

43rd Meeting of Harbourfront Commission
held at 3:00 pm on 31 March 2023 at
Room 1303, 13/F, Wing On Kowloon Centre, 345 Nathan Road, Kowloon

Minutes of Meeting

Present

Mr Vincent NG*	Chairman (also Chairman, Task Force on Kai Tak Harbourfront Development)
Ms Bernadette LINN	Secretary for Development, Vice-chairman
Mr Ivan HO	Chairman, Task Force on Harbourfront Developments on Hong Kong Island
Mr LEUNG Kong-yui	Chairman, Task Force on Water-land Interface and Harbourfront Activation (also representing The Chartered Institute of Logistics and Transport in Hong Kong)
Prof Becky LOO	Chairlady, Task Force on Harbourfront Developments in Kowloon, Tsuen Wan and Kwai Tsing
Mr Joel CHAN	Representing Hong Kong Institute of Urban Design
Mr Anthony CHEUNG*	Representing The Hong Kong Institute of Architects
Ir Victor CHEUNG*	Representing The Hong Kong Institution of Engineers
Mr Winston CHU	Representing Society for Protection of the Harbour
Sr Francis LAM	Representing The Hong Kong Institute of Surveyors
Dr Caroline LAW*	Representing Friends of the Earth (HK) Charity Limited
Ms Sam LOK	Representing The Hong Kong Institute of Planners
Mr Jeff TUNG*	Representing The Real Estate Developers Association of Hong Kong
Dr Rico WONG*	Representing The Conservancy Association
Mr Mac CHAN*	Individual Member
Mr Karl KWOK*	Individual Member
Ir Janice LAI*	Individual Member
Ms Christina LEE	Individual Member
Ms Angela SO*	Individual Member
Hon Tony TSE*	Individual Member
Dr Frankie YEUNG	Individual Member

Official Members

Mr Michael FONG*	Director of Civil Engineering and Development Department (CEDD)
Ms Doris HO	Permanent Secretary for Development (Planning and Lands), Development Bureau (DEVB)
Mr Horace HONG	Chief Traffic Engineer/Hong Kong, Transport Department (TD)
Miss Winnie LAU	Assistant Director of Planning/Metro, Planning Department (PlanD)
Mr LAW Lap-keung	Assistant Director/Planning & Services, Marine Department (MD)
Ms Anny TANG*	Senior Manager (Tourism) 21, Tourism Commission (TC)
Mr Henry WONG	Assistant Director (Leisure Services) 1, Leisure and Cultural Services Department (LCSD)
Ms Leonie LEE	Secretary

In Attendance

Mr David LAM	Under Secretary for Development, DEVB
Miss Winnie WONG	Political Assistant to Secretary for Development, DEVB
Ms Jessey KONG	Press Secretary to Secretary for Development, DEVB
Mr William LEUNG	Assistant Secretary (Harbour) 1, DEVB
Mr Nelson SO	Assistant Secretary (Harbour) 1 (Des), DEVB
Ms Ophelia LUI	Assistant Secretary (Harbour) Special Duties, DEVB
Mr Paul ZIMMERMAN	Representing Society for Protection of the Harbour

Absent with Apologies

Mrs Margaret BROOKE	Representing Business Environment Council Limited
Mr Paul CHAN	Representing The Hong Kong Institute of Landscape Architects
Ms Sunnie LAU	Individual Member
Dr Lawrence LI	Individual Member

Agenda Item 2

Ms Leonie LEE	Commissioner for Harbourfront, DEVB
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* Denotes attending online

Welcoming Message

- 1.1 **Mr Ivan HO**, the Chairman of the Task Force on Harbourfront Developments on Hong Kong Island, informed the meeting that **the Chairman** was joining the meeting online and therefore he would chair the meeting on behalf of the Chairman.
- 1.2 **Mr Ivan HO** welcomed all to the meeting. He went on informed the meeting that –
- (a) Mr LAW Lap-keung, Assistant Director/Planning & Services of the Marine Department (MD), attended on behalf of Ms Carol YUEN, Director of Marine;
 - (b) Mr Henry WONG, Assistant Director (Leisure Services) 1 of the Leisure and Cultural Services Department (LCSD), attended on behalf of Mr Vincent LIU, Director of Leisure and Cultural Services;
 - (c) Mr Horace HONG, Chief Traffic Engineer/Hong Kong of the Transport Department (TD), attended on behalf of Miss Rosanna LAW, Commissioner for Transport;
 - (d) Miss Winnie LAU, Assistant Director of Planning/Metro of the Planning Department (PlanD), attended on behalf of Mr Ivan CHUNG, Director of Planning; and
 - (e) Ms Anny TANG, Senior Manager of Tourism Commission (TC), attended online on behalf of Ms Vivian SUM, Commissioner of Tourism.

