

立法會
Legislative Council

LC Paper No. CB(1)368/18-19
(These minutes have been seen
by the Administration)

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**Subcommittee on
Land (Miscellaneous Provisions) (Amendment) Regulation 2018**

**Minutes of the first meeting on
Tuesday, 13 November 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Abraham SHEK Lai-him, GBS, JP (Chairman)
Dr Hon CHIANG Lai-wan, SBS, JP
Hon CHU Hoi-dick

Member absent : Hon CHEUNG Kwok-kwan, JP

**Public officers
attending** : **Agenda item II**

Mr Vitus NG
Principal Assistant Secretary for Development (Works)³

Mr HO Yiu-kwong
Assistant Director/Technical
Highways Department

Mr Alan LO Kam-lun
Assistant Director (Specialist 2)
Lands Department

Mr HO Kwok-tim
Senior Engineer/Utilities
Highways Department

Mr WONG Kwai-sun
Senior Land Executive/Land Control (1)
Lands Department

Clerk in attendance : Ms Doris LO
Chief Council Secretary (1)2

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Rita YUNG
Senior Council Secretary (1)2

Ms Christina SHIU
Legislative Assistant (1)2

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I Election of Chairman

Mr Abraham SHEK, the member who had the highest precedence among those present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Dr CHIANG Lai-wan nominated Mr Abraham SHEK and the nomination was seconded by Mr CHU Hoi-dick. Mr Abraham SHEK accepted the nomination. There being no other nomination, Mr Abraham SHEK was elected Chairman of the Subcommittee. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(L.N. 205 of 2018 — Land (Miscellaneous Provisions) (Amendment) Regulation 2018
(issued by the Development Bureau — Legislative Council Brief in October 2018)
LC Paper No. LS9/18-19 — Legal Service Division Report

Action

- LC Paper No. CB(1)160/18-19(01) — Marked-up copy of the Land (Miscellaneous Provisions) (Amendment) Regulation 2018 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(1)160/18-19(02) — Background brief prepared by the Legislative Council Secretariat)

Discussion

3. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

4. The Administration was requested to provide the following information:

Validity period of an excavation permit ("permit period")

- (a) elaboration of the principles and criteria adopted by the Highways Department ("HyD") in determining the initial permit period for different types and scales of road excavation works when conducting permit period assessment ("PPA") for excavation permit applications;
- (b) background of the formulation and implementation of the PPA process, including in particular when it was formulated, the recommendations made by the Hong Kong University of Science and Technology and the Hong Kong Polytechnic University on the PPA principles and criteria, and any subsequent review(s) conducted so far;

Charging of economic costs for extension of permit period

- (c) an explanation on the calculation and charging of the economic costs for extension of the permit period due to delayed excavation works, including:
- (i) the current basis of the calculation, and whether HyD would consider factoring in the inconvenience caused to the public and loss of business of the affected shops in the vicinity in

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the calculation; if it would, the details; if not, the reasons why; and

- (ii) whether the charging of economic costs was based on the number of days of delay; whether HyD had the discretion to deduct the number of days of delay to be charged or grant refund of the economic costs paid if the delay is caused by justifiable reasons; if so, categories of the justifiable reasons, and the legal basis for taking into consideration such justifiable reasons in making deduction or refund under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) and the Land (Miscellaneous Provisions) Regulations (Cap. 28A); and

Exploring the use of common utility tunnels

- (d) the expected completion time of the consultancy study on the use of common utility tunnels.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)182/18-19(02) on 19 November 2018.)

Date of next meeting and legislative timetable

5. Members agreed that the next meeting of the Subcommittee be tentatively scheduled for Tuesday, 20 November 2018 to discuss the Administration's response to the issues raised at this meeting, and to continue to study the Land (Miscellaneous Provisions) (Amendment) Regulation 2018 ("Amendment Regulation").

(Post-meeting note: Members were notified vide LC Paper No. CB(1)177/18-19 issued on 14 November 2018 that a meeting was scheduled for Tuesday, 20 November 2018, from 2:30 pm to 4:30 pm.)

6. The Subcommittee noted that the scrutiny period of the Amendment Regulation would expire at the Council meeting of 28 November 2018. To allow sufficient time for the Subcommittee to consider the supplementary information provided by the Administration and to study the Amendment Regulation, the Subcommittee agreed that the Chairman would move a motion at the Council meeting of 21 November 2018 to extend the scrutiny period to the Council meeting of 9 January 2019. Members noted that, upon extension of the scrutiny period, the deadline for giving notice of motion to amend the

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Amendment Regulation would be 2 January 2019. The Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting on 14 December 2018.

(Post-meeting note: At the Council meeting of 21 November 2018, the Council passed a motion to extend the scrutiny period of the Amendment Regulation to the Council meeting of 9 January 2019.)

