

**Information Paper for LegCo Panel on Planning, Lands & Works
Meeting on 13 January 2000**

**PROPOSED CHARGING AND PENALTY SYSTEM FOR
ROAD OPENING WORKS**

Purpose

1. This Paper presents an outline of the proposal to tighten control over promoters and contractors in connection with road excavation works. The Paper also delineates the updated proposed fee structure for recovery of the costs incurred by Government for administering the Excavation Permit (EP) system.

Introduction

2. Road excavation works are frequently carried out by the Highways Department (HyD), utility undertakers and many others throughout the Territory for the purposes of expanding, improving and maintaining the road or utility networks to better serve the community. 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. Road excavation works normally involve two (often independent) parties, namely the promoter (e.g. a utility undertaker) for whom the work is carried out and the contractor who actually carries out the work. At present, the promoter obtains an EP under the Land (Miscellaneous Provisions) Ordinance (LMPO), previously known as the Crown Land Ordinance, for making the road excavation, whilst the contractor acts as his agent and carries out the works on site. There is however no direct control over the performance of the contractor, who is not the permittee, in case of non-compliance with the EP conditions in the course of the works. In addition, no fees are now charged to recover Government's costs incurred for processing these EPs and for carrying out the related inspections.

4. The Road Opening Working Party (ROWP) chaired by the Secretary for Works set up a Working Group in mid-1995 to consider necessary amendments to LMPO to charge promoters for the issue of EPs and to explore possible penalty systems for road excavation works. The study was completed and a preliminary proposal was

made in early 1996. Following a consultation process, a revised proposal was presented to the utility undertakers and the LegCo Panel on Planning, Lands and Works in October/November 1996. The Administration's response to utility undertakers' comments is summarized in the Appendix to this Paper.

5. The proposal is now finalized. No major changes have been made except that the charge rates have been updated based on the projected cost in the financial year 2000/01.

Proposed EP System

6. The following system is now proposed :

- (a) Except under and in accordance with a government land allocation, prospecting licence, mining licence or sand removal permit, a promoter has to obtain an EP for excavation works in unleased land and to nominate a contractor in his EP application if the relevant excavation works are to be undertaken by an independent contractor.
- (b) Excavation without a valid EP is permitted in case of emergency, namely, prevention of injury, saving of life, prevention of damage to property and prevention of serious interruption or disruption to any public transport system or utility services.
- (c) With appropriate amendment to the LMPO, an EP issued to the promoter is deemed to be issued to any independent contractor instructed by the promoter for carrying out the excavation.
- (d) To ensure that the independent contractor is aware of the terms of the EP, the contractor is required to acknowledge that he has received a copy of the EP together with its conditions.
- (e) If the contractor employs a sub-contractor for carrying out the excavation works, an EP issued to the contractor is also deemed to be issued to his sub-contractor. However, the contractor is required to supervise his sub-contractor and if the sub-contractor fails to comply with the EP

conditions, the contractor shall be liable as if he had personally committed the offence.

7. An EP is normally issued for a specific period and for a particular project. It follows that an EP is required for every project under most circumstances and they shall be valid for the period specified therein or as may be extended by the Authority upon application by the promoter.

8. The current requirement and arrangement for advance notification and coordination of road excavation activities through the Road Opening Coordinating Committees (ROCCs) of HyD shall continue.

9. For Government works which are to be carried out by an independent contractor, the contractor (rather than the Government department as the promoter) is required to obtain an EP direct from the Authority for road excavation works.

Proposed Fee Structure

10. The following fees are proposed to recover the full cost incurred in vetting applications for and issuing the EP, and in carrying out inspections to ensure compliance :

The EP applicant (i.e. a utility undertaker or a private developer) has to pay :

Excavations in streets maintained by Highways Department		
	<u>Description</u>	<u>Fee</u>
(i)	for issue of an EP	\$940
(ii)	for an extension of an EP, if required	\$330
(iii)	a daily charge for the duration of the EP including any extension, if required.	\$67 per day

Excavations in other unleased land		
	<u>Description</u>	<u>Fee</u>
(i)	for issue of an EP	\$2,920
(ii)	for an extension to an EP	\$390

11. The above proposal is made based on the projected cost in the financial year 2000/01.

12. For Government works, Government will have to pay its contractors and ultimately bear the cost of the EP. To save Government's administrative effort, Government contractors are not required to pay the related EP fees. However, in deriving the proposed fees, the cost is assumed to be shared by all EP works. Internal arrangement will be established such that Government will bear its own portion of the cost and will not be subsidized by other EP applicants.

Proposed Penalty System

13. Breach of EP conditions is an offence under section 8(4) of the LMPO which carries a maximum penalty of \$5,000 and 6 months' imprisonment. Under the current provision, it is the promoter being the permittee, not his agent, who is to be prosecuted should there be a breach of the EP conditions. Such arrangement is not satisfactory as normally it is the contractor who takes the full control of the site and violates the EP conditions. It may be unfair to penalize the promoter instead of the contractor. With the proposal that the contractor shall be deemed to be a permittee, action can be taken to prosecute the contractor if he is found to be in breach of any EP conditions.

