

Harbourfront Commission

For discussion
on 26 June 2024

HC/06/2024

Progress of preparatory work taking forward the legislative amendment proposals for the Protection of the Harbour Ordinance (Cap. 531)

PURPOSE

Following the briefing to the Harbourfront Commission (HC) in March last year on the proposals in relation to the amendment of the Protection of the Harbour Ordinance (Cap. 531) (PHO)¹, we conducted a public engagement (PE) exercise that lasted for several months. This paper briefs Members on the progress of preparatory work taking forward the legislative amendment proposals, including findings of the PE exercise and the proposed way forward.

THE LEGISLATIVE AMENDMENT PROPOSALS RAISED IN MARCH LAST YEAR AND JUSTIFICATIONS

2. The existing PHO consists of only four sections and primarily prescribes that reclamations in the harbour² are subject to the “presumption against reclamation” (the presumption). According to the precedents, the presumption could only be rebutted if the “overriding public need” test is fulfilled. However, the PHO does not stipulate any specific mechanism to ascertain whether a reclamation proposal can fulfill the “overriding public need” test to rebut the presumption. At the same time, since the stringent presumption is applicable across-the-board to reclamations of all kinds in the harbour (regardless of permanence, scale or nature), many minor harbour enhancement projects involving only small-scale reclamations and affecting the harbour to a minimal extent were deterred.

3. As we have pointed out in March last year, the Government will not initiate large-scale reclamation in the harbour to form land for housing, commercial or industrial

¹ Relevant discussion paper are available at:
https://www.hfc.org.hk/filemanager/files/HC_06_2023.pdf

² “Harbour” as defined in the Interpretation and General Clauses Ordinance (Cap. 1) means the waters of Hong Kong within the boundaries specified in Schedule 3 thereto.

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developments, etc. The intention of the legislative amendments is to improve harbourfront connectivity, enhance harbourfront areas for public enjoyment, or strengthen harbour functions. We will amend the PHO in two strategic directions: on the one hand, to strengthen the mechanism for large-scale reclamations which should be regulated; and on the other hand, to facilitate in a reasonable manner certain harbour enhancement works involving reclamations which would strengthen the harbour functions, improve harbourfront connectivity or help people better enjoy the harbourfront, as well as non-permanent reclamations. There are three aspects in the specific proposals –

- (a) all **large-scale reclamations** in the harbour will continue to be subject to the high threshold of the presumption and the “overriding public need” test, with a prescribed mechanism to regulate under what circumstances may the presumption be rebutted, including the introduction of new statutory procedures for the public to comment on whether a reclamation has fulfilled the “overriding public need” test, and for the Chief Executive-in-Council (CE-in-C), after taking into account of the public comments, to decide whether the project has fulfilled the test to rebut the presumption;
- (b) for **harbour enhancement works** falling within the new Schedule to the PHO, and of which the area relating to the reclamation does not exceed the statutory limit, subject to the approval of the Financial Secretary (FS), there can be exemption from the presumption; and
- (c) for **non-permanent reclamation** in the harbour, so long as the area relating to the reclamation at any point in time as well as the duration of the works do not exceed the respective statutory limits, subject to the approval of the FS, there can be exemption from the presumption.

4. Members generally supported the above directions for the legislative amendment proposals, which were considered to be able to address the deficiencies in the existing PHO, with a view to maintaining the protection of the harbour and promoting harbourfront development.

FINDINGS OF THE PE EXERCISE

5. To solicit public views on the legislative amendment proposals, the Development Bureau (DEVB) conducted a series of PE activities. During the PE period, views from professional bodies, water-based activities organisations, fishermen’s organisations, users with operations/activities in the harbour, District Councils, local representatives and members of the general public were received. A total of about 1 160 survey responses were collected, through online views collection form, as well as on-site surveys and voting board activities at four designated harbourfront sites, between May and July 2023. In addition, six town hall sessions were held and about 30 written submissions were received during the PE period. The Executive Summary of the relevant PE exercise has been uploaded online³.

6. The key findings of the comments received through the PE exercise are illustrated as follows:

- (a) **overall comments:** the public generally recognised the benefits that the amendment proposals could bring to Hong Kong. Survey respondents generally agreed with or did not raise objections towards the overall proposals. The majority agreed that the presumption in the PHO should continue to apply to large-scale reclamations in the harbour to minimise unnecessary developments. On the other hand, there was also a broad consensus that the presumption should not be applicable across-the-board to reclamations of all kinds, so as not to deter some small-scale enhancement works from taking forward.
- (b) to **regulate large-scale reclamations:** the proposal to have the CE-in-C to assess and decide whether the concerned reclamation can fulfill the “overriding public need” test to rebut the presumption was generally accepted.

