

## **Chapter 8**

### **Section 2 - Guidance Notes for Review Panel and Review Board**

#### **1. Introduction**

- 1.1 Under the Land (Miscellaneous Provisions) Ordinance, Cap 28 (the Ordinance), road excavation promoters have to pay excavation permit fees and daily fees for the duration of the permit. For excavation in carriageways a daily economic cost will be charged for the period extended for completion of the road excavation works. Such daily economic cost varies from \$1,500 to \$18,000, depending on the type of carriageway in traffic terms. The purpose is to encourage the promoters to carry out their work diligently within the period approved so that disruption to traffic can be minimized. Despite that methodical ways of assessing permit periods are developed, circumstances may still arise whereby the promoters will not agree with the permit periods approved, and in the case of permit extensions, on the economic costs charged.
- 1.2 The Ordinance provides for an appealing mechanism in which an applicant who is aggrieved by the assessment made by Highways Department (HyD), normally by an engineer, on the duration an excavation permit or its extension and so on, to appeal to a Chief Engineer (CE) of the permit-issuing office. If the applicant is not satisfied with the decision of the CE and the matter is not settled at this level, he may appeal to the Director of Highways (DHy) who chairs a Review Board to review the case.
- 1.3 This guidance serves to give some guidance on the operation of Review Board.

#### **2. The Review Panel and its formation**

- 2.1 In order to conduct the review process in an impartial manner, there will be a Review Panel appointed by the Secretary for Development (SDEV). The Ordinance authorises the SDEV to appoint a panel of not more than 20 persons whom he considers suitable to sit as members of a Review Board to review the applicant's appeal against the CE's decision. In order to achieve greater independence and credibility in an appeal case, only non-government officers are appointed to be the Review Panel members.

2.2 To ensure more representative in the review, potential members of the Review Panel have been invited from various sectors, such as contractors, property developers, academia, learned societies, and consultants. Potential members, who were nominated from these establishments have been recommended by DHy to SDEV for formation of the Review Panel. A table showing the composition as follows:

<b>Organisations</b>	<b>Nomination by</b>	<b>No.</b>
<u>Academia:</u>		
a) The University of Hong Kong,	Dean of Engineering	1
b) The Hong Kong Polytechnic University, and	Vice President (Research Development) and Dean of Faculty of Construction and Land Use	1
c) The Hong Kong University of Science and Technology	Dean of Engineering	1
<u>Learned societies:</u>		
a) Hong Kong Institution of Engineers, and	Secretary	2
b) Hong Kong Institute of Architects	Assistant Registrar	2
<u>Utilities undertakings:</u>		
Joint Utilities Policy Group	Secretary	3
<u>Consultants:</u>		
The Association of Consulting Engineers of Hong Kong	Honorary Secretary	3
<u>Contractors:</u>		
The Hong Kong Construction Association	Secretary General	3
<u>Developers:</u>		
The Real Estate Developers Association of Hong Kong	Secretary General	2
<u>Others:</u>		
a) MTR Corporation Ltd., and	Project Director	1
b) Kowloon-Canton Railway Corporation	Senior Director	1

Total number of panel members = 20

### **3. The Review Board and its composition**

Upon receipt of an application for reviewing CE's decision, a Review Board shall be established. The Review Board may comprise 3 or 5 members, and to ensure that the majority of members are non-government officers, the composition of the Review Board would:-

Either

AD/T, HyD + 2 Review Panel members;

or

AD/T, HyD + 3 Review Panel members + 1 public officer from CED, DSD, WSD, ArchSD or BD.

The Chairman of Review Board is DHy. The Review Board is serviced by a Secretary, Senior Engineer/Quality Management (SE/QM) of HyD, who will keep records of Review Board meeting. The terms of reference of the board is shown in Appendix 8.2.1.

### **4. The Review Process**

Basically, the review process follows the Assessment Review Procedures. Prior to the hearing, all comments received from the appellant and CE will be sent to the Review Board members for perusal. The Review Board members will make a decision by a majority of vote after considering all written representation from the appellant and the CE, and the presentation of both parties at the hearing.

### **5. Appeal Cases**

The appeal cases handled by the Review Board may in general comprise the followings:

- (a) duration of excavation permit and emergency excavation permit,
- (b) extension for excavation permit and emergency excavation permit,
- (c) refund for daily fee and economic costs, etc.

## Review Board under the Ordinance

### I. Composition of Board

**Chairman:** DHy

**Members:** AD/T

2 or 3 nominated from a list of Review Panel members\*, and  
1 nominated from either CED, DSD, WSD, ArchSD or BD, if  
applicable.

**Secretary:** SE/QM

(Notes: In order to maintain the majority of members are non-government officers, the board may  
have the following compositions, either-

3 members (AD/T + 2 Review Panel members), or

5 members (AD/T + 3 Review Panel members + 1 public officer)

### II. Terms of Reference\*\*

1. Chairman to notify the SDEV for setting up a Review Board;
2. Fix a time and place for the hearing;
3. invite permittee and the CE to present their case;
4. hear the appeal case and decide by a majority of vote; and
5. exercise the powers under section 10M(13) of the Ordinance:-
  - (a) vary the CE's decision;
  - (b) require the Permittee who submit the appeal to pay extra daily fees and/or economic costs; and
  - (c) refund any daily fees and/or economic costs already paid by the Permittee.

### III. Frequency of Board Meetings

Monthly or as determined by Chairman

\* A list of 20 Review Panel members appointed by the SDEV under section 10N of the Ordinance.

\*\* The terms of reference of the Review Board are abstracted from sections 10M 10O and 10P of the Ordinance as appropriate. It shall be read in conjunction with these sections of the Ordinance and the relevant procedures contained in the Excavation Permit Processing Manual.