

UCL FACULTY OF LAWS

Law, Environment and Governance:
Harbour Reclamation in Hong Kong
A Case Study

by Winston Ka-Sun Chu



Tuesday 27 March 2012, 6pm

Hand Over To China

- 1841 - Became British Colony
- 1982 - Margaret Thatcher visit to Beijing
- 1984 - Joint Declaration signed between U.K. and China
- 1990 - The Basic Law enacted by Chinese Government
- 1997 - Became Hong Kong Special Administrative Region of China

Joint Declaration

1. Signed in 1984 by United Kingdom and China
2. Became Special Administrative Region of China
3. “One Country, Two Systems”
4. Capitalist system and life-style unchanged
5. For 50 years from 1st July 1997



中華人民共和國 香港特別行政區基本法

THE BASIC LAW
OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE
PEOPLE'S REPUBLIC OF CHINA

附 中英聯合聲明
關於香港新機場建設及有關問題的諒解備忘錄

with SINO-BRITISH JOINT DECLARATION
MEMORANDUM OF UNDERSTANDING CONCERNING THE CONSTRUCTION
OF THE NEW AIRPORT IN HONG KONG AND RELATED QUESTIONS

The Basic Law

- Article 8 - laws previously in force in Hong Kong would be maintained
- Article 81 - established a Court of Final Appeal as the highest court of Hong Kong
- Article 82 - judges from other common law jurisdictions may be invited to sit

Executive-Led Government

- Chief Executive – elected by Electoral College but appointed by Chinese Government
- Executive Council – members appointed by Chief Executive
 - decides policy and introduces legislation

Legislative Council

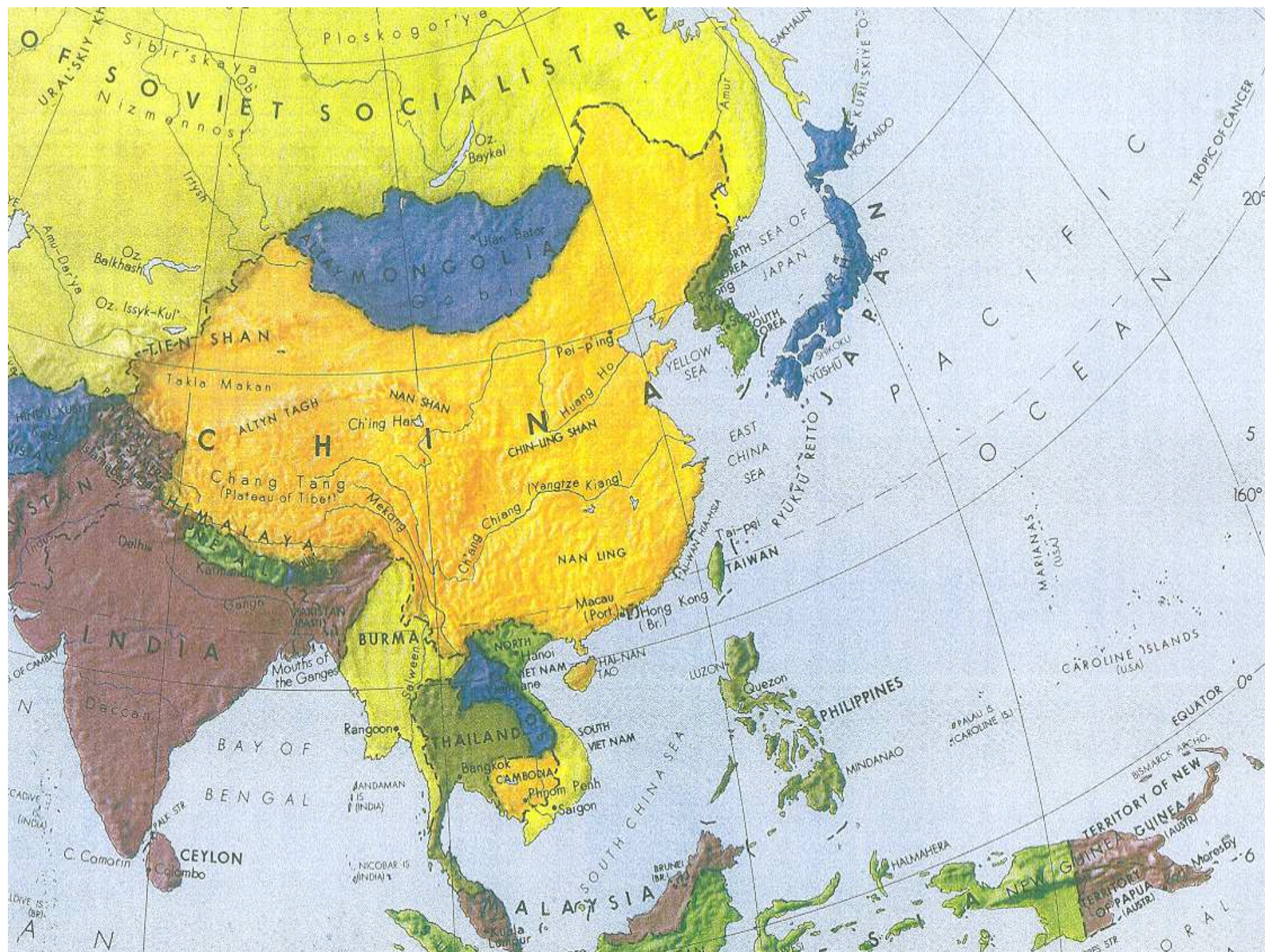
- 30 Members — elected by Geographical Constituencies
- 30 Members — elected by Functional Constituencies
- Power of Veto — can approve but not introduce legislation

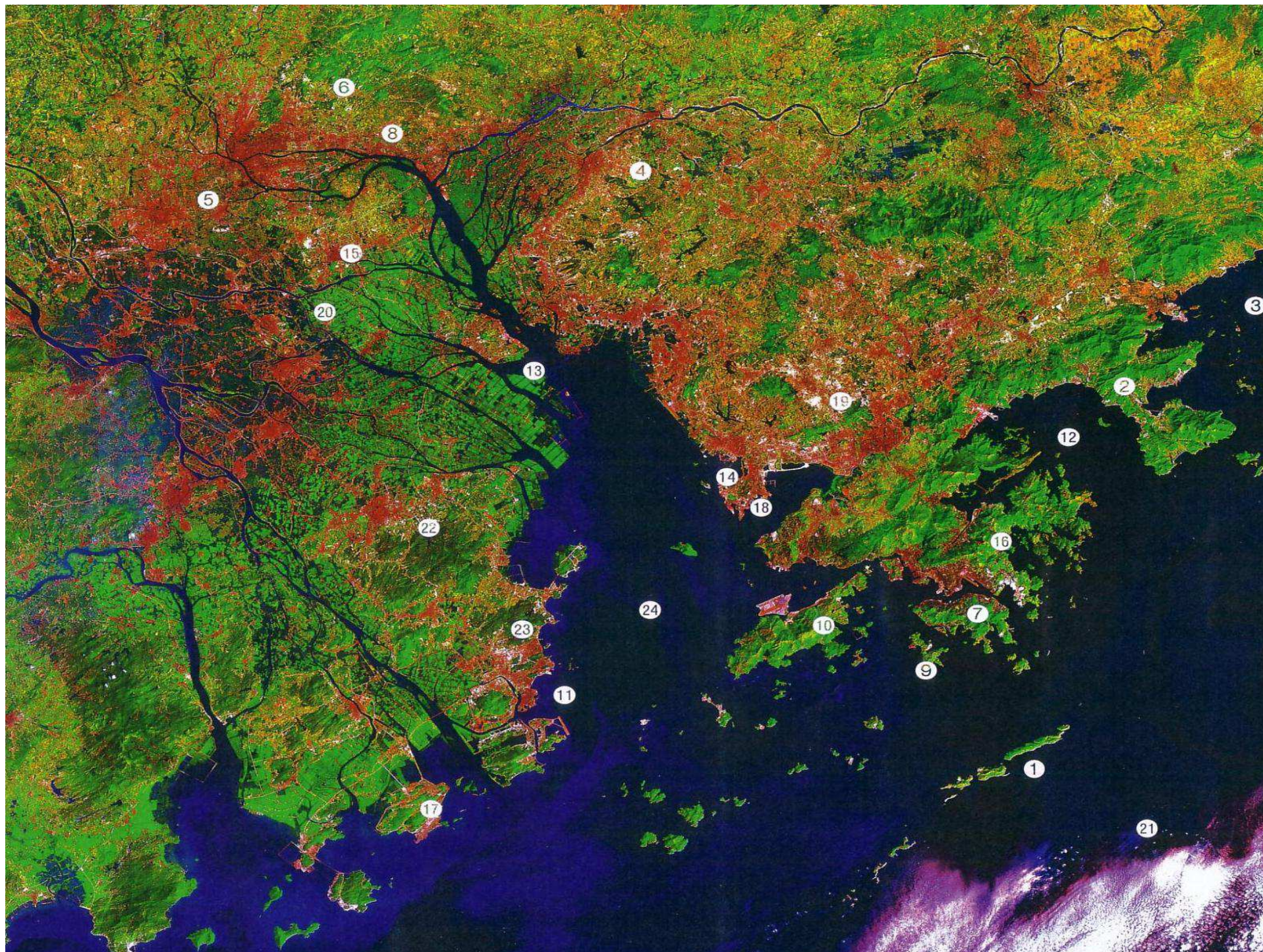
Government's Land Sales Policy

1. Acquires and produces land
2. Sells the land to developers
3. Restricts supply to ensure high price
4. Transfers proceeds to Capital Works Reserve Fund
5. Uses Fund to pay for more reclamation
6. Repeats the cycle again and again

