



保護海港協會
Society for Protection of the Harbour

Court of Final Appeal Judgment
Meaning of “Overriding Public Need”
Proposed Proportionality Principle
on
Reclamation of Victoria Harbour

By

Winston Ka-Sun Chu



This Paper on Harbour Reclamation is prepared at the request of the Harbourfront Commission at a meeting held on 9th February 2011

Court of Final Appeal Judgment (“the CFA Judgment”)

Meaning of “Overriding Public Need”

Proposed Proportionality Principle

on

Reclamation of Victoria Harbour

C O N T E N T S

Page

Part I - Events Leading To The CFA Judgment

1.	Introduction of Victoria Harbour	1
2.	Value of the Harbour	1
3.	Background of the Protection of the Harbour Ordinance	2
4.	Enactment of the Ordinance	2
5.	Definitions of words in the Ordinance	3
6.	Purpose of the Ordinance	3
7.	Application for Judicial Review	4

Part II - The CFA Judgment

8.	Quotations from CFA Judgment	5
9.	“Overriding Public Need” Test	6
10.	‘Need’ versus ‘Benefit’	6
11.	Other Requirements of the CFA Judgment	6

Part III – Proposed Proportionality Principle

12.	Effect of the CFA Judgment	7
13.	Impact of Reclamation	8
14.	The Proposed Principle	8
15.	Other Requirements Must Be Satisfied	9

Part IV - Conclusions & Recommendations

16.	Use of Harbour & Harbourfront	9
17.	Strategic Plan for the Harbour & Harbourfront	10
18.	Harbour Authority	10
19.	Conclusion	11

ANNEXURES

Important Documents on Reclamation

- A. **Reclamation in the Victoria Harbour Plan** attached to TPB Paper No. 2880 presented to the Town Planning Board by the Administration on 14th October 1994
- B. **‘Save Our Harbour’ Campaign Leaflet** prepared by the Society for Protection of the Harbour in 1996
- C. **Protection of the Harbour Ordinance** enacted on 27th June 1997
- D. **Plan showing 584 hectares of Reclamation** gazetted by the Administration between 1995 and 2002
- E. **Chief Executive Mr. Tung Chee Hwa Policy Address** extract regarding the harbour dated 6th October 1999
- F. **Town Planning Board “Vision Statement for the Victoria Harbour”** promulgated in 2000
- G. **Court of Final Appeal Judgment** extract on interpretation of Protection of the Harbour Ordinance dated 9th January 2004
- H. **Summary of Court of Final Appeal Judgment**
- I. **Technical Circular No. 1/04** prepared by Housing, Planning and Lands Bureau and Environment, Transport and Works Bureau regarding the Protection of the Harbour Ordinance dated 19th August 2004
- J. **Harbour-front Enhancement Committee “Vision, Mission & Planning Principles”** regarding Victoria Harbour and Its Waterfront Areas promulgated in April 2006
- K. **High Court Judgment on Temporary Reclamation** extract dated 20th March 2008
- L. **Chief Executive Mr. Donald Tsang Policy Address 2008-09** extract regarding his vision of the harbour
- M. **Secretary for Development Mrs. Carrie Lam Letter** dated 1st April 2010 confirming that the 584 hectares of gazetted reclamation would not be pursued
- N. Extract from **General Circular No. 3/2010 from the Chief Secretary for Administration Mr. Henry Tang** regarding Harbourfront Enhancement dated 8th July 2010

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Part I - Events Leading To The CFA Judgment

1. Introduction of Victoria Harbour

Hong Kong has a wonderful harbour, one of the best in the world. It is in a key location in Southern China at the mouth of the Pearl River estuary. Geographically it is an archipelago surrounded by over a hundred islands large and small which protect it from fierce typhoons. It is at the center of the Far East surrounded by a dozen countries. It is the name-sake of Hong Kong and the reason for Hong Kong’s existence.

2. Value of the Harbour

The harbour is the most valuable natural asset of Hong Kong. It has four categories of values summarized as follows.

Economic value. The harbour, being an excellent deep water harbour with water 60 feet deep, can accommodate the largest vessels in the world. Because of its strategic location, it enables Hong Kong to become a trading and transportation center. Currently, it is one of the top three busiest container ports in the world. It is also the central attraction for tourism which has become one of the most important sources of revenue.

Environmental value. The city of Hong Kong grew up around the harbour which provides ‘people space’, open views and a good living environment. It gives the people a feeling of closeness to nature. It is the city lung of Hong Kong with the wind passing through the harbour providing essential ventilation to the four million people living around its shores. Its tidal currents cleanse the waters of the harbour which run through the center of the city.

Social value. The harbour is the center of social life in Hong Kong. It provides recreational opportunities such as boating, sailing, rowing, swimming, fishing, etc.. The ferry services using the harbour enable people to travel all over the city and to the out-lying islands. The harbourfront provides popular gathering places for the people who enjoy the city's skyline, boating events, fire-works displays, walking along its promenades, etc.

Emotive value. The harbour is the symbol and icon of Hong Kong. It gives Hong Kong people an identity and a sense of belonging. The people are emotionally attached to the great beauty of a striking clash between the steep hills and the sea as well as the dramatic cityscape that has grown up around the harbour. Aesthetically, Hong Kong has perhaps the most beautiful harbour in the world especially at night with millions of lights like a magical work of art. With the prosperity and success of Hong Kong, this feeling of civic pride and emotional attachment to the harbour has become its most outstanding value which should be treasured above all other values of the harbour.

3. **Background of the Protection of the Harbour Ordinance (“the Ordinance”)**

Over the years, due to urban development and economic needs, over 2,500 hectares, more than one-third of the harbour, had been reclaimed. The harbour was traditionally regarded by the Government as a convenient source for the production of land and a ready means to raise revenue through the sale of the reclaimed land.

At a meeting of the Town Planning Board on 14th October 1994, the Government presented plans to reclaim a further 1,297 hectares (just over five square miles) of the harbour (Annexure “A”). This would have reduced the harbour into a narrow channel between 800 to 1,200 metres wide running through the central part of the city all the way from the Lei Yue Mun Pass to Sheung Wan. The harbour would have become less than half of its original size. By the time of the meeting, eight reclamation projects totalling 661 hectares were either completed, under construction or committed.

4. **Enactment of the Ordinance**

In 1995, the Society for Protection of the Harbour (“the Society”) was formed. It undertook a ‘Save Our Harbour’ Campaign to stop the Government’s remaining plans (Annexure “B”). The Vice Chairperson of the Society Ms. Christine Loh, who was then a member of the Legislative Council, presented a Private Members Bill which was enacted on 27th June 1997 into law as the “Protection of the Harbour Ordinance” annexed hereto as Annexure “C”.

Section 3(1) of the Ordinance:-

- (a) Prescribed a general protection to the harbour that it must be protected and preserved;
- (b) Elevated the harbour to the unique legal status of “a special public asset and a natural heritage of Hong Kong people”; and
- (c) Created a legal presumption against reclamation of the harbour.

Section 3(2) directed that all public officers and public bodies must observe Section 3(1) in all its decisions.

5. Definitions of Words in the Ordinance

According to the Oxford English Dictionary, the word ‘*harbour*’ has the meaning of “a place of shelter for ships”. Therefore the essence and value of a harbour is for marine use to provide a safe haven for shipping including both ocean-going vessels and smaller crafts.

The words ‘*protect*’ means “keep safe, defend and guard against danger and injury’ and ‘*preserve*’ means “maintain and retain in same quality and condition”.

By the words “*a special public asset*”, the harbour is given the same status as, for example, the Legislative Council Building, Government House or the Botanical Gardens.

The protection offered by the term ‘*a natural heritage of Hong Kong people*’ goes even further: the pristine natural state of the harbour should be maintained. This term prescribes even greater protection to the harbour than man-made special public assets which can be rebuilt, but the harbour is formed by nature and would no longer be ‘*a natural heritage*’ if its original condition is in any way tampered with or altered by man. Even if it is dug up again, the harbour would not be in its natural state.

6. Purpose of the Ordinance

The purpose of the Ordinance is clearly explained by its title: the “*Protection of the Harbour Ordinance*” and by its preamble: “*An Ordinance to protect and preserve the harbour by establishing a presumption against reclamation in the harbour.*”

The Ordinance was not named the “Control of Reclamation Ordinance” because the intention was to offer general legal protection to the harbour and not only to protect it against excessive reclamation even though that was a main concern of the Ordinance.

Therefore any activities which harm the harbour by causing either physical damage to the harbour or lowering the quality and value of the harbour or resulting in any loss of the enjoyment of the harbour contravene the Ordinance even if no reclamation is involved.

These activities, which would include the dumping of waste into the harbour or otherwise polluting the water of the harbour or making the harbour too shallow for shipping even if no land is formed or building a deck over the harbour thereby sterilizing that part of the harbour, etc. would come under the Ordinance.

However it was never the intention of the Ordinance to prohibit reclamation altogether nor to sterilize the harbour from its being properly used and enjoyed as a harbour. The ‘presumption against reclamation’ makes the allowance that for the essential needs for the legitimate use and enjoyment of the harbour and proper urban development, some reclamation must be tolerated and allowed. Therefore a sensible and sensitive balance has to be struck between protection and preservation on the one hand and use and enjoyment on the other.

7. Application for Judicial Review

Notwithstanding the enactment of the Ordinance, over the next five years, five new reclamation projects were gazetted under the Foreshore and Sea-beds (Reclamation) Ordinance. These together with the proposed Green Island Reclamation gazetted just before the enactment of the Ordinance totalled 584 hectares as shown in the annexed plan. (Annexure “D”)

In 2002, the Society issued an application for judicial review (*Society for Protection of the Harbour Ltd v. Town Planning Board* [2003] 2 HKLRD 787) to stop these projects and to clarify the proper implementation of the Ordinance. On 8th July 2003, Madam Justice Carlye Chu in the High Court pronounced judgment in favour of the Society. An appeal against her decision was heard by the Court of Final Appeal (*FACV14/2003* [2004] 2 HKLRD 95) which upheld her decision and pronounced judgment in favour of the Society on 9th January 2004.

Part II - The CFA Judgment

8. Important Quotations From CFA Judgment

The CFA Judgment imposed an ‘**overriding public need**’ test for rebuttal of the statutory presumption against reclamation created by Section 3 of the Ordinance. The following quotations are important and necessary to understand how the “**overriding public need**” test should be implemented. They reflect the careful balance adopted by the CFA between preserving the unique value of the harbour and answering the essential needs of the community. An extract of the Judgment is annexed hereto as Annexure “G” and a Summary of the Judgment is annexed hereto as Annexure “H”.

- “ 33. *As was observed at the outset, the harbour is undoubtedly a central part of Hong Kong’s identity. It is at the heart of the metropolis both physically and metaphorically. The statute characterizes this in the most distinctive terms. It is recognised not merely as a public asset but as a “special” one. It is something extraordinary. The recognition does not stop there. It is further acknowledged to be a natural heritage. “Natural” in that it was not created artificially by man but is part of nature. A “heritage” in that it is inherited as a legacy from previous generations and is to be transmitted from generation to generation. The harbour as a special public asset and natural heritage is declared to belong to Hong Kong people. This reinforces its character as a “public” asset. It is a community asset and as such, is to be enjoyed by the people of Hong Kong. By representing the harbour in such special terms in the statute, the legislature was giving legal recognition to its unique character.* ”
- “ 47. *A compelling and present need goes far beyond something which is “nice to have, desirable, preferable or beneficial. But on the other hand, it would be going much too far to describe it as something in the nature of the last resort, or something which the public cannot do without.* ”
- “ 52. *Having regard to the demanding nature of the overriding public need test and the requirement that there must be cogent and convincing materials to satisfy the test, the burden on those seeking to rebut the presumption is a heavy one. That this is so is entirely commensurate with what is at stake: the irreversible loss to the extent of the reclamation of a special asset and a natural heritage belonging to the people of Hong Kong.* ”

9. **“Overriding Public Need” Test**

The CFA prescribed a very stringent test. It must be shown by ‘cogent and convincing materials’ that the need for the reclamation is of greater public importance than the importance of the harbour. As by the Ordinance the harbour has been elevated to the unique legal status of “a special public asset and a natural heritage of Hong Kong people”, the proponent of reclamation has a very heavy burden to discharge.

