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22 November 2003

Miss Odelia Leung  
Clerk to Panel on Planning, Lands and Works  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Dear Miss Leung,

**Panel on Planning, Lands and Works  
and Panel on Environmental Affairs  
Follow-up to joint meeting on 13 October 2003**

Thank you for your letter of 15 October 2003. The following is our response to your request for follow-up.

- (a) **Transcripts of the hearing on application for interim injunction over Central Reclamation Phase III works**

Please see Annex A.

- (b) **Affirmations submitted by the Government to the Court for the above case**

Please see Annex B.

- (c) **Timetable specified in the relevant works contract for dredging and filling up works**

Please see Annex C.

**(d) Latest traffic forecasts in Central**

Please see Annex D.

**(e) Cost-effectiveness of CWB and Road P2 network**

Please see Annex E.

**(f) Feasibility of using fresh water for water-cooled air-conditioning system**

Please see Annex F.

Yours sincerely,

( Andrew Cheung )  
for Secretary for Housing, Planning and Lands

**c.c.**

SETW (Attn: Ms Ernestina Wong, Mr Raistlin Lau)  
D of J (Attn: Mr Simon Lee)  
DTD (Attn: Mr John Chai, Mr Cheung Tai-yan)  
D of Plan (Attn: Mr C K Li, Miss Ophelia Wong)  
C for T (Attn: Mr K K Lau)

**(a) 中區填海第三期工程暫緩令申請聆訊的謄本**

就立法會索取中區填海第三期工程暫緩令申請的聆訊謄本一事，現附上一份活頁檔案(附錄1)，以供議員參閱。檔案載有上述聆訊謄本及拓展署港島及離島拓展處處長張大恩先生的第一、第二及第三份誓章連證物。

亦應立法會的要求，資深大律師鄭若驊女士在庭上的陳詞，已在聆訊謄本的相關部分以下列顏色標示出：

- (i) **橙色**部分有關中區填海第三期工程的進展及工程可否還原；
- (ii) **綠色**部分有關停工(相對於繼續施工但其後縮減規模或刪除)的財政影響；以及
- (iii) **粉紅色**部分有關灣仔發展第二期和中區填海第三期工程的關係(如有的話)、朱芬齡法官所訂的三項測試準則、以及中區(擴展部分)分區大綱圖是否合法的問題。

我們懇請議員們注意，律政司表示，謄本及誓章均是專為法律訴訟而擬備的文件，一般來說不供公眾閱讀。考慮到議員們的指定問題及中區填海第三期牽涉到特殊的公眾利益和傳媒關注，政府才同意向立法會提供這些文件。這並不代表政府在日後參與的訴訟中，必定會應立法會的要求提供相關的法庭文件。就此而言，請參閱並同時向議員們指出立法會秘書處法律事務部擬備的LC No.LS8/03-04號文件(附錄2，只有英文)，當中的11-16段解釋了有關待決法庭案件的規則。請提示議員們應避免討論或作出下列行為，如果該討論或行為可能：

- (a) 產生壓力，程度足以令人合理地認為是有意令法官受到壓力或有這種效果，以及／或
- (b) 令公眾認為立法會僭越了法庭的司法職能。

最後，我們知悉立法會有意把謄本及誓章上網，在立法會網頁供傳媒和公眾瀏覽。請注意上述立法會文件第15段已指出，謄本和誓章基本上是供指定用途，以便查悉法庭獲得了什麼資料，而非用以檢視法庭訴訟程序。相信立法會決定是否容許自由閱讀上述法庭文件前，會注意立法會文件中所列出的法律意見。

# 立法會

## *Legislative Council*

LC Paper No. LS8/03-04

### **Paper for the Panel on Planning, Lands and Works and Panel on Environmental Affairs**

#### **Examination of the implications of the *Sub Judice* Rule for meeting with deputations on Central Reclamation Phase III or Wanchai Development Phase II**

At the Joint Panel meeting on 13 October 2003, members asked for legal advice on the application of the *sub judice* rule in meeting with deputations to receive views on Wanchai Development Phase II or Central Reclamation Phase III.

