

Harbourfront Commission

Review on the **Protection of the Harbour Ordinance (Cap. 531)** and Proposed Framework of Legislative Amendments

Development Bureau
31 March 2023

Background of the PHO

- Passed in June 1997
- Contains only four sections
- Section 3 stipulates the “**presumption against reclamation in the harbour**”
 - ***does not specify** the circumstances under which the presumption can be rebutted*
- Explained in two aspects in 2004 and 2008

Judgments relating to the PHO

- **1st aspect – Need to prove the reclamation has an “overriding public need”**
 - such public need is compelling and present
 - there is no reasonable alternative to reclamation
 - the reclamation extent should not go beyond the minimum of that which is required by the overriding need
- Reclamation project proponent is required to prepare **cogent and convincing materials (CCM)**
 - ***Assessed by the proposing department;***
absence of a formal and standardised assessment mechanism
- The Government issued Technical Circular 1/2004 to set out the PHO requirements and guidelines for CCM preparation

Judgments relating to the PHO

- 2nd aspect – All reclamations, regardless permanent or temporary, are under the constraints of the PHO
 - *“Presumption against reclamation” applies **indiscriminately** to all reclamations in the harbour*
 - *regardless of permanence, scale or nature*

Harbourfront development

- Harbour enhancement works unavoidably **involve small-scale reclamation** as defined under the PHO
- there is **uncertainty** as to whether the harbour enhancement works have “**overriding public need**” despite their popularity among the public
- Most of the developable harbourfront sites have been completed; need facilitation in the law to achieve further breakthrough in harbourfront development

Proposed legal framework

- The Government will **not** initiate large-scale reclamation in the harbour to form land for housing, commercial or industrial developments, etc.
- To amend the PHO in **two strategic directions** —

Reclamations which should be regulated —

To strengthen the mechanism

Reclamations which would strengthen the harbour functions —

To facilitate in a reasonable manner

Reclamations in the harbour

– before and after the legislative amendments

	Existing arrangements	New arrangements upon proposed legislative amendments
Legal threshold	Must satisfy the “ overriding public need ” test	Must satisfy the “ overriding public need ” test
Whether the “overriding public need” test is satisfied	Assessed by the proposing department	Assessed by the Chief Executive-in-Council
Public participation	<ul style="list-style-type: none"> Consult stakeholders during the preparation of CCM → No procedure/timeframe regarding public inspection of the CCM 	<ul style="list-style-type: none"> Legal requirement: to exhibit the CCM and provide 2 months for public inspection and comment Administrative arrangement : to consult the Harbourfront Commission, relevant District Council and stakeholders
Can lodge judicial review?	Yes	Yes

More formalised, more transparent, more stringent

Harbour enhancement works involving reclamations

– before and after the legislative amendments

	Existing arrangements	New arrangements upon proposed legislative amendments
Legal threshold	<p>Must satisfy the “overriding public need” test</p> <p>→ Uncertainty in most projects as to whether they have “overriding public need”</p>	<p>To introduce a streamlined mechanism: proponents may apply for exemption from the “overriding public need” test, provided that –</p> <ol style="list-style-type: none"> 1. the project belongs to the categories of harbour enhancement works on the statutory list; 2. area of reclamation is not more than the statutory limit (preliminary proposal: 0.8 hectare (ha)); and 3. the project must be approved by a Secretary-level government official, who may decide not to grant exemption
Public participation	Consult stakeholders in the preparation of CCM	<ul style="list-style-type: none"> • Legal requirement: shall continue to meet other legal requirements (e.g. gazettal and receiving public objections as required under the FS(R)O) • Administrative arrangement: consult the Harbourfront Commission, relevant District Council and stakeholders
Can lodge judicial review?	Yes	Yes

Fulfil eligible criteria + complete public engagement+ stringent internal approval mechanism

Non-permanent reclamations

– before and after the legislative amendments

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

Fulfil eligible criteria + complete public engagement + stringent internal approval mechanism

Conclusion

More
formalised

More
transparent

More
harbourfront
facilities

Enhance
harbour
functions

Protect the harbour –

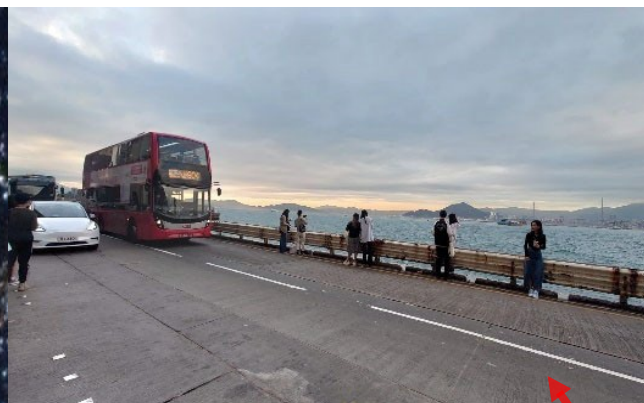
- More stringent regulation of large-scale reclamations
- Allow public participation

