



# Public Engagement on Proposed Amendments to Protection of the Harbour Ordinance (Cap. 531)



Public Engagement Document

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發展局  
Development Bureau

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# Introduction

Have you noticed that a lot of public spaces and facilities have been added to the waterfront on both sides of Victoria Harbour in recent years? How do you think the harbourfront development can make a breakthrough in the future?



The Development Bureau (DEVB) and the Harbourfront Commission (HC) are committed to taking forward harbourfront development on both sides of the Victoria Harbour. In recent years, efforts have been made in creating “Harbourfront Shared Spaces” under an open management model, which are well-received by the public. At present, promenades of more than 25 kilometres have been opened on both sides of the harbour. It is expected that the total length of the harbourfront promenades will be extended to 34 kilometres in 2028.

It is encouraging to see the joy of visitors in having fun or taking photos for “checking in” with their family members or friends in the harbourfront areas, and we are keen to further improve facilities there to bring a better experience to visitors. However, with the stringent requirements under the Protection of the Harbour Ordinance (Cap. 531)(PHO) and relevant legal framework, it has been difficult in implementing enhancement measures that are convenient and beneficial to the public.

The Government has reviewed the PHO and proposed legislative amendments, emphasizing that the intention of the amendments was to improve harbourfront connectivity or enhance harbourfront areas for public enjoyment, and not for reclamation to provide land for sale or housing development.

This document aims to explain the proposed amendments to the PHO, and to invite comments from different sectors of the community and the public. We hope to better understand considerations from different perspectives when finalising the details of the proposal and to ensure that in future the PHO will achieve the dual objectives of maintaining the protection of the harbour while promoting harbourfront development.

For details on the public engagement activities for the proposed amendments to the PHO, please visit the dedicated website: <http://www.phoreview-pe.hk>

**Chapter**

# 1

# Background



- 1.1 Currently, reclamation works in the harbour are regulated by the Protection of the Harbour Ordinance (Cap. 531) (PHO)<sup>1</sup>. The boundaries of the harbour are defined in the Interpretation and General Clauses Ordinance (Cap. 1).

## **Birth of the Protection of the Harbour Ordinance**

- 1.2 As development progressed, there had been rising concerns for the protection and preservation of the Victoria Harbour in the 1990s. It was against such background that Hon Christine LOH, a Legislative Council (LegCo) member at the time, submitted the Protection of the Harbour Bill. The Protection of the Harbour Bill was passed to become the PHO in June 1997.
- 1.3 According to the Report of the Bills Committee on the Protection of the Harbour Bill in June 1997, the purpose of the Bill was “...to ensure that Victoria Harbour will be protected against excessive reclamation. It establishes a presumption against reclamation in the harbour...” .

## **Scope of application of the Protection of the Harbour Ordinance**

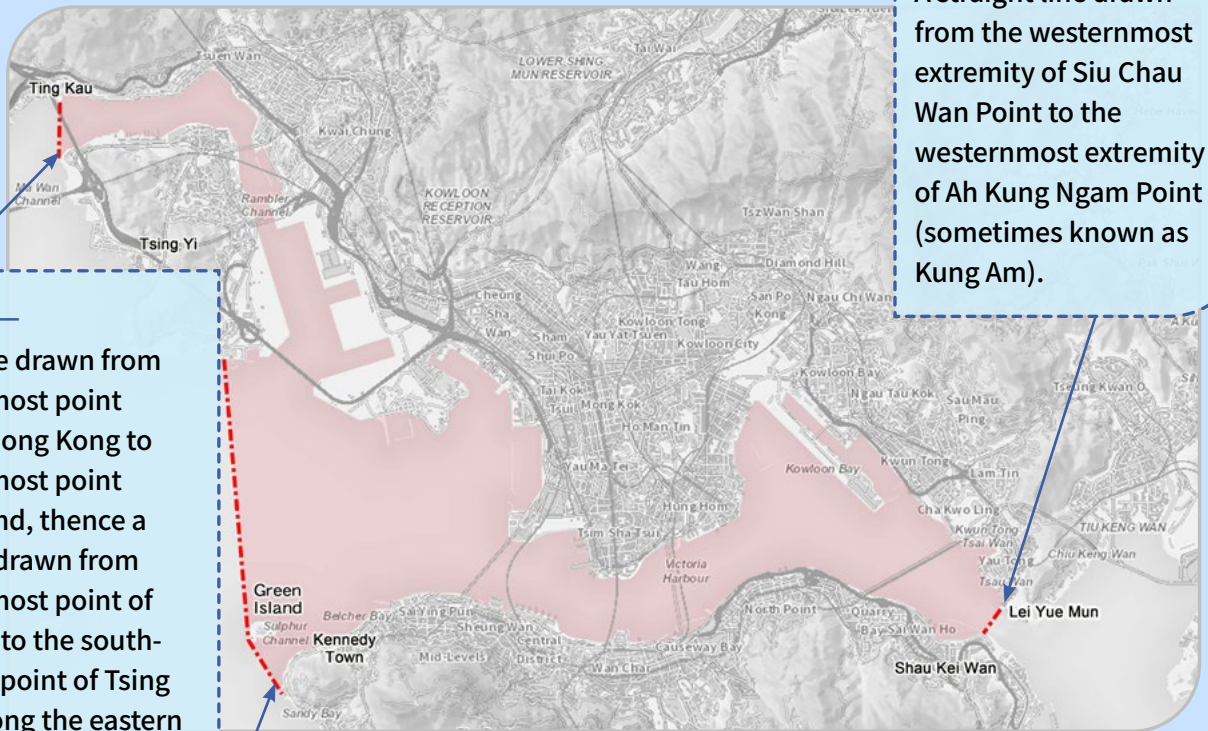
- 1.4 The “harbour” as referred to in the PHO means the waters of Hong Kong within the boundaries specified in Schedule 3 to the Interpretation and General Clauses Ordinance. The diagram below shows the area of the harbour governed by the PHO –

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<sup>1</sup> In Hong Kong, all reclamation works (i.e. including any work over and upon any foreshore and sea-bed), whether located within the harbour boundaries or not, are regulated by the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127).