Foreshore and Sea (Reclamations) Ordinance

1. Only needs approval by Governor-in-Council
2. Town Planning Board approval not needed
3. No public consultation
4. Public cannot object
5. No criteria and no control



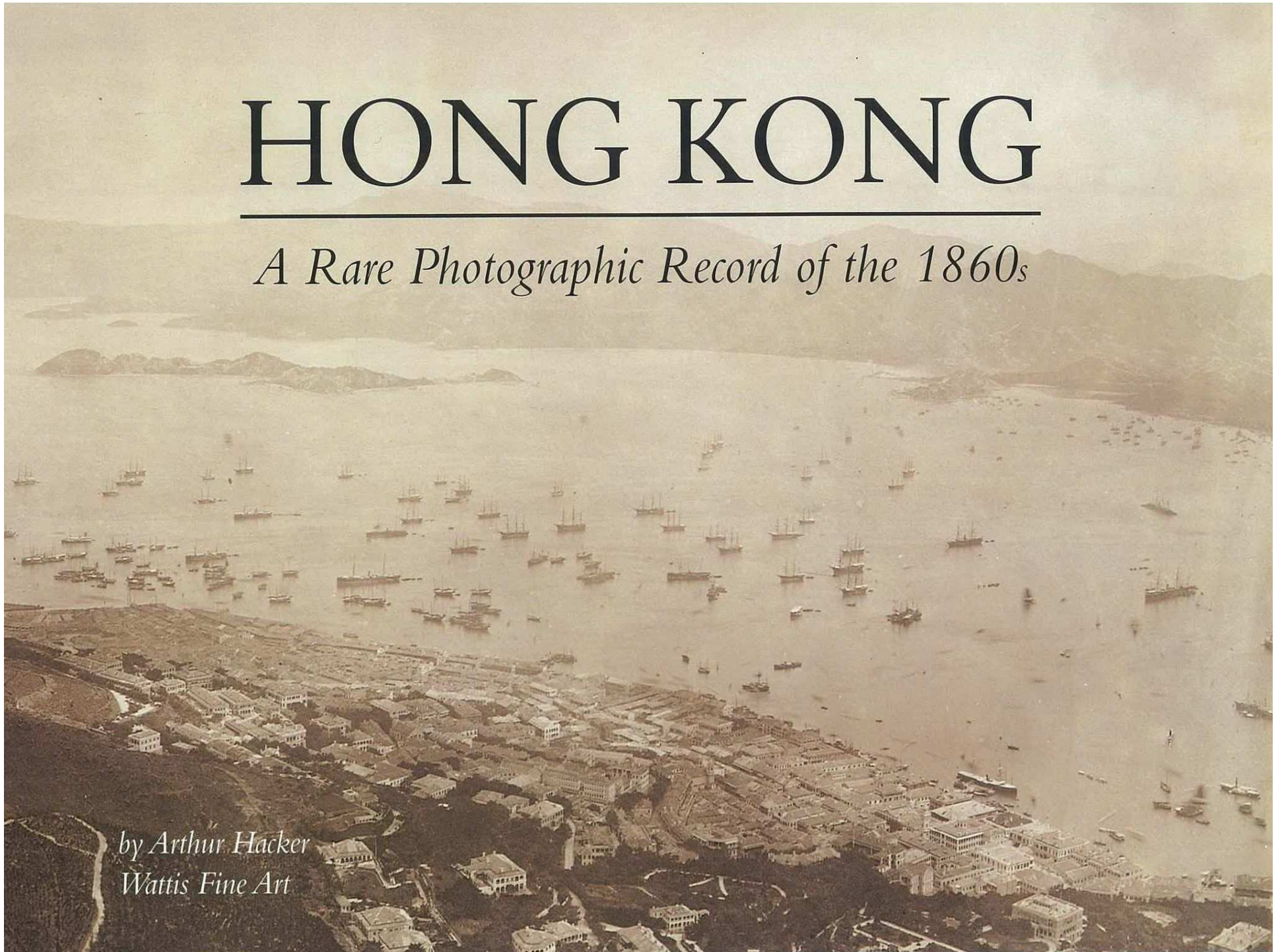


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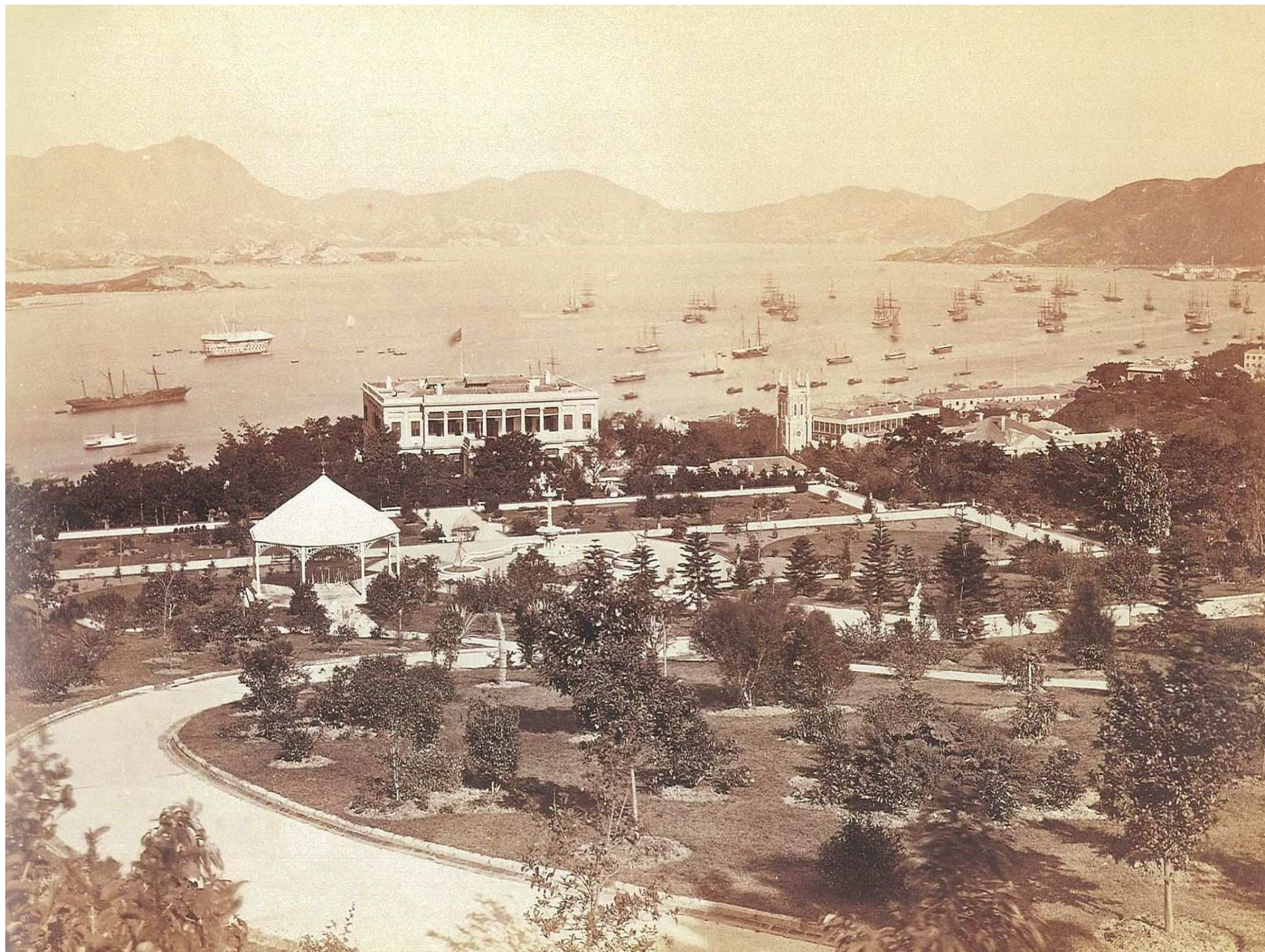
HONG KONG

