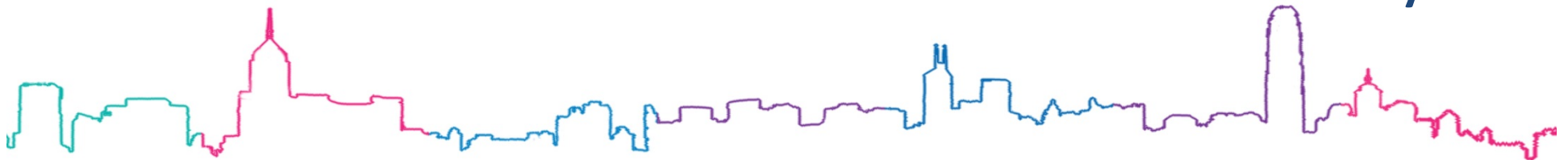
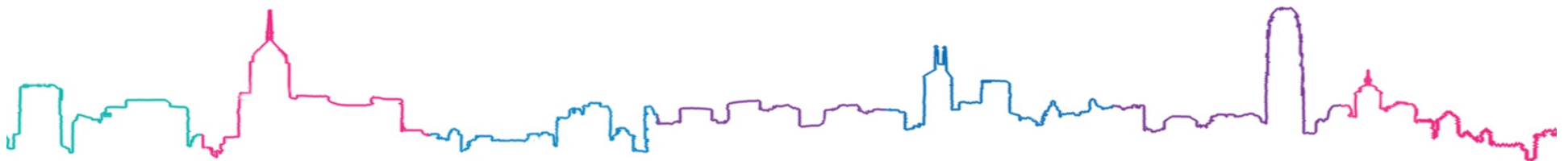

Compliance with the Protection of the Harbour Ordinance

**1st Working Group on the
Protection of the Harbour Ordinance meeting
24 February 2017**



Background

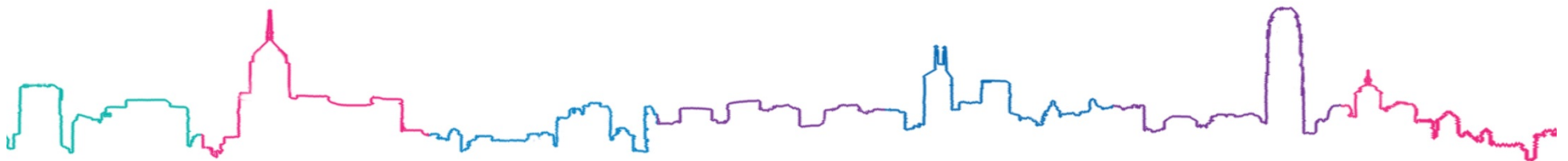
- Initiated by HC
- Working Group set up in December 2016
- Expected to have three meetings before making recommendations to the Government
- Detailed overview of the PHO and related issues could be found at HC Paper 08/2016



PHO

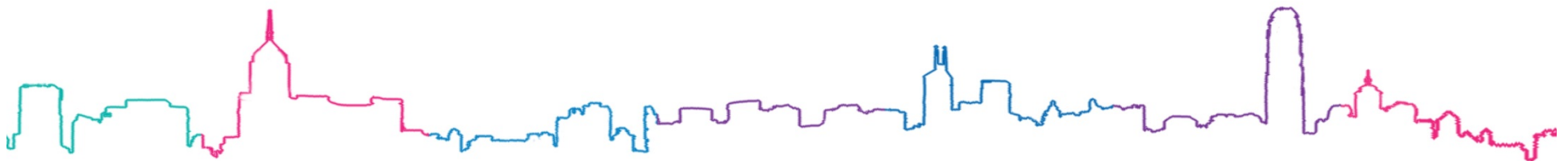
- PHO first came into force on 30 Jun 1997. The Chairman of the Bills Committee for the Protection of Harbour Bill 1997 described in his report to the Legislative Council on 27 Jun 1997 that the purpose of PHO was –

“...to ensure that Victoria Harbour will be protected against excessive reclamation. It establishes a presumption against reclamation in the harbour...”



