

Society for Protection of the Harbour Limited
保護海港協會有限公司

2006, One Pacific Place, Tel (852) 2845-8138
88 Queensway, Hong Kong Fax (852) 2845-5964

敬啟者：

基於公眾利益，本會認為有責任向立法會作出正式投訴，懇請於立法會內透徹地並妥善地調查及辯論，此重要的公眾事件。

房屋規劃及地政局局長孫明揚先生於二零零四年六月二日，出席立法會會議並向各位滙報「政府因中環填海工程訴訟(即本會就填海工程合法性及工程範圍所提出之司法覆核申請)所造成的延誤，而面對工程承建商為數 2.8 億元的索償」。現謹附二零零四年六月三日南華早報就此事件刊登之頭條文章以供參閱。

因為所牽涉的大額賠償，最終須由公帑支付，公眾必須知悉政府是否應對此鉅額賠償負上任何責任，與及該大額賠償是否政府可以透過採取一些恰當及負責任的措施而避免的。

政府現階段嘗試將責任推卸給本會所提出的司法覆核訴訟。但本會現揭出真相，證明這並不符合事實，並且亦毫無理據。

本會準備了本函所附的事實撮要，扼要並順時序地解釋事件的背景。本會存有所有文件支持該些事實，並樂意出席立法會作供及向立法會提供證據文本。

如該事實撮要所示，政府明知本會挑戰政府對保護海港條例的詮釋的合法性，在未有法院判決前，亦未有在合約上作出適當的安排，過早地，不智地及不恰當地批出中環填海工程合約（“該合約”），政府看來是刻意將自己置於一個法律上及財務安排上易受攻擊的位置。

如該事實撮要所述，裁判委員會在對該合約的訴訟中，發現政府在完全知悉本會將進行的司法覆核訴訟的情況下，匆匆地批出該合約。政府的行為被批評為「過於倉促」，並「太過倉促」地批出該合約。裁判委員會指示該合約重新招標，但政府拒絕遵行。如政府遵行裁判委員會所指示並就該合約重新招標，可能避免此宗索償。

本會亦質疑政府為何過早地批出該合約，政府這樣做法，導致該合約已批出，面對該合約下的鉅額索償，及合約中的工程已動工等事實，令法庭面對一個「既定事實」的局面，而可能對中環三期填海之司法覆核聆訊構成影響。

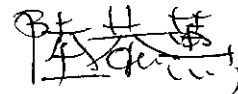
很明顯地，根據良好的行政及尊重法治的原則，政府應於法庭對灣仔分區草圖司法覆核判決後，才批出該合約，或最基本的做法是，應於合約中列有條款，預計將來本會於該司法覆核訴訟中，就該條例的解釋勝訴，因而挑戰中環填海的合法性的情況下，該作出如何安排。

因為中環填海問題的重要性，及引起公眾廣泛的關注，並且牽涉鉅額公帑，本會將會向公眾公開此信件。

此致

香港特區立法會議員

保護海港協會主席



陸恭蕙

二零零四年六月八日

中環填海工程第三期

事實撮要

日期	事件
二零零二年十一月二十九日	保護海港協會(“協會”)通知城市規劃委員會，將挑戰政府用以支持灣仔填海圖則，對保護海港條例的錯誤解釋。
二零零二年十二月十七日	行政會議用同樣的錯誤解釋，批核了中環填海圖。
二零零三年一月七日	協會書面通知城規會，對灣仔填海圖提出司法覆核申請的意願。
二零零三年一月十八日	協會透過律師發出通知，正將進行該司法覆核訴訟。
二零零三年一月三十日 和 二零零三年二月六日	政府中央投標會舉行兩次正式會議，討論批出中環填海合約。在該些會議中，中央投標會特別討論過將進行的司法覆核訴訟，將對中環填海構成的影響，並討論政府可能需要延遲指示中環填海工程，及重新與承建商談判補充合約。
二零零三年二月十日	中環填海工程合約批出。
二零零三年二月二十七日	協會向高等法院呈交灣仔填海計劃的司法覆核申請。
二零零三年七月八日	高等法院裁定協會勝訴，判決政府一向採用錯誤的法律解釋，去支持所有填海工程。判詞因此亦影響中環填海工程。

二零零三年七月十四日

裁判委員會於中環填海工程合約聆訊中，發現政府在完全知道協會將會進行的司法覆核訴訟，匆匆地批出工程合約，政府的行為是「過於倉促」，並且「太過倉促」的批出工程合約。裁判委員會要求對工程合約重新招標，但政府拒絕遵行。

二零零三年九月二十五日

協會向高等法院呈交中環填海計劃的司法覆核申請。

二零零四年一月九日

終審法院頒佈判詞，判決協會勝訴，確認高等法院的判決，即政府一向採用錯誤的法律去解釋保護海港條例，並且判定該判詞影響包括中環填海工程在內的所有填海工程。

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Contractors hit government with \$280m bill for reclamation delays

Cheung Chi-fai

The government faces a \$280 million compensation claim from the contractors involved in the Central Reclamation because of the delay caused by a dispute over the legality and size of the project.

But it does not plan to seek any money from the Society for the Protection of the Harbour, whose lawsuit caused the delay.

The claim, lodged by the joint

venture of Leighton Contractors and China State Construction Engineering Company, is \$180 million more than the amount estimated by the Territory Development Department as the cost of the delay.

Secretary for Housing, Planning and Lands Michael Suen Ming-yeung told legislators yesterday that the claim, lodged on April 17, was caused by a partial suspension of reclamation work between last September and March 9 this year.

During that time, the government was brought to court by the Society for Protection of the Harbour, which claimed the \$3.79 billion project breached the Harbour Protection Ordinance.

After public campaigns against the project, the government was forced to suspend the piling work but pressed on with the dredging.

Work resumed fully after the Court of First Instance rejected the society's case on March 9.

Mr Suen said the government was asking the contractor to provide more details about, and justification for, the claim.

"[The process of seeking compensation] has not started and we are checking the information we have," he said, adding it was possible that adjustments to the work schedule could reduce the claim.

Society chairwoman Christine Loh Kung-wai told ATV her group was not liable for the claim.

She also questioned its size, saying it was significantly higher than the original estimate.

Ms Loh said she could not believe there was not a clause in such a major infrastructure contract covering the circumstances under which a claim could be made and how to calculate any claim.

A spokeswoman for the bureau said the government would not make a claim against the society for the extra costs due to the delay.

"It is a separate issue and we will not seek to claim," she said.

Chris Gordon, a spokesman for Leighton, said it was "just an interim claim and we are required to substantiate it".

Mr Gordon said the claim included higher costs for the mobilisation of equipment, materials and storage. It also included legal costs but it could be adjusted after the remaining work programme was changed.