

1. The meeting was resumed at 9:12 a.m. on 2.12.2013.
2. The following Members and the Secretary were present at the resumed meeting:

Mr Thomas T.M. Chow

Chairman

Mr Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Professor C.M. Hui

Mr Roger K.H. Luk

Dr W.K. Yau

Mr Sunny L.K. Ho

Mr H.W. Cheung

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Mr H.F. Leung

Ms Christina M. Lee

Mr Patrick H.T. Lau

Dr C.P. Lau

Director of Lands

Mr Jeff Y.T. Lam

Director of Planning

Mr K.K. Ling

Presentation and Question Session

[Open Meeting]

3. The following representatives of the Planning Department (PlanD) and Civil Engineering and Development Department (CEDD), and commenters and their representatives were invited to the meeting at this point:

Miss Elsa Cheuk Chief Town Planner/Special Duties
(CTP/SD), PlanD

Mr Timothy Lui Senior Town Planner/Special Duties
(STP/SD), PlanD

Mr Lam Chun Tak Senior Engineer/Hong Kong (SE/HK),
CEDD

C2502 (Poon Maresca)

C2564 (Roy Cheung)

C2699 (Francis Law)

C2710 (Ken Tsoi)

Mr Stanley Ng Wing Fai Commenters' Representative

C2671 (Wai Hung Kom)

Mr Wai Hung Kom Commenter

C2811 (Gladys Li)

C3644 (Monica Leung)

C3809 (Dominic Leung)

Ms Gladys Li Commenter and Commenters'
Representative

C3696 (Mak Shuk Ching)

Ms Mak Shuk Ching Commenter

C3754 (Ernest Ling)

Mr Ling Man Cheong Ernest

Commenter

C3838 (Josephine Choi)

Mr Lee Wan Fung

Commenter's Representative

4. The Chairman extended a welcome and explained the special arrangements for hearing the large number of representations and comments in respect of the OZP. Each representer/commenter was allocated a total of 10 minutes' speaking time. If an authorised representative was appointed by more than one representer/commenter of the same session to represent them, that authorised representative might use the cumulative time allotted to all the persons he represented to make his oral submission. Request for further time for oral submission from a representer/commenter or his authorised representative would be considered by the Board. If his request was allowed by the Board, he would be either given further time in the same allotted session to make his submission (if time permitted), or notified of the date when he would be invited to return for such purpose. He then invited the representative of PlanD to brief Members on the background to the case.

5. With the aid of a Powerpoint presentation, Miss Elsa Cheuk, CTP/SD, repeated the presentation that was made in the hearing session on 4.11.2013 as recorded in paragraph 21 of the minutes of 4.11.2013.

6. The Chairman then invited the commenters and their representatives to elaborate on their comments. For the efficient conduct of the meeting, the Chairman asked the representers/commenters not to repeat unnecessarily long the same points that had already been presented by previous representers/commenters.

C2502 (Poon Maresca)

C2564 (Roy Cheung)

C2699 (Francis Law)

C2710 (Ken Tsoi)

7. With the aid of a Powerpoint presentation, Mr Stanley Ng Wing Fai made the following main points:

Support “Open Space” Zoning

- (a) as a registered planner in Hong Kong and a qualified planner in China, he considered that the amendment to the OZP was a real concern and the grounds of objection raised by the public were understandable. Certain relevant literature had been reviewed and an article had been published in Ming Pao with respect to the matter;
- (b) there was a query on the need for the People’s Liberation Army (PLA) to station in Central District from the planning viewpoint given that there was already shortage of office space in Central and Admiralty, and China’s sovereignty over Hong Kong had never been challenged. Nevertheless, the issue of relocating the PLA’s barracks in Central District was not a matter to be discussed at this occasion;
- (c) open space was a use always permitted on the site under the original zoning, though subject to occasional military use. The original “Open Space” (“O”) zone was considered the best land use zoning for the site. However, with the subject site rezoned to “Other Specified Uses” annotated “Military Use (1)” (“OU(MU)1”), many of the uses that were permitted under the “O” zoning were no longer permitted in the “OU(MU)1” zone and the rezoning had invited numerous public objections;
- (d) the Board was requested to reject the “OU(MU)1” zoning for the site and to stipulate the right of use by PLA when needed in the Notes of the “O” zone so as to address the public concerns and to maintain the public’s trust in the Board as well as the Government;

Change in planning intention

- (e) the “OU(MU)1” zone for a military berth, as pointed out by the Society for the Protection of Harbour (SPH), did not conform to the recommendations under UDS in which the subject site was proposed to be an open space for public enjoyment. Contrary to PlanD’s presentation, what the public learned in the various consultations was that the waterfront was for open space use. The rezoning of the site to “OU(MU)1” for use and control by

PLA was different from the original planning intention of the “O” zone. The change made the use of the military berth incompatible with the surrounding open space. It was questionable that the public were well aware that the subject site would be for military use during the consultation exercise of UDS;

- (f) the loss of a large piece of land on the waterfront for public enjoyment was a public concern. It was not disputed that PLA could use the berth when needed. However, to hand over the area to PLA for use and control by PLA as a military dock was a change in the planning intention of the area. People were worried that there would be a loss of open space on the waterfront with the site being rezoned for military use;
- (g) the amendment was not just a technical amendment. It was a major amendment which had invited a lot of objections. Unlike parks managed by the Government or private developers, details regarding public access and traffic arrangement of the site managed by PLA should be considered thoroughly by the Board;