CFA's Ruling on PHO

- Among others, CFA's ruling in 2004 set out that the purpose of the PHO is to protect and preserve the harbour by establishing a presumption against reclamation in the harbour and the presumption could only be rebutted by establishing an overriding public need for reclamation
- A public need would only be regarded as overriding if it is compelling and present, and if there is no reasonable alternative to reclamation
- Even if any, the extent of reclamation should not go beyond the minimum which is required by the overriding public need. The decision that there is an overriding public need for reclamation must be based on cogent and convincing materials (CCM)

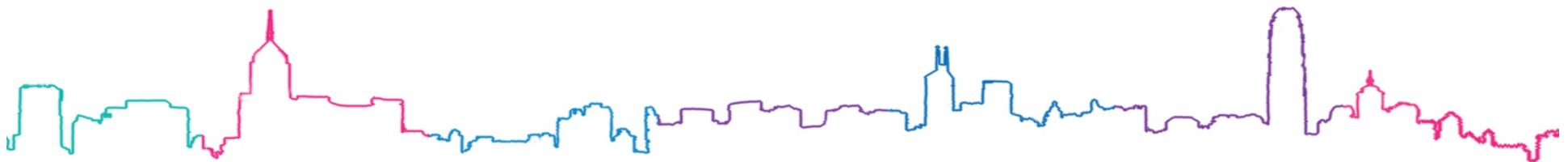


CFA's Ruling on PHO

- On rebutting the statutory presumption, CFA propounded a single and demanding test. The decision that there is an overriding public need for reclamation must be based on cogent and convincing materials –

“The burden

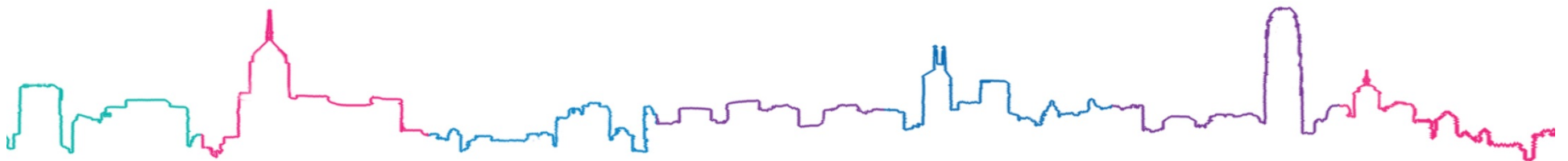
52. Having regard to the demanding nature of the overriding public need test and the requirement that there must be cogent and convincing materials to satisfy the test, the burden on those seeking to rebut the presumption is a heavy one. That this is so is entirely commensurate with what is at stake: the irreversible loss to the extent of the reclamation of a special asset and a natural heritage belonging to the people of Hong Kong.”



Compliance with PHO

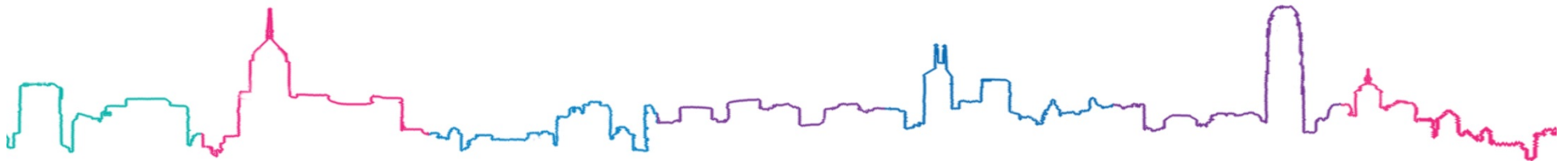
The Government is committed to protecting and preserving the harbour –

- 1) Issued a Technical Circular in August 2004 and
- 2) Made a public statement that there would be no new reclamation plan in the Victoria Harbour (apart from CRIII and WDII)



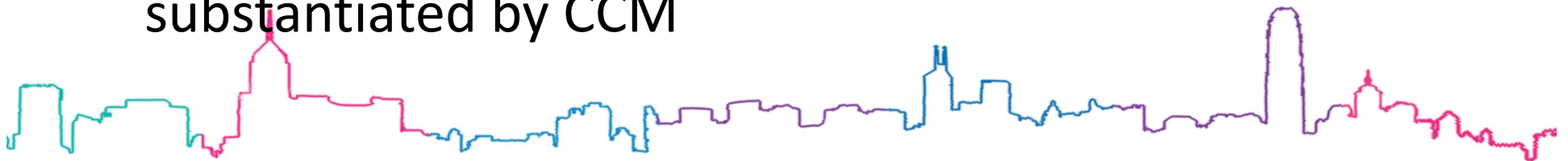
Compliance with PHO

- The Technical Circular applies to **all** reclamation proposals, regardless of scale, initiated by the Government or the private sector within the boundaries of the harbour
- It is the responsibility of the proponents of individual facilities (client bureaux / departments) to prove, with engineering input from the relevant works departments, that the proposals they put forward will meet “the overriding public need test”



