



保護海港協會

Society for Protection of the Harbour

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終審法院判詞撮要及語錄

保護海港條例之詮釋及應用

判詞之影響 - 終審法院之判詞指出，因為城市規劃委員會錯誤詮釋保護海港條例，城規會之決定必須被取消，事件須發還城規會重新考慮。此判詞就保護海港條例之詮釋乃適用於任何填海建議。

海港之重要性 - 終審法院表明，海港無疑地是香港身份的主要象徵。她是都市的心臟，並且是必須世代相傳的特別資產。過往的填海令海港僅餘的部份更為珍貴，亦令到保護和保存海港的需要更重要和迫切。

立法宗旨 - 保護海港條例給予了海港一個獨特的法律地位。由於她有獨特之地位，所以有極大公眾需要來把她保護和保存。海港必須被保存，即必須保持其現有的狀況，免受到侵害。此原則是強力和強烈的。

凌駕性的公眾需要測試準則 - 要推翻保護海港條例的推定，必須證明填海工程具有凌駕性的公眾需要。此需要必須比海港有更大的公眾重要性。

凌駕性 - 即指足以壓倒保護和保存海港的公眾需要之當前迫切需要。

迫切 - 即指在一特定和合理時限內的需要。

公眾需要 - 包括經濟，環境和社會性的社群需要。

最低限度 - 即指不應超越所需的。

沒有另一合理解決方法 - 成本，時間和引致的延誤也是有關連的考慮。

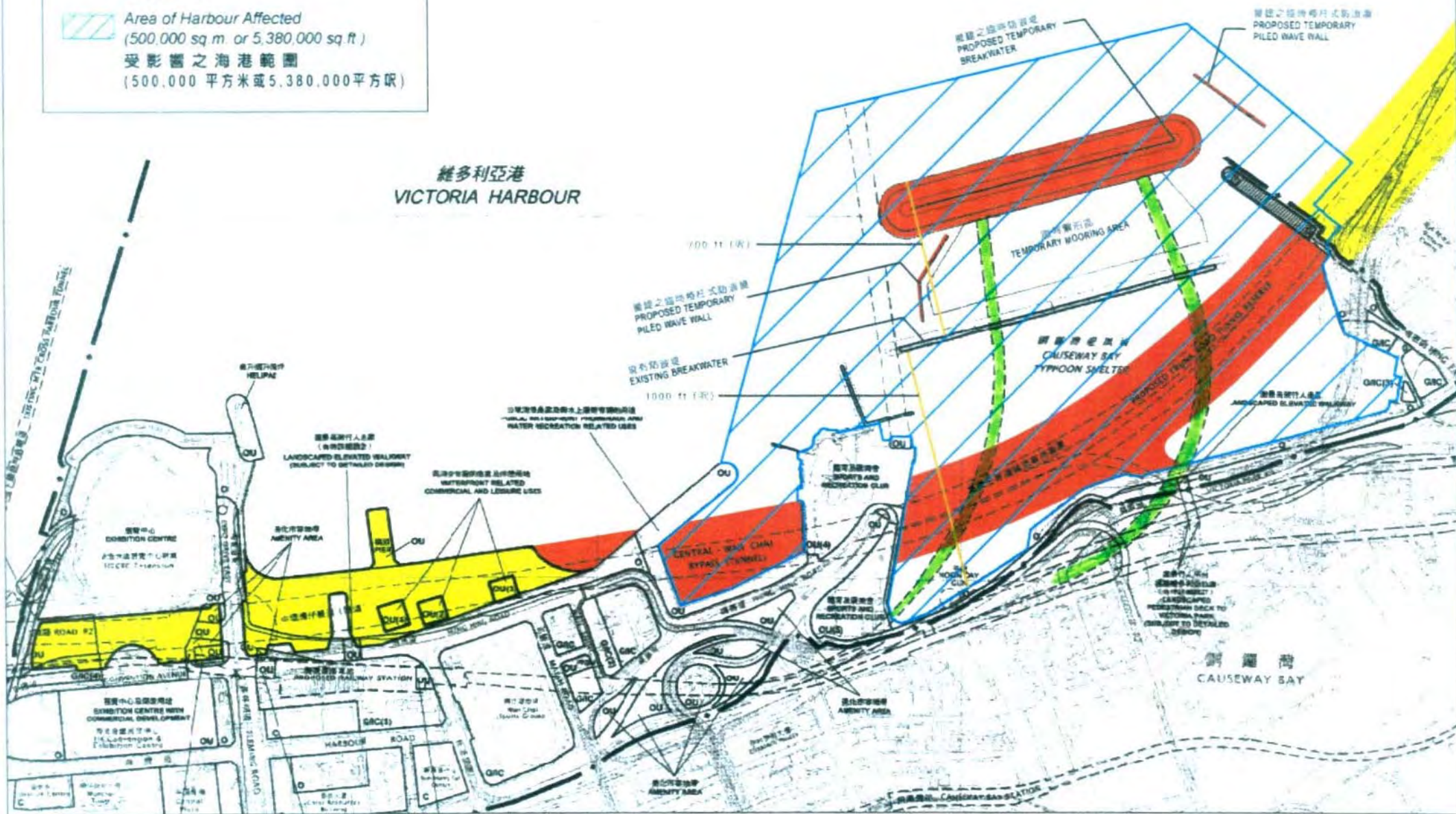
推翻該法定推定 - 填海建議的每部份都要有充份理據支持，除非符合“凌駕性公眾需要的測試準則”，否則不應進行填海。此測試準則是嚴格的，故舉證推翻推定的責任是沉重的。

