

By post and by email at [phoreview@devb.gov.hk](mailto:phoreview@devb.gov.hk)

31 August 2023

Public Engagement on Proposed Amendments to PHO  
Harbour Office, Development Bureau  
Room 1106-07, 11/F, Wing On Kowloon Centre,  
345 Nathan Road,  
Kowloon

Dear Sir/Madam

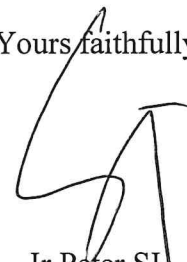
**Views from The Hong Kong Institution of Engineers  
Regarding the Proposed Amendments to the  
Protection of the Harbour Ordinance**

On behalf of the Institution, I am pleased to present to you our views and suggestions as set out in the enclosure for your consideration on the captioned subject.

The Institution welcomes the opportunity to work with the Government and offer our expertise and experience on the area of concern if and when it is needed.

Thank you.

Yours faithfully



Ir Peter SI  
Director

AS/PS/SS

**Enclosure**

**Views from The Hong Kong Institution of Engineers  
Regarding the Proposed Amendments to the  
Protection of the Harbour Ordinance**

The Harbour Office of Development Bureau presented in March 2023 the Review on the Protection of the Harbour Ordinance (Cap. 531) (“PHO”) and Proposed Framework of Legislative Amendments (LC Paper No. CB(1)243/2023(05), the “Proposal”). The Hong Kong Institution of Engineers (“HKIE”) attended the town hall session(s) organised by the Harbour Office, and would like to offer views on the subject matter for the Office’s further consideration.

2. The PHO was enacted in June 1997 and has been in place for over two decades. The HKIE notes its stringent thresholds and the voices from the society about the potential cause of hurdles to contemporary developments. The HKIE welcomes and supports the proposed legislative review, which is expected to achieve a better balance between protecting the harbour and efficiently implementing the much-needed infrastructures as well as practically proceeding community facilities of a smaller scale, all of which has virtually been hindered by the PHO in its existing form.

3. According to the Proposal, Section 3 of the PHO imposes a “presumption against reclamation” in the harbour and requires all public officers and public bodies to have regard to this principle for guidance in exercising their powers. There is no differentiation in the application of “presumption against reclamation” to different works projects, and the principle of “overriding public need” (“the Test”) and the requirement that there must be cogent and convincing materials (“CCM”) apply across-the-board to all reclamations in the harbour.

4. Currently, only mega size transportation projects could likely satisfy the Test and produce the CCM. Nevertheless, fulfilling these could have already drained substantial resources of any project office and possibly also of the society. Taking into consideration the significant increase in construction volume in years ahead to meet the demand for land, housing, and infrastructure (especially on transportation), it would be essential to deploy the precious resources of the society on important areas in an efficient and effective manner.

5. In addition, the current PHO does not clearly identify the “decision maker” in the approval mechanism of the reclamation scheme. To enable legitimate projects to proceed in a structured and well-regulated manner without unnecessary judicial challenges, the HKIE suggests the Administration to stipulate a clear and systematic framework in processing the Test and CCM, together with the approval mechanism of the reclamation scheme.

6. The Harbour Office’s proposal to require fulfilment of the Test to the satisfaction of the Chief Executive-in-Council (“CE-in-C”) and the specific details in

paragraph 11 of the Proposal are supported. Approval by CE-in-C is in fact a commonly adopted arrangement in many other Ordinances, and is considered an appropriate reference for the amendment to the PHO.

7. Given the past experience from a number of community improvement works that could not be proceeded due to slim chance of passing the Test and standing clear from judicial challenges, examples include the enhancement of old pier at the former Kai Tak Runway and the construction of a boardwalk at New Praya in Kennedy Town, the HKIE is supportive of the proposed amendment to enable reclamations in harbour enhancement works be processed according to the proposed streamlined procedures with appropriate internal checks and balances. As outlined in paragraphs 13 and 14 of the Proposal, works fall within the prescribed list in a schedule to PHO and the area of reclamations involved is not more than a statutory limit preliminarily proposed at 0.8 hectare are suggested to be granted exemption by a Secretary-level government official from the application of “presumption against reclamation” principle and the Test. It is also suggested that the legislative amendments shall include streamline mechanism such that the Administration can, under certain check and balance mechanism, expand the list in future when necessary; for instance, by negative vetting or other suitable means.

8. To further streamline the exemption process, the HKIE suggests including a “delegation” mechanism in the legislative amendments, such that the Secretary-level official can delegate his duty to Bureaux Directors / Permanent Secretaries / Department Directors for processing works of comparatively minor scale, such as the construction of landing steps or moorings.

9. Furthermore, the HKIE would suggest the Harbour Office in considering legislative amendments that include an exemption for emergency works, which is another common provision in many Ordinances. In the event of natural disasters, for example, relevant authorities might need to quickly set up a temporary platform in the harbour for rescue or other purposes. Nevertheless, such platform may be considered “reclamation” under the PHO if it is to be constructed within the harbour area. In order to build a resilient city, we should be prepared for emergency situations like this, however rare they might be.