

Tel No.
Fax No.

9 January 2004

Dr the Hon Tang Siu-tong, JP
Chairman
Panel on Planning, Lands and Works
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Dr Tang,

**Court of Final Appeal's Judgment on the
Wan Chai North Reclamation Scheme**

As you may be aware, the Court of Final Appeal (CFA) handed down its decision on the Town Planning Board (TPB)'s appeal against the High Court judgment relating to the draft Wan Chai North Outline Zoning Plan today. I am writing to inform you of the Administration's response in light of the CFA judgment and to thank you for the public hearings held jointly by the LegCo Planning, Lands and Works Panel and the Environmental Affairs Panel on the subject of harbour reclamation.

Reclamation in the Victoria Harbour has drawn much public attention in the latter half of the year 2003. The subject was discussed at a joint meeting of the LegCo Panels on Planning, Lands and Works and Environmental Affairs held on 13 October 2003 during which my colleagues and I had had the opportunity to explain to Members the Government's commitment to protect and preserve the Harbour and the justifications for the Central Reclamation Phase III (CRIII). To provide an opportunity for further exchanges between the Administration and interested organisations, you had kindly chaired two further meetings of the

Joint Panels on 27 November and 8 December 2003 during which over 20 deputations attended to give their views. These public hearings have been most helpful in bringing out the considerations relating to harbour reclamations and in allowing the Administration to respond to concerns.

Earlier today, the CFA delivered its judgment on the appeal lodged by the TPB against the earlier High Court judgment on the judicial review of the Board's decisions with regard to the draft Wan Chai North Outline Zoning Plan. You may recall that in its written submission to the Joint Panels, the TPB has clarified that the purpose of the appeal is to seek a clarification of the legal principles behind the Protection of the Harbour Ordinance, mainly with reference to the "three tests" relating to the presumption against reclamation laid down in the High Court judgment, rather than to preserve the draft Wan Chai Plan *per se*.

You may wish to note that the CFA, in its judgment today, has laid down a single test such that the presumption against reclamation can only be rebutted by establishing an overriding public need for reclamation. This single test replaces the three tests as previously set out in the High Court judgment. In explaining what amounts to an overriding public need, we are pleased to note that the CFA has adopted a number of considerations which are similar to those put forth by the Counsel representing the Town Planning Board. This has in our view resulted in a widened definition and scope of coverage embodied in the single test for rebutting the presumption against reclamation.

The CFA judgment has removed doubts in the community in the past few months as to whether there could be further reclamation. It also provides room for the Government and the people of Hong Kong to deliberate on the need to strike a balance between protecting the harbour and meeting social, economic and environmental needs. The CFA has given us a clear and final judgment on the clarification of the law. This will greatly help us in the formulation and implementation of future planning for the Harbour. In details, you may wish to refer to my public statement at enclosure.

We will work closely with the community and engage the public in developing a vibrant and attractive waterfront. Your continual support to our work in this aspect will be appreciated. May I take this opportunity to wish you and your colleagues a happy new year.

Yours sincerely,

(Michael M Y Suen)
Secretary for Housing, Planning
and Lands

c.c.

Chairperson, Panel for Environmental Affairs
(Attn: the Hon Choy So-yuk)
All Members of the Legislative Council

Statement of the Secretary for Housing, Planning and Lands

on the Judgement of CFA on Wan Chai North Reclamation

9 January 2004

1. The Court of Final Appeal (CFA) handed down its judgment on the Town Planning Board (TPB)'s appeal today. In respect of the presumption against reclamation as contained in the Protection of the Harbour Ordinance, the CFA judgment has substituted the "three tests" laid down earlier on by the High Court with a single test of "overriding public need". We note that there are many similarities between the CFA's explanation on what amounts to an "overriding public need" and the viewpoints expressed by the TPB's Counsel during the CFA enquiry. These include:

- (a) Public needs that support reclamation need not be something that the community cannot do without. As a matter of fact, CFA opines that to describe such needs as something which the public cannot do without would be "going much too far";
- (b) Public needs that may rebut the presumption against reclamation under the Protection of Harbour Ordinance would include 'the economic, environmental and social needs of the community';
- (c) Apart from reclamation, such public needs cannot be met by another reasonable alternative. In considering whether there are reasonable alternatives, all circumstances should be considered, including the economic, environmental and social implications of each alternative as well as the cost, the time and delay involved.

2. We are pleased to note that the single test now laid down by CFA carries a widened definition and coverage. The CFA judgment has removed doubts over reclamation which have prevailed in the community in recent months. It also provides room for the Government and the public to deliberate on the need to strike a balance between protecting the harbour and meeting social, economic and environmental needs.

3. Regarding the CFA judgment that upholds the High Court's decision relating to the Draft Wan Chai North Outline Zoning Plan (OZP), i.e. the TPB should re-consider

the relevant OZP, this is in line with our stated intention. In fact, the TPB has already given up the Harbour Park proposal that required reclamation to the extent of two hectares last July in the light of the High Court Judgment and has taken the initiative to request the Government to conduct a comprehensive planning and engineering review of the Wan Chai North reclamation. We will conduct such review expeditiously in accordance with the law with a view to meeting essential needs for transport infrastructure. We will review the Southeast Kowloon reclamation in an equally vigilant and cautious manner.

4. Government is committed to protecting and preserving the Harbour. I have stated time and again that CRIII and the proposed Wan Chai North and Southeast Kowloon reclamations are the only remaining reclamation projects in the harbour.

5. As to future reclamations, we will work out a set of clear operational guidelines on how to comply with the Protection of Harbour Ordinance and the CFA judgment. We will observe the CFA judgment and ensure that reclamation only takes place under special and reasonable circumstances, with the new test laid down met.

6. To address public concern that the use of reclaimed land may be changed, we propose to ensure in the town planning process that reclaimed land could only be used for the intended purpose in respect of which reclamation was approved.

7. On the CRIII project works on which have commenced since February 2003, it should be noted that the judicial review and the CFA judgement are not against the relevant OZP. Despite this, the Government has completed in November last year a review of CRIII. The results illustrate that CRIII can meet the three tests previously laid down by the High Court. Compared with CFA's widened definition, we are confident that the Central reclamation can meet the legal requirements.

8. In any case, we will promptly ascertain, in the light of the CFA judgement, that CRIII meets the single test laid down by the CFA as well as other relevant factors such as the cost and related considerations. We wish to emphasise that CRIII is reasonable and justified to meet essential transport infrastructure needs. It has undergone due and diligent scrutiny. With the extent of reclamation reduced from 32 hectares to 18 hectares, it represents the minimum reclamation.

9. We know that hearing on the CRIII judicial review is due to take place from 9-12 Feb 2004. As always, the Government respects the rule of law. Therefore, we will

continue to suspend the marine piling and reclamation works programmed to be carried out under the CRIII project until the legal proceedings have taken their course. However, we note that the CFA has in its judgment given guidance on the timing of judicial review challenge. The CFA has emphasized that there must not be any undue delay in applying for judicial review against any reclamation proposal and that it is of obvious importance that the earliest opportunity for any challenge to a reclamation proposal should be promptly taken or else the courts have the discretion to refuse relief.

10. We wish to point out that CRIII was first proposed in 1998. It has undergone due and diligent scrutiny. Works started in February 2003 whereas the Society for Protection of the Harbour only applied for judicial review against CRIII in September 2003. In view of this, we hope the Society for the Protection of the Harbour will reconsider whether it should continue to proceed with the CRIII judicial review.