有力和令人信服的資料 - 有鑑於該測試準則的嚴格性質，不可以只說已經遵守了測試，所依賴的資料必須是有力和令人信服的。

Government's Present Gazetted Wanchai Reclamation
最新已刊憲之政府灣仔填海計劃

- TEMPORARY RECLAMATION
臨時填海
- PERMANENT RECLAMATION
永久填海
- Area of Harbour Affected
(500,000 sq. m. or 5,380,000 sq. ft.)
受影響之海港範圍
(500,000 平方米或 5,380,000 平方呎)

維多利亞港
VICTORIA HARBOUR



大圍
Tai Wai

大圍至紅磡段
Tai Wai to Hung Hom Section

鑽石山
Diamond Hill

鑽石山車廠
DIH Depot

啓德
Kai Tak

土瓜灣
To Kwa Wan

馬頭圍
Ma Tau Wai

何文田
Ho Man Tin

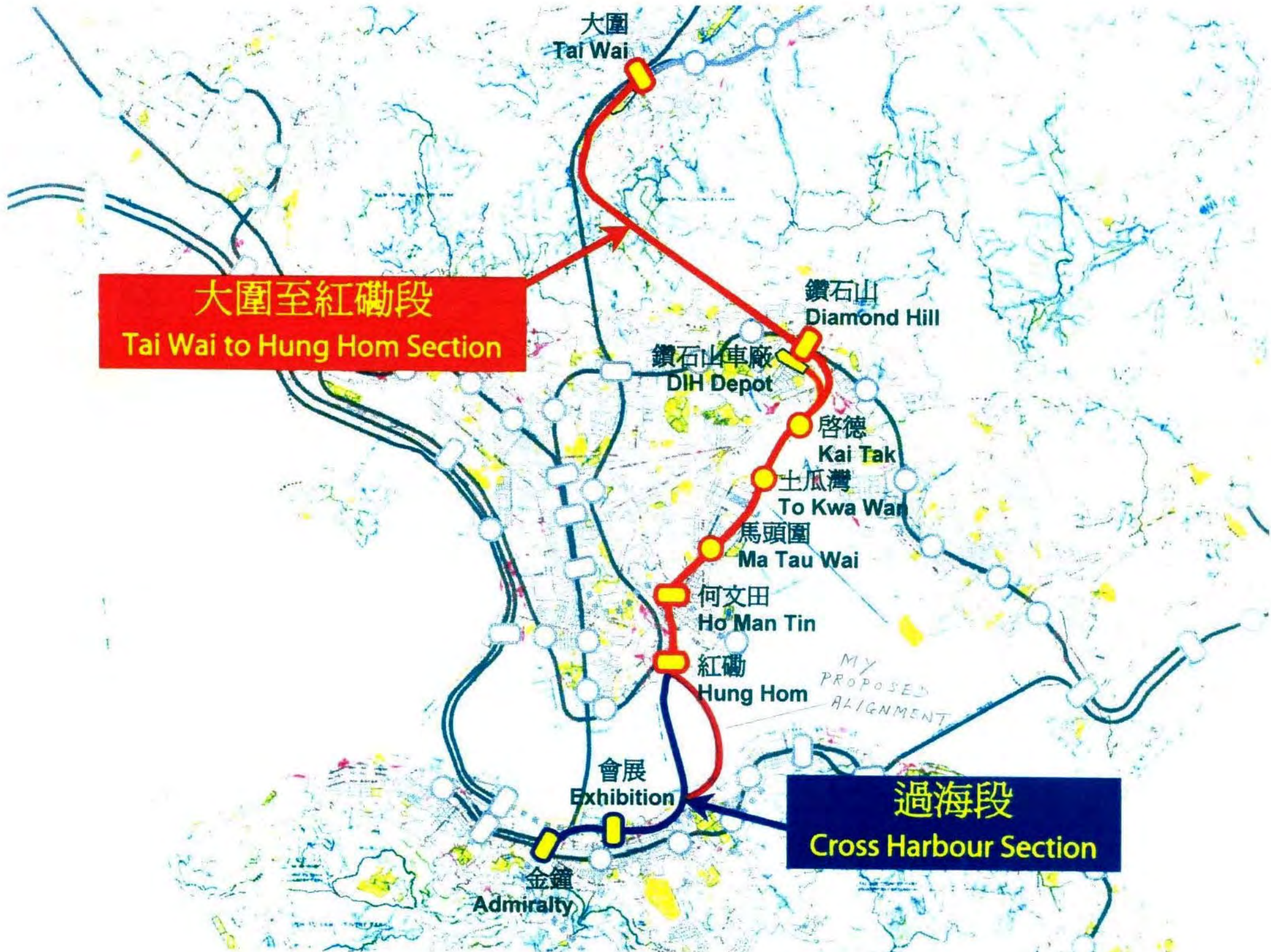
紅磡
Hung Hom

MY
PROPOSED
ALIGNMENT

會展
Exhibition

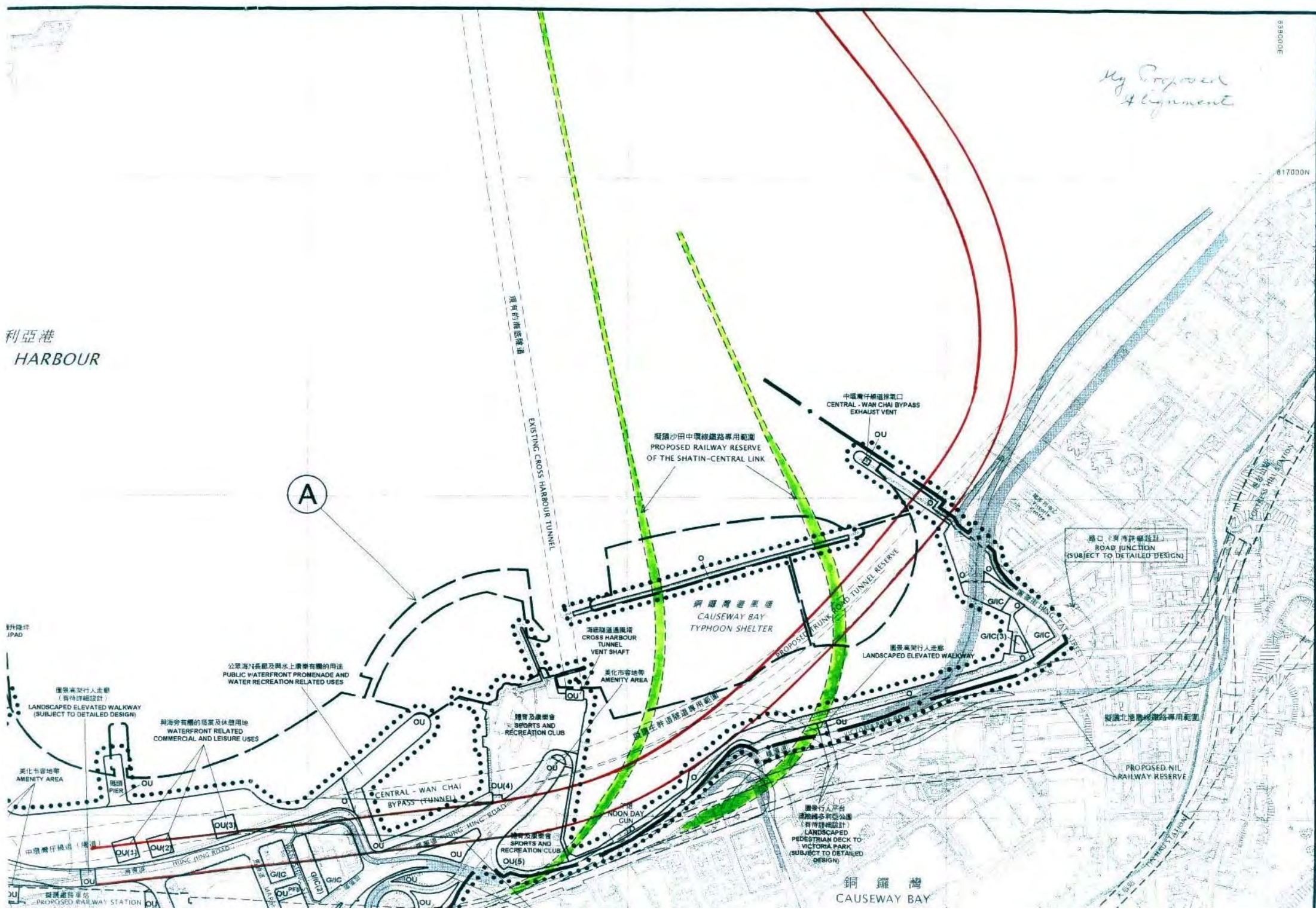
過海段
Cross Harbour Section

金鐘
Admiralty



My Proposed Alignment

利亞港 HARBOUR



軒尼臣 IPAD

A

園景高架行人走廊
(有待詳細設計)
LANDSCAPED ELEVATED WALKWAY
(SUBJECT TO DETAILED DESIGN)

與海有關的商業及休憩用地
WATERFRONT RELATED
COMMERCIAL AND LEISURE USES

公眾海濱長廊及與水上康樂有關的用途
PUBLIC WATERFRONT PROMENADE AND
WATER RECREATION RELATED USES

美化市容地帶
AMENITY AREA

中環灣仔繞道 (橋道)
MONG HING ROAD

擬議車站
PROPOSED RAILWAY STATION

現有的橫海隧道
EXISTING CROSS HARBOUR TUNNEL

擬議沙田中環線鐵路專用範圍
PROPOSED RAILWAY RESERVE
OF THE SHATIN-CENTRAL LINK

中環灣仔繞道排氣口
CENTRAL - WAN CHAI BYPASS
EXHAUST VENT

銅鑼灣避風塘
CAUSEWAY BAY
TYPHOON SHELTER

橫海隧道通風塔
CROSS HARBOUR
TUNNEL
