

1. The meeting was resumed at 9:40 a.m on 18.12.2013.
2. The following Members and the Secretary were present in the resumed meeting:

Mr Thomas T.M. Chow

Chairman

Mr Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Mr Timothy K.W. Ma

Professor Eddie C.M. Hui

Dr C.P. Lau

Ms Julia M.K. Lau

Mr Clarence W.C. Leung

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Dr W.K. Yau

Ms Bonnie J.Y. Chan

Professor K.C. Chau

Mr H.W. Cheung

Dr Wilton W.T. Fok

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Mr Patrick H. T. Lau

Ms Christina M. Lee

Mr H. F. Leung

Mr Stephen H.B. Yau

Mr F.C. Chan

Deputy Director of Environmental Protection

Mr C.W. Tse

Principal Assistant Secretary for Transport and Housing

Miss Winnie M.W. Wong

Director of Lands

Ms Bernadette H.H. Linn

Director of Planning

Mr K.K. Ling

Deliberation

[Closed Meeting]

3. The Chairman extended a welcome to all Members and thanked them for their attendance at the previous sessions of the meeting to hear the representations and comments in respect of the draft Central District (Extension) Outline Zoning Plan No. S/H24/8 (the OZP). He recapped that the OZP gazetted on 15.2.2013 was mainly to amend the zoning of a strip of waterfront land to the north of the existing People's Liberation Army (PLA) Hong Kong Garrison (the Garrison) Headquarters in the Central Barracks from "Open Space" to "Other Specified Uses" annotated "Military Use(1)" ("OU(MU)1"). A total of 9,815 representations and 9,242 comments were received. For the hearing, 74 representers/commenters/authorised representatives (involving 110 representations/ comments) attended and 66 of them made oral submissions to the Board. Seven of the attendees made use of the cumulative presentation time mechanism through obtaining authorizations from other representers/commenters. The 14 requests for extension of presentation time were all agreed by the Board based on justifications put forth by the representers/commenters and the time extensions were granted.

4. Members reconfirmed that it was necessary to adopt the special meeting arrangements which were set out in the "Guidance Notes on Attending the Meeting for Consideration of the Representations and Comments in respect of the draft Central District (Extension) Outline Zoning Plan No. S/H24/8" to cater for the large number of representations and comments received and since more than 1,000 representers/commenters had registered and indicated that they would attend the meeting. While there was a time limit of 10 minutes on presentation for each oral submission, the arrangements of allowing cumulative speaking time for authorised representatives representing more than one representer/commenter, swapping allotted time with other representers/commenters and/or requesting for extension of time for presentation had provided sufficient flexibility. Taking into account the attendance at the various sessions, the Board had made refinements to the meeting arrangements in the process to allow the extension of time for presentation to be made on the same day rather than after all representations or comments had been heard as set out in the

first version of the Guidelines. The attendees who walked out of the first session of the meeting were all invited back to make their presentations and the Board had allowed their requests for extension of time for presentations. All in all, under the special hearing arrangements, the hearing proceeded in an orderly manner and the rights of the representers/commenters to be heard was duly respected.

5. With regard to the concern raised by some representers/commenters on the conflict of role of the Chairman of the Board, Members re-affirmed that there was no conflict of role for the Permanent Secretary for Development (Planning and Lands) as the Chairman of the Board to chair the meeting. Members agreed that the Chairman could continue to chair the meeting as all official and non-official Members of the Board were appointed by the Chief Executive under section 2 of the Town Planning Ordinance (the Ordinance), and the Chairman was exercising his duties under the Ordinance in chairing the Board meetings. The Board was mindful of his responsibility to act fairly in considering the representations and comments in respect of the OZP. When considering any matters submitted to the Board, Members, including the Chairman, would comprehensively take into account all relevant planning factors, including but not limited to Government policies. Furthermore, upon consideration of the representations and comments, the Board only needed to decide whether or not to propose amendments to the OZP in the manner proposed in the representations or otherwise in the manner that, in the opinion of the Board, would meet the representations. Whether to approve the OZP or not was to be decided by the Chief Executive in Council. In considering the representations and comments, the Board was not exercising judicial functions or similar functions, and its decision would not determine the rights or obligations of any person.

6. The Chairman invited Members to consider the representations and comments taking into account all the written and oral submissions. The Chairman said that Members would deliberate on the main grounds and proposals of the representers/commenters at this session. The Secretariat would then draft the reasons for the Board's decision based on the discussion at this session, which would be considered by the Board at a separate session to be held at a later date.

Defence Land Agreement (DLA)

Obligation under DLA

7. The Chairman said that many representers and commenters had raised matters relating to the 1994 Exchange of Notes constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Arrangements for the Future Use of the Military Sites in Hong Kong (the Defence Land Agreement or DLA). It was stated in Clause 3 of DLA that "the Government of the United Kingdom shall ensure that the necessary funds are sought to re-provision the buildings and fixed facilities listed as Items 1 to 4 of Annex III without compensation at the sites agreed by the two sides as shown in the said Annex, and that the Hong Kong Government carry out the undertaking listed as Item 5 of Annex III." Item 5 of Annex III was related to the Central Military Dock (CMD), and it was stated that "The Hong Kong Government will leave free 150 metres 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 military dock after 1997." The representers/commenters considered that the Hong Kong Special Administrative Region Government (HKSARG) only needed to leave free 150 metres of the eventual permanent waterfront promenade for berthing of vessels and there was no obligation to fund, construct and hand over the military dock under Item 5 of Annex III.

8. The Vice-chairman said that the wording in Item 5 of Annex III stated both to "leave free 150 metres of the eventual permanent waterfront" and "for the construction of a military dock after 1997". Hence, it was considered that HKSARG had an obligation to construct a military dock including its ancillary facilities. Three other Members held the same view.

9. A Member said that Annex III had to be read together with the main text of DLA. It was clear from Clause 3 of DLA that Items 1 to 4 in Annex III were to be provided before 1997 while Item 5 about CMD was an undertaking that had to be completed after 1997. Hence, while DLA might have lapsed after 1997, the

undertaking in Item 5 had to be honoured and completed by the HKSARG after 1997.

10. A Member also agreed that the main text of DLA had to be read together with the Annexes. Clause 3 of the main text indicated that all items set out in the Annexes were to ensure that the buildings and facilities would continue to be available for defence purposes as from 1 July 1997. It was clear from the wording that the military facilities listed under Items 1 to 5 should “continue to be available” after 1 July 1997. Hence, the argument that Item 5 would no longer be relevant after the Handover was unfounded. The PLA had a continued right to the military facilities listed under Items 1 to 5 after the Handover. Two other Members also did not agree to some representers’/commenters’ argument that DLA should be ignored as the HKSARG was not a concerned party in the agreement.

11. The Vice-chairman said that it was obvious that ancillary facilities were required for the military dock. The kind of facilities that might be required could make reference to the design requirements for the other military facilities covered by DLA. Another Member agreed and said that details of CMD were not available at the time of signing DLA due to uncertainties about the extent and detailed design of the reclamation and hence it was not possible to set them out in DLA. The current design of CMD had merits in that the ancillary facilities were provided at a setback location near but not directly abutting the waterfront. As such, it would enable a continuous waterfront promenade for use by the public when CMD was not in military use. This would be much better than a design that would permanently block off a section of the waterfront.