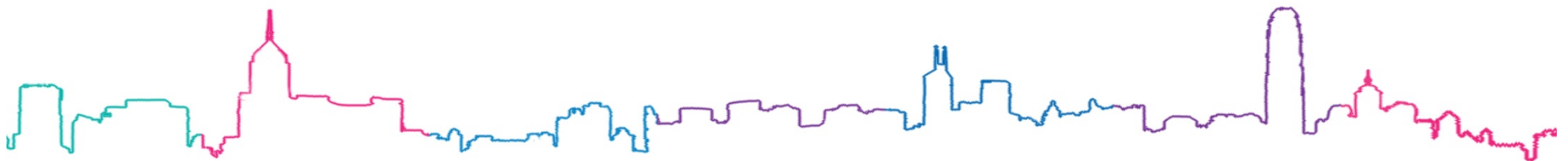
Compliance with PHO

- For each area of reclamation, three questions will need to be answered –
 - 1) Whether there is a compelling and present public need;
 - 2) Whether there is any reasonable alternative; and
 - 3) Whether the proposed reclamation extent is the minimum
- Answers must be clearly documented and substantiated by CCM



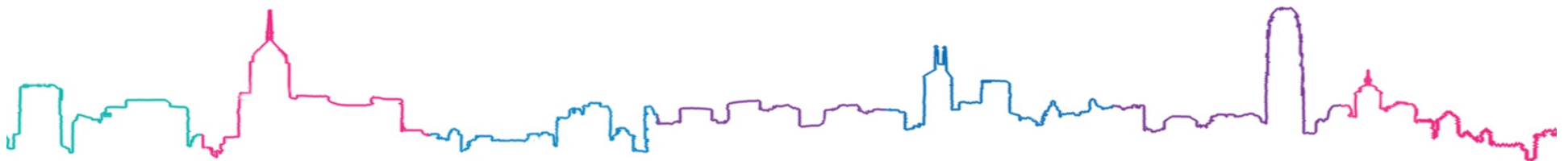
Compliance with PHO

- The Technical Circular also prescribed for the need for public consultation, the invitation of independent expert advice when necessary, flow chart in the decision making process and examples of materials to justify the overriding public need in different scenarios



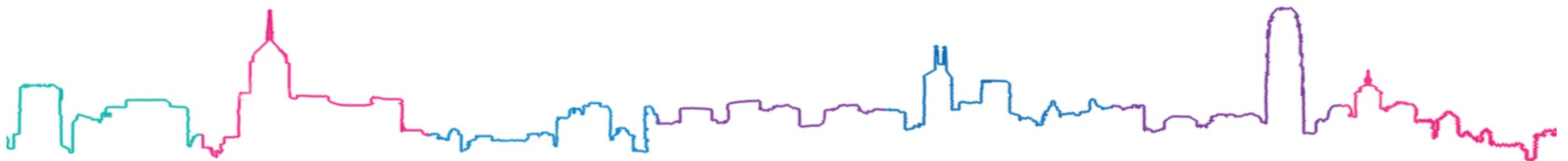
Compliance with PHO

- Since the CFA judgement in 2004, only three projects have been able to fulfil the overriding public need test in accordance with the Technical Circular –
 - Central Reclamation Phase III (“CRIII”) and Wan Chai Development Phase II (“WDII”)
 - Shatin to Central Link (“SCL”)
 - Central Kowloon Route (“CKR”)



