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19 November 2018

Legislative Council Secretariat
No. 1 Legislative Council Road
Legislative Council Complex

(Attn.: Ms Doris LO, Chief Council Secretary (1)2
Clerk to Subcommittee)

Dear Ms LO,

**Subcommittee on Land (Misc Provisions) (Amendment) Regulation 2018
List of follow-up actions arising from the meeting on 13 November 2018**

I refer to your email of 14 November 2018. The Administration's response to the follow up actions arising from the Subcommittee meeting on 13 November 2018 is as follows:

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

Question (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 period permit assessment ("PPA") for excavation permit applications;

Answer (a) The HyD assesses the Excavation Permit ("XP") period in a fair and open manner with an aim to balance the interests of the industry and society. When applying for an XP, an applicant is required to submit the construction programme and work activities for the proposed excavation works for HyD's approval. In fact, each utilities undertaking trade has its standard and specific work activities for laying its underground utilities.

Generally, there are two types of construction programmes : 1. standard works programme (i.e. common and less complex works such as laying utility pipes/ducts); 2. non-standard works programme (i.e. more complicated works such as the construction of footbridge foundations). For standard works programmes, applicants should use the standard PPA templates provided in the excavation permit management system (“XPMS”) to generate their construction programmes. The construction programme will be vetted and approved by the HyD. Using the example of laying utilities, the applicant is required to select relevant work activities from the standard PPA templates (the time required for each work activity is pre-set in the XPMS), such as setting up of temporary traffic arrangement, excavating, laying pipes/ducts, quality control procedures and backfilling. In addition, the XPMS will allow the applicant to apply for a longer XP period based on certain engineering constraints, such as heavy traffic, rainy seasons and existing congested underground utilities. In the case of non-standard works programmes, applicants must provide details of all construction works sequences/activities for HyD’s approval.

Question (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 Polytechnic University in proposing the PPA principles and criteria, and any subsequent review(s) conducted so far;**

Answer (b) In 2004, the computer system of the HyD for processing excavation permit applications already provided standard PPA templates for regulating the applicant's proposed permit period. Subsequently, the HyD commissioned the Hong Kong University of Science and Technology to review the existing standard PPA templates for utility trench works and to adopt a new PPA method which was completed in 2012 and incorporated in the XPMS. Improvements were made to the PPA method, including shortening the duration of works activities in the templates, eliminating unnecessary works activities, introducing concurrent programming of works activities in order to reduce the overall XP period calculated using the standard PPA templates.

The HyD also commissioned the Hong Kong Polytechnic University to conduct a follow up review of the PPA templates for excavation works other than utility trench works which was completed in 2013. The review proposed some new standard PPA templates to cater for some common types of standard excavation works, such as the geotechnical investigation works, slope improvement works, road resurfacing works.

The HyD has been monitoring whether the approved XP period is appropriate or too long. Through continual review of the effectiveness of the improved standard PPA templates, the average XP period has been continuously reduced. The XP periods for year 2012, 2014 and 2016 were 88, 78, and 67 days respectively and the figure of 2017 was further reduced to 65 days. Therefore, we believe that using the continuous improved standard PPA templates for assessing XP period is an effective mechanism.

Charging of economic costs for extension of permit period

Question (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 will consider factoring in the inconvenience caused to the public and loss of business of the affected shops in the vicinity in the calculation; if it will, the details; if not, the reasons why; and**

Answer (c)(i) When the Land (Miscellaneous Provisions) Ordinance (Cap. 28) (“LMPO”) was amended in 2003, the Bills Committee had examined whether it was desirable to introduce a charging scheme for economic costs associated with the inconvenience to public and loss of business to roadside shops caused by the extended excavation works. However, after an in-depth discussion, the current criteria used for calculation of economic costs were adopted.

In general, the impact of road excavation works on roadside shops could not be accurately assessed. Furthermore, excavation works on footpath would only affect relatively smaller parts of the concerned street (not as extensive as the excavation works on carriageways). The Government also pointed out at the time that there was no recognized scientific basis of assessment of economic costs to the pedestrian, who might easily take alternative routes. But if the Government was to charge such economic costs, legally, there must be a reasonable basis. In fact, the industry and their contractors’ practice had been to schedule their works to avoid inconvenience, as far as possible, to shops owners, such as covering the excavation by temporary covers to maintain pedestrian flow. Besides, it would not be beneficial to them for any kind of delays to their excavation works. Issues associated with inconvenience to public and shop

owners could be resolved in an amicable manner. Therefore, we consider that the current criteria used for the assessment of economic costs are appropriate.

Under section 10U of the LMPO, the Director of Highways may, by notice published in the Gazette, designate any street or part of a street as a strategic street, a sensitive street or a remaining street after taking into consideration the economic costs of traffic delay in a carriageway caused or likely to be caused by an excavation carried out on the street.