12. A Member said that the Board should consider the land use zoning for CMD that was now completed and should not dwell on the interpretation of the requirements for CMD under DLA. Another Member said that the Board should consider the appropriate land use zoning for the site that would reflect its dual purposes for military and open space uses. Another Member said that the “OU(MU)” zoning was the appropriate for the site. As the military dock was for defence purposes and there was the possibility of military actions to be held within it, it would not be appropriate to rezone the space therein as “Open Space” (“O”) as

proposed by some representers/commenters. Two other Members also agreed that the current “OU(MU)” zoning was appropriate to reflect the military use of the site.

13. A Member considered that given the historical background of DLA, the HKSARG had continued responsibility to provide CMD. The land use zoning for the site should respect the right of the PLA to use a military dock with the necessary facilities at the Central waterfront. This view was shared by two other Members.

14. A Member said that DLA clearly stated the need for the construction of a military dock after 1997 in Central and there was no dispute on that point. The PLA’s right to use a stretch of the Central waterfront was certain, despite that details of CMD were not yet available then due to the uncertainties about the Central and Wanchai reclamation at the time. However, how the military dock should be built was a matter for the Garrison and the HKSARG to decide and needed not be specified under DLA. The representers/commenters generally did not dispute that there should be a military dock at the Central waterfront. The Board needed not discuss about DLA and should focus on discussing about the zoning for the site that was the major issue of contention raised by the representers.

15. Mr K.K. Ling, Director of Planning, said that the delineation of the eventual permanent waterfront was not yet determined in 1994. After 1997, once the reclamation limit was confirmed, a line annotating the extent of CMD was added on the OZP. It was clear that the military dock had to be constructed after 1997. The representers’ argument that it was only necessary to leave free 150m of the waterfront in form of a line for the military dock was unfounded.

16. In summary, Members were of the view that it was not for the Board to rule whether HKSARG had any obligation to comply with DLA. However, the historical background relating to the reprovisioning of the military dock for the Garrison for defence purpose was relevant, and the Board should take this into account when considering the land use zoning for the site.

[Ms Anita W.T. Ma returned to join the meeting at this point.]

Spatial Extent of CMD

17. The Chairman said that another consideration put forth by some representers was that the CMD site was not on the list of the 14 military sites in Annex I to DLA, and all military facilities to be reprovisioned under Items 1 to 4 in Annex III had dimensions while there was only a need to leave free 150m of the waterfront for CMD under Item 5 in Annex III. Hence, there was query on the spatial extent of CMD and some considered that the Government of the United Kingdom only needed to reserve a stretch of the waterfront and there was no need for the HKSARG to construct the military dock on the site.

18. A Member said that according to Clause 3 of DLA, the Government of the United Kingdom was to reprovision buildings and fixed facilities under Items 1 to 4 in Annex III, hence there were detailed specifications. For Item 5 in Annex III, it was only an undertaking for the reprovisioning of the military dock. As such, there was no need to specify the details about CMD in DLA as it would be constructed after 1997 and the details were not matters for the Government of the United Kingdom before the Handover.

19. A Member said that the representers had raised a number of legal arguments. The legal aspects were relevant considerations. The Chairman said that the legal opinion obtained from the Department of Justice was incorporated into the Town Planning Board paper. Two Members also said that the legal aspect was only one of the many considerations that the Board needed to consider about the OZP amendments.

20. Two Members said that the requirement for the construction of a military dock should mean a two dimensional space, rather than just a line as argued by some representers. Another Member agreed and said that the Board might consider whether only zoning the four structures on site for military use, as suggested by some representers/commenters, was sufficient for the site to serve as a military dock. The Vice-chairman and another Member said that it was obvious that construction of a military dock required a space rather than just a line.

21. Two Members said that it was clear that DLA required building of a military dock rather than only reserving a berthing space. Four other Members said that as the eventual permanent waterfront was not yet fixed at the time of signing DLA, it was not possible to specify the details for CMD in DLA. Two other Members reiterated the view that the historical background embodied in DLA had to be considered, i.e. the Garrison had a right to the military dock at the Central waterfront after the Handover.

22. In summary, Members considered that the requirement for the construction of a military dock depicted a two-dimensional space rather than just a line on the OZP. Details of CMD were not specified in DLA as the eventual permanent waterfront at the Central and Wanchai reclamation could not be determined at that time.

[Ms Anita W.T. Ma and Dr C.P. Lau left the meeting temporarily at this point.]

Opening of the CMD Site Contravened DLA

23. The Chairman said that according to DLA, “The military sites handed over to the Garrison shall be used exclusively for defence purposes. The right to use the military sites shall not be transferred and the sites shall not be made available to others for purposes other than defence.” Based on that, some representers considered that if the CMD site was used for open space, it would contravene the original intention of DLA. In this regard, the representative of Planning Department (PlanD) had explained at the hearing that the Garrison had agreed in 2000 that it would open the land area of the military dock (except for the utilities, ancillary structures and landing steps) to the public as a part of the waterfront promenade when the dock was not in military use, having regard to its operation and the need for protecting the military dock. However, this would not affect the use of the site for defence purpose.

[Dr W.K. Yau left the meeting temporarily at this point.]

24. A Member said that DLA should have no binding effect on how CMD was to be used. Another Member said the Garrison's agreement to open the land area of the military dock to the public as a part of the waterfront promenade when the dock was not in military use was with good intentions.

25. The Vice-chairman and three other Members said that the primary use of the CMD site for military purpose was indisputable. With regard to the point that the right to use the CMD site should not be transferred, the Vice-chairman and a Member said that even though the land area might be opened to the public when not in military use, the Garrison had not transferred the right to use the site, it still maintained the right to decide when the land area should be closed for defence purpose and when it should be opened for the public to use. Similarly, the defence purpose of the military facilities at Stonecutters Island would not be affected even though it would sometimes be opened to the public on open days.

26. Two Members said that there was no need to go into detailed discussion of what would constitute defence purposes or whether a particular use would contravene DLA. The Garrison's agreement to open the CMD site for public enjoyment of the waterfront when not in military use was with good intentions to provide convenience for members of the public. It was an innovative attempt for integration of the site with other waterfront uses. There should be no contravention with DLA.

27. In summary, Members noted that CMD was designed to meet the defence requirements of the Garrison; and that it would be handed over to the Garrison for management and use. Members were of the view that the primary purpose of the CMD site was for defence purpose. Opening the CMD site for public use as part of the waterfront promenade when it was not in military use would not constitute a transfer of right of use of the CMD site.

The DLA was not for the Board to consider

28. The Chairman said that some representers had indicated that DLA was not for the Board to consider. Only the land use, planning intention and design were relevant considerations for the Board. Members noted and agreed that the earlier discussion had covered this ground.

Terminologies of 軍用碼頭 or Military Dock

29. The Chairman said that some representers had raised queries about whether a military dock or military berth was required under DLA. Members noted that the English version of DLA used the term “dock” while the Chinese version used the term “軍用碼頭.” In this regard, Members noted that the Board should consider whether the proposed “OU(MU)” zoning was appropriate from land use planning perspective rather than the legal interpretation of the said terms.

30. In summary of the above discussion about DLA, Members’ views were that DLA required, among other matters, leaving free 150m of the eventual permanent waterfront at a place close to the current Central Barracks for the construction of a military dock after 1997. After the reunification, the HKSARG confirmed the Garrison’s need for CMD for defence purposes and took up the construction of CMD near the Central Barracks after the completion of the statutory plan-making process in 2000 and funding approval by the Legislative Council (LegCo) in 2002. The detailed design and delineation of CMD was now confirmed and the construction works were reaching their final stages. It was against this historical background that amendments were made to reflect the final delineation and the land use of CMD on the OZP.