A Rare Photographic Record of the 1860s

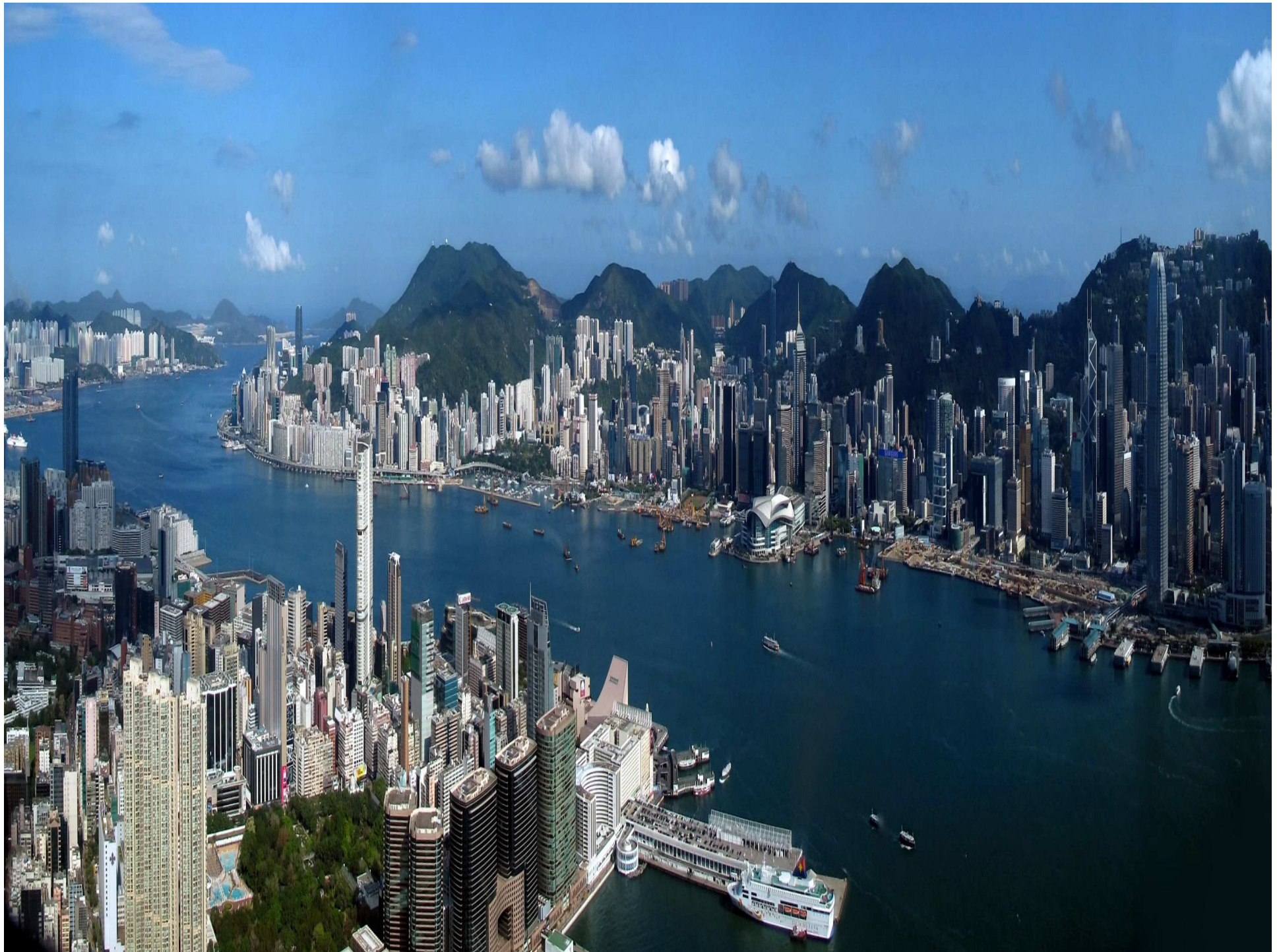
by Arthur Hacker
Wattis Fine Art















Adverse Impact of Reclamation

1. No more Victoria Harbour
2. Completely different cityscape
3. Loss of historic and heritage features
4. Over density in urban areas
5. Environmental and ecological damage

Existing and Committed Reclamation Areas

(1) West Kowloon Reclamation	340
(2) Hung Hom Bay Reclamation	35
(3) Central Reclamation Phase I	20
(4) Wanchai Reclamation Phase I	6
(5) Aldrich Bay Reclamation	28
(6) Container Terminal No. 8	97
(7) Central Reclamation Phases 2 and	45
(8) Container Terminal No. 9	90

