

Chapter 4

Section 9 -Refusal of Issue of Excavation Permit Procedure

1.0 Introduction

1.1 The Director of Highways (DH_y) 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.