Planning Process and Public Consultation

31. The Chairman said that the representers had raised a number of grounds relating to the planning process and public consultation, as follows:

- (a) the Central District (Extension) OZP had been amended seven times since its first approval in 2000, but the site had all along been zoned “Open Space” (“O”) on the OZP until the latest round of amendment in January 2013. The Government’s explanation that the detailed design of CMD had not yet been confirmed until recently was deceptive, as the design had already been determined and was shown in earlier documents, such as in the document for the consultation with District Councils in 2010;
- (b) the Government had misled the public during consultation. All along the public had been informed that there would be a public open space at the CMD site and there would be a continuous waterfront promenade. Hence, the public had legitimate expectation of such provision rather than the rezoning of the site to military use;
- (c) the consultation in respect of the OZP amendment was not a genuine consultation as it was undertaken after the military dock and the associated facilities were built; and
- (d) the Government had all along in the consultation exercise indicated that the military pier was to be integrated with and be part of the waterfront promenade for public enjoyment and access. The amendment to the OZP had made this right for public enjoyment and access conditional upon the PLA agreement on when to open the CMD site for public use. Some indicated that the site should be opened for public enjoyment and subject to occasional military use.

32. The Vice-chairman said that he did not agree that there was insufficient consultation about CMD or that the Government had misled the public. PlanD had explained at the hearing the extensive consultations that the Government had undertaken since early 2000, including the public engagement exercise for the Urban

Design Study for the New Central Harbourfront (UDS) and consultations with the District Councils. Throughout the consultations, it was clear that an area would be reserved at the Central waterfront for a military dock and it was clearly annotated that it was subject to detailed design. Nevertheless, the current controversy might be due to the perception of the public that the area would be reserved for open space use and there would be a continuous waterfront promenade at all times.

33. Two other Members said that they had been involved in some of the public engagement activities for UDS and the fact that there would be a military dock at the location of the site was clear and the allegation that PlanD had misled the public was unfounded. A Member said that the claims of some representers/commenters that the Government had misled the public during consultation and they were not aware that there would be a military dock at the Central waterfront could not be substantiated. Another Member said that in the previous consultations, the appropriate zoning of the CMD site had not been discussed.

34. A Member said that the planning intention for a military dock at the Central waterfront had already been clearly stated in the earlier versions of the OZP. It was clearly annotated that the site would be subject to detailed design. As the detailed design and delineation of CMD was now confirmed, it was in line with the Board's normal practice to amend the OZP to reflect CMD as a military use. The OZP amendments had been submitted to the Board for consideration within reasonable time from the finalisation of the detailed design and its construction.

[Mr Ivan C.S. Fu left the meeting temporarily at this point.]

35. Mr K. K. Ling said that the Government had not misled the public about CMD in the previous public engagement exercises. As soon as the eventual permanent waterfront under the Central Reclamation Phase III (CRIII) project had been finalised, the military berth, represented by a straight line, was indicated on the OZP. The public was all along informed that there was a need to build a military dock at the Central waterfront; that when the CMD site was not in military use, it could be opened for public enjoyment; and that the design would integrate with the

waterfront promenade. Contrary to claims by some representers/commenters, PlanD had explained at the hearing that the Government had never indicated in any previous public engagement that CMD would only be for ceremonial functions.

[Ms Christina M. Lee returned to join the meeting at this point.]

36. Three Members indicated that the Government's previous consultations about CMD were not directly relevant to the Board's consideration of the representations/comments in respect of the OZP. The Board should consider whether the proposed "OU(MU)" zoning was appropriate for the CMD site and it was important to note that the consultations required under the statutory planning process had been followed in this round of OZP amendments.

37. In summary, Members considered that the military berth at the Central waterfront was deliberated by the public at length when the draft OZP was gazetted in 1998. After going through a due process of plan exhibition and objection hearing under the then Town Planning Ordinance, the military berth was represented by a straight line annotated "150m Military Berth (subject to detailed design)" on the draft OZP since the design and the area required had not yet been decided at the time. The draft OZP was first approved by the Chief Executive in Council on 22.2.2000. On 21.6.2002, the LegCo approved the funding for building CMD and associated facilities for use by the Garrison, as part of the CRIII project. The Government had made known to the public the location and conceptual design of CMD and its integration with the New Central Harbourfront in the extensive public engagement exercises under the UDS in 2008, and the architectural design was presented to the Central & Western District Council and Harbourfront Commission's Task Force on Harbourfront Developments on Hong Kong Island on 13.5.2010 and 6.10.2010. The Government had all along made it clear that the concerned land area was for use as a military dock and that the Garrison had agreed to open it to the public when it was not in military use; instead of the other way round (i.e. open space use subject to occasional military use) as presented by some representers/commenters. The construction of CMD had now been largely completed and the OZP was duly amended to reflect the as-built condition. The OZP was exhibited and published for

public representations and comments in accordance with the provisions of the Ordinance. The statutory and administrative procedures in consulting the public on the OZP amendments had been duly followed.

[The meeting took a five-minute break.]

[Dr C.P. Lau and Ms Anita W.T. Ma returned to join the meeting and Ms Bernedette H.H. Linn left the meeting temporarily at this point.]

Protection of the Harbour Ordinance (PHO)

38. The Chairman said that some representers considered that there was no overriding public need for the military dock. Hence, it contravened the PHO.

39. With regard to this ground of representation, a Member said that PHO was not really relevant as the Board was considering the zoning of a piece of formed land. Mr K.K. Ling said that there was no need for additional reclamation for construction of CMD and the ancillary facilities were built in locations setback from the waterfront.

40. In summary, Members noted that CRIII was to provide land for essential transport infrastructure and the reclamation limit of the CRIII project followed strictly the presumption against reclamation principle under the PHO. It was determined by the need for provision of the essential transport infrastructure and re-provisioning of affected waterfront facilities and had passed the “overriding public need” test. The CMD site was located on land formed for such purposes and did not require any extra reclamation. The OZP amendments by themselves should not engage the PHO as they did not cause or give rise to any additional reclamation of the harbour.

Construction of the Ancillary Facilities

41. The Chairman said that some representers considered that the rezoning was not to facilitate the construction of military pier facilities because the construction

works, which had by-passed the statutory planning procedure, had already been completed. They considered that the primary purpose was only to rezone the site for military use and to hand it over to PLA. The rezoning would turn occasional berthing activities into regular military activities and functions that would affect public enjoyment of the waterfront promenade. On the draft OZP approved by the Chief Executive in Council in 2000, there was only a straight line annotated “150m Military Berth (subject to detailed design)”. There were queries why CMD was already built before the zoning was amended.

42. A Member said that construction of the military dock, which was co-ordinated and implemented by the Government, did not require planning permission as it was an always permitted use under the earlier versions of the OZP. Hence, there was no issue of unauthorised development. Whether the military dock was already built when the OZP amendment was submitted to the Board had no relevance to the Board’s consideration of what the appropriate zoning for the site should be.

43. Two Members also said that the planning intention for a military berth was already annotated on the earlier versions of the OZP, and there was no question of the construction works for the military dock being unauthorized. Another Member considered that the said ground was not relevant to the Board’s consideration of the OZP amendments. The Chairman said that if the site was to be opened for public use, it had to be based on an understanding that the CMD site involved a land area rather than merely a line along the waterfront.

44. In summary, Members agreed that construction of the facilities ancillary to CMD was part of the public works coordinated and implemented by the Government as part of the CRIII project. The LegCo Public Works Subcommittee paper stated clearly that as part of the CRIII project, the CMD works included the berth and ancillary facilities for use by the Garrison. The military berth use as shown on the first approved OZP in 2000 was a permitted use. The four single-storey structures supporting CMD were ancillary facilities directly related to the permitted use and no separate planning permission from the Board was required.

