

**BILLS COMMITTEE ON
LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002
MEETING ON 20 JANUARY 2003**

Follow-up to meeting on 7 January 2003

In the Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002 on 7 January 2003, the Administration was requested to follow up on certain issues. The following are the information provided on these issues.

Question (a) To provide a full set of standard excavation permit conditions.

Answer (a) A sample of the latest draft excavation permit (including the permit form and conditions) which underwent coordination and discussions with the utility undertakers covering excavation in streets maintained by Director of Highways, to be adopted after the Bill is enacted, is attached as Annex 1.

Annex 1

Question (b) To reconsider the need to bring in the concept of “secondary excavation permit” or “secondary emergency excavation permit” under the new section 10E.

Answer (b) The Bill will be modified to dispense with the need of having the terms ‘secondary excavation permit’ and ‘secondary emergency excavation permit’. A draft of the proposed amendment is enclosed at Annex 2 for the Bills Committee’s consideration.

Annex 2

Question (c) To advise on the course of action in case the Chief Engineer fails to give the result of an assessment within 28 days from the date of the receipt of the application for review and whether an express provision is required to ensure compliance by the Chief Engineer in this regard.

Answer (c) We have modified new section 10L so as to if the Chief Engineer fails to notify the result of his review within 28

days from the date of receipt of the application for review, then, if the permittee has stated in his application the assessment results which he thinks should be, then what he has stated shall become the Chief Engineer's decision; if the permittee has not stated in his application the assessment results which he thinks should be, then the original assessment of the Engineer shall prevail.

We also propose to make similar changes in the same section so as to if the Director of Highways fails to notify the applicant his decision within 14 days from the date of advice given by members of the Review Board, then, if the permittee has stated in his application what he thinks the decision of Director of Highways should be, then what he has stated shall become the Director of Highways' decision; if the permittee has not stated in his application what he thinks the decision of Director of Highways should be, then the original decision of the Chief Engineer shall prevail.

A draft of the proposed amendment is enclosed at Annex 2 for the Bills Committee's consideration.

Members are to note the Committee Stage Amendments on the Bill proposed by the Administration up to this moment in Annex 2.

ETWB

10 January 2003

To Permittee 致持准許證人：.....

Your EP Ref. 貴機構的檔號：.....

Principal Excavation Permit No. 主體挖掘准許證編號：.....

In exercise of the authority vested in me under Section 10A(1) of the Land (Miscellaneous Provisions) Ordinance, permit is hereby issued to you, authorizing the making of excavation(s) described below during the permit period given below subject to the conditions accompanying this permit. Approval is also given under Section 10I(1) of the Land (Miscellaneous Provisions) Ordinance to your nomination of the contractor named below as a Nominated Permittee of this permit.*

本署現行使土地（雜項條文）條例第 10A 條授予的權力，批准貴機構於下述准許證有效期內進行下述挖掘工程，但貴機構必須遵守准許證所列的各項條件。

The permit period commences on:

准許證生效日期：

The permit period expires on:

准許證期滿日期：

The location of the excavation is:

進行挖掘工程的地點：

The purpose of the excavation is:

進行挖掘工程的目的：

The number of openings involved is:

開挖壕坑數目：

The proposed size and location of each opening is:

每個壕坑的建議容積及位置：

Item 項目	Length 長度	Width 闊度	Depth 深度	Location 位置

Permittee's contact person:

領取准許證機構的聯絡人：

Permittee's office hours telephone no.:

領取准許證機構的電話（辦公時間）：

Permittee's 24-hour telephone no.:

領取准許證機構的電話（24 小時）：

Contractor Name:

承建商名稱：

Contractor's contact person:

承建商的聯絡人：

Contractor's 24-hour telephone no.:

承建商電話（24 小時）：

(Signed 簽署)

for Director of Highways (..... 代行)

Date 日期

*Delete if the Permittee did not make such nomination in his Principal Excavation Permit Application Form.

CONDITIONS OF PERMIT (2nd Draft)

COMPLIANCE WITH CONDITIONS OF PERMIT

1. The Permittee shall comply with these Conditions of Permit and Additional Conditions of Permit attached except that where there is a Nominated Permittee nominated and approved under Section 10F of the Land (Miscellaneous Provisions) Ordinance Cap. 28 in relation to the Permit, then:

(i)	<i>Conditions of Permit No.</i>	<i>To be complied with by</i>
(a)	3, 7, 9, 11, 12, 13, 14, 17, 18, 19(d), 21(a) & (b), 22, 26, 28, 44, 45, 46, 47, 49, 50, 51 and 52.	The Permittee
(b)	15, 16, 20, 21(c), (d), (e), (f) & (g), 23, 24, 29, 30, 31, 32, 34, 35, 36, 37(a) & (b), 38, 39 and 48.	The Nominated Permittee
(c)	Any conditions other than (a) and (b) above	Both the Permittee and the Nominated Permittee

- (ii) The Permittee referred in these Conditions of Permit shall also be referred to the Nominated Permittee or both the Permittee and the Nominated Permittee where appropriate.

ASSOCIATED LEGISLATION AND DOCUMENTS

2. In addition to the conditions set out in these Conditions of Permit, the Permittee shall comply with all the relevant provisions of the Land (Miscellaneous Provisions) Ordinance Cap. 28 and the provisions of any other legislation relating to the work covered by this Permit.
3. Wherever any parts of the Permittee's specifications are used to cover the work under this Permit, such parts of the specifications shall only be used with the prior agreement from the Authority.

