

# DRAINAGE SERVICES DEPARTMENT

## TECHNICAL CIRCULAR No. 4/96

### IMPLEMENTATION OF THE LAND DRAINAGE ORDINANCE

#### Introduction

This Technical Circular outlines the key procedures for implementing the Land Drainage Ordinance Chapter 446 (LDO). Further guidelines are being set out in the Land Drainage Ordinance Manual.

#### Background

2. Flooding has been a recurrent problem in the low lying areas of North West and North New Territories (NT). The chance of flooding could be reduced if watercourses were adequately maintained. However, there are circumstances in which the Drainage Services Department (DSD) is unable to undertake the requisite maintenance works as a result of failure to obtain the owners' consent to enter on private land.

3. To provide the necessary statutory power for Government to carry out watercourse maintenance works effectively, the LDO was enacted in March 1994. Two pieces of subsidiary legislation, namely the Land Drainage (Appeal) Regulation and the Land Drainage (Consent and Approval) Regulation have come into operation since June 1995.

#### Powers conferred on the Drainage Authority

4. The LDO creates a Drainage Authority (DA), who is the Director of Drainage Services (D of DS). Under the Ordinance, DA is empowered to -

- (a) prepare Drainage Authority Area plans and designate any watercourses in the Drainage Authority Areas (DAAs) as main watercourses;
- (b) enter private land for the purpose of preparing DAA plans, inspecting and executing works in main watercourses;
- (c) order removal of obstructions or structures from main watercourses to maintain free flow; and
- (d) give consent to or reject proposals of erecting structures in main watercourses.

#### Plan making for Drainage Authority Area plan

5. The Chief Engineer/Land Drainage (CE/LD) shall seek the direction of the Secretary for Planning, Environment and Lands (SPEL) to prepare a draft DAA plan (draft plan) for a particular area of Hong Kong.

6. The draft plan shall be prepared with reference to the recommendations of the Territorial Land Drainage and Flood Control Strategy Study - Phase II (TELADFLOCOSS II). TELADFLOCOSS II sets out the boundaries of major drainage basins in the North West and North NT. It also identifies, by means of a scoring system, major watercourses within these drainage basins. This background information, together with due consideration on hydraulic capacity, flood risk and land use, shall be used as a basis for preparing the draft plan.
7. The draft plan shall be circulated to the relevant Departments for comment. After resolving all problems, CE/LD shall submit a schedule summarizing all comments and responses together with the draft plan to the Assistant Director/Operations and Maintenance (AD/O&M) for clearance and onward transmission to D of DS for agreement before consultation with the Heung Yee Kuk, relevant Rural Committees (RCs) and District Boards.
8. CE/LD shall consider the opinions collected during public consultation and report all major comments received and any revisions proposed to D of DS through AD/O&M. Upon endorsement by D of DS, the draft plan will be forwarded to SPEL for agreement.
9. After the draft plan, gazette notification and press release are cleared by the relevant authorities, CE/LD shall submit the documents and propose gazette dates to D of DS.
10. The public will be given 60 days to consider the draft DAA plan and lodge any objections to DA. After examining the objections, CE/LD shall recommend either to reject the objections or to propose alterations to meet the objections for AD/O&M's clearance and D of DS's decision. The objectors shall be notified of the DA's decision. Any proposed alterations to the draft plan shall be gazetted as per paragraph 9.
11. Upon gazette of any proposed alterations to a draft plan, objections to the proposed alterations shall be considered at a meeting between CE/LD and the objectors. CE/LD shall then recommend either to reject the objections or to make alterations to meet the objections for AD/O&M's clearance and D of DS's decision. The objectors shall be informed of the DA's decision.
12. In case any objector applies to the Drainage Appeal Board (DAB) for a review of the DA's decision, CE/LD shall prepare a written representation on the application for the agreement of D of DS through AD/O&M. CE/LD shall appoint an officer of Senior Engineer (SE) rank or above to attend the hearing and make representation.
13. After resolving all the objections and finalising all the alterations, CE/LD shall prepare a finalised draft plan for D of DS's endorsement and signature. The finalised draft plan endorsed by D of DS shall be delivered to SPEL with other necessary documents for onward submission to the Governor-in-Council (G-in-C) for decision.

