

**Information Paper for LegCo Panel on Planning, Lands & Works
Special Meeting on 12 December 2001**

**PROPOSED CHARGING AND PENALTY SYSTEM FOR
STREET EXCAVATION WORKS**

Purpose

The Government proposes to tighten the control over promoters and contractors in connection with street excavation works. The scheme set out in this consultation paper sets out the proposed fee structure for recovery of the costs incurred by Government for administering the Excavation Permit (EP) system, as well as economic cost for unreasonable delay in completing street excavation works.

Introduction

2. Street excavation works are routinely carried out by the utility undertakers, Government departments and other parties such as developers, bus companies etc. for the purposes of expanding, improving and maintaining road or utility networks to better serve the community of Hong Kong. However, these works inevitably occupy road space and cause disruption to traffic and inconvenience to the public, despite proactive planning and control by the Government departments concerned.

3. Street excavation works normally involve two (often independent) parties, namely the promoter (e.g. a Government department or a utility undertaker) for whom the work is carried out, as well as the contractor who actually carries out the work. At present, the promoter obtains an EP under the Land (Miscellaneous Provisions) Ordinance (LMPO) for making the excavation, whilst in practice, the contractor carries out the works on site. Up to now, no fees have been charged to recover Government's costs incurred for processing these EPs or for carrying out the related audit inspections and monitoring of the excavation works.

Background

4. The subject of EP fee was first raised in 1987. Following a study on the subject, it was recommended that penalty charges should be introduced, in addition to a fee to recover the administrative costs, to ensure that disruptions caused by road excavations were limited to the least possible duration. The assumption was that

penalties should create an incentive for utility undertakers to mobilize sufficient resources to finish works within the approved permit duration.

5. In October 1991, the Director of Audit invited attention to the need to reduce incidences of delay in the completion of utility works on roads and the substantial financial implications for the Government due to the delay in implementing the EP fee. In his Report No. 24 of March 1995, the Director of Audit reiterated that a penalty should be imposed on utility undertakers who delayed their works without good reasons and that an EP fee should be introduced as soon as possible.

6. A Road Opening Working Party (ROWP) was convened by the Secretary for Works in 1993 to address concerns that action to improve the management of road openings had produced only barely measurable results. A number of improvement measures were proposed, all of which have since been implemented. The ROWP also proposed amending the LMPO to introduce a permit fee for street excavations.

7. In 1996, a proposed permit fee scheme was developed and, after consultation with the utility undertakers, a revised proposal was submitted to the LegCo Panel on Planning, Lands and Works in November 1996.

8. Progress on the matter was suspended in 1997 due to other legislative priorities in the transition period. A revised proposal was circulated to the utility undertakers for consultation in December 1999, who objected strongly to the introduction of permit charges.

9. A revised proposal was presented to the LegCo Panel on Planning, Lands and Works on 13 January 2000. Following that meeting, and taking into account utility undertakers' call for more consultation, the Administration undertook to further study the effect of the legislation on utility undertakers. The Administration commissioned a 'Regulatory Impact Assessment' (RIA) study on 'Introduction of Permit Fee and Financial Disincentive Scheme for Road Opening Works' in May 2000. As part of the study, the consultant organized a workshop at which the major utility undertakers participated and presented their views. Their view was that, as utilities provided a necessary economic benefit, undertakers should not be required to pay a fee for carrying out excavation works. However, the RIA study found that Government's proposal was acceptable. Subsequently, a proposed charging and penalty system for street excavation works was presented to the LegCo Panel on Planning, Lands and Works on 6 November 2000.

10. Upon further consideration by the Administration in early 2001, it was considered necessary to review the proposed EP fee scheme, to ensure that it had an adequate deterrent effect such that promoters would only carry out excavations where absolutely necessary and that contractors would complete the works in good time, with minimum impact on the public. We are now proposing a charging scheme which will recover administrative costs based on the “user-pays” principle and which we believe will encourage promoters and contractors to complete their excavation works within the permit period. In addition to administrative cost, a further charge based on the economic cost of traffic delay will be levied for excavation work carried out after expiry of the original permit period without good reason.

11. We circulated a Consultation Paper to all utility undertakers on 8 October 2001. We also consulted the interested parties at a meeting held on 16 October 2001, App. A and they have expressed their views in writing. Their views are consolidated, together App. B with our response to those views, at Appendix A. The agreed notes of the meeting on 16 October 2001 are attached at Appendix B.

Proposed EP System

12. The following main changes are proposed to the existing LMPO for the purpose of amending the EP system:

- (a) Introduction of the concept of 'nominated permittee' to make contractors carrying out excavations also liable to prosecution for breaches of EP conditions.
- (b) Dealing with emergency excavation permits.
- (c) Introduction of a charging scheme to recover administrative costs.
- (d) Introduction of a charging scheme for extension of permit period, due to unreasonable delay in completion of excavation, based on economic cost arising from traffic delays, with provision for exemptions and appeal mechanisms.
- (e) Government departments to pay charges.
- (f) Raising the level of fine for breach of EP conditions. Non-conforming

Government departments will be subject to a 'reporting mechanism'.

(g) Legalisation of computer EP records.

13. The current processes of using the Utility Management System (UMS) in the coordination and management of street excavations will be maintained. Consideration will be given to enhance the functionality of the UMS in the light of changes in the EP system. The current requirement and arrangement for coordination of street excavation activities through the Road Opening Coordinating Committees, Utilities Technical Liaison Committee and Joint Utilities Policy Group of HyD shall continue.