It is important to properly apply this test sensibly and sensitively because if the test is applied too loosely, the Ordinance will lose its effect and the harbour may be lost; while if the test is applied too strictly, the harbour and the harbourfront may be sterilized and cannot be reasonably and legitimately enjoyed by Hong Kong people.

It is also important to remember that when one talks about the enjoyment of the harbour, it is essential that there must first be a harbour to be enjoyed. The challenge is to find the right balance.

10. **‘Need’ versus ‘Benefit’**

It is important not to confuse the word ‘need’ with the word ‘benefit’ as they are totally different in nature. Satisfying a need always confers a benefit, but not every benefit is the result of or depends upon a need. For example, one may have the ‘need’ for a flat to live in or a car to go to work, but having a villa as a holiday home or a Rolls Royce as a second car is merely a ‘benefit’ and not a ‘need’.

The difference is that a ‘benefit’ is “something that is good to have” whereas a ‘need’ is “something that one must have”. Therefore it is not a good argument that a reclamation proposal will bring some benefit to the community. The question is whether it is something that the community must have. The distinction is not always easy as very often it is a matter of extent and degree and every case must be considered on its own merits.

11. **Other Requirements of the CFA Test**

“Public Need” The only legitimate use of a ‘special public asset’ must be for an overwhelming public need. Therefore it was correct for the Town Planning Board not to allow the proposed reclamations at Oil Street North Point for a private cruise terminal in 1999 and at Yau Tong Wan for a private housing development in 2002.

“Minimum” This also means that as much of existing harbourfront land as possible must be used to keep reclamation to a minimum. Therefore to comply with the letter and spirit of the Ordinance, the first priority for the use of harbourfront land must be for the public use and enjoyment of the harbour as a harbour to minimize the need for future reclamation.

“No Reasonable Alternative” If existing land can be used to satisfy the public need, reclamation will not be allowed. Hence to comply with the letter and spirit of the Ordinance, the first priority for the use of harbourfront land must be to enhance the enjoyment and value of the harbour and nothing should be done that will create a need for reclamation. All alternative solutions not involving reclamation or requiring less reclamation should be considered and reclamation must be shown to be unavoidable.

“Present Need” The need must not be fanciful nor something that may only be needed sometime in the distant future.

Part III - Proposed Proportionality Principle

12. Effect of the CFA Judgment

The CFA pronounced that “Reclamation that had already taken place renders what remains of the harbour even more precious”.

The harbour is the subject matter of the legal protection offered by the Ordinance. Therefore the effect of the reclamation must be considered not only from the local point of view but also from point of view of the harbour as a whole. The danger of establishing a precedent must also be taken into account.

Every reclamation means a permanent loss of that part of the harbour. In some cases, the reclamation may enhance the value of the harbour as a harbour, such as for the building of a pier, lighthouse, navigation beacon, landing steps, breakwater, slipway, etc. which are necessary for the use and enjoyment of the harbour as a harbour.

In other cases, such as for the construction of roads and other infrastructural projects or for the production of land for sale for revenue, the reclamation damages the harbour without any enhancement of the value of the harbour as a harbour.

13. Impact of Reclamation

As the impact of the reclamation on the harbour is important, the following factors need to be considered in assessing an ‘overriding public need’.

Extent – There must be a difference between reclaiming one million square feet and reclaiming merely one hundred square feet.

Effect – A totally negative impact on the harbour must also be different from where the impact on the harbour has some positive effect with the result that the use and public enjoyment of the harbour as a harbour will be enhanced.

Location – An inaccessible corner of the harbour must be different from the center of the harbour.

Duration – Where the reclamation is permanent, the strictest test must be applied. Where the reclamation is temporary, the duration of the adverse impact will be very relevant.

14. The Proposed Principle

Subject to the additional requirements set out in paragraph 15 below, the following principle is suggested as to how the CFA Judgment is to be applied:-

“ *Proportionality Principle For Harbour Reclamation* ”

The greater the adverse impact of the reclamation on the harbour, the greater must be the justification; accordingly having established a public need, in deciding if such need overrides the importance of the harbour, the prime consideration is whether any enrichment of the public enjoyment of the harbour and any enhancement of the environmental, social and economic value of the harbour as a result of the reclamation would justify the loss and damage consequentially caused to the harbour.

“ 「維港填海的相稱性原則」 ”

填海對維港的負面影響愈大，支持填海的理據愈須充份；因此，經確定該填海計劃有公眾需要之後，在決定該公眾需要是否凌駕於維港的重要性時，首要考慮之因素是：該填海計劃對公眾享用維港之增加，及維港的環保、社會及經濟價值之提升，是否足以抵償填海計劃對維港所造成的損失及損害。

This Principle enables the proponent to show that the reclamation is needed to enhance the value and public enjoyment of the harbour as a harbour and that the gain will be of such importance that it overrides the permanent loss of that part of the harbour.

The question is not what useful purpose the reclamation will serve from the Government's point of view nor what benefit the reclamation will bring to the community, but whether the value and public enjoyment of the harbour as a harbour will be enhanced as a result. If so, then the issue is whether the need for such enhancement is of greater public importance than the importance of the harbour.

The proposal should be considered objectively from the point of view of the harbour as a harbour which is the subject matter of the legal protection prescribed by the Ordinance.

It must be firmly borne in mind that the starting point of the above suggested Principle is that the harbour should remain in its pristine natural state as 'a natural heritage of Hong Kong people' unless an overriding public need is established. The Principle is only intended as a guide to the decision-making process.

15. Other Requirements Must Be Satisfied

Of course the other requirements of the CFA Judgment will still have to be satisfied:-

- (a) It must be for the general public interest of the Hong Kong community;
- (b) It must be the minimum and not go beyond what is required;
- (c) There must be no reasonable alternative to satisfy the economic, environmental and social needs of the community; and
- (d) It must be a present need which must arise within a definite and reasonable time frame.

Part IV – Conclusions & Recommendations

16. Use of Harbour & Harbourfront

To comply with the letter and spirit of the Ordinance and the CFA Judgment:-

- (a) The first use of the **harbour** should be as a harbour and reclamation for any purpose other than enhancing the use and public enjoyment of the harbour as a harbour should only be allowed in very exceptional circumstances.

- (b) The first use of the **harbourfront** should be what must be on it and cannot be anywhere else; accordingly any use that does not need to be on the harbourfront should be discouraged.
- (c) The first use of **harbourfront land** should be to enhance the use and enjoyment of the harbour as a harbour in order to minimize any need for reclamation.
- (d) Nothing should be done in the harbour, on the harbourfront or on harbourfront land the direct result of which is that more reclamation will be required.

17. **Strategic Plan for the Harbour & Harbourfront**

It is strongly proposed that a 'Strategic Plan for the Harbour and Harbourfront' be prepared which should form the basis of all future developments. It should be prepared on the basis of a holistic and long-term approach to the overall requirements for the entire harbour and harbourfront. It should take into account the (a) aesthetic; (b) environmental; (c) social; (d) recreational; and (e) economic needs of the community, but subject to the legal requirements set out in the Ordinance and the CFA Judgment.

This Strategic Plan should be the blue print for the future development of the harbour and harbourfront and based upon which Master Waterfront Land-use Plans can be prepared. The Strategic Plan and the Master Waterfront Land-use Plans can be useful in establishing an 'overriding public need' to satisfy the CFA Judgment.

As this Strategic Plan will determine the future of the harbour and harbourfront for many years to come, all the stakeholders should be invited to participate in its preparation. Extensive public consultation will be essential as the harbour is 'a special public asset'.

18. **Harbour Authority**

The CFA Judgment acknowledged the harbour to be Hong Kong's most important and valuable natural asset. Therefore special attention must be given to the protection, preservation as well as utilization of the harbour and harbourfront. This can only be properly achieved by an independent body with statutory powers specifically created for this purpose.

As soon as practicable, the Administration should enact the necessary legislation to create a statutory Harbour Authority with executive powers and adequate funds and resources to oversee the planning, design, development, operation and management of the Harbour and Harbourfront.

The Harbour Authority should have the following statutory functions:-

- a. Strategic planning of the harbour and harbourfront;
- b. Implementation of harbour planning principles and objectives;
- c. Ownership of public lands and facilities on and along the harbourfront; and
- d. Management of harbourfront lands and public utilities and facilities.

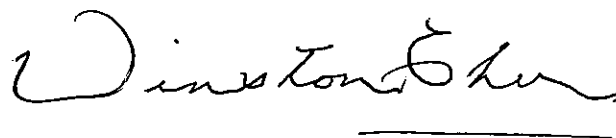
To have credibility and public support, the Harbour Authority must be truly representative of the people. Without genuine public representation and participation, the Authority will simply become another arm of the Administration and will not have any legitimacy as an independent statutory body representing the interests of the community.

19. Conclusion

This Paper is an attempt to explain how the CFA Judgment may be implemented and to draw attention to relevant factors that may need to be considered in deciding what may constitute an 'overriding public need'.

The Paper may be helpful to the Administration, the proponent of reclamation and the general public to understand the purpose of the Ordinance and will hopefully reduce the possibility of litigation. It is however clear that each proposal must be considered on its own facts, public consultation being of utmost importance.

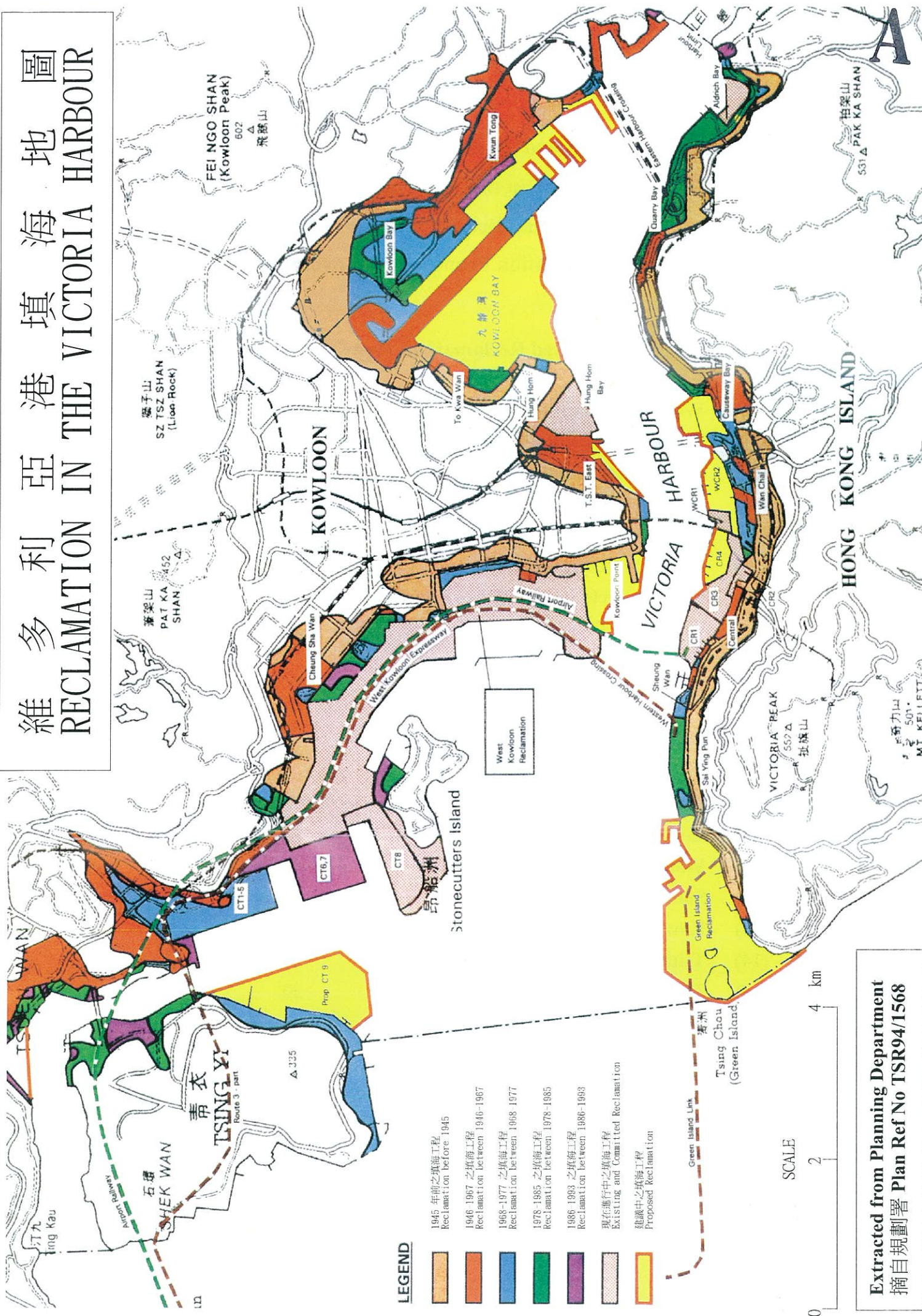
Although considerable thought and research have been given to the preparation of this Paper, it is openly conceded that the veracity of the Paper may have to be tested in the law courts one day.