CRIII

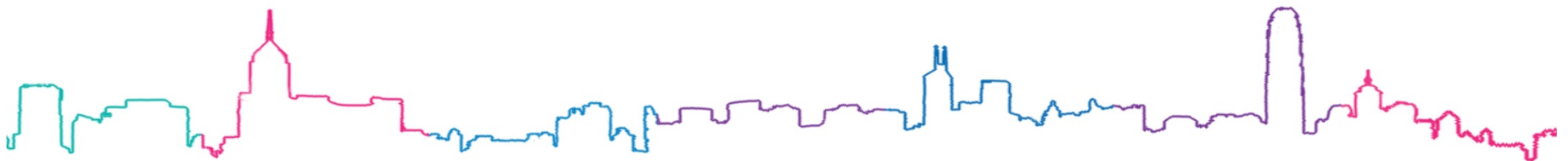
- Aim to provide land for essential transport infrastructure including the Central-Wan Chai Bypass and part of a vibrant waterfront promenade
- CEDD conducted two reviews in respect of CRIII



CRIII

First review (Nov 2003)

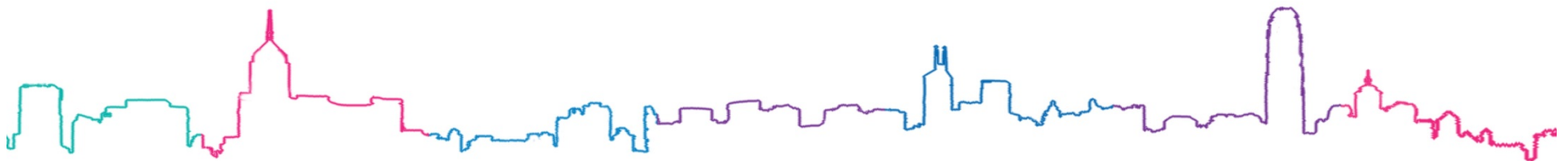
- “Three tests” were applied as laid down in the High Court Judgment in July 2003–
 - “compelling, overriding and present need”
 - “no viable alternative”
 - “minimum impairment”
- The review concluded that CRIII meets the “three tests”



CRIII

Further review (Jan 2004)

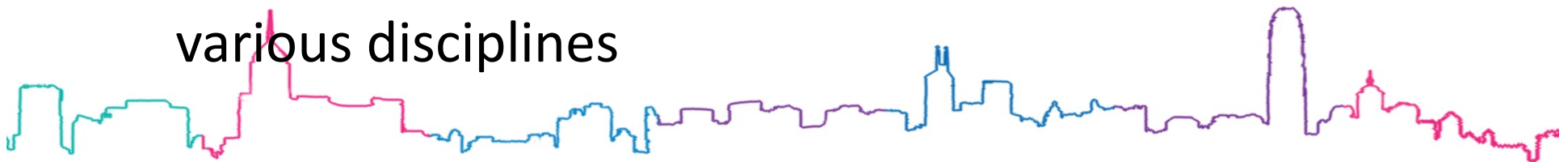
- Single test of “overriding public need” was applied to replace the “three tests” as laid down in CFA Judgment in January 2004
- “Review of CRIII by applying the CFA’s ‘Overriding Public Need Test’” (Review Report)



CRIII

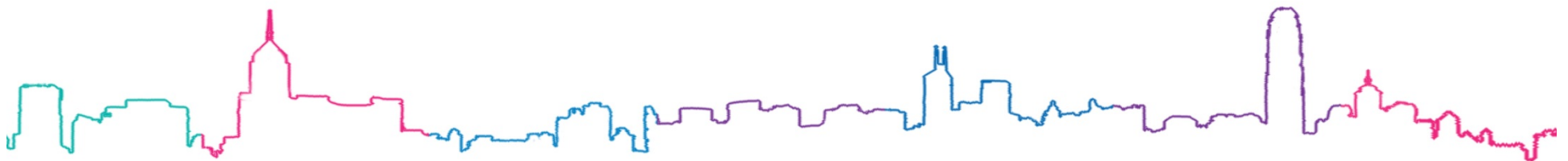
The Review Report (116 pages) –

- set out justifications by looking into the structural design of each major element under CRIII
- contained detailed elaborations on the need for the Central-Wan Chai Bypass and related road infrastructure
- examined and eliminated other possible alternatives with sufficient reasoning
- supporting affirmation by independent experts from various disciplines