Permittee and Nominated Permittee

14. Breach of EP conditions is an offence under section 8(4) of the LMPO, which at present carries a maximum penalty of \$5,000 and 6 months' imprisonment. Under the current practice, if there be a breach of EP conditions, it is the promoter (being the permittee) who is liable to prosecution, but not the contractor who actually carries out the excavation works. Such arrangement is not satisfactory and may be unfair since it is the contractor who violates the EP conditions in most circumstances. For this reason, there are legal difficulties in enforcing certain EP conditions against the permit holder.

15. It is recognised that the contractor carrying out the works should be held responsible for all breaches of EP conditions in relation to the execution of the works. As he has overall responsibility of site works, he should also be liable for the misdeeds of his subcontractors (any tier) and employees.

16. To make the contractor liable to prosecution, we will allow a permittee (if he himself is contracting out the work) to name his contractor as a nominated permittee by sending a notice of nomination to the Authority. If the contractor consents to such nomination and the Authority approves the nomination, then the contractor becomes a nominated permittee.

17. The nominated permittee will be liable for prosecution against the breach of those EP conditions that should be complied with by him. He can no longer avoid prosecution for want of knowledge of the permit conditions applicable to him.

However, the permittee will still be liable for prosecution for breach of those EP conditions that need to be complied with by the permittee. There are also some EP conditions that must be complied with by both the permittee and the nominated permittee. In the proposed EP fee scheme, breach of these EP conditions shall hold both the permittee and the nominated permittee liable to prosecution.

Proposed EP System for Emergency Excavation

18. Often, utility undertakers may have to make street excavations urgently before they can obtain an EP to carry out emergency repair to their network. Highways Department (HyD) currently issue block excavation permits for a specified period to utility undertakers for the purpose of carrying out such emergency works. Under a block excavation permit, permission to make street excavation(s) for each incident expires 7 calendar days from the date of the emergency incident. The utility undertaker is required under the block excavation permit to report any such incident to the Authority. For emergency works lasting longer than 7 days, the utility undertaker concerned has to apply for an EP before the expiry of the 7-day validity period under the block excavation permit.

19. To avoid forcing utility undertakers to make excavations without a valid permit and to maintain a flexible mechanism on control of excavations for the purpose of emergency repairs, we propose to retain the existing block excavation permits for emergency works (hereinafter called “Emergency EP”) with the following supplementary provisions:

- (i) If the permittee of an Emergency EP employs a contractor for the excavation work, the same Emergency EP shall be deemed to have been issued to the contractor and subcontractors of any tier below;
- (ii) The permittee of an Emergency EP may nominate a contractor as a nominated permittee by sending a notice of nomination to the Authority. If the contractor consents to such nomination and the Authority approves the nomination, then the contractor becomes a nominated permittee; and
- (iii) If the permittee of an Emergency EP anticipates that the work can be completed within the “initial period” of 7 calendar days from the date of reporting the incident to the Authority no further EP application will be required. Otherwise, the permittee will be required within 7 calendar days

from the reporting date of the incident to apply for a 'normal' EP. The normal 'first issue period' will retrospectively start from the starting date of the emergency excavation and the duration of this EP will be assessed in the normal manner.

20. No fee will be charged for issuing such an Emergency EP as the permittee concerned may not carry out any emergency excavation at all over the period. However, the same proposed fee charging system as stated below, will be applied to each emergency incident under the Emergency EP.

Proposed Fee Structure

21. The proposed fees for an excavation *in streets maintained by HyD* are:

- (a) EP issue fee, EP extension fee where applicable and a daily fee charged for the whole EP period including the extended period(s). These are to recover administrative costs of concerned Government departments for issuing and extending the EP and subsequently monitoring the street excavation works during the permit period based on the 'user- pays' principle, as follows:

Fee for issue of an EP	\$1,860
Fee for issue of an extension EP	\$590
Daily fee for the duration of an EP	\$32/day

and,

- (b) an additional daily charge based on the economic cost of traffic delay. Economic costs will only be charged during the extended period where the excavation is affecting carriageways and the extension is due to an unreasonable delay. The charge is calculated based on a weighted average figure fixed for a particular category of road which is related to the likely impact of traffic delay caused by the excavation works, as follows:

Category 1 – Strategic Roads	\$18,000/day
Category 2 – Sensitive Roads	\$7,000/day
Category 3 – Remaining Roads	\$1,500/day

The name of the roads in each category will be published by D of Hy after consultation with Transport Department and will be reviewed periodically.

22. For excavations *in unleased land other than streets maintained by HyD*, an EP issue fee and an EP extension fee, if required, will be charged to recover the administrative costs incurred by the relevant Authority, and is as follows:

Fee for issue of an EP	\$3,060
Fee for issue of an extension EP	\$400

23. Members should note that, all fees for the recovery of administration cost are based on 2001 – 2002 prices. There is a slight difference between the EP issue fee and EP extension fee as against that proposed in the Information Paper to this Panel submitted on 6 November 2000. The change is due to taking into account the involvement of Transport Department and Police in addition to HyD staff in the processing of applications. There is no change in the staffing level assumed between this and the last paper. A cost breakdown for administrating EP's for streets maintained by Highways Department is attached at Appendix C. A similar breakdown for unleased land controlled by Lands Department is attached at Appendix D. The principles for the assessment of economic charges is attached at Appendix E.

App. C
App. D
App. E

Fixing of EP duration, Extension and Appeal

24. The Authority will examine each application for EP and assess a first issue period, in which the excavation works is to be completed. The permittee should endeavour to complete the works in this period.

