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Panel on Development

Meeting on 25 June 2024

Background brief on review of the Protection of the Harbour Ordinance (Cap. 531)

Purpose

This paper provides background information on the review of the Protection of the Harbour Ordinance (Cap. 531) (“PHO”). It also gives a brief account of the major views and concerns expressed by Members on the subject at meetings of relevant committees of the Legislative Council (“LegCo”) since the 2023 session.

Background

2. PHO was enacted in 1997 to protect and preserve the harbour by establishing a presumption against reclamation in the central harbour. It was amended in 1999 to expand the area to be protected and preserved from the central part of Victoria Harbour (i.e. the central harbour) to cover the whole of Victoria Harbour (i.e. the Harbour).¹

3. Under the current regime imposed by PHO, all reclamations in the Harbour, regardless of permanence, scale or nature, are subject to the “presumption against reclamation” which can only be rebutted by proving that the “overriding public need” test (“the Test”) is met. To satisfy the demanding Test, the Government is required to substantiate not only the public need for the reclamation but also that such public need is compelling and present; that there is

¹ The boundaries of the Harbour are set out in Schedule 3 of the Interpretative and General Clauses Ordinance (Cap. 1) as: “On the east — A straight line drawn from the westernmost extremity of Siu Chau Wan Point to the westernmost extremity of Ah Kung Ngam Point (sometimes known as Kung Am); On the west — A straight line drawn from the westernmost point of Island of Hong Kong to the westernmost point of Green Island, thence a straight line drawn from the westernmost point of Green Island to the southeasternmost point of Tsing Yi, thence along the eastern and northern coast lines of Tsing Yi to the westernmost extremity of Tsing Yi and thence a straight line drawn true north therefrom to the mainland.”

no reasonable alternative to reclamation; and that the reclamation extent should not go beyond the minimum of that which is required by the overriding need.

4. The Administration has proposed amending PHO with a view to maintaining the protection of the Harbour while promoting enhancement of harbourfront for public enjoyment and harbour functions. It has also indicated that the Government will not initiate large-scale reclamation in the Harbour to form land for housing, commercial or industrial developments, etc. Having regard to this principle and maintaining the boundaries of the Harbour to be subject to PHO, the Administration has proposed that PHO be amended in two strategic directions: on the one hand, to strengthen the mechanism for reclamations which should be regulated; and on the other hand, to facilitate in a reasonable manner works involving reclamations which would strengthen the harbour functions, improve harbourfront connectivity or help people better enjoy the harbourfront.

5. In March 2023, the Administration briefed the Panel on Development (“DEV Panel”) on the proposed framework for legislative amendments to PHO, and subsequently conducted a five-month public engagement exercise during which comments were sought from stakeholders including members of the public.

Major views and concerns expressed by Members

6. The major views and concerns expressed by Members on the review of PHO during the relevant discussions of the DEV Panel and the Subcommittee to Study Policy Issues Relating to the Harbourfront² (“the Subcommittee”) are summarized in the ensuing paragraphs.

Reclamations in the Harbour

7. Members opined that the Administration should add provisions in PHO stipulating that the Government would not initiate large-scale reclamation in the Harbour to form land for housing, commercial or industrial developments, etc., so as to allay public concern. They also pointed out that the implementation of PHO in the past had been mainly shaped by the court judgments in 2004 and 2008, resulting in the high threshold to meet for carrying out works in the Harbour. Against this background, Members considered that the legislative amendment exercise should include relevant amendments to clarify and crystallize the principles established in those judgments.

² The Subcommittee was formed under DEV Panel and commenced work in May 2023. It has completed its work in April 2024.

8. The Administration explained that since the legislative amendment exercise was not aimed at relaxing the regulation of large-scale reclamations, the proposed legislative amendments would be prepared along the line of the existing legislation and the principles established by the relevant court judgments. The “presumption against reclamation” under PHO would remain intact after the legislative amendments and would continue to apply to large-scale reclamations in the Harbour. In addition, the proposed legislative amendments would strengthen the mechanism for regulation. To further allay public concern, the Administration would consider stipulating in PHO that reclamation would not be carried out in the Harbour to provide land for sale or housing development. The Administration indicated that it appreciated and shared the public’s aspiration about protecting the Harbour and understood that the legislative amendment exercise would be quite controversial.

9. Members noted that in the legislative amendment exercise, the Administration would strengthen the regime regarding the regulation of reclamations in the Harbour. In this connection, there was an enquiry as to whether it was envisaged that the exposure of reclamation projects to legal challenges could be reduced after amending the legislation. There was also a concern as to whether the application threshold for judicial review (“JR”) would be raised after amending the legislation, undermining the legal right of the public.

10. The Administration reiterated that the proposed legislative amendments would not affect the public’s rights to apply for JR. Under the proposed framework of legislative amendments, the regulation over reclamations in the Harbour would be further institutionalized, which should reduce the chance of the Government being challenged for its decisions. However, given the uniqueness of each JR application, it was up to the court to decide whether leave should be granted to individual cases, and hence a broad-brush approach did not apply.