Item 1 Matters Arising

- 2.1 No matters arising were raised at the meeting.

Item 2 Review of the Protection of the Harbour Ordinance (Paper No. HC/06/2023)

- 3.1 **Mr Ivan HO** said that in the 2021 Policy Address, the Government had proposed to review the Protection of the Harbour Ordinance (Cap. 531) (PHO), which had been enacted

for over 20 years. The Development Bureau (DEVB) would like to obtain the views of the Harbourfront Commission (HC) on the proposed amendment framework. **Mr Ivan HO** invited **Ms Bernadette LINN** to give a brief introduction, followed by a presentation by **Ms Leonie LEE**.

- 3.2 **Ms Bernadette LINN** said that the PHO had been effective in keeping reclamation projects in the harbour in check since its enactment in 1997. Nevertheless, many harbour enhancement projects inevitably involving small-scale reclamations as defined under the PHO were unable to proceed as they could not satisfy the stringent threshold of the “presumption against reclamation” principle and “overriding public need” (the Test). It was also disproportionate to allocate a large amount of resources for these projects to prepare the cogent and convincing materials (CCM) for satisfying the stringent threshold of the Test.
- 3.3 **Ms Bernadette LINN** reiterated that the Government had committed not to carry out large-scale reclamations in the harbour for the purpose of housing, commercial or industrial development. Under the proposed mechanism, large-scale reclamations would continue to be subject to the existing high threshold of “presumption against reclamation” and the processing mechanism would be formalised by requiring the reclamation projects to meet specific eligibility requirements, undergo public consultation and obtain approval from the Chief-Executive-in-Council (CE-in-C) before they could proceed. On the other hand, to enhance public enjoyment of the harbour, the Government proposed to establish a streamlined mechanism to facilitate harbour enhancement projects involving small-scale and non-permanent reclamations which would not cause irrevocable impacts on the harbour. She invited Members to share their views on the proposed framework of legislative amendments to the PHO.

Briefing by the DEVB

- 3.4 **Ms Leonie LEE** briefed Members with the aid of a PowerPoint.

Discussion

General Comment

- 3.5 **The Chairman, Mr Joel CHAN, Mr Anthony CHEUNG, Ir Victor CHEUNG, Mr Ivan HO, Sr Francis LAM, Ms Christina LEE, Mr LEUNG Kong-yui, Ms Sam LOK, Prof Becky LOO, Mr Jeff TUNG and Dr Frankie YEUNG** generally supported the Government's proposed framework for legislative amendments to the PHO, which were expected to streamline the procedures and facilitate harbour enhancement works with a view to enhancing the connectivity and vibrancy of the harbourfront in the interest of the public.
- 3.6 **Mr Ivan HO, Mr LEUNG Kong-yui and Dr Rico WONG** thanked the Government and various stakeholders for the concerted efforts over the years to protect and preserve the Victoria Harbour and at the same time continuously enhance the harbourfront through developing new promenades and open space for public enjoyment.
- 3.7 **Mr Winston CHU** said that the Government should maintain the existing legal framework because the PHO had been working well and very effectively over the years in fulfilling its purpose of harbour protection and preventing further reclamations in the Hong Kong Island and Kowloon.
- 3.8 **Ms Christina LEE** observed that there was room for improvement in the design of promenades and connectivity from the hinterland to and within harbourfront areas. She agreed that the proposed amendments would provide greater flexibility for conducting various harbour enhancement works for the benefit of the public.
- 3.9 **Mr Jeff TUNG** said that relaxing the existing legal barriers in harbourfront enhancement projects involving small scale reclamation would enable more comprehensive and holistic planning for harbourfront development that would bring potential advantages to the public.

- 3.10 **Sr Francis LAM** welcomed the introduction of a new mechanism which would allow harbour enhancement works involving small-scale reclamations and non-permanent reclamations to be exempted from the application of “presumption against reclamation” principle and the fulfilment of the Test.
- 3.11 **Ir Victor CHEUNG** said that by streamlining the procedures for basic infrastructure projects involving non-permanent reclamation, projects could also be completed more quickly without the need to prepare CCM, further contributing to cost savings.
- 3.12 **Sr Francis LAM, Ms Christina LEE and Dr Frankie YEUNG** welcomed the introduction of public engagement requirement under the proposed arrangements, so as to enhance transparency of the mechanism governing reclamations proposals and enable the Government to hear comments from different angles.