25. If an extension becomes necessary, the economic charge will apply to the extended period. Part or whole of the extended period may be waived for imposition of the economic charge in circumstances where the cause of delay is beyond the control of the permittee. The circumstances for the waiving of the additional daily charge will be set out in the law.

26. If the permittee is dissatisfied as regard the imposition of economic charges (including whether the initial period is unreasonable) there will be an appeal mechanism in the legislation for referral to the Administrative Appeals Board. The Administration will further consult utility undertakers and the construction industry on this issue.

Enhanced Enforcement

27. A prosecution team will be set up in HyD to tighten up control on street excavation works to reduce disruption arising from poorly executed works. The prosecution team will be charged with the immediate follow-up actions for referrals from HyD's audit inspection teams on any non-compliance cases during their routine audit inspections. The follow-up actions include screening for serious offences from the referrals, collection of evidence and procedures for prosecution actions under relevant Regulations and Ordinances. In addition to referrals from the audit inspection teams, the prosecution team will also carry out surprise checks to strengthen the deterrent effect on poor performance of contractors.

Treatment of Government Departments

28. EP's will be issued and fees will be charged to government departments in the same way as other private sector utility undertakers and road works promoters. Government departments will not be prosecuted for breach of permit conditions. Instead, a reporting procedure is to be set up in a similar way to section 3 of the Environmental Impact Assessment Ordinance, except that the report will be made to the Secretary for Works, rather than the Chief Secretary for Administration.

Legalization of Computer Records

29. With the implementation of the UMS and the enactment of the Electronic

Transactions Ordinance, for most applicants (essentially the utility undertakers) it would be technically feasible for EP applications to be forwarded to HyD through electronic media. In addition, non-UMS users can submit their applications through other electronic means. We therefore propose to make statutory provision for legalizing the use of computer records from the computer systems of the Authority as evidence in proceedings.

Increase Maximum Fine in LMPO

30. The maximum fine of \$5,000 in section 8(4) of LMPO has remained at the same level since enactment of the Ordinance in 1972. In order to reflect the serious consequences of the offence and the effect of inflation on the value of the amount, it is proposed to increase this maximum level of fine to \$50,000 (i.e. fine level 5 under the Criminal Procedure Ordinance Cap. 221).

Transitional Arrangement

31. To preserve the rights of the existing permit holders, the new legislation will not apply to EPs which are in force immediately before and continue to be in force after the commencement date of the new legislation.

The Way Forward

32. In order to implement the proposals described in this Paper, the LMPO has to be amended accordingly. To this end, the Administration aims to introduce the Amendment Bill to the LegCo in April 2002.

Woks Bureau
December 2001

**Consolidated Response to Comments Raised by Utility Undertakers
during the Consultation in October/November 2001**

Abbreviated Organisation Name

CTV	Cable TV	CLP	CLP Power Hong Kong Ltd.
NTT	Wharf New T&T Limited	NWT	New World Telephone
PCCW	Pacific Century Cyber Networks	HGG	Hutchison Global Crossing
HKCG	Hong Kong and China Gas Company Limited	HEC	Hong Kong Electric Company

