



保 護 海 港 協 會

Society for Protection of the Harbour

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12th July 2024

PRESS RELEASE

Do Not Let Government Take-away Protection of the Harbour by the Law Courts Without Enforcement by the Law Courts, the Ordinance is Meaningless

Our Society have this morning issued the enclosed two letters to the Government:

- A. Letter to the Chief Executive-in-Council ("CE-in-C").
- B. Letter to the Secretary for Justice.

Under the present Ordinance, the Law Courts make the legal decision and exercise control over the Government's Large Scale Reclamations.

This is necessary because historically the danger comes from the Government which had already reclaimed more than half of the harbour and made it less than half of the original width.

Without the Ordinance, the Government would have already completed its Reclamation Plan to further reclaim a further 1,297 hectares (5 square miles) of the harbour which by now would have already become like a river.

The Government is now proposing an Amended Ordinance which takes away the control by the independent Law Courts of Government's Large Scale Reclamations and gives complete control of harbour reclamation back to the Government as before the Ordinance.

The result is that the Government will be both the **Applicant** and the **Judge** in deciding the legality of its own application. This is contrary to the Fundamental Principle of Law and Natural Justice accepted by all Common Law jurisdictions that "**One cannot be the Judge of his own cause**".

Over the past year, our Society have made important legal submissions to the CE-in-C seeking clarifications of the reasons for the Government's proposed amendments of the Ordinance. These questions are summarized in our present letter to the Secretary for Justice.

We have received numerous promises from the CE-in-C to give us a substantial reply to our formal queries, but up to now, despite the lapse of many months, our Society have not received any substantive reply from the Government.

***Harbour Manifesto:** To protect and preserve the harbour and enhance the harbour-front to provide a healthy environment and a good quality of life for the people of Hong Kong*

維港宣言: 保護及保存維港, 並優化海濱, 為香港市民, 提供一個健康及優質的生活環境



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Our fundamental question is: “Why should the Government abolish the protection of the Harbour by the independent Law Courts as provided in Section 3(1) of the Ordinance?”

The Ordinance, supported and enforced by the Law Courts, is the only effective way of protecting the Harbour from Government’s Large Scale Reclamations which had almost destroyed the Harbour.

The Government’s proposed amendments will leave the Harbour entirely unprotected and will make the whole process completely incestuous:-

- (1) Government applies for permission to undertake a Large Scale Reclamation;
- (2) Government produces evidence to support its reclamation application; and
- (3) Government as the decision-maker approves its own reclamation application based upon its own evidence.

The Government runs the whole “One-Man” show as (a) The Applicant; (b) The Witness; and (c) The Judge.

Therefore our Society is jokingly calling Government’s proposed Amended Ordinance as “**The Fox Protecting the Chickens Ordinance**”.

NO COURT PROTECTION = NO HARBOUR

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The Honourable Mr. John Ka-chiu Lee,
Chief Executive-in-Council,
Hong Kong Special Administrative Region Government,
Tamar, Central, Hong Kong.

By Email & Post

12th July 2024

Chief Executive-in-Council,

**Re: Proposed Amendment of the Protection of the Harbour Ordinance (“the Ordinance”)
In respect of Government Large Scale Reclamation**

We respectfully refer to our Submissions to you and our exchanges of communications over the past year.

We very much regret to point out that, despite your many promises made over many months of a substantive reply to our Submissions, such promise has not been kept by you. Meanwhile your Government has taken advantage of the opportunity to proceed with your proposed amendments of the Ordinance. This is not fair.

Accordingly we are forced to seek recourse from your Secretary for Justice who is both “**your Government’s Legal Advisor**” and also a “**Guardian of Public Interest**”. We are pleased to enclose herewith for your kind attention a copy of our letter of even date to him.

We hope that our Society will receive his substantive reply within 30 calendar days in accordance with his **Official Pledge**.