There was no question of the construction works for the military dock being unauthorized. The OZP amendments were to reflect the final delineation and the land use of the military dock, which would not affect the arrangement under which the dock would be open to the public when it was not in military use.

Law Enforcement and Operational Details

45. The Chairman said that a number of grounds relating to law enforcement and operational details raised by some representers/commenters were as follows:

- (a) the Garrison Law would be applicable to the CMD site. Under the Garrison Law, defence actions taken by the Garrison should not be subject to jurisdiction of the Hong Kong courts. Public rights of gathering and protests at the site might not be protected by the Basic Law or other Hong Kong Laws;
- (b) if the site was governed by the Garrison Law, there were doubts on whether the Police could enforce under Hong Kong Laws within the CMD site and whether Hong Kong citizens and others would be subject to law enforcement by PLA inside the CMD site;
- (c) the Garrison was not answerable to the Chief Executive but to the Central Government. There was no clear channel for the public to complain against the Garrison. The Police could not arrest military personnels who were on duty. The CMD would become a special area within the HKSAR;
- (d) there was no information on the management and operation of CMD, including the party responsible for managing the site and the arrangement for opening the site for public use;
- (e) there was no written agreement from PLA that the CMD site would be opened for public use in future. Hence, there was no guarantee

that the CMD site would be open to the public when it was not in military use;

- (f) according to Article 12 of the Garrison Law, the Garrison would define military forbidden zones jointly with the HKSARG. The location and scope of the military forbidden zones should be announced by the HKSARG, but there was no declaration of the CMD site as military zone; and
- (g) acts committed by members of the Garrison when performing their official duties should be subject to the jurisdiction of the Supreme People's Court of the People's Republic of China according to Article 23 of the Garrison Law. Hong Kong citizens would worry about this as it could not be dealt with in Hong Kong.

46. The Vice-chairman said that the concerns about law enforcement and operational details raised by the representers/commenters were not matters for the Board to address or consider when deciding on the land use zoning for the site. Instead, the Government should take into account those concerns and try to alleviate them when discussing the operational details with the Garrison at a later stage. Another Member also agreed that matters on law enforcement and the operational details were outside the Board's purview. A Member said that CMD involved a new arrangement to integrate a military site with its surrounding uses and for it to be open to the public when not in military use, the detailed operational arrangements needed to be further agreed between the Government and the Garrison.

47. Another Member said that the representers/commenters had raised worries relating to law enforcement and operational aspects. While those matters were outside the Board's purview, the Board might still note those concerns when discussing about the extent of the "OU(MU)" zone. For example, whether reducing the extent of the "OU(MU)" zone, to cover say only the four structures on the site, might alleviate some of the concerns of the representers/commenters. Members noted that the suggestion of limiting the zoning to the four structures would be

discussed later on in the session.

[Ms Bernedette H.H. Linn and Dr W.K. Yau returned to join the meeting at this point.]

48. A Member said that it was outside the Board's purview to consider the law enforcement aspects. There was a need to re-provision a military dock at the site and the Garrison had agreed to open it to the public when it was not in military use. Regardless of whether the site would be zoned "OU(MU)" or "O", it might be used for both military and open space uses at different times.

49. The Chairman said that when the Board zoned sites as "O", it would not consider the operational details nor control the specific uses within the open spaces. Similarly, the applicable laws or operational details of the military dock should not be matters for the Board to consider or control. Even if CMD was to be zoned as "O" as proposed by some representers/commenters, it would not change the fact that the entire CMD site had to be handed over to and would be managed and used by the Garrison primarily for military purpose.

50. A Member said that after the CMD site was handed over to the Garrison, it would be managed and used by the Garrison in a manner they considered appropriate to serve defence purposes. This might be similar to the allocation of open space sites to the Leisure and Cultural Services Department (LCSD) in which the LCSD will manage and use the open spaces in ways considered appropriate.

51. In summary, Members considered that CMD, being one of the military facilities of the Garrison, would be under the management and used by the Garrison. The Garrison had, on the request of the HKSARG, agreed in 2000 that, having regard to its operation and need for protecting the military dock, it would open the area of the military dock to the public as part of the waterfront promenade when it was not in military use. The OZP amendments would not affect the arrangement agreed by the Garrison. The management and detailed operational arrangements of the military dock were outside the purview of the Board. Members noted that the Government would further liaise with the Garrison on the detailed arrangements for opening the

area of the CMD site to the public and inform the public of the future arrangements. Members also noted that whether a place was publicly or privately owned, the Police could carry out the enforcement duties under Hong Kong Laws.

Connectivity of the Waterfront

52. The Chairman said that some representers considered that CMD would disrupt the connectivity and continuity of the waterfront and affect the provision of a cycle track on the waterfront. It was also incompatible with the adjacent waterfront and open space uses. In this regard, he said that PlanD had explained at the hearing that CMD had been designed to integrate with the waterfront promenade and the ancillary structures had been set back from the waterfront. When CMD was used for military purpose, the site would be closed off with gates and there might be some temporary road closure. Nevertheless, the public could still use the walkway and the open space to the immediate south of the CMD site as a continuous east-west connection along the waterfront.

53. A Member said that there were a number of existing piers on both sides of the harbour, and it was not feasible to provide continuous access along the entire waterfront. Another Member said that while there were disruptions in the existing waterfront, provision of continuous access along the harbourfront was a vision for newly designed areas such as the Central waterfront. From the experience in dealing with these matters in the District Council, alternative access could be provided around the public facilities at the waterfront to enhance pedestrian accessibility. Another Member said that there were vast areas of open space at the Central harbourfront, and hence, there was generally continuous waterfront access around the CMD site although it might not be a direct line of connection. Another Member opined that the design of Piers 9 and 10 was good in that it allowed for continuous access along that stretch of the waterfront. The Chairman said that if the Garrison needed to use CMD, it was inevitable that the site would be closed off and there would be temporary disruption to the continuous waterfront access. Two Members also said that at times when CMD was not in military use, there would still be a continuous waterfront promenade at that location.

54. In summary, Members did not see major contravention of the planning intention to provide a continuous waterfront access as the Garrison had agreed that the CMD site would be open to the public when not in military use. Moreover, there would be alternative East-West access behind CMD. It was noted that the location and design of CMD at the Central harbourfront had been deliberated at length in the past, including the planning process leading up to the approval of the OZP in 2000 and the public engagement process for the UDS in 2008. The design of CMD, including design of the folding gates for fencing off the dock, was compatible with and integrated with the waterfront promenade. When CMD was closed for military use, the public could use the walkway to the immediate south of the military dock and continuous east-west connection along the waterfront was maintained. The area to the south of the walkway was zoned “O” and would be developed into a public open space within which public access would be provided. Members also noted that the cycle track was not the subject of OZP amendments and according to the final recommendation of the UDS, a cycle track would be provided in the waterfront promenade in the Central harbourfront.

Zoning and Related Matters

Preamble of Town Planning Ordinance

55. The Chairman said that some representers/commenters considered that zoning of the CMD site for military use was not in line with the preamble of the Town Planning Ordinance. The Secretary said that section 3(1) of the Ordinance also contained similar wording as the preamble which stated that the Board should undertake the systematic preparation of draft plans and draft development permission area plans “with a view to the promotion of the health, safety, convenience and general welfare of the community”.