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
1.	'User pays' – principle is not efficient. Heavy burden on UU's. Although the user of EP system are utilities, the public at large as consumers or users of utility services will ultimately foot the bill. Administrative cost should be recovered through tax.	NTT, PCCW, HKCG, CTV, CLP, NWT, HGC	Not all members of the public have the same pattern of consumption of utility services, and in some cases, they may have a choice. As the use of utility service is a consumption process, we believe it is incorrect to subsidise this process with tax. The user pays principle is more appropriate. It seems that the user pays principle in this case has the support of the Director of Audit and the Public Accounts Committee. Where there is a choice for the consumer, and if this is reflected in the service charge of utility services, it can give the utility undertakers greater incentive to manage their excavation works.
2.	The scheme does not have effect of speeding up work, as promoters and contractors are already keen to complete them early in their own interest.	NTT, PCCW, NWT	We believe promoters and contractors are keen to complete on time. But the administrative charge part is just for cost recovery, and the economic charge part is the incentive to complete <u>on time</u> . We do not want UU's to get into situation of having to pay economic charge, but we must have the disincentive instrument to meet any eventuality.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
3.	If there is a disincentive for delay, there should be a bonus for early completion.	HKCG	If there is room for early completion, that means the UU's are not submitting an optimum programme. In the interest of the public, a shortest time program is expected. What we want here is that the program submitted is the physically possible shortest program and we want it to be adhered to. We do not expect early completion.
4.	The proposal is cost oriented rather than process improvement	CTV	The scheme is basically process improvement. It just uses monetary incentive as a tool.
5.	The proposal is not cost effective to the UU's or the consumers. The scheme is just creating administrative cost.	CTV, HGC	According to the RIA study, the saving of traffic impact time by shortening excavations is very significant.
6.	UU's are already paying various licence fees annually, as such, they should be given EPs free.	CTV	All licence fees are basically for recovering cost of administering a particular licence based on the user- pays principle. It does not cover the cost of the EP system.
7.	Different administrative charge should be levied for carriageways and pavements to encourage use of footpath for service.	NTT	The costing of administrative expense is generally the same, irrespective of on carriageway or pavement. The economic charge should be a disincentive for making openings in carriageways, but will not be applied to pavements.
8.	The permittee may not be able to use the whole EP period due to delay in giving consent by EPD, Police, etc. One stop shop is required. What is the likely processing time.	NTT, PCCW, CTV, CLP, NWT, HGC, HKE	We are working out the necessary administrative framework to realize the one stop shop. The likely processing time will also be worked out.
9.	All EP fees should be waived for diversion required by Government (or 'semi government entities').	NTT, HKCG, CLP	There is a statutory requirement on UU's to meet cost of diversions. Where the diversion arises not due to statutory requirement, the UU's can recover the cost from the relevant parties.
10.	Criteria for judgment of initial permit period is required. Need to be fair. Code of practice forum should be set up.	HKCG, CLP, NWT, HEC	HyD staff will be able to judge according to their experience based on the information submitted by the applicants. Rest assured that the assessment will be fair. HyD will periodically invite UU's to discuss the issue to improve assessment.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
11.	<p>Economic charge should be waived for not due to fault of the permittee, agreed set of reasonable delays is required, and UU's should be consulted:</p> <ul style="list-style-type: none"> - suspension order issued not due to the permittee's fault; - objection from local people or business; - site not handed over by the Authority, including due to consent not granted by police, EPD etc. - restricted working hours; - adverse weather; - unforeseeable underground conditions. 	NTT, PCCW, HKCG, CTV, HGC	We have included such consideration in our proposal. The situations that are technically definable will be written into the law. As regards restriction on working hours, the assessment of reasonable duration will take this into account. Details will be worked out.
12.	No matter how the judgment system is worked out, there are always argument and increase in administrative work.	HKCG	We recognize that it may take some effort in arriving at a agreed working period. The set of administrative procedures and criteria will be made transparent and arguments can be minimized.
13.	Enforcement agency should be independent from HyD, WSD, DSD to be fair.	NTT, PCCW, CTV, NWT	The enforcement arm although operated under the DHy, is related to other divisions of the HyD just as the ICAC operates under the CE, is not related to any other government department. Hence there is no reason to believe HyD is biased.
14.	Transparent set of criteria for prosecuting breaking EP condition is required rather than subjective judgment	NTT, HKCG	The prosecution criteria of HyD are no less transparent than any other law enforcement agencies.
15.	Unequal as government departments are immune from prosecution. Should make departments prosecutable as in EIAO. Or why cannot the reporting mechanism be applicable to non-complying UU's. Doubtful if the incentive for expediting excavation work is applicable to government departments.	NTT, PCCW, CTV, CLP, NWT, HGC	<p>That departments are prosecutable under the EIAO is a misnomer. A similar reporting mechanism in the EIAO will be used in the LMPO.</p> <p>Government departments are subject to economic charge.</p>

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
16.	Not the right economic climate to introduce such to increase the burden of the public. It damages Hong Kong's business environment. The scheme should be stopped	NTT, PCCW, HKGC, CTV, HGC	The incentive for prompt completion of street excavations can reduce traffic congestion/ pollution can help improve business environment at large.
17.	Need to see cost breakdown to determine if the system is fair. Period review of charges is necessary	PCCW, HKCG, CTV, CLP, NWT, HGC	Already provided. All charges will be reviewed periodically.
18.	Why is the administrative charge this time higher than that recommended last year?	HGC	The apparent increase in the initial processing fee is to take into account of police and transport department's input. Previously, we took into account of HyD's input only.
19.	'Loophole' for bribery notwithstanding criteria are set for EP duration and economic charge exemption	PCCW, CTV, HEC	In any system, there is always a need to have some officials, or persons to make some judgment, or exercise some discretion. We should not assume that these always give rise to corruption. If there is evidence of corruption, those people involved will be liable to sanction by the law.
20.	Appeal (to the Administrative Appeal Board) is time consuming and delay provision of utility to Hong Kong	PCCW	The speed of settlement by the Administrative Appeal Board depends on workload and may not necessarily be time consuming. We do not envisage a lot of cases going to the AAB, nor do we want them to be so. It is unlikely that an appeal can hold up the provision of service, as the whole appeal is basically a paper exercise, and any economic charge determined to be overpaid can be refunded.
21.	More effort should be spent on road infrastructure, utility troughs etc. rather than the unfair scheme.	HKCG, CTV, NWT	Government has been studying the use of utility troughs in new development areas, but that idea also requires the support of utilities, including their willingness to participate in their investment.
22.	It is necessary to differentiate the liability between the permittee and the nominated permittee. Permittee should not be held liable for nominated permittee's act.	HKCG, NWT, HGC	The nominated permittee's and permittee's liability will be clearly differentiated in the permit itself. The Permittee will not be liable for those EP conditions which are to be complied by the Nominated Permittee.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
23.	The nominated permittee system increases complexity. But it should not increase the processing time for EP	NWT	The system is necessary to catch contractors. The EP processing time should not be affected by the system.
24.	The scheme runs against the spirit of asking UU's to invest more in Hong Kong to enhance Hong Kong's environment	CTV	We believe that whether UU's decide to invest in Hong Kong depends on whether there is a strong demand for their product or service, and therefore if it is profitable. The extra bit of EP fees is minimal to UU's cost, and if they are passed on, should not stifle demand if the quality of service offered is good. We do not expect UU's to pay a lot of economic charge.
25.	The scheme should provide for multiple utility working in one excavation. The permittee may not have control over other UU's working in the same trench	CLP	HyD will work out a fair allocation of time in case of 'common trench' and each UU working in that trench will be liable only for their own delay.
26.	Will other government departments impose charges similar to road opening?	HGC	We cannot foretell what charge will be proposed in future. We can only say that charges are proposed as the need arises, or is recognized. Any charge has to be agreed by LegCo.

