

1. The meeting was resumed at 9:15 a.m. on 20.11.2013.
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

Dr C.P. Lau

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Dr W.K. Yau

Mr H.W. Cheung

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

Assistant Director (2), Home Affairs Department

Mr Eric K.S. Hui

Deputy Director of Lands (General)

Mr Jeff Y.T. Lam

Director of Planning

Mr K.K. Ling

Presentation and Question Session

[Open Meeting]

3. The following Government representatives, representer and representers' representatives were invited to the meeting at this point:

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

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

Mr Mak Chi Biu - Chief Engineer/Hong Kong (1), Civil
Engineering and Development Department
(CE/HK1, CEDD)

R8326 – Kim Chan

Mr Hui Man Cheong - Representer's representative

R9106 – Ho Kwan Tai

Mr Wong Kai Yeung - Representer's representative

R9475 – Chu Mo Fong

Ms Chu Mo Fong - Representer

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

R8326 - Kim Chan (Represented by Mr Hui Man Cheong)

7. Mr Hui Man Cheong made the following main points:

- (a) he was representing 'Streetwise Policy Unit' which was a think tank formed voluntarily by citizens who cared about the development of Hong Kong;
- (b) the imposition of a 10-minute time limit on oral submissions made by representers and commenters would restrict the public from expressing their views and undermine the public consultation process;
- (c) as the former naval base at Tamar Basin had been reprovisioned at the Stonecutters Island, there was no need to provide additional military facilities in the Central District. CMD might only be constructed for fulfilling the commitment under DLA and symbolising the sovereignty of PRC;
- (d) there was reservation on the need to convert the originally planned 150m military berth into a military dock occupying a land area of 0.3 hectare;

- (e) the amendments to the OZP were not technical in nature. The rezoning of the CMD site from “O” to “OU(MU)1” was a significant change because the control of the CMD site would be transferred to the Garrison and the priority of using the site as open space for the public would be affected;
- (f) there were concerns on the opening hours and operational arrangements of the CMD site when it was not in military use, as such information had not been provided in the public consultation process. The information should be given to the public.
- (g) according to the Garrison Law, military restricted zones were managed by the Garrison. As such, there might be complication in law enforcement by the Hong Kong Police Force and the Garrison within the CMD site. The legal rights of the public within the CMD site should be made clear;
- (h) it was necessary to strike a balance among all the requirements of various legislation so as to ensure a usable space at CMD would be made available for public enjoyment. Currently, no detailed restrictions were specified on the OZP for the CMD site. The Board should review this;
- (i) noting that the Chairman of the Board was from the Development Bureau and town planning played an important role in the development of Hong Kong, it was necessary for the Board to be independent in order to uphold procedural justice; and
- (j) an open and considerate attitude should be adopted by the Board, as dialogue with the public was important.

[Actual speaking time of R8326: 10 minutes]

R9106 – Ho Kwan Tai (Represented by Mr Wong Kai Yeung)

8. Mr Wong Kai Yeung made the following main points:

- (a) he was a research student at the University of Hong Kong;
- (b) the amendments to the OZP contravened two fundamental legal principles. First, the amendments were premised on an misconception on the constitutional status of the HKSAR at the international level; and second, the OZP would give rise to practical difficulty in legal jurisdiction which could potentially undermine the protection of the rule of law and human rights in Hong Kong;
- (c) there was no legal justification for the amendments to the OZP. The Government had made little mention of the legal and constitutional aspects of the OZP amendments. So far, no response had been provided by the Government on the legal opinion and reasoning expressed by the representers;
- (d) the Government had placed considerable reliance on DLA in putting forward the OZP amendments. DLA was plainly an international treaty which had no legal effect on Hong Kong laws. The Government had consistently refused to give effect to other international treaties such as the right to adequate housing under Article 11 of International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly;
- (e) DLA was a bilateral treaty between the Chinese Government and the British Government. The HKSAR Government had no residual obligation under DLA after the reunification on 1.7.1997. Any unperformed obligation in DLA should be enforced by the Chinese Government against the British Government at the international level;
- (f) according to DLA, military sites should be used exclusively for military

purposes. Their use right was not transferable and they could not be used for purposes other than defence. There was concern over whether the DLA requirements could be complied with by the Garrison's undertaking to open the CMD site for public use when it was not in military use;

- (g) there was also a concern on the judicial jurisdiction and law enforcement power of members of the Garrison within the CMD site, as there were different provisions under Article 19 and Articles 20 to 22 of the Garrison Law. For example, Article 19 stated that any member of the Garrison who contravened any law of the HKSAR should be investigated for legal responsibility according to the law, but Article 20 stipulated that criminal offences committed by members of the Garrison should be under the jurisdiction of the military judicial organs; and

[Dr W.K. Yau returned to join at the meeting at this point.]

- (h) it should be made known to the public that CMD, which differed from other parts of the promenade, would be governed by the Garrison Law. As the demarcation of the CMD site was unclear, there might be a situation in which unprecedented and unconceivable jurisdictional difficulties would arise. There was a concern whether the legal rights of Hong Kong people would be protected within the CMD.

