

ENVIRONMENTAL IMPACT ASSESSMENT (APPEAL BOARD) REGULATION

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ENVIRONMENTAL IMPACT ASSESSMENT (APPEAL BOARD) REGULATION

(Made under section 32 of the Environmental Impact Assessment Ordinance (Cap. 499) after consultation with the Advisory Council on the Environment)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette.

2. Interpretation

In this Regulation -

"appellant" () means a person who lodges a notice of appeal in accordance with section 3;

"respondent" () in relation to an appeal for the purposes of section 17(1) of the Ordinance, means the Director; and in relation to an appeal for the purposes of section 17(2) of the Ordinance, means the Secretary.

3. Form of notice of appeal

Notice of appeal -

- (a) for the purposes of section 17(1) of the Ordinance, in the case of an environmental permit holder or an applicant, shall be in Form 1 in the Schedule;
- (b) for the purposes of section 17(2) of the Ordinance, in the case of a person whose project is specified by the Secretary as a designated project under section 4(4) of the Ordinance, shall be in Form 2 in the Schedule; and

(c) shall be lodged with the Chairman.

**4. Service of copy of notice of appeal
and statement of particulars**

(1) When lodging a notice of appeal under section 3 the appellant shall at the same time serve a copy of such notice on the respondent; and shall at the same time serve on the respondent and the Chairman a statement of particulars which shall include -

- (a) the name, address and telephone number of the appellant;
- (b) the name, address and telephone number of the appellant's authorized representative;
- (c) details of the decision appealed against;
- (d) the grounds of the appeal;
- (e) the name, address and telephone number of all proposed witnesses; and
- (f) particulars of the evidence to be given by the witnesses and documents and any other thing to be produced by or on behalf of the appellant sufficient to ensure that the Appeal Board is fully and fairly informed of the grounds of appeal.

(2) The respondent shall within 21 days of receipt of a copy of a notice under subsection (1) serve notice on the Chairman and the appellant of -

- (a) the name, address and telephone number of the respondent's authorized representative;
- (b) the name, address and telephone number of all proposed witnesses; and
- (c) particulars of the evidence to be given by the witnesses and documents and any other thing to be produced by or on behalf of the respondent

sufficient to ensure that the appellant and the Appeal Board are fully and fairly informed of the grounds of opposing the appeal.

5. Further particulars

If any party to any appeal requires further particulars from the other party relating to the appeal he may, within 21 days after the service on the respondent of a copy of the notice of appeal under section 4 or such longer period as the Chairman, on application, may allow in any particular case, serve notice on the other party specifying the further particulars required, and the other party shall, within 21 days after notice is served under this section or such longer period as the Chairman, on application, may allow in any particular case, furnish such particulars to the other party and lodge a copy of such particulars with the Chairman.

6. Inspection of documents

(1) Any party to any appeal may at any time serve notice on the other party to produce, within 21 days after the notice is served, any document relating to the appeal for the inspection of the party serving the notice and to permit him to take copies thereof.

(2) Any party who fails to comply with a notice under subsection (1) shall not afterwards be allowed to put any such document in evidence unless he satisfies the Appeal Board that he had a reason for his failure to comply which the Appeal Board deems sufficient.

7. Date, time and place of hearing

(1) Where notice of appeal is lodged, the Chairman shall fix the date, time and place of the hearing of appeal so as to enable the hearing to commence as soon as is reasonably practicable and shall, not less than 28 days before the date so fixed, serve on the appellant and on the respondent notice of the date, time and place in Form 3 in the Schedule.

(2) The Chairman upon application by any party to an appeal before the date and time fixed under subsection (1) for the hearing of the appeal, may change the date, time and place fixed for the hearing and shall serve on the parties to the appeal the notice mentioned in that subsection within the period referred to in that subsection.

8. Summons to witness

Upon application by any party to an appeal in Form 4 in the Schedule, the Chairman may issue a witness summons in Form 5 in the Schedule to any person named in the application requiring him to appear before the Appeal Board to produce any document relating to the appeal and to give evidence.

9. Appeal to be conducted in public

The hearing of an appeal shall be conducted in public unless the Chairman of his own motion, or upon application by any party to the appeal, orders that all or any persons should be excluded from the whole or any part of the hearing.

10. Representation

At the hearing of an appeal -

- (a) the appellant may be represented by a barrister or solicitor; and
- (b) the respondent may be represented by a barrister, solicitor or legal officer.

11. Abandonment of appeal

(1) The appellant may abandon the whole or any part of the appeal by notice in writing lodged with the Chairman.

(2) When lodging a notice under subsection (1), the appellant shall at the same time serve a copy of such notice on the respondent.