THE SITE AND THE WORK

4. The site occupied by the Permittee under this Permit shall include the working space occupied by the Permittee for the execution of the work, the pedestrian and vehicular access, and any temporary diversions as stated in Condition 34 of this Permit and other space required for the completion of the work.
5. The work under this Permit includes also all temporary work, temporary reinstatement and other operations to be carried out by the Permittee.

GENERAL OBLIGATIONS

6. The Permittee shall execute the work under this Permit in strict accordance with these Conditions of Permit to the satisfaction of the Authority and shall comply with and adhere strictly to the specifications (agreed between the Authority and the Permittee before the issue of the Permit), and instructions related to the Permit as may be added from time to time by the Authority. These instructions may include the following:
- (i) Deferring the commencement and completion date of this Permit;
 - (ii) Temporary imposition or modification of restricted hours for the work;
 - (iii) Temporary suspension of the work;
 - (iv) Temporary covering up or reinstatement of the excavation.

The Authority shall not be liable to any claim from the Permittee for any cost or loss thus incurred.

7. (a) The Permittee shall inform the Authority the name of the appointed contractor before one is instructed to commence work if such appointed contractor is different from the one named in

the Permit.

(b) The Permittee shall provide a copy of this Permit and Conditions of Permit to his appointed contractor before instructing the same.

8. A photocopy of this Permit and any extension of this Permit shall be displayed on the site for inspection by the Authority. A publicity board for pedestrian in accordance with the current version of Highways Department (HyD) Standard Drawings* no. H6112 and H6113 shall be displayed on each isolated site. In case of the work affecting carriageway, publicity boards for motorist shall be displayed in accordance with the guidelines as given in the current version of HyD Guidance Notes* RD/GN/019 and HyD Standard Drawing no. H6131 or H6132. The information on these publicity boards shall be in English and Chinese in printed words and shall be clear, legible and updated regularly. The contact telephone shall be manned at all times.
9. All pipes, cables, ducts, covers, valve boxes, chambers, and any other installations laid or installed by the Permittee under this Permit are so laid or installed at the risk of the Permittee and they shall be adjusted, realigned or removed at no expense to Government, whenever proven necessary by Government.
10. The Permittee shall indemnify and keep indemnified Government against all losses and claims for injury or damage to any person or property, nuisance, disruption or interference whatsoever which may arise out of or in consequence of the work of the Permittee, and against all claims, demands, proceedings, damages, costs, charges or expenses whatsoever in respect thereof or in relation thereto. The Permittee shall make good or pay for any works as a result of or in consequence of the work of the Permittee.
11. The Permittee shall notify the relevant Chief Highway Engineer (CHE) of HyD in writing, by facsimile or via HyD's Utility Management System (UMS) 2 working days in advance of the intended commencement date. The notification shall include the Permit number and the intended commencement date and any other information as required by the Authority. The Permittee shall serve another notification to the CHE if the intended commencement date of the original notification cannot be met.
12. The Permittee shall notify the Senior Superintendent of Police/Traffic, Hong Kong Police Force, in writing, by facsimile or via HyD's UMS 2 working days in advance of the intended commencement date of his work. All such notifications shall include a plan to a suitable scale showing the location and extent of the work, unless such a plan has been submitted previously.
13. The Permittee shall notify each of the parties shown in Table 1 of Appendix A (and such others as may be added from time to time by the Authority) in writing, by facsimile or via HyD's UMS 2 working days in advance of the intended commencement date of his excavation.
14. Unless otherwise agreed by the concerned party, the Permittee shall notify each of the parties shown in Table 2 of Appendix A (and such others as may be added from time to time by the Authority) in writing or by facsimile 7 working days in advance of the intended commencement date of his excavation.
15. Before starting the work, the Permittee shall ensure that adequate resources (construction plant, material, labour, etc.) are available on site for the execution of the work.
16. The Permittee shall carry out all necessary protection precautions to prevent any surface runoff from falling into the excavation.
17. This Permit expires on the date specified by the Authority in the Permit unless otherwise extended by the Authority. The Permittee shall apply for extension of the Permit to make and maintain an excavation lasting longer than the date specified in the Permit. Such application shall reach the Authority at least four working days before the expiry of the validity period of the Permit. Application for extension of the Permit in a shorter period but not less than two working days before the expiry date of the Permit will be accepted by the Authority only for exceptional cases with valid reasons justified by the Permittee. Upon receipt of an application for extension of this Permit by the Authority, an extension of this Permit on the same terms and conditions is deemed to be issued to the Permittee expiring on the date of the notification of the result of his application. Extension may not be granted without valid reasons given in the application for extension of the Permit. The extended period to be granted by the Authority shall commence from the expiry date of this Permit and expire on the last day of the period applied for by the Permittee. Any excavation made without a valid permit is an offence and may result in prosecution under Section 10(2) of the Land (Miscellaneous Provisions) Ordinance Cap. 28.

* HyD Standard Drawings and Guidance Notes may be downloaded from the HyD web site
www.hyd.gov.hk/publications/index.htm

SELF-REGULATORY CONTROL

18. The Permittee shall submit to the Authority before the expiry date of this Permit the details (i.e. the name, his relation with the Permittee etc.) of a responsible person, with recognised professional qualification such as member of recognised professional institutions, who has been designated by the Permittee to certify as-built records in respect of level and alignment of the services installed. The Permittee shall ensure that such person submits in writing to the Authority the certified as-built records within three months after the expiry date of this Permit.