III Any other business

7. There being no other business, the meeting ended at 5:41 pm.

Council Business Division 1
Legislative Council Secretariat
19 December 2018

**Proceedings of the first meeting of the
Subcommittee on Land (Miscellaneous Provisions) (Amendment) Regulation 2018
on Tuesday, 13 November 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman			
000457 – 000635	Mr Abraham SHEK Dr CHIANG Lai-wan Mr CHU Hoi-dick	Election of Chairman	
Agenda item II — Meeting with the Administration			
000636 – 000901	Chairman Administration	Briefing by the Administration on the Land (Miscellaneous Provisions) (Amendment) Regulation 2018 gazetted on 26 October 2018 (L.N. 205 of 2018) to revise the excavation permit ("XP") fees and economic costs specified in Schedule 3 of the Land (Miscellaneous Provisions) Regulations (Cap. 28A) ("the Regulations").	
000902 – 001049	Chairman	Legislative timetable	
001050 – 002335	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan expressed support for increasing XP fees and economic costs, and the views that:</p> <p>(a) frequent and prolonged excavation and road opening works gave rise to various problems, including inconvenience to the public and loss of business to roadside shops in the vicinity; and</p> <p>(b) the Administration should step up its efforts in managing and monitoring road excavation works, and actively explore the use of common utility tunnels ("CUT") for accommodating underground utility services with a view to minimizing road excavation works.</p> <p>The Administration responded that:</p> <p>(a) the average validity period of XPs ("permit period") for standard excavation works programmes had been shortened in recent years as a result of the improvements made by the Highways Department ("HyD") in the permit</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>period assessment ("PPA") method and the standard PPA templates for XP applications;</p> <p>(b) apart from applying for XPs from HyD, the excavation promoter should also liaise with the Transport Department and Hong Kong Police Force to seek traffic advice before carrying out road opening works in order to minimize traffic disruption; and</p> <p>(c) the Administration adopted a positive attitude on the proposed use of CUT in new development areas where it was justified and cost-effective to do so. In fact, HyD had commissioned a consultant to conduct a feasibility study in mid-2018 to review the implementation of CUT in new development areas.</p>	
002336 – 002945	Chairman Dr CHIANG Lai-wan Administration	<p>Given that there were complaints from members of the public from time to time about the disturbances caused by prolonged road excavation works, Dr CHIANG Lai-wan was concerned about whether the criteria adopted by HyD in determining the permit period were too relaxed.</p> <p>The Administration responded that:</p> <p>(a) for streets maintained by HyD, an XP applicant was required to submit a construction programme and work activities for the proposed excavation works for HyD's approval. For standard works programmes, the applicants should use the standard PPA templates provided in the XP Management System ("XPMS"), which was implemented by HyD for the management of XP applications, to generate their construction programmes for submission to HyD. The standard PPA templates provided a standard duration for each excavation works activity for specific type of excavation works concerned;</p> <p>(b) HyD had commissioned the Hong Kong University of Science and Technology ("HKUST") (the review was completed in 2012) and the Hong Kong Polytechnic University ("HKPU") (the review was completed in 2013) to review the PPA method for utility trench works and other excavation works respectively; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(c) since 2012, a Demerit Point System ("DPS") with sanctioning measures had been in place, and the DPS was made more stringent in 2017 with the introduction of additional demerit categories.	
002946 – 003314	Chairman Mr CHU Hoi-dick Administration	<p>Mr CHU Hoi-dick enquired:</p> <p>(a) whether an XP applicant could apply for a longer permit period than that pre-set in the relevant standard PPA template; and</p> <p>(b) the numbers of XP issued and extensions granted respectively since the XP fees and economic costs were last revised in 2015.</p> <p>The Administration responded that:</p> <p>(a) HyD would allow the applicant to apply for a longer permit period based on certain engineering constraints, such as heavy traffic, rainy seasons and existing congested underground utilities; and</p> <p>(b) in 2017, HyD had issued around 20 000 XPs, and among which around 1 300 XPs were granted extension of the initial permit period.</p>	
003315 – 004334	Chairman Mr CHU Hoi-dick Administration	<p>On the enquiry of Mr CHU Hoi-dick, the Administration undertook to provide the following information:</p> <p>(a) whether the charging of economic costs was based on the number of days of delay; and</p> <p>(b) whether HyD had the discretion to deduct the number of days of delay to be charged or grant refund of the economic costs paid if the delay was caused by justifiable reasons; if so, categories of the justifiable reasons.</p>	Administration (paragraph 4(c)(ii) of the minutes refers)
004335 – 004743	Chairman Mr CHU Hoi-dick Administration	<p>Mr CHU Hoi-dick enquired about the reason for proposing different percentage increases for XP fees (10%-15%) and economic costs (7%-8%) respectively.</p> <p>The Administration responded that:</p> <p>(a) the result of a review of XP fees showed that the existing fees payable for the issue of various</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>types of XPs were unable to recover the administration cost of the Government at 2018-2019 price level, and the review of the existing economic costs showed that they were below the 2018-2019 price level;</p> <p>(b) in order to achieve full-cost recovery gradually in accordance with the "user-pays" principle and to avoid steep fee increase, the fees payable for the issue of various types of XPs were proposed to be increased by 10% to 15%; and</p> <p>(c) to reflect the updated economic loss due to traffic delay caused by the excavations and to maintain sufficient incentive to the excavation permittees to complete their works as soon as possible, the economic costs payable for extension of the permit period were proposed to be increased by 7% to 8%.</p>	
004744 – 005554	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan enquired about the follow-up actions taken by the Administration in response to the recommendations made in Chapter 4: Government's efforts in managing excavation works on public roads of Report No. 70 of the Director of Audit.</p> <p>The Administration responded that:</p> <p>(a) the Development Bureau ("DEVB") had issued a memo to remind government works departments to make greater efforts to ascertain the underground conditions, in particular at locations of potential conflicts between utilities and the proposed works before applying for XPs;</p> <p>(b) HyD was exploring with the Lands Department the possibility to make use of their existing data sharing systems, such as Geospatial Information Hub and GeoInfo Map, to share the underground utility information and the feasibility to develop an effective management and monitoring system on underground space occupation;</p> <p>(c) HyD had commissioned a consultant to conduct a feasibility study in mid-2018 to review the implementation of CUT in new development areas. HyD would closely monitor the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>progress of the study and upon its completion, review and propose action plan in respect of the use of CUT in new development areas for DEVB's consideration;</p> <p>(d) in an effort to improve the overall inspection coverage for XP sites, HyD had enhanced the Audit Inspection Management System in July 2018 so that any permit sites without Advance Notification submission but with permit duration elapsed by 50% would be scheduled for inspection. HyD would regularly monitor the effectiveness of the modification;</p> <p>(e) HyD would regularly compile statistical data to closely monitor the processing of Completion Notice and submission of site photographs and test reports by utility undertakings ("UUs"). Demerit points would be assigned to UUs under DPS with sanctioning measures for any overdue submissions; and</p> <p>(f) to expedite the referral actions from the Audit Inspection Team ("AIT") to the Enforcement Team ("ET"), HyD had revised the referral procedures so that ET would be promptly notified of any suspected breaches of provisions under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Ordinance") identified by AIT. HyD would further automate this process.</p> <p>The Chairman advised that the Public Accounts Committee would monitor the Administration's progress made in implementing the various recommendations made by the Director of Audit.</p>	
005555 – 010014	Chairman Dr CHIANG Lai-wan Administration	On the enquiry of Dr CHIANG Lai-wan, the Administration undertook to provide information about the background of the formulation and implementation of the PPA process, including when it was formulated, the recommendations made by HKUST and HKPU on the PPA principles and criteria, and any subsequent review(s) conducted so far.	Administration (paragraph 4(b) of the minutes refers)