Yours faithfully,

c.c. Secretary for Justice
Secretary for Development

Winston Ka-Sun Chu, Vice Chairman,
Society for Protection of the Harbour

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The Secretary for Justice,
Hong Kong Special Administrative Region,
Department of Justice,
5th Floor, Main Wing, Justice Place,
18 Lower Albert Road, Central, Hong Kong.

By Hand & Email

12th July 2024

Secretary for Justice,

**Re: Proposed Amendment of the Protection of the Harbour Ordinance
("the Ordinance") In respect of Government Large Scale Reclamations**

Our Society is a legally constituted charity. In the public interest, we have successfully protected Hong Kong's Victoria Harbour from Government's Reclamation Plan for Large Scale Reclamations totalling 1,297 hectares over the past almost 30 years with the support of the Law Courts including the Court of Final Appeal.

We now respectfully submit to you, in your capacity as the **"Independent and professional legal advisor of the Government"** and a **"Guardian of Public Interest"**, the following 6 questions which we are asking for the public benefit and in response to the Public Consultation undertaken by the Government over the past year.

- A. What is the Government's justification for abolishing the legal protection of the harbour by the Law Courts against Government's reclamation proposal as provided by Section 3(1) of the Ordinance? Is it the Government's proposal in effect to repeal the Ordinance?
- B. How can the Government justify reversing the purpose and intention of the Ordinance, which is to control Government's reclamation proposals, but instead converting itself from being **"The Controlled"** into **"The Controller"** of reclamation thus achieving the opposite?

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- C. How can the Government justify the proposed drastic amendments to the Ordinance just because of its need for a mere **“Precedural Mechanism”** which only requires Government’s own internal administrative arrangements by **Government Circulars** and **Practice Directives** without any need to amend the Ordinance.

The following four precedents which specifically concern the harbour and the Ordinance are ready examples:-

Date	Title of Documents
8 th September 1997	Planning, Environment and Lands Bureau Technical Circular No. 3/97 Works Bureau Technical Circular No. 13/97 Revised Administrative Arrangements for Reclamation Works
4 th May 2001	Works Bureau Technical Circular (WBTC) No. 9/2001 Procedures for Gazetting under the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127)
19 th August 2004	Housing, Planning and Lands Bureau Technical Circular No. 1/04 Environment, Transport and Works Bureau Technical Circular No. 1/04 Protection of the Harbour Ordinance
8 th July 2010	General Circular No. 3/2010 Harbourfront Enhancement

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- D. How can the Government justify its proposal to become both “the **Applicant** of Reclamation” and “the **Decision-maker** of Reclamation” thus becoming “**A Judge of its own cause**” contrary to the **Fundamental Principle of Natural Justice and the Rule of Law accepted by all Common Law Jurisdictions**?
- E. Under the present Ordinance, in any Judicial Review challenge by the public, the Government must prove to the Law Court’s satisfaction that its reclamation proposal is lawful. Why should the proposed amendments **reverse the burden of proof** and impose upon the public objector the heavy legal burden of proving that the Government’s reclamation proposal is unlawful and that the Government’s decision is wrong?
- F. Having regard to the above and the proposed drastic amendments to the Ordinance, kindly explain the legal logic and clarify the reasoning behind the Government’s well-published statement repeatedly made to the Legislative Councillors and the public that: “**The Government’s proposal would not affect the right of the public to apply for judicial review**”, while in reality such right and chances of a successful Judicial Review will become merely illusory.

We shall be grateful for your early reply in view of the importance and urgency of this matter.

