

政府總部
運輸及房屋局

運輸科
香港添馬添美道 2 號
政府總部東翼



Transport and
Housing Bureau
Government Secretariat
Transport Branch
East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

本局檔號 Our Ref.

來函檔號 Your Ref.

By e-mail

16 May 2019

Ms Connie SZETO
Clerk to the Establishment Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Szeto,

**Establishment Subcommittee
Letter from Hon SHIU Ka-chun dated 29 April 2019**

Thank you for your e-mail of 30 April 2019, relaying to us the letter from Hon SHIU Ka-chun dated 29 April 2019 to the Chairman of the Legislative Council Establishment Subcommittee. Regarding the questions raised by Hon SHIU on the proposed creation of two permanent directorate posts in the Marine Department (“MD”) and the Direct Investigation Report by the Office of the Ombudsman on “Marine Department’s Arrangements for Private Vessel Moorings” (“the Report”) published on 12 March 2019, our responses are set out below.

Proposed creation of two permanent posts in the Marine Department

In his letter, Hon SHIU enquired whether the duties of the two proposed posts could be taken up by other MD officers. The Government has carefully examined the proposed creation of two permanent directorate posts in MD and thoroughly considered the feasibility for other directorate officers in MD to share the duties concerned. At present, the Deputy Director of Marine is responsible for assisting the Director of Marine in formulating and implementing various

policies and initiatives of MD, including undertaking duties on international obligations and local legislation on marine and navigational safety, as well as steering and supervising the management and operation of various functional divisions. As for the other Assistant Directors in MD, they are also fully occupied with their respective areas of responsibilities, which include port control, planning of marine-related issues, shipping matters, maritime policies, as well as management of the Government fleet and vessel procurement. In addition, the Marine Adviser stationed at the Hong Kong Economic and Trade Office in London is responsible for handling work related to the International Maritime Organization in the capacity of the Permanent Representative of Hong Kong, China.

Since all directorate officers are already fully engaged with the work under their specified responsibilities and could not take on additional duties, we consider it necessary to create one Administrative Officer Staff Grade B permanent post (D3) and one Assistant Director of Marine (D2) permanent post in MD, so as to provide the dedicated steer and supervision needed in the ongoing implementation of reform measures and regulatory work on marine safety.

Application procedure for private mooring spaces

Hon SHIU asked in his letter the procedures of applying for a vessel berthing space. Under normal weather conditions, a local vessel may berth at any safe and suitable locations in Hong Kong waters (except for those waters prohibited to be used for berthing purposes) according to its daily operational needs. MD's approval or allocation of specific berthing spaces is not required. Individual shipowners and marinas may also apply for written permissions from MD to lay private moorings ("PMs") as fixed locations for berthing at their own expense within the areas designated for PMs ("PM Areas"). An applicant must specify his choice of PM Area on the application form and provide information of the vessel, including its name, Certificate of Ownership number, type and size. In vetting the application, the MD will mainly consider factors relating to safety, marine traffic and the use of sheltered spaces, including the acceptable vessel size and draught, the marine traffic conditions and the alignment of moored vessels at the location concerned, etc. After receiving the written permission issued by MD, the applicant has to lay the PM equipment at his own expense at the specified space of the PM Area.

The condition on “Designated Vessel” of PMs

Regarding the requirement that a PM shall not be sublet or lent for use by other vessels as mentioned in Hon SHIU’s letter, the Government has sought legal advice on multiple occasions on the matter since 2013. The legal advice has pointed out that the existing legislation expressly allows vessels other than that belonging to the owner to use the PM with the permission of the owner concerned. In other words, the law does not prohibit an owner from subletting or lending his PM to others. The previous administrative requirement for PMs to be used only by the vessel specified on the application (“Designated Vessel”) was *ultra vires* and must be rectified. Furthermore, the relevant legislation has also stipulated the procedures for a PM owner to sell or transfer his PM. The previous administrative arrangement of MD in prohibiting the transfer of PMs was thus not in compliance with the relevant legislation. Based on the aforesaid legal advice, MD has removed the condition of specifying a PM to be used only by the Designated Vessel in the written permissions granted after December 2017. For safety reasons, each written permission has specified the permissible length and width of the vessel for using the PM.

The demand-supply issues of PMs

As pointed out in paragraph 7.2 of the Report, given that the Hong Kong waters do not cover a large area, the Government uses the overall demand for sheltered spaces in Hong Kong waters as the basis when assessing the demand and supply of sheltered spaces in Hong Kong (where the measuring unit is the area of waters) and will not increase the provision of sheltered spaces in a certain location due to regional demand. The Office of the Ombudsman agreed to our policy, and concurred that the Government had no obligation to satisfy the demand, in particular the regional demand, of all applicants for spaces to lay PMs.

At present, MD has designated 43 PM Areas within Hong Kong waters. To protect vessels from the effects of inclement weather, PM Areas must be established in sheltered waters where the sea is relatively calm (such as within typhoon shelters). Such waters are limited in size and play an important role in the berthing of different types of vessels (e.g. working vessels and passenger vessels) in inclement weather. Therefore, when considering the establishment of PM Areas, MD will have to strike a balance between the demand for sheltered waters by pleasure vessels and that by other local vessels.

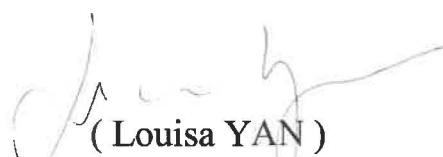
In view of the aforesaid considerations, regarding Hon SHIU's enquiry in his letter on how the Government will improve the relevant waiting times, the Government has taken forward various measures since 2017 to increase the supply of spaces for laying PMs, including establishing additional PM Areas in the underutilised Hei Ling Chau Typhoon Shelter, and expanding the PM Areas in some districts. The aforesaid measures are expected to provide additional spaces for the laying of over 1 000 PMs (vis-à-vis a total of about 2 000 PMs before the implementation of these measures) and will therefore considerably increase the overall supply of spaces for the laying of PMs, so as to provide more choices for applicants for laying PMs.

Administration Fee for laying PMs

As for the charging mode of fees for laying PMs, paragraphs 2.17 to 2.23 in the Report have described in detail MD's mechanism of adjusting the fee. MD has all along adopted the cost-recovery principle in accordance with the Shipping and Port Control Ordinance (Cap. 313) to recover the administrative costs in granting permissions for the laying of PMs. Since 1992, MD has adjusted the administration fee on three occasions, namely in 1993, 1994 and 1995, in accordance with the Government's established fee review mechanism. Between 1998 and 2004, various fee items of the Government (including the administration fee for PMs) were frozen. From 2005 onwards, MD resumed its annual review of the relevant fee items according to the Government's established mechanism. Under the principle of cost-recovery, MD examines periodically the expenditure incurred from work areas such as port control and regulation of vessel traffic. The reviews so far have not suggested a need to adjust the relevant fee item. As such, MD has not adjusted the administration fee for laying PMs since 1995.

The Transport and Housing Bureau together with MD are currently undertaking an internal review on the policy and legislative provisions related to PMs. We will consider in the internal review the relevant recommendations of the Office of the Ombudsman with a view to enhancing the management of PMs.

Yours sincerely,



(Louisa YAN)
for Secretary for Transport and Housing