

Chapter 8

Section 1 – Assessment Review Procedure

1 Introduction

Under the Land (Miscellaneous Provisions) Ordinance Cap 28 (the Ordinance), a public officer of the rank of Chief Technical Officer (CTO), Engineer (E) or Senior Engineer (SE) of Regional Office of Highways Department (the Department) shall make an assessment on matters relating to the duration of an excavation permit (XP) or its extended period, duration of initial period of an emergency excavation permit (EXP), and refund of daily fee and/or economic costs paid for extension of an excavation permit as stipulated in section 10M(1) (a) – (i) of the Ordinance. If the permittee of XP/EXP is aggrieved by this assessment, he may apply in writing to Chief Engineer (CE) of Regional Office for review. CE of Regional Office shall then make a review of the application under section 10M(4) of the Ordinance.

If the permittee is aggrieved by the decision made by the CE, he may further apply in writing to the Director of Highways (DH) for a review of CE's decision under section 10M(7) of the Ordinance. The Secretary for Development (SDEV) will then set up a Review Board (RB) under section 10O of the Ordinance to hear the review application.

This document sets out the procedures for reviewing the assessments made under section 10M of the Ordinance. This document should be read in conjunction with the Ordinance, related legislation and procedures, and Guidance Notes issued by the Department.

2 Assessment Review By Chief Engineer of Regional Office

2.1. Checking of Validity Period and Permittee's Assessment

Upon receiving an application submitted by the permittee for review of CTO/E/SE's assessment made under section 10M(1) (a) – (i) of the Ordinance, the CE shall check whether:

- (a) the application is submitted within the statutory validity period (i.e. 28 days from the date of service of the notice of the result of the CTO/E/SE's assessment); and
- (b) the permittee has set out his own assessment.

If the application is submitted beyond this validity period, CE shall inform the permittee in writing of his application being considered as invalid within 7 days from the date of receiving the application.

2.2. Chief Engineer's Review

- 2.2.1 If the application is submitted within the validity period stated in para. 2.1 above, CE will review the CTO/E/SE's assessment and serve a notice of his review result on the permittee within 28 days from the date of receipt of the permittee's application for review.
- 2.2.2 If CE fails to serve notice of his review result to the permittee within the specified period stated in para. 2.2.1 above, then:
 - (a) the permittee's own assessment if he has submitted together with his application for review; or
 - (b) in any other case, the CTO/E/SE's assessment, where appropriate, shall be taken to be the CE's review result.
- 2.2.3 In the CE's review result, CE may:
 - (a) vary the CTO/E/SE's assessment complained of;
 - (b) require the permittee to pay extra prescribed fee; and
 - (c) refund the prescribed fee or any part of prescribed fee paid by the permittee, where appropriate.

3 Assessment Review By Review Board

3.1 Checking of Validity Period and Permittee's Assessment

Upon receiving an application for review of CE's decision, Senior Engineer/Quality Management (SE/QM) of the Department shall check whether:

- (a) the application is submitted within the statutory validity period (i.e. 28 days from the date of service of the notice of the result of the CE's review); and
- (b) the permittee has set out his own assessment.

If the application is submitted beyond this validity period, SE/QM shall inform the permittee in writing of his application being considered as invalid within 7 days from the date of receiving the application.

3.2 Notification to SDEV

If the application is submitted within the validity period stated in 3.1 above, SE/QM shall within 7 days from the date of receiving the application:

- (a) prepare a memo for DHy to notify SDEV; and
- (b) submit a list of potential candidates as RB members to SDEV for setting up a RB.