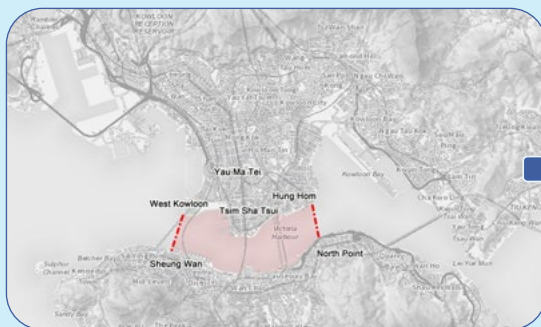
**On the east —**  
 A straight line drawn from the westernmost extremity of Siu Chau Wan Point to the westernmost extremity of Ah Kung Ngam Point (sometimes known as Kung Am).

**On the west —**  
 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.

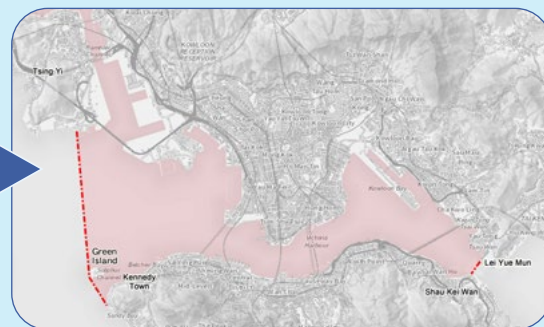


**😊 Do you know ?**

Upon its enactment in June 1997, the application of the PHO was limited to the central harbour. Subsequently, further legislative amendments were made in December 1999 to expand its scope to cover the whole of the harbour.



The harbour area subject to the PHO upon its enactment in June 1997



The harbour area subject to the PHO upon the amendments in December 1999

- 1.5 According to the PHO, “reclamation” is defined as “any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore” . “Foreshore and sea-bed” is defined in the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)(FS(R)O), which means “the shore and bed of the sea and of any tidal water within Hong Kong, below the line of the high water mark”.
- 1.6 The PHO has remained in force up to this day. Its implementation over the past two decades had been mainly shaped by two court judgments in 2004 and 2008 respectively. Relevant details are set out in Chapter 2.



**Chapter**

# 2

## **Requirements of the Protection of the Harbour Ordinance**



- 2.1 The PHO has only 4 sections with simple wording. Section 3 of the PHO imposes a “presumption against reclamation” in the harbour and requires all public officers and public bodies to have regard to this principle for guidance in exercising their powers. The PHO however does not specify the circumstances under which the presumption can be rebutted. The rebuttal of this presumption through the fulfillment of the “overriding public need” test was introduced in the judgment of the Court of Final Appeal in 2004.

## Protection of the Harbour Ordinance (Cap. 531) 13/12/2018

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]

(Format changes—E.R. 5 of 2018)

### 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; (Replaced 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);<sup>△</sup>
- (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)

Editorial Note:

\* Repealed — see 44 of 1999 s. 45.

<sup>△</sup> Repealed — see 7 of 2016 s. 19.

### 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)

## ***Court of Final Appeal (CFA)’s judgment in January 2004***

- 2.2 Arising from the proposed Central Reclamations (Phase 3) and Wan Chai Development (Phase 2), a judicial review was lodged in February 2003 regarding the Town Planning Board’s decisions that the two proposed reclamation projects were in compliance with the PHO.
- 2.3 In January 2004, the CFA handed down the judgment (the 2004 judgment), clarifying the interpretation of the statutory principles in the PHO. It held that the **presumption against reclamation could only be rebutted by establishing an overriding public need for reclamation**. There were three key concepts to explain this “overriding public need” –

**There is a compelling and present need:**

The need has to be compelling so that it has the requisite force to prevail over the strong public need for protection and preservation

**There is no reasonable alternative:**

Where there is a reasonable alternative to reclamation, an overriding need or reclamation would not be made out

**The extent of the proposed reclamation should not go beyond the minimum of that which is required by the overriding need**

- 2.4 There must be **cogent and convincing materials (CCM)** before the decision-maker to satisfy him that there is an “overriding public need” for reclamation so as to rebut the presumption against it.

## ***Court of First Instance (CFI)'s judgment in March 2008***

- 2.5 Subsequent to the 2004 judgment, another judicial review was lodged against the Government in respect of the **temporary reclamation** under the proposed road scheme of the Central-Wan Chai Bypass and the Island Eastern Corridor Link. Specifically, the applicant of the judicial review sought a declaration that the PHO did apply to the proposed temporary reclamation works.
- 2.6 The CFI delivered its judgment in March 2008 (the 2008 judgment), and held that there was no stated limitation on the nature of works; and the definition of “reclamation” encompassed any (and thereby “all”) works of reclamation, whether intended to be permanent or temporary, fall under the constraints of the PHO. However, the PHO provides that the works should be for a purpose, i.e. to form “land” .
- 2.7 The 2008 judgment has also elaborated on the meaning of “land” . As held in the 2008 judgment, what is or is not to be considered “land” is not defined in the PHO and accordingly, its ordinary meaning is to be adopted. In other words, each case would depend on its own facts and circumstances.