Limitations of the Existing Ordinance

- 3.13 **Sr Francis LAM, Prof Becky LOO and Dr Frankie YEUNG** opined that prolonged court cases relating to the PHO in the past had impeded the effective implementation of harbourfront enhancement initiatives.
- 3.14 **Dr Rico WONG** enquired about the kinds of projects that were prevented from proceeding due to the constraint of the PHO. In response to his enquiry, **the Chairman** explained that past judgments relevant to the PHO specified that any works of reclamation, whether intended to be permanent or temporary, fell under the controls of the PHO. Since most harbourfront enhancement projects might only involve small scale reclamation and would hardly be able to fulfill the Test, as a result, such proposals had not been submitted to the HC for discussion.

- 3.15 On the challenges faced by various harbourfront enhancement initiatives during the implementation stage, **the Chairman, Mr Anthony CHEUNG, Mr Ivan HO and Mr LEUNG Kong-yui** opined that the existing statutory framework of the PHO had made it difficult for harbourfront enhancement projects to adopt creative or unconventional designs. The existing framework also resulted in the deferral of several large-scale projects, including the Boardwalk underneath Island Eastern Corridor and the pedestrian-cum-cyclist bridge with travellers across the Kwun Tong Typhoon Shelter, due to the time required for preparing CCM to fulfill the Test.
- 3.16 **Prof Becky LOO** pointed out that the existing legal regime did not provide a less stringent threshold for smaller-scale reclamations as they were subject to the same Test and the preparation of CCM. She added that this had also deterred many relatively minor harbour enhancement projects involving small-scale reclamations which would only cause minimal impact on the harbour.
- 3.17 **Mr LEUNG Kong-yui** brought up the Wan Chai Development (Phase 2) project as an example of a reclamation project that had been delayed for years. The project involved temporary and permanent reclamations for the construction of a Trunk Road under the Central-Wan Chai Bypass and Island Eastern Corridor Link, and a large amount of public resources had been spent to demonstrate the compliance with the Test. He also believed that the project could have been completed earlier to generate economic benefits and divert traffic flow between the eastern and western parts of the Hong Kong Island, if the statutory constraint under the PHO was less stringent.
- 3.18 **Ms Doris HO** explained that the existing PHO itself did not provide clear guidance on circumstances under which the “presumption against reclamation” may be rebutted. However, the proposed amendments would clearly reflect the principles and considerations set out in previous court judgments, including the “presumption against reclamation”

could only be rebutted when the “overriding public need” for the reclamation was substantiated and that there must be CCM to satisfy the decision maker that the relevant situations met the Test.

Approving Authority

- 3.19 To ensure a higher credibility of the PHO, **Mr Anthony CHEUNG** and **Ms Sam LOK** suggested delegating the power to vet and approve various kinds of reclamation projects to the Town Planning Board (TPB). **Mr Anthony CHEUNG** also proposed including a set of a guidelines through legislative amendments that would outline the procedures for preparing the CCM to satisfy the Test, and that the guidelines would clarify the types of information to be included in the CCM report. **Mr Jeff TUNG** held a different view and said that the approval authority should be vested with a higher governing body and he considered that it would be more appropriate for the approving authority to rest with the CE-in-C, as currently proposed by the Government.
- 3.20 In response, **Ms Doris HO** said that Outline Zoning Plans (OZPs) formulated by the current plan-making procedures overseen by the TPB were ultimately approved by the CE-in-C upon completion of the public inspection and representation consideration processes.
- 3.21 **Ms Bernadette LINN** added that the CE-in-C was the highest decision making body within the Government. Just like OZPs and other major proposals were submitted to CE-in-C for approval, the CE-in-C was the appropriate authority to assess reclamations proposals in a high-level and holistic manner.
- 3.22 **Mr Winston CHU** objected to the proposal of having CE-in-C as the approving authority. He was particularly concerned that empowering CE-in-C to make the decision would undermine legal protection of the harbour conferred by the existing PHO. He also alleged that the proposed

arrangements would remove the “authority” of the court to assess and decide on whether reclamation proposals could satisfy the Test, and would de facto have the same effect as abolishing the PHO. He said that the Society for Protection of the Harbour (SPH) had devoted 30 years of effort to safeguard the Victoria Harbour for future generations, including drafting the PHO that was passed in 1997. If the amendment bill was eventually passed, he would have to dissolve the SPH.