Time Marker	Speaker	Subject(s)	Action Required
010015 – 010241	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan asked whether the Administration would explore the use of CUT to accommodate underground utility services, so as to reduce the need for road excavation works.</p> <p>The Administration reiterated that:</p> <p>(a) HyD had commissioned a consultant to conduct a feasibility study in mid-2018 to review the implementation of CUT. The main objectives of the study were to review the applicability of CUT in new development areas including construction cost estimate, social and economic benefits, management, maintenance, operation, security, safety and legal liability issues for recommending a practical implementation framework of CUT in such areas; and</p> <p>(b) after the completion of the study, HyD would assist DEVB in establishing procedures for identifying suitable locations to construct CUT.</p>	
010242 – 010748	Chairman Mr CHU Hoi-dick Administration	Mr CHU Hoi-dick enquired about the legal basis for taking into consideration justifiable reasons in exercising discretion to deduct the number of days of delay to be charged or grant refund of the economic costs paid under the Ordinance and the Regulations.	Administration (paragraph 4(c)(ii) of the minutes refers)
010749 – 010858	Chairman Dr CHIANG Lai-wan Administration	<p>Dr CHIANG Lai-wan requested the Administration to provide the following information:</p> <p>(a) elaboration of the principles and criteria adopted by HyD in determining the initial permit period for different types and scales of road excavation works when conducting PPA for XP applications;</p> <p>(b) whether HyD would consider factoring in the inconvenience caused to the public and loss of business of the affected shops in the vicinity in the calculation of the economic costs for extension of the permit period due to delayed excavation works; if it would, the details; if not, the reasons why; and</p> <p>(c) the expected completion time of the feasibility study on the implementation of CUT.</p>	Administration (paragraph 4(a), (c)(i) and (d) of the minutes refers)

Time Marker	Speaker	Subject(s)	Action Required
Agenda item III — Any other business			
010859 – 010952	Chairman	Legislative timetable and meeting arrangement	

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19 December 2018