Public access denied

- (h) some of the ‘always permitted uses’ under the “O” zone would no longer be available under the “OU(MU)1” zone. Public access might be denied if PLA, being the landowner of the site, would wish to close the site. There was no guarantee on how often or whether or not the site managed by PLA would be open for public enjoyment;
- (i) the public were most concerned that, without a statutory protection or a specification of the right of public use of the site in a statutory format, PLA could fence off the site as it wished;

Guarantee of public access

- (j) public access to the site when not in military use was only guaranteed by the promise of the Garrison as mentioned by the Secretary for Development (SDEV) on 28.5.2013 at a Legislative Council (LegCo) meeting.

However, the promise had not been widely accepted by the public as it carried no statutory effect and was not part of legislation. Moreover, the promise had not addressed the criticism and concerns of the public. The promise could not serve as a legal basis for protecting the rights of Hong Kong people under Article 12 of the Garrison Law;

Insufficient development control

- (k) development restrictions could either be shown on the OZP or on the Notes. To meet the changing needs and aspirations of the community, development restrictions under different land use zonings on OZPs had become very detailed and specific over the years for better control over land uses. It was the responsibility of the Board to annotate on the plan or to stipulate in the Notes the planning intention, development parameters and restrictions of the site concerned to protect the well-being of the public. However, the “OU(MU)1” zone, including its Column 1 and Column 2 uses as well as development restrictions imposed on the site, was far too simple to achieve the purpose. The intention that the site would be opened for public enjoyment when not in military use was not specified and there were no restrictions on the scale of development on the site, except the building height restriction;

Legal uncertainty

- (l) there were provisions under the Garrison Law to protect certain rights and interests in accordance with the laws of Hong Kong. Relevant sections of the Garrison Law were discussed below;
- (m) Article 12 of the Garrison Law stipulated that the Hong Kong Garrison should delimit military restricted zones in conjunction with the HKSAR Government. The locations and boundaries of the military restricted zones should be declared by the Government. The Government should assist the Garrison in maintaining the security of the military restricted zones. Guards of the military restricted zones should have the right to stop any act which would damage any military facilities, etc. The last sentence in Article 12 highlighted that the Garrison should protect the natural resources,

historical relics and monuments, and other non-military rights and interests within the military restricted zones in accordance with the laws of the HKSAR;

- (n) according to Article 12, if there were non-military rights and interests in the military restricted zones protected by the laws of the HKSAR, the Garrison should protect such rights and interests. Nothing was stipulated in the Town Planning Ordinance (the Ordinance) and the OZP to protect the rights of Hong Kong people to use the concerned area in the waterfront promenade. If the right of public use had been specified on the OZP, which was a statutory plan, even in military restricted zones, the Garrison had to protect such right;
- (o) Article 13 stated that any land used by the Hong Kong Garrison for military purposes, when approved by the Central People's Government to be no longer needed for defence purposes should be turned over without compensation to the HKSAR Government for disposal and if the HKSAR Government needed for public use any part of the land used for military purposes by the Hong Kong Garrison, it should seek approval of the Central People's Government;
- (p) the area required particular attention of Article 13 was that the terms 'land for military purposes' and 'land for military purposes needed for public purposes' were used;
- (q) Article 9 of the Garrison Law stipulated that the Hong Kong Garrison should not interfere in the local affairs of the HKSAR. It was uncertain if PLA could manage the waterfront promenade, which was regarded as a local affair of the HKSAR, when it was not in military use;
- (r) there was also another legal uncertainty regarding the provision under Article 12 of the Garrison Law. As said in Article 12, military restricted zones should be delimited by the Hong Kong Garrison in conjunction with the Government of the HKSAR, and the locations and boundaries of the

military restricted zones should be declared by the Government of HKSAR. Obviously, no such declaration had been made for the military berth and the berth was, as considered, not a military restricted zone. As such, whether Article 12 concerning the protection of non-military rights and interests in military restricted zones was applicable to the subject military berth was uncertain;

- (s) it was worth noting from Article 12 that even in military restricted zone, non-military rights and interests, such as the right of access by the public and visitors, could be protected by the laws of Hong Kong, i.e. the Ordinance, the OZP, legislation under the ambit of the Leisure and Cultural Services Department, etc. for the subject case. If the public right of use was stipulated on the OZP as said before (i.e. in the Notes or on the plan), such right could be protected under the Garrison Law without compromising the use by the Garrison when needed. As a solution to the current problem, the Board should use the OZP and its Notes of the “O” zone to specify the use by the public as open space and the use by PLA when needed;
- (t) it was also noted that Articles 12 and 13 of the Garrison Law mentioned about different requirements and restrictions on ‘military restricted zones’, ‘land for military purposes’ and ‘land for military purposes needed for public purposes’. The definitions of these terms were significant in determining the public’s right to use the site. It was the failure to define the “military use” of the military berth that had led to the current confusion. Article 12 stated that non-military rights and interests should be protected by local laws. If these non-military rights and interests could be defined and specified, they could be protected by Hong Kong laws;
- (u) as the definitions for different types of ‘military land’ were not found in the Garrison Law, reference was then made to documents of the Mainland, namely, the “Code for classification of urban land use and planning standards of development land (1991)” (“the Code”) (城市用地分類與規劃建設用地標準(1991)) and the “Law on the Protection of Military