COVER TO SERVICES AND INSTALLATIONS

19. (a) The minimum cover to the top of the services and installations including pipes, cables, ducts, chambers, etc. shall be:-
- (I) Services other than high tension power cables of 33kV or above:
 - (i) Footway – 450 millimetres from the surface of the footway provided that
 - a. Where the proposed services or installations occupy more than half the width of the footway, the minimum cover shall be increased to 900 millimetres, and
 - b. For non-energised services, which include telecommunication cables but exclude power cables, water mains and gas mains, lay in ducts involving a maximum of two cable ducts of nominal diameter 100 millimetres or less, the minimum cover can be reduced to 300 millimetres provided that conspicuous identification devices are provided above the services;
 - (ii) Carriageway – 900 millimetres from the surface of the carriageway;
 - (II) High tension power cables of 33kV or above:
 - (i) Footway – 1 000 millimetres from the surface of the footway;
 - (ii) Carriageway – 1 000 millimetres from the surface of the carriageway.
- (b) Notwithstanding the above, unless waived by the Authority, underground services running along the “Kerb Zone”, which is made up of the part of the footway within 300 millimetres from the kerb line and the part of the carriageway within 2 000 millimetres from the kerb line, shall be placed with a minimum cover of 1 500 millimetres from the surface of the carriageway to allow construction of road gullies.
- (c) Where in the opinion of the Authority, the minimum cover needs to be increased to make way for or to avoid any physical constraints, or any damage or fault in the services or installations may cause damage to the roads or adjoining properties, the Authority may require the services and installations be placed at such depth or such special precautions be taken as considered appropriate.
- (d) In case where the Permittee has adequate reasons to justify that services and installations should be laid at depth less than the minimum cover quoted in sub-clause (a) above, the Permittee shall submit the justifications and obtain the prior written approval of the Authority.

LENGTH OF EXCAVATION

20. No excavation shall be opened at any time for a length exceeding 100 metres unless otherwise permitted by the Authority.

EXISTING WORKS AND INSTALLATIONS

21. (a) Where any alterations to adjacent structures, pipes, utility services and installations are to be carried out by other parties to make way for the Permittee’s work or any part thereof, such work shall be carried out in accordance with the works programme agreed by the relevant parties. The Permittee shall be responsible for any necessary liaison and arrangements with the relevant parties for the required alteration work.
- (b) Before commencing any excavation for the work, the Permittee undertaking the work shall ensure that a layout plan with the relevant details are forwarded to all relevant parties as stipulated in Conditions 13 and 14 of this Permit to request for indication of their existing

installations in the vicinity. The Permittee shall make all effort to obtain relevant utility record plans from utility undertakings prior to commencement of excavation. For 'Urgent Works' agreed by the Authority, the Permittee shall also obtain the utility record plans before commencement of excavation as far as practicable.

- (c) Before any excavation including excavation for trial pits, the Permittee shall use suitable non-destructive underground services detectors, in conjunction with any available plans, to determine as accurately as possible the position of buried services in or near the proposed excavation area. The Permittee shall also carry out any suitable investigation e.g. hand-dug trial pits to ascertain the exact positions and levels of buried utility services prior to using mechanical plant for road breaking and excavations.
 - (d) The Permittee shall ensure adequate and experienced site personnel are provided to oversee the operation of mechanical plant. Excavation close to or around utilities shall be carried out by hand digging methods.
 - (e) Where utilities installations or plants are exposed, the Permittee shall provide proper protection means and warning signs to prevent damaging the utility installations and plants.
 - (f) The Permittee shall take reasonable and practical precautionary measures when passing excavator or compaction roller over buried utility installations and plants with less than 1 metre overburden cover, especially when the road surface is removed.
 - (g) The Permittee shall not interfere with any concrete blocks and structures attached to the utilities unless agreed by the utility undertakings concerned.
22. The Permittee shall take reasonable steps to find out whether any existing underground installations owned by private parties (e.g. building owners) and laid under wayleave granted by Lands Department will be affected by their work. A set of record plans for indication purpose only can be seen in HyD Regional Offices. The Permittee shall approach the relevant District Lands Office for up-to-date record plan if needed.
23. Should there be any utility pit covers located within the site where hoardings are to be erected, the Permittee shall inform the concerned utility undertaking(s) of the existence of the utility pit cover(s) prior to commencement of hoarding erection. The hoardings including their foundations must not obstruct the access to such utility pit(s) and opening of the pit cover(s) at all times. In addition, in the event that any utility undertaking(s) is required to carry out emergency repairs to any utilities within the site, the Permittee shall as soon as possible remove the portion of the hoardings including its foundation to facilitate the emergency repairs.
24. Fire hydrants, valves, stormwater drains and sewers, manholes, channels, gullies and other street hardware must be kept clear and unobstructed access to them shall be maintained at all times.
25. Street name plates, street furniture, drainage facilities and mail boxes shall not be removed, covered or resited without the prior consent of the Authority. Traffic aids shall not be removed, covered or resited without the prior consent of the Commissioner for Transport.

EXCAVATION AFFECTING TREES

26. In the event of excavation affecting trees during the progress of the work encountered, the Permittee shall be required to obtain necessary approval from the appropriate authorities for tree felling.

TEMPORARY TRAFFIC ARRANGEMENT AND CONTROL

27. The Permittee shall ensure that lighting, signing and guarding are provided and maintained at all times by the Permittee for any of his work on the roads and footway in accordance with the Code of Practice for the Lighting, Signing and Guarding of Road Works[#].
28. Lighting, signing and guarding equipment which in the opinion of the Authority is in an unsatisfactory condition shall be replaced immediately by the Permittee. If the Permittee fails to provide lighting, signing and guarding equipment in accordance with the Code of Practice for the Lighting, Signing and Guarding of Road Works or fails to replace any unsatisfactory equipment when instructed by the Authority to do so, the Authority shall have the right to carry out such lighting, signing and guarding as required, and all expenses incurred by the Authority in so doing shall be

[#] The Code of Practice for the Lighting, Signing and Guarding of Road Works may be downloaded from www.hyd.gov.hk/publications/index.htm

charged to the Permittee.