Winston Ka-Sun Chu, Adviser,
Society for Protection of the Harbour,
Member of the Harbourfront Commission

Dated the 30th day of June, 2011

維多利亞港填海地圖 RECLAMATION IN THE VICTORIA HARBOUR



Town Planning Board Meeting on 14th October 1994

Reclamation in the Victoria Harbour

Town Planning Board Paper No. 2880

Table of Reclamation Proposed by Government

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 3	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

Total 1,297 hectares

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• STOP RECLAMATION • B



"SAVE OUR HARBOUR"

拯救海港 制止填海

REPLY SLIP 回條



TO : SOCIETY FOR PROTECTION OF THE HARBOUR
保護海港協會

Room 3308, One Pacific Place, 88 Queensway, Hong Kong.
香港金鐘道八十八號太古廣場第一座三三零八室

Affix Stamp
請貼郵票

Please support our Petition to the Governor in Council to **stop further reclamation**.
Sign and return this Reply Slip by mail or by fax before **21st December, 1996**.

請簽名支持本會現向香港總督會同行政局請願，要求制止繼續填海，
並請於一九九六年十二月二十一日前將回條寄交或傳真致本會。

Enquiries/查詢：Miss Eunice Chan 陳幼能小姐 Tel/電話：2845-8138 Fax/傳真號碼：2845-5964

Signature / 簽名：_____

Name in Capitals / 姓名：_____

Signature / 簽名：_____

Name in Capitals / 姓名：_____

Signature / 簽名：_____

Name in Capitals / 姓名：_____

CHAPTER 531

PROTECTION OF THE HARBOUR

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

(Replaced 9 of 1998 s. 2. Amended 75 of 1999 s. 2)

[30 June 1997]

1. Short title

This Ordinance may be cited as the Protection of the Harbour Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“reclamation” (填海) means any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore;
(Added 9 of 1998 s. 3)

“relevant Ordinance” (有關條例) means—

- (a) the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127);
- (b) the Cross-Harbour Tunnel Ordinance (Cap. 203)*;
- (c) the Eastern Harbour Crossing Ordinance (Cap. 215);
- (d) the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
- (e) the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (f) the Western Harbour Crossing Ordinance (Cap. 436); or
- (g) any other Ordinance under which reclamation is authorized or which otherwise provides for reclamation.

(Amended 9 of 1998 s. 3; 75 of 1999 s. 3)

3. Presumption against reclamation in the harbour

(Amended 9 of 1998 s. 4)

(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. *(Amended 75 of 1999 s. 4)*

(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.

4. Transitional

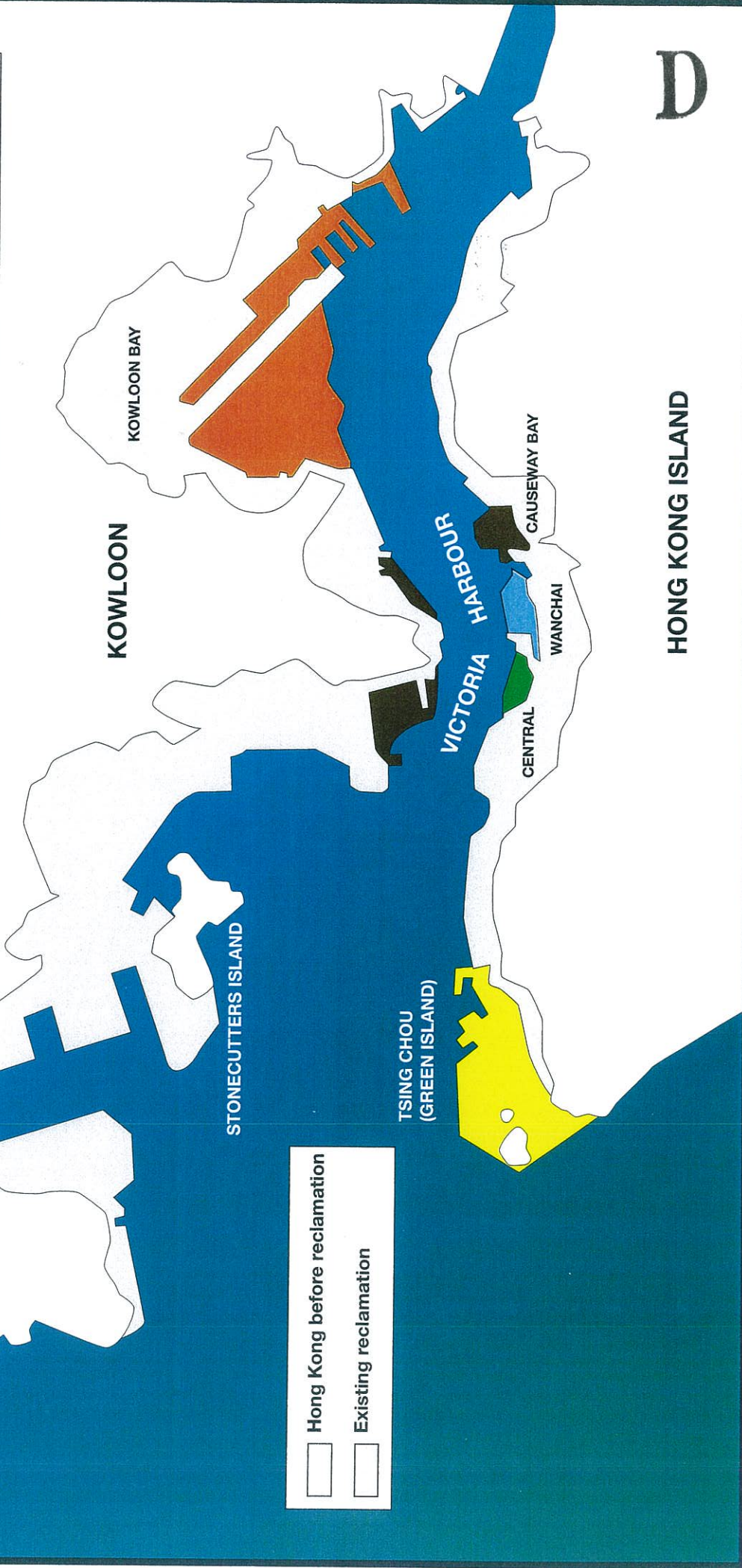
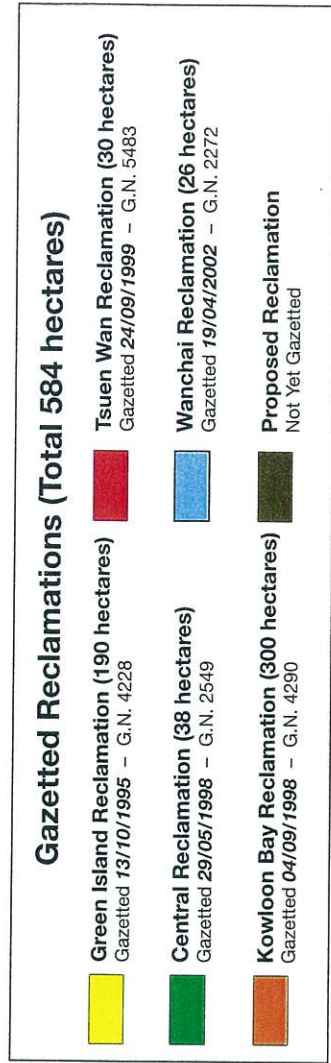
(1) This Ordinance does not apply to any reclamation authorized under a relevant Ordinance before the commencement of this Ordinance. *(Amended 75 of 1999 s. 5)*

(2) The Protection of the Harbour (Amendment) Ordinance 1999 (75 of 1999) (“the Amendment Ordinance”) does not apply to any reclamation authorized under a relevant Ordinance before the commencement of the Amendment Ordinance. *(Added 75 of 1999 s. 5)*

SCHEDULE 1

(Repealed 75 of 1999 s. 6)

RECLAMATIONS PROPOSED BY GOVERNMENT



D

HONG KONG ISLAND

**Address by the Chief Executive
The Honourable Tung Chee Hwa
at the Legislative Council meeting on 6 October 1999**

E

A More Beautiful Harbour

135. Victoria Harbour is an integral part of Hong Kong that we all treasure. It deserves all our efforts to protect it and make it more beautiful. For this reason, we have decided to scale back the reclamation planned for the Harbour.

136. Moreover, we will make land available along the waterfront for promenades and walkways so that our citizens and visitors can stay away from the hubbub of the city, stroll along the promenades and enjoy the beautiful scenery and refreshing sea breeze. On the open space on both sides of the Harbour from Lei Yue Mun in the east to Kennedy Town in the west, we will provide open plazas, landscaped areas, marinas, shops and restaurants with distinct cultural flavours. The arts, recreational and entertainment opportunities offered will enrich Hong Kong's quality of life, and fascinate tourists with Hong Kong's unique culture, a blend of Chinese and Western elements. In particular, we are planning to develop a major performance venue in the West Kowloon Reclamation and a sports complex in Southeast Kowloon to serve the community and attract tourists. Both will be designed to world-class standards and will help put Hong Kong on the map as the events capital of Asia.

137. In the plans for developing Southeast Kowloon, West Kowloon Reclamation, Wan Chai, Central and Western District, the waterfront should be reserved for the above amenities. Traffic corridors should be built as underground or semi-submerged roads to alleviate noise and air pollution as well as to improve the visual aspect. The development of the waterfront of the reclamations in Central and Wan Chai, and East and West Kowloon presents us with the opportunity to give Victoria Harbour a face lift. We will hold an open competition and invite local professionals as well as those from all over the world to help us create a new look for our Harbour in the new millennium.

G. Summing Up

138. If we are to completely overhaul our living environment, there are still many other issues that merit our attention. For example, we have on our agenda the prevention and control of noise, as well as energy efficiency in building design. The respective Policy Secretaries will brief you on the details of these later.

Town Planning Board
Vision Statement for the Victoria Harbour

Our Vision for Victoria Harbour

To make Victoria Harbour attractive, vibrant, accessible and symbolic of Hong Kong.

– a harbour for the people and a harbour of life.

Our Goals for the Harbour

1. To bring the people to the Harbour and the Harbour to the people.
2. To enhance the scenic views of the Harbour and maintain visual access to the harbour-front.
3. To enhance the Harbour as a unique attraction for our people and tourists.
4. To create a quality harbour-front through encouraging innovative building design and a variety of tourist, retail, leisure and recreational activities, and providing an integrated network of open space and pedestrian links.
5. To facilitate the improvement of the water quality of the Harbour,
6. To maintain a safe and efficient harbour for the transport of people and goods and for the operation of an international hub port.

Statement of Intent on Reclamation

The Harbour is to be protected and preserved as a special public asset and a natural heritage of the people of Hong Kong. Reclamation in the Harbour should only be carried out to meet essential community needs and public aspirations. It has to be environmentally acceptable and compatible with the principle of sustainable development and the principle of presumption against reclamation in the Harbour.