WD II

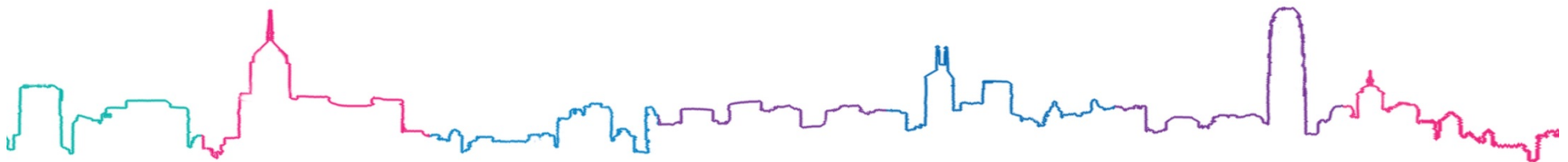
- Aim to provide land within the project area for the construction of a Trunk Road (comprising the Central – Wan Chai Bypass and Island Eastern Corridor Link) and other key transport infrastructure
- Opportunities for the development of a waterfront promenade joining that at the new Central waterfront



WD II

CCM report completed by CEDD in 2007

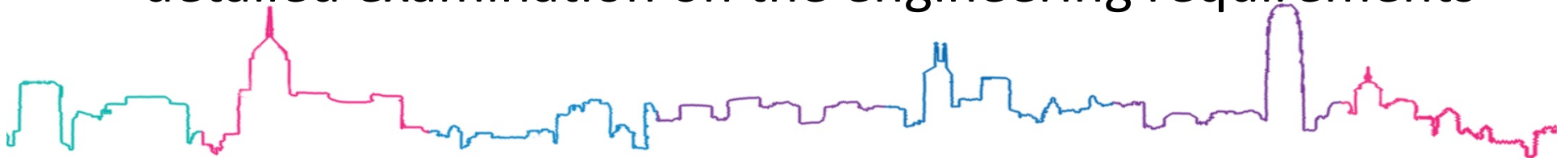
- Whether there was an overriding public need for the Trunk Road
- Made references to various traffic and transport studies
- Recommendations of an Expert Panel Forum



WD II

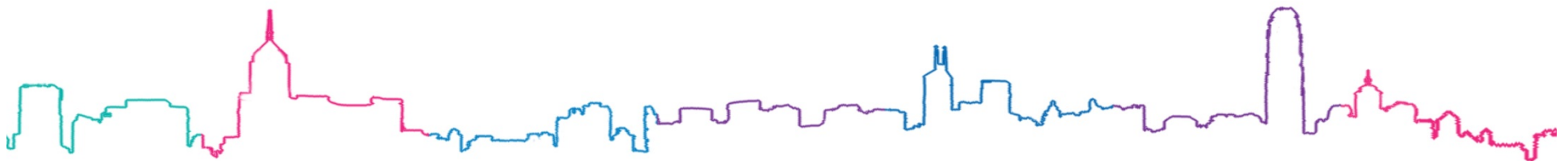
The CCM report (100 pages) –

- demonstrated that there was a compelling and present need for the Trunk Road
- identified all possible alignments and no feasible “no-reclamation” alignment for the Trunk Road
- option with the least amount of reclamation selected
- summarised public views and suggested a preferred scheme
- detailed examination on the engineering requirements



SCL

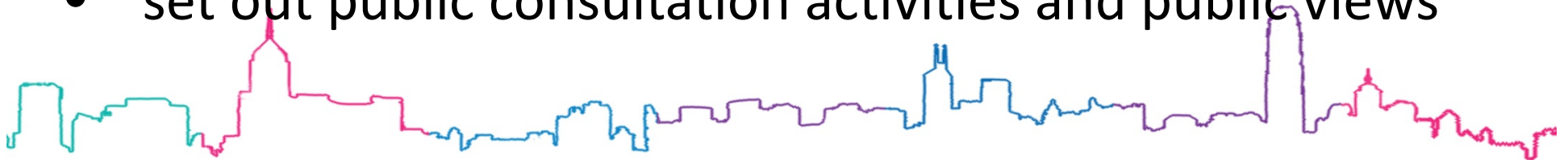
- Government's transportation policy and as part of the-then Railway Development Strategy
- Involve temporary reclamation and replacement of the fender piles
- Temporary reclamation is also subjected to PHO