### Execution of drainage works

14. Drainage works at main watercourses may continue to be executed in the traditional way if the consent of land owners and occupiers and the support of local community through the RC are obtained. However, it is necessary to ensure that the parties whose rights and interests may be affected by the works have given consent to the works.

15. It will be necessary to invoke the LDO to carry out drainage works in the following situations -

- (a) DSD is denied access to the main watercourse by land owners or occupiers; or
- (b) the nature of the drainage works itself is likely to cause damage to land, buildings, crops or agricultural cultivation which may give rise to compensation claims by land owners or occupiers; or
- (c) the nature of the drainage works itself is likely to cause disturbance which may give rise to compensation claims by land owners or occupiers; or
- (d) the drainage works are urgently required in cases of emergency involving risk of life or property such that obtaining the consent of land owners and occupiers is impractical.

16. Except in an emergency, a notice of the proposed drainage works shall be served on the relevant occupiers and owners before the powers given by the LDO are used. If no objection to the proposed drainage works is received, execution of the works shall proceed as proposed.

17. If written objections are received, CE/LD or the Chief Engineer of the District Division (CE/Dist), as the case may be, shall decide whether to proceed with the execution of the drainage works or to propose alterations, and notify the objectors and any other person who may be affected by such alterations.

18. Written representations on any proposed alterations from the public shall be considered by CE/LD or CE/Dist who shall decide whether to proceed with or without the alterations, and notify the relevant persons accordingly. If no appeal is made, execution of the drainage works shall proceed as decided. Works shall be suspended if an appeal is lodged with the DAB.

19. Whenever drainage works are to be carried out in an emergency, the works may be authorised by an officer of SE rank or above without prior notice to the occupiers and owners. Nevertheless, a notice authorising immediate entry onto the land shall be handed to the occupiers before commencing the works. As soon as practicable after the commencement of the emergency works, a notice shall be served on the occupiers and owners informing them of their right to claim compensation under the LDO.

### **Removal of obstructions or structures**

20. Regular inspections shall be conducted to identify any obstructions or structures in main watercourses which have the potential to cause serious drainage problems. Detailed records of such obstructions and structures and the sections of main watercourses concerned shall be taken.

21. When deciding the need to invoke the LDO for ordering the removal of obstructions or structures under section 20(1) or 21(1), consideration should be given to the following factors -

- (a) the extent of blockage in the main watercourse caused by the obstruction or structure;
- (b) the likely impact if the obstruction or structure is not removed;
- (c) the extent of private land affected by such removal;
- (d) the legal status of the structure proposed to be removed;
- (e) the need for a replacement of the structure to be removed; and
- (f) the likelihood of appeals or claims for compensation under the LDO.

22. If the removal of obstructions or structures is considered necessary, DA will serve a notice on the relevant occupier and owner or the person who caused the obstruction or the erection of the structure requiring the removal of such obstruction or structure within a specified period of time.

23. If the obstruction or structure is not removed within the specified time and no appeal is made, DA may remove such obstruction or structure and the expenses so incurred, including supervision charges, may be recovered from the persons concerned.

24. In cases of emergency involving risk of life or property, DA may remove any obstruction without prior notice and the expenses so incurred may be recovered from the persons concerned. Nevertheless, a notice authorising immediate entry onto the land shall be handed to the occupiers before commencing the works. As soon as practicable after the commencement of the emergency works, a notice shall be served on the occupiers and owners informing them of their right to claim compensation under the LDO.

### **Erection of structures in main watercourses**

25. Sections 26(1), 27(1) and 27(2) of the LDO require that the erection of structures and the formation of obstructions in main watercourses shall need prior approval of DA. During the processing of routine district submissions such as Building Ordinance Office submissions, Short Term Tenancy proposals, planning permission applications, lease modification applications and utility proposals, the District Divisions shall check whether a submission involves the following works which are within the ambit of the LDO -

- (a) engineering works or filling or erection of any dam, weir, culvert or other like obstruction in a main watercourse impeding its flow; or
- (b) erection of any structure in, over or under a main watercourse; or
- (c) repair works on any structure in, over or under a main watercourse, which are likely to affect the flow of water; or
- (d) erection of any structure designed to contain or divert water from a main watercourse.

