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Development Bureau
Technical Circular (Planning and Lands) No. 1/2025

Protection of the Harbour Ordinance

Purpose

With a view to providing guidance to project proponents and to public officers and public bodies in exercising powers or discharging duties under the Protection of the Harbour Ordinance (Cap. 531) (“PHO”), this technical circular (“Circular”) sets out the operational details and administrative requirements of the PHO for reference. However, it should not be treated as legal interpretations of the PHO and compliance with guidelines herein does not supersede the duty to comply with relevant statutory and legal requirements. This Circular should be read in conjunction with the relevant sections in the PHO and legal advice should be sought in case of doubt.

Effective Date

2. This Circular takes immediate effect upon publication on 18 July 2025.

Effect on Existing Circulars

3. In respect of the administrative arrangements of the PHO, this Circular supersedes HPLB & ETWB Technical Circular No. 1/04 on Protection of the Harbour Ordinance.

PART 1: Introduction

Government’s position on reclamation in the harbour (“harbour reclamation”)

4. The Government has no plan to initiate large-scale harbour reclamation to form land for housing, commercial or industrial developments. The Protection of the Harbour (Amendment) Ordinance 2025, which came into force on 16 May 2025, mainly introduces the mechanisms to regulate harbour reclamations, including a mechanism to determine whether the presumption against harbour reclamation under section 3(1) of the PHO (“the Presumption”) is rebutted, and a mechanism to exempt harbour enhancement reclamations (“HERs”) and harbour non-permanent reclamations (“NPRs”) from the Presumption.

Applicable scope of the PHO

5. Reclamation within Hong Kong waters, regardless of scale, initiated by the Government or a private proponent, may be authorized or directed under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127), Roads (Works, Use and Compensation) Ordinance (Cap. 370) and Railways Ordinance (Cap. 519)¹ (hereinafter referred as “enabling Ordinances”). If the reclamation takes place within the harbour and falls within the definition under the PHO, it will be subject to the additional controls under the PHO.

6. The boundaries of the harbour are defined in section 3 of and Schedule 3 to the Interpretation and General Clauses Ordinance (Cap. 1) (see **Annex 1.2**).

7. “Reclamation” defined under the PHO means “any works carried out or intended to be carried out for the purpose of forming land from the sea-bed or foreshore”. Furthermore, “sea-bed or foreshore” is defined as “the bed or shore of the sea and of any tidal water within Hong Kong, below the line of the high water mark”. As interpreted in the relevant court judgment in 2008², the reasonable man can tell well enough what is or is not “land”. Therefore, whether particular works are for the purpose of “forming land” from the sea-bed or foreshore has to be determined case by case based on its own facts and circumstances. As an example, construction works of floating pontoons that do not involve reclamation in that they are not formed from the sea-bed or foreshore, or

¹ According to section 2 of Cap. 127 and section 2 of Cap. 519, in those Ordinances, unless the context otherwise requires, “reclamation” “includes any work over and upon any foreshore and sea-bed”.

² *Society for Protection of the Harbour v Secretary for Justice* [2008] 4 HKLRD 417 (HCAL 116/2007, 20 March 2008).

construction works of cantilever structure which merely puts its shadow on the harbour and do not constitute reclamation as defined in the PHO, will not be caught by the PHO. As regards works for repairing, maintaining and demolishing structures (e.g. pier), if they are not for the purpose of forming land, they will not be “reclamation” as defined in the PHO, and are not subject to the Presumption and do not require an exemption to be granted by the Financial Secretary (“FS”). Further to the factual and technical assessment, in case of doubt on whether certain works would constitute reclamation, advice of the Department of Justice (“DoJ”) may be sought on the interpretation of the PHO if necessary.

Application of the presumption against harbour reclamation under section 3(1) of the PHO

8. Section 3(1) of the PHO establishes a statutory presumption against harbour reclamation (i.e. the Presumption) for protecting and preserving the harbour as a special public asset and a natural heritage of Hong Kong. Section 3(2) of the PHO imposes a statutory duty on all public officers and public bodies to have regard to the Presumption for guidance in the exercise of any powers conferred on them unless section 3(2)(a), (b) or (c) of the PHO applies.

9. As provided by sections 3(3) and (4) of the PHO, a **specified officer** should not propose or carry out (including authorizing any other person to do so) any harbour reclamation (as defined in the PHO) unless (a) the Chief Executive in Council (“CE-in-C”) has determined under section 3H of the PHO that the Presumption is rebutted for the harbour reclamation; or (b) the harbour reclamation is exempt under Part 4 of the PHO from the Presumption by the FS³; or (c) the harbour reclamation is allowed to continue to be carried out under section 3Y(2) of the PHO. Even if the Presumption is determined to be rebutted or an exemption is granted under the PHO for a harbour reclamation, the works must still fulfil all the other applicable legal requirements, which may include the requirements under the Town Planning Ordinance (Cap. 131) (if preparation of statutory plan is involved or planning permission for the proposed use on the reclamation is required), the Environmental Impact Assessment Ordinance (Cap. 499) and the respective enabling Ordinance, etc. If town planning procedures under the Cap. 131 or an environmental impact assessment under the Cap. 499 is required for the harbour reclamation, the preparation of plans or seeking of planning permission under

³ As an administrative requirement, the CE-in-C’s determination and the FS’ decision under the PHO will be reported to the Panel on Development of the Legislative Council (“LegCo”) and the Harbourfront Commission (“HC”) regularly. Harbour Office of the Development Bureau (“DEVB(HO)”) will coordinate for the reporting.

the Cap. 131⁴ and the submission of the environmental impact assessment report under the Cap. 499⁵ should proceed after the CE-in-C has determined that the Presumption is rebutted for the harbour reclamation or the harbour reclamation is exempt from the Presumption. The time required for all necessary statutory procedures should be well taken into account to facilitate the implementation of the projects as scheduled.

9.1 Specified officer

9.1.1 “**Specified officer**” is defined under section 2 of the PHO to include the Director of Lands (“DL”) in relation to a reclamation that may be proposed under Cap. 127 or a reclamation that may be authorized under section 16A of Cap. 127, and the Secretary for Transport and Logistics (“STL”) in relation to a reclamation that may be directed under section 17 of Cap. 370 or a reclamation that may be authorized under section 22 of Cap. 519, because they are officers vested with the statutory power to propose reclamation or works involving reclamation under the respective enabling Ordinance.⁶ However, in practice, the **initiating party** of a harbour reclamation is usually a director of a works department or a proponent of a private project (“private proponent”).⁷

⁴ As permitted by section 3Z of the PHO, which provides that the fact that no draft plan, approved plan or partly approved plan within the meaning of the Cap. 131 has been prepared under the Cap. 131 in relation to any part of the harbour does not prevent any of the following from being done under the PHO in respect of a reclamation in such part of the harbour— (a) the making of an OPNA report; (b) the making of an application for an HER exemption or an application for an NPR exemption; (c) the determination under section 3H of the PHO; (d) the decision in respect of an HER exemption under section 3L of the PHO; (e) the decision in respect of an NPR exemption under section 3O of the PHO.

⁵ With reference to the reclamations that had been conducted under the PHO before the commencement of the Protection of the Harbour (Amendment) Ordinance 2025, the cogent and convincing materials that demonstrated a rebuttal of the Presumption were usually published before the environmental impact assessment report was exhibited for public inspection under the Cap. 499.

⁶ In relation to a reclamation that may be directed or authorized under or otherwise provided for in any other Ordinance, “specified officer” is defined under section 2 of the PHO to mean a public officer who may propose or carry out the reclamation under that Ordinance.

⁷ Pursuant to section 2A(1) of the PHO, a specified officer for a harbour reclamation may act under the PHO in relation to the reclamation even though the reclamation may be proposed by the specified officer to be carried out by a person who is not a public officer (e.g. a private proponent, with policy support (if any)) or a public on the specified officer’s behalf (e.g. a public officers of a works department) and the PHO applies to the reclamation.

9.1.2 A specified officer may authorize a public officer to exercise or perform any of the powers or duties conferred or imposed on the specified officer under the PHO pursuant to section 2A(2) of the PHO⁸. Schedules of public officers authorized by the DL or the STL for the above purposes are at **Annex 1.3A** and **Annex 1.3B**.

9.1.3 For ease of reference, the “**specified officer**” and “**initiating party**” mentioned hereinafter refer to the following parties–

	Specified officer	Initiating party
Public works	Director of the works department initiating the reclamation, who is a public officer authorized to exercise or perform the powers or duties conferred or imposed on the specified officer under the PHO (as set out in <u>Annex 1.3A</u> and <u>Annex 1.3B</u>) by the specified officer pursuant to section 2A(2) of the PHO.	Director of the works department initiating the reclamation
Private works ^{8&9}	DL or a public officer of LandsD , who– (i) in relation to a reclamation that may be proposed under Cap. 127 or a reclamation that may be authorized under section 16A of Cap. 127, is a specified officer or is authorized by the DL to exercise or perform the powers or duties conferred or imposed on the DL as a specified officer under the PHO (as set out in <u>Annex 1.3A</u>); and (ii) in relation to a reclamation that may be directed under section 17 of Cap. 370, is authorized by the STL to exercise or perform the powers or duties conferred or imposed on the STL as a specified officer under the PHO (as set out in <u>Annex 1.3B</u>).	Private proponent initiating the reclamation, with support from policy bureau (if any)

⁸ In respect of any proposed harbour reclamation or works involving harbour reclamation for a public project, the director of the works department initiating the public project would be authorized by the DL or the STL as set out in **Annex 1.3A** and **Annex 1.3B** to exercise or perform any of the powers or duties conferred or imposed on the specified officer under the PHO. For the sake of administrative clarification, the director of the works department has to perform all the duties imposed on the specified officer under this Circular as authorized independently as if he is the specified officer instead of only the initiating party as mentioned in this Circular. For a harbour reclamation initiated by a private proponent, the exercise or performance of any of the powers or duties conferred or imposed on the specified officer under the PHO will be handled by the DL or the public officer of the Lands Department (“LandsD”) authorized hereby under the PHO. The compliance with requirements imposed on the DL or the public officer of LandsD authorized hereby under the PHO may be secured by an undertaking executed by the private proponent or any other instruments as appropriate (e.g. land lease together with side agreements on operation and management details).

⁹ For Cap. 519, railway development strategy are promulgated by the Transport and Logistics Bureau (“TLB”) and therefore no railway projects are privately initiated.

The **initiating party** should support the specified officer to exercise or perform any of the powers or duties conferred or imposed on the specified officer under the PHO and this Circular. The initiating party should approach DEVB(HO) and maintain close liaison with relevant parties to ensure the requirements under the PHO are fulfilled in relation to the harbour reclamation initiated.

9.2 Rebuttal of the Presumption: Save for the harbour reclamations that are exempt from the Presumption, all harbour reclamations are subject to the Presumption. The PHO prescribes the criteria for rebutting the Presumption and the statutory procedures for the public to comment on the assessment materials in relation to the rebuttal of the Presumption, and for the CE-in-C, after taking into account the public comments, to decide whether the Presumption has been rebutted for the harbour reclamation concerned (i.e. HER exemption and NPR exemption).

9.3 Exemption from the Presumption: To facilitate in a reasonable manner HERs which would strengthen the harbour functions, improve harbourfront connectivity or help people better enjoy the harbourfront, as well as NPRs which would unlikely cause irrevocable damage to the harbour area, exemptions from the Presumption can be granted by the FS under the PHO in respect of harbour reclamations meeting certain criteria.

9.4 The flowchart summarising the categorisation of harbour reclamations under the PHO is at **Annex 1.4**.

PART 2: Harbour reclamations not exempt from the Presumption

10. Harbour reclamations not exempt from the Presumption are subject to the Presumption. They can only be proposed or carried out under the respective enabling Ordinance after the CE-in-C has determined under section 3H of the PHO that the Presumption is rebutted for the harbour reclamation according to the following procedures (also summarised in flowchart at **Annex 2.1**) (or if the reclamation is allowed to continue to be carried out under section 3Y(2) of the PHO).

10.1 Making of the Overriding Public Need Assessment report [section 3B of the PHO]

10.1.1 A specified officer may make an Overriding Public Need Assessment report (“OPNA report”), which sets out an assessment as to whether the Presumption may be rebutted for the reclamation in accordance with the following criteria as set out in section 3A of the PHO—

- (a) there is an overriding public need for the reclamation and the need is compelling and present;
- (b) there is no reasonable alternative to the reclamation; and
- (c) the extent of the reclamation does not go beyond the minimum of that which is required by the overriding public need.

10.1.2 Pursuant to section 3B(2)(a) of the PHO, the OPNA report must be made in a form specified by the Secretary for Development (“SDEV”) (i.e. **Annex 2.2A**). The form requires the specified officer to set out–

- (a) the details of the reclamation e.g. describe the part of the harbour affected and the manner and duration of the effect; and
- (b) the assessment as to whether the Presumption may be rebutted for the reclamation in accordance with section 3A of the PHO (guidelines for consideration of criteria for rebutting the Presumption are set out at **Annex 2.2B**).