Enhance the harbour –

- Streamlined procedures to facilitate minor improvement works
- Public consultation
- Internal checks and balances

Examples of projects which may benefit from the legislative amendments

Boardwalk to enhance harbourfront connectivity in Kennedy Town



Revitalisation of the Kowloon City Vehicular Ferry Pier



Kowloon City Vehicular Ferry Pier
(Existing conditions)

Enhancement of the old pier at the former Kai Tak Runway



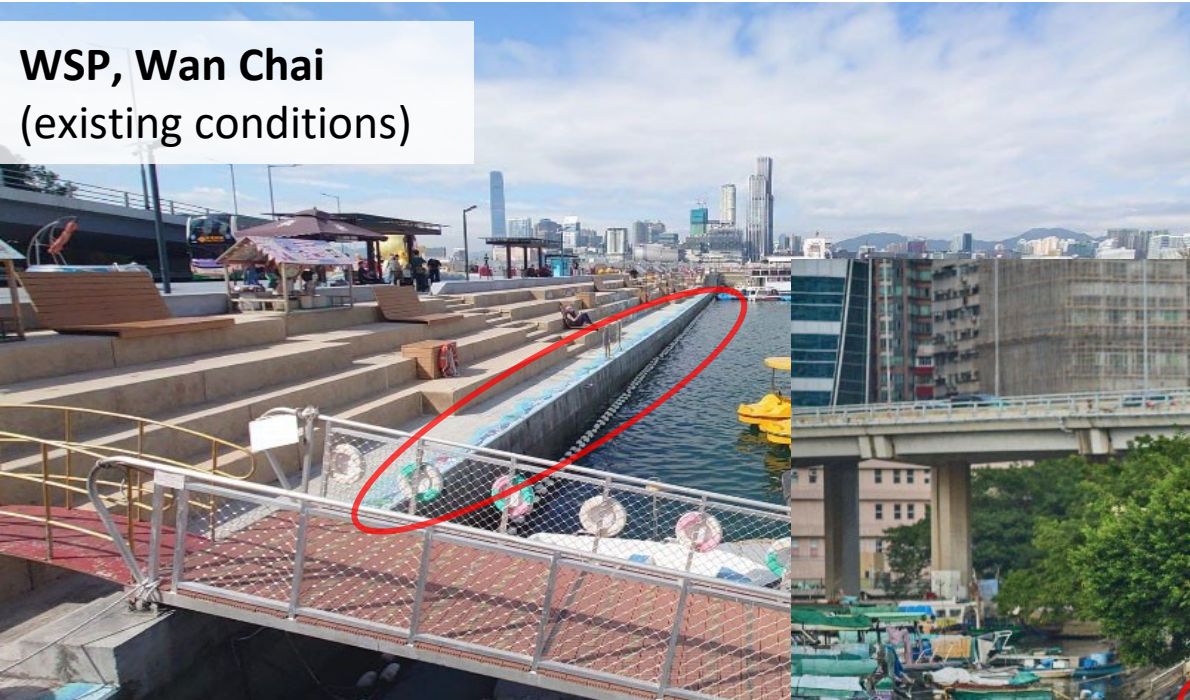
Kai Tak Pier
(existing condition)

Enhance/improve the four old piers near Cadogan Street in Kennedy Town



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

WSP, Wan Chai
(existing conditions)

