

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 carriageway a daily economic cost will be charged for the period extended for completion of the road excavation works. Such daily economic cost varies depending on the type of carriageway in traffic terms. For details, see Appendix 2.1.3. 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. The fees and economic costs for excavations on streets maintained by HyD are prescribed in Parts I and III of Schedule 3 to the Land (Miscellaneous Provisions) Regulations (Cap 28A). Despite that methodical ways of assessing permit periods are developed, circumstances may still arise in which the promoters do 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 a review 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 apply in writing for review to the 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 further apply in writing for a review to the Director of Highways (DH) 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 CE's decision. In order to achieve greater independence and credibility in a review 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 are invited from various sectors, such as contractors, property developers, academia, learned societies, and consultants. Potential members nominated from organisations of these sectors will then be submitted by DHy to SDEV for formation of the Review Panel. A table showing the composition of the current Review Panel as follows:

| Sectors | Nominating Organisations | No. of panel member |
|------------------------|---|----------------------------|
| Academia | a) The University of Hong Kong | 1 |
| | b) The Hong Kong Polytechnic University | 1 |
| | c) The Hong Kong University of Science and Technology | 1 |
| | d) City University of Hong Kong | 1 |
| Learned Societies | a) The Hong Kong Institution of Engineers | 2 |
| | b) The Hong Kong Institute of Architects | 2 |
| Utilities Undertakings | Joint Utilities Policy Group | 3 |
| Consultants | The Association of Consulting Engineers of Hong Kong | 3 |
| Contractors | The Hong Kong Construction Association | 3 |
| Developers | The Real Estate Developers Association of Hong Kong | 1 |
| Others | MTR Corporation Limited | 2 |

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 by the SDEV. The Review Board may comprise 3 or 5 members (excluding the Chairman), and to ensure that the majority of members are non-government officers, the composition of the Review Board would:-

Either

AD/T, HyD + 1 Review Panel member + 1 other person as SDEV thinks fit;

or

AD/T, HyD + 1 Review Panel member + 3 other persons as SDEV thinks fit.

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 (Section 1 of Chapter 8). Prior to the hearing, all comments received from the applicant 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 applicant and the CE, and the presentation of both parties at the hearing.

5. Review Cases

The review 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,
- (c) refund for daily fee and/or economic costs, etc.

Review Board under the Ordinance

I. Composition of Board

Chairman: DHy

Members: AD/T, HyD

1 nominated from a list of Review Panel members*, and

1 or 3 other persons as SDEV thinks fit.

Secretary: SE/QM, HyD

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

3 members (AD/T, HyD + 1 Review Panel member + 1 other person as SDEV thinks fit), or

5 members (AD/T, HyD + 1 Review Panel member + 3 other persons as SDEV thinks fit)

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 review 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 submitted the application for review to pay extra daily fees and/or economic costs; and
 - (c) refund any daily fee 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 are appointed by the SDEV under section 10N of the Ordinance. The current list of Review Panel members can be accessed via this link: <https://www.info.gov.hk/cml/eng/cbc/a191.htm>

** The terms of reference of the Review Board are abstracted from sections 10M 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.