12. Failure of any party to attend hearing

(1) If on the date and time fixed for the hearing of an appeal any party to the appeal fails to attend the hearing either in person or by a barrister or solicitor, the Appeal Board may -

- (a) if satisfied that the party's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;
- (b) proceed to hear the appeal;
- (c) in the case of a failure by the appellant to so attend other than by reason of sickness or other reasonable cause, dismiss the appeal.

(2) Where the appeal is dismissed by the Appeal Board under subsection (1)(c) the appellant may, within 30 days after the making of the order for dismissal, by notice in writing lodged with the Chairman, apply to the Appeal Board to review its order and the Appeal Board may, if satisfied that the appellant's

failure to attend the hearing was due to sickness or any other reasonable cause, set aside the order for dismissal.

(3) When lodging a notice under subsection (2), the appellant shall at the same time serve a copy of such notice on the respondent.

(4) Where the Appeal Board sets aside an order for dismissal under subsection (2), the Chairman shall fix the date, time and place for the hearing of the appeal so as to enable the hearing to commence as soon as is reasonably practicable and shall, not less than 14 days before the date so fixed, serve on the appellant and on the respondent notice of the date, time and place in Form 3 in the Schedule.

13. Failure to serve notice of appeal
or to furnish particulars

(1) Where an Appeal Board is satisfied that the appellant has failed -

- (a) to serve a copy of the notice of appeal on the respondent under section 4;
- (b) to furnish a statement of particulars to the respondent and the Chairman under section 4; or
- (c) to furnish further particulars to the respondent under section 5,

the Appeal Board may dismiss the appeal.

(2) Where an Appeal Board is satisfied that the respondent has failed to furnish further particulars to the appellant under section 5 the Appeal Board may allow the appeal.

14. Record of proceedings

The Chairman shall take or cause to be taken in writing a full minute, so far as circumstances permit, of the following matters in respect of every appeal heard by the Appeal Board -

- (a) the grounds of the appeal;
- (b) the name of the appellant;
- (c) the name of any person who appears as a witness for the appellant;
- (d) the name of any person who appears as a witness for the respondent;
- (e) the name of any person summonsed as a witness before the Appeal Board;
- (f) the evidence of any person who gives evidence;
- (g) the decision of the Appeal Board;
- (h) the amount of any sum awarded under section 19 of the Ordinance in respect of the costs of the appeal; and the name of the person in favour of whom the award was made.

15. Service of notices by Chairman, respondent or appellant

Any notice or copy of a notice required to be served under this Regulation -

- (a) by the Chairman on the appellant or the respondent;
- (b) by the respondent on the appellant; or
- (c) by the appellant on the respondent,

may be served by serving a copy personally or by registered post addressed to the last known address of the appellant or to the respondent, as the case may be.

SCHEDULE

[ss. 3, 7, 8 & 12]

Form 1

Environmental Impact Assessment Ordinance

(Cap. 499)

NOTICE OF APPEAL BY AN ENVIRONMENTAL PERMIT
HOLDER OR AN APPLICANT

(Section 17(1) of the Environmental Impact
Assessment Ordinance (Cap. 499))

To: Chairman of the Appeal Board

1. Full name of Appellant:
2. Address of Appellant:
Telephone No.:
3. Address of Appellant or name and address of duly authorized
representative for service if different from the above:
.....
.....
4. Indicate by ticking in the appropriate box whether the appeal
is against a decision of the Director:
 - ☐ as to the content of an environmental impact assessment
study brief issued by the Director under section 5(7) (a)
of the Ordinance;
 - ☐ not to permit an applicant to apply directly for an
environmental permit under section 5(9), (10) or (11) of
the Ordinance;
 - ☐ as to the conditions imposed on an applicant applying
directly for an environmental permit under section 5(12)
of the Ordinance;
 - ☐ not to approve an environmental impact assessment report
under section 8(3) of the Ordinance;
 - ☐ not to issue an environmental permit under section 10(5)
of the Ordinance;

- ☐ to impose conditions on the issue or variation of an environmental permit under section 10(5) or 13(2) of the Ordinance;
- ☐ to vary or to cancel an environmental permit under section 14(1) of the Ordinance; or
- ☐ to claim costs incidental to remedying environmental damage under section 24(3) of the Ordinance.

5. Details of decision appealed against:
(Attach copy of decision and indicate the particular aspect being the subject of appeal)
.....
.....
.....
6. The grounds of appeal are -
.....
.....
.....
7. A detailed description of the matter to which the appeal relates is as follows -
.....
.....
.....
8. A description of each document or thing the appellant intends to produce at the hearing is as follows -
.....
.....
.....
9. The name, address, telephone number and title of each witness the appellant intends to call on his behalf at the hearing is -
.....
.....
.....
10. The particulars of evidence to be given by the witnesses are -
.....
.....
.....