- 3.23 **Ms Doris HO** clarified that the proposed legislative amendments were intended to strengthen the regulatory mechanism for large-scale reclamations and not to affect the public's right to apply for judicial review (JR). She further explained that if members of the public believed that there was no overriding public need for the reclamation approved by the CE-in-C, they could seek a JR of the decisions of the CE-in-C and their compliance with the PHO, and it would be up to the court to decide whether leave would be granted based on merits on each case.
- 3.24 **Ms Bernadette LINN** encouraged the SPH to provide feedback and comments on the CCM, especially during the public inspection stage. She looked forward to the SPH's continued monitoring of the progress of the harbourfront development in future.
- 3.25 As for projects involving small-scale reclamations, **Prof Becky LOO** suggested that these works be abided by the Harbour Planning Principles & Guideline (HPP&G) and that such requirement be laid down in the amended PHO. **The Chairman** agreed with **Prof Becky LOO** and explained that the key objectives under the HPP&G included consulting with the HC and engaging with the public in the course of harbourfront planning. He opined that since the issuance of HPP&G in 2004, Government departments and stakeholders involved in harbourfront development and planning projects had effectively integrated such principles into their respective projects. In response, **Ms Doris HO** said that in exercising

powers under the amended PHO to give exemption for small-scale reclamations, the relevant authority (which was proposed to be a Secretary-level government official) would assess if the projects had fulfilled the relevant criteria including compliance with the HPP&G and consider whether it was in the public interest to allow the projects to go ahead.

Reclamations in the Harbour

- 3.26 With regard to strengthening the regulatory measures on reclamations in the harbour, **Mr Joel CHAN** and **Mr Anthony CHEUNG** supported the introduction of the public engagement requirements under the proposed arrangements to require project proponents to exhibit the CCM for public inspection and comment with a view to gauging public comments and building consensus on the proposals.
- 3.27 Understanding the public's aspiration for the protection of the Victoria Harbour, **Ms Doris HO** explained that there was greater public participation and transparency under the proposed mechanism for dealing with large-scale reclamations. The mechanism would set out time limits to govern the exhibition, submission, and consideration of the CCM. Specifically, project proponents would need to exhibit the CCM for public inspection and comment for two months, and submit the CCM along with public comments received to the CE-in-C within the following five months or any extended period as appropriate. The public would have the opportunity to comment on the CCM particularly whether there was an overriding public need for the reclamation project, and their views would be taken into account by the CE-in-C, when deciding whether the Test has been fulfilled for the proposal concerned.

Reclamations for Harbour Enhancement Works

- 3.28 **Mr Joel CHAN** and **Mr Anthony CHEUNG** considered the proposed exemption mechanism of harbour enhancement works from the presumption against reclamation and the Test

an improvement to the existing PHO and believed that this would allow more harbour enhancement works to be pursued for the benefit of the public.

- 3.29 **Dr Frankie YEUNG** concurred and added that he was looking forward to the implementation of various enhancement works, such as the construction of landing steps and water sports facilities, to meet the needs of the public.
- 3.30 **Prof Becky LOO** suggested attaching importance to public participation in the process of implementing the said harbour enhancements works. She said that it was important for the project proponents to consult the HC which, with its Members from environmental groups and professionals bodies, could perform gatekeeping function for reclamation projects.
- 3.31 **Mr Winston CHU** agreed with the proposed list of harbour enhancement works which should be set out in the schedule to PHO, i.e. the 16 categories of harbour enhancement works eligible for exemption from the “presumption against reclamation” principle on the basis that such works were intended for the enjoyment and benefit of the public.
- 3.32 **Ms Sam LOK** showed concern about the inclusion of the construction of piers and breakwater in the exemption list. She was of the view that the area of the non-permanent reclamation required for the construction of piers and breakwater might be sizable and would cause water pollution and disruption of ocean currents. She also enquired about the measures to be taken to mitigate any adverse effects on marine ecology. She requested the Government to carefully consider these issues and work out the necessary details in due course.
- 3.33 **Mr Anthony CHEUNG** and **Mr Jeff TUNG** suggested that the prescribed list be expanded to include the construction of bridges, pedestrian walkway and cycle paths, as these projects could provide potential public benefits and enhance the harbourfront. **Mr Anthony CHEUNG** added that the list

should not be exhaustive and should allow flexibility so that projects not mentioned on the list could also be considered for exemption based on their merits.