56. Four Members said that zoning of the CMD site for military use was in line with the preamble of the Ordinance as defence was related to safety and/or general welfare of the community. Two of the Members pointed out that the Board

had in the past also zoned sites for military use. A Member also said that a military dock already existed in Central previously and CMD was only for its reprovisioning. The rezoning of the site would not in any way be inconsistent with the preamble. A Member said that by constructing the military dock at a place close to the Prince of Wales Barracks (as required under Item 5 of Annex III of DLA), the possible adverse impacts or inconvenience caused by the presence of the military facilities would be minimised. A Member said that there were utility facilities such as gas storage in some housing estates that might be considered by some people as land uses that would affect the health, safety and well being of the people living in the housing estates. However, such facilities were essential and had to be provided but with consideration to minimise the health and safety risks.

57. Another Member said that some representers/commenters considered that the military dock would cause inconvenience or even constitute threat to their personal safety. The Board might need to take into account the concerns when deciding on the zoning for the site. Some representers/commenters had proposed that the site should be rezoned from “OU(MU)” to “O” and be closed for military use only when needed. This proposal might be able to address some concerns of the representers.

58. In summary, Members considered that the amendments incorporated into the OZP were to reflect the land use of CMD and they were within the statutory functions of the Board and were in compliance with the Ordinance.

Justifications for Zoning the Site for Military Use

59. The Chairman said some representers/commenters were of the view that given that the undertaking in DLA had already been fulfilled, DLA would no longer be a relevant consideration or justification for the rezoning. Some also said that there was no specific request from the Security Bureau or PLA for the Board to zone the site for military use. Hence, there was no justification for the Board’s rezoning of the site to military use.

60. A Member said that the zoning of the CMD site to military use was to reflect its intended use, which was in line with the Board's practice to rezone sites to reflect their as-built conditions. Another Member said that it was a hard fact that CMD had to be reprovisioned and handed over to the Garrison for its management and use and, as such, the zoning reflecting its military use was appropriate. With regard to the point that the OZP amendment was not initiated by the Security Bureau or PLA, Members noted that it was explained by PlanD at the hearing that the subject amendments to the OZP were made by the Board under section 7 of the Ordinance and within its statutory functions. They were not arising from a section 12A application submitted by another party.

61. A Member said that in the earlier versions of the OZP, the "military berth" was annotated as "subject to detailed design". Now that the design and construction of CMD was completed, it was appropriate to amend the zoning to reflect the boundary and the use of CMD on the OZP. This was a necessary step to complete the statutory planning process for the site. The Chairman said that the boundary of the military dock and the ancillary facilities built were based on the requirements of the Garrison.

62. In summary, Members generally agreed that taking into account the historical background relating to DLA, the funding approval from LegCo and that CMD was now built and its boundary was finalised, the amendments to the OZP to reflect the present circumstances were necessary. This was also in accordance with the usual practice of the Board to reflect the delineation and use of the military sites.

"OU(MU)" Zoning

63. The Chairman said that some representers/commenters raised queries that the term "military use" being used in the current OZP was too wide, given that more specific terms such as "military dock" and "military berth" were used in DLA and the previous OZP respectively. Members noted that CMD, which was required to be located near the Central Barracks as stated in Annex III of DLA, was associated with the Central Barracks. The Central Barracks was under the same "OU(MU)" zoning

under the OZP. The Chairman said that given the historical background relating to DLA, the CMD was to be re-provisioned so that it would continue to be available for defence purpose, and Members would need to consider whether restricting its use to say only a military dock or military berth, as suggested by some representers/commenters, would be appropriate for CMD to serve its defence purpose.

64. In response to the Chairman, the Secretary highlighted the provisions for the site in the Notes and Explanatory Statement (ES) of the OZP. The CMD site was zoned “OU(MU)1” and there were also other military sites under the same “OU(MU)” zoning on some other OZPs. The Notes applicable to the CMD site were that “For All Other Specified Uses (Not Listed Above)” under which the Column 1 use was indicated as ‘As specified on the Plan’ i.e. military use. The Remarks of the Notes included a building height restriction of 10mPD for the “OU(MU)1” site and a clause for minor relaxation of the said building height restriction. The Column 2 uses were typical to those in other “OU” zones, namely, ‘Government Use’, ‘Mass Transit Railway Vent Shaft and/or other Structures above Ground Level other than Entrances’, ‘Public Utility Installation’ and ‘Utility Installation for Private Project’. In the ES, it was explained that the CMD site had an area of 0.3ha and was zoned for military use as a military dock with a building height restriction of 10mPD.

65. A Member said that under the OZP, there were four other “OU” zones that were annotated with specific uses, namely ‘Pier’, ‘Pier and Associated Facilities’, ‘Elevated Walkway’ and ‘Waterfront Related Commercial and Leisure Uses’. There were clearly listed Column 1 uses for those “OU” zones, rather than ‘As Specified on the Plan’ for the CMD site. A separate Notes for the “OU(MU)1” zone with clearly listed Column 1 uses, say open space use might be considered. The Secretary said that open space was an always permitted use under the OZP and it was not necessary to specify that in the Notes for individual zones.

66. Ms Bernedette H.H. Linn said that the representers/commenters wanted to see a clearer specification of the type of military uses that would be permitted on the site. PlanD had explained at the hearing that of the military sites covered by

OZPs, other than three of them being zoned residential, the others were zoned “OU”. She asked what the specific annotations were for those military sites. The Chairman said that the naval basin at Stonecutters Island and the Central Barracks were both zoned “OU(MU)”.

[Mr Clarence W.C. Leung left the meeting temporarily at this point.]

67. The Vice-chairman said that some representers/commenters had raised concerns that a wide range of military uses might be permitted on the site, and that might affect the safety of the public or the image of Central being the central business district of Hong Kong. However, regardless of whether the zoning would be military berth or a military dock, the fact would be that CMD would be used for berthing military vessels and related activities, ceremonial functions, small scale military training and carrying out maintenance works. Hence, for consistency, the “OU(MU)” zoning could be maintained. Mr K.K. Ling said that, as an example, when the Board zoned sites as “O”, it would not annotate them for specific types of open space use. Following similar logic, it was not necessary to annotate the CMD site for a specific type of military use.

68. The Secretary said that of the 19 military sites in the territory, 12 (including the CMD site) were covered by OZPs. One of the site was zoned “Residential (Group B)”; two were zoned “Residential (Group C)”; four were zoned “OU(MU)” (i.e. Ngong Shuen Chau Barracks, Central Barracks, the CMD site and Tai O Barracks); two were zoned “OU” annotated “Military Camp” (i.e. the Chek Chue Barracks and Kowloon East Barracks); one was zoned “OU” annotated “Military Quarters” (i.e. Ching Yi To Barracks); two others were zoned “OU” annotated “Gun Club Hill Barracks” and “OU” annotated “Airport Service Area”. The Secretary said that for the CMD site, it was zoned “OU(MU)1” and it was specifically stated in the ES that it would be for “military use as a military dock”.

69. A Member said that since CMD would be a military site, it was appropriate to adopt the “OU(MU)” zone that was similar to the zoning for some other military sites. The differences in annotations for the “OU” zones for the

existing military sites should not be a material concern as those terms in general all referred to military use in a broad sense.

70. A Member said that the “OU(MU)” zoning and the explanation of the intention in the ES was sufficient to set out the planning intention for the CMD site, as it was not possible for the Board to know in detail the actual uses of the military dock and to specify the detailed uses in a user schedule.