Installations (1990)” (“the Law”) (軍事設施保護法(1990)) found in the “Compendium of the legal instruments on urban and rural planning (2009)” (城鄉規劃法規文件匯編(2009)) to help understand the terms used in the Garrison Law and work out a view on the matter under discussion. However, it had to be pointed out that “the Code” and “the Law” were not applicable to the Hong Kong cases;

- (v) there was a clear definition of military land in the “Code”. Military land was defined as land of military facilities used directly for military purposes, e.g. command organ, barrack, training ground, testing ground, military airfield, port, dock, military cave storehouse, warehouse, etc. ‘Berth’ was not on the list of ‘military land’ and was therefore not necessarily a ‘military land’;
- (w) Articles 5 and 6 of Chapter I of “the Law” required protection of military installations according to their categories and stipulated that, where military installations to be converted to civilian use or military airfields, harbours and docks were to be jointly used for military and civilian purposes, any such change should be subject to the approval of the State Council and the Central Military Commission. Article 7 of Chapter II of “the Law” stipulated that different military use zones were designated by the State in accordance with the nature, function, security requirements and requirements for effective utilization of military installations. Measures should also be taken for the protection of the military installations not included in the military restricted zones and military administrative zones. This implied that military installations were not necessarily located within military restricted zones or military administrative zones;
- (x) “the Law” had provisions for the protection of the military restricted zones, including enclosing walls, barbed wire fences, etc. Article 15 of Chapter III of “the Law” stipulated restrictions on access and activities within the military restricted zones;
- (y) Article 21 of Chapter V of “the Law” stipulated that the units in charge of

military installations should adopt measures for the protection of the military installations not included in the military restricted zones and the military administrative zones. The administrative units of the armed forces at or above the regimental level might entrust local people's governments with the protection of the military installations;

Recommendation and conclusion

- (z) as noted from (y) above that even local people's governments might be entrusted with the protection of the military installations. The HKSAR Government, being comparable to a local people's government, should have the ability to manage the military berth;

- (aa) since the HKSAR Government had not handled the interface issue between the Garrison Law and the Ordinance properly, there was no clear interpretation or definition of Article 12 of the Garrison Law and it was not appropriate to adopt the laws of the People's Republic of China (PRC) due to differences in the two legal systems and issues regarding the sources of laws. It was considered that the best solution to the current dispute was to revert the military berth to the original "O" zone specifying the right of PLA to use it when needed;

- (bb) according to the Ordinance, the Board had the responsibility to seek for the best well-being of Hong Kong. The Board had the statutory authority to stipulate the planning intention and all types of development parameters and restrictions, such as access, plot ratio, site coverage, building height, etc. on the OZP to control land use and to avoid abuse. The lack of restrictions for the "OU(MU)1" zone had led to the general public discontent and arguments;

- (cc) the Board could at least use two common tools in statutory planning to ensure that the military land, which was originally zoned "O", could be used by the public. The first was to illustrate such public right in detail on the plan and the second was to specify such in the planning intention in the Notes for the zone. However, the detailed uses of the site were not found

in the Notes of the OZP. Although the representative of PlanD had said that the Board would not usually specify the detailed operations and uses of every piece of land on the OZP, due to the legal implications in relation to the type of military use of the berth and the requirement under the Garrison Law for protection of the non-military rights and interests in military land, there was a need to specify the details regarding the land use and operation of the site on the OZP or the Notes;

- (dd) while the public's right to use the open space could be specified under the Notes of the "OU(MU)1" zone, there was still legal uncertainty in that the Garrison Law had not stipulated how non-military rights and interests in military land not classified as a military restricted zone should be handled. Besides, the Government would have to make a lot of effort to explain the arrangement to the public. In view of the current political environment, this alternative might still not earn popular support. Taking into account all these considerations, it was concluded that the best option was to revert to the original "O" zone specifying the right of the PLA to use the area when needed; and
- (ee) the Board should maintain dialogues with the representers and commenters for a consensus to tackle the dispute. The public in general agreed that the site could be used as a military berth when needed. What the public demanded was the protection of their right to use the open space. The best proposal was to revert to the original "O" zone with Notes specifying the occasional military use in view of the uncertainties involved, including the legal uncertainty, social objections and unavailability of definitions of the different military uses in the Garrison Law.