Chapter

# 3

## Justifications for amending the Protection of the Harbour Ordinance



3.1 The PHO has been effective in keeping reclamations in the harbour in check since its implementation over 20 years ago. In recent years, the general public has been calling for better facilities at the harbourfront to improve visitors' experiences. However, actual experience in developing the harbourfront in recent years has shown that many harbour enhancement works would inevitably involve "reclamation" as defined under the PHO, and are therefore subject to the "presumption against reclamation" principle and the "overriding public need" test in the same manner as large-scale works projects. While these harbour enhancement works are welcomed by the public, there is uncertainty as to whether they have an "overriding public need". It is also disproportionate to invest a large amount of resources for these projects to fulfill the stringent threshold of the "overriding public need" test. Therefore, in response to public demand, we consider that the PHO should be amended to enable a breakthrough in harbourfront development .

3.2 There are three key justifications for amending the PHO –

1 The "presumption against reclamation" principle and the high threshold of the "overriding public need" test **apply indiscriminately to all reclamation works in the harbour**, regardless of permanence, scale or nature

2 The "overriding public need" test and the stringent requirements of CCM require heavy investment of public money, time and human resources, **which hinders the implementation of many minor harbour enhancement projects** which only involve small-scale reclamation and have minimal impact on the harbour

3 Whether the reclamation project meets the "overriding public need" test **lacks a formal and standardised assessment mechanism**, thus lacking certainty

The above three points will be elaborated below.

1 ***Stringent threshold indiscriminately covers all reclamations in the harbour***

3.3 The 2004 judgment<sup>2</sup> explained that the "presumption against reclamation" could only be rebutted by establishing an "overriding public need" test; and there must be CCM before the decision-maker to satisfy him that there is an overriding public need to rebut the presumption. However, the PHO itself makes no differentiation in the application of "presumption against reclamation" to different works projects, and the principle of "overriding public need" and the requirement that there must be CCM apply across-the-board to all reclamations in the harbour. As explained in the 2004 judgment, to prove that the "overriding public need" test can be met, project proponents are required to substantiate not only the public need for the reclamation but that such public need is **compelling and present**; that there is **no reasonable alternative to reclamation**; and that the reclamation extent **should not go beyond the minimum of that which is required by the overriding need**.

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<sup>2</sup> See details in paragraphs 2.2 to 2.4 in Chapter 2.

- 3.4 Furthermore, the 2008 judgment<sup>3</sup> held that any (and thereby “all” ) works of reclamation, whether intended to be permanent or temporary, fall under the constraints of the PHO and are hence are subject to the “presumption against reclamation” principle, even though reclamation under PHO is defined as “any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore” .
- 3.5 Therefore, the “**presumption against reclamation**” applies indiscriminately to all reclamations in the harbour, regardless of permanence, scale or nature.

### Do you know ?

Since the 2004 judgment, five reclamation projects within the harbour have proceeded upon preparation of CCM demonstrating the “overriding public need” test being met –

- **Central Reclamation (Phase 3)**(commenced in 2003): involved permanent reclamation;
- **Wanchai Development (Phase 2)**(commenced in 2009): involved permanent and temporary reclamations; the cost for preparing CCM was about \$13.2 million;
- **Shatin to Central Link (SCL)**(commenced in 2014): involved temporary reclamation; the cost for preparing CCM was about \$700,000;
- **Central Kowloon Route (CKR)**(commenced in 2019): involved temporary reclamation; the cost for preparing CCM was about \$2.1 million; and
- **Boardwalk underneath the Island Eastern Corridor** (commenced in 2021): involved permanent reclamation; the cost for preparing CCM was about \$1.7 million.

As for the time taken to complete the entire CCM preparation, the duration varied depending on the complexity and circumstances of individual works projects.

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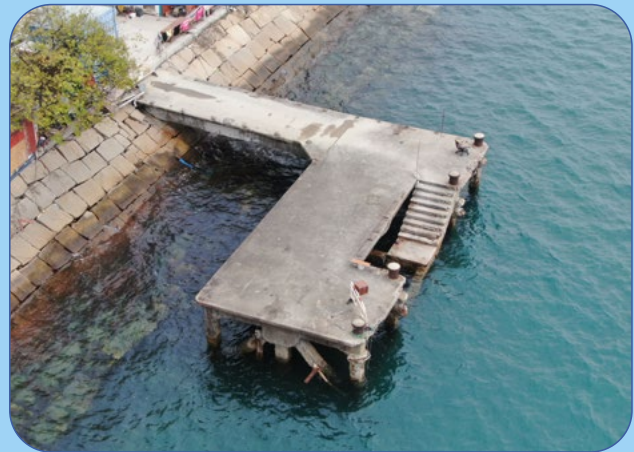
<sup>3</sup> See details in paragraphs 2.5 to 2.7 in Chapter 2.

## 2 *Deters minor harbour enhancement projects*

- 3.6 While the PHO and court judgments have been effective in keeping reclamations in check, the existing legal regime does not provide a less stringent threshold for smaller-scale reclamations to fulfil the demanding nature of the “overriding public need” test and the requirement of CCM, and have deterred many relatively minor harbour enhancement projects involving only small-scale reclamation and affecting the harbour to a minimal extent (e.g. construction of landing steps, pier enhancement, etc.).