71. In summary, Members considered that it was appropriate to retain the annotation “military use”.

Need for Zoning the Site for Military Use

72. The Chairman said that some representers/commenters considered that there was already provision under the previous OZP for berthing of military vessels along the 150m waterfront. Similar to the vehicular access arrangement between CMD and the PLA Hong Kong Garrison Headquarters, a mechanism could be devised to close off the concerned waterfront area when the military dock was in use. It was not necessary to designate a waterfront area for military use. It was considered that the public should have priority to use the waterfront and CMD should only be used for berthing of military vessels when needed.

73. A Member said that when deciding on the zoning, it was necessary to consider which of the two uses, i.e. military use or open space use, would be the primary use. Based on the earlier discussion, as CMD had to be provided for use by the Garrison for defence purpose, the primary use should be military use. In this regard, some representers/commenters had proposed that the site could be rezoned to “O” and, if needed, the site could be gazetted for military use on need basis. However, this would create inconvenience to the Garrison and would affect its right to use the site for defence purpose. Given the historical background and balancing various factors, the Member considered that it was more appropriate to zone the site for military use.

74. Another Member agreed that as the site was required for reprovisioning a military dock for defence purpose, it was in line with the Board's practice to zone it for military use. If the site was zoned "O", it would create confusion as to the primary planning intention for the site. The Chairman said that according to the early discussion, Members generally considered that the site was all along intended for military use taking into account the historical background including DLA, the LegCo funding approval as well as the planning intention annotated in earlier versions of the OZP. The military site would be open to the public because of the Garrison's agreement.

75. A Member agreed that the primary use of the site was for military use. Given the unprecedented circumstances of this military site which would be open to the public for use when it was not used in military use, the zoning provisions might need to be more specific for the site. It might also be possible to prepare separate Notes for this "OU(MU)1" zone and list out both military use and open space use in the user schedule. The ES might also need to be amended to indicate the Garrison's agreement to open the land area of the CMD site to the public when not in military use. Such amendments might be able to address the concerns raised by some representers/commenters.

76. A Member said that the Garrison had agreed to open the site for public use if it was not used for military purpose and had indicated that no additional building would be built on the site. It appeared that the site would not be used extensively for military purpose and it might be open to the public most of the time. If so, it might be appropriate to revert the site to an "O" zone. In any event, areas zoned "O" could be used for alternative uses when a genuine need was demonstrated. An example was the marine police station at Sai Wan Ho which had occupied an area zoned "O" for many years.

77. Three Members considered that there was no doubt that the site would primarily be used for military purpose and the zoning should reflect this. Other than the requirements under DLA for a military dock, the Garrison's agreement to open the site to the public when not in military use was also a part of the historical background.

Both of these intentions should be reflected in the Notes and/or ES of the OZP.

78. In summary, the majority of Members considered that the planning intention of the site for military use was clear, and hence, the zoning should be “OU(MU)” rather than “O”. The Chairman said that whether the ES of the OZP should be amended could be further discussed later on in the session.

Zoning only the Four Structures

79. The Chairman said that some representers/commenters had proposed to zone only the four structures on the site for military use while the other portions of the site should be reverted to an “O” zoning. He asked Members to consider this proposal. If such approach was adopted, there would also be a need for an appropriate zoning for the landing steps. The Government had all along made known, for example in the UDS, that the military dock would occupy the entire area to be bounded by retractable gates.

80. Mr K.K. Ling said that since the entire military site (with dimensions of 150m by 20m) would be used as a military dock, the zoning should cover the whole piece of land and it would not be appropriate to only zone the four structures within the CMD site for military use. For pier uses, the “OU” zones also covered the entire pier areas rather than individual structures therein. The concerns of the representers/commenters had to be addressed by the Security Bureau when they liaised with the Garrison to work out the detailed arrangements later.

81. A Member said that taking into account the historical background and that the entire piece of land, of about 0.3ha in area would be used for military purpose, the boundary of the “OU(MU)1” zone should cover the whole site rather than only the four structures. The concerns raised by the representers/commenters was due to the interface between a military use and an open space use. Such concerns would not be alleviated even if the “OU(MU)” zoning was to be confined only to the four structures as the entire site would still be handed over and be used as a military dock by the Garrison.

82. The Vice-chairman said that it was the Board's practice to zone areas of land and not individual structures. Hence, the zoning should cover the entire site and not just the four structures. Another Member agreed that the zoning should cover the entire site as the four structures were not sufficient for the site to function as a military dock. Another Member said that the area to be used as a military dock should be clearly delineated by the boundary of the "OU(MU)1" zone. It was not logical to only zone the four structures for military use and leave the intervening space as "O". The Member also agreed that the Government had not misled the public as the military dock was already shown in the UDS.

83. The Chairman clarified that some representers' claim that the Garrison had agreed to open the site when no vessels were berthed was incorrect. The Garrison's agreement was to open the CMD site to the public when not in military use.

84. A Member said that it was agreed that the entire site, including the four structures, the landing steps and the intervening space, should be covered by the "OU(MU)" zoning. A Member pointed out that in the previous version of the OZP, the site was zoned "O" and it was indicated in the ES that the site would be for military use while in the current OZP, the site was zoned "OU(MU)1". In response to this Member's question about the different implications from statutory planning perspective, the Chairman said that the general view of Members in the preceding discussion was that taking into account the historical background, the site would be used as a military dock and the zoning should reflect that the primary use was for military purpose.

85. A Member said that for Piers 7 to 10, only the covered areas were zoned "OU" annotated "Pier" and the uncovered areas in between the pier structures were zoned "O". The Secretary clarified that the pier structures jutting out into the harbour were zoned "OU" annotated "Pier". For Piers 7 to 10, the covered areas that were used for commercial or associated facilities were zoned "OU" annotated "Waterfront related Commercial and Leisure Uses" or "Pier and Associated Facilities

Pier”; and the uncovered areas were zoned “O”. The Chairman said that the areas needed for the sites to function as piers were all covered under the “OU” annotated “Pier” zone and the areas zoned “O” were not areas required for the pier functions. Following similar logic, the boundary of the “OU(MU)” zone should cover the entire site including the landing steps, the four structures and the space between the four structures as they were all required for the military dock to function.

86. In summary, Members noted that CMD was needed by the Garrison for defence purpose. The site was intended for a military dock while the Garrison had agreed to open it to the public as a part of the promenade when it was not in military use. The current “OU(MU)1” zoning and its boundary on the OZP was considered appropriate to reflect such planning intention and the primary use of the site. It was also consistent with the zoning of the Central Barracks that was associated with CMD.

87. The meeting was adjourned for lunch break at 12:55pm.

88. The meeting was resumed at 2:10p.m.

89. The following Members and the Secretary were present in the resumed meeting:

Mr Thomas T.M. Chow Chairman

Mr Stanley Y.F. Wong Vice-chairman

Mr Timothy K.W. Ma

Dr C.P. Lau

Ms Julia M.K. Lau

Mr Clarence W.C. Leung

Mr Roger K.H. Luk

Ms Bonnie J.Y. Chan

Professor K.C. Chau

Dr Wilton W.T. Fok

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Mr Patrick H. T. Lau

Mr H. F. Leung

Mr F.C. Chan

Deputy Director of Environmental Protection

Mr C.W. Tse

Director of Lands

Ms Bernadette H.H. Linn

Director of Planning

Mr K.K. Ling

Need for CMD

90. The Chairman said that some representers/commenters considered that there was no need for a military berth at the Central harbourfront and military use should be located in more remote areas. There were also views that the dock facilities had already been re-provisioned at Stonecutters Island. Hence, the statement that “CMD, which is situated close to the Central Barracks, is a re-provisioning of the dock facilities for the previous Prince of Wales Barracks” was not true.