Held, dismissing the appeal and remitting the matter to the Board, that:
(1) Section 3(1) established a statutory principle recognising the harbour as a special public asset and a natural heritage of the Hong Kong people and prescribing that it was to be protected and preserved as such an asset and such a heritage. It was recognised

- as something extraordinary. By representing the harbour in such special terms, the Legislature was giving legal recognition to its unique character and the great public need to protect and preserve it having regard to such character. The legislative intent so expressed was to establish the principle of protection and preservation as a strong and vigorous one. (See pp.14I–15G.)
- (2) Section 3(2) was in mandatory terms and imposed on public officers and public bodies the statutory duty, not only to have regard to the principle, but also to have regard to the presumption in exercising their powers. (See p.16C–E.)
- (3) The Board's construction relegated the presumption to no more than a planning consideration required by statute to be taken into account and must be rejected (*South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141, *Edinburgh City Council v Secretary of State for Scotland* [1997] 1 WLR 1447 distinguished). (See pp.16G–17C, 19J–20F.)
- (4) On a true construction, the presumption could only be rebutted by establishing an overriding public need for reclamation. This included economic, environmental and social needs of the community. A need was only overriding if it was a compelling and present need: compelling so that it had the requisite force to prevail over the strong public need for protection and preservation; and present in that it would arise within a definite and reasonable time frame. Such need went far beyond something which was desirable, preferable or beneficial, but it would be going much too far to describe it as a last resort or something which the public could not do without (*R v Oakes* (1986) 24 CCC (3d) 321, *R v Chaulk* (1990) 62 CCC (3d) 193 considered). (See pp.17C–I, 18H–19I.)
- (5) Where there was a reasonable alternative, an overriding need for reclamation would not be made out. In considering what was a reasonable alternative, all the circumstances should be considered including the economic, environmental and social implications. (See pp.17I–18A.)
- (6) The overriding public need test was a demanding one and there must be cogent and convincing materials before the decision-maker to satisfy him that it was met. Thus, the burden on those seeking to rebut the presumption was a heavy one. (See p.18A–G.)
- (7) (*Per curiam*) A real question existed as to whether there was a sliding scale of judicial review, with the intensity of review depending on the subject-matter of the decision. On this approach, the most intensive review would be where a fundamental human right was in question. Further, in relation to the harbour, the question of whether the traditional standard of irrationality or a higher standard due to the unique legal status of the harbour would apply remained for future consideration (*Minister for Aboriginal Affairs v Peko Wallsend Ltd* (1985) 162 CLR 24, *R (on the application*
- A
B
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- A of *Mahmood*) v *Secretary of State for the Home Department* [2001] 1 WLR 840 considered). (See pp.21H–22C.)
- (8) (*Per curiam*) Although there was no delay in this case, it should be emphasised that there must not be any undue delay in applying for judicial review, pursuant to s.21K(6) of the High Court Ordinance (Cap.4) and O.53 r.4 of the Rules of the High Court (Cap.4, Sub.Leg.). With any reclamation proposal, substantial public funds and third parties' rights would be involved and the earliest opportunity for any challenge should be promptly taken. If not, the courts had the discretion to refuse relief. (See p.22D–F.)
- B
- C

[Chinese translation of headnote.]

- D 城市規劃——在海港內進行填海工程——保護及保存海港——條例賦予海港獨特法律地位——第3條訂立不准在海港內進行填海工程的推定——只有在通過“具凌駕性的公眾需要”驗證標準下，推定方會被推翻——只有迫切及即時的需要才屬具凌駕性的需要——不須為別無他選時的最後一着——假如存在着其他合理選擇，將不通過上述驗證標準——《保護海港條例》(第531章)第3條
- E 環境法——在海港內進行填海工程——第3條訂立不准在海港內進行填海工程的推定——第3條的釋義——第18(3)條下的酌情權——《保護海港條例》(第531章)第3條
- F [[《保護海港條例》(第531章)弁言，第3、3(1)、(2)條]
- G 城市規劃委員會(下稱“城規會”)決定將一份建議在維多利亞港填出26公頃土地的計劃書(下稱“計劃書”)呈交行政長官會同行政會議審批。本案答辯人申請司法覆核，理由是城規會作出上述決定時曾錯誤地詮釋《保護海港條例》(第531章)(下稱《條例》)，特別是當中第3條，其內容如下：(1)海港須作為香港人的特別公有資產和天然財產而受到保護和保存，而為此目的，現設定一個不准許進行海港填海工程的推定[下稱“‘不得填海’推定”]。(2)所有公職人員和公共機構在行使任何歸屬他們的權力時，須顧及第(1)款所述的原則以作為指引。“原審法庭裁定答辯人勝訴。城規會現向終審法院提出上訴，並辯稱它曾正確地詮釋第3條，即決策者必須視“不得填海”推定為強制性且重要的考慮因素，並必須衡量建議中填海工程所帶來的公眾利益是否大於保存海港的需要。
- H

裁決——駁回上訴，並將事件發還城規會再作考慮：

- I (1) 《條例》第3(1)條訂立了法定原則，確認海港是香港人的特別公有資產和天然財產，同時規定海港須作為此等資產和天然財產而受到保護和保存。海港被視為非一般的資產。立法機關以如此特別的文字描述海港，顯示其在法律上肯定海港的獨特地位，且確認有重大公眾需要對這個享有獨特地位的海港加以保護和保存。由此可見，立法機關的意願是訂立強而有力的保護和保存海港原則。(見第14頁I至第15頁G)
- J

Society for Protection of the Harbour
保護海港協會

H

Summary Of Court of Final Appeal Judgment
Interpretation of Protection of the Harbour Ordinance

Effect of Judgment - The CFA pronounced on 9th January 2004 that the Town Planning Board had erred in law in the correct interpretation of the Harbour Ordinance; that the Board's decisions must be quashed; that the Wanchai Outline Zoning Plan must be remitted back to the Board for reconsideration; and that the Judgment applies to any reclamation proposal in the Harbour.

Importance of Harbour - The CFA pronounced that the Harbour is undoubtedly a central part of Hong Kong's identity. It is the heart of the metropolis and something extraordinary to be transmitted from generation to generation. Reclamation that had already taken place renders what remains of the Harbour even more precious and makes the need to protect and preserve it more important and compelling.

Legislative Intention - The Harbour Ordinance accords to the Harbour a unique legal status. There is a great public need to protect and preserve it having regard to its unique character. There must be preservation which means maintenance and conservation in its present state. It must be kept from harm, defended and guarded. Such a principle is strong and vigorous.

Overriding Public Need Test - The presumption prescribed by the Harbour Ordinance can only be rebutted by establishing an overriding public need for reclamation. Such need must be of greater public importance than the importance of the Harbour.

Overriding – means a compelling and present need which has the requisite force to prevail over the strong public need for protection and preservation

Present – means that the need must arise within a definite and reasonable time frame

Public needs – include economic, environmental and social needs of the community

Minimum – means not to go beyond what is required

No Reasonable Alternative – where costs, time and delay would be relevant

Rebuttal of Presumption - Each area proposed to be reclaimed must be justified. It is imperative that there shall be no reclamation unless the Overriding Public Need Test is satisfied. The Test is by its nature a demanding one and the burden to rebut the presumption is therefore a heavy one.

Cogent & Convincing Materials - Due to the demanding nature of the Test, it is not sufficient to incant the Test or just to pay lip service to it. The materials relied on must be cogent and convincing.

19 August 2004

Housing, Planning and Lands Bureau
Technical Circular No. 1/04

Environment, Transport and Works Bureau
Technical Circular No. 1/04

Protection of the Harbour Ordinance

Purpose

This technical circular sets out the requirements of the Protection of the Harbour Ordinance (PHO) (Cap. 531) and provides guidance for public officers and public bodies to follow in considering and approving reclamation proposals.

Effective Date

2. This Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular supersedes PELB Technical Circular No. 4/98 on Protection of the Harbour Ordinance and ETWB Technical Circular (Works) No. 32/2003 on Protection of the Harbour. However, the revised administrative arrangements for reclamation works as promulgated under PELB Technical Circular No. 3/97, Works Bureau Technical Circular No. 13/97 and 9/2001 shall remain in force.

Definition of Reclamation

4. The guidelines set out in this Circular apply to all reclamation proposals, regardless of scale, initiated by the Government or the private sector within the boundaries of the harbour as defined under section 3 of the Interpretation and General Clause Ordinance (Cap. 1) (see Annex A). According to section 2 of the PHO, reclamation means any works carried out or intended to be carried out for the purposes of forming land from the sea-bed or foreshore. In case of doubt on whether certain works would constitute reclamation, advice of the Department of
-

Justice should be sought.

Government's Position on Harbour Reclamation

5. The Government is committed to protecting and preserving the harbour and enhancing it for public enjoyment. Apart from the Central Reclamation Phase III and the reclamation proposals for Wan Chai North and South East Kowloon, the Government will not undertake any further reclamation in the harbour. These guidelines are therefore of particular relevance to the two proposed development projects of Wan Chai Development Phase II and South East Kowloon Development. Small-scale reclamations required for the construction of piers, landing steps, etc. not subject to the revised administrative arrangements promulgated in 1997 should also comply with these guidelines.

Protection of the Harbour Ordinance

6.1 Section 3 of the PHO provides that:

- (a) "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."
[section 3(1)]
- (b) "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." [section 3(2)]

6.2 Section 3(1) of the PHO establishes a statutory principle recognizing the harbour as a special public asset and a natural heritage of Hong Kong people and prescribing it to be protected and preserved.

6.3 Section 3(2) imposes a specific legal duty on public officers and public bodies to abide by the legal principle stated in section 3(1) in the exercise of any powers vested in them. The legal burden to rebut the presumption is a heavy one. To overcome the presumption, all public officers and public bodies must follow the principles prescribed in the PHO and the CFA judgment conscientiously and decide whether it is complied with before coming to a decision.

Court of Final Appeal's Judgment

7.1 On 9.1.2004, the Court of Final Appeal (CFA) handed down its judgment on the Town Planning Board (TPB)'s appeal against the High Court's ruling in respect of the draft Wan Chai North Outline Zoning Plan, clarifying the interpretation of the legal principles behind the PHO. The CFA judgment and its Summary (FACV 14/2003) is viewable at the website of the Judiciary at www.judiciary.gov.hk.

7.2 According to the CFA, the harbour is a special public asset and natural heritage is declared to belong to Hong Kong people. It is a community asset and is to be enjoyed by the people of Hong Kong. It must be kept from harm, defended and guarded. There must be not merely protection. There must also be preservation.

7.3 Reclamation would result in permanent destruction and irreversible loss of what should be protected and preserved under the statutory principle. The statutory presumption against reclamation was therefore enacted to implement the principle of protection and preservation. It is a legal concept and is a means or method for achieving protection and preservation. Its legal effect is not to impose an absolute bar against reclamation. It does not prohibit reclamation altogether. As a presumption, it is capable of being rebutted.

7.4 The CFA propounded a single and demanding test. The presumption against reclamation can only be rebutted by establishing an overriding public need for reclamation, i.e. "the overriding public need test".

7.5 *Public needs* are community needs and include the economic, environmental and social needs of the community.

7.6 A need should only be regarded as *overriding* if it is compelling and present and if there is no reasonable alternative to reclamation, as follows:

- (a) a compelling need must have the requisite force to prevail over the strong public need for protection and preservation of the harbour;
- (b) the meaning of present need is that taking into account the time scale of planning exercises, the need would arise within a definite and

reasonable time frame;

- (c) all circumstances should be considered in considering whether there is a reasonable alternative to reclamation, including the economic, environmental and social implications of each alternative, the cost as well as the time and delay involved.

7.7 The extent of reclamation should not go beyond the minimum of that which is required by the overriding need. It is necessary that each area proposed to be reclaimed must be justified.

7.8 The decision that there is an overriding public need for reclamation must be based on cogent and convincing materials.

Guidelines for Consideration of Reclamation Proposals

8.1 Considerations in the Decision-making Process

8.1.1 Based on the CFA judgment, a flow chart highlighting the major considerations that should be taken into account by public officers and public bodies in the decision-making process on reclamation proposals is at Annex B. It applies to all stages of the process covering planning and engineering investigations, preparation of plan and reclamation/road schemes for gazetting, consideration of objections, approval/authorization under relevant ordinances, funding approval and detailed design of a reclamation project. However, it does not apply to the works implementation stage which is basically to implement the project already approved by all relevant authorities.

8.1.2 All public officers and public bodies that are involved from initial project inception to the planning and design stage are required to critically examine the need for the proposed reclamation project. The considerations and any decision on the reclamation project should be recorded fully in writing.

