

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

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June 8, 2004

Members of the Legislative Council
Legislative Council
8 Jackson Road
Hong Kong

Dear Members,

Re: Central Reclamation III – Contractor’s Claim

In the public interest, our Society feels obliged to lodge the following formal complaint with the respectful request that this important public matter be thoroughly and properly investigated and debated in your honourable Council.

On 2nd June 2004, the Secretary for Housing, Planning and Lands Michael Suen Ming-Yeung had appeared before your honourable Council and reported to you that “the Government faces a \$280 million compensation claim from the contractors involved in the Central Reclamation because of the delay caused by a dispute (that is, the Judicial Review instituted by our Society) over the legality and size of the project”. We enclose herewith the front page head-line article regarding this from the South China Morning Post dated 3rd June 2004.

In view of the large amount of the claim which will have to be paid out of public funds, it is vital for the public to know whether the Government should bear any responsibility for this huge claim and whether this large claim could have been avoided through proper and conscientious administration by the Government.

At present, the Government is trying to lay the blame on the Judicial Review taken by our Society. This is untrue and unjustified as a review of the facts will show.

Our Society has prepared for you the enclosed Summary Of Facts which briefly explains the factual background in chronological order. We are in possession of all the relevant supporting documents and shall be pleased to provide both testimonial and documentary evidence to your Council.

As the Summary shows, the Government appears to have deliberately put itself in a legally and financially vulnerable position by prematurely, unwisely and improperly entering into the Central Reclamation Works Contract (“the Contract”) with the Contractors without waiting for and making provision for the outcome of the legal

proceedings by which, to its knowledge, our Society had challenged the legality of the Government's interpretation of the Protection of the Harbour Ordinance upon which the Central Reclamation was based.

As mentioned in the Summary, the arbitration Decision of the Tribunal in the legal proceedings taken over the Contract found that the Government had rushed into the Contract with full knowledge of the pending judicial review proceedings then being instituted by our Society and that the Government had acted with 'undue haste' and had entered into the Contract with 'too much haste'. The Tribunal ordered that the Contract be re-tendered, but the Government had refused to do so. If the Government should have complied with the Decision and re-tendered the Contract, the present claim by the Contractors may not have arisen.

Our Society also questions why the Government had prematurely entered into the Contract, when by doing so, the Government might have prejudiced the hearing of the Central Reclamation Phase III Judicial Review as the Court was presented with a 'fait accompli' because of the Contract and its severe financial claims and because the works pursuant thereto were already proceeding.

It is evident that, as a matter of good administration and respect for the Rule of Law, the Government should have waited for the outcome of the Wanchai Draft Outline Zoning Plan Judicial Review proceedings before entering into the Contract and should have, at the very least, made provision in the Contract for the eventuality that the Government might be challenged over the legality of the Central Reclamation as a result of our Society winning the Wanchai Draft Outline Zoning Plan Judicial Review over the correct legal interpretation of the Ordinance as had actually happened.

Please be informed that, in view of the importance of the Central Reclamation to Hong Kong, the tremendous public concern and interest over this matter as well as the large amount of public funds involved, we are making this letter public.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Christine Loh', with a long horizontal flourish extending to the right.

Christine Loh,
Chairperson

Central Reclamation Phase III

Summary of Facts

Date	Events
29/11/2002	Society for Protection of the Harbour (“Harbour Society”) informed the Town Planning Board that it would challenge the wrong interpretation adopted by the Government of the Protection of the Harbour Ordinance to justify the Wanchai Reclamation Plans.
17/12/2002	Exco approved the Central Reclamation Plans based upon the same wrong interpretation.
07/01/2003	Harbour Society gave written notice to the Town Planning Board of its intention to institute Judicial Review proceedings over the Wanchai Reclamation.
18/01/2003	Harbour Society gave legal notice by letter from its solicitors that it was instituting such Judicial Review proceedings.
30/01/2003 and 06/02/2003	The Central Tender Board (“CTB”) of the Government held two formal meetings to discuss the award of the Central Reclamation Works Contract. At these meetings, the CTB specifically discussed the impact of the pending Judicial Review which would also affect the Central Reclamation and the possibility that the Government might have to extend the deadline for instructing the Central Reclamation Works and to renegotiate a supplementary agreement with the Contractor.
10/02/2003	Central Reclamation Works Contract awarded.

- 27/02/2003 Harbour Society submitted application for Judicial Review to the High Court in respect of the Wanchai Reclamation.
- 8/07/2003 High Court gave Judgment on the Judicial Review in favour of Harbour Society that the Government had been using the wrong legal interpretation of the Ordinance over all of its reclamation projects. The Judgment therefore also affected the Central Reclamation.
- 14/07/2003 The Tribunal hearing the legal proceedings taken over the Central Reclamation Works Contract gave its Decision that the Government had rushed into the Works Contract with full knowledge of the pending judicial review proceedings then being instituted by Harbour Society and that the Government had acted with 'undue haste' and had entered into the Works Contract with 'too much haste'. The Tribunal ordered that the Works Contract be re-tendered, but the Government had refused to do so.
- 25/09/2003 Harbour Society submitted application for Judicial Review to the High Court in respect of the Central Reclamation.
- 9/01/2004 Court of Final Appeal gave Judgment in favour of the Harbour Society confirming the High Court decision that the Government had been using the wrong legal interpretation of the Ordinance and pronouncing that its Judgment affected all reclamation proposals including the Central Reclamation.

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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.