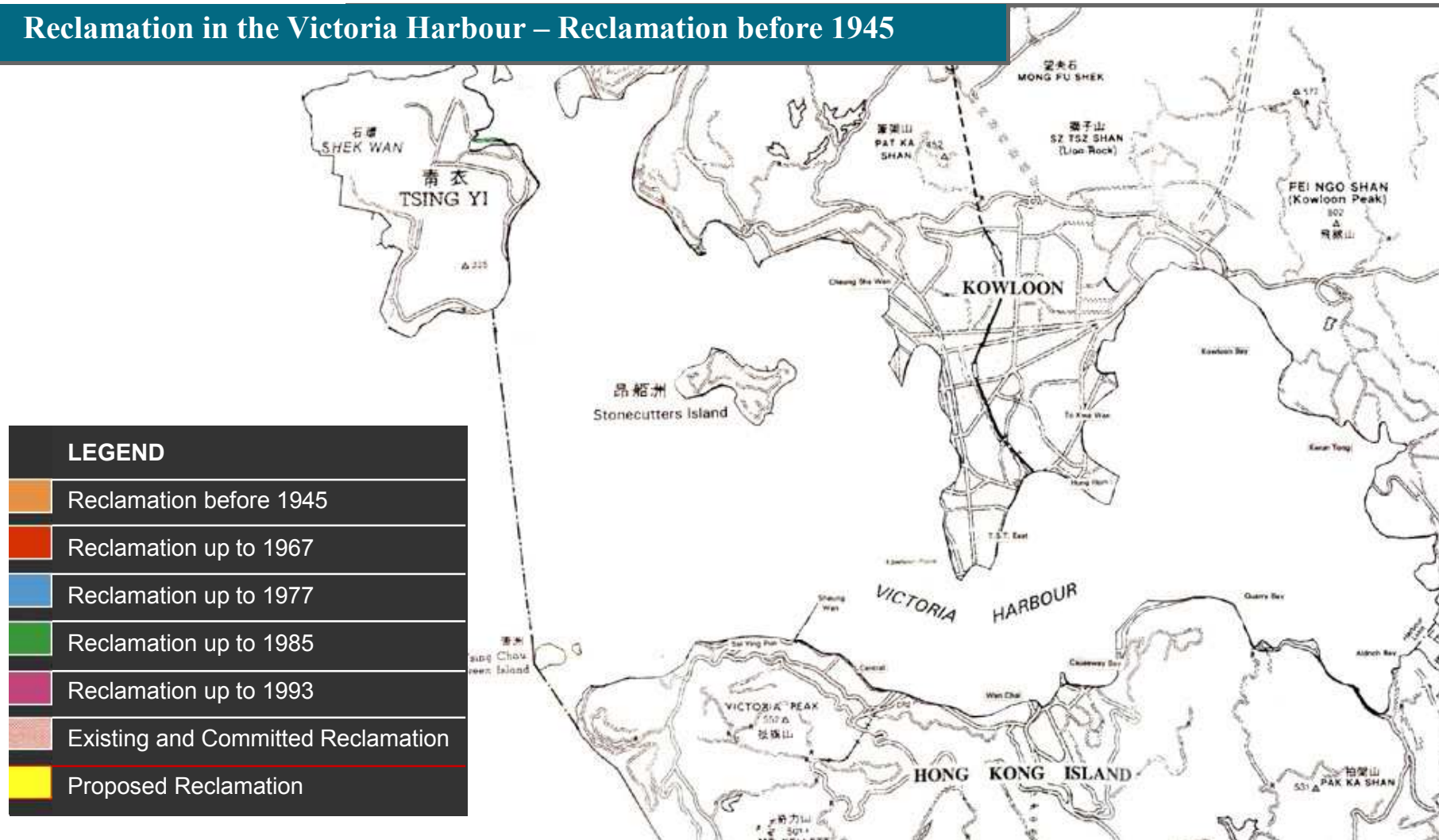
661 hectares

Proposed Reclamation Areas

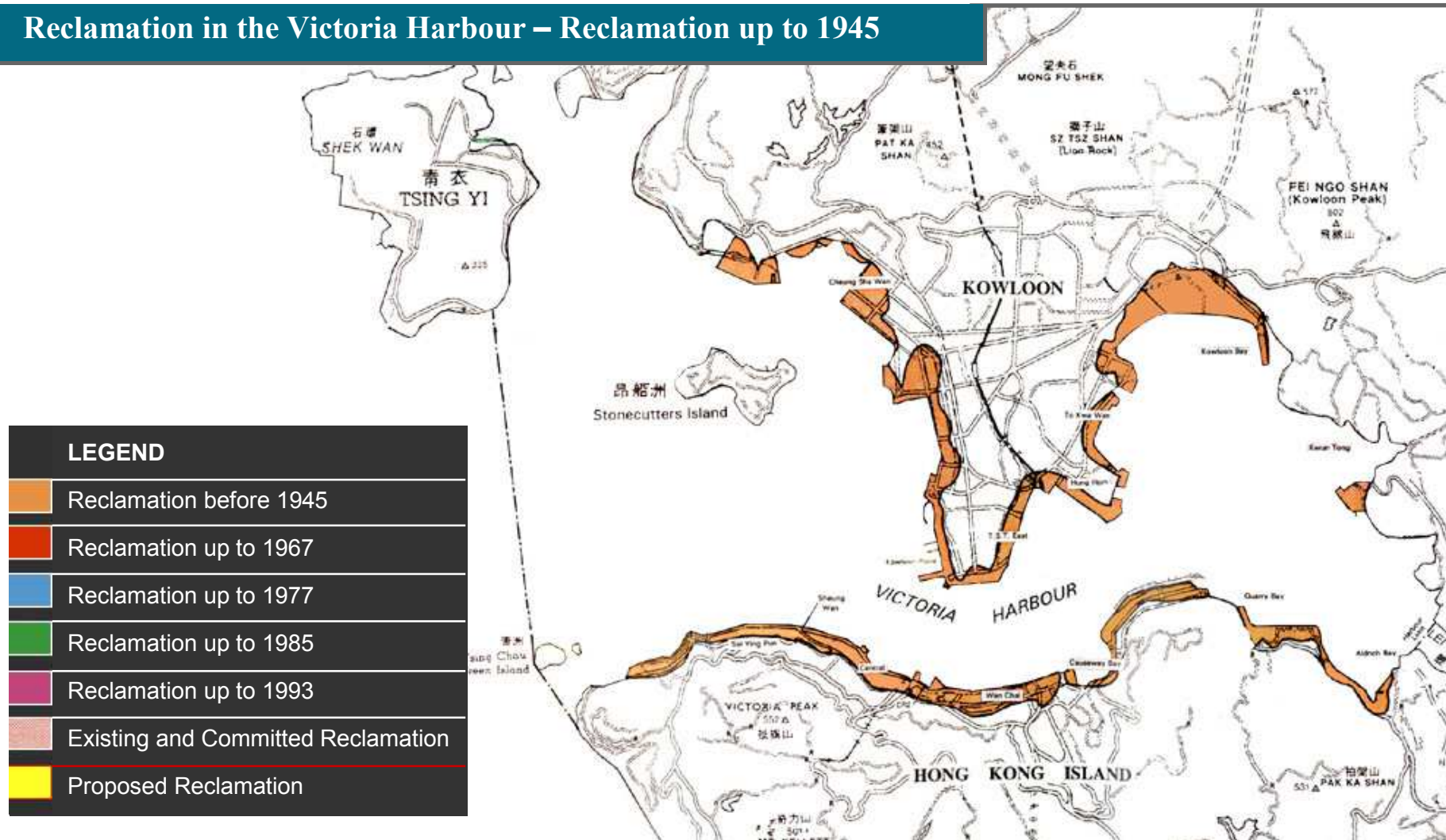
(9) Green Island	190
(10) Central Reclamation Phase 4	18
(11) Wanchai Reclamation Phase 2	52
(12) South East Kowloon	300
(13) Kowloon Point	40
(14) Tsim Sha Tsui East	6
(15) Tsuen Wan Bay	30

636 hectares

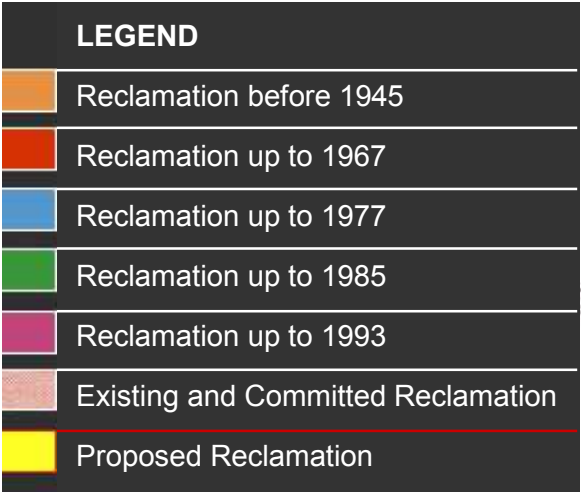
Reclamation in the Victoria Harbour – Reclamation before 1945



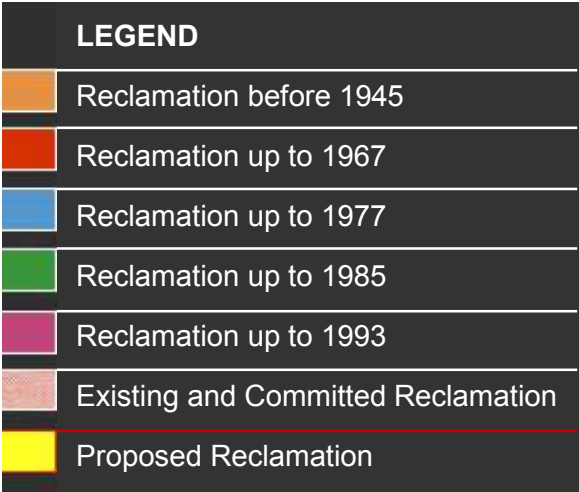
Reclamation in the Victoria Harbour – Reclamation up to 1945



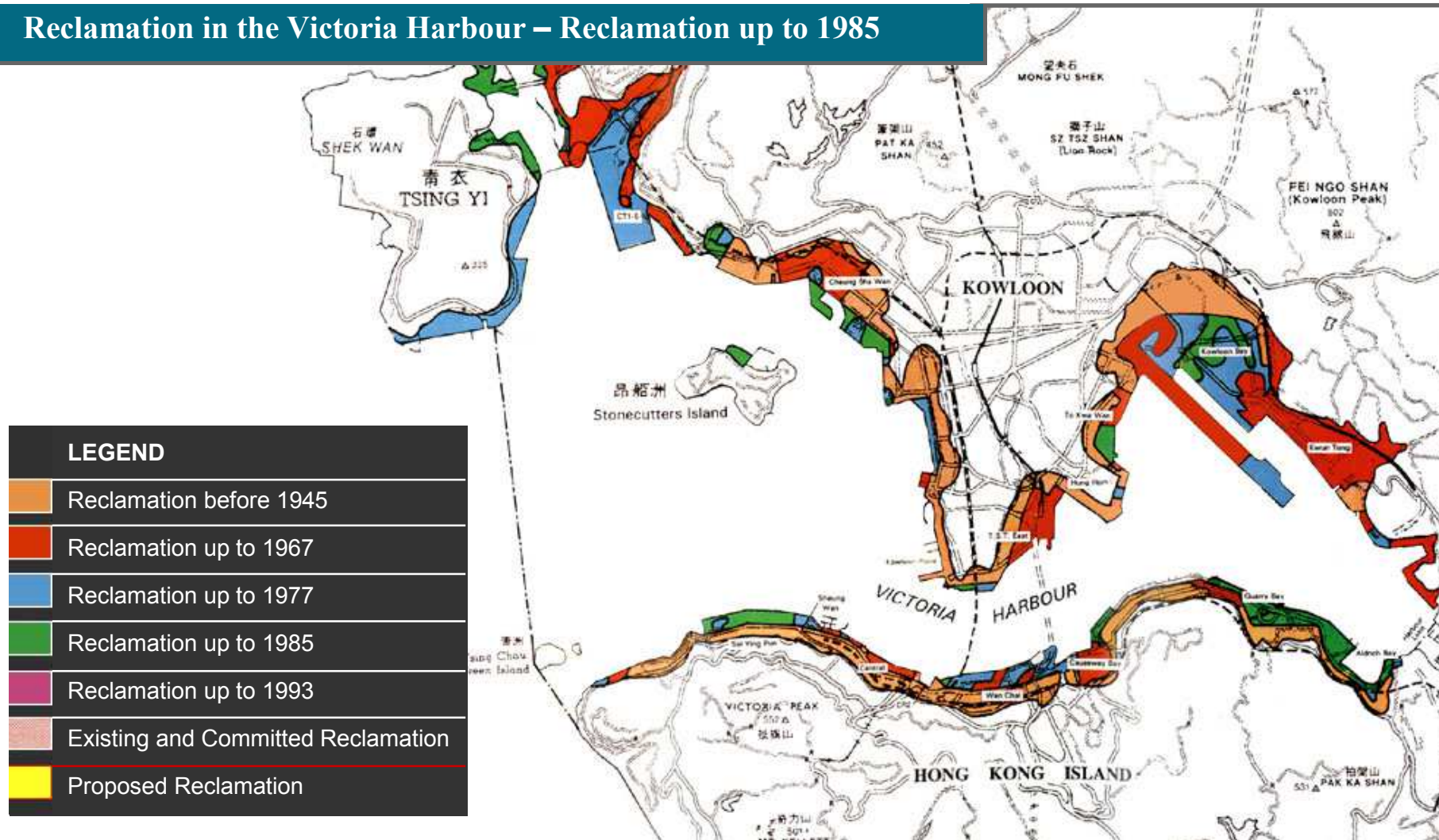
Reclamation in the Victoria Harbour – Reclamation up to 1967