³ The Executive Summary of the relevant PE exercise is available at:
[https://www.devb.gov.hk/filemanager/en/content_2384/PHO_PE_Executive%20Summary\(EN\).pdf](https://www.devb.gov.hk/filemanager/en/content_2384/PHO_PE_Executive%20Summary(EN).pdf)

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- (c) to **facilitate harbour enhancement works**: there is general support among survey respondents on exempting reclamations for specific categories of harbour enhancement works from the presumption. In particular, a majority of survey respondents agree with the proposals that such exemptions could only be granted by a government official at the level of Secretary of Department (e.g. the FS), and that they should be subject to the area limit of 0.8 hectare and be applicable to the proposed categories of harbour enhancement works (the categories receiving most support are promenade/boardwalk, cycle track, viewing deck and harbour steps).
- (d) to **facilitate non-permanent reclamations**: there is also general support among survey respondents on exempting non-permanent reclamations from the presumption, as long as they could meet certain conditions. Survey respondents generally agreed that any non-permanent reclamation eligible for exemption should be subject to an area limit of not more than three hectares at any point in time. As regards the duration limit of not more than three years for each phase, there were views that such reclamation should be regulated by a specific cap on the overall duration, rather than a cap on the number of phases involved.

FINE-TUNED LEGISLATIVE AMENDMENT PROPOSALS

7. In view of the public's general support for the directions of the legislative amendment proposals put forward in March last year, we would adopt most of the original proposals, while enhancing and refining some of the original proposals in the light of the specific comments received. Details are set out as follows. We will also take this opportunity to further elaborate on the justifications of the key amendment proposals put forward earlier. A summary of the fine-tuned legislative amendment proposals is in **Annex A**.

To incorporate the mechanism regulating large-scale reclamations into the PHO

8. As proposed in March last year, we will incorporate the mechanism regulating large-scale reclamations into the PHO, including the requirement to prepare the assessment materials in relation to the fulfillment of “overriding public need” test to rebut the presumption, the exhibition of the said assessment materials for public to comment under statutory procedures, and the authority for the CE-in-C to, in consideration of the assessment materials and public comments, decide on whether he is satisfied that the presumption is rebutted. Such formalized mechanism is envisaged to enhance the certainty and transparency on the application of the presumption, and ensure that all reclamations would be assessed by the highest decision-making authority of the Administration in respect of whether the presumption can be rebutted.

To facilitate reclamations for harbour enhancement works under an exemption mechanism

9. We propose that only reclamations for harbour enhancement works which fall within the specified categories and area limit are eligible for exemption. With reference to the further suggestions received during the PE exercise period, we propose to add three new categories (i.e. ramps; hangers, cranes and hardstands for ship repair; water absorption structure) to the list of harbour enhancement works proposed originally, making it to cover a total of 14 categories of structures, features or devices now (See **Annex B**). This fine-tuned list will provide a more comprehensive coverage of facilities that can improve harbourfront connectivity, enhance harbourfront areas and strengthen harbour functions. The list will be incorporated into the PHO in the form of a Schedule, which will be a subsidiary legislation subject to the negative vetting procedure for future amendments.

10. Individual works projects, even if they fall within the categories set out in the list, would still be subject to public consultation as appropriate, and also the approval of the Administration, for exemption from the presumption. It would be for the FS to decide whether to exempt a reclamation for harbour

enhancement works from the presumption. One of the conditions is that the area relating to the reclamation must not exceed 0.8 hectare.

11. Furthermore, there were views expressing concerns on whether the exemption mechanism would be abused. Abuse may arise, for example, if large-scale reclamations are artificially “split up” into multiple projects for implementation, so as to circumvent the stringent requirement of rebutting the presumption applicable to large-scale reclamations. To avoid abuse of the mechanism, we propose to specify expressly that the FS, when exercising his discretion to grant exemption under the said mechanism, should consider whether it is in the public interest to carry out the proposed reclamation, and holistically consider whether it is reasonable to exempt the proposed reclamation having regard to its relation with the other reclamation(s) previously granted with exemptions (if any) as well as the impacts (including the anticipated impacts) of these reclamations on the harbour.

To facilitate non-permanent reclamations under an exemption mechanism

12. Apart from the harbour enhancement works mentioned above, the FS may also grant the exemption for a non-permanent reclamation, provided that the proposed reclamation must be within the area limit and duration limit, that it is in the public interest to carry out the proposed reclamation and that the impact on the harbour by the reclamation is minimized as far as reasonably practicable.