10.1.3 During the preparation of the OPNA report, the specified officer and/or initiating party may consider to engage or sound out with relevant stakeholders (e.g. the HC (or its task forces), LegCo, Town Planning Board, relevant District Council(s) (“DC(s)”), professional institutes, interest groups, relevant advisory committees and stakeholders) in advance on the proposed reclamation. The extent of such early public engagement (if any), including the scope and timing, the target audience, the methods etc., should be determined by the specified officer and/or the initiating party with reference to the scale and details of the reclamation proposal. The OPNA report may suitably reflect the views and comments received during the early public engagement.

10.1.4 Where necessary, independent experts from outside the Government may be invited to give opinions on whether the Presumption may be rebutted for the reclamation.

10.2 Before publication of the OPNA report

10.2.1 Before publication of the OPNA report, the initiating party should ensure that–

- (a) the reclamation is in accordance with applicable policies;
- (b) the reclamation limit and scope of works are well-defined;
- (c) the following materials are prepared–
 - background note of the proposed reclamation;
 - a draft OPNA report in the form as specified by the SDEV;
 - a draft notice under section 3C(3) of the PHO (in both the Chinese and English languages);

- a draft press release (in both the Chinese and English languages); and
- (d) relevant bureaux/ departments/ parties have been consulted. The consultation shall be made by sending each of them the materials prepared in (c) above, and the relevant bureaux/ departments/ parties shall include, but not be limited to, the following—
- (i) in every case
- DEVB(HO)
 - Agriculture, Fisheries and Conservation Department (“AFCD”)¹⁰
 - Civil Engineering and Development Department (“CEDD”)¹¹
 - Drainage Services Department
 - Relevant District Lands Office of the LandsD for the area (for public works only)
 - Relevant District Office of the Home Affairs Department for the area
 - seeking specific agreement to the draft press release
 - seeking advice on whether strong objection from the public is anticipated.
 - Relevant District Planning Office of the Planning Department for the area
 - Environmental Protection Department
 - Marine Department
 - Water Supplies Department
- (ii) where appropriate
- Development Office of CEDD for the area
 - Marine Fill Committee¹²
 - Public Fill Committee¹³
 - Highways Department¹⁴
 - where roads and railways are involved
 - Hong Kong Police Force
 - where traffic flows or law and order may be affected

¹⁰ AFCD’s advice on the estimated ex-gratia allowance payable to fishermen and/or mariculturists, where appropriate, affected by gazettal under the PHO, should be sought. LandsD will process any such claims for ex-gratia allowance in collaboration with other relevant bureaux/departments.

¹¹ The documents should be sent to CEDD for the attention of Chief Engineer/Headquarters.

¹² The documents should be sent to the Chief Engineer/Fill Management of CEDD, who is the Secretary of the Committee.

¹³ The documents should be sent to the Chief Engineer/Fill Management of CEDD, who is the Secretary of the Committee.

¹⁴ The documents should be addressed to the Chief Highway Engineer of the respective regional office of the concerned road and the Chief Engineer of the respective office of the concerned railway.

- Clearance Unit of Acquisition Section in LandsD
 - where rehousing and payment of ex-gratia allowance to licensed structure/ surveyed squatter covered by the 1982 Squatter Control Survey are required
- Transport Department¹⁵
 - where road access, ferry services or transport implications are involved
- Any other relevant bureaux/ departments/ parties

10.2.2 For private works, the initiating party, with the support from the policy bureau (if any), should submit a note enclosing the relevant materials to the relevant specified officer in LandsD in the manner and timeframe as required by the specified officer to arrange for the publication of the OPNA report.

10.3 Publication of the OPNA report [section 3C of the PHO]

10.3.1 The specified officer must publish the OPNA report on a website and make a copy of it available for inspection by the public in accordance with section 3C(1) of the PHO.

10.3.2 The specified officer must, within 21 days after the date on which an OPNA report was made available for inspection by the public in accordance with section 3C(1)(b) of the PHO, publish a notice—

- (a) in 2 issues of the Gazette in both the Chinese and English languages;
- (b) on the website specified by the specified officer;
- (c) in 2 issues of a Chinese language newspaper; and
- (d) in 2 issues of an English language newspaper.

10.3.3 To facilitate the follow up work in relation to the public comments on the OPNA report (set out in paragraphs 10.6.1-10.6.3 below), the persons submitting written comments under section 3F of the PHO (“commenters”) should be required to provide the full name in the HKID card / passport, the first four alphanumeric characters of a person’s HKID card / passport number and contact (e.g. address, email address or telephone number) when giving comments to the specified officer. The notice on the publication of an OPNA report should contain a “Personal Information Collection Statement” regarding the collection and processing of personal data and relevant parties should act in compliance with relevant laws and regulations (e.g. Personal Data (Privacy) Ordinance (Cap. 486)).

¹⁵ The documents should be addressed to the Chief Traffic Engineer of the respective regional office for the concerned project.

10.4 Amendments to the OPNA report [section 3D of the PHO]

10.4.1 The specified officer may, under section 3D of the PHO, amend the OPNA report at any time after a copy of it is made available for inspection by the public under section 3C of the PHO. Where such an amendment is made, the specified officer must publish the amended OPNA report (together with a statement containing a general description of the amendment) on a website and make a copy of the report and the statement available for inspection by the public in accordance with section 3C(2) of the PHO. The specified officer must also publish a relevant notice in accordance with sections 3C(3) and (4) of the PHO. The specified officer should set out clearly the parts and content amended in a suitable manner (e.g. publication of a marked-up version of the amended parts together with the amended OPNA report). The amended OPNA report (together with a statement containing a general description of the amendment) should go through the procedures of inspection and consultation with the HC (or its task force), relevant DC(s) and stakeholders in the same manner as that for the first publication of the OPNA report, but public comments are limited to the matters arising from the amendment made in the amended report. An OPNA report may be amended under section 3D of the PHO more than once.

10.4.2 If only minor amendment(s)¹⁶ is/ are made to the OPNA report, the specified officer must publish the amended OPNA report involving the minor amendment(s) (together with a statement containing a general description of the amendment(s)) on the website and make a copy of the report and the statement available for inspection by the public in accordance with section 3C(2) of the PHO. The specified officer must also publish a relevant notice containing (among other things) a general description of the minor amendment(s) and a statement identifying the minor amendment(s), in accordance with sections 3C(3), (4) and (5) of the PHO, although no comment from the public may be made on matters arising from a minor amendment.

10.4.3 If the change in the proposed reclamation is substantial (e.g. the area of the harbour to be affected is entirely different), the specified officer is advised to withdraw the OPNA report and make a new OPNA report, instead of amending the original OPNA report.

10.5 Withdrawal of the OPNA report [section 3E of the PHO]

10.5.1 If a specified officer decides to withdraw an OPNA report or an amended OPNA report made, the specified officer must, as soon as practicable after the decision

¹⁶ An amendment is a minor amendment if–

- (a) it is intended to correct a clerical, typographical or calculation error, or an error of a similar nature, in the OPNA report; and
- (b) it does not, in the specified officer's opinion, materially affect the assessment set out in the OPNA report.

is made and before the CE-in-C makes a determination in respect of the harbour reclamation under section 3H(1) of the PHO, publish a notice to state the specified officer's decision to withdraw the OPNA report.

10.5.2 Upon the withdrawal of the OPNA report or an amended OPNA report, the powers or rights set out in sections 3D, 3F, 3G and 3H of the PHO are no longer exercisable and the duties set out in sections 3C and 3G of the PHO are no longer required to be performed in relation to the OPNA report or the amended OPNA report.

10.6 Public comments on the OPNA report [section 3F of the PHO]

10.6.1 After the publication of an OPNA report or an amended OPNA report, a person may, within 60 days after the first publication of the notice in the Gazette under section 3C(3) of the PHO, give written comments on, respectively, the OPNA report or the matters arising from the amendment (but not minor amendment) made in the amended OPNA report to the specified officer in the manner specified in the PHO.

10.6.2 Written comments may only be given to a specified officer for a harbour reclamation by—

- (a) delivering it to a public officer who is authorized by the specified officer to receive it on the specified officer's behalf;
- (b) sending it by ordinary or registered post to an address specified by the specified officer;
- (c) sending it by electronic mail transmission to an electronic mail address specified by the specified officer; or
- (d) sending it by fax transmission to a fax number specified by the specified officer.

10.6.3 Respective specified officer will inform the initiating party of any public comments received at the specified officer's end on the expiry of the period set for giving comments. The comment gathering procedure in the PHO is different from the objection handling procedure under the Cap. 370 and it is not mandatory for the initiating party or specified officer to give reply to the commenters. For example, if the matters raised in a comment are addressed in the OPNA report (or the amended OPNA report) published, reply to the commenter will not be required. Nonetheless, the specified officer, having regard to the facts and circumstances concerned, may reply to the commenter and invite the commenter to provide further comments, if any, by a reasonable deadline; or consider amending the OPNA report.

10.6.4 As an administrative requirement, consultation with the HC (or its task force), relevant DC(s) and stakeholders should be conducted during the public comment period. The extent of public consultation should be determined by the specified officer and the initiating party with reference to the scale and details of the reclamation proposal.

10.6.5 In particular, the specified officer and initiating party should inform DEVB(HO), as the HC Secretariat, in advance to facilitate the consultation with the HC (or its task force). Upon the publication of an OPNA report, the specified officer and/or initiating party should be prepared to attend meeting(s) of the HC (or its task force) to illustrate the OPNA report and respond to the HC members' comments. After the meeting, the HC Secretariat will submit the confirmed written comments of the HC via the designated channel under section 3F of the PHO so that the comments should be included in the submission to the CE-in-C.

10.7 Submission to the CE-in-C [section 3G of the PHO]

10.7.1 The specified officer must, within the **submission period** (i.e. 5 months after the date of expiry of the 60-day public comment period for an OPNA report or an amended OPNA report, unless extended), submit to the CE-in-C, the latest version of the OPNA report and all the written comments received. HC's comments, received through the arrangement set out in paragraph 10.6.5 above, should be highlighted in the submission to the CE-in-C. An overview analysis of public comments received should also be highlighted in the submission to the CE-in-C.

10.7.2 The initiating party should support the specified officer to prepare a draft Executive Council ("ExCo") Memorandum with a full set of the Annexes containing the OPNA report and the comments received during the public comment period. The specified officer will circulate the draft ExCo Memorandum to all concerned bureaux/ departments/ parties and coordinate the preparation of the finalised ExCo Memorandum. The specified officer should also closely liaise with the clerk to the ExCo on the matters relevant to the submission to the CE-in-C and ExCo meeting. To meet the requirement on making the ExCo submission within 5 months after the expiry date of the statutory public comment period, the initiating party should normally target to complete the preparation of the ExCo Memorandum in the first 3 months upon expiry of the public comment period, allowing the remaining 2 months for subsequent vetting/ circulation/ clearance of the ExCo Memorandum by the specified officer.

10.7.3 The FS may, on application by a specified officer for a harbour reclamation, extend the five-month period by two months under section 3G(3)(a) of the PHO if the

FS considers it appropriate to do so in a particular case. If satisfied that exceptional circumstances exist in a particular case, the FS may, on the specified officer's application, further extend the period on not more than two occasions and for two months for each extension under section 3G(3)(b) of the PHO. As to what may constitute "exceptional circumstances" by the FS, it will be considered case by case, and may include the following—

- (a) the case involves enormous comments;
- (b) the case is considered complex;
- (c) special work arrangements due to unforeseen reasons; or
- (d) any other reasons as raised by the initiating party that the specified officer considers appropriate.

10.8 CE-in-C's Determination [section 3H of the PHO]

10.8.1 On receipt of the specified officer's submission, the CE-in-C may determine under section 3H(1) of the PHO whether the Presumption is rebutted for the proposed reclamation. Even if the CE-in-C determines that the Presumption is rebutted for the proposed reclamation, the relevant statutory requirements under the other ordinances continue to apply.

10.8.2 In the unlikely event that the CE-in-C makes a determination under section 3H(1) of the PHO and subsequently makes another determination under section 3H(1) of the PHO on receipt of an amended OPNA report, the new determination would substitute the original determination on the effective date of the new determination under section 3H of the PHO.

10.9 Action after the CE-in-C's Determination [section 3H of the PHO]

10.9.1 As soon as practicable after a determination is made under section 3H(1) of the PHO, the specified officer should arrange publication of a notice stating the determination of the CE-in-C in the manner set out in section 3C(3) of the PHO, including in the Gazette.

10.9.2 After a determination is made under section 3H(1) of the PHO, the specified officer should also publish a press release and a LegCo brief.

PART 3: Harbour enhancement reclamation (“HER”)

11. HER means a harbour reclamation for harbour enhancement works, and harbour enhancement works refers to the construction (including addition and alteration) in the harbour of any of the structures, features and devices set out in **Schedule 2** to the PHO. With an exemption granted by the FS under section 3L(1) of the PHO according to the following procedures, an HER may be exempt from the Presumption. DEVB(HO) will support the FS in processing the relevant applications. For the avoidance of doubt, this mechanism is applicable to the HER executed by the Government departments or private proponents.