[Actual speaking time of C2502, C2564, C2699 and C2710: 32 minutes]

C2671 (Wai Hung Kom)

8. Mr Wai Hung Kom confirmed that he had no oral submission.

C2811 (Gladys Li)

C3644 (Monica Leung)

C3809 (Dominic Leung)

9. With the agreement by the Chairman to extend her presentation to an hour, Ms Gladys Li made the following main points:

The Chairman's role

- (a) It was accepted that the Chairman had the right to manage the time and proceedings in the Board. However, taking into consideration that the Chairman's bureau had been promoting the amendment to the OZP and those serving under him had also been actively promoting the amendment, although the Chairman could still chair the meeting, he should not participate in any decision of the Board in the subject case;

DLA

- (b) SPH had already addressed Members of the Board on DLA but certain points on DLA would still need to be elaborated;

No obligation for funding the military dock

- (c) paragraphs 1 to 5 of the submission by SPH together with the provisions of DLA referred to in these paragraphs were agreed. Members should read carefully the provisions because what had been asserted by PlanD, put to the members of the public, LegCo and District Councils that a military berth, a dock or in essence a military facility covering more than mere berthing was to be reprovisioned under DLA, was incorrect. It was stated in paragraph 3 of DLA that since the military sites listed in Annex II of DLA would be handed over to the then Hong Kong Government, certain buildings and fixed facilities needed by the Chinese military forces for defence purposes would be affected. In order to ensure that these buildings and fixed facilities would continue to be available, the Government of the United Kingdom (UK) should ensure that the necessary funds were sought to reprovision the buildings and fixed facilities listed as Items 1 to 4 of Annex III. Items 1 to 4 of Annex III did not include the

military berth. Item 1 in Annex III, for instance, was the naval base at Stonecutters Island intended to provide all the facilities which were previously provided in the eastern half of the Prince of Wales Barracks. The western half of the Prince of Wales Barracks had been handed over to PLA. The eastern side including the naval basin and the naval dockyard was reprovisioned at Stonecutters Island. The UK Government undertook in DLA to ensure that necessary funds would be sought to reprovision the buildings and fixed facilities listed as Items 1 to 4. Item 5, i.e. the military berth, was not among the items for which funds would be sought to reprovision the buildings and fixed facilities;

- (d) Item 1 of Annex II of DLA was the eastern part of the Prince of Wales Barracks Central including the naval basin and dockyard facilities. The requirements of reprovisioning were detailed at Item 1 in Annex III. It described the water depth, the amount of reclaimed land which comprised 12 hectares and the total GFA of the land facilities to be 28,830 m². The standard of construction and the fixed facilities would be equivalent to those of the former naval base in the Central District such that the eastern part of the Prince of Wales Barracks was to be fully reprovisioned at Stonecutters Island. The details were appended to DLA. Everything which was provided at the naval base of Tamar in the past was to be provided at Stonecutters Island, and the UK Government was to ensure that funds would be made available for the reprovisioning;
- (e) This, however, did not apply to item 5. Paragraph 3 of DLA provided that the UK Government should ensure that the Hong Kong Government would carry out the undertaking. Item 5 was not an item for which the UK Government was to ensure that necessary funds would be sought to reprovision the buildings and fixed facilities. The obligation related only to Items 1 and 4;
- (f) Item 5 headed “Waterfront to be left free at the Central and Wanchai Reclamation, Hong Kong, was for the construction of a military berth”. The Hong Kong Government would leave free 150m of the eventual

permanent waterfront in the plans for the Central and Wanchai Reclamation at a place close to the Prince of Wales Barracks for the construction of a dock after 1997. No specific area was stated. There was a marked contrast between Items 1 to 4 and Item 5. DLA should have specified the amount of space that should be left for the military berth but it did not do so. Item 5 was on its own. There was no requirement on the Hong Kong Government to hand over any specific area. The only obligation for the Hong Kong Government was to leave free 150m of the waterfront and it did not compromise the ability of PLA to use the 150m of the waterfront as a military berth. Therefore, paragraph 5.4.2(d) of TPB Paper No. 9491 was wrong. There was no provision of the precise size and facilities that were required to be provided or handed over by the Hong Kong Government;

- (g) Item 5 was significant and stood on its own in Annex III of DLA. It was wrong to ask LegCo to approve funding for the building and its ancillary facilities because DLA did not require the Hong Kong Government to pay for them;

Waterfront promenade for public access subject to occasional military use

- (h) the waterfront promenade was built with public funds. There was a query whether the funding approved for the waterfront promenade had included funding for the military berth. If not, LegCo was requested to fund the building of the waterfront promenade at Site 7 under UDS on the basis that the whole of the funding was for the waterfront promenade ;
- (i) although the obligation to leave free 150m of waterfront had been known since DLA, there had never been any suggestion that the waterfront promenade or Site 7 (as referred to in UDS) would be zoned anything other than “O”. The waterfront promenade was intended generally for public use, which was in line with the vision of the harbour. The design was to enhance the enjoyment of the harbour for Hong Kong residents and visitors, replicating the kind of harbourfront that major cities, such as Sydney, provided for their citizens and visitors;

- (j) the primacy and the basis of public consultation of UDS was to give public enjoyment and access to the harbour and provision of an east-west pedestrian connector. It was described in the UDS brief and paragraph 5.10 of TPB Paper No. 8448 that the promenade was a 2 km long waterfront promenade with about 11 ha of harbourside east-west pedestrian link along the northern shore of Hong Kong Island. The waterfront promenade would be extensively landscaped and integrated with various marine facilities, including ferry piers, public landing steps and military berth. In accordance with the space network plan and the pedestrian circulation framework of the UDS brief, the public open space was the edge to the harbour and the east-west pedestrian link ran along the northern shore;

[Mr Sunny L.K. Ho returned to join the meeting at this point]

