

Harbour-front Enhancement Committee

“Overriding Public Need Test”

Purpose

This paper elaborates on the “overriding public need test” stipulated by the Court of Final Appeal (“CFA”) in the judgment it delivered on 9 January 2004 on the subject of reclamation.

Background

2. In light of the CFA judgment, the Government has undertaken to comprehensively review the Wan Chai Development Phase II (“WDII”) and Kai Tak development projects to ensure full compliance with the requirements of the Protection of the Harbour Ordinance (“PHO”) and the CFA judgment. Since the establishment of the Harbour-front Enhancement Committee (“HEC”) in May 2004, the Government has been working closely with the Sub-committee on WDII Review and the Sub-committee on South East Kowloon Development Review on the two reviews.

3. Both Members of the HEC and the public have shown interest in the CFA’s “overriding public need test” and how it should be interpreted and applied in case of reclamation. At the first meeting of the HEC on 6 May 2004, the Government presented the paper “Protection of the Harbour Ordinance and the Court of Final Appeal Judgment” (Paper No. 2/2004), which covers the following topics –

- (a) A brief enactment history of the PHO and the presumption against reclamation set out under section 3 of the ordinance;
- (b) The judicial reviews related to the WDII and Central Reclamation Phase III (“CRIII”) projects; and
- (c) The CFA judgment of 9 January 2004 and the “overriding public

need test”.

A copy of the paper is enclosed at **Appendix A** for Members’ reference.

Technical Circular

4. To better explain the requirements of the PHO and to provide guidance for public officers and public bodies in considering and approving reclamation proposals, a technical circular was jointly issued by the Housing, Planning and Lands Bureau and the Environment, Transport and Works Bureau in August 2004.

5. The technical circular provides an explanation on the CFA’s “overriding public need test” and a set of guidelines for public officers and public bodies in considering reclamation proposals inside the limits of Victoria Harbour. A copy of the technical circular is attached at **Appendix B** for Members’ reference. It is also available on-line at <http://www.etwb.gov.hk/UtilManager/tc/JTC-2004-01-1-1.pdf>.

Advice Sought

6. Members are invited to note the contents of this paper.

Secretariat, Harbour-front Enhancement Committee
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