#### Background

2. On 8 July 2003, in the application for judicial review by The Society for Protection of the Harbour Limited (SPH), the Court of First Instance quashed the decision of the Town Planning Board (TPB) with regard to the Outline Zoning Plan in connection with Wanchai Development Phase II (WDII) and ordered TPB to reconsider the plan and the objections thereto. TPB decided to appeal against the judgment and by consent of TPB and SPH, the appeal has been scheduled for hearing by the Hong Kong Court of Final Appeal on 9 December 2003.

3. As for Central Reclamation Phase III (CRIII):

- (a) on 6 October 2003, the Court of First Instance dismissed the application for interim injunction and according to the Rules of the High Court (Cap. 4 sub. leg.), an appeal may be lodged on or before 31 October 2003 (i.e. within 14 days from the date on which the order is sealed); and
- (b) leave to apply for judicial review has been granted on 26 September 2003 and the hearing would take place on 9 February 2004.

### Contempt of Court

4. At common law, words spoken or otherwise published, or acts done, outside court which are intended or likely to interfere with or obstruct the fair administration of justice are punishable as criminal contempts of court. Some of the commonest examples of such contempts are :

- (a) publications which are intended or likely to prejudice the fair trial or conduct of criminal or civil proceedings; and
- (b) publications which scandalise, or otherwise lower the authority of, the court.

5. In civil proceedings, publications may also be punishable as a contempt of court if they have the effect of deterring or inhibiting parties in the conduct of their proceedings by prejudicial discussion of the merits or facts of the case before the proceedings have been determined by a court of law. Although there is no clear authority, civil proceedings would appear to be pending until an appeal has been heard or the time within which an appeal may be lodged has expired.

6. It is not necessary that a fair trial or the conduct of the proceedings is actually prejudiced. The test is whether there is a real risk of prejudice. It seems that a risk of prejudice to the administration of justice as a whole will suffice. Contempt of court is unlikely where the risk of prejudice is slight, for example, if the proceedings are to be tried by a judge or heard by an appellate court.

### Legislative Council (Powers and Privileges) Ordinance

7. Section 3 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provides Members with the freedom of speech and debate in the Council. Such freedom of speech and debate is not liable to be questioned in any court or place outside the Council. Under section 4 of the same ordinance, no civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to the Council or a committee, or by reason of any matter brought by him therein by petition, bill, resolution, motion or otherwise. Although not expressly provided, sections 3 and 4 do not apply to conduct outside of the proceedings of the Council or its committee.

8. Section 8A of the same Ordinance extends the same privileges and immunities in sections 3 and 4 to any public officer designated by the Chief Executive

for the purpose of attending sittings of the Council or any committee, while so designated and attending any such sitting. Members will note that the privileges and immunities do not extend to deputations addressing the committee nor their written submissions.

### Rules of Procedure

9. The Legislative Council has imposed upon itself certain restrictions in relation to contents of speeches in Rule 41(2) of the Rules of Procedure, which provides -

"Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case."

The rule reflects what is commonly known as the *sub judice* rule or convention in legislative assemblies of some other jurisdictions. By Rule 43 of the Rules of Procedure, the above rule applies to proceedings in a committee (which includes a panel) unless the chairman of the committee orders otherwise.

10. The Council has not formulated any further general guidelines beyond what has been expressly provided in the Rules of Procedure. The precise application of the rule is at the discretion of the Chairman of the joint panel meeting, being the person who is to rule on such matters whenever they arise. However, the following principles from the past application of the rule locally and from practices and procedures in other jurisdictions may be helpful :

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) references would include comment on, inquiry into and the making of findings on such matters; and
- (c) matters awaiting adjudication would include matters in respect of which a charge has been laid or proceedings have been initiated by the filing of the appropriate documents;
- (d) prejudice might arise from an element of explicit or implicit prejudgment in the proceedings of the legislature in two possible ways -

- (i) the references might hinder the court in reaching the right conclusion or lead it to reach other than the right conclusion; and
- (ii) whether the court is affected in its conclusion or not, the references might amount to an effective usurpation of the court's judicial functions.