11.1 Preparation of application

11.1.1 The specified officer should be satisfied that the proposed harbour reclamation meets the following criteria before making the application for an HER exemption—

- (a) **for construction of a specified structure, feature or device:** the harbour reclamation is for the construction (including addition and alteration) in the harbour of a structure, feature or device set out in **Schedule 2** to the PHO. **Schedule 2** to the PHO is compiled based on experiences and observations in developing harbourfront and in consultation with relevant Government departments and trades. These works normally lead to insignificant change to the harbour but can positively respond to the public needs. The descriptions of the structures, features or devices are provided in **Annex 3.1** as reference. If a specified officer is uncertain whether the proposed works constitute construction of a specified structure, feature or device, he may consult Works Branch of the Development Bureau.
- (b) **within the area limit:** the specified area (as defined in section 3I of the PHO) of the structure, feature or device set out in Schedule 2 to the PHO to be constructed does not exceed 0.8 hectare. The area limit refers to the specified area of the structure, feature or device to be constructed, but not the works area. Examples illustrating the calculation of the specified area are at **Annex 3.2**.
- (c) **in the public interest:** it is in the public interest to carry out the reclamation, having regard to all relevant matters including—
 - (i) the intended public benefit to be brought by the harbour enhancement works;
 - (ii) the relationship of the reclamation with any other reclamation in respect of

- which an HER exemption has previously been granted¹⁷; and
- (iii) the impacts (including the anticipated impacts) of those reclamations on the harbour.

11.2 Public consultation [administrative requirement]

11.2.1 Consultation with the HC (or its task force), relevant DC(s) and stakeholders should be conducted before making the application to the FS. Necessary information under the proposed HER application shall be submitted to DEVB(HO) for publication on the website of the DEVB and delivery to the members of the LegCo Panel on Development via its secretariat for comment within a reasonable period of time, i.e. normally 1 month, before making the application to the FS. The extent of public consultation should be determined by the specified officer and the initiating party with reference to the scale and details of the reclamation proposal.

11.2.2 In particular, the specified officer and initiating party should inform DEVB(HO) in advance to facilitate the consultation with the HC (or its task force). The specified officer and/ or initiating party should be prepared to attend meeting(s) of the HC (or its task force) to explain the proposed reclamation and respond to HC members' comments. After the meeting, the HC Secretariat will pass the confirmed written comments of the HC to the specified officer and/ or initiating party for incorporation in the application form for exemption. For avoidance of doubt, the HC (or its task force) should be consulted again if there is a major change in the proposed reclamation.

11.3 Application to the FS [section 3J of the PHO]

11.3.1 To enable the FS to make the decision on granting of an HER exemption, an initiating party should prepare the "Application Form for an HER exemption" (see **Annex 3.3**). The form at **Annex 3.3** is specified by the SDEV pursuant to section 3J(2) of the PHO and requires the following information—

- (a) a plan delineating and describing the specified area of the structure, feature or device set out in Schedule 2 to the PHO to be constructed under the harbour enhancement works for which the reclamation is intended to be carried out and the specified area of the reclamation;
- (b) the intended public benefit to be brought by the harbour enhancement works;
- (c) the relationship of the reclamation with any other reclamation in respect of which an HER exemption has previously been granted; and

¹⁷ Please obtain a list and plan(s) showing all reclamations in the harbour that had been granted HER exemptions by the FS from DEVB(HO) while making this assessment.

- (d) the impacts (including the anticipated impacts) of those reclamations on the harbour

11.3.2 Before submitting the application, relevant bureaux/ departments/ parties (similar to that in paragraph 10.2.1(d)) should have been consulted.

11.3.3 The specified officer should submit the application to the FS via DEVB(HO). DEVB(HO) will provide administrative support to the FS in handling the applications received, but the statutory power to decide whether to grant or refuse to grant an HER exemption under section 3L of the PHO rests solely with the FS.

11.4 Withdrawal of HER exemption Application [section 3K of the PHO]

11.4.1 Before a decision is made under **section 3L** of the PHO on an application for an HER exemption, a specified officer for the reclamation may, by submitting a written withdrawal notice via DEVB(HO) to the FS, withdraw the application.

11.4.2 Upon the withdrawal, the powers set out in sections 3J(4) and (5) and 3L(1) of the PHO are no longer exercisable in relation to the application for an HER exemption.

11.5 FS' Decision [section 3L of the PHO]

11.5.1 As provided under section 3L(2)(a) of the PHO, the FS may only grant an HER exemption if the FS is satisfied that the specified area of the **structure, feature or device set out in Schedule 2** to be constructed under the harbour enhancement works for which the reclamation is intended to be carried out **does not exceed 0.8 hectare**.

- When considering whether a proposed structure, feature or device falls within Schedule 2, the FS should **consider the substance, rather than the mere label** attached to it in the application. The descriptions of the items in Schedule 2 to the PHO are set out in **Annex 3.1** for reference. For example, even if the proposed structure, feature or device is labelled by the initiating party as an item specified under Schedule 2, the FS must refuse to grant the HER exemption where the structure, feature or device in substance lacks or deviates from the essential attributes of that specified item and is not one set out in Schedule 2 to the PHO.
- If a project involves more than one type of structure, feature or device, the FS may give more than one exemptions, such that each individual structure, feature or device may be taken forward under different HER exemptions. For example, a pier and a breakwater, each with a specified area not exceeding 0.8 hectare, may

be processed under two exemptions. However, these applications should be made at the same juncture so that the FS may make a holistic assessment on all the relevant applications. If the FS suspected there to be an abuse of the mechanism by artificial “splitting up” the construction of a large structure (e.g. construction of a pier with a specified area of 1.6 hectares by artificially splitting it up into two applications with a specified area of 0.8 hectare each) or that there may be an over supply of the same type of structure, feature or device in the vicinity, the FS may decide to reject the application(s). The specified officer may then need to pursue the rejected proposal under the mechanism applicable to harbour reclamations not exempt from the Presumption.

11.5.2 In addition, as provided under section 3L(2)(b) of the PHO, the FS may only grant an HER exemption if the FS is also satisfied that it is **in the public interest** to carry out the reclamation, having regard to all relevant matters including (i) the **intended public benefit** to be brought by the harbour enhancement works; (ii) the **relationship** of the reclamation with any other reclamation in respect of which an HER exemption has previously been granted; and (iii) the **impacts** (including the anticipated impacts) of those reclamations on the harbour.

- In considering whether it is **in the public interest** to carry out the proposed HER, the FS will generally conduct weighing exercise between the benefits and costs of carrying out the proposed HER to the community.
- Examples of intended public benefit may include—
 - Improving the connectivity and accessibility from the hinterland to and within harbourfront areas
 - Promoting public enjoyment of the harbourfront area and the harbour
 - Supporting industry developments (e.g. tourism, recreational, fishing, maritime industries, ship/ boat repairs) by making good use of resources in the harbourfront area and the harbour
 - Enhancing and diversifying the transportation network (e.g. development of waterborne transport or cross-harbour transportation network)
 - Creating synergy with the facilities or development in the vicinity or hinterland areas
 - Coping with the risks of natural hazards and climate change
 - Promoting water-friendly culture and water-based activities
 - Providing public utility services
 - Supporting heritage conservation (e.g. reclamation for revitalisation of seafront historical structures)

- When having regard to the **impacts** (including the anticipated impacts) of the reclamations, the FS will first ascertain the **relationship** of the subject HER with *any other reclamation in respect of which an HER exemption has previously been granted* (“other previous HER”). The FS may take into account the proximity of the relevant locations and the frequency or time gap in the making of the HER applications. If a relationship between the subject HER and the other previous HER is identified, then the FS will generally make a holistic assessment with reference to the **marginal** and **cumulative** aspects of the impacts on the harbour. Moreover, in the light of the difference in the impacts of the reclamation(s) on the harbour during and after the works, the FS may consider the **permanent** and **temporary** aspects of the impacts on the harbour.
- Examples of impacts of the reclamation(s) on the harbour may include–
 - Reduction in area of the harbour in the vicinity
 - Visual impact on the harbour
 - Navigational impact on the harbour (e.g. impact on the fairways, function and water flow of the harbour)
 - Obstruction of public enjoyment of the harbour
 - Duration of the proposed reclamation and size of the works area in the harbour
 - Special factors, including
 - any suspected abuse of mechanism by artificially “splitting up” the construction of a large structure (e.g. construction of a pier with a specified area of 1.6 hectare by artificially splitting it up into two applications with a specified area of 0.8 hectare each); or
 - interfaces between the different or similar facilities in the vicinity (e.g. complementary or in competition)
- Examples of other relevant matters that the FS may consider in the weighing exercise in considering whether it is **in the public interest** to carry out the proposed HER may also include–
 - the views received during the public consultation
 - the opportunity cost of carrying out the proposed reclamation (e.g. the availability of a more cost effective alternative in achieving the intended public benefits or the forgoing of another project in the same location that may serve other more worthwhile purposes);
 - the proposal’s compatibility with the Harbour Planning Principles; and
 - the sustainability in respect of the proposed reclamation.

11.5.3 While an HER is eligible for the exemption from the Presumption where the conditions stipulated in section 3L(2) of the PHO are fulfilled, the FS still has

discretion to decide whether to grant the HER exemption or refuse to grant the exemption. The elaboration set out above does not fetter the FS' discretion to decide whether to grant the HER exemption or refuse to grant the exemption with regard to the specific circumstances in each individual decision.

11.5.4 The FS may require the specified officer to submit additional information regarding the proposed HER for the FS' consideration of the exemption application by a written notice pursuant to section 3J(4) of the PHO. The specified officer must provide the information to the FS within a period specified in the FS' notice. The information should be provided in writing.

11.5.5 Upon consideration of the application and additional information (if applicable), the FS may, in his discretion, grant the exemption to exempt the HER from the Presumption under section 3L(1) of the PHO. The FS will publish his decision on whether to grant the HER exemption or refuse to grant it in a notice in the Gazette, in newspapers and on the website specified by the FS as soon as practicable. In the event that the FS rejects the application, the FS will provide the reasons for his decision in the notice (e.g. the request made by the FS for additional information was not complied with).

11.5.6 The FS may grant an HER exemption subject to any condition that the FS considers appropriate. The reclamation must be in accordance with the exemption (including the conditions) granted. The specified officer should monitor the works as appropriate to ensure the compliance with all the conditions imposed (e.g. by requiring the initiating party or contractor to provide regular reports). In case of minor or first occurrence of non-compliance with a condition, the specified officer should require the initiating party or contractor to carry out a timely rectification. If the non-compliance is serious or continuous, the specified officer should report it to the FS via DEVB(HO). Examples of serious or continuous non-compliance include: Substantial deviation from approved area limit of the reclamation, where there is a relevant condition imposed by the FS when granting the exemption; continuous use of machinery or equipment prohibited in the FS' condition and undue delay (with no reasonable justification) in the commencement or completion of proposed HER, where there is a relevant condition imposed by the FS when granting the exemption. For consequence of non-compliance with conditions, please refer to paragraph 13.4.

11.6 Amendment of Schedule 2

11.6.1 The authority under section 3ZB(1) of the PHO to amend Schedule 2 to the

PHO rests with the SDEV¹⁸. To ensure transparency and allow public scrutiny, the Government will consult the LegCo Panel on Development before publishing notice in the Gazette for any amendments to the Schedule.

11.6.2 Any amendment made to Schedule 2 under section 3ZB(1) of the PHO does not affect any HER exemptions granted by the FS before the proposed amendment comes into operation.

PART 4: Harbour non-permanent reclamation (“NPR”)

12. NPR means any works carried out, or intended to be carried out, in the harbour for temporarily forming from the sea-bed or foreshore any land that is intended to be subsequently removed from the sea-bed or foreshore. An NPR is usually undertaken to construct temporary working platforms in the harbour for implementing transport infrastructure projects, such as road tunnels and railway tunnels. As the affected part of the harbour would be reinstated upon completion of works, they do not cause any irrevocable damage to the area of the harbour. With an exemption granted by the FS according to the following procedures, an NPR may be exempt from the Presumption. DEVB(HO) will support the FS in processing the relevant applications.

12.1 Preparation of application

12.1.1 The specified officer should be satisfied that the proposed harbour reclamation meets the following criteria before making the application for an NPR exemption—

- (a) **within the duration limit:** The expected duration of the reclamation refers to the period beginning on the expected date to start to carry out the reclamation and ending on the expected completion date of the works to reinstate the harbour affected by the reclamation, and it should not exceed 7 years;
- (b) **within the area limit:** the specified area of the reclamation does not exceed 3 hectares at any time during the reclamation. The calculation of the specified area is the same as that of a structure, feature or device in an HER (illustrated at **Annex 3.2**) except that the specified area of an NPR refers to the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by *the land formed in the harbour by the reclamation* instead of by *the structure, feature or device*.