29. Where temporary traffic light signal is used, the Permittee shall display at the back of the temporary traffic light signal the name and the telephone number of the responsible technician for handling complaint/enquiry. The responsible technician shall be able to be contacted by the telephone number round the clock.
30. Where the Permittee has to carry out excavation on footpath resulting in diversion of pedestrians onto the carriageway, the Permittee shall follow the arrangement stipulated in the current version of HyD standard drawing no. H1133 as far as practicable and/or other relevant drawings as advised by the Authority from time to time.
31. Where the Authority imposes restricted hours during which the work under this Permit cannot be carried out, the Permittee shall cease any work and remove any obstruction such that the full width of the carriageway/footway is available for vehicular traffic/pedestrians during the restricted hours.
32. Where the Permittee has to carry out temporary traffic diversion to facilitate his work and for any phase of temporary traffic diversion lasting for a period not longer than three months, proprietary self-adhesive temporary road marking tapes or thermoplastic road markings approved by the Authority shall be used and properly maintained. Existing road markings that are to be replaced by the temporary road markings shall be properly covered up.
33. Where the Permittee has obtained the approval from the Commissioner for Transport to temporarily remove, modify or relocate any existing traffic aids to facilitate commencement of his work, he shall notify the Commissioner for Transport and HyD within 3 working days before commencement of his work affecting traffic aids and within 3 working days upon re-opening to traffic after the affected traffic aids are permanently reinstated. Such notifications shall be made in accordance with the format required by the Commissioner for Transport.

VEHICULAR AND PEDESTRIAN FACILITIES

34. No operations in connection with the execution of the work of the Permittee shall interfere unnecessarily or improperly with the convenience of the public or the access to, use and occupation of public or private roads or footpath or right-of-ways or to or of properties whether in the possession of Government or of any other person. The Permittee shall establish and maintain pedestrian and vehicular access, and any temporary diversions. All emergency exits and accesses for emergency vehicles shall be kept clear and unobstructed access to them shall be maintained at all times.
35. (a) The Permittee shall properly contain all excavation materials to be used for backfilling by vertical boards or suitable containers within the fenced off site area and prevent them from being washed away by rain if these excavation materials are not removed off site. Where necessary for the maintaining of pedestrian or vehicular access, the Permittee shall make arrangements to remove such excavated materials from site as deemed necessary for this purpose within the next day unless it is impracticable to do so, and, in which case, the Authority may allow other time limits.
(b) Materials unsuitable for the purpose of backfilling shall be removed from site in the first opportunity.
36. In the case of excavation along building frontages, steel plates or other suitable means approved by the Authority, shall be provided by the Permittee so as to maintain access to adjoining premises.

UNATTENDED SITES

37. (a) The Permittee shall carry out the works for the purposes for which excavation is permitted to be made under this 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. or other specified time period(s) on any day permitted under this Permit. 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 plates 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 or pedestrian traffic.

- (b) Where a site is left open for apparent unattendance, prominent display boards for pedestrians and motorists shall be erected on site if the apparent attendance is anticipated to last for one whole working day or longer. The display boards shall be provided in accordance with the current version of HyD Standard Drawings no. H6133 & H6134 for pedestrians and in accordance with the current version of HyD Standard Drawing no. H6138 for motorists. The display board for motorists shall also comply with guidelines given in the current version of HyD Guidance Notes RD/GN/024.
- (c) The Authority reserves the right to take over the site after giving due notice to the Permittee if the excavation remains open without being worked on and without any reason being given to and accepted by the Authority. The Authority shall not be liable to any claim from the Permittee for any cost or loss thus incurred.
38. As a facility for the convenience of the public, where excavation(s)/section(s) of excavation on carriageways are plated over during the restricted hours mentioned in Clause 31 or due to technical grounds mentioned in Clause 37(a), steel plates in accordance with the current version of HyD Standard Drawing no. H6136 for concrete carriageway or HyD Standard Drawing no. H6135 for bituminous carriageway, or other approved means shall be provided to allow the area to be reopened for the reasonably nuisance-free passage of vehicular traffic.

