



保 護 海 港 協 會

Society for Protection of the Harbour

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Ms. Bernadette Linn Hon-ho (甯漢豪),
Secretary for Development, Development Bureau,
Central Government Offices, Hong Kong.

By Email & Post

9th August 2024

Secretary for Development,

**Re: Proposed Amendment of the Protection of the
Harbour Ordinance (“the PHO”) in respect
of Large Scale Reclamations**

We respectfully refer to your letters dated 29.7.2024 and 2.8.2024 as well as our past correspondence. We are taking legal advice on the legal and administrative matters raised by you and will give you a considered legal response in due course. At this time we simply wish to place the following matters on record:-

A. Government’s Failure to Respond to Our Society

Despite numerous serious communications with the Chief Executive-in-Council and yourself on this vital matter of the future of Victoria Harbour whereby our Society in the public interests had raised important legal and administrative issues in response to your Public Consultation exercise and despite the Government’s repeated promises of a substantive reply to these important issues, none had been forthcoming.

Hence at substantial costs our Society had to make known to the public the legal issues involved by our Public Questionnaire to the Secretary for Justice and to bring to public attention the factual background of harbour reclamation by press release.

B. Our Reference to Government’s Proposed Reclamation at Green Island is Justified by Government’s Own Announcements summarized as follows:-

- (a) Your Government had long made known to the public the plan for a Strategic Transport Infrastructure for connection between Kau Yi Chau Artificial Islands (“KYCAI”) and the transportation network on Hong Kong Island through the Green Island and Kennedy Town areas for which purpose your Government had appropriated \$550.4 Million of Public Funds.

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- (b) Your Government had issued repeated statements over the need for a rail and traffic interchange to enhance traffic and transport connectivity between the KYCAI and the Hong Kong transportation network. The enclosed plans published by your Government show extensive site investigations works being carried out around Green Island which may lead to Large Scale Reclamation Works being planned for that area.
- (c) In any event, your Government had already acknowledged that there will be Large Scale Reclamations at Green Island even though they might be temporary.
- (d) In the 2nd paragraph of your letter dated 2.8.2024 you had only mentioned “housing, commercial or industrial developments” but you had left out “large scale reclamation to form land for **transport infrastructure**”. Can you explain this omission as it supports the conclusion that is Government’s intention for Green Island.
- (e) Having regard to the above, unless and until the Government formally presents the Final Plan for Green Island for our scrutiny, we have to maintain our present position.

C. Your Misquoting Our Publication

In the penultimate paragraph of your letter dated 2.8.2024 you seriously misquoted us by stating that “*It is also incorrect for you to say in the advertisement that the PHO empowers the court to approve reclamation projects*”.

What we actually published was that “*The Ordinance empowers the independent Law Courts to decide whether a Government Large Scale Reclamation is lawful*”.

Our above statement is absolutely correct and represents the present law enshrined in the Judgment of the Court of Final Appeal. The role of the Law Courts is to enforce the PHO to protect the harbour by ensuring that the statutory “**presumption against reclamation**” is complied with by any proponent of reclamation whether Government or private enterprises.

Your mis-quote is crucial. The PHO is not an enabling ordinance but a restrictive and protective ordinance. This goes to the root of the legal dispute between us. The PHO is designed to control reclamation not to authorise it. The courts’ function imposed by the PHO as a Law of Hong Kong is to protect the harbour against unnecessary and/or excessive reclamation of the harbour.

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Therefore the Law Courts must independently and objectively decide whether the statutory presumption against reclamation has been rebutted from the public's point of view and not from the proponent's point of view.

The burden of proof must clearly be borne by the proponent in accordance with the legal pronouncement of the Court of Final Appeal which has already settled the Law.

D. "Misleading the Public"

Our Society have been anxious to bring accurate information to the public and to ensure that the information and proposals you have been circulating to the Legislative Councillors, the public bodies and the community are accurate legal and factual statements and not biased and misleading.

We are disappointed that you have not given us the opportunity of enlightening the public with the benefit of your response to us on the important legal and procedural issues we had raised. Hence it is debatable which of us is responsible for misleading the community.

E. Let us Join Hands to Protect the Harbour

The PHO that our Society had caused to be enacted had saved the harbour from becoming like a "Victoria River" by successfully stopping five Government and two private enterprise Large Scale Reclamation projects totalling over 600 hectares.

Should not both your Government and our Society work together for the good of Hong Kong in protecting and preserving our wonderful Victoria Harbour as we have done over the past 16 years since the end of the saga of litigation between us which had already clarified the law? Hence we do not understand why your present proposal to amend the PHO in respect of Large Scale Reclamations is necessary.

Yours faithfully,

c.c. Chief Executive-in-Council
Secretary for Justice

Winston Ka-Sun Chu, Vice Chairman,
Society for Protection of the Harbour

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