Yours faithfully,

c.c. Chief Executive-in-Council
Secretary for Development

Winston Ka-Sun Chu, Vice Chairman,
Society for Protection of the Harbour

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關於政府就大規模填海工程，對《保護海港條例》提出之修訂建議

本協會為合法成立的慈善機構。為了公眾利益，我們在過去近30年來，致力守護香港維多利亞港，使其免受政府大規模填海計劃的破壞，成功爭取保留的維港總面積，達1,297公頃，即五英平方里。

本協會現謹以律政司司長是「政府獨立專業法律顧問」及「公眾利益守護者」的身份，誠向司長提呈以下6個問題。我們提出這些問題是為了公眾利益，並旨在就政府過去一年所進行的公眾諮詢，作出回應。

- A. 維港現時享有法庭根據條例第3(1)條的法律保障，賦予市民有權反對政府填海計劃。現條例要求政府負上法律責任，證實政府所提議之大規模填海計劃，有充份的公眾需要。政府現在有何理據取消此法律保障？政府此番提出修訂建議，實際上目的是否廢除現有的條例？
- B. 訂立條例之目的和用意為管制政府的填海計劃，有何理由將這目的及用意掉轉，將政府由「受管制者」變成「管制者」？
- C. 政府為何僅僅因為需要制訂一項「程序機制」，而提出對條例進行這麼重大之修訂？政府明明只需要通過內部行政安排，發出「政府通告」和「實務指示」即可，並不需要修改條例。下列四個，涉及維港和條例的先例，便是很好的例子：

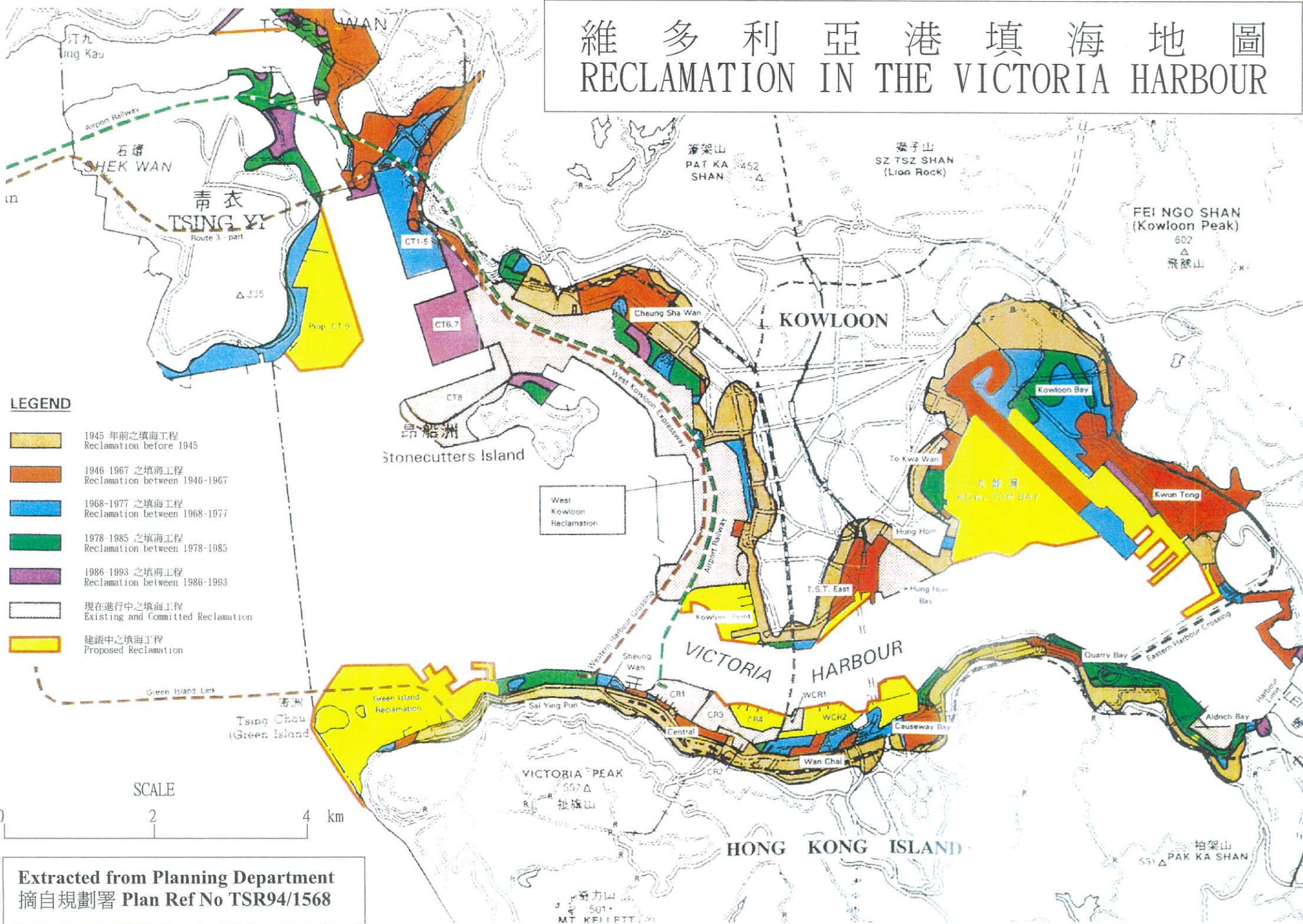
日期	文件名稱
1997 年 9 月 8 日	規劃環境地政局 技術通告第 3/97 號 工務局技術通告第 13/97 號 修訂填海工程行政安排
2001 年 5 月 4 日	工務局技術通告第 9/2001 號 根據《前濱及海床（填海工程）條例》（第 127 章） 刊登憲報的程序
2004 年 8 月 19 日	房屋及規劃地政局 技術通告第 1/04 號 環境運輸及工務局 技術通告第 1/04 號 保護海港條例
2010 年 7 月 8 日	通函第 3/2010 號 優化海濱

