

## Chapter 4

### Section 9 -Refusal of Issue of Excavation Permit Procedure

#### 1.0 Introduction

1.1 The Director of Highways (DH<sub>y</sub>) as the Authority or his delegates may refuse to issue an excavation permit (XP) or emergency excavation permit (EXP) in accordance with section 10E of the Land (Miscellaneous Provisions) Ordinance (LMPO).

#### 2.0 Conditions for Refusal of Issue of Excavation Permit

2.1 The Engineer/Chief Technical Officer (E/CTO) of the respective Highways Department (HyD) Regional Office may refuse to issue an XP or EXP in accordance with section 10E(1) of the LMPO if-

- (i) he reasonably believes that the applicant-
  - (a) is not a fit and proper person to make or maintain any excavation in unleased land;
  - (b) cannot comply with the conditions imposed under the permit; or
  - (c) does not have sufficient financial resources to make or maintain an excavation to which the permit relates. If there is any doubt, the E/CTO may request the applicant to provide evidence to prove his financial situation through the Excavation Permit Management System (XPMS). If the applicant is not an XPMS user, the E/CTO should send the request to the applicant by post or facsimile.
- (ii) in his opinion, the application to which the permit relates is unreasonable. Some unreasonable applications are listed below for reference only-
  - (a) The applicant submits application for an XP without providing sufficient information or supporting documents;
  - (b) The applicant submits application for an XP without written approval from relevant authority such as laying a drainage pipe illegally from his house to a roadside gully or somewhere and constructing illegal structures;
  - (c) Excavation which will likely cause hazards to the public;
  - (d) Shallow cover installation without waiver;
  - (e) Proposed works is unclear, e.g. without clear dimension of works;
  - (f) Excavation location falls within the site area of major project

without prior consent from subject part, e.g. railway boundary. The E/CTO should carefully assess each application and make decision with his own discretion.

- (iii) having regard to the circumstances of the case, the issue of the permit is, in the opinion of the E/CTO, inappropriate in such circumstances. Some inappropriate circumstances are listed below for reference only-
- (a) When a special event is to be held at or nearby the location of excavation proposed by the applicant, the E/CTO may refuse to issue an XP to the applicant if he considers that such excavation will probably affect such event. The event may include:-
- celebration events for Hong Kong Special Administrative Region Establishment Day;
  - celebration events for some great festivals such as:- New Year, Easter, Christmas, Ching Ming Festival, Lunar New Year, etc.
- (b) Where the location of excavation proposed by the applicant is very close to the open examination centers in the period from April to June, the E/CTO may refuse to issue an XP to the applicant if he considers that such excavation will create serious noise problem.

The E/CTO should carefully assess each application and consider any other alternatives proposed by the applicant.

2.2 In addition to the grounds specified in item 2.1 above, the E/CTO may, on reasonable grounds-

- (i) refuse to issue an XP if-
- (a) the applicant fails to submit the application at least 5 working days before his intended commencement date of works specified by the DHy, by notice published in Gazette, under section 18C of the LMPO; or
  - (b) the street to which the permit relates is a newly constructed street specified by the DHy, by notice published in Gazette, under section 18C of the LMPO;
- (ii) refuse to extend the period for which an XP is valid if the permittee fails to submit an application for extension in accordance with section 10F of the LMPO.

**3.0 Notification of Refusal of Issue of Excavation Permit**

- 3.1 Where the E/CTO refuses to issue a permit or extend the period for which a permit is valid, he shall notify the person who made the application through XPMS of the grounds for such refusal. If the applicant is not an XPMS user, the E/CTO should inform the applicant by notice in writing.