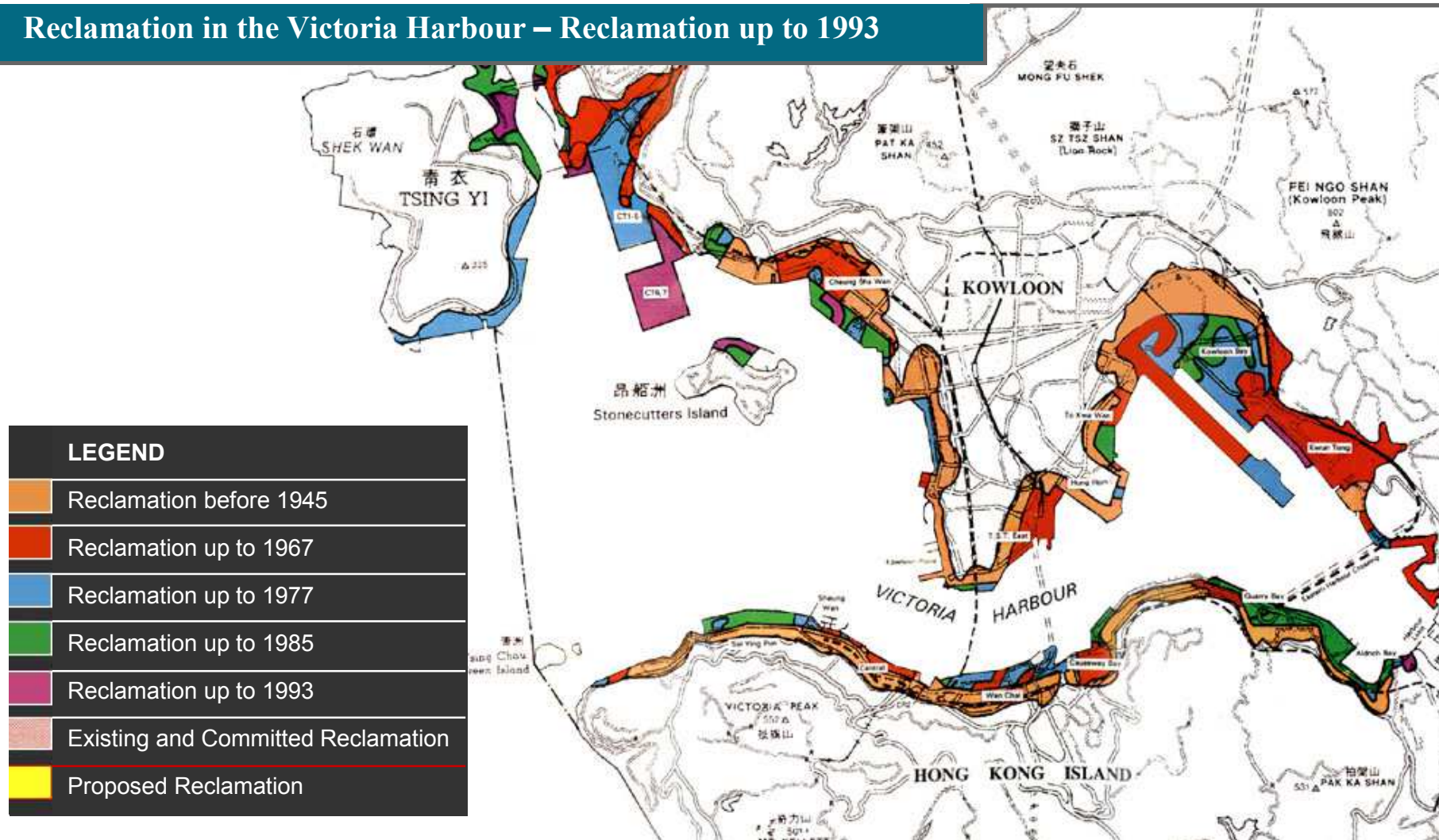
Reclamation in the Victoria Harbour – Reclamation up to 1977



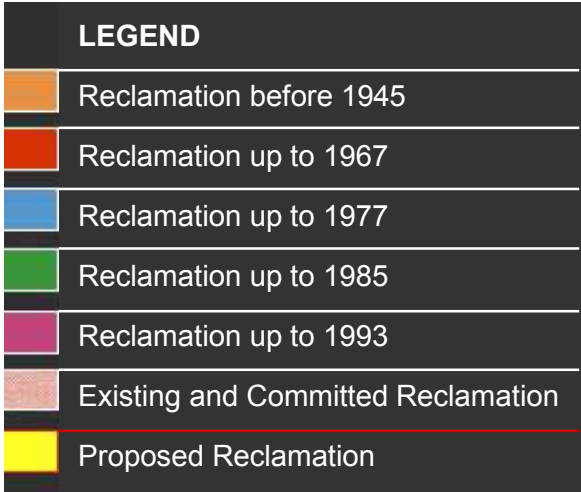
Reclamation in the Victoria Harbour – Reclamation up to 1985



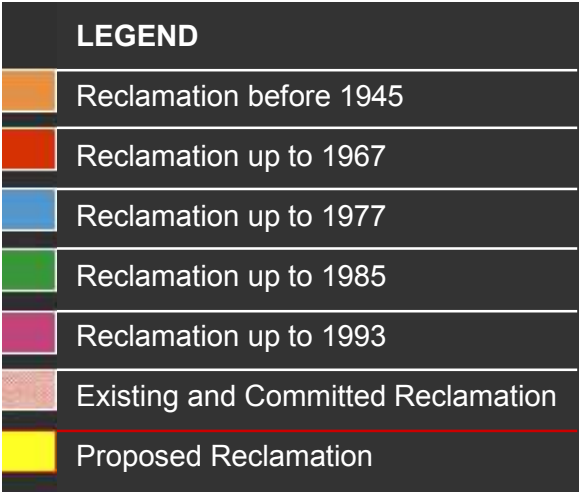
Reclamation in the Victoria Harbour – Reclamation up to 1993



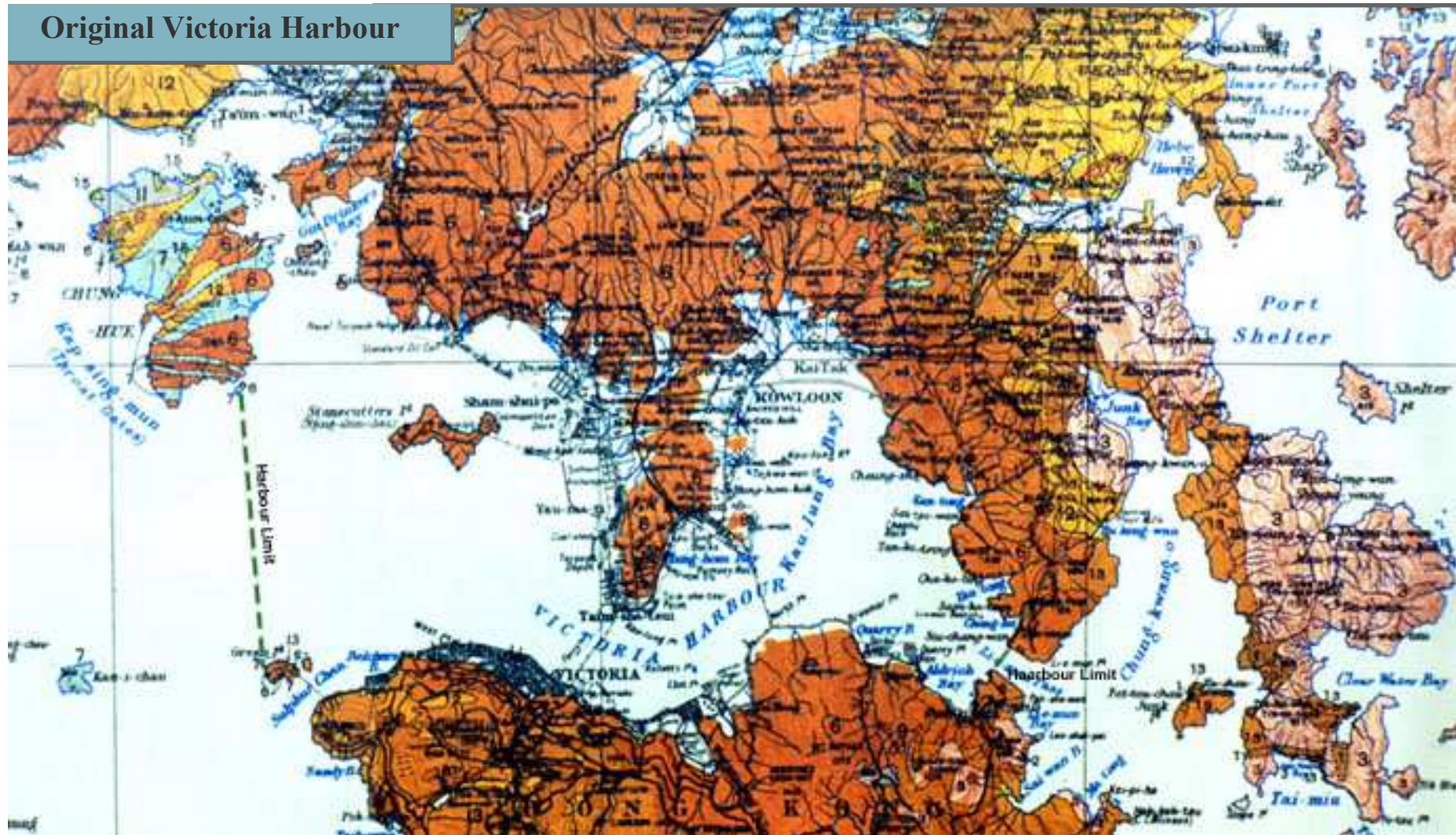
Reclamation in the Victoria Harbour – Existing and Committed Reclamation