SCL

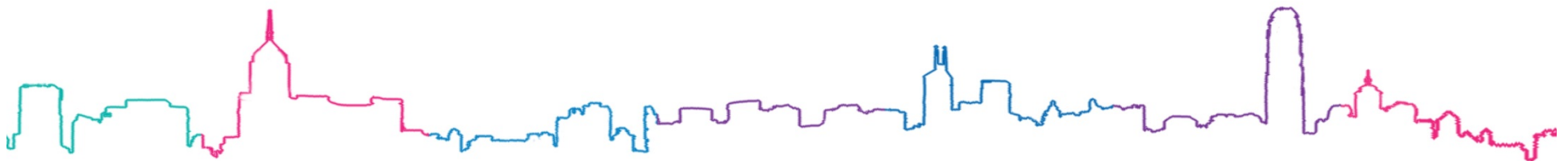
CCM report completed by MTRCL in 2010 (26 pages) –

- provided extensive evidence (e.g. improved accessibility in quantitative terms) and detailed accounts of the social, economic and environmental benefits
- investigated a number of “no-reclamation options”
- provided support with technical evidence
- account for exact areas of reclamation and the respective engineering purposes
- set out public consultation activities and public views



CKR

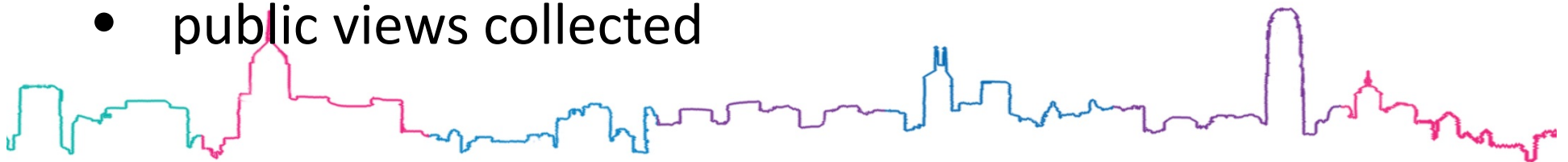
- Comprises a trunk road across central Kowloon linking West Kowloon at Yau Ma Tei Interchange with the Kai Tak Development and road network at Kowloon Bay in East Kowloon
- A section of CKR tunnel involves temporary reclamation



CKR

CCM report completed by Highways Department in 2013 (23 pages) covered –

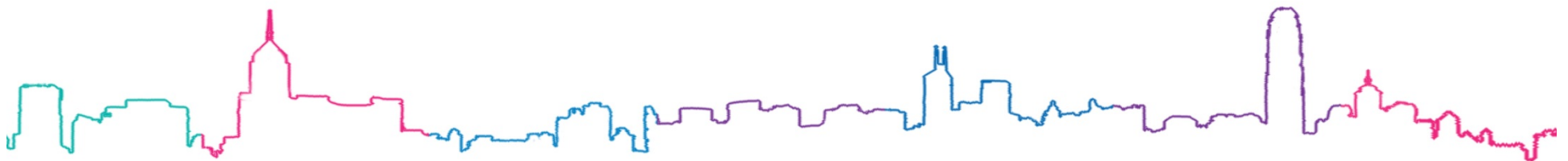
- detailed traffic justifications
- assessments on the estimates of economic returns and reduction in annual emissions
- various construction methods and engineering perspectives in proving that there was no viable or reasonable no-reclamation alternative and the extent of reclamation was minimum
- public views collected



PHO Implications of Smaller Scale Projects

Harbourfront Enhancement Initiatives with PHO Implications

- Pontoons
- Breakwaters
- Marinas
- Enhancement of Waterfront Promenades
- Seawalls
- Piers and Landing Steps



Pontoons

Case Study – Provision of Barrier-Free Access (BFA) facilities

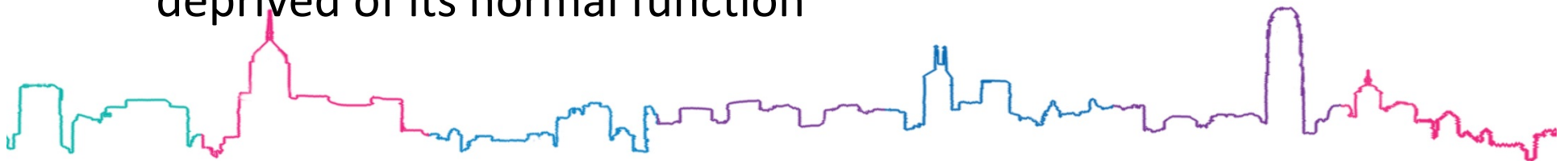
- No provision of BFA for wheel chair user in public landing facilities
- Employment of floating pontoon