¹⁸ As stipulated under section 3ZB of the PHO, the SDEV may amend the Schedule by publishing a notice in the Gazette. The notice shall then be laid on the table of the LegCo at the next sitting. The LegCo may amend the notice by a resolution passed at a Council meeting held not later than 28 days after the meeting at which it was so laid.

- (c) **in the public interest:** it is in the public interest to carry out the reclamation, having regard to all relevant matters including—
 - (i) the intended public benefit to be brought by the reclamation: including the benefits to be brought by the end product (e.g. underwater tunnel) supported by the NPR; and
 - (ii) the adverse impact on the harbour caused by the reclamation:

12.2 Public consultation [administrative requirement]: The requirements set out in paragraph 11.2 is also applicable to the case of the NPR.

12.3 Application to the FS [section 3M of the PHO]

12.3.1 To enable the FS to make the decision on granting of an NPR exemption, an initiating party shall provide the information a draft of the “Application Form for an NPR exemption” (see **Annex 4.1**). The form at **Annex 4.1** is specified by the SDEV pursuant to section 3M(2) of the PHO and requires the following information—

- (a) a plan delineating and describing the specified area of the reclamation;
- (b) if the area mentioned in paragraph (a) exceeds 3 hectares—a description of how the area does not exceed 3 hectares at any time during the reclamation;
- (c) the expected date to start to carry out the reclamation;
- (d) the expected duration of the reclamation beginning on the date mentioned in paragraph (c) and ending on the expected completion date of the works to reinstate the harbour affected by the reclamation;
- (e) the intended public benefit to be brought by the reclamation; and
- (f) the adverse impact on the harbour caused by the reclamation and the proposed mitigation measures to minimize the impact.

12.3.2 Before submitting the application, relevant bureaux/ departments/ parties (similar to that in paragraph 10.2.1(d)) should have been consulted.

12.3.3 The specified officer should submit the application to the FS via DEVB(HO). DEVB(HO) will provide administrative support to the FS in handling the applications received, but the statutory power to decide whether to grant or refuse to grant the NPR exemption under section 3O of the PHO rests solely with the FS.

12.4 Withdrawal of NPR Application [section 3N of the PHO]

12.4.1 Before a decision is made under **section 3O** of the PHO on an application for an NPR exemption, a specified officer for the reclamation may, by submitting a written withdrawal notice via DEVB(HO) to the FS withdraw the application.

12.4.2 Upon the withdrawal, the powers set out in sections 3M(4) and (5) and 3O(1) of the PHO are no longer exercisable in relation to the application for an NPR exemption.

12.5 FS' Decision [section 3O of the PHO]

12.5.1 As provided under section 3O(2)(a) and section 3O(2)(b) of the PHO, the FS may only grant an NPR exemption if the FS is satisfied that (a) the specified area of the reclamation does not exceed 3 hectares at any time during the reclamation; and (b) the expected duration of the reclamation does not exceed 7 years.

- As regards the area limit of 3 hectares at any time during the reclamation, when the harbour reclamation involves more than one phase, land may be formed and removed by the end of a phase but before the end of the harbour reclamation, resulting in a change in location and size of land formed at different points of time during a reclamation. The change in the specified area of the land formed in the harbour reclamation should be clearly identified to show that at any time during the reclamation, the specified area of the reclamation does not exceed 3 hectares.
- As regards the duration limit of 7 years, it refers to the period beginning on the expected date to start to carry out the reclamation and ending on the expected completion date of the works to reinstate the harbour affected by the reclamation.

12.5.2 In addition, as provided under section 3O(2)(c) of the PHO, the FS may only grant an NPR exemption if the FS is also satisfied that it is in the public interest to carry out the reclamation, having regard to all relevant matters including (i) the intended public benefit to be brought by the reclamation; and (ii) the adverse impact on the harbour caused by the reclamation.

- In considering whether it is **in the public interest** to carry out the proposed NPR, **similar to that in the assessment for an HER exemption**, the FS will generally conduct a weighing exercise between the benefits and costs of carrying out the proposed NPR to the community.
- The **intended public benefit** to be brought by the proposed NPR refers to the public benefit intended to be brought by the construction works and the end product (e.g. underwater tunnel) supported by the NPR. Examples of intended public benefit include those applicable ones listed in paragraph 11.5.2 above. Where the NPR is used to support large-scale infrastructure, the economic and societal benefits generated in relation to the infrastructure may also be relevant.

- When having regard to the **adverse impact** on the harbour caused by the reclamation, in light of the reversible nature of an NPR (i.e. the harbour affected by the reclamation should be reinstated) and will not in general result in irrevocable damage to the harbour area, the FS may mainly focus on the **temporary** aspect of the impacts (i.e. the impacts during the works of the reclamation) and also the adverse impacts as minimized by mitigation measures. Examples of adverse impacts on the harbour caused by the reclamation include those applicable ones listed in paragraph 11.5.2 above.
- Examples of other relevant matters that the FS may consider in the weighing exercise in considering whether it is **in the public interest** to carry out the proposed NPR may also include those applicable ones listed in paragraph 11.5.2 above.

12.5.3 While an NPR is eligible for the exemption from the Presumption where the conditions stipulated in section 3O(2) of the PHO are fulfilled, the FS still has discretion to decide whether to grant the NPR exemption or refuse to grant the exemption. The elaboration set out above does not fetter the FS' discretion to decide whether to grant the NPR exemption or refuse to grant the exemption with regard to the specific circumstances in each individual decision.

12.5.4 The FS may require the specified officer to submit additional information regarding the proposed NPR for the FS' consideration of the exemption application by a written notice pursuant to section 3M(4) of the PHO. The specified officer must provide the information to the FS within a period specified in the FS' notice. The information should be provided in writing.

12.5.5 Upon consideration of the application and additional information (if applicable), the FS may, in his discretion, grant the exemption to exempt the NPR from the Presumption under section 3O(1) of the PHO. The FS will publish his decision on whether to grant the NPR exemption or refuse to grant it in a notice in the Gazette, in newspapers and on the website specified by the FS as soon as practicable. If the FS grants an exemption for an NPR, the FS will specify a period of exemption not exceeding 7 years beginning on the intended starting date of the NPR in the notice. If the FS rejects the application, the FS will provide the reasons for his decision in the notice (e.g. the request made by the FS for additional information was not complied with).

12.5.6 The FS may grant an NPR exemption subject to any condition that the FS considers appropriate. The reclamation must be in accordance with the exemption

(including the conditions) granted¹⁹. The specified officer should monitor the works as appropriate to ensure the compliance with all the conditions imposed (e.g. by requiring the initiating party or contractor to provide regular reports). In case of minor or first occurrence of non-compliance with a condition, the specified officer should require the initiating party or contractor to carry out timely rectification. If the non-compliance is serious or continuous, the specified officer should report it to the FS via DEVB(HO). Examples of serious or continuous non-compliance include: Substantial deviation from approved area limit of the reclamation, where there is a relevant condition imposed by the FS when granting the exemption; continuous use of machinery or equipment prohibited in the FS' condition and undue delay (with no reasonable justification) in the commencement or completion of proposed NPR, where there is a relevant condition imposed by the FS when granting the exemption. For consequence of non-compliance with conditions, please refer to paragraph 13.4.

12.6 Notification of intended starting date [section 3P of the PHO]

12.6.1 There is usually a time gap between the FS' granting of an NPR exemption and the commencement date of the NPR. It may be difficult for the specified officer to ascertain and provide the commencement date of the NPR when the specified officer makes an application for the exemption and when the FS grants the exemption. Therefore, the FS grants the NPR exemption on the basis that it will be valid for the permitted construction period as specified in the FS' notice, and the starting date of the period will be later supplemented by another notice given to the FS with a copy published by the specified officer as required by section 3P of the PHO after the specified officer can ascertain the intended starting date for the exempted NPR.

12.6.2 The copy of the notice for the notification of "intended starting date" must be published in the Gazette, in newspapers and on the website specified by the FS no earlier than 6 months and no later than 1 month before the specified intended starting date. Also, the NPR must not be carried out before the specified "intended starting date".

12.6.3 For non-compliance with the notification requirement, the FS may revoke the NPR exemption. For details, please refer to paragraph 13.3.

¹⁹ The compliance with conditions imposed on the DL or the other public officer of LandsD authorized hereby under the PHO may be secured by an undertaking executed by the private proponent or any other instruments as appropriate (e.g. land lease).

12.7 Progress report of harbour non-permanent reclamation [section 3Q of the PHO]

12.7.1 To strengthen the monitoring of the progress of the NPR and to enable early awareness and intervention by the Government, there is a statutory requirement under section 3Q of the PHO for the submission of annual progress reports by the specified officer to the FS. If an NPR exemption is granted in respect of an NPR, the specified officer is required to submit an annual progress report to the FS on each anniversary of the intended starting date of the reclamation that occurs before the completion date of the works to reinstate the harbour affected by the reclamation and a final report no later than 3 months after the completion date.

12.7.2 The progress report shall be made in a form as specified by the SDEV pursuant to section 3Q(3)(a) of the PHO (**Annex 4.2**). The annual progress report must set out the progress of the NPR up to a date not earlier than 3 months before the aforesaid anniversary and the final report must set out the progress up to the completion date. In the final report, supporting materials should be provided to demonstrate that the works to reinstate the harbour affected by the reclamation are completed (e.g. as-built land survey report and hydrographic survey report certified by a Corporate Member of Hong Kong Institute of Surveyors (Land Surveying Division) or equivalent). DEVB(HO) will provide comments on the progress reports and coordinate the submission of progress report to the FS.

12.7.3 Pursuant to **section 3Q(4)** of the PHO, the FS may, by written notice, require the submission of additional information on the progress of the exempted NPR, to enable the FS to monitor the progress of the NPR.

12.7.4 The FS may suspend or revoke the NPR exemption if there is a failure to comply with the progress report requirement. For details, please refer to paragraph 13.2.

PART 5: Suspension, revocation or expiry of exemption

13. An NPR exemption will expire; in addition, in the unlikely event of non-compliance with conditions of the exemptions or certain requirements, the exemptions granted may be suspended or revoked. The PHO also provides supplementary provisions to deal with these events.

13.1 Expiry of an NPR exemption [sections 3R, 3S, 3T and 3X of the PHO]

13.1.1 Subject to sections 3U, 3V and 3W of the PHO, an NPR exemption granted will expire at the end of the permitted construction period specified by the FS in the

notice referred to in paragraph 12.6.1 above unless the period is extended or taken to be extended under Part 4 of the PHO. A specified officer may apply to the FS for extending the permitted construction period of an NPR exemption granted. Such extension application may only be made (1) **no earlier than the date** on which the NPR starts to be carried out; and (2) **no later than 6 months** before the date following the end of the permitted construction period of the NPR exemption. The specified officer should monitor the progress of works of an exempted NPR closely in order to make timely application within the time limit. The specified officer must specify in the application: (1) the proposed period of extension of the permitted construction period of the NPR exemption; and (2) the justifications for the extension. There is no limit on the number of extensions, but the aggregate duration of the permitted construction period and any extension(s) granted must not exceed eight years.

13.1.2 The FS may require the specified officer to submit additional information regarding the application for extension of permitted construction period of the NPR exemption by a written notice. The specified officer must provide the information to the FS within a period specified in the FS' notice. The information should be provided in writing.

13.1.3 Upon consideration of the application and additional information (if applicable), the FS may, in his discretion, grant the extension of permitted construction period of the NPR exemption under section 3S(1) of the PHO if he is satisfied that (a) it is reasonable to grant the extension; and (b) the aggregate duration of the permitted construction period and any extension(s) granted does not exceed eight years. The FS will publish his decision in a notice in the Gazette, in newspapers and on the website specified by the FS as soon as practicable. In the event that the FS rejects the application, the FS will provide the reasons for his decision in the notice (e.g. the request made by the FS for additional information was not complied with).

13.1.4 If there are exceptional circumstances preventing the exempted NPR from being carried out in whole or in part, the FS may on his own initiative, grant an extension of the permitted construction period of the NPR exemption for a period that the FS considers appropriate (aggregate duration may exceed 8 years), according to section 3T of the PHO. Exceptional circumstances may include unusual scenarios that would result in inevitable suspension of the works for public interests. While whether there are exceptional circumstances preventing the exempted NPR from being carried out in whole or in part has to be judged on the facts and circumstances of the particular case, examples of what may constitute such exceptional circumstances may potentially include: legal proceedings (including judicial review), bankruptcy or disqualification of contractors; discovery of explosives or other dangerous goods that render the

continuation of works unsafe; discovery of antiques that should be preserved, etc. The specified officer must contact DEVB(HO) as soon as practicable for dealing with exceptional circumstances.

13.1.5 The consequences set out in paragraph 14.1 apply when the exempted NPR cannot be completed before the NPR exemption expires at the end of the permitted construction period.