- (k) Site 7, under the design concept for key sites, was the waterfront promenade. Its purpose was to integrate the PLA berth for a continuous promenade. It meant that the PLA berth was to be part of the waterfront promenade, and it would be opened for public access when it was not in military use, but not the other way round. The waterfront promenade was clearly intended, planned and designed to be used for public access and enjoyment, and not a place just for passing through, but for all kinds of uses which could maximize public enjoyment of the harbour. The land use of the berth was for public use and public enjoyment subject to occasional military use when a vessel was berthed;
- (l) the Board should consider whether the area was planned, designed and intended to be a waterfront promenade for public access and enjoyment. This was a matter of land use of the area which was fully within the purview of the Board;
- (m) with reference to Annex C to the Paper No. 8448 'Urban Design Study for the New Central Harbourfront – Revised Planning and Urban Design Proposals' for the key sites, Site 7 was zoned "O" and the military berth

would be open for public use when it was not in military use. The assertion was that it was for public use;

- (n) paragraph 8.8.3(i) of PlanD's UDS Final Report stated that both the part of the berth used for open space and the access road would be open to the public when they were not in military use. That was, the berth would be used for open space;
- (o) the open space use should be the primary use and should not be conditional on the time when the berth was not in military use. At the very least, there was a dual use of the land, i.e. for public use and public enjoyment subject to occasional military use when a military vessel was berthed;

Planning objectives and public aspiration

- (p) section 3 of the Ordinance stated that the overriding purpose of the Board was to undertake the systematic preparation of plans for the layout of Hong Kong to promote the health, safety, convenience and general welfare of the community. It was doubtful whether the rezoning of the subject site from "O" to military use would promote the health, safety, convenience and general welfare of the community, given that the public had been repeatedly told at public consultation that there would be a waterfront promenade for public access and enjoyment as well as pedestrian connectivity. The amendment involving setting apart land for the military berth and ancillary facilities, totalling 0.3 ha of area exclusively for military use, had made military use the only permitted use. This was contrary to the proposed use. As there were no development restrictions on GFA (other than the building height restriction), it could not prevent PLA from ceasing to use the site as a berth and to militarizing Central by locating an anti-aircraft on the front of the harbour or by building a private officers' mess;

Planning intention could be specified in Notes and Explanatory Statement (ES)

- (q) if the planning intention of the site was to keep it as part of the open space of the promenade, the site should remain to be zoned as "O". Contrary to some suggestions of what could not be done in the Notes or ES to illustrate

its planning intention, the Board had discretion under section 3(1) of the Ordinance to use the Notes and ES to illustrate its planning intention as expressly provided under the section of the Ordinance. Any matter whatsoever might be shown or provided for or specified in or in respect of the plans by means of diagrams, illustrations, notes or descriptive matters as the Board considered appropriate should be part of the plans. By adding a note of 'subject to occasional military use' to the "O" zone, it would keep the site, as what the Government had promised, to the public and what the site was designed, planned and intended for public enjoyment. The ES could also be used to express the planning intention and objectives of the "O" zone for public access and enjoyment of the waterfront promenade;

Zoning for the four structures

- (r) regarding the four small structures of the PLA berth, if they were exclusively for military use, they could be zoned for military use with height restriction imposed individually. However, if anyone of them was also for public use such as a toilet, it should not be zoned exclusively for military use. More importantly, if one of the structures consisted of facilities for fire fighting on the waterfront promenade, such facility should not be zoned exclusively for military use so as to ensure that the fire services could access to it without having to ask for the permission from PLA ;

Management issues

- (s) the whole issue of management of the waterfront promenade was an issue of health, safety, convenience and welfare of the community falling within the remit of the Board. Consideration should be given as to whether the zone for exclusive military use would facilitate or obstruct convenience of the public, whether it would promote clarity or cause confusion. If the "OU(MU)1" zone was a restricted zone and the public were not permitted to enter, the control was by the military but not by the Police. PlanD's representative who answered questions on 27.11.2013 was not aware of the provisions of the Public Order Ordinance (Cap. 245), in particular s.37(1) and the corresponding provisions in the Protected Places (Safety) Ordinance

(Cap. 260) and the Protected Places (Safety)(Authorized Guards) Ordinance (Cap. 260C) in particular paragraphs 2 to 4. These indicated that the Government had not thought through the implications of control and management of the area. Until the Government could state clearly the arrangement and the applicable provisions, the zoning as amended could not stand as it created enormous confusion;

- (t) the Garrison were not answerable to the Chief Executive. They were subject to the Central Military Commission and military discipline. There was no existing protocol accessible to the public of the authority within the area to whom they could complain about abuse of power, excess of authority or use of unnecessary force. The Government had not said in practice what law could be enforced regarding the right of people against over officious military personnel. Any area which was for military use only was a restricted zone, like a 'special area' within a 'special area' where the Government or the Police could not enforce the laws. The rights of the Hong Kong public were jeopardized. If public access was by permission of PLA, people did not enjoy it as of right. This was completely contrary to what the public had been told. The PLA berth was part of the waterfront promenade subject to occasional military use and for this reason, the representations which opposed the amendment were supported;
- (u) in relation to the Garrison Law, what Mr Stanley Ng had brought to the Board's attention under Article 12 of the Garrison Law was agreed. So far no declaration had been made for any military restricted zone and it was at odds to create an area solely for military use; and
- (v) to conclude, to zone the PLA berth for military use did not reflect the public open space that had been promised to the public.