8.1.3 For each area of reclamation, three basic questions will need to be answered. The whole process including the decisions as to whether there is a compelling and present public need, whether there is any reasonable alternative, and whether the proposed reclamation extent is the minimum must be clearly documented and substantiated by cogent and convincing materials. It is the responsibility of the proponents of individual facilities (i.e. the client

bureaux/departments) to prove, with engineering input from the relevant works departments, that the proposals they put forward will meet "the overriding public need test".

8.1.4 There is no hard-and-fast rule on what materials could be considered as cogent and convincing. It depends on the merit of each case. Provided that one takes account of all relevant matters and does not consider irrelevant matters, one's decision could not be challenged as perverse, irrational or unreasonable.

Question 1 – Is there a compelling and present public need?

8.1.5 In assessing whether there is an overriding public need for providing certain infrastructure or facility which may involve reclamation, it will be necessary to establish that the need is a public need, and is compelling and present.

8.1.6 Public needs are community needs and include the economic, environmental and social needs of the community. The following are some examples of public needs:

Economic Needs

- sustain economic growth and prosperity of the economy (e.g. by providing or improving essential infrastructure such as roads, railways, drainage and sewerage facilities, or facilities which require a waterfront location such as cruise terminal);

Environmental Needs

- needs which are most substantial/formal (e.g. reclamation for constructing environmental infrastructures like sewage treatment plants);
- needs which are confirmed through proper environmental studies such that they are indeed environmental "needs" rather than ad hoc justifications for reclamation; and
- needs which are backed up by broad community consensus, instead of just some "wants" by the few to justify reclamation. The concepts of "needs" and "wants" are different and should not be mixed up.
- It will be up to the project proponent to carry out studies to justify the environmental needs. When considering the environmental needs for the proposed reclamation, the project proponent may also need to

examine the “net result” after taking into account the possible adverse environmental implications arising from the project or at least the reclamation itself.

Social Needs

- Improve quality of life of the community (e.g by providing more public amenities and promoting public accessibility to the harbour-front).

8.1.7 An overriding need must be compelling and justified by cogent and convincing materials. The exact type and extent of supporting materials depend on the nature and purpose of the project/facility. Annex C gives some examples of the materials that may be required for justifying certain projects.

8.1.8 An overriding need must also be present. To satisfy this requirement, there must be a sufficiently concrete programme of implementation and firm commitment from the concerned department and bureau, with endorsement by relevant authorities, where applicable. Annex D is a proforma for confirming the present need for a proposed facility involving reclamation.

8.1.9 In providing cogent and convincing materials to justify the urgent public need for reclamation, it is necessary to set out any adverse consequences of not meeting the public need in time, which may cover various aspects including the economic, environmental and social implications, as well as the time, cost and delay involved.

Question 2 – Is there any reasonable alternative to reclamation?

8.1.10 Alternatives to reclamation can be in various forms such as changing the policy choices, siting/reprovisioning a use/facility at an alternative location or adopting an alternative road/rail alignment, and employing different design and construction methods. Annex E gives some sample questions that need to be answered in considering whether there are alternatives to reclamation.

8.1.11 All alternatives, including those put forward by the public, should be clearly set out and carefully examined to assess whether they are reasonable alternatives. A “no reclamation” scenario must be taken as the starting point in considering alternatives. It is imperative to examine if an overriding public need can be met without any reclamation.

8.1.12 All circumstances should be considered in determining whether there is a reasonable alternative to reclamation, including the economic, social and environmental implications, cost and time incurred, and other relevant considerations.¹ The assessments should be properly documented, and where appropriate, subject to public scrutiny. If any reasonable alternative is available, the reclamation proposal should not be considered further. An alternative may be considered as "unreasonable" if it (the following is not exhaustive) –

- (a) could not achieve or substantially achieve the set objectives;
- (b) would have significantly adverse economic, social and environmental implications;
- (c) would cause unacceptable delay to achieving the objectives;
- (d) would result in prohibitively high cost; and/or
- (e) would involve employment of untested technology.

8.1.13 As a general rule, reprovisioning of affected facilities on reclaimed land should be justified on individual basis and should not be taken for granted. All reprovisioning requirements must be justified individually on their own by the concerned departments and bureaux. It is necessary to demonstrate that there is no reasonable alternative but to reprovision an affected facility on reclamation.

Question 3 – Is the proposed reclamation extent minimum?

8.1.14 If it can be established that there is no reasonable alternative to reclamation in meeting the overriding public need, the next step is to ensure that

¹ The range of indicators and criteria may include but not necessarily limit to the following:

- Economic Implications – economic growth and prosperity, overall cost of doing business, and employment opportunity;
- Social Implications – community need and aspiration, community support/consensus, healthy living, heritage preservation, social cohesion, and community identity;
- Environmental Implications – air quality, noise, water quality, waste disposal, energy efficiency, natural resources, landscape and visual impacts, and nature conservation;
- Cost – financial viability, return on investment/economic return, capital cost, and recurrent cost;
- Time – lead time of implementation, and time required to achieve the objectives; and
- Others – effectiveness of achieving the objectives, technical feasibility, and safety consideration.

reclamation must be restricted to only the amount strictly necessary to meet the overriding public need.

8.1.15 The extent of reclamation for each and every component must be fully justified on its own and minimized. Reclamation for a particular element/objective (e.g. reprovisioning of waterfront facilities affected by reclamation) cannot be justified by its association with the reclamation scheme, or individual components in the scheme, proposed for meeting certain overriding public needs (e.g. provision of essential road and railway infrastructure). The extent of reclamation may be considered as minimum if further reduction in reclamation would, for example –

- (a) significantly compromise the effectiveness and efficiency of a particular facility;
- (b) substantially increase the capital and running costs; and/or
- (c) unduly lengthen the construction time and result in unacceptable delay in provision of the required facilities and services.

8.1.16 The consideration leading to the decision of not selecting an alternative that may minimize the extent of reclamation because it does not pass the test of reasonableness should be documented as part of the cogent and convincing materials.

8.2 Public Consultation

8.2.1 It is of paramount importance to gauge the views of the public on the need identified by the Government as an overriding public need. Public consultation should therefore be conducted on any reclamation proposal in the harbour. A proactive approach should be adopted to encourage public involvement in the process to instill a sense of partnership between the Government, stakeholder groups and the community. All relevant parties, including the Legislative Council, Town Planning Board, Harbour-front Enhancement Committee, relevant District Councils, professional institutes, interest groups, relevant advisory committees and the general public, should be consulted as appropriate. The extent of public consultation should be determined with reference to the scale of the reclamation proposal.

8.2.2 To be effective and useful, the public consultation exercise should be well structured and a consultation strategy including the following major aspects should be formulated:

- (a) the scope and timing of consultation;
- (b) the target audience to be consulted;
- (c) the methods of consultation (e.g. informal sounding out; opinion polling/market research/questionnaire survey; exhibition; press conference/briefing/release; publication of consultation materials; presentation to relevant committees/bodies; public consultation forum, etc.);
- (d) the types of consultation and presentation materials to cater for different types of audience and events; and
- (e) the level of representation at various consultation events.

8.2.3 The public should be involved early in the planning process. For any reclamation proposal that requires the carrying out of a comprehensive planning and engineering feasibility study, the public should be consulted at various key stages of the feasibility study, for example, when the inception report is prepared, preliminary findings of the study are available, alternative conceptual schemes are formulated and the preferred scheme recommended under the study, before a final decision is made by the Government. In particular, it is useful to collect public views on whether the facilities proposed on reclamation are generally accepted as meeting "the overriding public need test", and whether there are any alternatives to reclamation that need to be examined.

8.2.4 Public views gathered from consultation should be carefully analyzed and incorporated, where appropriate. All public views addressed to the Government should be suitably responded to, for example, by way of correspondence or a consolidated consultation report.

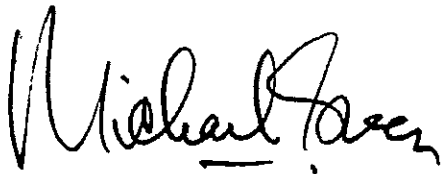
8.3 Independent Expert Advice

Where necessary, independent experts from outside the Government should be invited to ascertain if "the overriding public need test" has been satisfied, if the

reclamation are cogent and convincing.

Annexes

- Annex A The Boundaries of the Harbour
- Annex B Flow Chart on Major Considerations in Decision-making Process on Reclamation Proposals
- Annex C Examples of Materials to Justify the Overriding Public Need
- Annex D Proforma for Confirming the Present Need for Facility Involving Reclamation
- Annex E Examples of Questions that Need to be Answered on Alternatives to Reclamation



(Michael M.Y. Suen)

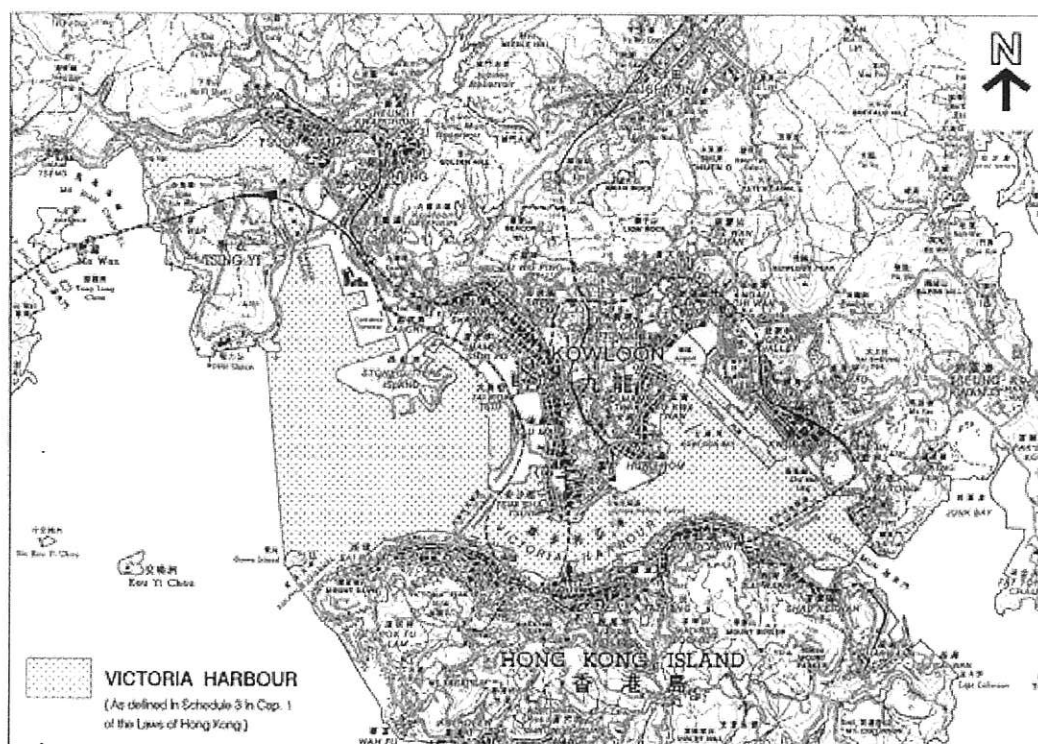
Secretary for Housing,
Planning and Lands



(Dr. Sarah Liao)