14. A prosecution team will be set up in HyD who will inspect EP sites which have received a warning from HyD's inspectorate staff regarding areas of non-compliance identified during their routine inspections. Where appropriate, the

prosecution team will collect evidence and institute prosecution action against the permittee i.e. the promoter or the independent contractor as appropriate.

Tightening Control in Respect of Idle/Inactive Sites

15. In order to tighten up control on road excavation works, the following Condition has been included in EPs :

“The Permittee shall carry out the works for the purposes for which excavation is permitted to be made under this Excavation Permit with such despatch as is reasonably practicable. The Permittee shall therefore ensure that the excavation is not left open without being actively worked on during any working day. For the purpose of this Condition a working day shall mean the period between 8:00 a.m. and 6:00 p.m. on any day which is not a Sunday nor a public holiday. If it is necessary on technical grounds for the excavation to be left open and not be worked on during any working day, the Permittee shall, unless obtaining the Authority’s prior permission to do otherwise, cover the excavation by steel plate or other suitable means in such a manner so as to allow the area to be reopened for the safe and reasonably nuisance-free passage of vehicular and/or pedestrian traffic.”

16. The Authority will take action to prosecute a permittee for any breach of EP conditions including the situation described in para 15.

Increase Maximum Fine in LMPO

17. It is considered that the prosecution of contractors against the breach of any EP conditions would be a direct and effective way in dealing with isolated default incidents by any contractor engaged in road opening work. However, the maximum fine of \$5,000 in section 8(4) of LMPO as mentioned earlier has remained at the same level since enactment of the Ordinance in 1972. In order to reflect the serious consequences of the offence, it is proposed to amend LMPO to increase this maximum level of fine to Level 5¹ on the basis of a similar purchasing power.

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- 1 The maximum penalty under this level is \$50,000 and \$25,000 for level 4. Previous recommendation of \$30,000 fits in this level.

Computerized Utility Management System (UMS)

18. HyD has developed the UMS under the assistance of the Information Technology Services Department. Amongst the various benefits of introducing the UMS, the processing of EP applications has been expedited.

19. Under the existing practice, an applicant has to complete and submit a standard form to HyD when applying for an EP. Upon scrutinizing the application and finding it satisfactory in all respects the authorized staff will indicate approval by signing and returning the form to the applicant.

20. With the implementation of the UMS, for most applicants (essentially the utility undertakers) it would be technically feasible for EP applications to be forwarded to HyD through electronic media (e.g. Internet). The approved EPs can also be returned to the applicants through the same media. It is anticipated that substantial effort in administering paper applications could be saved, not to mention the significant saving in delivery time. We propose to make statutory provisions for processing EP applications and granting EPs through electronic media.

Way Forward

21. In order to implement the proposals described in this Paper, LMPO has to be amended accordingly. To this end, a slot has been reserved for introducing the amendments to LMPO in the second half of the 1999-2000 Legislative Session.

Enquiry

22. Any enquiry in connection with this Paper may be made to Mr. C. K. NIP, Senior Engineer/Research & Development of HyD, at 2762 3458 or Mr S M CHAU, Assistant Secretary/Works Bureau, at 2848 2740.

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COST COMPUTATION

Fees payable in relation to the issue of an excavation permit Cost at 2000-01 Prices

	(1) \$	(2) \$	(3) \$	(4) \$	(5) \$
Staff Cost	8,038,771	588,017	18,903,540	3,111,535	87,715,369
Departmental Expenses	231,430	15,748	319,100	50,002	1,432,728
Accommodation Costs	339,340	20,653	410,924	65,279	1,861,897
Services by other departments			25,291	3,915	112,639
Central administration overhead	1,077,195	78,794	486,212	77,133	2,200,999
Cost of the computerised UMS			931,118	441,015	9,791,463
	<u>9,686,736</u>	<u>703,212</u>	<u>21,076,185</u>	<u>3,748,879</u>	<u>103,115,095</u>
Total					
No. of permit / permit-day	4,506	1,817	22,418	11,393	1,546,842
Unit Cost	2,150	387	940	329	67 per day
Additional charge for copying of land records	770				
Proposed fees	2,920	390	940	330	67 per day

Legend:

- (1) For issue of an excavation permit for excavation in unleased land other than streets maintained by HyD.
- (2) For an extension of an excavation permit for excavation in unleased land other than streets maintained by HyD
- (3) For issue of an excavation permit for excavation in streets maintained by HyD.
- (4) For an extension of an excavation permit for excavation in streets maintained by HyD.
- (5) The daily charge for the duration of the excavation permit including any extension, for excavation in streets maintained by HyD.