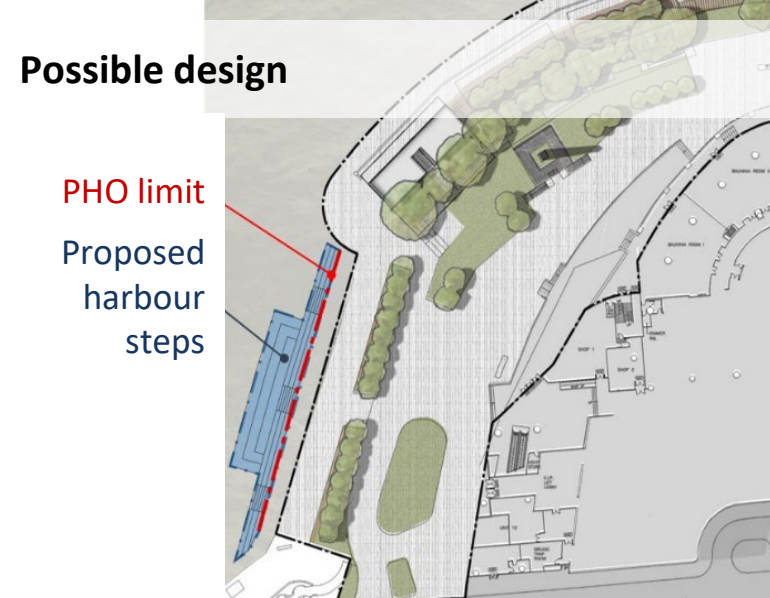


RTSP, Causeway Bay
(existing conditions)



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

Celebration Precinct
(Existing conditions)



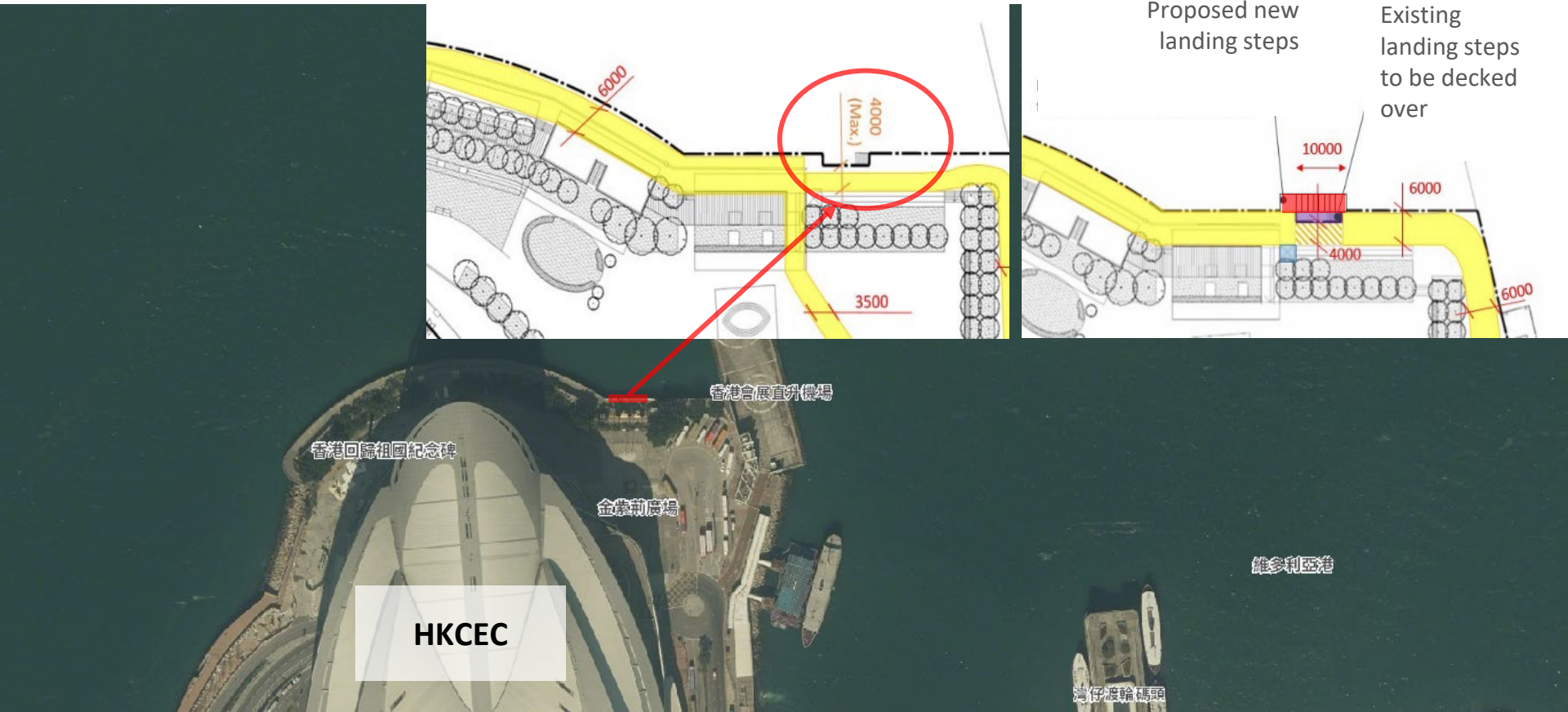
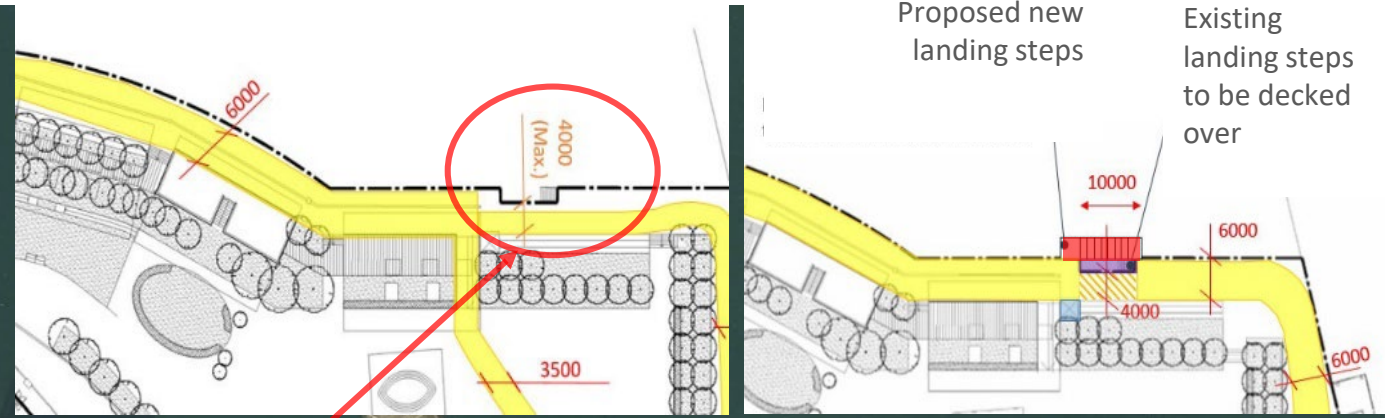
Enhancement of landing steps in the Celebration Precinct in Wan Chai