Secretary for the Environment,
Transport and Works

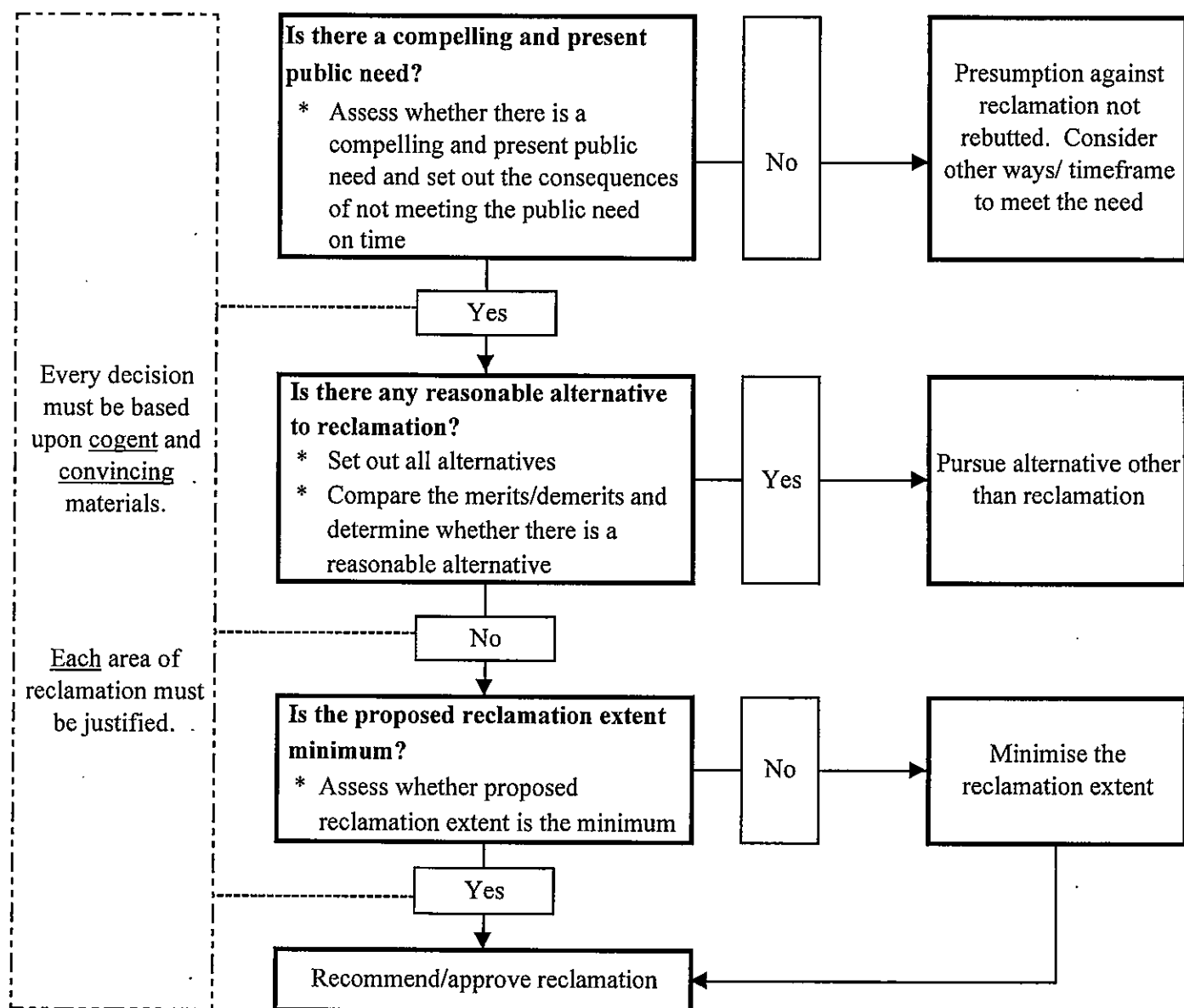
The Boundaries of the Harbour



According to the Interpretation and General Clauses Ordinance, the "Boundaries of Harbour" means the waters of Hong Kong between:

- (a) the eastern limit – a straight line drawn from the westernmost extremity of Siu Chau Wan Point to the westernmost extremity of Ah Kung Ngam Point; and
- (b) the western limit – a straight line drawn from the westernmost point of Island of Hong Kong to the westernmost point of Green Island, thence a straight line drawn from the westernmost point of Green Island to the south-easternmost point of Tsing Yi, thence along the eastern and northern coast lines of Tsing Yi to the westernmost extremity of Tsing Yi, and thence a straight line drawn true north therefrom to the mainland.

Flow Chart on Major Considerations in Decision-making Process on Reclamation Proposals



Footnote : The public will be consulted as necessary at various stages.

Examples of Materials to Justify the Overriding Public Need

Case 1: Trunk Road and Railway

Economic Aspect

- Findings and recommendations of updated transport studies
- Role of trunk road and railway in strategic transport network
- Road traffic forecasts in specific timeframe (e.g. volume/capacity ratios, speed of vehicular traffic)
- Congestion relief to adjacent roads
- Daily boardings, rail ridership, percentage of trips by rail
- Overloading of rail system and critical peak hour loadings
- Journey time
- Cost and benefit analysis
- Economic returns
- Economic loss due to congestion
- Effect on competitiveness of Hong Kong

Environmental Aspect

- Improvement in air quality
- Reduction in noise sensitive receivers exposed to excessive road traffic noise
- Reduction in energy consumption
- Improvements along other roads (by the relief in traffic provided by the new project)

Social Aspect

- Increase in mobility of passengers
- Improvement in living and working environment (may include qualitative assessment)
- Public support (may be established through public consultation)
- Improvement in living and working environment

Case 2: Drainage and Sewerage Facilities

Economic Aspect

- Resident/working population and domestic/non-domestic units to be served by the facilities
- Reduction in flooding risk inland
- Reduction in economic loss due to flooding

Environmental Aspect

- Improvement in water quality
- Reduction in expedient connections to stormwater drains

Social Aspect

- Improvement in healthy living and working environment (may include qualitative assessment)
- Public support (may be established through public consultation)

Case 3: Promenade

Economic Aspect

- Enhancing the image of Hong Kong as an international city and its competitiveness (may include qualitative assessment)
- Number of tourists visiting the promenade
- Number of major events using the promenade as venue

Environmental Aspect

- Improvement in visual quality and landscape character of the waterfront

Social Aspect

- Public support and aspiration for a high-quality waterfront promenade and supporting facilities (may be established through surveys and public consultation)
- Improvement in healthy living and working environment (may include qualitative assessment)

Proforma for Confirming the Present Need for Facility Involving Reclamation

(One proforma should be used for each proposed facility)

Facility:	<i>(Specify the name of facility - e.g. sewage pumping station)</i>
1. Date Required:	<i>(Specify the timing when the facility is required)</i>
2. Justifications:	<i>(Explain why the facility must be provided at the above time)</i>
3. Authority and Decision Date:	<i>(Specify the authority giving the endorsement to the provision of the facility and the date of decision)</i>
4. Public Works/ Building Programme:	<i>(Specify the category of Public Works/Building Programme in which the facility falls, and relevant dates of inclusion/upgrading in the programme)</i>
5. Public Views/ Support:	<i>(Give an account of the public views/support on the provision of the facility, including the dates when the consultations were undertaken)</i>

Examples of Questions that Need to be Answered on Alternatives to Reclamation

Alternative Ways to Meet the Public Need (including policy choices)

- Should demand management measures be used instead of reclaiming the harbour to provide land for developing new facility?
- Can a change in policy effectively resolve the problem?
- Is there an alternative mode of operation/system that can achieve or substantially achieve the same objectives of the proposed reclamation?
- Can the existing facilities be improved or better utilized to reduce or postpone the need to provide the new facility on reclamation?
- Can cash compensation be paid in lieu of reprovisioning of affected facilities?
- Can pollution problem be controlled at source?

Alternative Locations of Use/Facility or Alternative Alignments

- Can a particular use or facility be located outside the proposed reclamation?
- Can an alternative road/railway alignment be adopted to obviate the need for or minimize reclamation?

Alternative Design and Construction Methods (more related to minimizing extent of reclamation)

- Can road tunnels be built instead of surface roads?
- Can the size and land requirement of a particular facility be further reduced to minimize reclamation?
- Can staging and work sequence of construction be varied to reduce the reclamation extent?
- Are there alternative construction/foundation methods for waterfront structures to minimize reclamation?

VICTORIA HARBOUR AND ITS WATERFRONT AREAS
VISION, MISSION & PLANNING PRINCIPLES

Victoria Harbour : Vision

To enhance Victoria Harbour and its harbour-front areas to become an attractive, vibrant, accessible and sustainable world-class asset: a harbour for the people, a harbour of life.

Victoria Harbour : Mission

To realise the vision of Victoria Harbour through effective and balanced utilization of land and marine resources having regard to the Harbour Planning Principles and subject to an open and transparent public engagement process.

Harbour Planning Principles

The Harbour Planning Principles were developed and are monitored by the Harbour-front Enhancement Committee as a set of guidelines for all individuals and organisations to facilitate the sustainable planning, preservation, development and management of Victoria Harbour and the harbour-front areas.

Preserving Victoria Harbour

Principle 1: Victoria Harbour must be protected and preserved for Hong Kong people and visitors as a special public asset, a natural and cultural heritage asset, and a driver for the creation of economic and social values.

Stakeholder Engagement

Principle 2: All sectors of the community must be engaged at an early stage and on an on-going basis in the planning, development and management of Victoria Harbour and its harbour-front areas through transparent and inclusive consensus building processes.

Sustainable Development

Principle 3: The planning, development and management of Victoria Harbour and its harbour-front areas should embrace the principles of sustainable development to balance and cater for the economic, social and environmental needs of all sectors of the present generation, without compromising the needs of future generations.

Integrated Planning

Principle 4: Integrated and long-term planning, development and management of infrastructure, land and marine uses, and water quality is essential to ensure that Victoria Harbour and its harbour-front areas support and enhance the economic, environmental and social aspirations of Hong Kong.

Proactive Harbour Enhancement

Principle 5: The planning, development and management of Victoria Harbour must proactively enhance the harbour and its harbour-front areas as Hong Kong's symbol of urban design excellence and Hong Kong's brand identity to the international community.

Vibrant Harbour

Principle 6: It is essential to balance the use of the harbour to provide both a maritime and logistics hub for the safe and efficient passage of people and goods, and as a cultural and leisure facility. Both marine and land-side activities must cater to and balance with the aspirations of all sectors of the community.

Accessible Harbour

Principle 7: Victoria Harbour must integrate with the hinterland in a comprehensive manner, including ample unrestricted and convenient visual and physical access for pedestrians, preferably at grade, to and along the Harbour as well as the harbour-front areas.

Public Enjoyment

Principle 8: The planning, development and management of Victoria Harbour and its harbour-front areas should maximize opportunities for public enjoyment. Land required for and the impact from infrastructure developments, utility installations and land uses incompatible with the harbour planning principles should be minimized.

Harbour-front Enhancement Committee
April 2006

(This is a revised version endorsed by the Harbour-front Enhancement Committee on 27.4.2006.)

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

Town planning — reclamation of harbour — Protection of the Harbour Ordinance (Cap.531) and presumption against reclamation applied to temporary reclamation works

城市規劃 — 在海港進行填海 — 《保護海港條例》(第531章) 及「反對填海」推定均適用於臨時填海工程

The Government proposed to build a trunk road along the foreshore. The road would include a tunnel running under the sea-bed and under a typhoon shelter for mooring small craft (CBTS). Construction would involve extensive temporary reclamation works of the foreshore and sea-bed: (a) for tunnel construction over six years; and (b) require additional temporary reclamation of CBTS to build temporary breakwaters farther out in the harbour for displaced vessels (the Works). The Government took the view that the construction was not subject to the constraints of the Protection of the Harbour Ordinance (Cap.531) because: (i) there was no reclamation within the meaning of the Ordinance as the purpose of the works was to form a “working platform” and not “land”; and (ii) the works were of a temporary nature and would be removed and the foreshore and sea-bed reinstated. X brought judicial review proceedings seeking a declaration that the Government had erred in law.

Held, granting the declaration that the temporary reclamation works, in respect of both the tunnel construction and the provision of temporary breakwaters, were subject to the Ordinance, that:

- (1) On a true and purposive construction of the Ordinance, which provided for a presumption against reclamation, the intention of the Legislature was clear: the harbour was to be protected from any and all reclamation works, whether intended to be permanent or temporary. No distinction was drawn between

permanent and temporary reclamation (*Town Planning Board v Society for the Protection of the Harbour Ltd* (2004) 7 HKCFAR 1 applied). (See paras.38–41, 45.)

- (2) “Land” was to be given its ordinary meaning. The Ordinance did not permit the end result to be divorced from the means. Whatever the ultimate purpose of the works here, the primary purpose was the formation of “land” for the purposes of the Ordinance and so the works were subject to the provisions of the Ordinance. (See paras.46, 52.)

Judicial review

The applicant sought a declaration that the Protection of the Harbour Ordinance (Cap.531) and the presumption against reclamation applied to proposed temporary reclamation works by the government. The facts are set out in the judgment.