Proposed Reclamation in the Victoria Harbour



Original Victoria Harbour



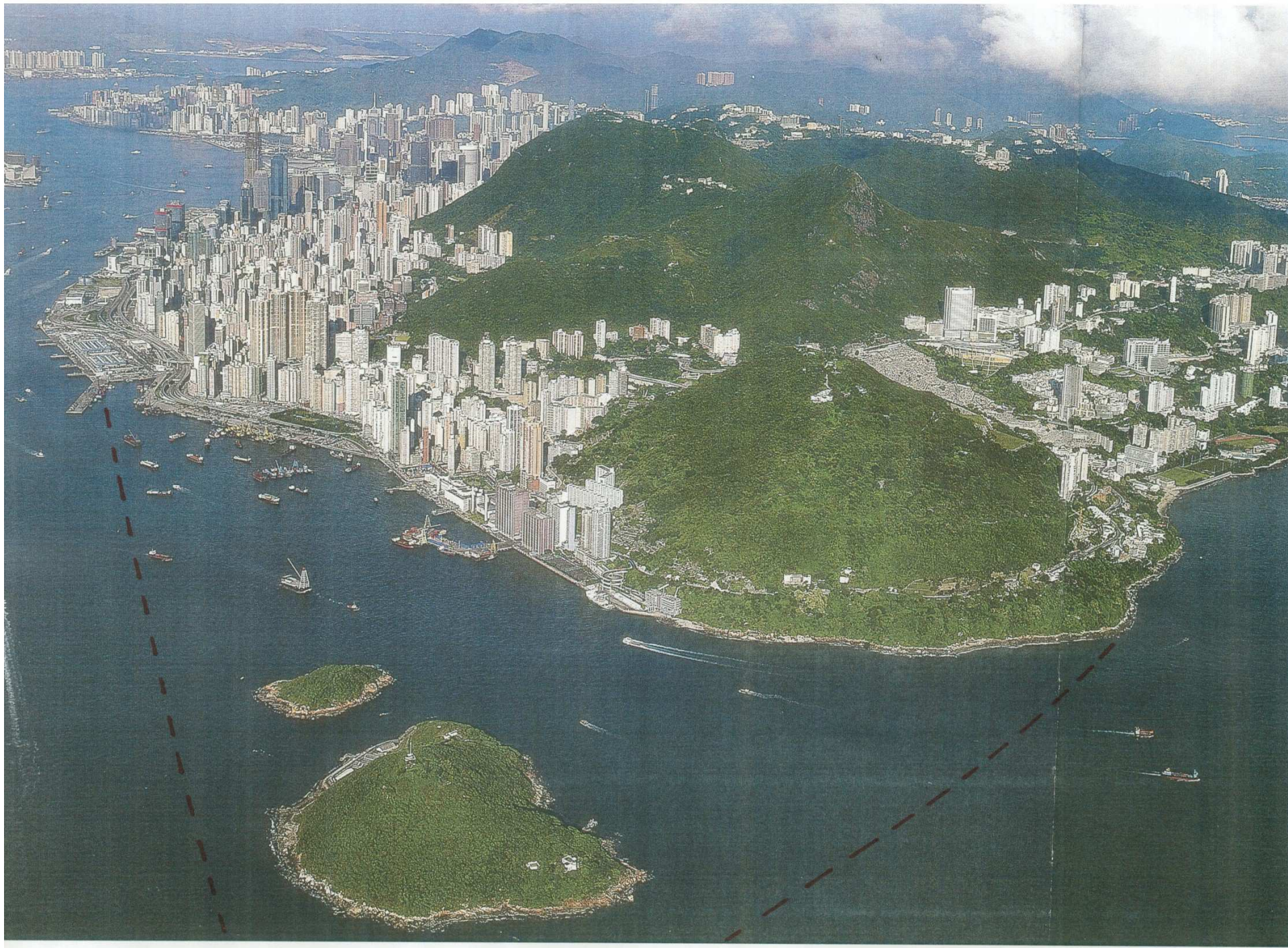
Victoria Harbour after completing Government's Proposal



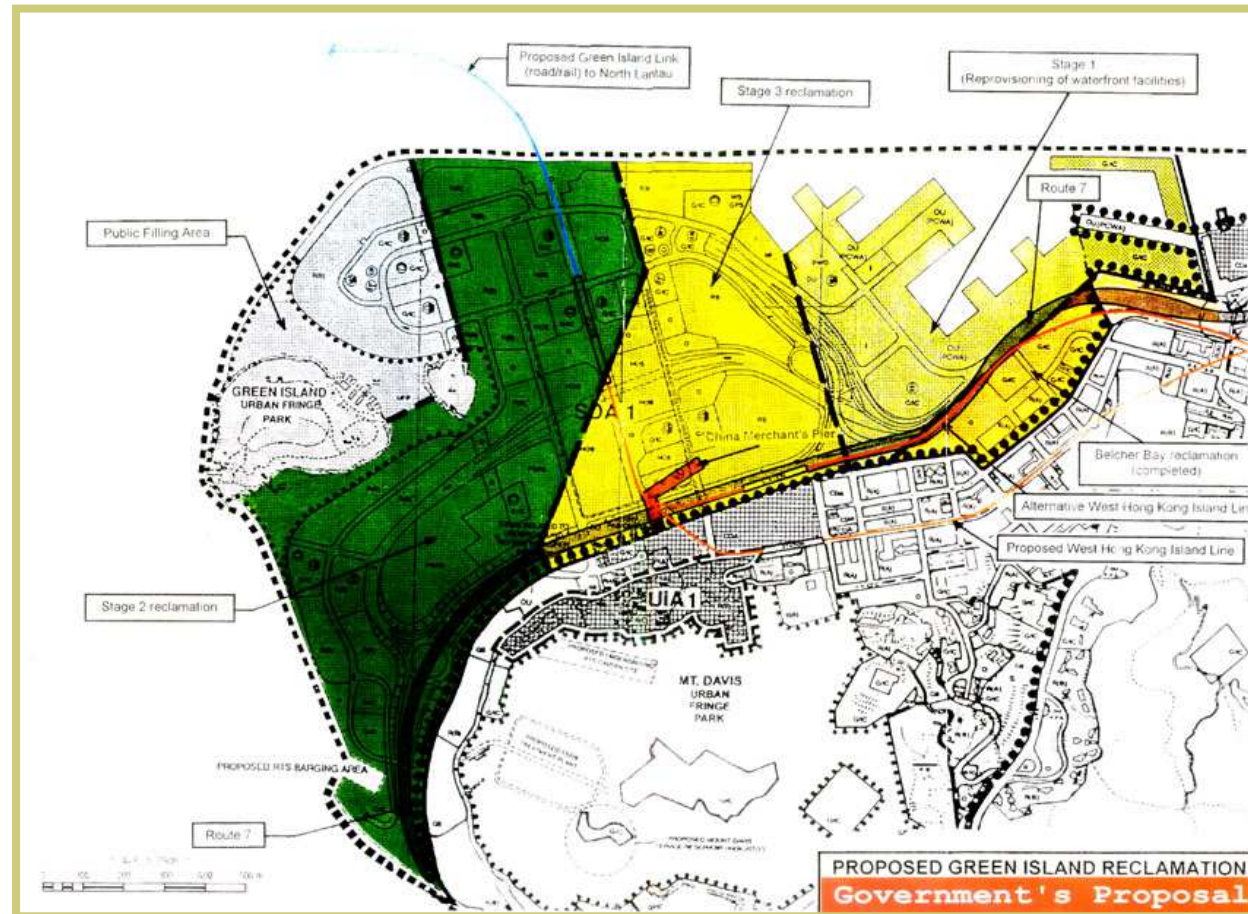


West Kowloon Reclamation in progress - 1990





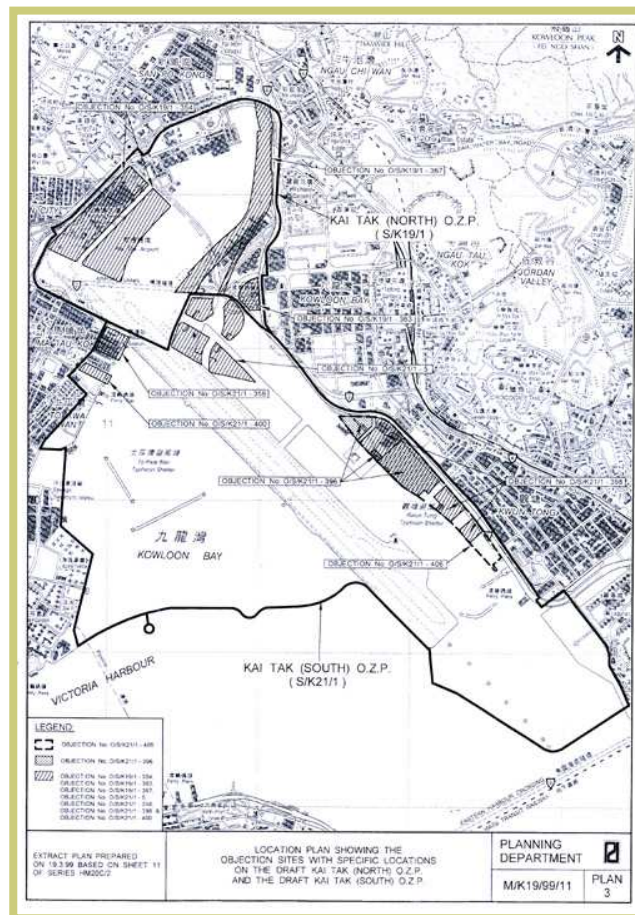
Green Island Reclamation – Government's Proposal