Pontoons

Case Study – Provision of Barrier-Free Access (BFA) facilities

- Whether pontoons are regarded as “land” and henceforth whether reclamation involved would depend on actual size of the pontoon, duration and interval of use and its actual operation
- Whether against the statutory principle prescribing the harbour to be protected and preserved depends on other facts and circumstances, e.g. whether part of the harbour would be deprived of its normal function



Breakwaters

Case Study – Yacht Centre at Yau Tong Bay

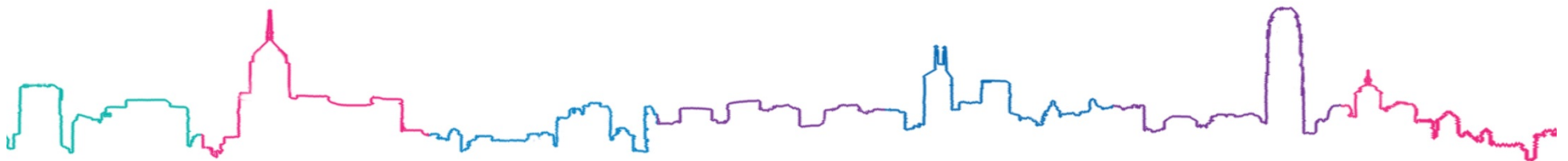
- Proposal of incorporating a yacht centre at a Yau Tong Bay CDA site
- A breakwater would have to be built to provide protected water



Breakwaters

Case Study – Yacht Centre at Yau Tong Bay

- Project proponent decided not to pursue with the proposal
- One of the quoted reasons was that its private legal advice concluded that there could be difficulty in satisfying the overriding public need test with the construction of the breakwater



Marinas

- The Task Force on Water-land Interface once conducted a general overview of marina development
- Marinas encompass key water-side structures including breakwaters, finger piers and guide piles which would have PHO implications



Enhancement of Waterfront Promenades

Case Study – Waterfront Promenade at Kennedy Town

- Central and Western District Council proposed to construct a cantilever slab supported by bored piles on landward side to enhance the waterfront promenade



Enhancement of Waterfront Promenades

Case Study – Waterfront Promenade at Kennedy Town

- The legal advice sought advised that the cantilever slab would remove enjoyment of the sea of the area under the cantilever slab and would likely constitute reclamation



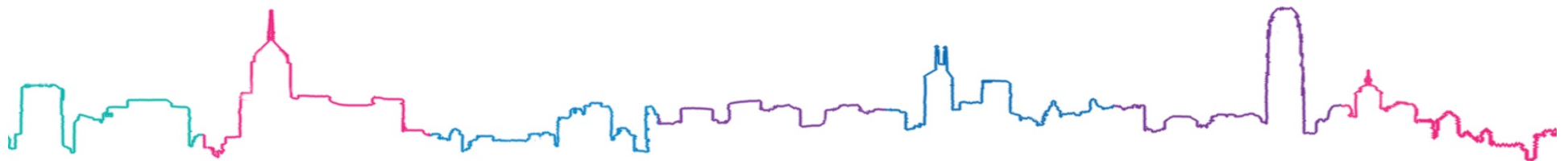
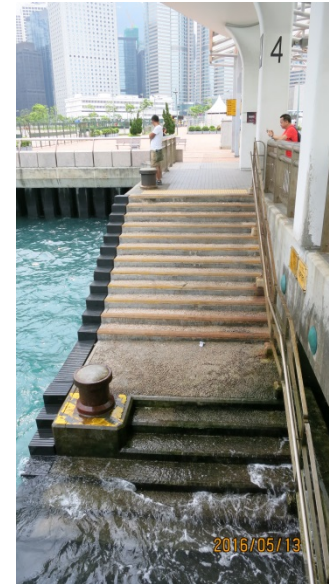
Seawalls

- If existing vertical seawalls would have to be replaced with sloping or vertical but wave-absorbing seawall, there would likely be reclamation



Piers and Landing Steps

- Provision and design of permanent piers, as well as landing steps would be subject to PHO.



Thank you