Mr Anthony Neoh SC, Mr Johannes Chan SC and Mr Jin Pao, instructed by Winston Chu & Co, for the applicant.

Mr Jat Sew Tong SC and Mr Godfrey Lam, instructed by the Department of Justice, for the respondent.

Legislation mentioned in the judgment

Protection of the Harbour Ordinance (Cap.531) ss.2, 3

Roads (Works, Use and Compensation) Ordinance (Cap.370) s.3(3)

Case cited in the judgment

Town Planning Board v Society for the Protection of the Harbour Ltd (2004) 7 HKCFAR 1, [2004] 1 HKLRD 396

Hartmann J

Introduction

1. The harbour, it has been said, is the jewel in Hong Kong’s crown. Over the years, however, it has been much diminished — sometimes dramatically so — by the reclaiming of land from its waters.

2. In 1997, the Protection of the Harbour Ordinance (Cap.531) (the Ordinance), was brought into law, enshrining the harbour as a “special public asset and a natural heritage” of all Hong Kong people.

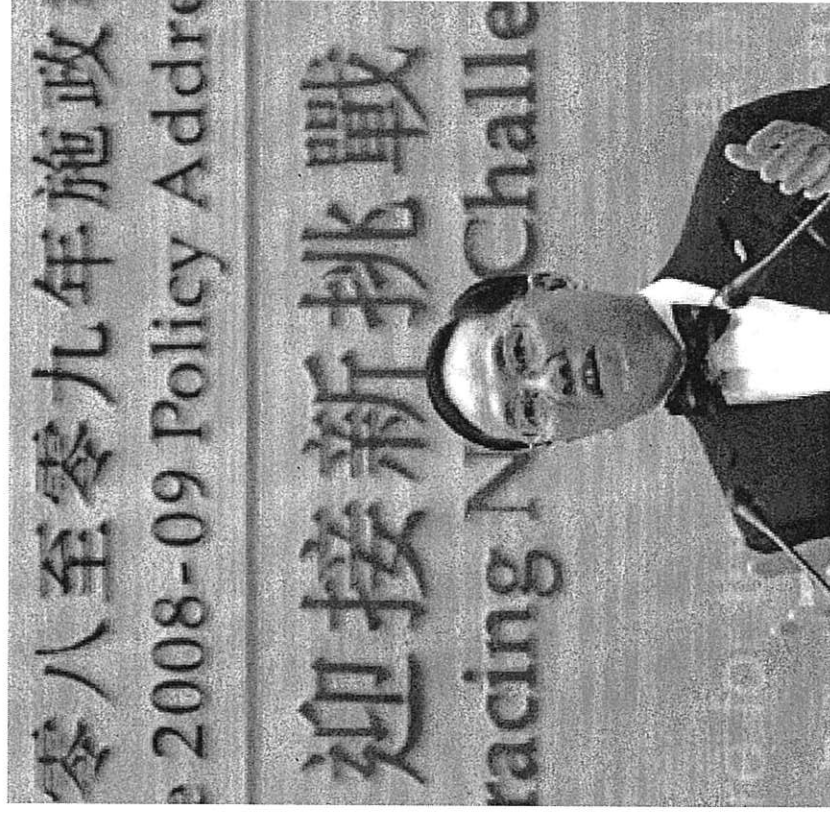
3. It is a succinct statute but one which the Court of Final Appeal has described as giving to the harbour “a unique legal status”: *Town Planning Board v Society for the Protection of the Harbour Ltd* (2004) 7 HKCFAR 1 at p.15G. That status is protected by

My Vision of the Harbour

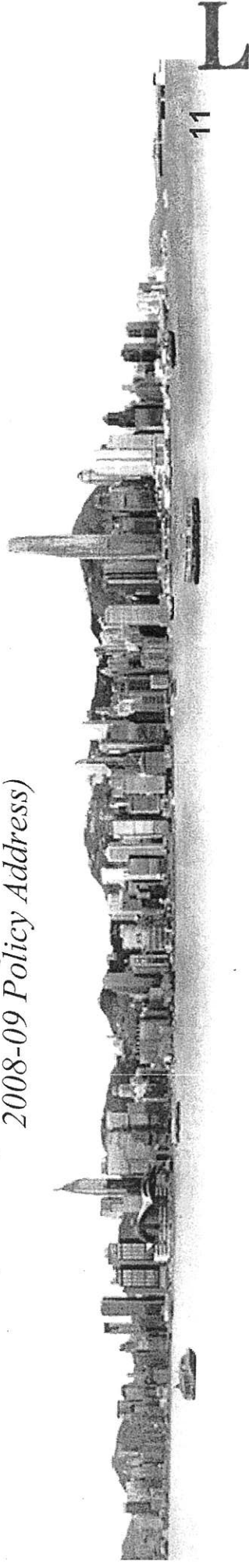
"Imbued with cultural and historical significance, Victoria Harbour is an icon of our city. All Hong Kong people cherish it as our precious asset.

I hope that our beautiful harbour will remain a symbol of our city that can be enjoyed by all."

*(Extract from the Chief Executive's
2008-09 Policy Address)*



Mr Donald Tsang
The Chief Executive of HKSAR



香港特別行政區政府

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SECRETARY FOR DEVELOPMENT

Government of the Hong Kong Special
Administrative Region

8/F, West Wing, Central Government Offices
11 Ice House Street, Central, Hong Kong

1 April 2010

Mr Winston Ka-sun CHU
Adviser
Society for Protection of the Harbour
Room 608, One Pacific Place
Hong Kong

Dear

Winston,

**Central Reclamation – Questions for Government
Response to Government's Press Release dated 17 November 2009
Proposed Reclamations – Questions for Government
Foreshore and Sea-bed (Reclamations) Ordinance**

I write further to our interim reply of 26 January 2010 to respond to the queries raised in your two letters of 21 and 22 January 2010. I have to say that the frank and candid exchanges we had over dinner on 29 January 2010 and your subsequent letter of 5 February 2010 have helped me to better understand your concerns and I hope, in turn, have enabled us to allay them with this reply.

Let me start by repeating my sincere appreciation for the work done by the Society for Protection of the Harbour ("SPH") in arousing public concerns for the protection and preservation of the Victoria Harbour. Speaking personally and in my present capacity as Secretary for Development, I take the view that what SPH has done is exemplary of the civic society and it is through constructive interaction between Government and the civic society that the public stands to benefit. The Government fully recognises the importance of our Harbour as a special public asset and natural heritage that belongs to the people of Hong Kong. This commitment is now enshrined in the Chief Executive's successive Policy Addresses and reflected in the work of the Development Bureau, assisted by the setting up of a dedicated Harbour Unit last April. The

high-level commitment to preserve the Harbourfront for the enjoyment of the public has also helped to shape the final outcome of the Urban Design Study of the New Central Harbourfront with the decision to change the use of Sites 1 and 2 from "hotel and office development" to "a vibrant civic node and open space for public use", which I understand has your blessing.

Turning to those queries concerning reclamations in your above-mentioned letters, we note that a number of Government Notices ("GN") quoted in SPH's Harbour Day publicity leaflet ("leaflet") last year are actually related to the gazettal of amendments to the Outline Zoning Plans ("OZPs") under the Town Planning Ordinance. They are not gazetted reclamations per se. As you are aware, the OZPs mainly set out the broad land use zonings so that development/redevelopment can be put under statutory planning control. If reclamation is involved, the reclamation proposal has to be gazetted under the Foreshore and Sea-bed (Reclamations) Ordinance ("FSRO"), which is the only statutory authority for undertaking a reclamation proposal. In short, no reclamation works can be carried out unless it is authorised under the FSRO.

As a response to your letter of 21 January 2010, the Harbour Unit has prepared the table at Annex A to this letter for your reference setting out the status of the various reclamation proposals within the Victoria Harbour quoted respectively in the leaflet under two separate headings. From the background materials you have subsequently provided to me, it appears that those reclamation proposals categorised under Section B of the Table were taken from a 1994 Town Planning Board paper. However, also as stated in that 1994 paper, the proposed reclamation projects in respect of Green Island, Central Reclamation Phase 4, Wai Chai Reclamation Phase 2, South East Kowloon, Kowloon Point, Tsim Sha Tsui East and Tsuen Wan Bay were subject to engineering, environmental and transport studies to ascertain their feasibility. All these proposals were clearly overtaken by events.

As regards the questions in your other letter on the FSRO, my colleagues have prepared another table at Annex B which shows the position of the five GNs quoted in the leaflet. Of the five GNs quoted in the leaflet, only the GN of the then Green Island reclamation proposal (GN4228) was a gazettal under the FSRO, hence a gazetted reclamation. As you will recall, many objections were received under section 6 of the FSRO against the Green Island reclamation proposal; the proposed reclamation had lapsed as it was not submitted to the Chief Executive in

Council within the time limit specified in section 8(1) of the FSRO¹. I would just like to supplement that we have been advised by lawyers that even if no objections were received under section 6 of the FSRO against the Green Island reclamation proposal, the reclamation proposal would have lapsed if it was not submitted to the Chief Executive for authorisation under section 7 of the FSRO within a reasonable time period. Such period should not in any event be longer than the period allowed under section 8 of the FSRO for submission to the Chief Executive in Council for authorisation of the reclamation proposal. The contention or worry you have put to me, that is, as long as a gazetted reclamation under the FSRO has received no valid objection or such objection is withdrawn, the Chief Executive may at any time thereafter authorise the reclamation works, is therefore untenable.

I hope this reply would have allayed your concerns and paved the way for mutual trust and co-operation between Government and SPH in pursuing our common aspiration and passion for the Victoria Harbour. Whilst writing, I am honoured to be invited to attend and speak at SPH's 15th Anniversary reception later this year. I look forward to seeing you on that occasion, if not before.

Yours sincerely,



(Mrs Carrie Lam)
Secretary for Development

Encls

¹ Section 8(1) of FSRO provides that where at the expiry of the time for the making of objections under section 6 in respect of a proposed reclamation any objection has been delivered under that section, the Director of Lands (the Director) shall, within a period of 9 months after the expiry of that time, or within such further period of not more than 6 months after the expiry of that period as may, upon the application of the Director, be allowed by the Chief Executive having regard to the circumstances of the case, submit to the Chief Executive in Council for consideration the proposed reclamation and any such objection, and the Chief Executive in Council shall consider the proposed reclamation and every objection and may – (a) decline to authorize the reclamation; (b) authorize the reclamation in part only and defer for further consideration at such future time as the Chief Executive in Council shall specify, any objection which relates to the remaining part of the reclamation not so authorized; or (c) authorize the whole of the reclamation.

**Information of the Past Reclamation Proposals Quoted in
the Publicity Leaflet of Society for Protection of the Harbour**

(A) Information in the Left Column of the Publicity Leaflet

Information in the Left Column of the Publicity Leaflet	Remarks
1. 已刊登憲報的填海計劃 (如右圖) 584 公頃 Gazetted Reclamations (As shown on the right plan) 584 hectares	<ul style="list-style-type: none"> ➤ Among the five government notices (GNs) quoted in the publicity leaflet, only the one on Green Island Reclamation (Part) – Public Dumping (i.e. GN4228) is a GN for reclamation gazetted under the Foreshore and Sea-bed (Reclamations) Ordinance (FSRO), which is the only statutory authority for undertaking a reclamation proposal. The rest are GNs of Outline Zoning Plans (OZPs) to set out the proposed land uses of the concerned areas. ➤ More details are provided in Part B on pages 3 and 4.
2. 已完成的中環填海工程 (如上照片) 18 公頃 Completed Central Reclamation (As shown above) 18 hectares	<ul style="list-style-type: none"> ➤ 18 hectares (ha) of land had been formed under Central Reclamation Phase III (CRIII), which was substantially completed by end 2008.
3. 將進行的填海工程 Coming Reclamations 中環第二階段 5 公頃 Central Reclamation Second Stage 5 hectares	<ul style="list-style-type: none"> ➤ There is no such term as Central Reclamation Second Stage. If it is referring to Central Reclamation Phase II (CRII), it is not a <u>coming</u> reclamation¹, but land formed as early as 1997. If it refers to the reclamation of land from the east boundary of CRIII to the Hong Kong Convention and Exhibition Centre (HKCEC) Extension, which comes under Wan Chai Development Phase II, it will commence in end 2011/early 2012, and the area to be reclaimed is 3.7 ha, not 5 ha.
灣仔及銅鑼灣 21 公頃 Wan Chai and Causeway Bay 21 hectares	<ul style="list-style-type: none"> ➤ Assuming that the above-mentioned 3.7 ha of reclamation is regarded as reclamation in Central, there will only be reclamation of 5.7 ha² (not 21 ha) in Wan Chai and Causeway Bay.