[Actual speaking time of C2811, C3644 and C3809: 39 minutes]

C3696 (Mak Shuk Ching)

10. Ms Mak Shuk Ching made the following main points:

- (a) the zoning of the subject site for military use was objected to. Hong Kong people should treasure Hong Kong land. Having regard to the provisions in the Ordinance, consideration of the rights of Hong Kong people should be accorded higher priority. The urgency of converting the 'military berth' to 'military use' was incomprehensible;
- (b) it was stated in DLA that 150m of the waterfront of the new reclamation area would be set aside for a military berth. There had been no objection raised regarding the agreement, but the words 'military use' were not found in DLA to describe the use of the waterfront area;
- (c) when the first OZP covering the new reclamation area was approved in 2000, the waterfront promenade in Central District was zoned "O". In 2002, when LegCo approved funding for the new reclamation area in Central District, the funding covered also the construction of the military berth. However, no words of 'military use' appeared in the LegCo paper. In 2011, when the Government reported to LegCo on UDS, the military berth was included in the design of the waterfront promenade. The Government had always advised that the waterfront promenade would be open to public use and the military berth would be used by the military only when needed. When the Government made the seventh amendment to the Central District (Extension) OZP in early 2012, the waterfront promenade as shown on the plan was still zoned "O". It was not until the gazetting of the latest OZP on 15.2.2013 did Hong Kong citizens realize that that part of the waterfront promenade had been turned into military use. There was no comprehensive public consultation and it should be explained whether 'military berth' was the same as 'military use';
- (d) Hong Kong people could not understand what exactly the defence purpose the military berth would serve as a military use. The berth might on the contrary be used to intimidate or suppress citizens by force. Hong Kong people should be protected by the Government but not by PLA. The

Government should have explained to the public the reasons for the rezoning;

- (e) the military berth would give rise to management issues. It was uncertain whether the management of the area was the responsibility of the HKSAR Government or PLA. It was not clear whether a Hong Kong citizen committed a crime within the PLA berth would be arrested by the PLA or could be exempted from any legal liability of the crime if he successfully ran away from the boundary of the military berth;
- (f) if the area belonged to the HKSAR Government, it should be under the governance of the Government; and
- (g) if the current rezoning of the military berth to military use was to proceed, it would be an illegal and unreasonable decision. The Board should consider if the amendment would be for the well-being of the public. Laws should be observed and rights of Hong Kong people should be respected. The Government should not change the berth to military use stealthily. The military berth should be maintained as open space.

[Actual speaking time of C3696: 8 minutes]

C (3754) Ernest Ling

11. Mr Ling Man Cheong Ernest made the follow main points:

- (a) it was not appropriate to locate the military berth in Central District which should be for commercial use. There was already acute shortage in office supply in Central District. In terms of defence, the military berth should be placed at the outskirts of the city to fight against intruders before they could reach Central District. If, according to what the late Deng Xiaoping said, the Garrison was to realize the sovereignty of China over Hong Kong, the facility could be placed anywhere and again needed not be in Central District. Besides, there was no need to put so many military facilities in

Hong Kong just to realize sovereignty. The areas for military facilities in Hong Kong could be reduced if they were not really needed for defence purpose ;

- (b) unlike commercial use which needed to be close to banks and law firms, garrison facilities needed not be located in Central District. According to a report in the press, even food for the Garrison was imported from Shenzhen. An outlying island would be sufficient for the berthing of military vessels. As noted from the examples of China, PLA facilities would not be compatible with the flamboyant developments in Central District. It was ridiculous to place military facilities in Central District in terms of urban planning, legal and other considerations; and
- (c) the Board should consider carefully if it was appropriate to change the 'military berth' to 'military use'. The Board should consider reversing the decision and, to a further extent, removing military facilities from the urban areas.

[Actual speaking time of C3754: 7 minutes]

C 3838 (Josephine Choi)

12. Mr Lee Wan Fung made the following main points:

- (a) the design of the military berth was considered even worse than the design of a modern public lavatory;
- (b) it was not understood why it took so long to plan and extend the waterfront promenade and all of a sudden, an amendment to reverse the planning. The matter should have been made clear at the outset rather than until this late stage and hoping for muddling through;
- (c) it was not justified to locate the military berth in a waterfront promenade intended for public enjoyment. Consideration could be given to putting

the facility underground;

- (d) the facilities should not be located in Central District. It should not be located at a place with the public around. The Government should not hand over the place to PLA; and
- (e) if the berth was for a genuine military purpose, it would forever be closed and would not be open for public use. If not, the berth would be left idle and unmanaged. It did not make sense to create such a situation that the public was allowed to have access to the berth over which the Government had no control.

[Actual speaking time of C3838: 6 minutes]

[The meeting was adjourned for a short break of 5 minutes.]

[Commenter Mr Ling Man Cheong Ernest and Commenter's Representative Mr Lee Wan Fung left the meeting at this point.]

13. As the presentation from the Government representative, commenters and commenters' representatives had been completed, the Chairman invited questions from Members.