At present, a permittee is required to pay economic costs according to different categories of street affected by the excavation works for extension of an XP without reasons to the satisfaction of the Authority. Please see response (c)(ii) for relevant reasons.

Economic costs are calculated according to the following criteria:

- (1) The charging of economic cost according to different categories of street is considered relatively fair as it can differentiate the effect of delay on various types of roads. In addition, the economic costs calculated on the above basis are also within the affordability of those who are required to pay whilst maintaining the necessary incentives for them to complete the road excavation works as soon as possible;
- (2) The Transport Department will conduct computer simulation on representative road sections and intersections in each category of street to assess the delays caused by the excavation work to motorists; and
- (3) The computer simulation is done by utilizing a transport-modelling 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 experienced by all vehicles through the road section for the scenarios with and without the excavation works, a delay value 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.

- (ii) whether the charging of economic costs is based on the number of days of delay; whether HyD has 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) (please cite the relevant provisions); and**

Answer (c)(ii) Under section 10A(3) of the LMPO, the HyD may extend the excavation permit period on payment of the appropriate prescribed fee by the permittee. Part I of the Schedule III to the Land (Miscellaneous Provisions) Regulations (Cap. 28A) sets out the relevant prescribed fees, including the fee for extension at strategic streets, sensitive streets and remaining streets as specified in section 10U of LMPO.

Please refer to the response (c)(i) for the calculation of economic costs. Under section 10L of LMPO, the permittee may apply to the HyD for the refund the whole or any part of the economic costs paid for an extension of an excavation permit, by stating the reasons and setting out the evidence in support of the application, to the HyD's satisfaction, and such reasons include but not limited to the following:

- (1) inclement weather
- (2) suspension of excavation on order of the Government which is not due to the fault of the permittee, its contractors or employees
- (3) physical condition of the unleased land to which the permit relates and which is not in existence at the time of the application of the permit

The HyD may refund the respective economic costs paid if the HyD is satisfied that the reasons mentioned above hindered the progress of the excavation to which the permit relates.

Exploring the use of common utility enclosures

Question (d) the expected completion time of the consultancy study on the use of common utility enclosures.

Answer (d) The Government adopts a positive attitude on any proposed use of common utility tunnels (“CUT”) in new development areas where it is cost-effective and justified to do so. The HyD’s consultancy study to review the implementation of CUT commenced in mid-2018. The study is targeted for completion in the second half of 2019. The main objectives of the study are 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 new development areas in Hong Kong for consideration by the Government.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Vitus NG', is centered below the text 'Yours faithfully,'.

(Vitus NG)
for Secretary for Development

c.c.

Director of Highways (Attn.: Mr. YK HO, AD/Tech)

Director of Lands (Attn.: Mr. Alan KL LO, AD/Specialist 2)

中文回答

回答(a)

路政署是以一個公平和公開的方式，來釐定掘路准許證的工期，以平衡業界和社會的利益。在申請掘路准許證時，申請人必須向路政署提交其挖掘工程的施工計劃及工序，予路政署審批。其實，各公用事業機構均有其鋪設管線的標準及特定工序。

施工計劃一般分兩種：1. 標準工程（即一些常見的簡單工程，例如鋪設公用設施管線）；2. 非標準工程（即一些較複雜的工程，例如建造行人天橋地基）。如屬標準工程，申請人須利用路政署挖掘准許證管理系統內（下稱（系統））的標準工期評估範本，制定出施工計劃，提交路政署審批。就鋪設公用設施為例，申請人須從系統選取相關的預設工序（每個預設工序所須時間均是系統預設的），如設立臨時交通安排，挖掘，鋪設喉管，品質檢測，回填等。另外，系統亦會根據一些工程限制，如交通繁忙、雨季、密集管線等，允許申請人申請比預設時間長的工期。如屬非標準工程，申請人須詳細列出所有施工計劃，再交由路政署審批。

回答(b)

在 2004 年路政署的電腦挖掘准許證申請平台，已提供標準工期評估範本來規範申請人的工期。其後，路政署委託了香港科技大學就公用事業機構在挖掘准許證申請平台的標準工期評估範本進行檢討（於 2012 年完成）並納入系統內，改進了原有的工期評估方法，包括縮短工序的預設時間、刪除在系統上預設的一些非必要工序、引入工序平排進行模式等，以減短就標準工程計算所得的工期。

路政署亦委託了香港理工大學就其他挖掘工程的標準工期評估範本進行檢討（於 2013 年完成），此項檢討亦為系統引進了一些其他常用的挖掘工程的標準工期評估範本，如探土工程、斜坡改善工程、路面重鋪工程等。