- D. 政府提出同時擔任「填海工程申請人」又是「填海工程決策者」導致成為了「審核自己提案的法官」，其與「普通法司法管轄區」所公認的「自然公義原則」和「法治原則」相悖。政府對於此項提議如何能夠作出合理的解釋呢？
- E. 根據現行條例，如果公眾提出反對，政府必須向法院證明其填海提案是合法的。而為何政府現時提出修訂條例，試圖將舉證責任倒置，從而將沉重的舉證責任施加於反對提案之人士，要求他們證明政府的填海提案是不合法的，以及政府的決定是錯誤的呢？
- F. 鑒於上述情況，並就政府對條例提出的重大修訂建議，本協會現誠請司長解釋當中的法律邏輯，並闡明政府多次向立法會議員和公眾重申的聲明背後之理據：「政府的建議不會影響公眾申請司法覆核的權利」，而實際上這項權利將變得似有實無。

本協會深切關注這個極為重要及迫切的問題，懇請司長儘快向市民及本會作出回應。

保護海港協會副主席徐嘉慎謹啓

維多利亞港填海地圖
RECLAMATION IN THE VICTORIA HARBOUR



Extracted from Planning Department
 摘自規劃署 Plan Ref No TSR94/1568

Town Planning Board Meeting on 14th October 1994

Reclamation in the Victoria Harbour

Town Planning Board Paper No. 2880

Table of Reclamations Proposed by Government

Existing and Committed Reclamation Areas

(1)	West Kowloon Reclamation	340
(2)	Hung Hom Bay Reclamation	35
(3)	Central Reclamation Phase I	20
(4)	Wanchai Reclamation Phase I	6
(5)	Aldrich Bay Reclamation	28
(6)	Container Terminal No. 8	97
(7)	Central Reclamation Phases 2 and 3	45
(8)	Container Terminal No. 9	90

661 hectares

Proposed Reclamation Areas

(9)	Green Island	190
(10)	Central Reclamation Phase 4	18
(11)	Wanchai Reclamation Phase 2	52
(12)	South East Kowloon	300
(13)	Kowloon Point	40
(14)	Tsim Sha Tsui East	6
(15)	Tsuen Wan Bay	30

