



保 護 海 港 協 會
Society for Protection of the Harbour

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U R G E N T

Panel on Planning, Lands and Works,
3rd Floor, Citibank Tower,
3 Garden Road, Central,
Hong Kong.

20th May 2006

Attention: Ms. Christina Shiu, Legislative Council Secretariat

Dear Sir,

**Panel on Planning, Lands and Works Meeting on 23rd May 2006 at 2:30 p.m.
Wan Chai Development Phase II Review – Harbourfront Enhancement Review –
Wan Chai, Causeway Bay and Adjoining Areas:
Outcome of Public Engagement at the Envisioning Stage**

We refer to the coming meeting on Tuesday, 23rd May 2006 to discuss the above matter (Item V).

We are pleased to enclose herewith our letter (“the Letter”) dated 21st April 2006 to the Chairman of the Harbourfront Enhancement Committee (“the Committee”) which is self-explanatory.

Our Letter respectfully referred to the Consultant Report (“the Report”) prepared by Maunsell Consultant Limited (“the Consultant”) which is circulated and being relied upon by the Committee to justify the Committee’s recent recommendations. In our Letter, we had duly set out the relevant requirements of the Court of Final Appeal Judgment (“the CFA Judgment”) in FACV 14/2003 (the Summary whereof in English and Chinese is hereto enclosed).



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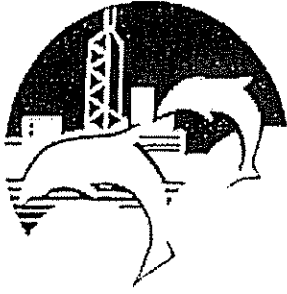
We respectfully point out, that as a matter of legal logic, the Report can only be relied upon as ‘cogent material’ if the Report itself complied with the requirements of the CFA Judgment. Therefore it is vital to know what was in the Brief that instructed the Consultant to prepare the report. The Brief itself must have instructed the Consultant to observe, comply with and apply the principles laid down by the CFA Judgment before the Report can be relied upon as ‘cogent material’ to which the CFA Judgment referred.

We enclose herewith the response dated 8th May 2006 we had received from the Committee which failed to respond to our aforesaid requests set out in our Letter, specifically our request for the opportunity to scrutinize the above mentioned Brief and Instructions to the Consultant.

We shall therefore be grateful if, at the above mentioned meeting, you will give your consideration to the matters mentioned in our Letter and to ask for the opportunity to scrutinise the Brief and instructions to the Consultant so that your Committee, the public and ourselves shall have the opportunity to scrutinize them.

Yours faithfully,

Dennis K.W. Li, Director



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The Chairman of the Harbour-front Enhancement Committee
c/o Housing, Planning and Lands Bureau
9/F, Murray Building,
Garden Road,
Central, Hong Kong

By Hand

21 April 2006

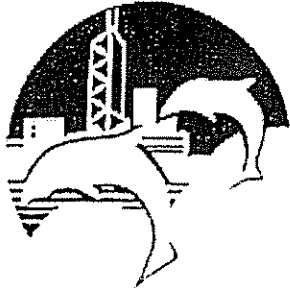
Dear Professor Lee Chack Fan,

Schemes for the Trunk Road Alignment through the Wan Chai Development II Project Area

As the successful Applicant in the Judicial Review leading to the Court of Final Appeal (“CFA”) Judgment in FACV14 of 2003 (copy enclosed), we are anxious to ascertain whether the law over Harbour reclamation encapsulated in the CFA Judgment has been duly complied with by your Committee.

We would like to clarify whether you have duly observed the requirements of the CFA Judgment that:-

1. “ There is a need which has the requisite force to prevail over the strong public need for protection and preservation of the harbour”;
2. “ The need arises within a definite and reasonable time frame”;
3. “ The need satisfies the economic, environmental and social needs of the community”;
4. “ Reclamation does not go beyond what is the minimum extent required to satisfy the need”;
5. “ There are no reasonable alternatives, where costs, time and delay would be relevant”;
6. “ There are cogent and convincing materials relied upon to justify each area of the proposed reclamation”.



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We note that you have recently circulated the Consultant Report prepared by Maunsell Consultants Asia Ltd. which you are relying upon. We are anxious to find out whether you have instructed the Consultant to comply with the above requirements of the CFA Judgment.