Proposed Reclamation of Kai Tak



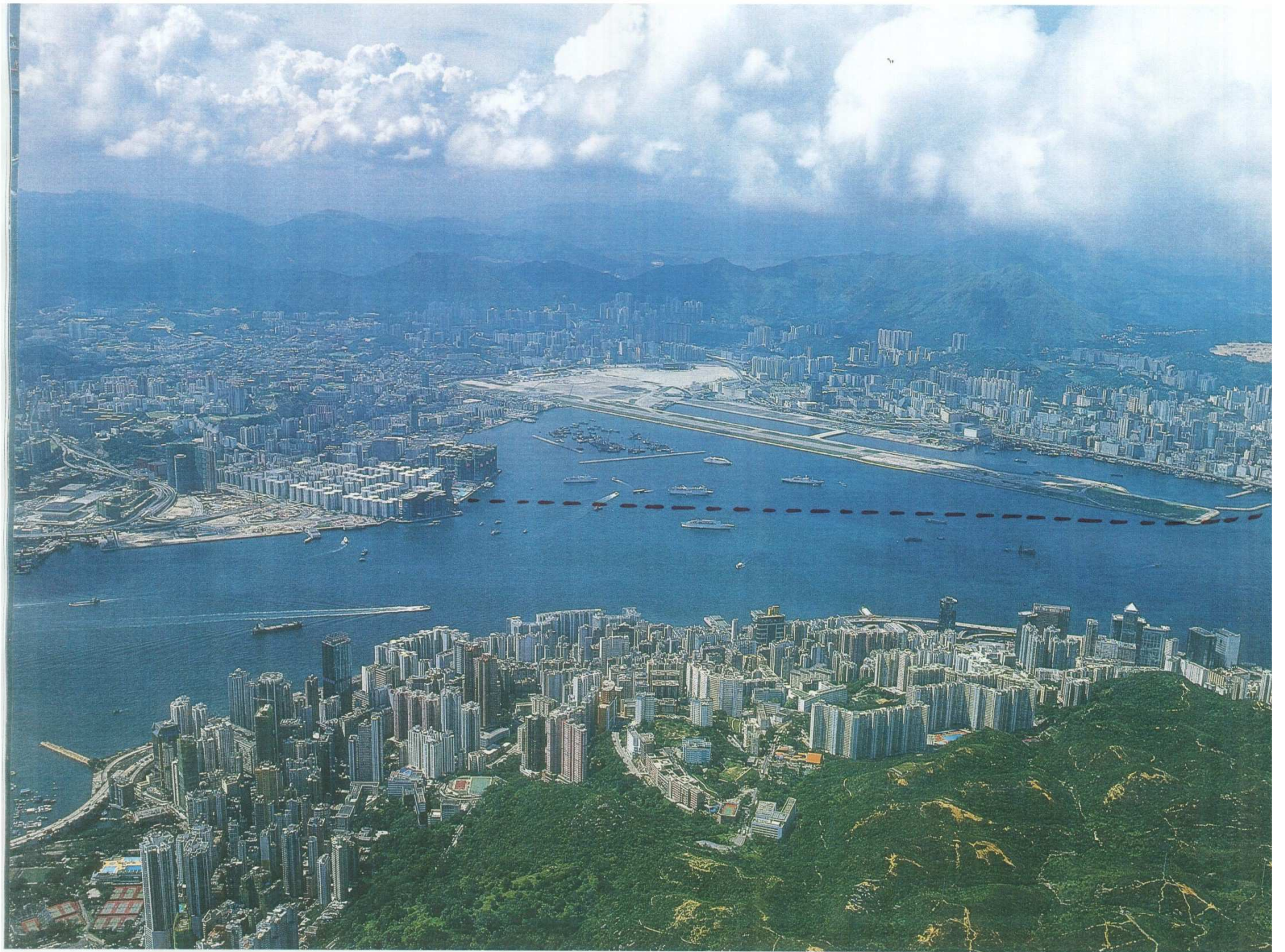
Complete Plan of Kai Tak Reclamation











‘Save Our Harbour’ Campaign

1. 1994 - started by Cissy Chu
2. 1995 - founded Society for Protection of the Harbour
3. 1997 - enacted Protection of the Harbour Ordinance
4. 2004 - Court of Final Appeal Judgment
5. 2008 - High Court Judgment on Temporary Reclamation

Campaign Strategy

1. Information - inform the public of danger
2. Education - educate the public on adverse impact
3. Legislation - enact Protection of the Harbour Ordinance
4. Litigation - judicial reviews to stop reclamation plans





Harbour activists keep on fighting





Protection of the Harbour Ordinance

Preamble – An Ordinance to protect and preserve the harbour by establishing a presumption against reclamation in the harbour.

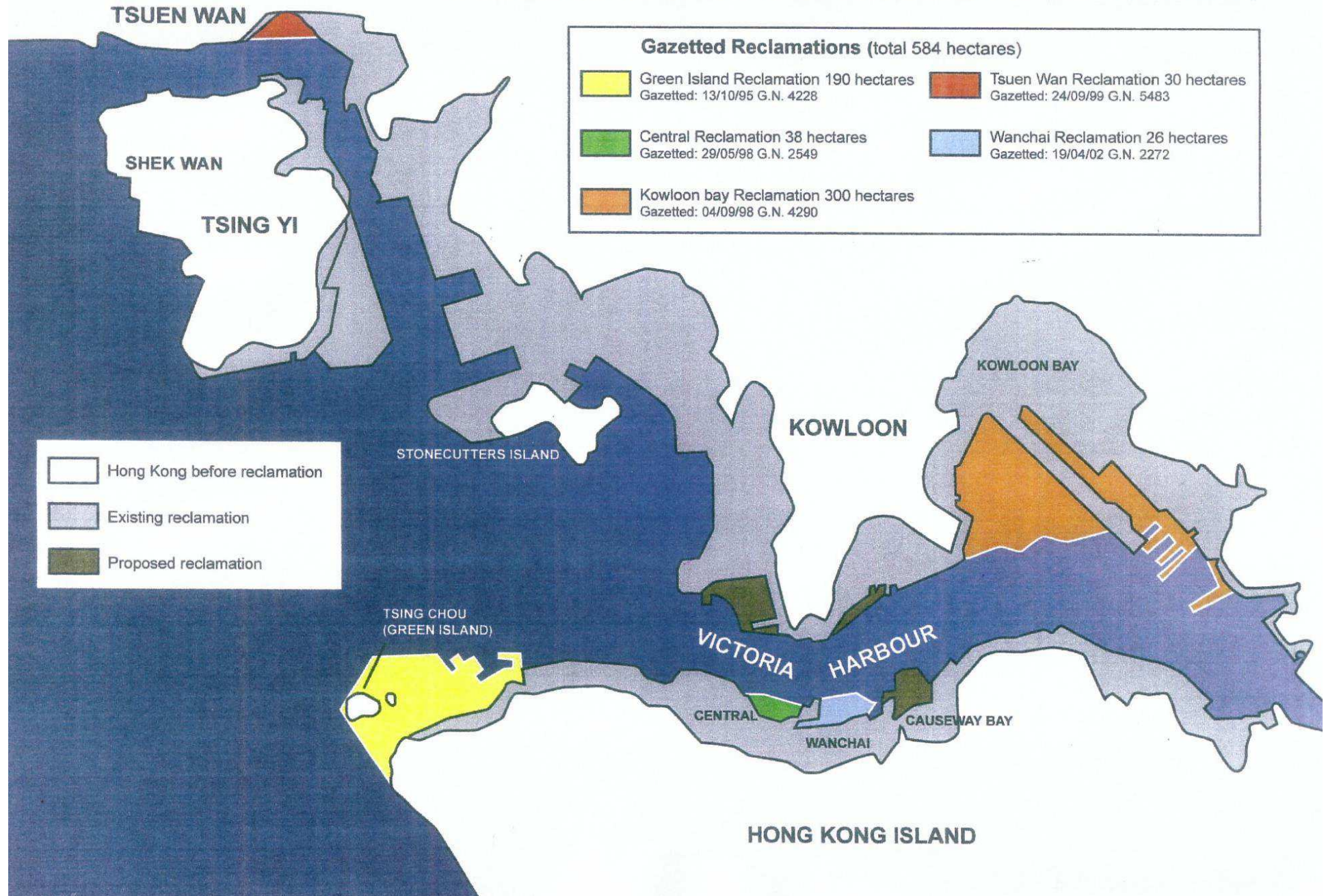
Protection of the Harbour Ordinance

Section 3(1) – The harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people, and for that purpose there shall be a presumption against reclamation in the harbour

Protection of the Harbour Ordinance

Section 3(2) – All public officers and public bodies shall have regard to the principle stated in subsection (1) for guidance in the exercise of any powers vested in them.

