

Harbourfront Commission

For discussion
on 8 May 2017

HC/06/2017

Progress Report from Working Group on the Protection of the Harbour Ordinance

REPORTING PERIOD

This progress report covers the period from February 2017 to April 2017.

MEETING HELD AND THE MAJOR OUTCOME, FINDINGS AND RECOMMENDATIONS

2. The Working Group discussed the following issues/items at its first meeting –

First Meeting – 15 February 2017

(a) Terms of Reference (ToR) and Proposed Workflow

- At the Harbourfront Commission (HC) meeting held on 13 December 2016, Members agreed to set up the Working Group on PHO under the aegis of HC to examine matters arising from the Protection of the Harbour Ordinance (PHO) and conduct suitable reviews.
- Members endorsed the proposed ToR and workflow with slight amendment to the ToR by adding in the reference to the judgment laid down by the Court of Final Appeal in 2004, which was the most salient judgment discussing the “overriding public need” test. The amended ToR is annexed.

(b) Compliance with the PHO

- Members were briefed on the background of the PHO and relevant judgments, Government’s compliance with the PHO, projects that have fulfilled the PHO’s overriding public need test and their respective cogent and convincing materials and PHO implications of different harbourfront enhancement initiatives that involve small-scale reclamations.

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- Some members would like to further explore the proportionality principle once raised by the Society for Protection of the Harbour and suggested the Government to put forward worthwhile projects to the overriding public need test more often, after balancing the benefits to the community and the damage to the harbour.
- Members discussed past cases in which they might not have proceeded further because of the demanding nature of the overriding public need test and the fear of potential legal challenges. Members recognized the need to facilitate the implementation of harbourfront enhancement initiatives such as replacing aged breakwaters that may involve minor reclamations. Some discussed the possibility of establishing a mechanism for assessing whether reclamations involved could be considered as “minor” or delegating the authority to an independent body in declaring whether a project had fulfilled the overriding public need test.
- Members requested the Government to seek legal advice regarding the definition of “reclamation”, “forming land” as well as “overriding public need” and report to the Working Group at its next meeting.

Secretariat

Working Group on the Protection of the Harbour Ordinance

May 2017

Working Group on the Protection of the Harbour Ordinance

Terms of Reference

The Working Group aims to review the implementation of PHO with a view to –

- (a) identify issues under existing arrangements that may not be conducive to the fulfilment of the original intent and purpose of PHO as substantiated by subsequent court judgements (in particular that of the Court of Final Appeal), which is that the harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people;
- (b) study possible solutions to the issues as identified in (a) with public enjoyment of the Harbour and its harbourfront in mind as the objective; and
- (c) provide recommendations to the Government with the goal of removing hurdles faced by harbourfront enhancement initiatives, implementation of which would be in the interest of the public.