**Construction of landing steps**



**Pier enhancement**

- 3.7 Some consider that the Government needs not worry about implementation of such works, so long as there are sufficient justifications. However, due to the stringent threshold of the PHO and the “overriding public need” test, there is uncertainty as to whether these works project would be legally challenged. Also, the CCM exercise often requires heavy investment of public funding, time and manpower resources, which are disproportionate to the value of minor projects and are not cost effective.
- 3.8 Contrasting with larger-scale reclamations supporting transport infrastructure (such as strategic roads) where the expected benefits are more quantifiable, the benefits for minor harbour enhancement works are usually intangible such as greater public enjoyment of the harbourfront, improved amenity, etc. It is difficult to quantify these benefits and to prove that the public need is “overriding”. Under such constraints, upon balancing public interests and priority in resource allocation, there is difficulty in implementing harbour enhancement projects involving small-scale reclamation in the harbour in an effective manner.



### 3

## ***Lack of a formal and standardised assessment mechanism***

- 3.9 While project proponents are required to substantiate in the CCM whether the “overriding public need” test could be fulfilled, the 2004 judgment does not specify how the CCM so prepared were to be assessed and approved by a higher authority. Generally speaking, as per existing practice, individual works department initiating the reclamation will prepare CCM through conducting technical assessments and public consultation, in order to satisfy that the project has an “overriding public need” . In other words, **given the lack of a formal and standardised assessment mechanism, whether the reclamation project fulfills the “overriding public need” test is solely assessed by the proposing department.**
- 3.10 In constrast, under the FS(R)O, public comments processed by project proponents will be put to the Chief Executive-in-Council (CE-in-C) for consideration. The CE-in-C will decide whether objections to the works should be over-ruled and whether the proposed project should be approved.

Chapter

# 4

## Proposed framework of legislative amendments



4.1 The Government has made policy manifestations that it **will not initiate large-scale reclamation in the harbour to form land for housing, commercial or industrial developments, etc.** At the same time, we will maintain the boundaries of the harbour to be subject to the PHO (i.e. the “harbour” as defined under the Interpretation and General Clauses Ordinance).

4.2 Under the above principles, we propose amending the PHO in **2 strategic directions**:

- for large-scale reclamations which should be regulated, the “overriding public need” requirement shall be maintained and the relevant mechanism would be strengthened;
- for works which would strengthen the harbour functions, improve harbourfront connectivity or help people better enjoy the harbourfront, they should be facilitated in a reasonable manner through introducing a streamlined mechanism to promote the implementation of these harbour enhancement works.

4.3 Specifically, the Government’s proposed amendments to the PHO fall into **three categories** –



### Large-scale reclamation projects

4.4 Based on the fundamental principle of protecting the harbour against excessive reclamation, we propose that **all large-scale reclamations in the harbour will continue to be subject to the stringent threshold of “presumption against reclamation” principle and the “overriding public need” test.** New requirements will also be added to **introduce public engagement opportunities and to formalise the assessment mechanism** through replacing the self-assessment arrangement by individual departments with CE-in-C being the assessment authority regarding the fulfillment of the “overriding public need” test.

## \* Details of the proposal

- 4.5 Except for **harbour enhancement works**<sup>4</sup> and **non-permanent reclamation works**<sup>5</sup> meeting specific criteria, all **reclamation works** in the harbour shall continue to be subject to the “presumption against reclamation” principle and have to fulfil the “overriding public need” test. For clarity, the principles and considerations as set out in the 2004 judgment (i.e. the public need must be compelling and present; there is no reasonable alternative to reclamation; and the reclamation extent should not go beyond the minimum of that which is required by the overriding need, as well as the requirement that there must be CCM) will be reflected in the PHO.
- 4.6 To provide a proper mechanism for assessing whether the works projects fulfil the “overriding public need” test, it will be specified in the PHO that the assessment will be made by the CE-in-C. In the decision-making process, CE-in-C will take into account the CCM prepared by project proponents and public comments received during the 2-month period as mentioned in paragraph 4.7 below.
- 4.7 To enhance certainty and transparency, a new mechanism with time limits will be set up under the PHO to govern the exhibition, submission and consideration of the CCM. Specifically, project proponents should exhibit the CCM for public inspection and comment for 2 months and submit the CCM together with public comments received to CE-in-C within the following 5 months or any extended period for it to decide whether the “overriding public need” test has been fulfilled.
- 4.8 Apart from receiving public comments during the above 2-month period, project proponents should continue the established administrative arrangements of consulting key stakeholders, including the HC and District Councils. Besides, in finalising the CCM, project proponents will continue to consult relevant stakeholders and collate their views on the need for reclamation.

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<sup>4</sup> See paragraphs 4.10 to 4.13 below.

<sup>5</sup> See paragraphs 4.14 to 4.19 below.