26. The District Division shall be responsible for coordinating and processing submissions in the usual manner whether or not a submission involves works affecting a main watercourse. The part of the submission involving works mentioned in paragraph 25 may be referred to CE/LD for comments. The District Division shall, in its reply, also advise the applicant to submit an application to DA in accordance with the Land Drainage (Consent and Approval) Regulation for approval before execution of the relevant works.

27. Applications for approval of works under the LDO shall be considered against the standards set out in the Stormwater Drainage Manual. The aim is to ensure that there will be no unacceptable lowering of the flood protection standard afforded by the main watercourse during the expected life of a proposed structure or the duration of any repair works on an existing structure.

### Appeals

28. In case there is an appeal to the DAB against the DA's decision on execution of drainage works, removal of obstructions or structures, or applications for executing works in designated main watercourses, the procedures laid down in the Land Drainage (Appeal) Regulations shall be followed.

29. Within 28 days of receipt of a notice of appeal, CE/LD or CE/Dist shall supply to the DAB and to the appellant the information set out in section 5 of the Land Drainage (Appeal) Regulation. Further information listed in section 6 of the Regulation will have to be furnished if necessary. All information concerning the appeal shall be cleared by AD/O&M and agreed by D of DS before the DAB hears the case. The secretary to the DAB Panel shall fix a time and place for the hearing of the appeal. An officer of SE rank or above shall attend the hearing.

30. Under section 33 of the LDO, the decision of the DAB on an appeal shall be final unless an appeal is made to the High Court on point of law by either DA or the appellant. The advice of the Attorney General's Chambers (AGC) shall be sought for all cases involving an appeal to the High Court.

31. Where an appeal has been made to the DAB or the High Court, all actions relating to the execution of drainage works or the removal of obstruction or structure which are the subject of appeal shall be suspended until the appeal is determined.

## **Compensation**

32. Before and during execution and upon completion of any works authorised under the LDO, CE/LD or CE/Dist shall keep comprehensive records of the works. The assistance of the Agriculture and Fishery Department (AFD) and relevant District Lands Office (DLO) shall be sought if crops or agricultural cultivation are affected.
33. All claims for compensation shall be referred to CE/LD or CE/Dist as appropriate for acknowledgement of receipt and follow-up action. The basis on which compensation is assessed is set out in Part I and Part II of the Schedule of the LDO. If there is any doubt as to the DA's liability, AGC shall be consulted.
34. A claim assessment report shall be submitted to AD/O&M for clearance and onward transmission to D of DS for consideration. CE/LD or CE/Dist shall then prepare a notice of the DA's determination for D of DS's signature and issuance to the claimant.
35. In case the claimant does not agree to the DA's determination, CE/LD or CE/Dist shall negotiate with the claimant to settle the dispute. If necessary, the relevant District Officer (DO) shall be invited to act as a mediator. If revision of the DA's determination appears justifiable, CE/LD or CE/Dist shall make appropriate recommendations for AD/O&M's clearance and D of DS's consideration.
36. If the claim is not settled by agreement within 7 months of its service, CE/LD or CE/Dist shall recommend whether the claim should be referred to the Lands Tribunal for AD/O&M's clearance and D of DS's decision. Normally, the claim should not be referred to the Lands Tribunal if there is a likelihood of settlement by agreement through negotiation in the foreseeable future. In the event that DA or the claimant refers the claim to the Lands Tribunal, CE/LD or CE/Dist shall seek legal assistance from AGC and keep D of DS informed of the case. An officer of SE rank or above shall attend hearings of the Lands Tribunal.
37. Whenever the claim for compensation is related to resumption of land, it shall be referred to the Director of Lands for processing under the Crown Land Resumption Ordinance.

