

**Panel on Planning, Lands and Works and
Panel on Environmental Affairs**

**Joint Meeting on
Thursday, 27th November 2003 at 4:30 p.m.
In the Chamber of the Legislative Council Building**

Submission by The Society for Protection of the Harbour Limited

Practical Impact of High Court Judgment

No Excessive Reclamation

1. As the recent High Court Judgment represents the present law, it is important to understand its practical consequences.
2. The Judgment only stops **excessive reclamation** but does not stop reclamation for a proper purpose. The Judgment supports reclamation which is really needed for the community, such as a needed **highway**, and not something which is merely interesting or desirable, such as a **harbour park**.
3. The Judgment seeks to strike a **proper balance between conservation and development** and condemns the cavalier attitude of the Government in regarding Victoria Harbour as a **land bank** and reclamation as a means to produce land for sale for commercial, residential, hotel, entertainment etc. development.

Reclamation After Harbour Ordinance

4. Despite the enactment of the Protection of the Harbour Ordinance (“Harbour Ordinance”) in June 1997, Government had attempted to proceed with the following reclamations. Our Society was only able to stop such reclamations through the threat of legal proceedings in reliance upon the Harbour Ordinance.

Project	Gazettal	Size
Green Island Reclamation	gazetted in 1996	190 hectares
Central Reclamation Phase III	gazetted in 1998	38 hectares
South East Kowloon Reclamation	gazetted in 1998	300 hectares
Tsuen Wan Bay Reclamation	gazetted in 1999	30 hectares
Wanchai Reclamation Phase II	gazetted in 2002	26 hectares

	Total Area Gazetted	: 584 hectares
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Interpretation of the Harbour Ordinance

5. Since the enactment of the Harbour Ordinance, the Government and the Town Planning Board (“the Board”) had been adopting a wrong interpretation of the Ordinance despite repeated protestations by our Society and despite our Society repeatedly submitting to the Government and the Town Planning Board the correct interpretation which was eventually upheld by the High Court Judgment.

Misinterpretation and Misunderstanding of the Law

6. The Learned Judge found that the decisions of the Town Planning Board (“the Board”) were “based upon a misinterpretation and misunderstanding of the law and flawed as a matter of law”.
7. The effect of this Judgment is that all the previous decisions made by the Board and the Government were wrong as a matter of law and such decisions were in contravention of the Harbour Ordinance.

Government Misleading Legco & Public

8. Therefore all the plans including the Central Reclamation Plan put forward by the Government to Legco were unlawful and in breach of the Ordinance.
9. Legco and the public were misinformed by the Government that these plans were lawful and duly complied with the Harbour Ordinance whereas in fact Government had failed to apply to the plans the three tests laid down by the Judgment.
10. As a result, the Central Reclamation Plan like the Wanchai Reclamation requires twice as much reclamation as is really needed by the Central/Wanchai By-pass and the extra reclamation areas are intended for commercial and other non-essential developments which the Harbour Ordinance does not allow.

Judgment's Criticisms of Government's Approach

11. The Judgment made the following criticisms:-

- (a) “ What the Board appeared to have done is to make use of the opportunity of reclaiming land for essential infrastructure to make zoning and planning provisions for developing the Harbour.”
- (b) “ Reclamation in present time should no longer be regarded as a convenient and ready-at-hand option to obtain additional land.”
- (c) “ The waters in the Harbour is also becoming precious in present time.”
- (d) “ Precisely because Hong Kong owes much of her present achievement to reclamation in the Harbour, it is incumbent upon public officials and authorities to treasure what is now left of the Harbour.”

Rule of Law

12. The Court of Final Appeal (“CFA”) will hear this Appeal in 12 day’s time on 9th December 2003 and judgment is expected to be delivered by the middle of January 2004. In obedience to the Rule of Law, the Government must abide by the decision of the CFA and apply the Harbour Ordinance both to the Central Reclamation and the Wanchai Reclamation in accordance with the interpretation of the Ordinance that the CFA will prescribe.

Public Statement of the Secretary for Housing, Planning and Lands

13. On 1st October 2003, the Secretary for Housing, Planning and Lands wrote the following passage in the Hong Kong Economic Times:-

*“I treasure every bit of the Victoria Harbour as much as everyone in Hong Kong does. In recent years, the special administrative region government has made every effort to comply with the provisions of the Protection of the Harbour Ordinance and to avoid reclamation. It was only under the **most compelling circumstances** that **essential** and **minimum reclamation** would be carried out. Apart from works in Central, we are reviewing the proposed reclamation to be carried out in Wan Chai North.”*

Public Statement of the Chief Executive Mr. Tung

14. On 17th October 2003 at the Australian Business Award Ceremony, the Chief Executive made the following statement in his speech:-

*“Thirdly, I want to tell you that on July 8th this year, the court ruled that another reclamation in Wan Chai, according to the **judge’s interpretation of the law**, should only be carried out if it is of **over-riding importance**, if there is an **immediate need**, and that there are **no other alternatives**, and that **impairment to the harbour is minimal**. I think these are **very good, very sound judgment**, and we would certainly like to make sure that whatever we do **we should comply with the particular ruling.**”*