Appendix B

Land (Miscellaneous Provisions) (Amendment) Bill Proposed Charging and Penalty System for Street Excavation Works

Notes of Consultation Meeting (held on 16 October 2001 at 3:00 p.m. to 5:30 p.m. in Room 613, Highways Department, Homantin Government Offices)

Present :

Department/Organization	Name	Fax No.
Highways Department (HyD)	C S WAI (Chairman) Albert H H LIU Simon Y W CHUNG K H HO	2714 5216 2714 5290 2714 5290 2714 5290
Works Bureau (WB)	S W CHIA	2869 0167
The Hong Kong and China Gas Co. Ltd. (HKCG)	Simon NGO	2561 6313
Hong Kong Tramways Ltd. (HKT)	Steven CHAN S SHARMA	2118 9299 2118 9299
Hong Kong Cable Television Ltd. (HKC)	Allen LAW Keith CHAN	2112 7810 2112 7884
The Hongkong Electric Co. Ltd. (HEC)	K W LI	25107843
New T&T Hong Kong Ltd. (New T&T)	Patrick SO	2112 8163
New World Telephone Ltd. (NWT)	Kevin KWAN C L WONG	2133 2194 2133 2036
Pacific Century CyberWorks Ltd. (PCCW)	S W TANG K C CHEUNG	2635 3277 2511 9301
Hutchison Global Crossing Ltd. (HGC)	S P LIU K K TSANG	2123 1675 2123 1675
CLP Power Hong Kong Ltd. (CLP)	Paul POON T F CHOW	2678 7133 2678 6996
Water Supplies Department (WSD)	David C W CHAU	2824 0578
Drainage Services Department (DSD)	H P YIP	2827 6657

Purpose of the meeting

1. The Chairman stated that the purpose of the meeting was for the Government to consult and collect views of utility undertakers (UU) on the proposed Excavation Permit (EP) charging and penalty system and provide clarification, if necessary, on the Consultation Paper circulated to the UU by Works Bureau (WB).

Discussion/Comments on the Proposed System

2. The Chairman stated that a copy of the consultation paper and the notes of this consultation meeting were requested by the Public Accounts Committee (PAC) in the recent public hearing. UU had no objection to copying the consultation paper and the agreed notes of meeting to PAC for reference.
3. Upon WB's advice, the consultation period would end on 20 November 2001 for submission to the LegCo PLW Panel scheduled for 7 December 2001. The amendment Bill would be gazetted before its submission to the LegCo for 1st and 2nd readings in April 2002. The Chairman stated that all written comments on the proposed charging and penalty system for street excavation works should reach WB on or before 20 November 2001.
4. The Chairman stated that Planning and Lands Bureau, as the policy bureau for the Land (Miscellaneous Provisions) Ordinance, would determine when the amendment Bill came into effect after taking all relevant factors into consideration.
5. UU raised the following common reasons for objecting to the proposed system:
 - a) The charging system would impose a heavy financial burden on UU.
 - b) The charging system would create unnecessary disputes and administrative works, and hence cost and time, to both Government and all UU. All these might eventually need to be borne by the public.
 - c) With the current downturn in the economy, it was not an appropriate time to implement the charging system.
 - d) UU were already making their best effort to carry out road opening works by working co-operatively and closely with government departments and the charging system would not provide any incentive for improvement in shortening the excavation period as the majority of road opening works were carried out by the government departments.
 - e) Instead of imposing a tedious and unfair scheme like that, Government should consider other means or measures, such as one-stop-shop EP application, better road infrastructure design and planning and common utility trough etc.

6. HKC stated that the proposal should not just focus on UU as Government works accounted for the largest proportion of the current excavation works. Circulation and consultation of the proposal to UU only without addressing this fact that Government works was responsible for the majority of the current excavation works would mislead the public.

HKC stated that the proposal was in fact cost oriented rather than a process improvement approach. It was neither incentive nor cost-effective to UU. However, it would absolutely increase UU administrative cost, yet no improvement to the system.

HKC stated that UU had controversial comments to the fairness of user pays principle to be applied on utility services because the induced cost would eventually charge back to the end-users, i.e. the utility users. Furthermore, the proposed administrative cost and daily fee were, in fact, the cost of setting a system to govern the excavation works for installation of the utility facilities to better the Hong Kong environment. Shifting of such administrative cost together with the cost of extra resources from Government to UU and finally to the community was indeed unnecessary and not beneficial to the public at large.

HKC stated that their excavated works were definitely necessary and they were, as a responsible UU, always with best endeavour to complete the works in good time with minimum impact to the public. Internally they had an efficient works control system. Externally, there were existing co-ordination and co-operation under the three-tier system, existing co-ordination mechanism for excavation works in vicinity of each other, stringent code of practice, standard and regulations for UU to comply with. HKC stated that UU had always been quality conscious in improving the processes of excavation such as improving lighting and guarding, use of detecting devices, requisition of the one-stop-shop application, co-ordination with Government in making provision of sufficient footway width for installation of underground facilities and common duct/trough in new town planning stage.

HKC stated that as facing the economic downturn, the proposed charging scheme would impose intensive burden on them and was absolutely in conflict with the Government's emphasized policy of 'enhancing the business environment'.

7. CLP stated that the user pays principle was not well founded. The reason was because the users were actually the community who would ultimately pay the administrative cost for road openings, no matter whether the Government recovered it through direct levy or indirectly from UU who would eventually transfer the cost to their customers if the charging system was introduced.
8. HKCG stated that the user pays principle applied in this case was questionable and unfair. Utility services were laid to serve the community thus there was not a single group of privilege "users". Instead the public at large was the "end users" of utility services.