- 3.34 **Ms Doris HO** clarified that bridges were not included in the prescribed list because its construction could have a more adverse impact on the surrounding harbourfront environment, including noise pollution and air quality concerns for the public, and the structure of the bridge may have permanent impact on the harbour.
- 3.35 **Ms Doris HO** supplemented that any amendment to the prescribed list which was a piece of subsidiary legislation would require approval from the Legislative Council through negative vetting. Newly proposed items to be added to the list would be subject to consultation with the HC, which would continue to play a gatekeeping role in harbour protection and harbourfront development.
- 3.36 While the proposed amendments had imposed a limit on the total area of reclamation in harbour enhancement works eligible for exemption (i.e. not more than 0.8 hectares under the preliminary proposal), **Mr Anthony CHEUNG, Prof Becky LOO** and **Dr Rico WONG** recommended imposing a limit on the total number of such works that could be carried out in the entire harbour to reduce the cumulative impact of works going on in parallel.
- 3.37 **Ms Doris HO** said that the Government took note of Members' views and would consider whether further restrictions should be imposed in addition to the restriction on the total area of reclamation in exempted works. However, a balance may be called for as one of the objectives of the proposed exemption mechanism was to allow harbour enhancement works to be taken forward in a more streamlined manner.

Works involving non-permanent reclamations

- 3.38 **Ms Sam LOK** and **Mr Joel CHAN** expressed concern about the possible delay of the infrastructure projects under the new mechanism. They enquired if there would be any handling mechanism to regulate reclamation works that exceeded the limit prescribed in the exemption criteria (i.e., not more than three hectares in area and not more than three years in duration for each phase of works under the preliminary proposal). They suggested that such handling mechanism should be stipulated under the PHO to strengthen the regulation of works projects and make the project proponent accountable.
- 3.39 **Ms Doris HO** took note of the Members' suggestions regarding the need to tighten the monitoring of the duration and affected area of all exempted non-permanent reclamations. She shared Members' views that there was a need to consider what to do in the event that the non-permanent reclamation turned out to have exceeded the statutory limits under the exemption mechanism.
- 3.40 **Ms Sam LOK** added that the proposed statutory limit of three hectares in area as prescribed in the exemption conditions was quite extensive. She was concerned that non-permanent reclamations with no compelling and public need would abuse the exemption mechanism and requested the Government to holistically assess the works projects before granting the exemption in order to protect and preserve the harbour.
- 3.41 **Ms Doris HO** explained that the proposed statutory time limit and area for the works were deemed sufficient and reasonable for non-permanent reclamation works for large-scale projects with reference to previous works such as the Central Kowloon Route project involving non-permanent reclamation. In approving the non-permanent reclamation, the public officer was expected to take into account all relevant factors including the possibility of the project proponents abusing the exemption mechanism by splitting up one single project into multiple ones.

Three-month Public Engagement on the proposed amendment framework

- 3.42 **Ms Doris HO** said that a three-month public engagement exercise would commence in May 2023 and comments on refining the PHO would be invited.
- 3.43 **Mr Ivan HO** said that during the three-month public engagement exercise, the Government should focus on building trust between the Government and the public. He also encouraged Members to provide suggestions.

Way Forward

- 3.44 **Mr Ivan HO** concluded that, while different Members might have raised different views and suggestions, it was the shared vision of all Members to improve the legislative framework to revitalise and offer greater flexibility in making Victoria Harbour a world-class asset.
- 3.45 **The Chairman** said that realising the vision for the harbourfront would require a dedicated group of Government officials, Members of the HC, and individuals with foresight. The HC has always played a vital role as a gatekeeper in driving the development of the harbourfront while also ensuring the protection of the harbour, and it would continue to do so in the future. **The Chairman** added that while the direction taken in the legislative amendment was appropriate in providing a better environment and facilities for the public, there was room for further refinement to the proposed mechanism.
- 3.46 **Ms Bernadette LINN** acknowledged Members' concerns regarding the extent of reclamation and their commitment to preserving the harbour. She added that even after the passage of the amendments to the PHO, other statutory requirements, such as those under the Roads (Works, Use and Compensation) Ordinance (Cap. 370) and the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127), would still need to be met. Furthermore, if the works projects eventually involved

amendments to the OZPs, the statutory requirements under the Town Planning Ordinance (Cap. 131) should also be followed. She emphasized that HC would continue to serve as the gate-keeper of harbourfront development and reclamation projects in the harbour.

- 3.47 **The Chairman** suggested the Government to take into account the views from Members and the public to further refine the proposed legislative amendments. He also suggested that the HC might play a more active role in facilitating the processing of reclamation projects in the harbour.

Item 3 Any Other Business

- 4.1 Members raised no further comment on the matter. There being no other business, the meeting ended at 5:40pm.

Secretariat
Harbourfront Commission
April 2024