## ❄️ Comparison of arrangements before and after the proposed amendments to the PHO

	Existing arrangement	New arrangement upon proposed legislative amendment
Legal threshold	<ul style="list-style-type: none"> <li>➤ Subject to the “<b>presumption against reclamation</b>” principle</li> <li>➤ <b>Must satisfy the “overriding public need” test (as set out in the 2004 judgment)</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Subject to the “<b>presumption against reclamation</b>” principle</li> <li>➤ Must satisfy the “<b>overriding public need</b>” test (to be stipulated in the PHO)</li> </ul>
Whether the “overriding public need” test is satisfied	Approved by the <b>proposing department</b>	Approved by the <b>CE-in-C</b> , thus standardising the mechanism
Public participation	<ul style="list-style-type: none"> <li>➤ Consult stakeholders during the preparation of CCM</li> <li>➤ The PHO does not govern the procedures/ timeframe for public inspection of the CCM</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Legal requirement:</b> to exhibit the CCM and provide 2 months for public inspection and comment</li> <li>➤ <b>Administrative arrangement:</b> to consult the HC, relevant District Councils and stakeholders</li> </ul>
Can lodge judicial review?	Yes	Yes

## ❄️ Example of works projects

4.9 We envisage that examples in this category include large-scale reclamations for the purpose of forming land for roads and other infrastructure, etc. For example, the proposed works for constructing a **pedestrian cum cyclist bridge with travellers across Kwun Tong Typhoon Shelter** would fall within this category.



## The pedestrian cum cyclist bridge with travellers across Kwun Tong Typhoon Shelter

### ? Q&A ?

**Q: Will the proposal weaken the regulation of large-scale reclamations and replace the court in approving such works?**

**A:** No! Under the premise of protecting the harbour, there are two objectives of the amendments: to strengthen the mechanism for those works that need to be regulated; and to facilitate harbour enhancement works which are beneficial to the society. The proposal will not weaken, but strengthen, the regulation of large-scale reclamations in the following aspects:

- 1 The “overriding public need” requirement and the considerations laid down by the court earlier will be formally written into the law;
- 2 The assessment concerning fulfillment of the “overriding public need” test is to be made by the CE-in-E, which will tighten the current arrangement of self-assessment by departments;
- 3 Statutory procedures on consultation arrangement, including on public participation, will be incorporated into the law. The department must display the CCM for 2 months to allow the general public to express their opinions, and then submit the CCM and public opinions to the CE-in-C within 5 months; and
- 4 The current law does not require the court to approve reclamation projects. It has always been up to the Government to decide whether to take forward such projects. The role of the court is to process judicial review applications filed by the public against individual reclamation projects. The proposed legislative amendments will not change this arrangement. Members of the public can still lodge a judicial review against a reclamation project if they have justifications, and the case will be handled by the court.

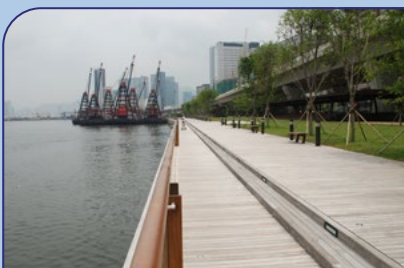
## Harbour enhancement works involving reclamation

4.10 To facilitate **harbour enhancement works** involving small-scale reclamation, we propose setting out the categories of works in the form of a statutory list in the PHO. If a works project in the harbour falls within the categories on the list and the area of reclamation involved is not more than the statutory limit (preliminary proposal is 0.8 hectare) and is approved by a Secretary-level government official (e.g. the Financial Secretary), such works may be exempted from the “presumption against reclamation” principle and the “overriding public need” test.

### \***Details of the proposal**

4.11 **Harbour enhancement works** meeting the criteria as set out below are proposed to be exempted from the “presumption against reclamation” principle and the “overriding public need” test -

- (i) to ensure appropriate internal checks and balances, exemption for **harbour enhancement works** under the streamlined procedures may be granted by a **Secretary-level government official (e.g. the Financial Secretary)**, subject to him being satisfied that the **harbour enhancement works** meeting the requirements in (ii) to (v) below and relevant works are justified;
- (ii) to limit the scale of works to be eligible for the said exemption, we propose imposing a limit on the total area of reclamation in the works involved. The preliminary proposal is **not more than 0.8 hectare (roughly about the size of a standard football pitch)**;
- (iii) **harbour enhancement works** should fall within the works set out in a **prescribed list** in a schedule to the PHO. The works on the prescribed list aim to enhance the public enjoyment of the harbour (such as through enhancing connectivity, increasing vibrant harbourfront spaces and improving water-land interface); and/or enhance the functions of the harbour as a working harbour (in terms of marine access, navigation, extreme climate risk mitigation and fishery operation, etc.). Specifically, we propose including the following types of **harbour enhancement works** –