SITE CLEANLINESS

39. The Permittee shall keep the site in a clean and tidy condition and free of litter and waste.

BACKFILLING AND REINSTATEMENT

40. The Permittee shall carry out backfilling to his excavation made under this Permit at his own expenses. Unless otherwise advised by the Authority, the Permittee shall also carry out permanent reinstatement to his excavation made under this Permit at his own expenses. Depending on the extent of excavation and the practice of the Authority, the Authority has the right to require the Permittee to carry out reinstatement for the full footway width or for the full lane width of carriageway, and/or to reinstate the excavation to the current standards of the Authority. Such reinstatement as required shall be at the own expenses of the Permittee. The Permittee shall carry out reinstatement of affected street furniture, traffic aids, road markings and any other installations to the conditions existing before commencement of his work unless otherwise agreed by the Authority.
41. (a) The excavation shall be backfilled with fine fill material as defined in the current version of the General Specification for Civil Engineering Works[@] (GS) published by the Government of the Hong Kong Special Administrative Region in compacted layers not exceeding 150 mm thick. Each layer of backfill materials shall be compacted with a power rammer, vibratory plate or vibratory roller. The relative compaction of the compacted backfill, either in terms of the in-situ dry density and maximum dry density or in terms of in-situ bulk density and maximum converted bulk density, determined in accordance with the GS clauses 6.61 to 6.70 (which make reference to the Geospec 3[@]), shall not be less than 98% for the levels within 200 mm of formation level nor 95% for other levels of backfill.
- (b) The backfill materials shall not contain broken concrete, bricks, clay, bituminous material, and materials susceptible to spontaneous combustion, perishable materials or debris. Backfill material shall not exceed 75 mm maximum particle size.
- (c) Suitable backfill materials shall be carefully placed and compacted by hand-rammers to obtain a relative compaction of at least 85% throughout, or in accordance with the approved Permittee's specifications, and up to the level of :-
- 150 mm above the crown of the utility ducts, cables or pipes;
 - 150 mm above the roof of the chambers, junction boxes or other installations; or
 - 300 mm above the crown of water pipes.
- (d) Backfilling material adjacent to gas plant and watermains shall be suitably compacted to give comparable support and protection to that provided before excavation. No power compaction shall take place until 300mm cover of selected fine fill has been suitably compacted by hand-rammers.

[@] General Specification for Civil Engineering Works and Geospec 3 may be downloaded from the web site of Civil Engineering Department www.info.gov.hk/ced/eng/publications/publications_f.htm

42. Unless otherwise advised by the Authority, the Permittee shall, in reinstating (including temporary reinstatement or permanent reinstatement) the streets, comply with the standards given in the current version of the GS and its corrigenda, HyD Guidance Notes No. RD/GN014 – Permanent Trench Reinstatement and the HyD Standard Drawings referred to in the HyD Guidance Notes No. RD/GN014.
43. Unless otherwise advised by the Authority, the Permittee shall reinstate concrete staircase to the original details, dimensions, lines, levels etc. The edges of reinstatement shall be in a saw-cut straight line. For masonry steps, they shall be taken up in whole piece with extreme care and properly stored for re-use. Any damaged masonry steps resulting from the work shall be made good or replaced at the Permittee's own expense. The Permittee shall reinstate masonry steps to the original state.
44. Unless otherwise waived by the Authority, the Permittee shall submit to the Authority the test results of satisfactory compaction of the backfill as well as compliance tests for granular sub-base, lean concrete, concrete or bituminous materials. For backfill to carriageway and/or paving slab/block constructed footpath, the Permittee shall also submit to the Authority the moisture content and relative compaction test results of at least three samples of the top layer compacted backfill. The tests shall be performed by a laboratory accredited to carry out such particular tests under the Hong Kong Laboratory Accreditation Scheme (HOKLAS). The original copy or certified true copy of the test certificate/report shall be sent to the Authority within 14 days of test. For any non-compliance found, the Permittee shall carry out the necessary remedial works at his expense.
45. For reinstatement of bituminous carriageways, the Permittee shall carry out tests to determine the particle size distribution, bitumen content and Rice's specific gravity of each batch of the bituminous materials and the air void content of the cores taken from each batch of compacted bituminous materials in accordance with the GS. The tests shall be performed by a laboratory accredited to carry out such particular tests under the HOKLAS. The Permittee shall provide the original copy or certified true copy of the test results to the Authority within 14 days of tests. For any non-compliance found, the Permittee shall carry out the necessary remedial works at his expense.
46. For reinstatement of concrete carriageways, the Permittee shall carry out tests to determine the 28-day compressive cube strength of the concrete in accordance with the GS. The tests shall be performed by a laboratory accredited to carry out such particular tests under the HOKLAS. The Permittee shall provide the original copy or certified true copy of the test results to the Authority within 14 days of tests. For any non-compliance found, the Permittee shall carry out the necessary remedial works at his expense.
47. (a) Any temporary reinstatement shall be as follows unless otherwise agreed by the Authority :-
 - (i) Concrete footway - 20 mm thick cement sand mortar.
 - (ii) Bituminous footway - 20 mm thick cement sand mortar.
 - (iii) Concrete Carriageway - 100 mm thick 10mm or 20mm nominal size bituminous wearing course material.
 - (iv) Bituminous Carriageway - 100 mm thick 10mm or 20mm nominal size bituminous wearing course material.
 (b) Material specified above shall be to the relevant specifications of the Authority.
 (c) For excavation in pavement of paving slab/block construction, if in the rare case where permanent reinstatement is to be carried out by the Authority, the Permittee is required to backfill and compact the trench up to the formation level and to give advance notice to the Authority for permanent reinstatement. The notice shall be given 3 working days before backfilling.
48. The Permittee shall upon the completion of reinstatement clear away and remove from the site all equipment and surplus materials.
49. (a) Immediately after completion of temporary reinstatement or permanent reinstatement as required, the Permittee shall inform the Authority by submitting a Reinstatement Notice stating that the excavation is ready for permanent reinstatement or the permanent reinstatement area is ready for taking over by the Authority.
 (b) In case of temporary reinstatement, should the Reinstatement Notice not be given within one working day after the completion of the temporary reinstatement, the Authority shall have the right to take over the site without reference to the Permittee but without relieving the Permittee of any obligations under the conditions of this Permit.