91. Members agreed that the early discussion had already covered these points. In gist, the need for CMD was clear given the historical background on the requirement for reprovisioning of CMD close to the Central Barracks as well as the annotation of a military berth on the OZP since 2000. The reprovisioning of CMD at the Central harbourfront was in accordance with DLA.

Explanatory Statement

92. The Chairman said that some representers/commenters had proposed to revise the planning intention in the Notes and ES of the OZP to reflect the dual purposes of the site for open space and military uses, i.e. the CMD site would be open to the public when not in military use. Under section 4(1) of the Town Planning Ordinance, the Board was empowered to impose “any matter whatsoever may be shown or provided for or specified in or in respect of the plans by means of such diagrams, illustrations, notes or descriptive matter as the Board thinks appropriate” in the OZP. Their views were that the Board had complete discretion to use the Notes and ES of the OZP to spell out that the site would be open to the public when it was not in military use. They did not agree with the view that spelling out the dual purposes of the site were operational details which were not appropriate to be included in the ES.

93. In this regard, the Chairman said that the current ES indicated that the site would be used for military purpose as a military dock. The Garrison’s agreement to

open the site to the public when not in military use was not mentioned in the ES but was mentioned in the TPB Paper. The Department of Justice (DoJ) had advised that as the Notes or the ES of the OZP should only include matters that reflect the planning intention, it was not appropriate for the Board to impose operational details, such as the conditions when the military site should be open to the public in the Notes or ES of the OZP.

94. A Member said that even if amendments were made to the ES to indicate that the site would be open to the public when not in military use, there would be no practical difference in how the site would be used and managed in future.

95. Another Member considered that while the zoning for the site should reflect the primary intention for military use; the intention for the site to be open to the public when not in military use should also be included in the ES as an expression of the planning intention for the site. With regard to DoJ's advice, the Member considered that a statement about the intention for the site to be open to the public when not in military use was not operational details. Operational details should mean opening hours or specific days when the site would be open to the public.

96. Another Member said that for some other "OU" zones on the OZP, the annotations were more specific about their intended uses, such as 'waterfront related commercial and leisure uses'. A lot of details were included in the ES for other "OU" sites, for example, that festival markets, café and restaurants and retail shops would be provided in the "OU" annotated "Waterfront Related Commercial and Leisure Uses" zone; the Star Ferry Clock Tower would be recreated in front of Piers 7 and 8; or pier roof-garden would be provided to allow unobstructed view of the harbour. Similarly, the dual military and open space uses on the site should be more clearly reflected in the zoning on the Plan, the Notes and/or the ES.

[Ms Bernedette H.H. Linn and Mr Clarence W.T. Leung returned to join the meeting at this point.]

97. The Chairman said that the views expressed by Members in the morning

discussion was that the “OU(MU)” zoning of the CMD site was considered appropriate and Members were focusing on discussing whether the ES needed to be amended. He referred Members to details about DoJ’s advice included in paragraph 5.4(p) of the TPB Paper which stated that “as regards the queries on the Garrison’s agreement to open the military dock not explicitly stated in the OZP, the Board was not empowered under the Ordinance to specify the operational details or arrangement of a specific site in the OZP or its Notes”.

98. The Vice-chairman was of the view that amendments to the ES to reflect both purposes would not contravene the Town Planning Ordinance. The Board had in the past included similar details in the ES of other OZPs, for example, to specify that some places needed to be open to the public. Moreover, a statement of the intention that the site would be open to the public when not in military use was a planning intention for the CMD site and not operational details. Operational details might include how many days the site would be opened and the specific opening hours. Amendment to the ES to clearly include the intention to open the site for public use when not in military use might be able to address some of the representers’/commenters’ concerns and might have some positive public relations (PR) effect.

99. The Chairman said that while Members might consider whether opening the CMD site to the public when not in military use was a planning objective for the site, and whether it was appropriate to reflect this in the ES, PR was not a relevant planning consideration.

100. A Member agreed with the Vice-chairman that the ES should be amended to indicate that the site would be open to the public when not in military use as it reflected the Garrison’s agreement and it would not affect the primary planning intention of the site for military purpose. Another Member agreed that amendment to the ES to reflect the Garrison’s agreement would not contravene the Ordinance.

[Dr C.P. Lau returned to join the meeting at this point.]

101. A Member had a different view and considered that an indication that the site would be open to the public when not in military use might be regarded as an operational detail. Amendments to the ES could not address the concerns raised by the representers/commenters.

102. The Chairman again referred Members to DoJ's advice in paragraph 5.4(p) of the TPB Paper and said that DoJ had advised that the ES should only include the planning intention and objectives of the Board and that the planning intention for the CMD site as stated in the OZP was to reflect the delineation of the area for the military dock. Hence, DoJ did not consider it appropriate to include operational details or arrangements of a specific site in the OZP or the Notes. Based on the above discussion, Members might consider different options, including not to propose any amendment to the ES; or to revise the ES by indicating as a planning objective that the site would be open to the public when not in military use or state the Garrison's agreement to open the site to the public when not in military use.

103. A Member said that the Board had recently approved a rezoning request in Wan Chai and had requested for specification of an operational detail, i.e. opening of the ground floor to the public. In response to the Member's question, the Secretary said that for that case, the requirement was included in the ES. She clarified that DoJ's advice was since the Board had agreed that the planning intention for the site was for military use and the opening of the site to the public was based on the Garrison's agreement rather than the Board's planning intention, it should not be included in the ES.

104. The Vice-chairman said that opening of the military site to the public when not in military use was all along the planning intention for the site based on the Garrison's agreement. It was not a decision made in response to concerns raised by the representers/commenters. He reiterated his view that only indicating that the site would be open to the public when not in military use was not operational details. Even if the ES was amended, it would not conflict with DoJ's views.

105. A Member said that the CMD site was very special in that military use

and open space use were to be integrated on the same site. The primary use was military use and since the Garrison was the party to offer to open the military site, it was difficult to argue that this was the planning intention. On the contrary, the provision of the walkway and open space to the south of the site to allow for continuous access along the waterfront would constitute the planning intention.

106. Mr K.K. Ling said that while it would be arguable what should constitute a planning intention, it was well understood that one function of the ES was to provide information about the OZP. The Garrison's agreement to open the site to the public when not in military use was information that the Government had consistently made known to the public.

107. A Member said that the site was for military use and it was PLA's intention, rather than the Board's intention, that the site would be open to the public when not in military use. Hence, it would not be appropriate to amend the ES to indicate that it was the Board's intention to open the CMD site. However, whether the ES should be amended to state the fact about the Garrison's agreement to open the site might be considered. It was the Member's view that the Board should decide on the matter based on planning considerations and should not consider the PR perspective. In any case, there would not be much positive PR effect as it could not fully address the concerns of the representers/commenters. Another Member agreed with this view.

108. A Member doubted if the rezoning of the CMD site from "O" to "OU(MU)" should be described as a technical amendment. In response, the Secretary explained that technical amendments normally referred to amendments to reflect as-built situations or amendments that had no material planning impact. OZP amendments, whether technical or otherwise, were effected either under sections 5 or 7 of the Ordinance. The current zoning amendment was described as a technical amendment as it was mainly to reflect the completed military dock.

109. Ms Bernedette H.H. Linn said that the ES could be revised to indicate the alternative open space use that was anticipated for the site. The Board generally

agreed to this alternative intention for open space use on the site and considered it to be a compatible use. Hence, the alternative open space use could be regarded as a part of the planning intention, albeit not the primary intention. Another Member agreed that the ES should be revised to reflect the Garrison's agreement, such amendment was not proposed for PR purpose but to indicate a fact.