13. As regards the area limit, we will adopt the original proposal, i.e. the area relating to the reclamation at any point in time must not exceed three hectares.

14. As regards the duration limit, it was suggested in the original proposal that each phase in a non-permanent reclamation should take no more than three years⁴, but there was

⁴ It was proposed in the PE document that in the same works project, duration of each phase of non-permanent reclamation shall not exceed the statutory limit of 3 years, starting from the time when the works begin affecting the harbour until the time when the works are dismantled and the relevant part of the harbour is reinstated to its original state.

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no cap on the total number of phases in the same reclamation project. This regulatory approach may open up the loophole for a non-permanent reclamation with a long works period to stay eligible for exemption by splitting into multiple consecutive phases. It is also difficult to accurately define the works duration involved in each phase in a non-permanent reclamation. For the sake of clarity and to ensure a non-permanent reclamation would conclude within a reasonable period, we propose to tighten the total duration limit for each non-permanent reclamation eligible for exemption (regardless of the number of phases involved in the project) to a maximum of seven years.

15. There were views that, if supported by valid justifications, flexibility should be provided for extension of the works period, in order to cater for unforeseen circumstances. We agree to build in flexibility but only limited extension should be allowed. We suggest, apart from the duration limit mentioned in paragraph 14 above, reclamation proponent may make application to the FS for a one-time extension for a period of not more than one year.

16. If the non-permanent reclamation cannot be completed within the exemption period granted (or as extended) by the FS, the exemption granted would be rendered invalid and the reclamation proponent will need to take remedial actions according to the directives given by the FS having regard to the prevailing circumstances. To strengthen the monitoring of the progress of reclamation works and to enable early awareness and intervention by the Administration, we will introduce administrative measures to require reclamation proponents to submit progress reports annually.

Checks and Balances and Transparency

17. Subject to the enactment of the proposed amendment bill, the above regimes on the application of the presumption and the exemption from it are envisaged to be able to enhance the checks and balances and transparency for assessing reclamation proposals. In addition, the Administration will make regular reports to the HC on applications approved under the new mechanisms in relation to the rebuttal of the presumption and the exemption from it, so as to enable the HC and the public to better monitor the relevant reclamation projects.

HARBOUR ENHANCEMENT WORKS THAT MAY BE TAKEN FORWARD AND MAY BENEFIT

18. The abovementioned proposed amendments would provide greater flexibility in exploring potential options in harbourfront enhancement. To illustrate the works that may be taken forward and may benefit after the PHO is amended, we have mentioned several examples (location plan and photos at **Annex C**) for reference of the Subcommittee to Study Policy Issues Relating to the Harbourfront in its meeting held in April this year. Such examples include constructing a boardwalk in New Praya in Kennedy Town, and enhancements works for the harbourfront in Hung Hom and To Kwa Wan (including works that may involve reclamation for improving connectivity and works for revitalising the Kowloon City Vehicular Ferry Pier, a Grade II historic building). We will also study the possibility of extending the harbour steps in the Water Sports and Recreation Precinct in Wan Chai and the Revitalised Typhoon Shelter Precinct in Causeway Bay to the water body, as well as the possibility of providing new harbour steps, so as to promote water-friendly culture.

WAY FORWARD

19. Following the consultation with the Legislative Council (LegCo) Panel on Development and the HC at their respective meetings on 25 and 26 June 2024, we will finalise the legislative amendments, taking into account all the comments received, and submit the amendment bill to the LegCo within this year.

ADVICE SOUGHT

20. Members are invited to offer their views on the fine-tuned legislative amendment proposals set out above.

Annex A **Summary of the fine-tuned legislative amendment proposals**

Annex B **14 categories of structures, features or devices proposed to be listed in a new Schedule to the Protection of the Harbour Ordinance**

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Annex C Harbour enhancement works that may be taken forward and may benefit from the proposed legislative amendment proposals