50. Permanent reinstatement as determined and/or carried out by the Authority shall be at the expenses of the Permittee.

MAINTENANCE AND DEFECTS LIABILITY

51. In the case of permanent reinstatement by the Authority, the Permittee shall remain fully responsible for the maintenance of the backfilling and the temporary reinstatement until a period of 14 consecutive days has elapsed after the receipt of the Reinstatement Notice by the Authority.
52. In the case of subsidence of the permanently reinstated pavement (permanent reinstatement by either the Authority or the Permittee) or deterioration in the permanent reinstatement itself (permanent reinstatement by the Permittee) within 12 months of the permanent reinstatement, the Permittee shall carry out the necessary remedial works at his expense, unless the Permittee can prove conclusively that the defect was caused by a third party. Where necessary, the Authority will carry out the remedial work and recover the costs incurred from the Permittee under Section 100 of the Land (Miscellaneous Provisions) Ordinance Cap. 28.

CONTRAVENTION AND ASSOCIATED REMEDIES

53. The Authority shall not be liable to any claim from the Permittee whatsoever arising out of or in consequence of his actions taken under the Conditions of Permit.

AMENDMENTS TO CONDITIONS AND SPECIFICATIONS

54. During the currency of the Permit, the Authority reserves the right to amend and add to the Conditions and the specifications in writing as necessary to suit the site conditions so that the interest of the public can be protected in a more effective way.

A NOTE TO THE PERMITTEE AND THE NOMINATED PERMITTEE

1. In accordance with Section 4 of the Prevention of Bribery Ordinance Cap. 201, any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuses, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body.

shall be guilty of an offence.

2. In accordance with Section 2 of the Prevention of Bribery Ordinance Cap. 201, "Advantage" means-

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e).

3. Notwithstanding the definition of "Advantage" in Section 2 of the Prevention of Bribery Ordinance Cap. 201, in order to prevent HyD staff from putting themselves into what may prove to be a compromising situation, no entertainment proffered by people who have official dealings with the department other than that normally associated with official contacts may be accepted by HyD staff without prior approval.

Table 1

<i>Hong Kong Island :</i>	<i>Kowloon and New Territories :</i>
The Hongkong Electric Co. Ltd.	CLP Power Hong Kong Ltd.
Chief Engineer/Lighting, Highways Department	Chief Engineer/Lighting, Highways Department
PCCW Ltd.	PCCW Ltd.
The Hong Kong & China Gas Co. Ltd.	The Hong Kong & China Gas Co. Ltd.
Rediffusion (H.K.) Ltd.	Rediffusion (H.K.) Ltd.
Hutchison Global Communications Ltd.	Hutchison Global Communications Ltd.
New World Telephone Co. Ltd.	New World Telephone Co. Ltd.
Wharf New T & T Ltd.	Wharf New T & T Ltd.
Hong Kong Cable Television Ltd.	Hong Kong Cable Television Ltd.
Water Supplies Department	Water Supplies Department
Drainage Services Department	Drainage Services Department
Transport Department	Transport Department
Hongkong Tramways Ltd.	

Table 2

(i) Fire Services Department
(ii) The Headquarters, PLA Forces Hong Kong, 2 Edinburgh Place, Central, Hong Kong.
(iii) The relevant Chief Leisure Manager of Leisure and Cultural Services Department (for excavation affecting roadside trees)
(iv) SPSM/TS, Architectural Services Department
(v) Mass Transit Railway Corporation Ltd. (for excavation within mass transit protection zones)
(vi) Kowloon-Canton Railway Corporation, Light Rail Department (for excavation in the vicinity of the Light Rail Transit System)
(vii) Kowloon-Canton Railway Corporation, East Rail Department (for excavation within the railway protection zone)
(viii) Electrical and Mechanical Services Department (for excavation located within 30m of a signalised junction)
(ix) Country and Marine Parks Authority (for excavation located within country park areas)
(x) Lands Department and Government Property Agency (for Kai Tak area only)
(xi) The Hongkong Electric Co. Ltd. and Chief Engineer/Lighting, Highways Department (for excavation on Lamma Island)

ADDITIONAL CONDITIONS OF PERMIT (Sample)

COMPLIANCE WITH ADDITIONAL CONDITIONS OF PERMIT

1. The Permittee shall comply with these Additional Conditions of Permit except that where there is a Nominated Permittee nominated and approved under Section 10F of the Land (Miscellaneous Provisions) Ordinance Cap. 28 in relation to the Permit, then:

(i)

<i>Additional Conditions of Permit No.</i>	<i>To be complied with by</i>
(a)	The Permittee
(b)	The Nominated Permittee
(c) Any conditions other than (a) and (b) above	Both the Permittee and the Nominated Permittee

- (ii) The Permittee referred in these Additional Conditions of Permit shall also be referred to the Nominated Permittee or both the Permittee and the Nominated Permittee where appropriate.

LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary
for the Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By adding "the Environment, Transport and" before "Works".
2	(a) In <u>paragraph (a)</u> , by repealing the definition of "excavation permit" and substituting - "excavation permit" (挖掘准許證) means an excavation permit issued under <u>section 10A</u> :".
	(b) In <u>paragraph (b)</u> - (i) in the definition of "contractor", by repealing " a principal excavation permit or principal" and substituting "an excavation permit or"; (ii) by repealing the definition of "emergency excavation permit" and substituting - "emergency excavation permit (緊急挖掘准許證) means an emergency

excavation permit issued under
section 10B;"

- (iii) in the definition of "permittee", by repealing "a principal excavation permit or principal" and substituting "an excavation permit or";
- (iv) by repealing the definitions of "principal emergency excavation permit", "principal excavation permit", "secondary emergency excavation permit" and "secondary excavation permit".