Application of the *sub judice* rule

11. In cases involving an appeal or judicial review by a judge such as the present one, it is rare that a publication will be held to constitute a contempt of court as it is accepted judges are capable of guarding against allowing any prejudicial matter to influence them. Even for jury trials, the court tends to approach the question in practical rather than absolute terms and placed its faith primarily in the efficacy of measures available to overcome any potential unfairness.

12. The principle is demonstrated in the recent case of *HKSAR v Lee Ming Tee & Another [2001] 4 HKCFAR 133*, in which the Hong Kong Court of Final Appeal placed its faith in the jury, properly directed, to secure a fair trial.

13. In the same case, the Hong Kong Court of Final Appeal acknowledged that special care must be taken to counteract the possible effects of prejudicial publicity. Comments made in public on pending proceedings may affect witnesses or the parties themselves in the conduct of their proceedings. Such comments may also be so strong as to amount to a campaign of pressure so great that would reasonably be perceived as intending to exert or having the effect of exerting pressure on a judge.

14. With regard to inviting deputations, *Equal Opportunities Commission v Apple Daily Limited [1998] 1 HKC 260 at 266* would be relevant. In this case, a District Court judge has commented, by way of obiter dictum, that a party who starts and invites the media to report discussions and expressions of opinions on the case, and thus allows the publications of a prejudiced impression to the public may amount to a contempt of court. Members may wish to consider the consequence of inviting deputations to express their views in public meetings while proceedings are pending, discussion at which would very likely be reported by the media.

15. Even if the court might not be affected in its conclusion, members may also need to assess the likelihood of proceedings of the Council amounting to an effective usurpation of the court's judicial functions. Members have requested, and

the Administration has agreed, at the last joint panel meeting to provide transcripts of the hearing for application of interim injunction in connection with CRIII and the affirmations filed with the court. Whilst the transcripts and affirmations would primarily be used for ascertaining what information was given to the Court, it would be advisable to make clear that the exercise was for purposes other than reviewing the court proceedings.

### Conclusion

16. As a matter of law and practice of this Council, there is no absolute restriction against members holding a meeting with deputations to receive their views on the policy issues relating to WDII or CRIII while those court proceedings presently instituted are pending. However, should members decide to hold such a meeting, it would be advisable to consider measures to guard against the likelihood of (a) generating a campaign of pressure so great that would reasonably be perceived as intending to exert or having the effect of exerting pressure on a judge, and (b) the public perceiving such meeting as amounting to an effective usurpation of the court's judicial functions. Such measures may be considered necessary, from the constitutional point of view, in order that the independence of the judiciary would not be undermined and to avoid the interests of the parties to the pending judicial proceedings from being unfairly prejudiced.

17. Such measures may include a warning by the Chairman to all members and deputations present at the start of the joint panel meeting stating clearly the objective of the meeting and the approach to be adopted. Members and deputations could be asked to exercise self-restraint respectively in their questions and responses. In the course of the meeting, the Chairman may also exercise his discretion in preventing references to be made to issues pending adjudication in the appeal or judicial review. This had been the practice when witnesses involved in criminal investigations or judicial proceedings attended before the Select Committee on Building Problems of Public Housing Units.

Prepared by

Legal Service Division  
Legislative Council Secretariat  
28 October 2003

**(b) 政府向法庭呈交的誓章**

請參閱附件A的附錄1。

**(c) 工程合約中有關挖泥和回填工程的時間表**

中區填海第三期工程(合約HK12/02：中區填海第三期工程 – 工程部分)，由開工日期2003年2月28日起計，預期將耗時55個月。雖然合約有列明須完成填海不同階段的粗略主要日期，但個別項目如挖泥和回填則沒有列明。因此，合約沒有特定的挖泥和回填工程時間表。

雖然高等法院於2003年10月6日就保護海港協會對中區填海第三期工程申請暫緩令的案件判政府勝訴，並容許中區填海第三期工程繼續進行，但政府並沒有下令全面恢復相關的海事工程。政府只恢復了如挖泥和回填石料等不會對海港造成不可修復後果的工程。以下是工程承包商由現在至2004年3月底的施工計劃：