14. In response to the Vice-chairman's questions in relation to the funding arrangement for construction of the military dock and the designation of sites for military use on statutory plans, Miss Elsa Cheuk made the following main points:

Funding for construction of CMD

- (a) the construction of CMD was in accordance with DLA which required, amongst the others, leaving free 150m of the eventual permanent waterfront of the Central and Wanchai Reclamation for the construction of a military dock after 1997. In addition, Article 13 of the Garrison Law stated that if the HKSAR Government needed for public use of any part of the land used for military purposes by the Garrison, the HKSAR Government should seek

approval of the Central Government; and that where approval was obtained, the HKSAR Government should make re-provision of land and military facilities for the Garrison at such sites as agreed to by the Central Government, and should bear all the expenses and costs entailed. Such provision was applicable to the military dock in question and the Government took up the responsibility for the construction of the re-provisioned military dock;

[Mr Roger K.H. Luk returned to the meeting at this point.]

- (b) in the LegCo Paper No. PWSC(2002-03)41 submitted to Public Works Subcommittee of the Finance Committee in 2002, it was stated that the scope of the reclamation project included the construction of a 150m long berth and the related facilities for use by the Garrison;

Land use designation

- (c) the public had been fully consulted on the location of the military dock at the Central harbourfront in the past when the Board prepared the OZP, leading to the approval of the OZP in 2000. As the design and area that it would occupy were not decided at that time, the proposed military berth was represented by a straight line annotated “150m Military Berth (subject to detailed design)” on the OZP. The design and area of the military dock was presented to the public during the UDS consultation exercise. As the detailed design and delineation of the military dock had been confirmed and the construction works were near their final stage, in accordance with the established practice, technical amendment was made to the OZP to reflect the final delineation and the land use of the military dock;
- (d) the major considerations for zoning the military berth “OU(MU)1” were:
 - (i) the design and area of the military dock was for the defence purposes of the Garrison; and
 - (ii) the military dock was related to the Central Barracks. It was stated in DLA that the waterfront left free for the construction of a military

dock had to be at a place close to the Prince of Wales Barracks (i.e. the current Central Barracks). Since the Central Barracks to the south of the military dock had all along been zoned “OU(MU)” on the OZP and the military dock and the Central Barracks were related facilities, they were designated the same land use zoning “OU(MU)”. The ES for the “OU(MU)1” zone clearly indicated that the zone was for military use as a military dock; and

- (e) there were a total of 19 military sites in Hong Kong including the subject CMD. Some of the sites were not covered by the statutory plans. For those military sites which were covered by the statutory plans, all except for the three sites zoned for residential use were under “OU” zoning and no development restrictions were imposed by the Board.

15. A Member asked whether merely by leaving free 150m of the waterfront, the requirement for Item 5 of Annex III of DLA could be considered as having been complied with bearing in mind that the waterfront left free was for the construction of a military dock. In response, Miss Elsa Cheuk, with the aid of powerpoint slides, made the following main points:

Relevance of DLA

- (a) the function of the Board in considering the representations and comments was to decide whether or not to propose amendment to the draft plan in question in the manner proposed in the representation or otherwise in the manner that, in the opinion of the Board, would meet the representation. Since some of the representers and commenters had referred to DLA, a description of the background and contents of DLA was provided in the paper for Members’ reference;

Ultimate use of the waterfront

- (b) the naval base at Stonecutters Island and the military dock of the subject amendment as defence facilities were the military buildings and fixed facilities to be reprovisioned for the Chinese Garrison under Annex III of DLA. The design and land requirements for the naval base on the south

shore of Stonecutters Island were provided under Item 1 of Annex III. As regards Item 5, the requirements were (i) it had to be at a place close to the Prince of Wales Barracks, i.e. the current Central Barracks; and (ii) a 150m of the eventual permanent waterfront had to be left free for the construction of a military dock. The ultimate use of the 150m waterfront, as clearly indicated in DLA, was for the construction of a military dock; and

Need to reflect the required area

- (c) since the Central and Wanchai Reclamation only commenced in the late 1990s and the detailed design of the berth was not available when the Central District (Extension) OZP was prepared in 1998, the military berth was shown only as a straight line with the annotation ‘150m Military Berth (subject to detailed design)’ on the OZP. However, the ultimate use of the area for a military dock for defence purposes was clear as it was set out in DLA. The use of the expression of ‘subject to detailed design’ was common on OZPs for projects that their detailed site configuration and boundaries had not yet been decided. Central Piers 9 and 10 were previously zoned “O” with annotation ‘piers and waterfront related commercial and leisure uses (subject to detailed design)’ on the OZP. The concerned piers were subsequently rezoned to “OU” annotated “Pier”. Since the military dock, as one of the military facilities for defence purposes, had to be handed over to the Garrison for use and management, there was a need to reflect the actual boundaries of the land use on the OZP.