3 By repealing the proposed section 2A(3) and (4) and substituting -

"(3) If the Authority considers that a public officer, in carrying out his duties in the service of the Government, has done an act or made an omission in contravention of Part III, the Authority shall -

- (a) report the matter to the Secretary for the Environment, Transport and Works;
and
- (b) in the report, advise him, that the act or omission has, as the case may be -
 - (i) been terminated to the Authority's satisfaction;

or

- (ii) not been terminated to the Authority's satisfaction.

(4) On receiving a report under subsection (3) where paragraph (b)(ii) of that subsection is applicable, the Secretary for the Environment, Transport and Works shall inquire into the matter to which the report relates and ascertain if the public officer concerned is continuing to contravene Part III or has stopped the contravention.

(5) If an inquiry under subsection (4) shows that the public officer concerned is continuing to contravene Part III, the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to -

- (a) stop the contravention; and
- (b) avoid the recurrence of any like contravention if he considers that the public officer concerned or any other public officer, is likely to commit the like contravention.

(6) If -

- (a) either -
 - (i) a report under subsection (3) is received where paragraph

(b) (i) of that subsection is applicable; or

(ii) an inquiry under subsection (4) shows that the public officer concerned has stopped the contravention; but

(b) the Secretary for the Environment, Transport and Works considers that the public officer concerned or any other public officer, is likely to commit a like contravention,

then the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to avoid the recurrence of the like contravention."

4 (a) In the proposed section 10 -

(i) by repealing subsections (1) and (2) and substituting -

"(1) Except under and in accordance with a prospecting licence, mining licence or sand removal permit, a person shall not make or maintain any excavation in unleased land unless -

(a) either -

(i) he is the holder of an excavation permit or emergency excavation permit; or

(ii) he is the contractor of the holder of an excavation permit or emergency excavation permit; and

(b) he so makes or maintains the excavation under and in accordance with the permit.

(2) Subject to subsection (6), a person who contravenes subsection (1) by making or maintaining an excavation in

unleased land without being -

(a) the holder of an excavation permit or emergency excavation permit;

or

(b) the contractor of the holder of an excavation permit or emergency excavation permit,

shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months.";

- (ii) in subsection (3), by repealing "issued to him";
- (iii) in subsection (4) (a), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or";
- (iv) in subsection (5), by repealing "a principal excavation permit or

principal" and substituting "an excavation permit or";

- (v) in subsection (7), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".

(b) In the proposed section 10A -

- (i) in the heading, by repealing "principal";
- (ii) in subsection (1), by repealing "a permit, to be known as the principal" and substituting "an";
- (iii) in subsection (2), by repealing "A principal" and substituting "An";
- (iv) in subsection (3), by repealing "a principal" and substituting "an";
- (v) in subsection (4) -
 - (A) in paragraph (a), by repealing "a principal" and substituting "an";
 - (B) by repealing paragraph (b) and substituting -

"(b) the permittee
of the permit
is unable to

have access
to a
reasonably
substantial
portion of
the land
concerned for
the purpose
of making or
maintaining
the
excavation,
after the
commencement
of the period
for which the
permit is
valid but
before the
commencement
of the
excavation,
for reason
other than
the fault of

the permittee,
the
contractor
for the
excavation or
their
employees,".

(c) In the proposed section 10B -

- (i) in the heading by repealing
"principal";
- (ii) in subsection (1), by repealing "a
permit, to be known as the principal"
and substituting "an";
- (iii) in subsection (2), by repealing "A
principal" and substituting "An";
- (iv) in subsection (3), by repealing "a
principal" and substituting "an";
- (v) in subsection (7) -
 - (A) in paragraph (a), by repealing "a
principal" and substituting "an";
 - (B) by repealing paragraph (b) and
substituting -
 - "(b) the permittee of the
permit is unable to
have access to a

reasonably
substantial
portion of the land
concerned for the
purpose of making or
maintaining the
excavation, after
the date of the
report of the
emergency incident
concerned to the
Authority under
subsection (3) but
before the
commencement of the
excavation, for
reason other than
the fault of the
permittee, the
contractor for the
excavation or their
employees,".

(d) In the proposed section 10C -

(i) in subsection (1), by repealing "a
principal" where it twice appears and

- substituting "an";
 - (ii) in subsection (2) -
 - (A) by repealing "a principal" and substituting "an";
 - (B) by repealing "the principal" wherever it appears and substituting "an";
 - (iii) in subsection (3), by repealing "a principal" and substituting "an";
 - (iv) in subsection (4), by repealing "a principal" and substituting "an";
 - (v) in subsection (5), by repealing "a principal" and substituting "an".
- (e) In the proposed section 10D(1), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".
- (f) By repealing the proposed section 10E.
- (g) In the proposed section 10F, by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".
- (h) In the proposed section 10G -
 - (i) in subsection (1), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or";

- (ii) in subsection (2), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".
- (i) In the proposed section 10H -
 - (i) in subsection (1), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (ii) in subsection (2), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".
- (j) In the proposed section 10I(2), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".
- (k) In the proposed section 10J -
 - (i) in subsection (1), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (ii) in subsection (2), by repealing "A principal excavation permit or principal" and substituting "An excavation permit or";

- (iii) by repealing subsection (3);
- (iv) in subsection (4), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or";
- (v) in subsection (5), by repealing "a principal excavation permit or principal" and substituting "an excavation permit or".

(l) In the proposed section 10K -

- (i) in the heading, by repealing "principal";
- (ii) in subsection (1) -
 - (A) by repealing "a principal" and substituting "an";
 - (B) in paragraph (a)(i), by repealing "principal";
- (iii) in subsection (2), by repealing "a principal" and substituting "an".