**Response to comments raised by utility undertakers
during the 2nd round consultation in late 1996**

Abbreviated Organization Names :

HKCG: The Hong Kong and China Gas Co., Ltd.
CLP: China Light & Power Co., Ltd.
HKTy: Hongkong Tramways Ltd.
WCL: Wharf Cable Ltd.
NT&T: New T&T Hong Kong Ltd.

HCL: Hutchison Telecommunication Ltd.
NWT: New World Telephone
HKTC: Hong Kong Telecommunication Ltd.
HEC: The Hongkong Electric Co., Ltd.
HyD: Highways Department

No.	Comment	Utility Undertaker raising the Comment	Administration's response
1	There is no incentive for the contractor to complete the work earlier if he is asked to pay for the duration he applied.	CLP, NT&T, HKCG, NWT	The proposal will discourage the applicant from applying for an unnecessarily long duration for an EP. Further, if the Permittee cannot complete the works on time, he will have to pay another sum for applying EP extension. It follows that the proposal does introduce incentive for the Permittee to avoid delay and to plan more carefully before applying. Proper advance planning of road opening will enhance co-ordination with other road opening works.

2	It appears that HyD is building a requirement into their UMS that works in different streets must be under different EPs disregarding the length of trench in each street. This requirement will induce unnecessary increase in number of EPs.	CLP, NT&T, WCL, NWT, HKTy, HKCG	Government has explained to utility undertakers in other occasions that the original proposal of demanding one EP for one street would be relaxed.
3	The commencement date is usually out of the utility undertakers' control due to Police's or TD's additional traffic requirements.	CLP, HKCG, HKTy, NT&T, WCL, NWT, HCL	<p>Although Government departments (e.g. Police, TD etc.) may impose control requirements which would affect the commencement dates, the construction programmes and progress are essentially under control of the Permittee if the works are properly planned taking into account their impact on traffic or the environment. The utility undertakers, when denoting the proposed commencement date in their applications, should take into account the lead time required for seeking traffic advice etc.</p> <p>In case at the commencement date, the site is still being occupied by another permittee, the Authority may grant extension free of charge to compensate for the delay in delivery of the site by the Authority.</p> <p>The daily fee will be calculated starting from the proposed commencement date instead of the EP issue date.</p>

4	Utilities are usually required to temporarily suspend their work due to various uncontrollable reasons. Hence the daily charge should only apply to the actual period of work.	HKCG, HKTy, NT&T, WCL	Site inspection by the Authority is still required even if the utility works are suspended. The daily charges calculated on the basis of the EP period do reflect the costs genuinely incurred by the Authority.
5	Charging the utilities for diversion work done for the Government is extremely unfair since the work is done solely for the Government authorities.	HKCG, NT&T, NWT, HCL	To demand utility undertakers to bear all necessary costs for utility diversions requested by Government is the requirement under the various statutory provisions.
6	The fees remain more or less the same despite that the EP system has been simplified. There must be some cost savings by only issuing half the amount of paperwork.	CLP, HKTy	Eliminating the originally proposed Licence will not reduce the cost since the build up of the originally proposed fees are based on the assumption that the Licence will be issued at the same time with the EP such that no additional administrative effort will be required.
7	The proposed EP condition regarding unattended site may sometimes be unfair to the Permittee. CLP quoted the case that if they had three permits for one section of cable, no work might be carried out in one or two of the permit areas for some time although the overall project was being worked on every day.	CLP, WCL	In order to reduce disruption to the public, the permit areas with no work being carried out should be temporarily covered up with appropriate plating for the passage of the traffic. As such the Permittee could avoid violation of the proposed EP condition if he has taken proper actions.

8	Clearer definition on “unattended site” is required. Will a site under the concrete curing process be regarded as unattended?	CLP, HKTy	For the purpose of the road opening control exercise, “unattended site” shall be defined as “an excavation left open without being actively worked on during any working day and without proper plating over for temporary use by the public”. When a site is under the concrete curing process it should not be regarded as unattended, but a notice board explaining reasons of the apparent unattendance should be displayed on site to avoid misunderstanding.
9	A breakdown of the proposed charges should be provided to utility undertakers	CLP, HKTy, NT&T, WCL, HKCG, HCL	A breakdown is attached.
10	The rates of charges are very much on the high side and should be reviewed and reduced significantly.	HEC	The proposed fees are based on the true costs which are necessarily incurred in administering the EP system.
11	The daily charge should not be applied to the extended period of an EP	HKTy	Inspection on the site is also required for the extended period of an EP, the daily charge is therefore applicable to the extended period of an EP as well.
12	Penalties will also be charged for extensions of EPs	NT&T	The fees are to recover the costs incurred by the Government, bearing no implication of a penalty.

13	It is important for us to understand the constitution of the proposed prosecution team, how it operates and on what base it exercises its authority.	WCL	The proposed prosecution team will consist of both professional and inspectorate staff. When a site covered by an EP is suspected to have involved non-compliance with EP conditions, the team will monitor the site and, if necessary, collect evidence for instituting prosecution in accordance with the Land (Miscellaneous Provisions) Ordinance.
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