9. New T&T mentioned that utility services were used by the public at large. The introduction of the proposed charging system would unnecessarily jack-up the cost of provision because of additional administrative cost.

New T&T further stated that similar to the use of roads, if every person walking on a footpath had to be charged according to user pays principle, then it would just introduce unnecessary administrative cost.

10. In response to enquiry from UU, the Chairman clarified that the economic charge referred to in the Consultation Paper was an additional daily charge based on the economic cost of traffic delay. Paragraph 23 of the Consultation Paper meant that the economic charge would apply to the unreasonably extended EP period for excavations affecting carriageways. For excavations on footpath (not affecting carriageways), no economic charge would be imposed. UU were of the view that if the cause of delay was beyond the control of permittee, the charge should not be applied.
11. HGC and NWT stated that without giving detailed cost calculation, UU were not able to give comments on the fairness of the fee structure. HKC questioned why the breakdown of HyD's administrative cost had been shown in previous proposal but not at this time. In response to UU's request for more information on how the administrative fees were built-up and the economic charge was calculated, the Chairman stated that agreement of S for Tsy would be sought to release the cost information on the proposed fee structure to UU for reference.
12. In response to enquiry from UU about the methodology in derivation of economic charge due to traffic delay, the Chairman stated that a simple average analysis rather than an individual assessment was adopted since the former was simple to administer and the latter would unnecessarily push up the administrative costs. UU said that they could not comment further on this until they had received the cost information and calculation support.
13. As regards HGC's request, HyD would provide UU the statistical figures on EP issued for the past year and this year up to September 2001, and categorized in private UU and government departments including WSD and DSD in carriageway.
14. HKCG, HEC, New T&T, HGC, CLP and NWT stated that it was unfair and unacceptable for UU to pay EP fees for those diversion works requested by Government departments and other entities such as MTRC, KCRC etc. under prevailing ordinances. EP fees should be waived for such utility diversion works.
15. HKT said that they had maintained a low fare transportation service to serve the public. HKT also said that their profit was very minimal and they could not support further additional burden on its operation arising from the proposed EP charging and penalty system.

HKT said that they had effectively conducted the maintenance and repair works of one-third of Hong Kong Island's Northern Corridor, which was shared for use by all other traffic. They commented that if Government applied a "user-should-pay" principle the road users who shared HKT's carriageway should be asked to share the construction and maintenance cost. HKT suggested that they should get compensation from Government in respect of part of their road construction and maintenance cost of the carriageway.

HKT also pointed out that apart from maintaining the track and the road under those difficult, congested and hazardous road conditions, HKT had to continue its tram operation without interruption during the construction period. Delay of construction was often caused by factors beyond HKT's control. For instance, other vehicles were diverted onto their track during heavy traffic conditions, creating hazardous conditions for HKT workers doing the works on the roads. There were two options for HKT. Firstly, HKT would face heavy fines and penalty because deadlines were not met for situation mentioned above. Secondly, HKT might consider to provide hoarding around the construction section and stop part of their tram service at the cost of public's inconvenience. This social cost was huge. HKT considered that the imposition of category 1 additional cost on HKT was unfair.

HKT stressed that the impact of this EP charging and penalty system had repercussions affecting the public passengers. They commented that if the purpose of the implementation of the proposed EP charging and penalty system was to get UU to work faster, Government should consider granting some incentives to those who could finish their works faster than the deadline.

16. HKCG wished to know how and who would judge the initial permit period and to determine the unreasonable delay for imposition of economic charges. As there were too many variable factors e.g. different kinds of utilities, different kinds of roads, different utility sizes, different materials, different pressures, different installation methods, different pressure test requirements, different soil conditions etc., it would be an extremely complicated and perhaps subjective exercise to judge the permit period and "reasonable vs unreasonable extension". HKCG raised concern that it could result in lengthy and perhaps unresolvable disputes during the permit application/extension application and, since many judgements could be subjective, it might increase corruption opportunity. New T&T stated that the permit period should not be assessed by HyD because the site situation might vary and it was the best position for UU to assess the permit period. HEC stated that there should be a set of fair, equitable, open and clear criteria to determine EP duration and the circumstances where the cause of delay was beyond the control of the permittee. HKC had doubts about how to evaluate the cause of unreasonable delay among lots of uncontrolled factors. HKC queried that it was a very complicated issue in relation to how EP duration and EP extension could be fairly justified.

17. The Chairman stated that when applying for EP, it would be up to UU to propose the permit period together with their substantiation. HyD, as the Authority for issue of EP, would assess and determine the EP period. HyD would collaborate with UU to set up a Working Group to establish a set of criteria for determination of EP duration and circumstances for waiving, in whole or in part, economic charges for EP extension, prior to submission of the amendment Bill to LegCo. In response to the Chairman's explanation to set up a Working Group to deal with the issue, HKC expressed the time might not be adequate for such complicated issue if starting from January to April 2002.
18. PCCW stated that excavation for emergency incident should be charged differently especially for night works as it involved less time for administration. PCCW suggested that the Working Group should review the fee structure to have a separate system for emergency work.
19. The Chairman stated that there was HyD staff involvement in the emergency incidents. Similar to the methodology for the economic charge, a simple average approach instead of individual assessment was adopted in the assessment of EP fees. The EP fee structure would not be reviewed in the Working Group.
20. HEC, New T&T, PCCW, HKCG, HGC and CLP stated that the Government should provide one-stop-shop service so that UU would be able to commence work on the specified date once EP was issued by HyD, without the necessity of processing application for other permits and/or seeking advice from other Government departments after obtaining an EP as currently prevailing. HKC expressed that one-stop-shop was crucial to improve the process of EP application.
21. The Chairman stated that one-stop-shop service was not a prerequisite. The more relevant point to address was to get all the approvals from relevant authorities such that UU could commence their works once EP was issued. HyD would try to get agreement from all relevant government departments for that purpose. HEC stated that UU did not agree with the Chairman's view as UU would have to pay for the period with work unable to be commenced and the unnecessary EP extension fees/additional daily charge thus caused if the Government insisted on implementing the proposed system.
22. CLP stated that a clear service pledge for granting permits should be provided in respect of the new proposed system. CLP also stated that the permit extension fee would give disincentive to common trenching.
23. Referring to paragraph 9 of the Consultation Paper, HEC requested that it should add "The UU and contractors' representatives participating in the workshop objected to the proposal." in the paragraph and HKCG suggested to replace "The RIA study found that" with "The RIA study consultant commissioned by Finance Bureau opined that".