(m) In the proposed section 10L -

- (i) in subsection (1) -
 - (A) in paragraph (a), by repealing "a principal" and substituting "an";
 - (B) in paragraph (c), by repealing "a principal" and substituting "an";

(ii) by repealing subsection (2) and substituting -

"(2) A permittee who is aggrieved by an assessment made in respect of him under subsection (1) may -

- (a) within 28 days from the date of being notified of the result of the assessment, apply in writing to a public officer of the rank of Chief Engineer or Government Engineer (collectively referred to as "the Chief Engineer") in the Highways Department for a review of the Engineer's assessment;
- (b) set out the result of his own assessment in an application made under paragraph (a)."

(iii) by repealing subsection (5) and

substituting -

"(5) After receipt of an application under subsection (2), if the Chief Engineer fails to notify the permittee concerned of the result of his review within the time specified in subsection(3), then -

- (a) where subsection (2) (b) is applicable, the result of the permittee's assessment shall be taken to be the result of the Chief Engineer's review; or
- (b) in any other case, the assessment made by the Engineer under subsection (1) on the subject matter of the application shall be taken to be the result of the Chief Engineer's review,

and the Chief Engineer may, in

accordance with the result of the review, exercise any of the powers conferred on him under subsection (4).

(5A) A permittee who is aggrieved by a decision made in respect of him under subsection (4) may -

- (a) within 28 days from the date of being notified of the decision, apply in writing to the Director of Highways for a review of the Chief Engineer's decision;
- (b) set out the result of his own assessment in an application made under paragraph (a).";
- (iv) in subsection (6), by repealing "(5)" and substituting "(5A)";
- (v) in subsection 7, by repealing "(5)" and substituting "(5A)";
- (vi) in subsection (12)(b), by repealing "(5)" and substituting "(5A)";

(vii) by adding -

"(12A) After receipt of an application under subsection (5A), if the Director of Highways fails to notify the applicant of his decision within the time specified in subsection (10) (b), then -

- (a) where subsection (5A) (b) is applicable, the result of the permittee's assessment shall be taken to be the decision of the Director of Highways; or
- (b) in any other case, the decision made by the Chief Engineer under subsection (4) on the subject matter of the application shall be taken to be the decision of the Director of Highways,

and the Director of Highways may, in accordance with the decision,

exercise any of the powers
conferred on him under subsection
(12)."

(viii) in subsection (13) -

(A) by adding "or any decision taken to
be the decision of the Director of
Highways under subsection (12A)"
after "(12)";

(B) by repealing "that subsection" and
substituting "those subsections".

(n) In the proposed section 10M(2), (3) and (4), by
adding "the Environment, Transport and" before
"Works".

(o) In the proposed section 10N(2)(b), by adding "the
Environment, Transport and" before "Works".

(p) In the proposed section 10O(1), by repealing "a
principal excavation permit or principal" and
substituting "an excavation permit or".

(q) In the proposed section 10P, by repealing "a
principal excavation permit or principal" and
substituting "an excavation permit or".

(r) In the proposed section 10Q -

(i) in subsection (1), by repealing "a
principal excavation permit or
principal" and substituting "an

excavation permit or";

- (ii) by repealing subsection (2) and substituting -

"(2) Where there is a permittee and no nominated permittee and subsection (1) is contravened, the permittee shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000.

(2A) Where there is a permittee and a nominated permittee and subsection (1) is contravened, both the permittee and the nominated permittee shall each be guilty of an offence and shall each be liable on conviction to a fine of \$200,000.";

- (iii) in subsection (3), by adding "or (2A)" after "(2)";

- (iv) by adding -

"(4) A court, in making a decision on the defence provided under subsection (3), may take into consideration that a person

charged with an offence under
subsection (2) or (2A) has -

- (a) hired a competent person to supervise the excavation concerned;
- (b) a documented system for supervising the excavation concerned, including but not limited to a system which requires a competent person to inspect the excavation at a certain frequency each day and record such inspection;
- (c) a system to ensure his contractor complies with the duties imposed under subsection (1).

(5) For the purpose of

subsection (4), "competent person"

(合資格人士) means a person whose name is on the register of -

(a) registered architects established and maintained under the Architects Registration Ordinance (Cap. 408);

(b) registered professional engineers established and maintained under the Engineers Registration Ordinance (Cap. 409) and is within the civil, building, structural or geotechnical engineering discipline; or

(c) registered
professional
surveyors
established and
maintained under the
Surveyors
Registration
Ordinance (Cap. 417)
and is within the
building surveying
discipline.".

6 In the proposed section 18(1A), by adding "the
Environment, Transport and" before "Works".

9(b) In the first column, by repealing "2A(3)" and "10E(4)".

11 In the proposed section 3A -

(a) in the heading, by repealing "principal" wherever
it appears;

(b) in subsection (1), by repealing "a principal" and
substituting "an".

14 In the proposed Schedule 3 -

(a) in Part I -

(i) in the heading, by repealing
"PRINCIPAL";

(ii) in item 1 -

(A) by repealing "a principal" and

substituting "an";

(B) by repealing "the principal" and
substituting "the";

(iii) in item 2, by repealing "a principal" and
substituting "an";

(b) in Part II -

(i) in the heading, by repealing
"PRINCIPAL";

(ii) in item 1, by repealing "a principal" and
substituting "an";

(iii) in item 2, by repealing "a principal" and
substituting "an".

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By repealing "a principal" where it twice appears and
substituting "an".