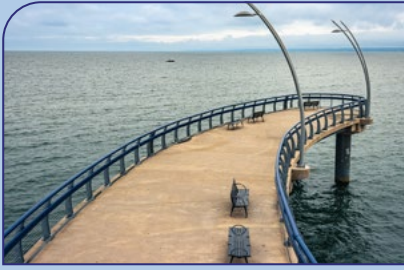
Promenade/boardwalk



Cycle track



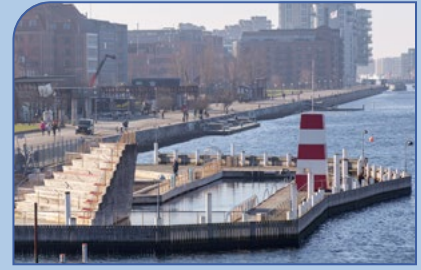
Floating pontoon



**Viewing deck**



**Harbour steps**



**Harbour pool**



**Pier**



**Landing steps**



**Slipway**



**Mooring**



**Typhoon shelter**



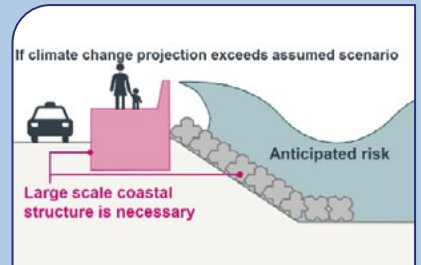
**Breakwater**



**Seawall**



**Facilities supporting users and operations at sea, including water selling kiosk and petrol stations**



**Facilities for mitigating extreme climate risks, e.g. wave wall to prevent flooding in low-lying areas**

- (iv) the Development (Town Planning, Lands and Works)(Miscellaneous Amendments) Bill 2022 proposes setting up a mechanism to process “minor works” to be added in the FS(R)O<sup>6</sup>. It is proposed that in future such “minor works” in the harbour may be exempted from the “presumption against reclamation” principle and the “overriding public need” test through approval by a Secretary-level government official; and

<sup>6</sup> In the Development (Town Planning, Lands and Works) (Miscellaneous Amendments) Bill 2022, a new provision will be added to the FS(R)O to empower the Director of Lands to authorise minor works (i.e. with works area not more than 0.5 hectare) without gazettal and objection-receiving procedures. A total of 10 types of works are specified in the new schedule, namely landing steps; harbour steps; slipways; mooring dolphins; beacons; floating pontoons; submarine pipelines or outfall; diffuser for open sea discharge; seawater intakes; and peripheral structure or feature associated with a marine structure.



- (v) works to be exempted include works for the construction, repair, maintenance and demolition of the structures, features or devices within the works area, non-permanent reclamation required to implement such works (such as construction of temporary working platform), as well as relevant public amenities (such as food and beverage facilities).
- 4.12 Any change to be made to the list mentioned in paragraph 4.11(iii) will be subject to negative vetting by the Legislative Council (LegCo). The Government cannot amend the list by itself.
- 4.13 We will continue to attach importance to public engagement in the process of implementing the said **harbour enhancement works**. According to established practice, project proponents should consult the HC, relevant District Councils and stakeholders to gauge their views on the project.

 **Do you know ?**

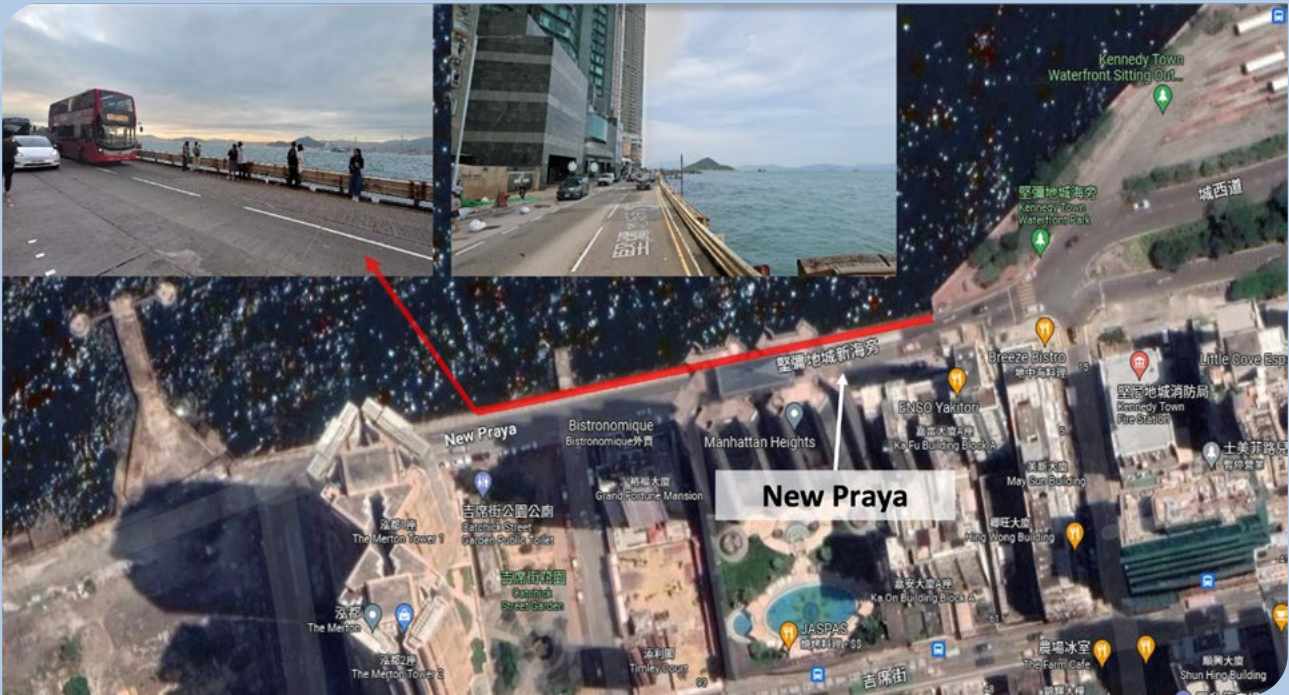
In future, even if a **harbour enhancement works** is exempted from the “presumption against reclamation” under the PHO, such works project must still continue to comply with other relevant statutory requirements (such as gazettal and the receiving and considering of objections as required under the FS(R)O).