13.2 Non-compliance with the progress report requirement of NPR exemption under section 3Q of the PHO [section 3U of the PHO]

13.2.1 Upon non-compliance with the progress report requirement of the NPR exemption under section 3Q of the PHO, the FS may suspend or revoke the NPR exemption with a notice published in the Gazette, in newspapers and on the website specified by the FS. The effective date of the decision is the date on which the notice is first published in the Gazette or a later date as specified in the notice.

13.2.2 The consequences set out in paragraph 14.2 apply when the NPR exemption is suspended whereas the consequences set out in paragraph 14.1 apply when the NPR exemption is revoked.

13.3 Non-compliance with the notification requirement of NPR exemption under section 3P of the PHO [section 3W of the PHO]

13.3.1 Upon non-compliance with the notification requirement of the NPR exemption under section 3P of the PHO, the FS may revoke the NPR exemption with a notice published in the Gazette, in newspapers and on the website specified by the FS. The effective date of the decision made by the FS shall be the date on which a notice is first published in the Gazette or a later date which is specified in the notice.

13.4 Non-compliance with the conditions imposed in respect of HER exemption or NPR exemption [section 3U of the PHO]

13.4.1 Upon non-compliance with a condition imposed in respect of an HER exemption or an NPR exemption, the FS may suspend or revoke the HER exemption or NPR exemption with a notice published in the Gazette, in newspapers and on the website specified by the FS. The effective date of the decision is the date on which the notice is first published in the Gazette or a later date as specified in the notice.

13.4.2 The consequences set out in paragraph 14.2 apply when the exemption is

suspended whereas the consequences set out in paragraph 14.1 apply when the exemption is revoked.

14. Upon suspension, revocation or expiry of an exemption, the following consequences will apply–

14.1 Expiry or revocation of exemption [section 3X and section 3Y of the PHO]

14.1.1 Pursuant to section 3Y(2) of the PHO, despite the expiry or revocation of an exemption, the reclamation may continue to be carried out to the extent that it is necessary for avoiding safety or environmental hazards, or other similar hazards, that would arise if the reclamation ceases to be carried out.

14.1.2 The FS may give to the specified officer (a) a direction to reinstate the harbour affected by the reclamation; (b) any other directions that the FS considers appropriate. If a new NPR is required in order to comply with FS' direction (e.g. reinstatement of the harbour affected by the reclamation), the said new NPR is exempt from the Presumption until the direction is complied with unless the FS directs otherwise. The said NPR should be carried out in compliance with the enabling Ordinance(s).

14.2 Suspension of exemption [section 3V and section 3Y of the PHO]

14.2.1 An exemption ceases to be in force during the suspension period. Under section 3U(5) – (8) of the PHO, the FS may lift the suspension (upon which the suspension period will end) when the non-compliance has been rectified to the satisfaction of the FS. During the suspension period, the reclamation can only continue to be carried out to the extent that it is necessary for avoiding safety or environmental hazards, or other similar hazards, that would arise if the reclamation ceases to be carried out pursuant to section 3Y(2) of the PHO. If a suspension of an NPR exemption is lifted by the FS under section 3U(5) of the PHO, the permitted construction period of the exemption is taken to have been extended from the end of that permitted construction period by a period of time (***period of extension***) that is of the same length as the suspension period. The period of extension will be specified in the relevant notice published by the FS.

14.2.2 In addition, the consequence set out in paragraph 14.1.2 is also applicable in the case of suspension of exemption.

Enquiries

15. Enquiries on this Circular should be addressed to the Commissioner for Harbourfront at 3468 4015 or Assistant Secretary (Harbour) Special Duties at 3422 3810.

Annexes

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Annex 1.2	The Boundaries of the Harbour
Annex 1.3A	Memo from LandsD – on Delegation under the PHO
Annex 1.3B	Memo from TLB – on Delegation under the PHO
Annex 1.4	Summary of the categorisation of harbour reclamations under the PHO
Annex 2.1	Flowchart on procedures for rebuttal of the Presumption
Annex 2.2A	Specified Form of the OPNA report [section 3B(2)(a) of the PHO]
Annex 2.2B	Guidelines for consideration of criteria for rebutting the Presumption
Annex 3.1	Structures, features or devices set out in Schedule 2 to the PHO
Annex 3.2	Examples illustrating the calculation of the specified area of the structure, feature or device in the HER
Annex 3.3	Specified Form of the application for an HER exemption [section 3J(2) of the PHO]
Annex 4.1	Specified Form of the application for an NPR exemption [section 3M(2) of the PHO]
Annex 4.2	Specified Form of Progress Report for an NPR granted an NPR exemption [section 3Q(3)(a) of the PHO]

Remarks: Except for specified forms at **Annex 2.2A**, **Annex 3.3**, **Annex 4.1**, and **Annex 4.2** which are forms specified by the SDEV mentioned in the relevant sections in the PHO, the sample notices and notes may require suitable updates on a case-by-case basis.



(Bernadette LINN)
Secretary for Development

Annex 1.1 – Abbreviation and Glossary

Abbreviation

Abbreviation	Term
CCM	Cogent and Convincing Materials
CEDD	Civil Engineering and Development Department
CE-in-C	Chief Executive in Council
DC(s)	District Council(s)
DEVB	Development Bureau
DEVB(HO)	Development Bureau (Harbour Office)
DL	Director of Lands
DoJ	Department of Justice
ExCo	Executive Council
FS	Financial Secretary
HC	Harbourfront Commission
HER	Harbour Enhancement Reclamation
LandsD	Lands Department
LegCo	Legislative Council
NPR	Harbour Non-permanent Reclamation
OPNA report	Overriding Public Need Assessment report
PHO/ the Ordinance	Protection of the Harbour Ordinance (Cap. 531)
SDEV	Secretary for Development
STL	Secretary for Transport and Logistics
TLB	Transport and Logistics Bureau

Glossary

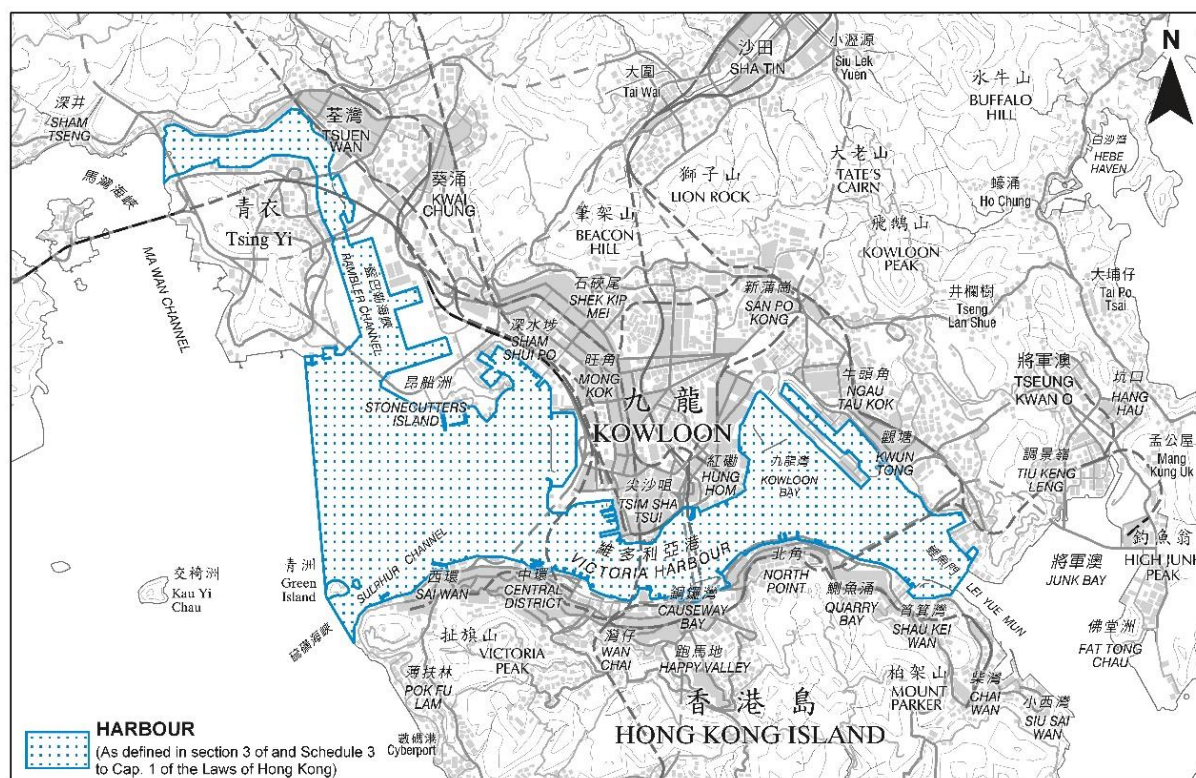
Term	Explanation
Harbour	The waters of Hong Kong within the boundaries specified in Schedule 3 under Cap. 1.
commenters	The persons submitting written comments under section 3F of the PHO
harbour enhancement reclamation (“HER”)	A harbour reclamation for harbour enhancement works;
harbour enhancement works	The construction (including addition and alteration) in the harbour of any of the structures, features and devices set out in Schedule 2
HER exemption	In relation to a harbour enhancement reclamation, means an exemption of the reclamation from the presumption against reclamation
harbour non-permanent reclamation (“NPR”)	Any works carried out, or intended to be carried out, in the harbour for temporarily forming from the sea-bed or foreshore any land that is intended to be subsequently removed from the sea-bed or foreshore
NPR exemption	In relation to a harbour non-permanent reclamation, means an exemption of the reclamation from the presumption against reclamation
harbour reclamation	A reclamation in the Harbour
initiating party	In practice, the initiating party of a harbour reclamation is usually a works department or a proponent of private project (“private proponent”).
intended starting date	The specified officer for the harbour non-permanent reclamation must, no earlier than 6 months and no later than 1 month before the date on which the specified officer intends to start to carry out the reclamation (<i>intended starting date</i>)— (a) give a written notice to the Financial Secretary (“FS”); and (b) publish a copy of the written notice in the manner set out in section 3J(5) of the PHO

Term	Explanation
minor amendment	An amendment is a minor amendment if– (a) it is intended to correct a clerical, typographical or calculation error, or an error of a similar nature, in the OPNA report; and (b) it does not, in the specified officer’s opinion, materially affect the assessment set out in the OPNA report.
Overriding Public Need Assessment report (“OPNA report”)	An OPNA report– (a) must be made in a form specified by the Secretary for Development (“SDEV”) and (b) must set out– (i) the details of the reclamation; and (ii) the assessment as to whether the presumption against reclamation may be rebutted for the reclamation in accordance with section 3A of the PHO
permitted construction period	In relation to an NPR exemption, means– (a) subject to paragraph (b), the period specified in a notice under section 3O(4)(b)(i) of the PHO for the exemption; or (b) if the period mentioned in paragraph (a) is extended or is taken to be extended under this Part – the period so extended
presumption against reclamation (the Presumption)	The presumption against harbour reclamation under section 3(1) of the PHO
progress report	The specified officer for the harbour non-permanent reclamation must submit a report of the reclamation to the FS– (a) on each anniversary of the intended starting date of the reclamation that occurs before the completion date of the works to reinstate the harbour affected by the reclamation; and (b) on a date no later than 3 months after the completion date. A report under section 3Q(2) of the PHO– (a) must be made in a form specified by the SDEV; and (b) must set out the progress of the harbour non-permanent reclamation up to– (i) in the case of section 3Q(2)(a) of the PHO – a date

Term	Explanation
	not earlier than 3 months before the anniversary or (ii) in the case of section 3Q(2)(b) of the PHO– the completion date
sea-bed or foreshore	The bed or shore of the sea and of any tidal water within Hong Kong, below the line of the high water mark;
specified area of a structure, feature or device	The total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the structure, feature or device
specified area of a harbour enhancement reclamation or a harbour non-permanent reclamation	the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the land formed in the harbour by the reclamation.
specified officer	<p>(a) in relation to a reclamation that may be proposed under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) of a reclamation that may be authorized under Section 16A of that Ordinance – the Director of Lands (“DL”);</p> <p>(b) in relation to a reclamation that may be directed under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) – the Secretary for Transport and Logistics (“STL”);</p> <p>(c) in relation to a reclamation that may be authorized under section 22 of the Railways Ordinance (Cap. 519) – the Secretary for Transport and Logistics (“STL”); or</p> <p>(d) in relation to a reclamation that may be directed or authorized under or otherwise provided for in any other Ordinance – a public officer who may propose or carry out the reclamation under that Ordinance.</p>
suspension period	in relation to an HER exemption of an NPR exemption, means the period during which the HER exemption or the NPR exemption is suspended under section 3U(1) of the PHO.

Term	Explanation
written comments	<p>Written comments may only be given to a specified officer for a harbour reclamation by–</p> <ul style="list-style-type: none"> (a) delivering it to a public officer who is authorized by a specified officer to receive it on the specified officer's behalf; (b) sending it by ordinary or registered post to an address specified by the specified officer; (c) sending it by electronic mail transmission to an electronic mail address specified by the specified officer; or (d) sending it by fax transmission to a fax number specified by the specified officer

Annex 1.2 – The Boundaries of the Harbour



According to the Interpretation and General Clauses Ordinance, the “harbour” means the waters of Hong Kong within the following boundaries:

- 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); and
- 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.