Unless the proper instructions have been given to the Consultant, the Consultant Report will not and cannot constitute "cogent and convincing materials" legally required to comply with the CFA Judgment. Therefore, the Brief to the Consultant and any instructions given to them are of paramount importance. We shall therefore be grateful to have the opportunity to scrutinize the Brief and instructions.

The present situation is rather topsy-turvy. The Protection of the Harbour Ordinance has been enacted by the Legislature in order to protect and preserve the harbour and to control the Government's extensive harbour reclamation programme. Therefore, the Department of Justice, as a limb of the Government, has not been upholding the law as set out in the Ordinance. It has therefore been the task of our Society to assume the role of upholding the law which protects the harbour from reclamation as set out in Ordinance and interpreted by the CFA Judgment.

Accordingly we shall be grateful if you will give this letter your best attention and confirm that you are prepared to accede to our above requests.

Yours sincerely,

Christine Loh, Chairperson

c.c. The Town Planning Board Fax: 2877 0245
The Secretary for Justice Fax: 2877-3978

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

Summary Of Court of Final Appeal Judgment
Interpretation of Protection of the Harbour Ordinance

Effect of Judgment - The CFA pronounced on 9th January 2004 that the Town Planning Board had erred in law in the correct interpretation of the Harbour Ordinance; that the Board's decisions must be quashed; that the Wanchai Outline Zoning Plan must be remitted back to the Board for reconsideration; and that the Judgment applies to any reclamation proposal in the Harbour.

Importance of Harbour - The CFA pronounced that the Harbour is undoubtedly a central part of Hong Kong's identity. It is the heart of the metropolis and something extraordinary to be transmitted from generation to generation. Reclamation that had already taken place renders what remains of the Harbour even more precious and makes the need to protect and preserve it more important and compelling.

Legislative Intention - The Harbour Ordinance accords to the Harbour a unique legal status. There is a great public need to protect and preserve it having regard to its unique character. There must be preservation which means maintenance and conservation in its present state. It must be kept from harm, defended and guarded. Such a principle is strong and vigorous.

Overriding Public Need Test - The presumption prescribed by the Harbour Ordinance can only be rebutted by establishing an overriding public need for reclamation. Such need must be of greater public importance than the importance of the Harbour.

Overriding – means a compelling and present need which has the requisite force to prevail over the strong public need for protection and preservation

Present – means that the need must arise within a definite and reasonable time frame

Public needs – include economic, environmental and social needs of the community

Minimum – means not to go beyond what is required

No Reasonable Alternative – where costs, time and delay would be relevant

Rebuttal of Presumption - Each area proposed to be reclaimed must be justified. It is imperative that there shall be no reclamation unless the Overriding Public Need Test is satisfied. The Test is by its nature a demanding one and the burden to rebut the presumption is therefore a heavy one.

Cogent & Convincing Materials - Due to the demanding nature of the Test, it is not sufficient to incant the Test or just to pay lip service to it. The materials relied on must be cogent and convincing.

終審法院判詞撮要

保護海港條例之詮釋

判詞之影響 – 終審法院於2004年1月9日之判詞宣佈，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；灣仔分區計劃大綱圖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。

共建維港委員會
Harbour-front Enhancement
Committee



Tel No : 2186 7286

Fax No : 2868 4530

Our Ref. HPLB(P) 50/02/68

8 May 2006

Ms Christine Loh
Chairperson, Society for Protection of the Harbour
Room 2006, 20th Floor, One Pacific Place
88 Queensway, Hong Kong

Dear Ms Loh,


**Schemes for the Trunk Road Alignment
through the Wan Chai Development II Project Area**

Thanks for your letter of 21 April 2006.

The Harbour-front Enhancement Committee (HEC) has set up the Sub-committee on Wan Chai Development Phase II Review to assist the former in giving advice on the Planning and Engineering Review of Wan Chai Development Phase II. As such, it is more appropriate for the Sub-committee to follow up on matters relating to the Review. I have requested the Chairman of the Sub-committee to reply direct to you.

Thank you again for your comments on/concern about the Review. I trust that the representative of Society for Protection of the Harbour in the HEC will continue to provide valuable advice on the work of the HEC.

Yours sincerely,

A handwritten signature in black ink, appearing to read "C. F. Lee". The signature is written in a cursive style with a large, prominent "L" and "e" at the end.

(Professor Lee Chack-fan)
Chairman, HEC

c.c. Chairman, Sub-committee on Wan Chai Development Phase II Review
(Fax 2577 5040)