24. UU considered that under the proposed system, same treatment should be applied to Government departments as more than half of road opening works were carried out by Government departments.
25. The Chairman pointed out that paragraph 26 of the consultation paper had elaborated that Government departments would be charged in the same way as private sector. However, instead of being prosecuted for breach of EP conditions like private sector, Government departments would be subject to a reporting procedure for breach of EP conditions. UU challenged that the heading “Equal Treatment” was wrong since Government departments were supposed to be immune from prosecution. In view of this difference, the Chairman considered that “Treatment to Government Departments” would be a more appropriate title for paragraph 26. HKC and HGC pointed out that it was unfair if Government departments were immune from prosecution. HKCG, NWT and PCCW challenged why similar reporting procedure could not be applied to UU in private sector instead of being prosecuted for breach of permit conditions.
26. New T&T stated that a third party should be introduced for the enforcement of the Ordinance and auditing the excavation works to ensure independence and fairness. Items in the inspection checklist that were subjective and not measurable should be taken out. HKC stated that there would be conflict of interest since HyD was responsible for significant proportion of the number of excavations but at the same time also acted as the inspector and prosecutor of the subjective permit checklist. That might impose a lot of unfair judgement and opportunity in corruption.
27. In response to HEC’s enquiry, the Chairman stated that the inspection checklist in conjunction with the conditions of permit would be reviewed in light of the proposed system.
28. The Chairman stated that AAB had been consulted for incorporation of such appeal mechanism in the proposed amendment Bill.
29. New T&T, HKCG and HKC raised concern if the Administrative Appeals Board (AAB) could handle appeals from UU on the initial permit period and extension due to unreasonable delay given the huge amount of EP issued and EP extensions in the past years. The past record showed that the number of extension was about 50% of the number of EPs. However the Chairman pointed out that with the implementation of the charging scheme, UU would work more diligently and it was foreseeable that the number of extension would be reduced tremendously. NWT and HGC stated that a separate appeal channel should be set up instead of AAB. HGC queried whether AAB had been properly advised on the anticipated number of appeals and recommended HyD to consult AAB again. HKC asked whether there would be any charge on the AAB appeal mechanism.
30. WB stated that AAB payment requirement, if any, would be in accordance with the provisions stated in Administrative Appeals Board Ordinance (Cap. 442).

31. New T&T stated that it was necessary to consult those persons, mostly contractors, who would be nominated as nominated permittees as they were the stakeholders in roadwork and there would be significant impact on them.
32. As regards the penalty system, HKC queried what management level of a company would be charged. The Chairman stated that who would be charged would depend upon the evidence available and circumstances under which the permit conditions were violated.
33. As regards the “social cost” due to “traffic delay”, HK Tramways and HKCG enquired the disposition of the fines collected by such a scheme. They challenged that if “incentive” was the principle, then the authority should also consider a reciprocal ‘Bonus’ for early completion of work.
34. The Chairman informed the meeting that the consultation paper would not be re-circulated with the amendments but the requests for changes would be recorded in the notes of the meeting.

Highways Department
November 2001

Statistics of EP Issued on 2000

Utility Undertaker	EP applied	EP issued	No. of EP Extended	EP Extension	EP days	Total EP days*	Average EP Duration*
	(no.)	(no.)	(no.)	(day)	(day)	(day)	(day)
HEC	2464	2445	660	35480	53561	89041	36.42
CCL	818	815	26	1133	21489	22622	27.76
CLP	5370	5330	2195	200094	207090	407184	76.39
ESL	1147	1133	187	21032	38900	59932	52.90
HKCG	1393	1380	237	18459	47480	65939	47.78
HGC	2856	2790	925	70929	98177	169106	60.61
PCCW	2219	2208	336	28520	63054	91574	41.47
NWT	101	101	37	2107	3809	5916	58.57
CTV	961	956	311	22159	27492	49651	51.94
NTT	250	249	115	6721	7206	13927	55.93
TRAM	82	82	33	835	2068	2903	35.40
WSD	4003	3985	817	139025	103595	242620	60.88
DSD	1232	1213	613	147183	61497	208680	172.04
RED	10	7	1	17	121	138	19.71
Others	2578	2568	816	106232	142493	248725	96.86
Total	25484	25262	7309	799926	878032	1677958	66.42

* including EP extensions

Statistics of EP Issued on 2001 (Up to September)