RECLAMATIONS PROPOSED BY GOVERNMENT



Town Planning Board

Appellant

and

**Society for the Protection of
the Harbour Ltd**

Respondent

**(Court of Final Appeal)
(Final Appeal No 14 of 2003 (Civil))**

**Li CJ, Bokhary, Chan and Ribeiro PJJ and Sir Anthony Mason NPJ
9–12 December 2003 and 9 January 2004**

Court of Final Appeal Judgment

1. Central part of Hong Kong's identity
2. Transmitted from generation to generation
3. What remains even more precious
4. Unique legal status
5. Heavy burden to rebut presumption

Overriding Public Need

1. Need of great public importance
2. Overrides importance of the harbour
3. Minimum and not excessive
4. No reasonable alternative
5. Supported by cogent & convincing materials

**Town Planning Board
and
Society for Protection of
the Harbour Ltd (No 2)**

**Li CJ, Bokhary, Chan and Ribeiro PJJ and Sir Anthony Mason NPJ
Final Appeal No 14 of 2003 (Civil)
2 April 2004**

Indemnity Costs

1. Not confined to existing decided cases
2. Protection of public asset
3. Manifest public importance
4. Limited finances of litigant
5. Resolution of fundamental legal issues.

Important Legal Precedent

1. New legal principle
2. Public interest litigation
3. Removal of dis-incentive
4. Contributes to the Rule of Law
5. Persuasive authority for Common Law Jurisdiction

**Society for Protection of the Harbour
and
Secretary for Justice**

(Court of First Instance)

(Constitutional and Administrative Law List No 116 of 2007)

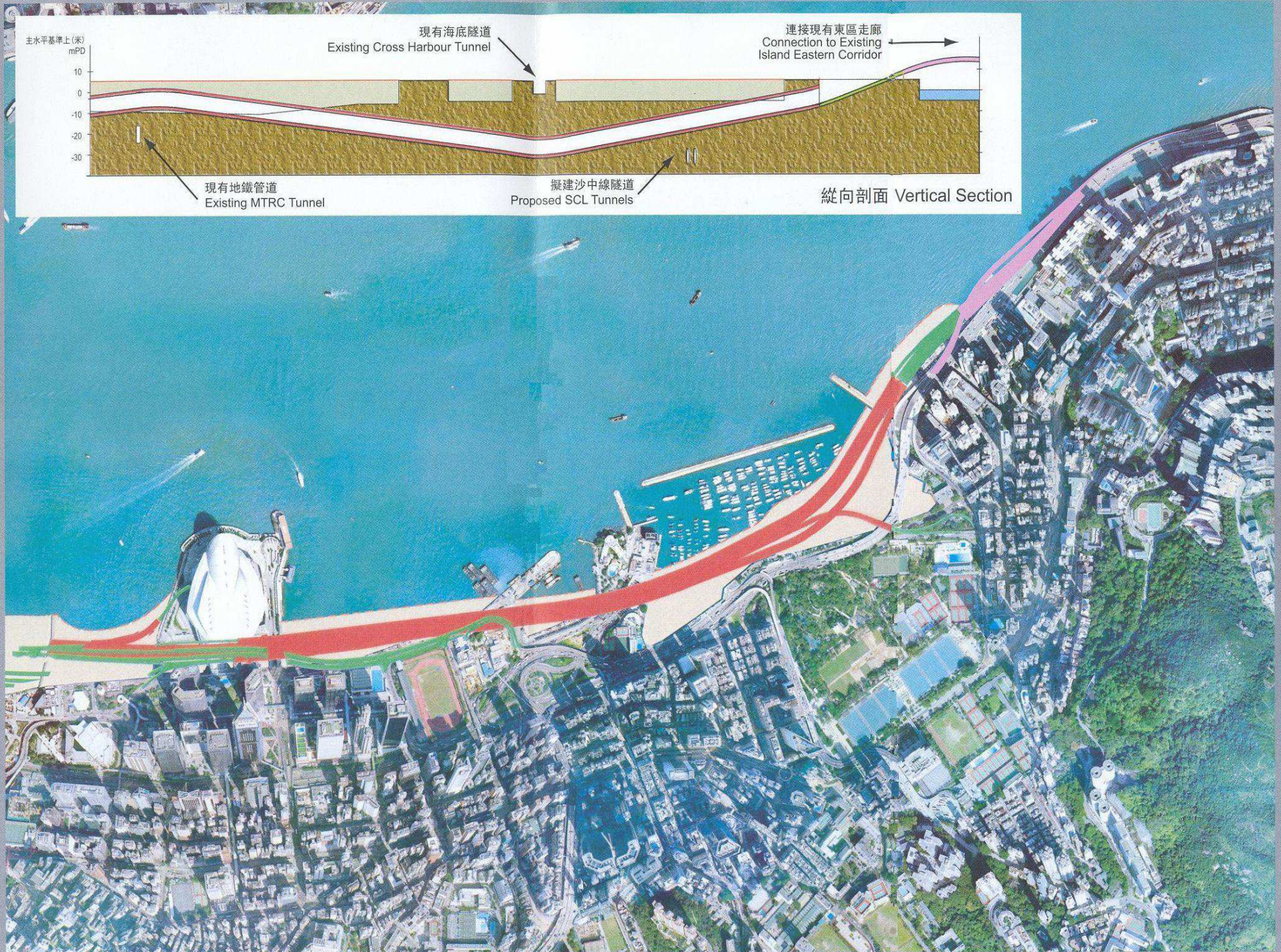
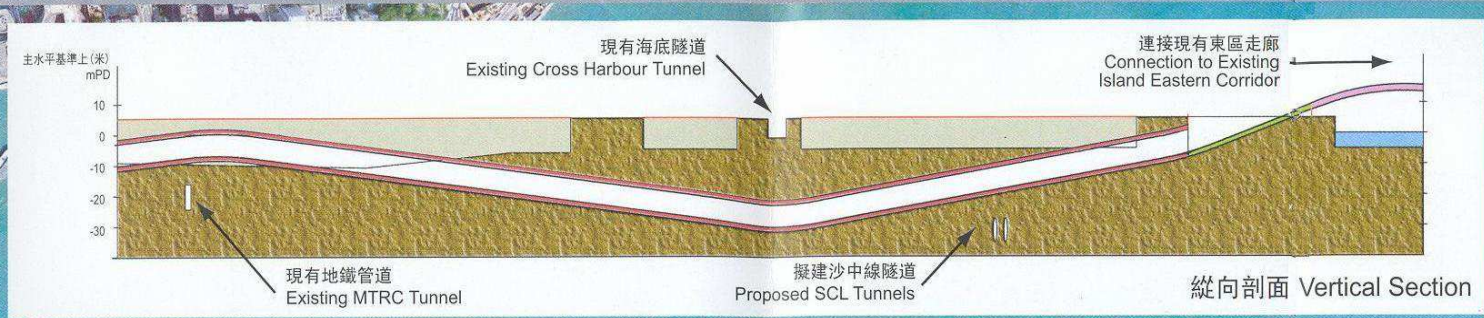
Hartmann J

4–5 February, 20 March 2008

What Has Been Achieved

Harbour protected by:-

1. Protection of the Harbour Ordinance
2. Court of Final Appeal Judgment
3. Voice of the People
4. Government's official commitments
5. Urban planning not top-down but bottom-up



Government's New Harbour Policy

1. 2008 Chief Executive's Policy Address
2. Town Planning Board Vision Statement
3. Harbour Planning Principles
4. Harbourfront Commission
5. Harbourfront Authority

Current Events

1. Harbour Business Forum founded
2. Public amenities being built
3. Leisure uses being planned
4. Water being cleaned up
5. Whole harbour & harbourfront transformed

Aspirations For Future

1. Healthy Society: Democracy + Rule of Law
2. Judicial Review – useful safety valve
3. Window to the world for China
4. Hong Kong experience a useful precedent

Attributes For Difficult Tasks

- A Pure Heart - to act with conscience
- A Clear Head - for incisive thinking
- Good Eyes - for far-sighted vision
- Sharp Ears - to listen to sound advice
- Broad Shoulders - to bear burden of responsibility
- Strong Legs - to last the distance
- Guts - to face up to the challenge

**Society for Protection
of the Harbour**
保護海港協會