110. A Member also considered that there were benefits to include clearer information in the ES about the future uses on the site. Nevertheless, the wording had to be carefully considered to reflect the primary intention of the site being a military use, and that it would only be open to the public when not in military use.

111. The Chairman reminded Members that the Garrison's agreement was to open the land area of the military dock to the public as part of the waterfront promenade when the dock was not in military use. Members should be mindful that the Garrison's agreement was for the site to be open as part of the waterfront promenade, and not as a public open space.

112. A Member also agreed that the ES should be amended and it would be beneficial to state clearly that the site would be open to the public when not in military use. That was in fact all along the Board's understanding of how the site would be used. It was not related to PR considerations.

113. The Vice-chairman said that owing to the history, there was a definite need to hand over and delineate a waterfront space for a military dock at that location. Suitable amendment to the ES would be able to highlight the general planning intention for continuous pedestrian access along the waterfront.

114. The Chairman concluded that having considered the legal advice included in paragraph 5.4(p) of the TPB paper, the majority view of Members was that the ES should be revised to reflect the Garrison's agreement and the possible wording might be along the lines that the Garrison had agreed to open the land area of the military dock to the public as part of the waterfront promenade when it was not in military use.

115. Two Members said that the suggested wording might not reflect some Members' view that opening of the military site was part of the planning intention for the site.

116. A Member had a different view and said that the reason why the site would be open to the public was due to the Garrison's agreement. The ES should not be worded as if it was the Board's intention. As such, the ES should be amended to only state the fact about the Garrison's agreement. The Chairman said that if only the fact was to be stated, then the wording might be along the lines that 'the Garrison had agreed, that having regard to its operation and need for protecting the military dock, to open the area of the military dock (except for the ancillary structures and landing steps) to the public as part of the waterfront promenade for enjoyment when it is not in military use'. Mr K.K. Ling suggested that the wording should make reference to the statement previously shown to the public, including the LegCo, as mentioned by PlanD at the hearing. Members agreed.

117. In summary, the Chairman concluded that Members noted DoJ's advice on the matter but considered it was not relevant to the proposed amendment to the ES as it was not to include operational details or arrangements for the site, but rather a fact about the Garrison's agreement. The Secretariat was asked to further refine the wording for Members' agreement.

[Mr Wilton W.T. Fok left the meeting temporarily at this point.]

Development Scale

118. The Chairman said that some presenters/commenters had indicated that the imposition of only building height restriction in the "OU(MU)1" zone did not provide sufficient planning control. They doubted why other development restrictions such as plot ratio, gross floor area and site coverage were not imposed. In this regard, PlanD had explained in the hearing that the area of the "OU(MU)1" zone, occupying about 0.3ha, only accounted for a minor portion of the waterfront promenade of the new Central harbourfront which was about 9.87ha; that the Board

did not impose any development restrictions on other military sites in Hong Kong (except for the three sites zoned for residential use); and that the PLA had indicated that they had no plan to build any further structures in CMD.

119. A Member said that CMD was used for defence purpose and it was not appropriate to impose unnecessary restrictions on the site. No additional development restrictions should be imposed to allow some flexibility in case there were unforeseen needs, although the PLA had indicated that they had no plan to build further structure.

120. In summary, Members noted and agreed that a building height restriction of 10mPD imposed on the “OU(MU)1” zone was appropriate. The restriction respected the waterfront setting and avoided creating visual intrusion to the developments behind. It was in line with the proposed height of 10mPD as recommended under UDS. The building height restriction of 10mPD would only allow structures with an absolute building height up to 5.8m which was compatible with the waterfront setting. Although some representers had indicated that there was no need for a minor relaxation clause for the building height restriction, inclusion of a minor relaxation clause was a standard practice of the Board for all zonings with building height restrictions to cater for site-specific circumstances and the Board would scrutinize each application for minor relaxation on its own merits.

[Mr Lincoln L.H. Huang left the meeting temporarily at this point.]

Public Order Ordinance

121. Members were asked to consider some representers’ suggestion for the military dock area and access road to be closed under the Public Order Ordinance (section 36 of Cap. 245) for use by the Garrison when a vessel was berthed. A Member said that the Board was working under the mandate of the Town Planning Ordinance and the suggestion involving another Ordinance was outside the purview of the Board.

Representer's Proposals

122. The Chairman said that the proposals from the representers had been covered in the earlier discussion and he recapped the proposals and Members' views. With regard to the proposal to confine the military use zone to the four structures only, Members did not agree and the main views were that the current zoning covered the entire military dock area which was required for the operation of the Garrison and did not cover the four single-storey buildings only. Such zoning was not in line with the Board's normal practice in delineating zoning boundaries.

123. Regarding the proposal to rezone the CMD site to "O" with temporary measures for closure for military use when necessary, Members did not agree and the conclusion was that having regard to the historical background, it was clear that the primary intention of the site was for military use rather than open space use.

124. On the proposal to consult the public again on the zoning of the site, Members considered it not necessary to consult the public again. The main reasons were that the military berth at the Central harbourfront was deliberated at length on various occasions, when the draft OZP was gazetted in 1998 for objections; when the LegCo approved the funding for building CMD and the ancillary facilities as part of the CRIII project on 21.6.2002; when the public was consulted on the location and design of CMD in the extensive public engagement exercises under the UDS in 2008; and when the architectural design was presented to the Central & Western District Council and Harbourfront Commission's Task Force on Harbourfront Developments on Hong Kong Island on 13.5.2010 and 6.10.2010 respectively. The current OZP was exhibited and published for public representations and comments in accordance with the provisions of the Ordinance; and the statutory and administrative procedures for consulting the public on the OZP amendments had been duly followed. The Board had also thoroughly considered the representations and comments received on the OZP.

125. With regard to the proposal to revise the Notes and ES of the OZP to reflect the dual purposes of the site for open space and military use, Members did not

agree given that primary purpose of the site was for military use as a military dock. The Garrison's agreement was to open the CMD site to the public as part of the waterfront promenade when not in military use. The Secretary said that Members had to discuss whether the agreement to amend the ES was to meet the representers' proposal or not. The Vice-chairman said that the revision to the ES agreed at the meeting was not intended to meet the representations. The Board was well aware of the Garrison's agreement before the hearing and the decision was to include this fact into the ES to reflect this. Members considered that the ES did not form part of the OZP and the revision to the ES would not be gazetted as an amendment under section 6C(2). The draft OZP (including the revised ES) would be submitted to the Chief Executive in Council for approval and would be gazetted for public inspection in accordance with the provisions of the Ordinance after the OZP was approved.

The Hearing Arrangement

126. The Vice-chairman said that the Board had agreed to adopt special arrangements for the hearing, including a limit of 10 minutes on the presentation time as well as other flexible arrangements to facilitate the representers'/commenters' presentation at the meeting. These special arrangements were necessary and appropriate and the hearing sessions had generally been conducted in an effective manner. Another Member said that the limit of 10 minutes on the presentation time was generally sufficient as most of the presenters were able to finish their presentations within the time limit. The Chairman concluded Members' views that the special arrangements were necessary and the hearing was conducted in an orderly manner and the representers had used the flexible arrangements to suit their presentation needs.

127. Based on the meeting discussion, the Board requested the Secretariat to draft the reasons for not upholding the adverse representations for the Board to consider in another session of the meeting.

128. The meeting was adjourned at 3:05 pm.