## **Delegation of Authority**

38. It is planned to implement the LDO in five flood prone drainage basins, viz, Yuen Long/Kam Tin/Ngau Tam Mei, Indus, San Tin, Tin Shui Wai and Ganges, in the NT. For the purpose of operating the LDO, staff of the Operations and Maintenance Branch are authorised to act on behalf of DA in accordance with the schedule at Appendix A.

Drainage Authority Advisory Committee

39. In the event that any dispute, objection or claim is referred to DA for decision, a Drainage Authority Advisory Committee will be formed, if necessary, to advise DA of the appropriate action to be taken. The Advisory Committee shall be set up on an ad hoc basis, the membership and terms of reference are at Appendix B.



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Director of Drainage Services

Drainage Services Department  
May 1996

**LAND DRAINAGE ORDINANCE, CHAPTER 446**  
**SCHEDULE OF AUTHORIZATION BY THE DRAINAGE AUTHORITY**

Public officers holding the substantive or acting ranks specified hereunder are hereby authorized to exercise and perform the powers, duties or functions stipulated in the following sections of the Land Drainage Ordinance. Such powers, duties or functions shall be performed in the name of the Drainage Authority -

<b><u>Section No</u></b>	<b><u>Power/Duty/Function</u></b>	<b><u>Authorised Officer</u></b>
7(4)(a) 7(5)(b) 7(7) 7(8) 7(9)(a)	To deal with objections and notify the objectors of the DA's decisions.	CE/LD
8(3)	To send to the secretary to the Drainage Appeal Board Panel and applicant written representation concerning application for a review of the DA's decision under section 7(4)(a) or 7(9).	CE/LD
8(5) 8(10) 28(4)	To attend before the Drainage Appeal Board during review or appeal.	SE & above in LDD, MND
18 19	To execute drainage works or temporary works, but exclude the power under sections 18(4), 18(7) and 19(2) concerning objections and emergency works.	E & above in LDD, MND
18(4)	To make decision in respect of objections received.	CE/LD, CE/MN
18(7) 19(2)	To execute emergency drainage works or emergency temporary works.	SE & above in LDD, MND.
20 21	To require removal of obstructions or structures from main watercourses.	SE & above in LDD, MND
22(1) 23(1)	To authorise entry for the purpose of executing works, inspection, etc.	SE & above in LDD, MND

**APPENDIX A**

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<b><u>Section No</u></b>	<b><u>Power/Duty/Function</u></b>	<b><u>Authorised Officer</u></b>
24	To dispose of spoil.	E & above in LDD, MND
26 27	To give consent to or reject proposal of erecting obstruction or structure in main watercourse.	SE & above in MND
39(2)	To request claimant to furnish further particulars in support of a claim.	E & above in LDD, MND

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<b><u>Note</u></b>	CE/LD	- Chief Engineer/Land Drainage
	CE/MN	- Chief Engineer/Mainland North
	SE	- Senior Engineer
	E	- Engineer
	LDD	- Land Drainage Division
	MND	- Mainland North Division

**DRAINAGE AUTHORITY ADVISORY COMMITTEE**

**Membership**

The composition of the Drainage Authority Advisory Committee is as below -

Chairman	:	AD/O&M
Members	:	CE/LD
		CE/Dist (relevant)
		DLO )
		AFD ) representatives (invited on as-needed basis)
		DO )
		AGC )

**Terms of Reference**

The terms of reference of the Drainage Authority Advisory Committee are as follows -

- (a) To advise DA in respect of matters relating to departmental disputes on draft plan.
- (b) To advise DA in respect of matters relating to public objections and applications to the DAB for review of the DA's decisions on draft plan.
- (c) To advise DA in respect of matters relating to objections to execution of drainage works.
- (d) To advise DA in respect of matters relating to appeals to the DAB or the High Court against the DA's decision on execution of drainage works, removal of obstructions or structures, or applications for executing works in designated main watercourses.
- (e) To make recommendations to DA in settling compensation claims.
- (f) To advise DA of any other matter in connection with implementation of the LDO.