**Development Bureau
June 2024**

Summary of the fine-tuned proposed legislative amendments

	Large-scale reclamations which should be regulated¹	Harbour enhancement works	Non-permanent reclamations
Applicable mechanism	The reclamation proponent is required to assess whether the project can satisfy the “overriding public need” test to rebut the “presumption against reclamation” (presumption). The relevant assessment materials together with public comments (see “Public participation” row below) shall be submitted to the Chief Executive-in-Council (CE-in-C) to consider and decide whether he is satisfied that the “overriding public need” test is fulfilled to rebut the presumption. No reclamation should be carried out unless the CE-in-C is satisfied that the presumption is rebutted.	For structures, features or devices listed in the Schedule to be added to the PHO (at Annex B) which involve reclamations, an exemption from the presumption may be granted under a streamlined mechanism. The Financial Secretary (FS) will decide whether the exemption should be granted. No reclamation should be carried out unless there is a valid exemption granted by the FS.	For non-permanent reclamations, an exemption from the presumption may be granted under a streamlined mechanism. The FS will decide whether the exemption should be granted. No reclamation should be carried out unless there is a valid exemption granted by the FS.
Factors for consideration	“Overriding public need” test – (1) there is an overriding public need for the proposed reclamation and the need must be compelling and present; (2) there is no reasonable alternative to the proposed reclamation; and (3) the extent of the proposed reclamation should not go beyond the minimum of that which is required by the overriding need.	The FS may exercise discretion to grant the exemption with or without condition, if he is satisfied that – (1) the area of the harbour relating to the proposed reclamation is not more than 0.8 hectare; (2) it is in the public interest to carry out the proposed harbour enhancement works; and (3) it is reasonable to exempt the proposed reclamation having regard to its relation with the other reclamations previously granted with exemptions (if any) as well as the impacts (including the anticipated impacts) of these reclamations on the harbour.	The FS may exercise discretion to grant the exemption with or without condition, if he is satisfied that – (1) the area of the harbour relating to the proposed reclamation is not more than three hectares at any point in time; (2) the intended duration of the proposed reclamation is not more than seven years; (3) it is in the public interest to carry out the works involved in the proposed reclamation; and (4) the impact on the harbour by the proposed reclamation is minimized as far as reasonably practicable.
Public participation	<ul style="list-style-type: none"> • Statutory requirement: Required to exhibit the materials in relation to the proposed assessment of rebuttal of the presumption and provide two months for public inspection and comment. • Administrative arrangement: Required to consult the Harbourfront Commission, relevant District Council(s) and stakeholders. 	Administrative arrangement: Required to consult the Harbourfront Commission, relevant District Council(s) and stakeholders	Administrative arrangement: Required to consult the Harbourfront Commission, relevant District Council(s) and stakeholders
Additional features	Submission of the assessment materials and public comments to the CE-in-C shall be made within five months upon the end of the public inspection period.	Not applicable.	If the proposed reclamation cannot be completed within seven years, application to the FS may be made for a one-time extension for a period of not more than one year.

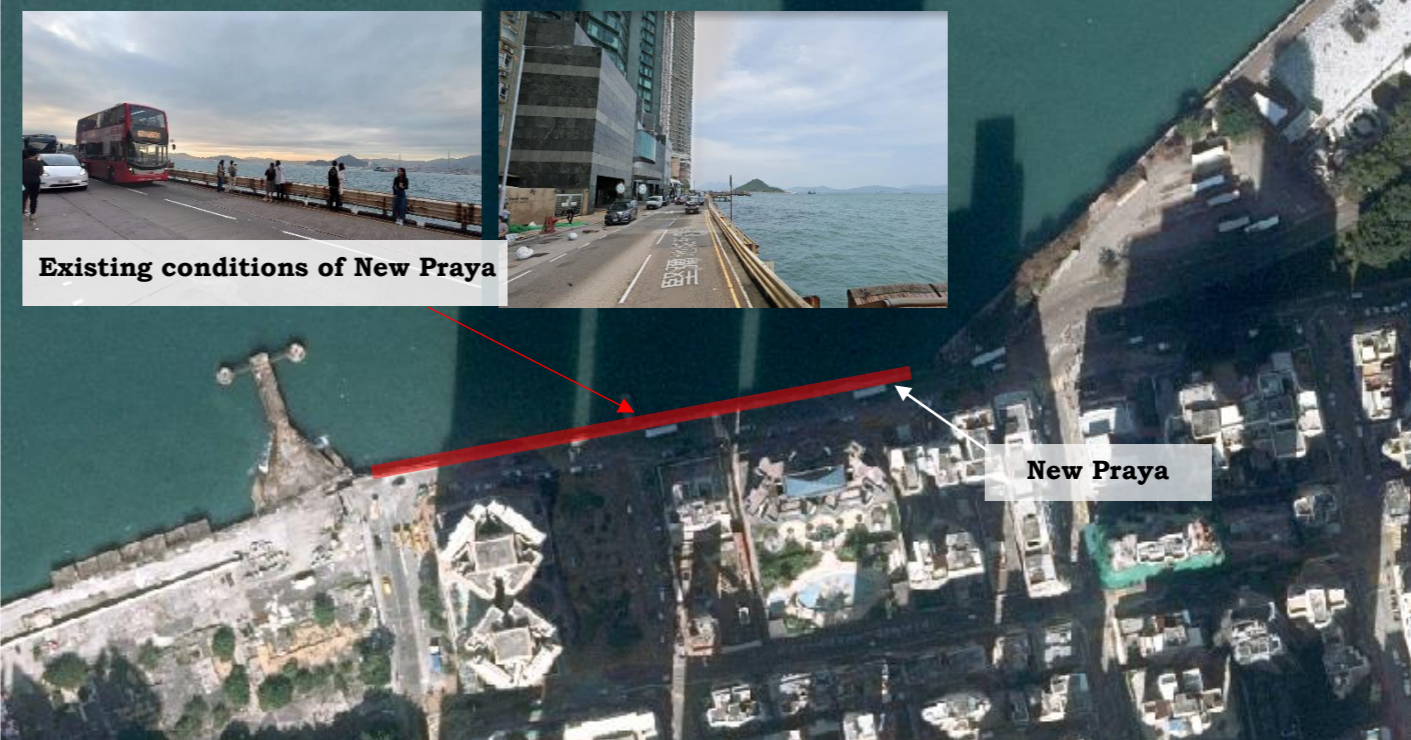
¹ Reclamations that are not exempted from the “presumption against reclamation” under the proposed mechanism.