.....
Appellant

Dated this day of ..,..... 19 ...

Please note:

1. This form must be completed fully in writing in accordance with the directions specified in the form and lodged with the Chairman of the Appeal Board at the office of the Secretary before the expiry of 30 days after the service upon you of the notice in respect of the decision you wish to appeal against.
2. At the same time that this notice is lodged you are required to serve a copy of the notice on the Director, personally, or by registered post.
3. You are advised to read the Environmental Impact Assessment Ordinance (Cap. 499) and the Environmental Impact Assessment (Appeal Board) Regulation (Cap. 499 sub. leg.) before lodging this notice of appeal.

Form 2

Environmental Impact Assessment Ordinance
(Cap. 499)

NOTICE OF APPEAL AGAINST SPECIFICATION OF A PROJECT
AS A DESIGNATED PROJECT

(Section 17(2) of the Environmental Impact
Assessment Ordinance (Cap. 499))

To: Chairman of the Appeal Board

1. Full name of Appellant:
2. Address of Appellant:
Telephone No.:
3. Address of Appellant or name and address of duly authorized
representative for service if different from the above:
.....
.....
4. Appeal against a decision of the Secretary to specify a
project as a designated project under section 4(4) of the
Environmental Impact Assessment Ordinance (Cap. 499)
(Attach copy of decision and indicate the particular aspect
of the decision to designate the project being the subject of
appeal)
.....
.....
.....
5. The grounds of appeal are -
.....
.....
.....
6. A detailed description of the matter to which the appeal
relates is as follows -
.....
.....
.....

7. A description of each document or thing the appellant intends to produce at the hearing is as follows -

8. The name, address, telephone number and title of each witness the appellant intends to call on his behalf is -

.....
 Appellant

Dated this day of 19 ...

Please note:

1. This form must be completed fully in writing in accordance with the directions specified in the form and lodged with the Chairman of the Appeal Board at the office of the Secretary before the expiry of 30 days after the service upon you of the notice in respect of the decision you wish to appeal against.
2. At the same time that this notice is lodged you are required to serve a copy of the notice on the Secretary, personally, or by registered post.
3. You are advised to read the Environmental Impact Assessment Ordinance (Cap. 499) and the Environmental Impact Assessment (Appeal Board) Regulation (Cap. 499 sub. leg.) before lodging this notice of appeal.

Form 3

Environmental Impact Assessment Ordinance

(Cap. 499)

NOTICE OF DATE, TIME AND PLACE FIXED FOR HEARING OF AN APPEAL

Appeal No.: of 19 ...

In the matter of the Appeal lodged by
 (Appellant) against

To (Appellant)
 And To (Respondent)

TAKE NOTICE that the above appeal will be heard at
 on the day of 19
 at a.m./p.m.

AND TAKE NOTICE that if you do not attend at the date, time
 and place mentioned, either in person or by a person duly
 authorized to appear on your behalf, the appeal may be heard in
 your absence.

Dated this day of 19

.....
 Chairman of the Appeal Board

This notice was served by me on at
 on the day of 19 ...

.....
 Recipient of notice

.....
 Process server

Form 4

Environmental Impact Assessment Ordinance

(Cap. 499)

APPLICATION FOR SUMMONS TO WITNESS

Appeal No.: of 19

To: Chairman of the Appeal Board

Whereas
of
is likely to give material evidence in respect of the above
appeal, I,
hereby apply for a summons to be issued to the said
..... requiring him to
attend the hearing of the appeal for that purpose./*and to bring
with him and produce the several documents hereunder specified:

Documents required to be produced:

.....
.....

Dated this day of 19 ...

.....
*Appellant/Respondent

*Delete as necessary.

Form 5
Environmental Impact Assessment Ordinance
(Cap. 499)

SUMMONS TO A WITNESS

Appeal No.: of 19 ...

In the matter of the Appeal lodged by
..... (Appellant) against
.....
.....
.....
.....

To (a)

YOU ARE HEREBY SUMMONSED to attend at
on the day of 19 at*a.m./p.m.,
and so from day to day, until the proceedings are heard, to give
evidence in the above appeal *and also to bring with you and
produce the several documents hereunder specified:

Document required to be produced:

.....
.....

Dated this day of 19

.....
Chairman of the Appeal Board

*Delete as necessary.

Note: (a) Insert name of person to be served.

This summons was served by me on
at on the day
of 19

.....
Recipient of summons

.....
Process server

Secretary for Planning,
Environment and Lands.

1997.

Explanatory Note