



保 護 海 港 協 會
Society for Protection of the Harbour

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Your Ref. No. TPB/O/S/H25/1-558

Town Planning Board,
15/F., North Point Government Offices,
333 Java Road, North Point, Hong Kong.

29th May 2007

Dear Board Members,

**Representation to Town Planning Board
For Hearing on 20th June 2007**

Draft Wan Chai North Outline Zoning Plan No. S/H25/1

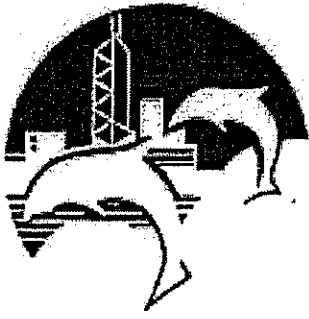
May we start by respectfully seeking your decision on the following legal issues.

1. Burden of Proof is on the Proponent – It is our submission that the Protection of the Harbour Ordinance (“the Harbour Ordinance”) as interpreted by the Court of Final Appeal Judgment (“the Judgment”) casts a heavy burden of proof on the proponent of reclamation. For the reclamation to be lawful, the proponent must prove to your satisfaction that the burden has been discharged. You must come to the decision independently and not vicariously by relying on the opinion of someone else. The burden of making the decision whether the ‘Overriding Public Need’ test has been complied with is on the Board and not on anyone else.
2. Duty to Present Evidence is on the Proponent – The Judgment clearly requires the proponent to present evidence to support its reclamation proposal. The standard of proof is very high. The proponent must not rely on its own or other people’s ‘lip-service’ but must present factual ‘cogent and convincing materials’ as set out in the Judgment. While expert reports (“Reports”) may have a bearing, the burden of proving that there is an ‘Overriding Public Need’ at all times remains on the shoulders of the proponent.

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維港宣言: 保護及保存維港, 並優化海濱, 為香港市民, 提供一個健康及優質的生活環境



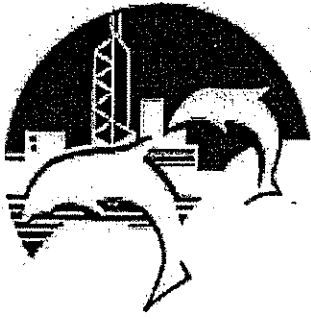
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3. Nature of Reports – The Reports are merely advisory and only reflect the opinion of the particular consultation commissioned by the proponent on technical matters.
4. ‘Cogent and Convincing Materials’ – The proponent must present all relevant materials to the adjudicating tribunal, in the present instance, your Board. The proponent must come forward with open hands and without concealment. It is an important matter as the proponent is asking for the sacrifice of ‘a special public asset’ and ‘a natural heritage of the people’. Therefore in the present case, the proponent’s Brief giving instructions to the producer of the Report upon which the proponent is relying must form part of the ‘cogent and convincing materials’.
5. Government Enjoys No Special Status – The Harbour Ordinance was clearly worded to control even reclamation proposed by the Government which is afforded no special status. The Government must be regarded the same as any real estate developer or other proponent of reclamation and must be required to follow the same procedure and to discharge the same burden and standard of proof. The Government should not be given any special treatment and must be subjected to the same tests because the Ordinance does not offer the Government any special privilege or a different status. The stringent test must remain the same as that applied to any other proponent.
6. Not Judge of One’s own cause - The present proponent of reclamation is the Government. To ensure a fair hearing and an independent decision in this important matter, we submit that:-
 - (a) The Chairman and all Government officials on the Board should declare an interest;
 - (b) They must not participate in the Board’s discussions and should be excused from the meeting after giving the Board such information as the Board may require; and
 - (c) They should not participate in the voting and decision-making.



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In view of the time constraint, we adopt the representations of the other objectors with regard to the following matters: -

- (a) An 'Overriding Public Need' for the proposed reclamation has not been demonstrated.
- (b) Alternative measures, in particular, traffic management measures have not been sufficiently considered;
- (c) It has not been sufficiently demonstrated that the extent of the proposed reclamations are the minimum;
- (d) It has not been sufficiently demonstrated that the Central-Wanchai Bypass, if really needed, could not be nearly all under-water by an immersed tube construction or other design.
- (e) The proposed "temporary reclamation" may not be needed and there is no provision for a legally binding commitment for it to be removed in the future.

We also specifically adopt all the representations of Mr. Nigel Kat as set out in his letter to the Board dated 23rd May 2007.

In particular, as the Board appears to have found the previous plan to be beyond salvage and amendment and the Board has decided to adopt an entirely new plan, this new plan should be re-gazetted under Section 5 of the Town Planning Ordinance for public comment and objections. Not to do so is unfair to the public who are denied the opportunity to submit objections and is in breach of the letter and spirit of the Town Planning Ordinance which requires public input to the preparation by the Board of a draft plan.

As it is for the Board to comply with the law, we reserve our rights to raise such other matters as may be necessary to challenge the Board's decision.

Yours faithfully,

Christine K.W. Loh, Chairperson

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