16. With the agreement of the Chairman, Ms Gladys Li made the following main points:

Different requirements for military facilities

- (a) paragraph 3 of DLA made clear the difference between Items 1 to 4 and Item 5 of Annex III. With respect to Items 1 to 4, the Government of UK should ensure that the necessary funds were sought to re-provision the buildings and fixed facilities listed. With regard to Item 5, the Government of UK was to ensure that the Hong Kong Government would

carry out the undertaking. It could have said that the Government of UK should ensure that necessary funds were sought to re-provision the buildings and fixed facilities for Item 5 but it did not. So the only obligation of the Hong Kong Government was to leave free 150m of the waterfront for the construction of a military berth or dock. It was not intended for an extensive military facility or a military facility that reproduced what was previously at the Prince of Wales Barracks; and

- (b) as regards 'the obligation to ensure that these buildings and fixed facilities would continue to be available for defence purposes', it was submitted that the PLA berth integrated into the waterfront promenade could be able to serve the defence purposes. There was nothing in DLA which had been compromised by what the Hong Kong Government had done. It was a waterfront promenade with the PLA berth integrated into it for public access and public enjoyment subject to occasional military use.

17. A Member asked two questions: (a) as far as town planning was concerned, whether the focus of consideration should be on the planning intention, and whether it was true to say that how to construct and what fund to be used for the proposal were not relevant planning considerations by the Board; and (b) whether the suggestion by a commenter to specify the use of the dock by the Garrison when needed in the planning intention worth consideration.

18. In response, Miss Elsa Cheuk made the following main points:

Town planning considerations

- (a) the main purpose of the current hearing was to invite Members to consider the representations and comments received with respect to the amendments to the OZP and to decide whether to propose or not to propose any amendment to meet or partially meet the representations. The need, the reasons and funding for construction of the military dock were background information that the Board would be invited to consider. The information relating to DLA provided in the TPB paper was only to facilitate Members' consideration of the views of representers and commenters on this aspect;

and

Planning intention

- (b) it was stated in paragraph 2.17(d) of the TPB paper that the Government confirmed the Garrison's need for CMD for defence purposes. According to the Garrison Law, controlling military facilities was one of the defence functions and responsibilities of the Garrison. CMD would be handed over to the Garrison in future as one of the military facilities in accordance with DLA and the Garrison Law. The design of CMD, including the four ancillary structures and the area in front of the waterfront had been adopted according to the defence and operational needs of the Garrison, and to meet the requirement to provide protection to the berthing facilities and to fulfil the promise of integrating the dock with the waterfront promenade for public access when it was not in military use;

- (c) the promise of opening the dock for public access when not in military use had been conveyed to the public through extensive consultations in the past. All along, the intention to open up the dock to the public when not in military use had been made known to the public in various public consultation documents and the papers submitted to LegCo. The subject amendment had not altered the promise by the Garrison, which had also been stated by the Government on various occasions in the past. It had been reflected in the consultation documents with the Central and Western District Council and the Harbourfront Commission's Task Force on Harbourfront Developments on Hong Kong Island that the dock would be open for public use when not in military use; and

- (d) the Ordinance had not provided for the Board to include details regarding the management and operational details of land uses in the Notes or on the plan. The HKSAR Government would continue to liaise with the Garrison on the detailed arrangements including the opening hours of CMD for public use when not in military use and would announce the arrangements in due course. The planning intention of the "OU(MU)1" zone for construction of a military dock was stated in the Explanatory

Statement of the OZP.

19. In response to Ms Mak Shuk Ching's comment on PlanD's response regarding the opening of the dock for public use, the Chairman clarified what PlanD had said was when the dock was not in military use, it would be open for public use. Ms Mak Shuk Ching wondered if the Government had actually started discussion with PLA about the opening hours of the dock for public use. If not, it would be dangerous to approve the amendment at this stage as PLA might then have authority to prohibit public access.

20. Ms Gladys Li said that she agreed in a sense that it was not necessary for the Board to consider DLA. What was considered central for the Board to consider was the land use, planning intention and design of the area. The PLA berth had always been intended to be part of the waterfront promenade, but the zoning amendment would exclude public access to the site and deprive the right of public enjoyment. The public would have no right to be there except by permission of PLA. Nothing about the management of the facility had been given by PLA. The amendment fundamentally changed the basis upon which the consent and acceptance of the people who had responded to the proposal. It did not confer right on the people of Hong Kong and that was the mischief and evil of the amendment. The land use was always public use and enjoyment but it had been changed by the amendment.

21. A Member said that DLA was a request of undertakings to be fulfilled by the Government of UK. The Government of UK had to ensure that the necessary funds were sought to re-provision the buildings and fixed facilities listed as Items 1 to 4 of Annex III to be re-provisioned before 1997. Therefore, the requirements had to be in detail. For Item 5, i.e. the subject military dock, it would have to be re-provisioned after 1997 and as such there was no need to specify the requirements in detail. The responsibility of the Government of UK was clearly stated in Annex III of DLA with respect to Item 5, which was to leave free 150m of waterfront for the construction of a military dock. The Member wondered if merely leaving free 150m of waterfront could satisfy the requirement of Item 5 for the construction of a military dock. Since both China and UK were naval countries, they should have good knowledge on the operation of naval vessels and that there would be land requirements for the berthing facilities of a military dock.

22. As Members had no further question to raise, the Chairman thanked the commenters and representatives of the commenters and the Government representatives for attending the meeting. They all left the meeting at this point.

[The meeting was adjourned for a break of 5 minutes.]

23. As no more commenters or their representatives had arrived to attend the session of the meeting, the meeting was adjourned at 12:04 p.m.