Reclamations in harbour enhancement works

11. Regarding the proposed amendments for the purpose of facilitating harbour enhancement works involving small-scale reclamations, Members enquired about the principles based on which the Administration had compiled the proposed list of harbour enhancement works eligible for exemption from the “presumption against reclamation” principle under PHO and whether it would be specified that the facilities covered by the relevant works had to be opened for public use. Some Members took the view that apart from imposing a statutory limit on the total area of reclamation in the project concerned (i.e. 0.8 hectare per project according to the preliminary proposal), a limit should be imposed on the total number of harbour enhancement projects that could be carried out in the entire Harbour, and the shape of the reclamation areas should be regulated to prevent them from extending excessively to the centre of the Harbour.

12. The Administration advised that the works set out in the prescribed list were aimed at enhancing public enjoyment of the Harbour and/or enhancing the functions of the Harbour as a working harbour. Such works included minor harbour enhancement projects that could not be implemented due to the restrictions under the existing PHO. The list had been prepared by consolidating the relevant suggestions received in the past and the experience gained from implementing the relevant works.

13. The Administration also explained that one of the objectives of the legislative amendment exercise was to remove the barriers to small-scale reclamations in harbour enhancement works. For this reason, the Administration had no intention to add provisions to limit the total number of projects to be exempted or to exclude private development projects. Meanwhile, to ensure that the exempted works served public interest (including keeping the density of enhancement projects of the same category within the same area under monitoring) and to ensure appropriate checks and balances, the Administration proposed the introduction of a mechanism under which exemption would be granted by Secretary-level government officials, and the retention of the established administrative arrangement requiring project proponents to consult the Harbourfront Commission, the relevant District Councils and stakeholders. In the light of Members' views, the Administration would study whether restriction on the shape of the reclaimed land should be imposed on harbour enhancement works.

14. Members welcomed the Government's plan to take forward harbour enhancement works (e.g. boardwalk and harbour steps)³ by obtaining exemption from the "presumption against reclamation" under the mechanism set out in the proposed legislative amendments. They also asked whether the exemption would cover transport infrastructure. The Administration replied that as reclamations for forming land for transport infrastructure would be of certain scale and might be controversial, such works would not be exempted from the "presumption against reclamation" principle and would continue to be required to fulfil the Test with the enactment of the amended PHO.

Works involving non-permanent reclamations

15. Regarding non-permanent reclamations in the harbour that would be exempted from the "presumption against reclamation" principle, Members asked about the mechanism the Administration had in place to handle situations where the area of the harbour so affected at any point in time after works commencement went beyond the limit prescribed in the exemption conditions (i.e. three hectares

³ The Administration's paper discussed at the Subcommittee meeting held on 29 April 2024 sets out the potential projects that may be pursued by the Administration subject to the passage of the amended PHO ([LC Paper No. CB\(1\)325/2024\(01\)](#)).

according to the preliminary proposal) or the duration of works exceeded the specified time limit (i.e. three years according to the preliminary proposal). Members opined that the handling mechanism should be incorporated into PHO, and a limit on the number and area of exempted non-permanent reclamations that could be carried out concurrently within a designated area should be stipulated.

16. The Administration responded that if the area of the harbour so affected by or the duration of exempted non-permanent reclamations was found going beyond the exemption limit during project implementation, and the discrepancies were not the result of unforeseeable factors, the head of department, as the project proponent, should be held accountable. Nevertheless, the Administration took note of Members' concern about erroneous assessment identified after exemption had been granted and would explore ways to enhance the handling mechanism. The Administration reiterated that works projects involving non-permanent reclamations were subject to vetting by Secretary-level government officials before being granted the exemption. Holistic consideration would be given during the vetting and approval process (e.g. whether there were other ongoing non-permanent reclamations at the same location). In addition, the affected part of the harbour would be reinstated upon completion of non-permanent reclamations and no irrevocable damage to the harbour area would be caused. In view of the above, the Administration had no plans to impose a limit on the total number of such kind of projects.

Latest development

17. At the DEV Panel meeting to be held on 25 June 2024, the Administration will brief members on the progress of the preparatory work on taking forward the legislative amendment proposals for PHO.

Relevant papers

18. A list of relevant papers on the LegCo website is in the **Appendix**.

Review of the Protection of the Harbour Ordinance (Cap. 531)

List of relevant papers

Committee	Date of meeting	Paper
Panel on Development	28 March 2023	Agenda item V: Review of the Protection of the Harbour Ordinance (Cap. 531) Minutes of meeting
Subcommittee to Study Policy Issues Relating to the Harbourfront	29 April 2024	Agenda item I: Potential harbour enhancement works under the amended Protection of the Harbour Ordinance (Cap. 531) Minutes of meeting