**\*\* Comparison of arrangements before and after the proposed amendments to the PHO**

	Existing arrangement	New arrangement upon proposed legislative amendment
Legal threshold	<p>Subject to the “presumption against reclamation” principle and must satisfy the “<b>overriding public need</b>” test</p> <p>→ However, for most projects, there is uncertainty as to <b>whether the public need is “overriding”</b>. Coupled with resource considerations, these projects have not been implemented</p>	<p><b>To introduce a streamlined mechanism:</b> proponents may apply for exemption from the “presumption against reclamation” principle and the “overriding public need” test, provided that –</p> <ol style="list-style-type: none"> <li>1. the project falls within the categories of harbour enhancement works on the <b>statutory list</b>;</li> <li>2. area of reclamation is <b>not more than the statutory limit</b> (preliminary proposal is 0.8 hectare); and</li> <li>3. the project must be <b>approved by a Secretary-level government official</b>, who may not grant the exemption</li> </ol>
Public participation	<p>➤ Consult stakeholders in the preparation of CCM</p>	<p>➤ <b>Legal requirement:</b> shall continue to meet other legal requirements (e.g. gazettal and the receiving of public views as required under the FS(R)O)</p> <p>➤ <b>Administrative arrangement:</b> consult the HC, relevant District Councils and stakeholders</p>
Can lodge judicial review?	Yes	Yes

**\*\* Example of works projects**

**Example 1 Boardwalk to enhance harbourfront connectivity in Kennedy Town**



**Example 2 Revitalisation of the Kowloon City Vehicular Ferry Pier**



**Example 3 Enhancement of the old pier at the former Kai Tak Runway**



**Example 4 Enhancement/improvement of the four old piers near Cadogan Street in Kennedy Town**



**Example 5 Extension of harbour steps at the Water Sports and Recreation Precinct (WSP) in Wan Chai and Revitalised Typhoon Shelter Precinct (RTSP) in Causeway Bay**

**WSP, Wan Chai**  
(existing conditions)



**RTSP, Causeway Bay**  
(existing conditions)



**Example 6 Provision of harbour steps outside the Celebration Precinct outside the Hong Kong Convention and Exhibition Centre (HKCEC)**

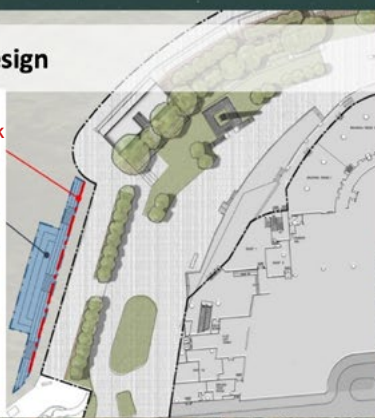
**Celebration Precinct**  
(Existing conditions)



**Possible design**

High water mark

Proposed  
harbour  
steps



**Example 7 Enhancement of landing steps in the Celebration Precinct in Wan Chai**

**Existing conditions**

Landing steps are set back into pavement to avoid constituting “reclamation” under PHO.

**Possible improvement**

To construct new landing steps (in red) and restore the original area (in purple) for shared-use zone.



**Example 8 Enhancement of slipway at the public open space developed by private developer (POSPD) at Area 4B3 at the former Kai Tak Runway**



## ? Q&A ?

**Q: Would the streamlined procedure for handling harbour enhancement works involving reclamation benefit private developers rather than the society as a whole?**

**A:** While the proposal is drawn up with reference to works projects initiated by the Government, whether the project is led by the Government or by private developer is beyond the point. The focus is whether the project can help the public better enjoy the harbour or enhance the functions of the harbour. We do not consider that non-government projects should be ruled out so long as they help to achieve the above objectives (e.g. ship repair operations that must operate along the harbour may require reclamation to provide slipways). When the Secretary-level government official handles the application for exemption from a non-government project, one of the considerations would be whether the project would provide public gain.

## Non-permanent reclamation works

- 4.14 As a result of the 2008 judgment, **non-permanent reclamations** are also subject to the “presumption against reclamation” principle and the “overriding public need” test. To give an example, **non-permanent reclamations** are usually undertaken to construct temporary working platforms in the harbour for implementing transport infrastructure projects, such as road tunnels. As the affected part of the harbour would be reinstated upon completion of works, they do not cause irrevocable damage to the harbour area.
- 4.15 Therefore, we propose that for **non-permanent reclamation works** in the harbour, if the area of the harbour so affected at any point in time will not be more than the statutory limit (preliminary proposal is 3 hectares) with a duration of not more than the statutory limit (preliminary proposal is 3 years), such non-permanent reclamations may be exempted from the “presumption against reclamation” principle and the “overriding public need” test. Similarly, to provide appropriate internal checks and balances while streamlining the procedures, such works may be exempted by a Secretary-level government official (e.g. the Financial Secretary).

## \* Details of the proposal

- 4.16 We propose that **non-permanent reclamation works** meeting the criteria as set out below, whether related to **harbour enhancement works** or not, may be exempted from the “presumption against reclamation” principle and the “overriding public need” test –
- (i) in a works project involving **non-permanent reclamation**, the area affecting the harbour at any point in time shall **not be more than the statutory limit (preliminary proposal is 3 hectares)**;
  - (ii) in the same works project, duration of each phase of **non-permanent reclamation** shall **not exceed the statutory limit (preliminary proposal is 3 years, starting from the time when the works begin affecting the harbour until the time when the works are dismantled and the relevant part of the harbour is reinstated to its original state)**; and

- (iii) similar to the proposal for **harbour enhancement works**, to ensure appropriate checks and balances, exemption for **non-permanent reclamations** may be granted by a Secretary-level government official (e.g. the Financial Secretary), subject to him being satisfied that **non-permanent reclamations** meeting the requirements in (i) and (ii) above and relevant works are justified.