Annex B

14 categories of structures, features or devices proposed to be listed in a new Schedule to the Protection of the Harbour Ordinance



1. Promenade and boardwalk
2. Cycle track
3. Harbour pool
4. Viewing Deck
5. Ramp
6. Mooring
7. Breakwater
8. Seawall
9. Hanger, crane and hardstand for ship repair
10. Wave absorption structure
11. Facilities for the operation of typhoon shelter or sheltered anchorages
12. Water selling kiosks and petrol stations for supporting operations at sea
13. Devices which aim to mitigate extreme climate risks
14. Minor Works items specified in the Schedule to the Foreshore and Sea-bed (Reclamations) Ordinance
 - 14.1 Pier
 - 14.2 Landing steps
 - 14.3 Harbour steps
 - 14.4 Slipway
 - 14.5 Mooring dolphin
 - 14.6 Beacon
 - 14.7 Floating pontoon
 - 14.8 Submarine pipeline or outfall
 - 14.9 Diffuser for open sea discharge
 - 14.10 Seawater intake
 - 14.11 Peripheral structure or feature associated with a marine structure

Harbour enhancement works that may be taken forward and may benefit from the proposed legislative amendments

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos
Constructing a boardwalk	New Praya, Kennedy Town	 <p>The image consists of two parts. The top part is a street-level photograph showing a road with a red double-decker bus, a white car, and a few people walking along a waterfront promenade. A caption below this photo reads "Existing conditions of New Praya". The bottom part is an aerial satellite-style photograph of the same area, showing buildings, roads, and the sea. A red arrow points from the street-level view to a specific spot on the aerial view, which is labeled "New Praya".</p>

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos
Improving the connectivity in the harbourfront in the vicinity of Hung Hom and To Kwa Wan	(1) Waterfront gas facility site off Grand Waterfront in To Kwa Wan	 <p>Existing conditions of waterfront gas facility site</p>
	(2) Waterfront area in the vicinity of the Green Island Cement Pier in Hung Hom	 <p>Existing conditions of waterfront area near Green Island Cement Pier</p>

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos
Revitalising pier facilities to increase vibrancy of the harbourfront	Kowloon City Vehicular Ferry Pier	 <p>Existing conditions of Kowloon City Vehicular Ferry Pier</p>

Projects that may be taken forward and may benefit	Relevant location(s)	Location plan and photos
<p>Extending the existing harbour steps to the water body</p>	<p>Water Sports and Recreation Precinct (WSP) in Wan Chai and the Revitalised Typhoon Shelter Precinct (RTSP) in Causeway Bay</p>	 <p>Existing conditions at WSP, Wan Chai</p> <p>Existing conditions at RSTP, Causeway Bay</p>
<p>Provision of new harbour steps</p>	<p>Celebration Precinct outside the Hong Kong Convention and Exhibition Centre (HKCEC)</p>	 <p>Existing conditions at Celebration Precinct</p> <p>High water mark</p> <p>Proposed location</p> <p>HKCEC</p> <p>Proposed location of the harbour steps</p>