Utility Undertaker	EP applied	EP issued	No. of EP Extended	EP Extension	EP days	Total EP days*	Average EP Duration*
	(no.)	(no.)	(no.)	(day)	(day)	(day)	(day)
HEC	1769	1758	475	22630	41996	64626	36.76
CCL	548	548	24	1053	14070	15123	27.60
CLP	4814	4750	1578	162959	172798	335757	70.69
ESL	1216	1211	182	16341	40037	56378	46.55
HKCG	980	976	132	9282	31191	40473	41.47
HGC	2295	2256	964	63357	75987	139344	61.77
PCCW	1695	1690	287	17418	49600	67018	39.66
NWT	276	266	72	3759	9225	12984	48.81
CTV	710	705	222	14793	19515	34308	48.66
NTT	314	308	119	9511	10110	19621	63.70
TRAM	32	32	16	896	882	1778	55.56
WSD	3340	3298	639	104549	85333	189882	57.57
DSD	1008	990	397	95178	54657	149835	151.35
RED	14	14	2	41	342	383	27.36
Others	1955	1916	421	61451	107521	168972	88.19
Total	20966	20718	5530	583218	713264	1296482	62.58

* including EP extensions

Appendix C

Highways Department
Fees for Excavation Permit System
Cost at 2001-02 Prices

	Issue of EP \$	Issue of extension EP \$	Daily Fee in respect of EP/ extension EP \$
Staff Costs	59,383,346	4,628,734	43,037,290
Departmental Expenses	2,352,232	302,143	2,413,409
Accommodation Cost	1,704,949	152,878	1,354,845
Depreciation of the computerised UMS	4,625,073	746,584	5,655,072
Cost of Services provided by other departments	31,040,364	2,575,776	5,928,511
Central Administration Overheads	1,559,846	121,585	1,130,478
	<hr/>	<hr/>	<hr/>
Total Cost	<u>100,665,810</u>	<u>8,527,699</u>	<u>59,519,605</u>
Total no of permit / permit-day	54,295	14,427	1,846,590
Unit cost	1,854	591.1	32.2
Fees	1,860	590	32

* 1) The above costs include those of HyD, TD and HKPF

2) The total no. of permit / permit-day include those for HyD works orders and excavation permits

Appendix D

**Lands Department
Fees for Excavation Permit System
Cost at 2001-02 Prices**

<u>Description of costs</u>	<u>(1)</u>	<u>(2)</u>
	\$	\$
Staff Cost	8,964,166	660,396
Departmental Expenses	260,726	17,773
Accommodation Costs	444,869	27,982
Services by Other Departments	-	-
Central Administrative Overheads	323,706	23,848
Total	<u>9,993,467</u>	<u>729,999</u>
Number of Permits Issued#	4,506	1,817
Unit Cost	2,218	402
Plus Unit Cost for Copying of Land Records	840	-
Total :	<u>3,058</u>	<u>402</u>
Proposed Fees	3,060	400

Remarks:

The numbers of permits issued in 2000-2001 & 2001-02 are assumed to be the same as that in 1997-98.

Legend:

- (1) Excavation permit for excavation in unleased land other than streets maintained by HyD.
- (2) Extension of an excavation permit for excavation in unleased land other than streets maintained by HyD.

Methodology in assessing the Additional EP Daily Charge based on Economic Cost due to Traffic Delay

Introduction

The additional daily EP charge based on economic cost due to traffic delay is chargeable to the extended period(s) of an EP where the excavation works affect carriageways. The rate for the charge is fixed for a particular category of road which is related to the likely impact of traffic delay caused by excavation works. The rate for each category of roads are as follows :

Type of Carriageway	Charge
Category 1 (strategic roads)	\$18,000/day
Category 2 (sensitive roads)	\$7,000/day
Category 3 (remaining roads)	\$1,500/day

Category 1 – Strategic Roads

This category comprises all strategic roads which basically include all red and pink routes.¹ Since expressways are either red or pink routes, they are automatically included in this category. All Category 1 roads will be specified on a list.

Category 2 – Sensitive Roads

This category includes all traffic sensitive roads other than those specified in Category 1 above. It includes roads where any excavation would normally require a Traffic Impact Assessment (TIA) and/or Day-time Ban would be imposed, and other roads where the closure of a traffic lane will result in major traffic problems.² All Category 2 roads will be specified on a list.

¹ The existing red routes and pink routes are listed in the Annexes to Highways Department Technical Circular No. 5/2001.

² The list of roads where TIA and/or Day-time Ban requirements shall apply is also given in the Appendix to the “Guidance Notes No. RD/GN/021” issued by Highways Department.

Category 3 – Remaining Roads

This category comprises all other roads not included in Categories 1 and 2.

Highways Department in consultation with Transport Department will publish a list of roads under Categories 1 and 2, with the remaining roads to be classified as Category 3. Director of Highways, in consultation with Commissioner for Transport` has the power to amend the list as circumstance changes.

Methodology

To assess a reasonable charge for each of the three categories, Transport Department carried out an assessment of the delay to motorists, as a result of excavations, on a sample of roads in each category. This assessment utilized a computer based transport modeling package capable of reporting the total travel time for all vehicles passing through a defined road section under different network conditions. For each sample selected, a model run was conducted for the normal road network and a second run was carried out with a road network suitably modified to reflect the loss of road capacity, resulting from the excavation works. By comparing the total travel time through the road section for the scenarios with and without excavation works, the additional travel time, or delay caused by the excavation works was derived. This delay was converted to an economic loss in dollars per day by application of a “value of time” factor used in the Comprehensive Transport Study. The cost for each category of roads are then derived from the weighted average of the sample costs within that particular category.