	<i>工程</i>	<i>時間</i>
(i)	初段填海範圍西部的挖泥工程	現已進行，將繼續至2003年12月底
(ii)	在初段填海範圍西部已挖坑道回填石料	現已進行，將繼續至2004年1月
(iii)	初段填海範圍東部的挖泥工程	由2003年11月初至2004年3月底為止
(iv)	在初段填海範圍東部已挖坑道回填石料	2003年11月底至2004年3月底為止

**(d) 中環交通情況的最新預測**

目前，中環和灣仔東西走向的交通主要是由干諾道中—夏慤道—告士打道走廊應付。這條走廊的運作現已超出負荷，導致經常塞車。中環灣仔繞道是一條非常重要的道路，可經由東區走廊連接路把林士街天橋和東區走廊連接起來。中環灣仔繞道和相關的P2道路網可輔助現有的走廊，解決中區以至整個港島北岸迫切的交通擠塞問題。

下表列出在2011年及2016年時，上述走廊不同地點的預期行車量／容車量比率：

地點	假設沒有中環灣仔繞道及P2道路網		假設有中環灣仔繞道及P2道路網	
	2011	2016	2011	2016
干諾道中	1.3	1.3	0.8	0.9
夏慤道	1.3	1.3	0.8	0.9
告士打道	1.3	1.3	0.9	0.9
中環灣仔繞道	-	-	0.7	0.7

行車量／容車量比率是一項反映道路交通情況的指標，如果比率是1.0或以下，則表示道路的容車量足以應付行車量及交通暢順；如果比率高於1.0，則表示交通開始擠塞。高於1.2的比率則表示交通嚴重擠塞，行車速度會隨車輛的繼續增加而更加減慢。

附錄D-1載有附圖，在假設中環灣仔繞道在2012年啟用的情況下，列出2002年、2006年和2011年上午和下午繁忙時間駛經中環商業區內部監察線的載客汽車數目。

就興建中環灣仔繞道的交通及運輸理據，政府將向有關的事務委員會呈交一份詳細的文件，以供議員參考。

**(e) 中環灣仔繞道及P2道路網的成本效益**

一般來說，只有中環灣仔繞道這種主幹道才会有成本效益的考慮。由於P2路只是一條幹路，所以沒有估計其經濟內部回報率。

政府的著重點是每個工程項目可為社會帶來的整體利益。就運輸基建而言，整體利益是以市民可節省的交通時間及對鄰近道路擠塞情況的紓緩來衡量的。因此，經濟內部回報率會量度某個工程項目對整體社會所帶來的總成本效益。

根據下列各項假設，中環灣仔繞道的經濟內部回報率估計是28%：

1. 資本成本 = 87億600萬元
2. 經常成本 = 每年1億200萬元
3. 運作壽命 = 40年
4. 道路擠塞緩和後道路使用者節省出來的時間 = 每年21億9300萬分鐘
5. 節省時間的折算金額 = 21億9300萬元

換言之，這項工程在壽命期內令總回報相等於總投資額的年折扣率為28%。環境運輸及工務局指出，28%的經濟內部回報率可被視為是具成本效益的。參考資料：九號幹線的經濟內部回報率約為18%至20%。

**(f) 水冷式空調系統使用淡水的可行性**

要把受中區填海第三期工程影響的樓宇現時所使用的海水冷卻系統，改裝為淡水冷卻系統，有技術上的困難。這樣的改裝佔用受影響樓宇額外的樓面面積。受影響樓宇的結構承重能力(尤其是天台部分)亦是限制因素之一。此外，由於淡水冷卻系統的能源效益不及海水冷卻系統，因此可能需要額外的冷卻設備才能達到同樣的冷卻效果。受影響樓宇往往未能提供額外的樓面面積來裝置這些設備。為了配合使用新的淡水冷卻系統，現有海水冷卻系統的若干主要構件亦需要更換。基於這些技術上的限制，我們認為在受影響的樓宇使用淡水冷卻系統的方案是不可行的。