Existing situation

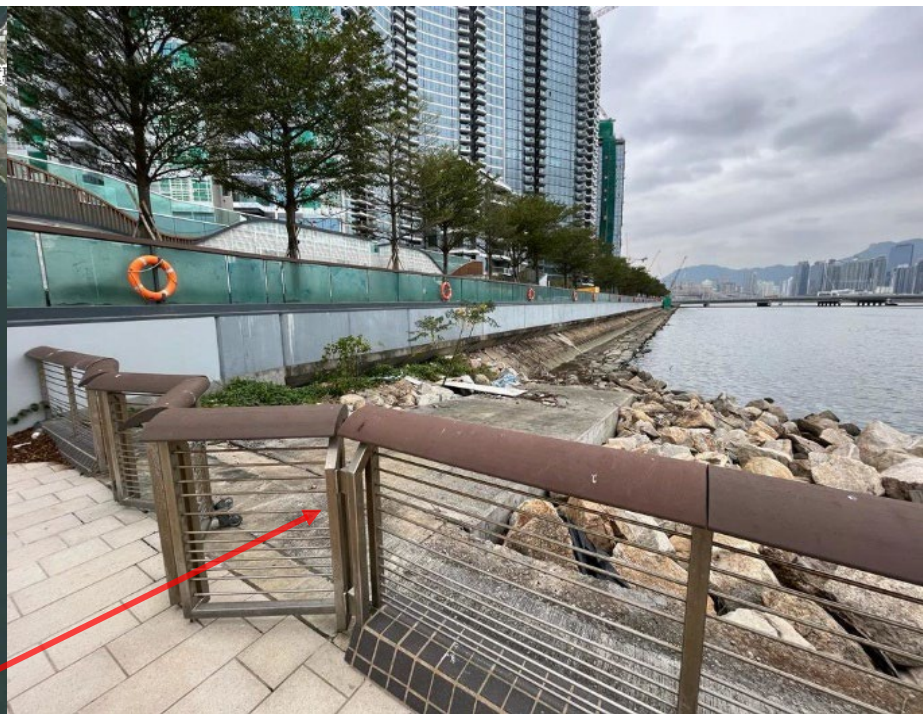
(Landing steps are set back into pavement to avoid constituting "reclamation" under PHO.)

Possible improvement

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



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



Temporary reclamations under the Central-Kowloon Rail Project



November 2019



November 2022

The original temporary structure (i.e. on the right) has been removed and seabed reinstated

Ends