Annex 1.3A – Memo from LandsD – Delegation under the PHO

**Protection of the Harbour Ordinance
(Chapter 531)**

I, Maurice LOO, Director of Lands, acting pursuant to section 2A(2) of the Protection of the Harbour Ordinance (Chapter 531) HEREBY AUTHORIZE the persons for the time being holding the respective offices listed in the fourth column of the Schedule attached hereto, to exercise and perform the powers and duties set out in the third column of the Schedule which are conferred or imposed on me by virtue of the respective sections of the Protection of the Harbour Ordinance (Chapter 531) set out in the second column of the Schedule in respect of works for which the said persons are responsible.

Dated this 30th day of June 2025.



(Maurice LOO)
Director of Lands

SCHEDULE

Serial	Section	Power or duty	Person authorized – office holder
1	3B(1)	To make an OPNA report as specified in this section	<p>1. <u>Private works of reclamation that may be proposed under Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) or a reclamation that may be authorized under section 16A of Cap. 127</u></p> <p><u>Lands Department</u> Principal Government Land Agents Government Land Agents Chief Estate Surveyors</p> <p>2. <u>Public works of reclamation that may be proposed under Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) or a reclamation that may be authorized under section 16A of Cap. 127</u></p> <p><u>Architectural Services Department</u> Director of Architectural Services</p> <p><u>Civil Engineering and Development Department</u> Director of Civil Engineering and Development</p> <p><u>Drainage Services Department</u> Director of Drainage Services</p> <p><u>Electrical and Mechanical Services Department</u> Director of Electrical and Mechanical Services</p> <p><u>Highways Department</u> Director of Highways</p> <p><u>Water Supplies Department</u> Director of Water Supplies</p>
2	3C(1) 3C(2) 3C(3)	To publish the OPNA report or amended OPNA report (together with a statement containing a general description of the amendment) on a website and make a copy thereof available for inspection by the public and publish a notice as specified in this section	As Serial 1

Serial	Section	Power or duty	Person authorized – office holder
3	3D(1)	To amend an OPNA report as specified in this section	As Serial 1
4	3E(1) 3E(2)	To withdraw an OPNA report or amended OPNA report as specified in this section	As Serial 1
5	3F(1) 3F(2) 3F(4)	To receive written comments on the OPNA report or matters arising from the amendment made in the amended OPNA report as specified in this section, to authorize a public officer to receive a written comment on the specified officer's behalf, and to specify an address, an electronic mail address and a fax number to which a written comment may be sent	As Serial 1
6	3G(1)	To make submission to Chief Executive in Council as specified in this section	As Serial 1
7	3G(3)	To apply for extension of submission period as specified in this section	As Serial 1
8	3J(1)	To apply for an HER exemption under this section	As Serial 1
9	3J(4)	To provide additional information to the FS in respect of an application for an HER exemption under this section	As Serial 1
10	3K(1)	To withdraw an application for an HER exemption as specified in this section	As Serial 1

Serial	Section	Power or duty	Person authorized – office holder
11	3M(1)	To apply for an NPR exemption under this section	As Serial 1
12	3M(4)	To provide additional information to the FS in respect of an application for an NPR exemption under this section	As Serial 1
13	3N(1)	To withdraw an application for an NPR exemption as specified in this section	As Serial 1
14	3P(2)	To give a written notice to the FS specifying the date on which the specified officer intends to start to carry out the harbour non-permanent reclamation and to publish a copy of the written notice as specified in this section	As Serial 1
15	3Q(2)	To submit report of the harbour non-permanent reclamation to the FS as specified in this section	As Serial 1
16	3Q(4)	To provide additional information to the FS for monitoring the progress of harbour non-permanent reclamation	As Serial 1
17	3R(1)	To make extension application under this section	As Serial 1
18	3R(4)	To provide additional information to the FS for consideration of extension application under this section	As Serial 1
19	3Y(3)	To comply with the directions given by the FS in the event of suspension, revocation or expiry of an HER exemption or an NPR exemption	As Serial 1

Annex 1.3B – Memo from TLB – Delegation under the PHO

**Protection of the Harbour Ordinance
(Chapter 531)**

I, Mable CHAN, Secretary for Transport and Logistics, acting pursuant to section 2A(2) of the Protection of the Harbour Ordinance (Chapter 531) HEREBY AUTHORIZE the persons for the time being holding the respective offices listed in the fourth column of the Schedule attached hereto, to exercise and perform the powers and duties set out in the third column of the Schedule which are conferred or imposed on me by virtue of the respective sections of the Protection of the Harbour Ordinance (Chapter 531) set out in the second column of the Schedule in respect of works for which the said persons are responsible.

Dated this 30th day of June 2025.

A handwritten signature in black ink, appearing to read 'Mable Chan', is positioned above the printed name and title.

(CHAN Mable)
Secretary for Transport and Logistics

SCHEDULE

Serial	Section	Power or duty	Person authorized – office holder
1	3B(1)	To make an OPNA report as specified in this section	<p>1. <u>Private works of reclamation that may be directed under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap.370)</u></p> <p><u>Lands Department</u> Director of Lands Principal Government Land Agents Government Land Agents Chief Estate Surveyors</p> <p>2. <u>Public works of reclamation that may be directed under section 17 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) or authorized under section 22 of the Railways Ordinance (Cap. 519)</u></p> <p><u>Architectural Services Department</u> Director of Architectural Services</p> <p><u>Civil Engineering and Development Department</u> Director of Civil Engineering and Development</p> <p><u>Drainage Services Department</u> Director of Drainage Services</p> <p><u>Electrical and Mechanical Services Department</u> Director of Electrical and Mechanical Services</p> <p><u>Highways Department</u> Director of Highways</p> <p><u>Water Supplies Department</u> Director of Water Supplies</p>
2	3C(1) 3C(2) 3C(3)	To publish the OPNA report or amended OPNA report (together with a statement containing a general description of the amendment) on a website and make a copy thereof available for inspection by the public and publish a notice as specified in this section	As Serial 1

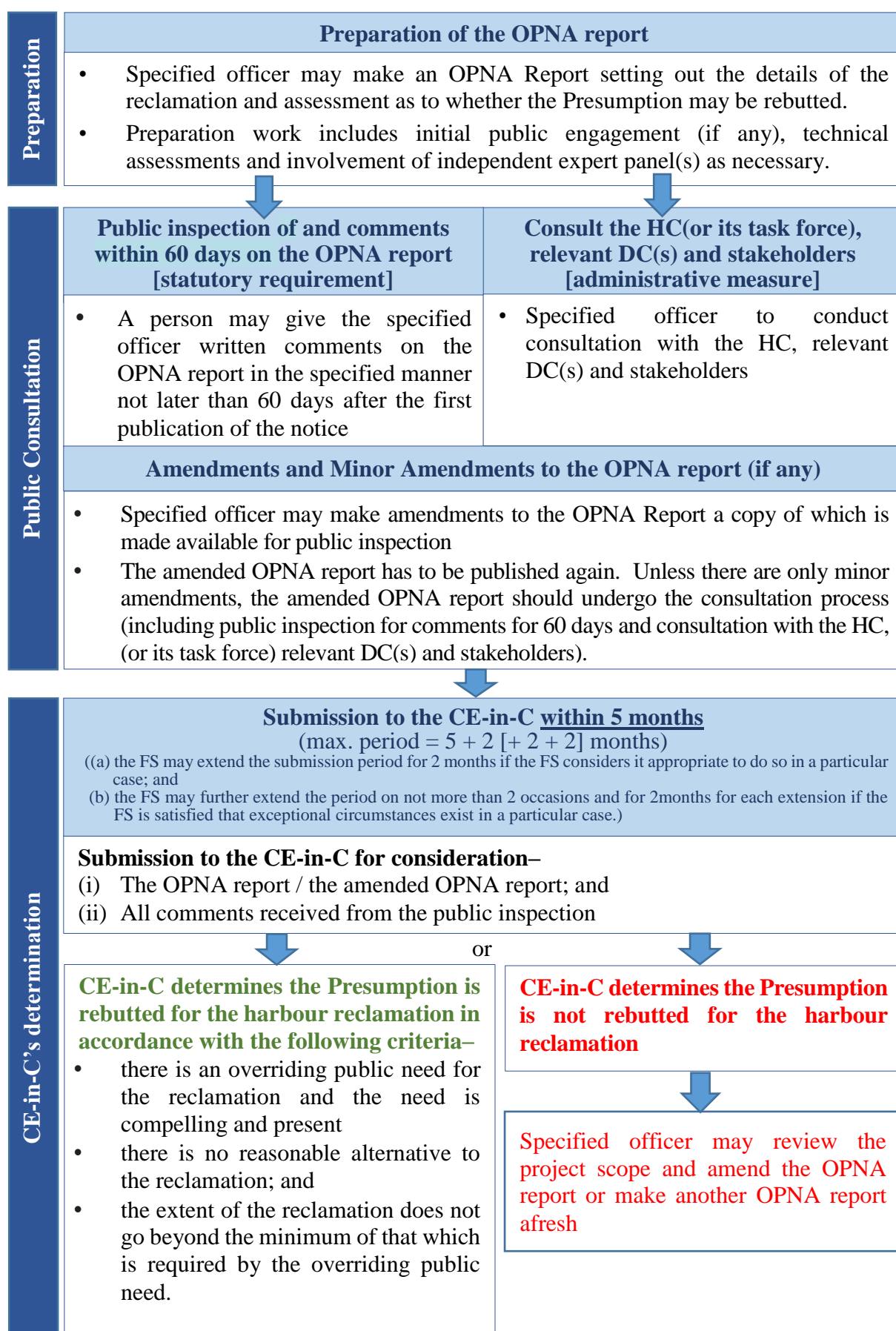
Serial	Section	Power or duty	Person authorized – office holder
3	3D(1)	To amend an OPNA report as specified in this section	As Serial 1
4	3E(1) 3E(2)	To withdraw an OPNA report or amended OPNA report as specified in this section	As Serial 1
5	3F(1) 3F(2) 3F(4)	To receive written comments on the OPNA report or matters arising from the amendment made in the amended OPNA report as specified in this section, to authorize a public officer to receive a written comment on the specified officer's behalf, and to specify an address, an electronic mail address and a fax number to which a written comment may be sent	As Serial 1
6	3G(1)	To make submission to Chief Executive in Council as specified in this section	As Serial 1
7	3G(3)	To apply for extension of submission period as specified in this section	As Serial 1
8	3J(1)	To apply for an HER exemption under this section	As Serial 1
9	3J(4)	To provide additional information to the FS in respect of an application for an HER exemption under this section	As Serial 1
10	3K(1)	To withdraw an application for an HER exemption as specified in this section	As Serial 1

Serial	Section	Power or duty	Person authorized – office holder
11	3M(1)	To apply for an NPR exemption under this section	As Serial 1
12	3M(4)	To provide additional information to the FS in respect of an application for an NPR exemption under this section	As Serial 1
13	3N(1)	To withdraw an application for an NPR exemption as specified in this section	As Serial 1
14	3P(2)	To give a written notice to the FS specifying the date on which the specified officer intends to start to carry out the harbour non-permanent reclamation and to publish a copy of the written notice as specified in this section	As Serial 1
15	3Q(2)	To submit report of the harbour non-permanent reclamation to the FS as specified in this section	As Serial 1
16	3Q(4)	To provide additional information to the FS for monitoring the progress of harbour non-permanent reclamation	As Serial 1
17	3R(1)	To make extension application under this section	As Serial 1
18	3R(4)	To provide additional information to the FS for consideration of extension application under this section	As Serial 1
19	3Y(3)	To comply with the directions given by the FS in the event of suspension, revocation or expiry of an HER exemption or an NPR exemption	As Serial 1

Annex 1.4 – Summary of the categorisation of harbour reclamations under the PHO

Harbour reclamations not exempt from the Presumption	HERs	NPRs
The Presumption continues to apply	May be exempt from the Presumption	
<p>The Presumption may only be rebutted if:</p> <ul style="list-style-type: none"> • there is an overriding public need for the reclamation and the need is compelling and present; • there is no reasonable alternative to the reclamation; and • the extent of the reclamation does not go beyond the minimum of that which is required by the overriding public need 	<p>Exemption may be granted only if:</p> <ul style="list-style-type: none"> • the reclamation is for the construction (including addition and alteration) in the harbour of any of the structures, features or devices set out in Schedule 2 to the PHO; • specified area of the structure, feature or device does not exceed 0.8 ha; and • the HER is in the public interest 	<p>Exemption may be granted only if:</p> <ul style="list-style-type: none"> • Specified area of the reclamation does not exceed 3 ha at any time; • the expected duration of the proposed NPR does not exceed 7 years; and • the NPR is in the public interest
Procedures		
Specified officer to prepare OPNA report ↓	Specified officer to prepare materials for application for exemption ↓	
<p>Public participation</p> <ul style="list-style-type: none"> • Specified officer to arrange public inspection of OPNA report and comments may be given within 60 days (<i>statutory requirement</i>) • Specified officer to consult the HC(or its task force), relevant DC(s) and stakeholders (<i>administrative measure</i>) <p>↓</p>	<p>Public participation</p> <ul style="list-style-type: none"> • Specified officer to consult the HC (or its task force), relevant DCs and stakeholders, publish the HER/NPR application on the DEVB website and deliver it to the members of the LegCo Panel on Development via its secretariat for comment within a reasonable period of time (<i>administrative measure</i>) <p>↓</p>	
Specified officer to submit OPNA report and comments received to the CE-in-C within 5 months (unless extended) after the expiry of the 60-day public comment period ↓	Specified officer to submit application to the FS ↓	
The CE-in-C to determine whether the presumption is rebutted	<p>The FS to decide on whether to grant the exemption (with/ without conditions)</p> <p>↓</p> <p>Specified officer to submit progress report annually and upon completion of works</p>	

Annex 2.1 – Flowchart on procedures for rebuttal of the Presumption



Annex 2.2A – Specified Form of the OPNA report [section 3B(2)(a) of the PHO]

Remarks: the texts in italics are notes providing guidance for filling in the form and should be removed from the form submitted.