VENT SHAFT

美化市容地帶
AMENITY AREA

體育及康樂會
SPORTS AND
RECREATION CLUB

中環灣仔繞道
CENTRAL - WAN CHAI
BYPASS (TUNNEL)

體育及康樂會
SPORTS AND
RECREATION CLUB

體育及康樂會
SPORTS AND
RECREATION CLUB

體育及康樂會
SPORTS AND
RECREATION CLUB

園景行人平台
園景綠化和公園
(有待詳細設計)
LANDSCAPED
PROMENADE DECK TO
VICTORIA PARK
(SUBJECT TO DETAILED
DESIGN)

銅鑼灣
CAUSEWAY BAY

路口 (有待詳細設計)
ROAD JUNCTION
(SUBJECT TO DETAILED DESIGN)

擬議北環線鐵路專用範圍
PROPOSED NIL
RAILWAY RESERVE

Society for Protection of the Harbour
and
Secretary for Justice

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(Court of First Instance)

(Constitutional and Administrative Law List No 116 of 2007)
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Hartmann J

4–5 February, 20 March 2008

Town planning — reclamation of harbour — Protection of the Harbour Ordinance (Cap.531) and presumption against reclamation applied to temporary reclamation works

城市規劃 — 在海港進行填海 — 《保護海港條例》 (第531章) 及「反對填海」推定均適用於臨時填海工程

The Government proposed to build a trunk road along the foreshore. The road would include a tunnel running under the sea-bed and under a typhoon shelter for mooring small craft (CBTS). Construction would involve extensive temporary reclamation works of the foreshore and sea-bed: (a) for tunnel construction over six years; and (b) require additional temporary reclamation of CBTS to build temporary breakwaters farther out in the harbour for displaced vessels (the Works). The Government took the view that the construction was not subject to the constraints of the Protection of the Harbour Ordinance (Cap.531) because: (i) there was no reclamation within the meaning of the Ordinance as the purpose of the works was to form a “working platform” and not “land”; and (ii) the works were of a temporary nature and would be removed and the foreshore and sea-bed reinstated. X brought judicial review proceedings seeking a declaration that the Government had erred in law.

Held, granting the declaration that the temporary reclamation works, in respect of both the tunnel construction and the provision of temporary breakwaters, were subject to the Ordinance, that:

- (1) On a true and purposive construction of the Ordinance, which provided for a presumption against reclamation, the intention of the Legislature was clear: the harbour was to be protected from any and all reclamation works, whether intended to be permanent or temporary. No distinction was drawn between