¹ CRII was a reclamation of 5.3 ha in the Tamar Basin to provide land for “Government, Institution or Community” use and public open space in Central. Engineering works commenced in December 1994 and were completed in September 1997.

² The 5.7 ha of reclamation is part of the total reclamation of 12.7 ha under Wanchai Development Phase II (WDII) (gazetted under FSRO on 27.7.2007 under GN4790), which also includes the aforementioned 3.7 ha between CRIII and the HKCEC Extension, and another 3.3 ha of reclamation in North Point.

Information in the Left Column of the Publicity Leaflet	Remarks
	<p>➤ However, it should be noted that there will be temporary reclamation to be carried out in stages under Roads (Works, Use and Compensation) Ordinance for the Central-Wan Chai Bypass project. All these temporary reclamations will be removed upon the completion of each stage. Hence, not all the proposed reclamation will appear at the same time, and the maximum area will be 4.9 ha at any one time. In any event, the total permanent and temporary reclamations in Wan Chai and Causeway Bay do not add up to 21 ha.</p>
<p>北角 3.3 公頃 North Point 3.3 hectares</p>	<p>➤ Reclamation of 3.3 ha in North Point is included in the WDII project. See <u>Footnote 2</u>.</p>
<p>沙中線銅鑼灣填海範圍 ? 公頃 Reclamation of Shatin – Central Link on Causeway Bay ? hectares</p>	<p>➤ The alignment of the Shatin-Central Link (SCL) has yet to be gazetted. Based on the preliminary design of the Cross Harbour Section of SCL, there will be about 1ha and 2.6 ha of temporary reclamations at Hung Hom landfall and the Causeway Bay Typhoon Shelter respectively.</p>

(B) Information Printed on the Map in the Publicity Leaflet

Information Printed on the Map in the Publicity Leaflet	Remarks
<p>已刊憲的填海計劃(共 584 公頃) Gazetted Reclamations (total 584 hectares)</p>	<p>➤ Among the five GNs quoted in the publicity leaflet, only the one on Green Island Reclamation (Part) – Public Dumping (i.e. GN4228) is a GN for reclamation gazetted under FSRO, which is the only statutory authority for undertaking a reclamation proposal. The rest are GNs of OZPs to set out the proposed land uses of the concerned areas.</p>
<p>青洲填海 (190 公頃) 於 13/10/1995，政府公告 4228 Green Island Reclamation (190 hectares) Gazetted 13/10/1995, GN4228</p>	<p>➤ The proposed reclamation for Green Island gazetted under FSRO on 13.10.1995 under GN4228 would only involve reclamation of approximately 37 ha, not 190 ha as quoted in the publicity leaflet.</p> <p>➤ The gazettal had lapsed without the Chief Executive in Council's (CE in C) authorisation pursuant to section 8 of FSRO.</p>
<p>中環填海 (38 公頃) 於 29/05/1998，政府公告 2549 Central Reclamation (38 hectares) Gazetted 29/05/1998, GN2549</p>	<p>➤ The GN quoted (i.e. GN2549) is the draft Central District (Extension) OZP No. S/H24/1. It is not a gazetted reclamation under FSRO³.</p>
<p>九龍灣填海 (300 公頃) 於 04/09/1998，政府公告 4290 Kowloon Bay Reclamation (300 hectares) Gazetted 04/09/1998, GN4290</p>	<p>➤ The GN quoted (i.e. GN4290) is the draft Kai Tak (South) OZP No. S/K21/1. It is not a gazetted reclamation under FSRO⁴.</p>

³ The final reclamation proposal for Central Reclamation Phase III which involved 18 ha (not 38 ha) of reclamation was gazetted under FSRO on 30.6.2000 under GN4105.

⁴ There was only a FSRO gazettal involving 30 ha (not 300 ha) of reclamation for Kai Tak Approach Channel on 2.8.2002 under GN4710, but it had not been authorized. In any event, the final plan for Kowloon Bay/Kai Tak was zero reclamation.

Information Printed on the Map in the Publicity Leaflet	Remarks
荃灣填海 (30 公頃) 於 24/09/1999，政府公告 5483 Tsuen Wan Reclamation (30 hectares) Gazetted 24/09/1999, GN 5483	➤ The GN quoted (i.e. GN5483) is the Tsuen Wan OZP No. S/TW/11. It is not a gazetted reclamation under FSRO ⁵ .
灣仔填海 (26 公頃) 於 19/04/2002，政府公告 2272 Wan Chai Reclamation (26 hectares) Gazetted 19/04/2002, GN2272	➤ The GN quoted (i.e. GN2272) is the draft Wan Chai North OZP No. S/H25/1. It is not a gazetted reclamation under FSRO ⁶ .
建議中填海 (尚未刊憲) Proposed Reclamation Not yet Gazetted	➤ There is currently no proposed reclamation or “建議中填海” for Tsim Sha Tsui East and Kowloon Point as indicated on the site plan in the publicity leaflet. ➤ “Proposed Reclamation” or “建議中填海”, if any, for Tsim Sha Tsui East and Kowloon Point was contemplated in the early 1990s but has never been gazetted or authorized under FSRO, and/or included in the previous or current Tsim Sha Tsui OZP.

Development Bureau
March 2010

⁵ There was no gazettal of Tsuen Wan Reclamation under FSRO. In addition, the OZP was subsequently amended in 2003 under S/TW/19 to remove any indication of possible reclamation limit.

⁶ There was however a FSRO gazettal on 19.4.2002 under GN2298 which concerned reclamation of 28.5 ha for the WDII project, but the gazettal had lapsed without CE in C's authorisation in September 2003. The final reclamation proposal for WDII which involved a reclamation of 12.7 ha (not 26 ha) was gazetted under FSRO on 27.7.2007 under GN4790 and authorized by CE in C on 19.5.2009.

**Information about the Five Government Notices (GN)
Quoted in the Publicity Leaflet of the Society for Protection of the Harbour (SPH)**

	GN4228 published on 13.10.1995	GN5483 published on 24.09.1999	GN4290 published on 04.09.1998	GN2549 published on 29.05.1998	GN2272 published on 19.04.2002
1. Is the government notice (GN) a gazettal under the Foreshore and Sea-bed (Reclamations) Ordinance (FSRO) ?	<p>Yes. GN4228 published on 13.10.1995 was a FSRO gazettal of 37 hectares (ha) of proposed reclamation for Green Island, but not 190 ha as quoted in SPH's leaflet.</p> <p>The reclamation proposal of 37 ha had lapsed without the Chief Executive in Council's (CE in C) authorisation.</p>	<p>No. GN5483 published on 24.9.1999 was a gazettal of the approved Tsuen Wan Outline Zoning Plan (OZP) No. S/TW/11.</p> <p>Information about the then proposed reclamation limit of 30 ha appeared in the above-mentioned OZP had never been gazetted under FSRO.</p>	<p>No. GN4290 published on 4.9.1998 was a gazettal of the draft Kai Tak (South) OZP No. S/K21/1.</p> <p>Information about the then proposed reclamation limit of 300 ha appeared in the above-mentioned OZP had never been gazetted under FSRO¹.</p>	<p>No. GN2549 published on 29.5.1998 was a gazettal of the draft Central District (Extension) OZP No. S/H24/1.</p> <p>Information about the then proposed reclamation limit of 38 ha appeared in the above-mentioned OZP had never been gazetted under FSRO².</p>	<p>No. GN2272 published on 19.4.2002 was a gazettal of the draft Wan Chai North OZP No. S/H25/1.</p> <p>There was however a FSRO gazettal on 19.4.2002 under GN2298 which concerned reclamation of 28.5 ha for the Wan Chai</p>

¹ There was only a FSRO gazettal involving 30 ha (not 300 ha) of reclamation for Kai Tak Approach Channel on 2.8.2002 under GN4710, but it had not been authorized. In any event, the final plan for Kowloon Bay/Kai Tak was zero reclamation.

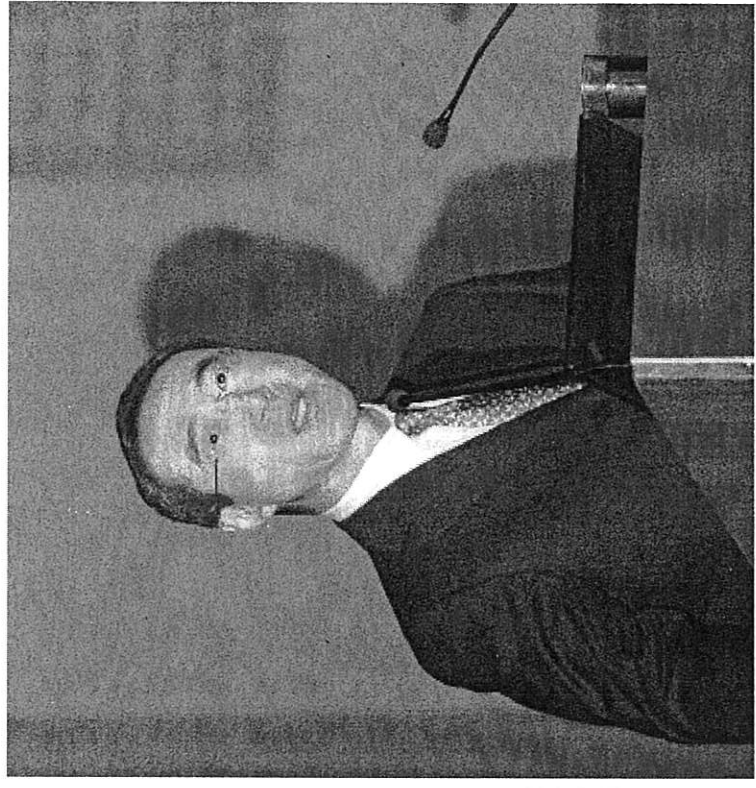
		GN4228 published on 13-10-1995	GN5483 published on 24-09-1999	GN4290 published on 04-09-1998	GN2549 published on 29-05-1998	GN2272 published on 19-04-2002	
							Development Phase II (WDII) project, but the gazetted had lapsed without CE in C's authorisation in September 2003.
2.	Whether any notice of objection was delivered to the Director of Lands under Section 6(1) of the FSRO?	Yes. About 1,100 objections were received (most objections were submitted through the "Campaign for Green Island Petition" organized by the "Campaign for Green Island") under S. 6(1) of FSRO.	N.A	N.A.	N.A.	N.A.	

² The final reclamation proposal for Central Reclamation Phase III which involved 18 ha (not 38 ha) of reclamation was gazetted under FSRO on 30.6.2000 under GN4105 and authorized by CE in C on 18.12.2001.

		GN4228 published on 13.10.1995	GN5483 published on 24.09.1999	GN4290 published on 04.09.1998	GN2549 published on 29.05.1998	GN2272 published on 19.04.2002
3.	Whether such notice of objection was valid and satisfied Section 6(2) of the FSRO?	Yes	N.A.	N.A.	N.A.	N.A.
4.	Whether any of such objections had been withdrawn pursuant to Section 6(3) of the FSRO?	No	N.A.	N.A.	N.A.	N.A.
5.	Whether any of these five reclamation proposals had ever been authorized by CE in C?	No	N.A.	N.A.	N.A.	N.A.

Development Bureau
March 2010

"The Government is firmly committed to enhancing the harbourfront for public enjoyment. I look forward to all Directors of Bureaux, Permanent Secretaries and Heads of Departments for their personal support and cooperation in realising our vision to create a vibrant, green, accessible and sustainable harbourfront."



Mr Henry Tang
Chief Secretary for Administration

*(Extract from General Circular No.3/2010
"Harbourfront Enhancement" signed off by the
Chief Secretary for Administration)*