OPNA report No.

[to be provided by DEVB(HO)]

**OPNA report
(Made under section 3B(1) of the Protection of the Harbour Ordinance
(Cap. 531) (“the Ordinance”))**

[Project Title]

Part I – Details of the proposed reclamation

Please include the following information–

- *a plan delineating and describing the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the land formed in the harbour by the proposed reclamation*
- *Describe the facility constructed and works in the harbour, including the part of the harbour affected and the manner in which and duration for which the harbour will be affected by the proposed reclamation*
- *Describe the major processes of the proposed reclamation*

Part II – Assessment as to whether the presumption against reclamation under section 3(1) of the Ordinance may be rebutted for the proposed reclamation

Please refer to the “Guidelines for consideration of criteria for rebutting the Presumption” at Annex 2.2B to the Development Bureau Technical Circular (Planning and Lands) No. 1/2025

The assessment should cover the following issues:

1. *whether there is an overriding public need for the proposed reclamation and the need is compelling and present*
2. *whether there is no reasonable alternative to the proposed reclamation; and*
3. *whether the extent of the proposed reclamation does not go beyond the minimum of that which is required by the overriding public need*

Part III – Other relevant information (if any)

Please include any other relevant information that supports the assessment in Part II, e.g. views and comments received during early engagement (if any), independent expert reviews (if any) etc.

Made by specified officer / public officer as authorized by specified officer:

[E.g. STL/ DL/ Officers in LandsD with authorization/ Director of the works department with authorization]

**Contact
Person(s)**

**Contact Tel. No.
Contact E-mail.
Fax No.**

Drafted by initiating party:

[E.g. Director of the works department/ private proponent and supporting bureau, if any]

**Contact
Person(s)**

**Contact Tel. No.
Contact E-mail.
Fax. No.**

Annex 2.2B – Guidelines for consideration of criteria for rebutting the Presumption

As provided under section 3A of the PHO, the Presumption may only be rebutted for a harbour reclamation if–

- (a) there is an overriding public need for the reclamation and the need is compelling and present;
- (b) there is no reasonable alternative to the reclamation; and
- (c) the extent of the reclamation does not go beyond the minimum of that which is required by the overriding public need.

2. The whole process including the decisions on the three criteria must be clearly documented and substantiated by the OPNA report in the form specified by the SDEV. Supporting materials may be necessary and the exact type and extent of supporting materials depend on the nature and purpose of the project/facility. For examples, please see **Appendix**. It is the responsibility of the specified officer to prove, with support of the relevant works departments, that the proposals they put forward will rebut the Presumption in accordance with the three criteria.

3. 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 bureaux and departments. It is necessary to demonstrate that there is no reasonable alternative but to reprovision an affected facility on reclamation.

Criterion 1 – overriding, compelling and present public need

4. In assessing whether the Presumption may be rebutted, it will be necessary to establish that there is an **overriding public need**, and the need is **compelling** and **present**.

- (a) **Public needs** are community needs and include the economic, environmental and social needs of the community.

Economic Needs

- need to 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;
- 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; and
- 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

- need to improve quality of life of the community (e.g. by providing more public amenities and promoting public accessibility to the harbourfront).

- (b) A **compelling need** must have the requisite force to prevail over the strong public need for protection and preservation of the harbour. It is also 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.
- (c) 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. 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.

Criterion 2 – no reasonable alternative to reclamation

5. 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.

- (a) **Examples of alternatives to reclamations:** 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/railway alignment, and employing different design and construction methods. Below are sample questions that need to be answered in considering whether there are 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 utilised 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?

- (b) **Assessment on "reasonableness" of alternatives:** all circumstances should be considered in determining what is a reasonable alternative to reclamation, including the economic, social and environmental implications of each

alternative, the cost and time incurred, and other relevant considerations²⁰. The assessments should be properly documented, and set out in the OPNA report for public scrutiny. If any reasonable alternative is available, the reclamation proposal should not be considered further. An alternative may be potentially considered as “unreasonable” if it (the following is not exhaustive)–

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

Criterion 3 – minimum extent of reclamation

6. Reclamation must be restricted to only the extent strictly necessary to meet the overriding public need. 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 potentially be considered as minimum if further reduction in reclamation would, for example–

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

7. 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 OPNA report.

²⁰ The range of indicators and criteria may potentially include but is not necessarily limited 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.





Appendix to Annex 2.2B - Examples of Supporting materials in OPNA Report




Case example	Trunk Road and Railway	Drainage and Sewerage Facilities	Promenade
Economic Aspect	<ul style="list-style-type: none"> Findings and recommendations of updated transport studies Role of trunk road and railway in strategic transport network Road traffic and railway usage forecasts in specific timeframe (e.g. volume/capacity ratios, speed of vehicular traffic) Congestion relief to adjacent roads and railway network Daily boarding, rail ridership, percentage of trips by railways Overloading of railway 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 Drive development 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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

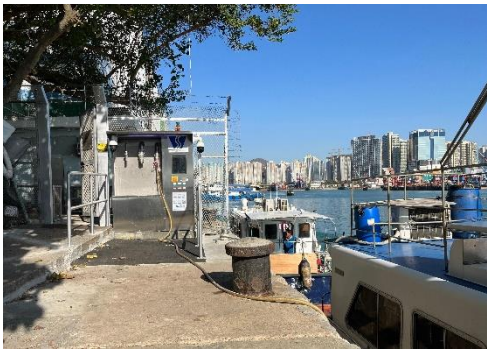
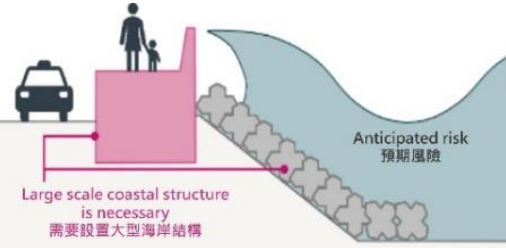
Case example	Trunk Road and Railway	Drainage and Sewerage Facilities	Promenade
Environmental Aspect	<ul style="list-style-type: none"> • Improvement in air quality • Reduction in noise sensitive receivers exposed to excessive road traffic noise • Reduction in energy consumption • Improvements along other roads (by the relief in traffic provided by the new project) 	<ul style="list-style-type: none"> • Improvement in water quality • Reduction in expedient connections to stormwater drains 	<ul style="list-style-type: none"> • Improvement in visual quality and landscape character of the waterfront
Social Aspect	<ul style="list-style-type: none"> • Increase in mobility of passengers • Improvement in living and working environment (may include qualitative assessment) • Public support (may be established through public consultation) 	<ul style="list-style-type: none"> • Improvement in healthy living and working environment (may include qualitative assessment) • Public support (may be established through public consultation) 	<ul style="list-style-type: none"> • 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)

Annex 3.1 – Structures, features or devices set out in Schedule 2 to the PHO

Schedule 2 to the PHO	Photo for reference	Description
1. Promenade and boardwalk	 <p><i>(Photo credits: DEVB(HO))</i></p>	A walkway along a beach or waterfront.
2. Cycle track	 <p><i>(Photo credits: CEDD)</i></p>	A lane for use by non-mechanically propelled vehicles, such as bicycles and tricycles.
3. Harbour pool	 <p><i>(Photo credits: purchased from dreamstime)</i></p>	A designated area located within the Harbour for swimming.
4. Viewing deck	 <p><i>(Photo credits: purchased from Shutterstock)</i></p>	An area to facilitate public enjoyment of viewing of harbourfront scenery.

Schedule 2 to the PHO	Photo for reference	Description
5. Ramp	 <p><i>(Photo credits: purchased from Shutterstock)</i></p>	A slab sloping from about lowest tide level to above high tide level, for the movement of vehicles and people, usually from vessels to the shore.
6. Mooring	 <p><i>(Photo credits: Home Affairs Department)</i></p>	A structure that makes fast to vessels, enables vessels to berth stably, or prevents vessels from drifting away from a berth so as to ensure safe embarkation and disembarkation of personnel or loading and discharging cargoes.
7. Breakwater	 <p><i>(Photo credits: ISD)</i></p>	A structure employed to reflect and dissipate the energy of water waves and thus prevent or reduce wave action in a water area it is desired to protect.
8. Seawall	 <p><i>(Photo credits: CEDD)</i></p>	A soil retaining structure of a reclamation or as an armouring structure to protect a shoreline from erosion against wave and current actions.






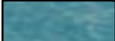
Schedule 2 to the PHO	Photo for reference	Description
9. Hanger, crane and hardstand for ship repair	 <p>(Photo credits: Marine Department)</p>	An area for storage, seasonal maintenance and the construction of boat (hanger); a device equipped with mechanical means of raising and lowering a load and for transporting the load (crane); and a hard-surfaced area for parking / berthing / mooring of ship (hardstand).
10. Wave absorption structure	 <p>(Photo credits: CEDD)</p>	A structure that can reduce the energy of water tides, waves, currents or storm surges.
11. Facility for the operation of typhoon shelter or sheltered anchorage	 <p>(Photo credits: TLB)</p>	Facilities for the operation of typhoon shelter or sheltered anchorage for parking / berthing / mooring of ship and protect against waves and storm surges.

Schedule 2 to the PHO	Photo for reference	Description
12. Water supplies, bunkering or battery charging facility for supporting marine operations	 <p>(Photo credits: Marine Department)</p>	An area for supply of water and energy for supporting operations at sea and shipping purpose.
13. Device for mitigating extreme climate risks	 <p>(Photo credits: CEDD)</p>	A device that mitigates extreme climate risks, such as severe flooding.
14. An item specified in the Schedule to the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)	<p>Schedule to the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) contains the following–</p> <ul style="list-style-type: none"> ● Pier ● Landing steps ● Harbour steps ● Slipway ● Mooring dolphin ● Beacon ● Floating pontoon ● Submarine pipeline or outfall ● Diffuser for open sea discharge ● Seawater intake ● Peripheral structure or feature associated with a marine structure <p>Their photos and descriptions can be found at Appendix 3.11B of Project Administration Handbook for Civil Engineering Works (2024 Edition).</p>	

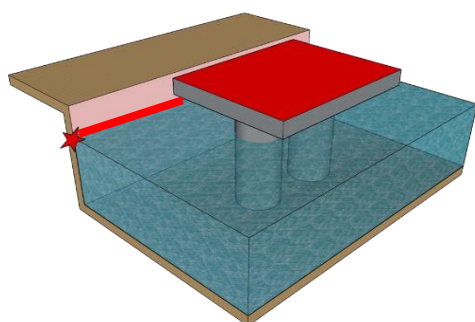
Annex 3.2 – Examples illustrating the calculation of the specified area of the structure, feature or device in the HER

For an HER exemption to be granted, the specified area of the structure, feature or device set out in Schedule 2 to the PHO (“specified structure”) (i.e. the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the structure, feature or device) to be constructed must not exceed 0.8 hectare. The following graphics demonstrate the calculation of the specified area of the specified structure in the HER by making reference to the line of the high water mark along the shore–

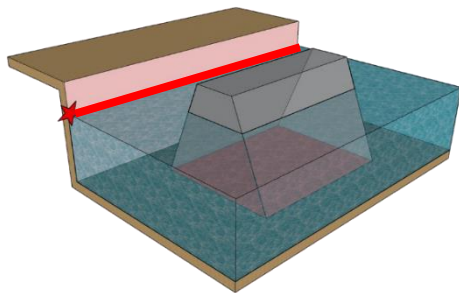
Legend:

	High water mark (2.3m above Hong Kong Principal Datum)
	Area to be counted as specified area
	New specified structure
	Existing specified structure demolished and reconstructed (if any)
	Existing specified structure (if any)
	Waterbody

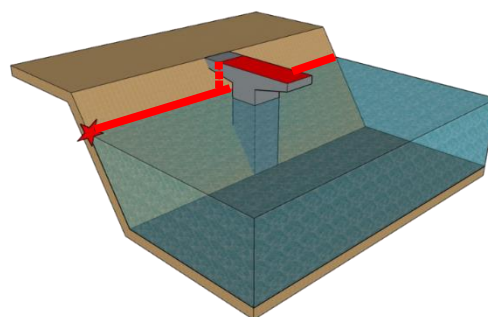
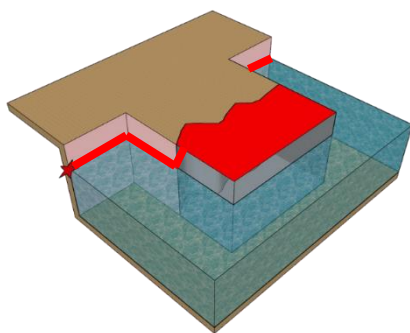
Example 1: Above-water structures, such as cycle track supported by structure erected in the water body.