636 hectares

Total 1,297 hectares

• STOP RECLAMATION •

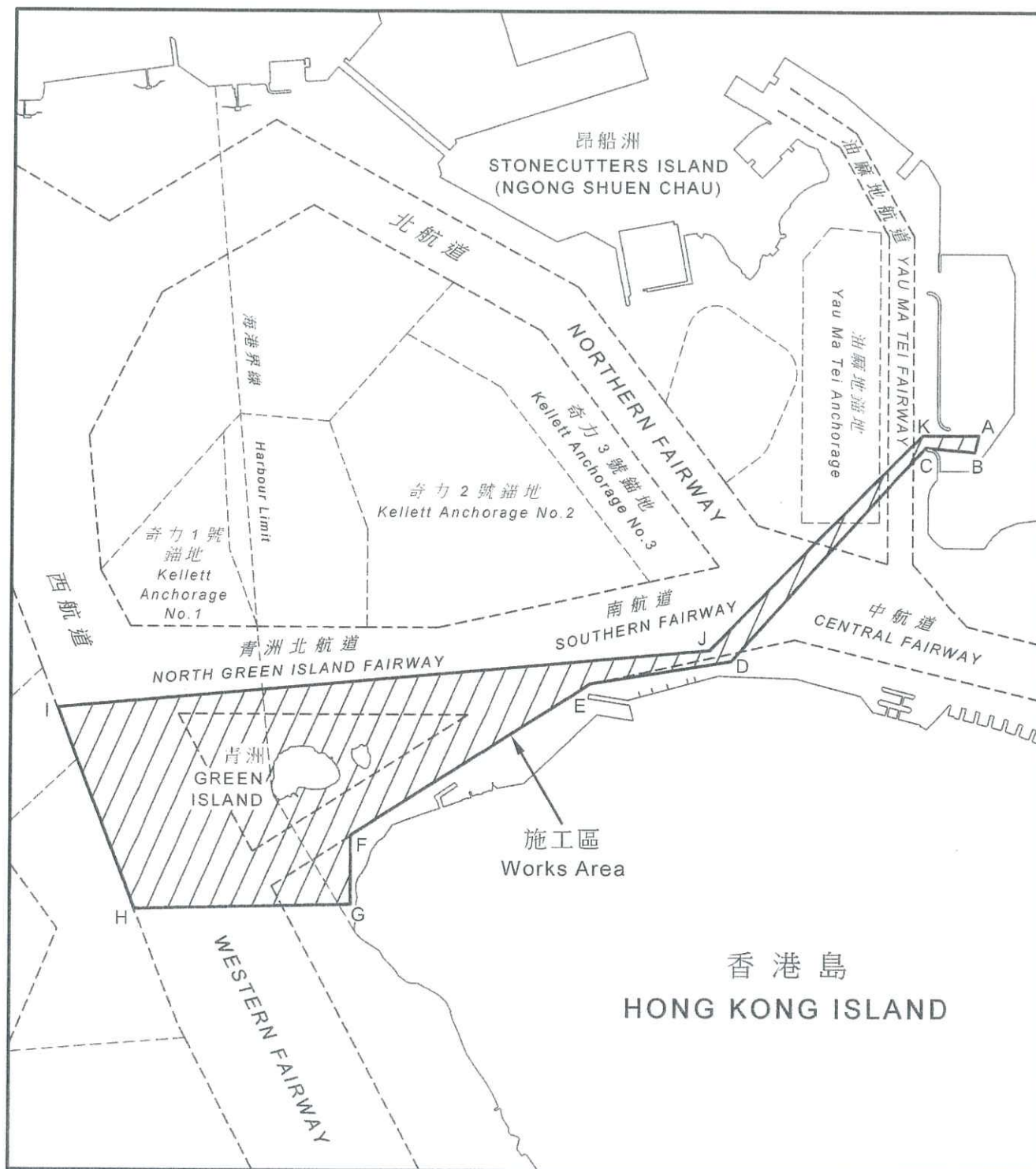


"SAVE OUR HARBOUR"

拯救海港 制止填海

海事處佈告第 233 / 2022 號附圖

Drawing Attached to Marine Department Notice No. 233/2022



不宜作航行用途

NOT TO BE USED FOR NAVIGATION