4.17 As per established practice, project proponents will continue the current practice of conducting public consultation on projects of this category, including consultation with the HC, relevant District Councils and stakeholders.

**\* Comparison of arrangements before and after the proposed amendments to the PHO**

	Existing arrangement	New arrangement upon proposed legislative amendment
Legal threshold	<p>Subject to the “presumption against reclamation” principle and must satisfy the “overriding public need” test</p> <p>→ However, the purpose of works is <b>not to “form land”</b>, and the harbour area affected by the works will be reinstated upon completion of works</p>	<p><b>To introduce a streamlined mechanism:</b> proponents may apply for exemption from the “presumption against reclamation” principle and the “overriding public need” test, provided that, within a project, –</p> <ol style="list-style-type: none"> <li>1. area of reclamation at any point in time is <b>not more than the statutory limit</b> (preliminary proposal is 3 hectares);</li> <li>2. <b>duration of non-permanent reclamation at each phase is not more than the statutory time limit</b> (preliminary proposal is 3 years); and</li> <li>3. the project must be approved by <b>Secretary-level government official</b>, who may not grant the exemption</li> </ol>
Public participation	Consult stakeholders in the preparation of CCM	<ul style="list-style-type: none"> <li>➤ <b>Legal requirement:</b> shall continue to meet other legal requirements (e.g. gazettal and the receiving of public views as required under the FS(R)O)</li> <li>➤ <b>Administrative arrangement:</b> consult the HC, relevant District Councils and stakeholders</li> </ul>
Can lodge judicial review?	Yes	Yes



## ❁ Example of works projects

4.18 In formulating this proposal, we have made reference to the temporary reclamation works in the Central Kowloon Route (CKR) Project, which involved two phases of **non-permanent reclamation** works, each of which involved a reclamation period of less than 3 years, while the harbour area affected by **non-permanent reclamation** works in each phase is less than 3 hectares.



**Temporary reclamation of CKR - Phase 1 (November 2019)**



**Temporary reclamation of CKR - Phase 2 (November 2022):**  
Temporary structures from Phase 1 (i.e. circled on the right) have been removed and the seabed reinstated



**Completion of temporary reclamation of CKR (conceptual diagram for reference only):**  
All temporary structures will be removed completely and the seabed will be reinstated

4.19 Should the above legislative proposals be adopted and subject to further feasibility study, we expect that projects that would benefit from the proposal would include, as an example of potentially applicable projects, the **extension of the cycle tracks in Tsuen Wan** which involves **non-permanent reclamation**.



### Non-permanent reclamation involved in the extension of the cycle tracks in Tsuen Wan

(For details, please visit: <https://www.twtm-cycletrack.hk/assets/img/consult/Leaflet.pdf>)

## ? Q&A ?

**Q: Do the proposed amendments intend to pave the way for the strategic road links of Kau Yi Chau Artificial Islands (KYCAI)?**

**A:** No! The Government has publicly stated that it has already started preparing the CCM to prove that the non-permanent reclamation required by the KYCAI road links, which will affect the Belcher Bay waterfront in the Central and Western District, has an “overriding public need” in accordance with the prevailing requirements. Regardless of the progress of the legislative amendments in future, the work on the CCM preparation will continue and the justifications will also be made public.

## 😊 Do you know ?

In future, even if a **non-permanent reclamation works** is exempted from the “presumption against reclamation” principle under the PHO, such works project **must still continue to comply with other relevant statutory requirements** (such as gazettal and the receiving and considering of objections as required under the FS(R)O).

# Chapter 5

## Share your views



5.1 We welcome all sectors of the community and the public to express their views on the proposed amendments to the PHO through the following channels, so that we can better understand the considerations from different perspectives when finalising the details of the proposal, and ensure that in future the PHO will maintain the protection of the harbour while promoting harbourfront development along the Victoria Harbour:

(i) Fill out the “Views Collection Form”

1. Scan the QR code on this page; or
2. Fill out the electronic version of the “Views Collection Form” on the dedicated website of the public engagement activities and submit it upon completion; or download the “Views Collection Form” in PDF format and send the completed form to DEVB by email, post or fax;



Dedicated website of the public engagement activities –  
<http://www.phoreview-pe.hk>

(ii) Participate in town hall sessions, details of which will be announced on the dedicated website;

(iii) Submit comments by email, post or fax.

5.2 In addition, you are welcome to express your views on the proposed amendments to the PHO in the following ways:

- Email: [phoreview@devb.gov.hk](mailto:phoreview@devb.gov.hk)
- Mail: Harbour Office of the Development Bureau  
Room 1106-07, 11/F, Wing On Kowloon Centre,  
345 Nathan Road, Kowloon
- Fax: 3621 0634

5.3 Please note that the DEVB would wish, either in discussion with others or in any subsequent report, whether privately or publicly, to be able to refer to and attribute views submitted in response to this PE document. Any request to treat all or part of a response in confidence will be respected; but if no such request is made, it will be assumed that the response and the identity for submitting such response is not intended to be confidential.

5.4 The names and comments (except personal data) provided by individuals or groups to the DEVB in the course of the public engagement will be deemed as agreed to be disclosed, either wholly or partly, to the public (including disclosure on the relevant websites). If you do not wish such information to be disclosed, please advise us at the time of submission.

- Thank you for your comments and support ! -