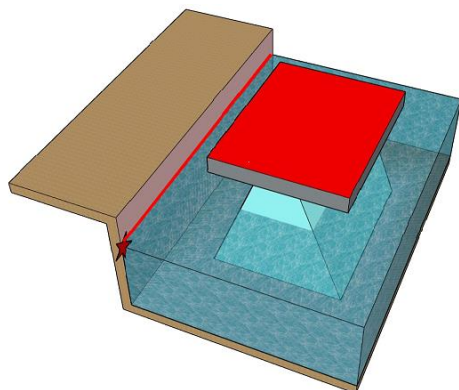
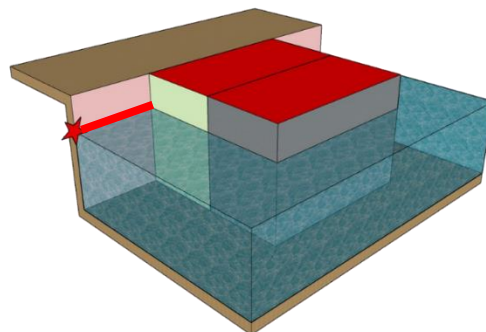
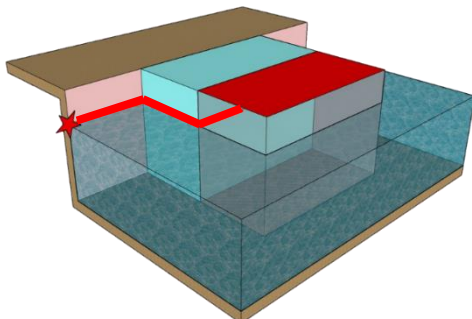
Example 2: Underwater structure, such as breakwater



Example 3: Coastal structures, including cantilevered structure above water surface



Special case: Construction involving existing structures



Annex 3.3 – Specified Form of the application for an HER exemption
[section 3J(2) of the PHO]

Remarks: the texts in italics are notes providing guidance for filling in the form and should be removed from the form submitted. The application submitted should not be more than 5 pages (excluding Annexes).

Application No.

[to be provided by DEVB(HO)]

Application Form for an HER exemption
(Submitted under section 3J(1) of the
Protection of the Harbour Ordinance (Cap. 531) (PHO))

[Project Title]

Part I – Proposed Harbour Enhancement Reclamation (HER)

A. Works project No./ PWP No./ Contract No. of the Project <i>(if applicable)</i>	<i>[PWP No. XXXX]</i> <i>[CEDD/20XX/XX]</i>
B. Project Manager of the Project	
C. Consultant of the Project	
D. Description of the Project <i>[XXX development project]</i>	
E. Description of the harbour enhancement works that the HER is for (e.g. facility to be constructed, location of the project in the harbour, construction method, etc.) <i>[Construction of a cycle track connecting [location] and [location] by [construction method] in the harbour in [location] and by non-permanent reclamation of 0.1 hectare in [location]]</i>	
F. The structure, feature or device to be constructed [Note: must fall within Schedule 2 to the PHO.] <i>[Cycle track]</i>	

G. Specified area of the structure, feature or device set out in Schedule 2 to the PHO to be constructed under the harbour enhancement works (with Plan)
[Note: the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the structure, feature or device must not be more than 0.8 hectare.]

[0.4 ha (denoted in the plan enclosed)]

H. Specified area of the HER (with Plan)
[i.e. the total area of the harbour occupied under water or covered at or above the water surface, whichever is the largest, by the land formed in the harbour by the HER (e.g. non-permanent land formed as temporary working platform (if any) will be included)]

[0.5 ha (denoted in the plan enclosed)]

I. Expected date to start to carry out the HER and expected duration of the works of the HER

[The expected date to start to carry out the reclamation is [date] and the expected duration is [x] year(s).]

J. Other Ordinance(s) under which authorization is required (e.g. Cap. 127, Cap. 370 or Cap. 519) and when the respective submission is targeted to be made

[Target to make submission for obtaining authorization under [Cap. 370] in [QX 20XX]]

Part II – Assessment of the proposed reclamation

A. Intended public benefit to be brought by the harbour enhancement works

[set out the public benefits, e.g. enhances public enjoyment of the harbour and improves harbour connectivity.]

B. Relationship of the HER with any other reclamation in respect of which an HER exemption has previously been granted, and impacts (including the anticipated impacts) of those reclamations on the harbour

[set out details of the other reclamation(s) that had been granted with an HER exemption and has/have a relationship with the proposed reclamation, and the details of such relationship. Please obtain a list and plan(s) showing all reclamations in the harbour that had been granted exemption by the FS from DEVB(HO) while making this assessment.]

C. Public engagement conducted

[set out a summary of the public consultation, including the stakeholders consulted, the means of consultation, the views received, the response given and/ or follow up actions taken.]

Part III – Other information (if any)

[set out any other information that may be relevant to the FS' decision]

Application made by specified officer / public officer as authorized by specified officer:
[E.g. STL/ DL/ Officers in LandsD with authorization/ Director of the works department with authorization]

**Contact
Person(s)**

**Contact Tel. No.
Contact E-mail.
Fax No.**

Prepared by initiating party:

[E.g. Director of the works department/ private proponent and supporting bureau, if any]

**Contact
Person(s)**

**Contact Tel. No.
Contact E-mail.
Fax. No.**

Comments from the Harbour Office of Development Bureau

[to be provided by DEVB(HO)]

Annex 4.1 – Specified Form of the application for an NPR exemption
[section 3M(2) of the PHO]

Remarks: the texts in italics are notes providing guidance for filling in the form and should be removed from the form submitted. The application submitted should not be more than 5 pages (excluding Annexes).

Application No.

[to be provided by DEVB(HO)]

Application Form for an NPR Exemption
(Submitted under section 3M(1) of the
Protection of the Harbour Ordinance (Cap.531))

[Project Title]

Part I – Proposed Harbour Non-permanent Reclamation (NPR)

A. Works project No./ PWP No./ Contract No. of the Project (if applicable)	<i>[PWP No. XXXX] [CEDD/20XX/XX]</i>
B. Project Manager of the Project	
C. Consultant of the Project	
D. Description of the Project <i>[XXX development project]</i>	
E. Description of NPR (e.g. Facility to be constructed, location of the project in the harbour, construction method, etc.) <i>[Non-permanent reclamation for construction of a cross harbour tunnel in [location] by [construction method]]</i>	

F. Specified area of NPR (with Plan), and if the specified area exceeds 3 hectares, description on how the area limit (i.e. not exceeding 3 ha at any time during the reclamation) is met

[A total area of 4 ha of land formed from sea-bed in two phases, which are Phase 1 with 2 ha in 30 months and Phase 2 of 2 ha in 30 months. (denoted in the plan enclosed). At most only 2 ha of land will be formed in each phase]

G. Expected date to start to carry out the NPR and expected duration of the NPR (beginning on the said date and ending on the expected completion date of the works to reinstate the harbour affected by the reclamation) [Note: the expected duration of the NPR must not exceed 7 years.]

[The expected date to start to carry out the reclamation is [date] and the expected duration is [x] year(s).]

H. Other Ordinance(s) under which authorization is required (e.g. Cap. 127, Cap. 370 or Cap. 519) and when the respective submission is targeted to be made

[Target to make submission for obtaining authorization under [Cap. 370] in [QX 20XX]]

Part II – Assessment of the proposed reclamation

A. Intended public benefits to be brought by the NPR

[set out the public benefits e.g. relieve traffic congestion]

B. Adverse impact on the harbour caused by NPR and proposed mitigation measures to minimize the adverse impact

[set out details of adverse impact on the harbour by the proposed non-permanent reclamation, and the proposed mitigation measures]

C. Public engagement conducted

[set out a summary of the public consultation, including the stakeholders consulted, the means of consultation, the views received, the response given and/ or follow up actions taken.]

Part III – Other information (if any)

[set out any other information that may be relevant to the FS' decision]

Application made by specified officer / public officer as authorized by specified officer:
[E.g. STL/ DL/ Officers in LandsD with authorization/ Director of the works department with authorization]

**Contact
Person(s)**

**Contact Tel. No.
Contact E-mail.
Fax No.**

Prepared by initiating party:

[E.g. Director of the works department/ private proponent and supporting bureau, if any]

**Contact
Person(s)**

**Contact Tel. No.
Contact E-mail.
Fax. No.**

Comments from the Harbour Office of Development Bureau

[to be provided by DEVB(HO)]

Annex 4.2 – Specified Form of Progress Report for an NPR granted an NPR exemption [section 3O(3)(a) of the PHO]

Remarks: the texts in italics are notes providing guidance for filling in the form and should be removed from the form submitted. The progress report submitted should not be more than 5 pages (excluding Annexes).

Application No.

[to be provided by DEVB(HO)]

Progress report No.

[to be provided by DEVB(HO)]

Progress Report for Harbour Non-Permanent Reclamation
(Submitted under section 3Q(2) of the
Protection of the Harbour Ordinance (Cap. 531)

[Project Title]

Part I – Details of the harbour non-permanent reclamation

A. Works project No./ PWP No./ Contract No. of the Project (if applicable)	<i>[PWP No. XXXX]</i> <i>[CEDD/20XX/XX]</i>
B. Project Manager of the Project	
C. Consultant of the Project	
D. Contractor of the Project	
E. Description of the Project <i>[XXX development project]</i>	

F. Permitted construction period granted by the Financial Secretary (“FS”)

[The permitted construction period is [specify the permitted construction period] specified by the FS in the Government Notice No. [number] published in the Gazette on [date] and [date] (i.e. from [intended starting date] to the last date of the said period)]

G. Details of extension(s) applied for / granted (or taken to granted) by the FS (if any)

Part II - Progress of the harbour non-permanent reclamation

A. Report Type

[annual progress report/ final progress report]

B. The date up to which the progress of the harbour non-permanent reclamation is reported

[Note: the annual progress report should set out the progress up to a date not earlier than 3 months before the anniversary of the intended starting date of the reclamation and the final progress report should set out the progress up to the completion date.]

[date]

C. Report Submission Date

[Note: the annual report should be submitted on each anniversary of the intended starting date of the reclamation that occurs before the completion date of the works to reinstate the harbour affected by the reclamation; and the final progress report should be submitted on a date no later than 3 months after the completion date.]

[date]

D. Progress Summary

[Planned Area reclaimed (m²): [X ha]

Actual Area reclaimed (m²): [X ha]

Progress: Satisfactory/ unsatisfactory

[Note: breakdown of reclamation could be down to the quantity of marine deposits dredged, quantity of filling and backfilling, length of seawall peripheral to the reclamation constructed etc.]

Planned reclamation to be removed (m²): [X ha]
Actual reclamation removed (m²): [X ha]
Progress: Satisfactory/ unsatisfactory
[Note: breakdown of reclamation could be down to the quantity of temporary reclamation removed, length of seawall peripheral to the reclamation demolished etc.]

Other progress could be included
Manpower, mobilisation of plants and machinery, construction of working platforms and berthing etc.

Proposed follow up action (applicable if the progress is “unsatisfactory”)
Mitigation measures for delay/ Application for extension, etc.]

E. Supplementary Information

[In the final report, supporting materials should be provided to demonstrate that the works to reinstate the harbour affected by the reclamation are completed (e.g. as-built land survey report and hydrographic survey report certified by a Corporate Member of Hong Kong Institute of Surveyors (Land Surveying Division) or equivalent)

Submitted by specified officer / public officer as authorized by specified officer:
[E.g. STL/ DL/ Officers in LandsD with authorization/ Director of the works department with authorization]

Contact Person(s)		Contact Tel. No. Contact E-mail. Fax No.	
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Prepared by initiating party:
[E.g. Director of the works department/ private proponent and supporting bureau, if any]

Contact Person(s)		Contact Tel. No. Contact E-mail. Fax. No.	
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Comments from the Harbour Office of Development Bureau

[to be provided by DEVB(HO)]