3.3 Setting Up a Review Board

3.3.1 SE/QM shall liaise with SDEV in order to ensure that:

- (a) SDEV has served a notice on the list of potential RB members requiring them to make declaration as to whether they have direct or indirect interest in the review;
- (b) all declarations from the potential RB members are made within 7 days from the date of service of SDEV's notice;
- (c) SDEV has served a notice on the permittee notifying him the names of the members shortlisted and his right to raise any objection to the appointment of any member on ground of direct / indirect interest of any members;
- (d) the permittee's objection is made within 7 days from the date of service of SDEV's notice;
- (e) objection be made in writing and accompanied by all written statements and other documentary evidence;
- (f) within 14 days from the expiry of the period of declaration of interest and the raising of objections, SDEV will finalize the composition of RB with DHy as Chairman, SE/QM as Secretary of RB and appoint either of the following as RB members:
 - (a) one Government Engineer (GE) from HyD, one Review Panel¹ member and one other person as SDEV thinks fit; or
 - (b) one GE from HyD, one Review Panel member and three other persons as SDEV thinks fit.

3.3.2 SE/QM will, within 7 days from the date of receiving SDEV's notification of establishment of RB, inform the applicant and the CE in writing of the establishment and composition of RB. The CE will also be informed of details of the applicant's own assessment and his right to submit a written response to the application if he wishes to do so within 7 days from the date of issue of notification of RB's establishment. SE/QM will also keep the applicant informed of CE's written response, if any.

3.4 Review Board's Review

3.4.1 Upon setting up of a RB, SE/QM shall arrange to fix a time and place for RB to hear the application for review.

¹ Guidance for setting-up Review Panel is outlined in section 10(N) of the Ordinance.

- 3.4.2 SE/QM will arrange to invite the permittee and the CE to present case in the RB.
- 3.4.3 SE/QM shall check whether all RB members are present before proceeding to hearing. The RB shall not proceed to hear the application unless all members appointed are present in the RB. SE/QM shall keep records of RB meeting.
- 3.4.4 In the RB meeting, RB members shall review the application and make a decision by a majority of vote of the members. The Chairman shall not vote at the hearing.
- 3.4.5 SE/QM shall ensure that a notice of RB's decision on the permittee be served by DHy within 14 days from the date of RB's decision.
- 3.4.6 If DHy fails to serve notice of RB's decision to the permittee within the specified period stated in para. 3.4.5 above, then:
 - (a) the permittee's own assessment if he has submitted together with his application for review; or
 - (b) in any other case, CE's decision, where appropriate, shall be taken to be RB's review result.
- 3.4.7 In the RB review result, RB may:
 - (a) vary the CE's decision;
 - (b) require the permittee to pay extra prescribed fee; and
 - (c) refund any prescribed fee or any part of prescribed fee paid by the permittee.

3.5 Rehearing of Review Case

- 3.5.1 Equality of Vote
 - (i) When there is an equality of vote in the RB meeting, DHy shall discharge the RB. SE/QM shall prepare a memo for DHy's signature to notify SDEV for discharging the RB.
 - (ii) SE/QM shall liaise with SDEV to ensure that another RB is appointed to rehear the review case. Rehearing will normally be conducted not later than 90 days from the date of first hearing.
 - (iii) A new RB shall then rehear the review case and make a decision by a majority of vote of RB members.
 - (iv) If equality of vote arises again in the RB's review under item (iii) above,

then:

- (a) the permittee's own assessment if he has submitted together with his application for review; or
 - (b) in any other case, the CE's decision, where appropriate,
- shall be taken to be the RB's decision and the RB may, in accordance with this result, exercise its power stated in para. 3.4.7 above.

3.5.2 Discovery of Conflict of Interest

- (i) If at any time during the review proceedings, it is discovered that any RB member has a direct or indirect conflict of interest in the review, DHy may adjourn the review and inform SDEV.
- (ii) SE/QM shall liaise with SDEV for terminating the appointment of the RB member who has a conflict of interest and appoint other RB members by going through the procedures in para. 3.3 above.
- (iii) A new RB shall then rehear the review case wholly or in part.

4 Appeals against Review Board's Decision

SE/QM will provide support, if necessary, to the Administrative Appeals Board (AAB) in case a person, who is aggrieved by RB's decision made under section 10M(13) relating to an assessment made under section 10M(1)(d), (g), (h) & (i) of the Ordinance and appeals to the AAB under section 18B of the Ordinance.