路政署一直有監察所批的挖掘准許證工期是否合適或過長，通過不斷檢視改善後的標準工期評估範本的成效，挖掘准許證平均日數已持續減少。2012 年、2014 年及 2016 年的挖掘准許證平均日數分別為 88 日、78 日及 67 日，而 2017 年的數字更降至 65 日。因此，我們相信使用持續改善的標準工期評估範本來評估挖掘准許證工期是一個有效的機制。

回答(c)(i)

於 2003 年修訂《土地(雜項條文)條例》時，法案委員會曾研究是否合適就挖掘工程延期對市民做成不便及令路旁商舖蒙受業務損失所招致的經濟成本引入一項收費計劃，但經深入討論後，最後定下了現時的經濟成本計算準則。

一般而言，掘路工程對商舖的影響是無法準確衡量的。再者，在行人路進行挖掘工作只會對局部路面造成影響(而並非如在行車道施工般可以造成廣泛的影響)。政府當時亦指出，沒有任何公認的科學準則，可據以估量掘路工程對行人造成的經濟成本，因為行人隨時可以繞道而行；但倘若政府要徵費來收回上述的經濟成本，在法律上必須有一個合理的基礎。其實，業界和承判商安排工作的一貫做法，是盡量避免為商舖帶來不便，例如在掘路位置安裝臨時蓋板讓行人繼續通行，而且在工程出現任何形式的延誤，對他們均無益處，各項問題均可透過協商方式解決。因此，我們認為現時的經濟成本計算準則是合適的。

根據《土地(雜項條文)條例》(第 28 章)第 10U 條，路政署署長可藉憲報刊登的公告，在考慮因在任何街道上進行挖掘工作而引致或相當可能引致的車路交通阻塞的經濟成本後，指定該條街道或其部分為策略性街道、敏感街道或餘下街道。

現時，政府對那些沒有充分理由下延誤的掘路工程，因應所受影響街道的等級，向持證人收取不同的經濟成本。相關的理由請參閱回應(c)(ii)。

經濟成本費用是根據下列準則計算：

- (1) 經濟成本是按街道類別而收取，按這個基礎收取的經濟成本由於能按挖掘工作對某類街道可能造成的交通影響而作出的，所以相對來說較為公平。此外，以上述基礎計算的經濟成本既不會超越繳費者的能力範圍，同時亦收到必要的誘因令掘路工程盡快完成；
- (2) 運輸署會在每一類街道中抽取具代表性的路段和路口進行電腦模擬計算，評估掘路工作對駕駛人士造成延誤的情況；及
- (3) 電腦模擬計算的方法，是藉著電腦運輸模型軟件包，計算所有車輛在不同道路網絡環境下，通過一指定路段所需的總行車時數。就每一個樣本，電腦會在沒有掘路工

作的道路網絡條件下，及一個經調整，以反映掘路工作引致流量損失的道路網絡條件下，分別進行運算。透過比較經過某一指定路段在掘路工作存與否分別得出所有車輛經過的總行車時數，從而得出因掘路工作而引致的延誤。該延誤可以根據整體運輸研究中採納的「時間價值」因數，變換為一個以每天多少元為單位的經濟成本。

回答(c)(ii)

根據《土地(雜項條文)條例》(第 28 章)第 10A(3)條，路政署可在收取適當的訂明費用後，延長挖掘准許證的有效期。而《土地(雜項條文)規例》(第 28A 章)的附表 3 的第 I 部則列出相關的訂明費用，當中包括經於第 28 章第 10U 條指定的策略性街道、敏感街道及餘下街道。

經濟成本的計算原則請參閱回應(c)(i)。根據《土地(雜項條文)條例》(第 28 章)第 10L 條，持准許證人可向路政署申請退還為挖掘准許證延期而付的經濟成本的全部或部分，須就該申請述明理由及列出支持的證據，路政署信納的原因包括(但不限於)：

- (1) 惡劣天氣
- (2) 應政府的命令暫停挖掘，而發出該命令的原因並非持准許證人、其承判商或僱員的過失
- (3) 該證所關乎的未批租土地的狀況，而該狀況於申請該證時並不存在

路政署如信納申請人因上述理由妨礙該證所關乎的挖掘進展，可把該延誤引至的經濟成本退還申請人。

回答(d)

政府對於在新發展地區建造具合理成本效益的公用設施共同溝持積極態度。路政署已於 2018 年中展開探討在新發展區實施公用設施共同溝的可行性研究，研究預計於 2019 年下半年完成。研究主要目的是檢討在新發展地區建造公用設施共同溝的可行性，包括建造成本估算、分析社會及經濟效益、有關建設、營運管理、維護、及相關安全和法律責任等問題。顧問研究會匯報在新發展區採用公用設施共同溝的適用性，以制訂在香港推行公用設施共同溝的技術規定及提出一套切實可行的實施框架建議。