[Actual speaking time of R9106: 10 minutes]

R9475 – Chu Mo Fong

9. Ms Chu Mo Fong made the following main points:

- (a) the harbourfront belonged to the people of Hong Kong and should be made available for public enjoyment;
- (b) public views had not been sought on the military dock during the

previous public consultation exercises;

- (c) when the funding for CRIII was approved by the Finance Committee of LegCo in 2002, the Central harbourfront was indicated as open space in the relevant documents. There was no mention of designating the CMD site for military use;
- (d) the CMD site at the Central harbourfront was not amongst one of the 14 military sites to be handed over to the Garrison by the British Government under DLA; and
- (e) military facilities and military use were two different things. Military facilities should only be provided along the Central harbourfront for the People's Liberation Army (PLA) as and when required.

[Actual speaking time of R9475: 3 minutes]

10. As the presentation from the Government representatives, the representer and representers' representatives had been completed, the Chairman invited questions from Members.

11. Referring to a slide showing PlanD's responses to the major grounds of representations/comments, a Member asked whether planning permission from the Board was required for the military dock. Miss Elsa Cheuk said that 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. The intention was that there would be a military dock at the Central waterfront and its location was clearly presented on the OZP by a straight line annotated "150m Military Berth (subject to detailed design)". As military dock and military berth were of the same nature for the berthing of vessels, it was a permitted use and planning permission was not required for the military dock including its ancillary facilities. Miss Cheuk continued to say that according to Article 5 of the Garrison Law, the Garrison should perform defence functions and responsibilities which included the carrying out of defence duties and control of military functions. The zoning of the CMD site was hence amended to "OU(MU(1))" to

reflect the planning intention for the development of the military dock.

12. Regarding the queries raised by the representers on the legal issues, the same Member asked whether the HKSAR Government was obliged to construct the military dock as it was not a signatory of DLA. Miss Elsa Cheuk said that the objective of DLA was to make appropriate arrangements for the use of military sites in Hong Kong after the reunification. Annex III of DLA stipulated that the then Hong Kong Government would “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 (i.e. the Central Barracks) for the construction of a military dock after 1997”. As the military dock and its ancillary facilities were not completed before the reunification due to the Central Reclamation, the HKSAR Government took up the construction of CMD and its ancillary facilities at the Central harbourfront.

13. A Member said that under Annex III of DLA, apart from CMD, other military facilities such as the military transportation centre at Chek Lap Kok were required to be reprovisioned for the Garrison after the reunification. The Member asked whether these military facilities had already been reprovisioned and, if so, at what time. Miss Elsa Cheuk said that she had no detailed information on this aspect at hand. Another Member said that the principle adopted in the reprovisioning of other military facilities under DLA might be relevant to the consideration of CMD. Mr Hui Man Cheong (representative of R8326) said that the nature and operation of different military facilities were different. CMD was located at the heart of the Central District. Moreover, there were fundamental differences between the “O” and “OU(MU)1” zonings. In particular, the control of the CMD site would be handed over to the Garrison upon designation of the site for military use. As such, the operational details of CMD should be made known to the public in order to address public concerns. Mr Hui was also concerned about whether the amendments to the OZP were purposively arranged by the present Government, as the concerned area was always zoned “O” in the previous OZPs.

14. In response to a Member’s enquiry on the site area of CMD, Miss Elsa Cheuk referred to a slide showing an aerial photo of the Central harbourfront and said that its land area was about 0.3 hectare whilst the total area of the waterfront promenade was about 9.87 hectares.

15. A Member enquired about the public consultation conducted for CMD. With the aid of some slides, Miss Cheuk elaborated on the planning history of CMD, which covered the following main points:

- (a) before the reunification, the British Garrison used to have a naval base and dock facilities in the former Tamar Basin;
- (b) DLA was to make appropriate arrangements for the use of military sites in Hong Kong after the reunification. It set out the military sites to be handed over to the Garrison by the British Government, military sites to be handed over to the then Hong Kong Government for disposal, and military buildings and fixed facilities to be reprovisioned for the Garrison;
- (c) as Tamar Basin was planned to be reclaimed under the Central Reclamation, Annex III of DLA provided that a naval base should be reprovisioned on Stonecutters Island and 150m of the eventual permanent waterfront near the Central Barracks should be left free for construction of a military dock;
- (d) 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 that CMD would take and the area it would occupy were not decided at that time, the military dock was represented by a straight line annotated “150m Military Berth (subject to detailed design)” on the OZP;
- (e) the intentions to construct the 150m long military berth and its associated facilities on the Central Reclamation and to open the land area of the military dock for public use when it was not in military use were spelt out in a paper seeking funding approval for CR III and endorsed by LegCo in 2002;
- (f) in 2007, PlanD commissioned the Urban Design Study for the New

Central Harbourfront (UDS). Under UDS, the waterfront promenade including the CMD had been identified as one of the key sites, i.e. Site 7, for public consultation purpose. During the public engagement (PE) exercise of UDS in 2008, it had been publicly stated that the design of the military dock including its four ancillary buildings would be integrated into the waterfront promenade and the dock would be open to public when it was not in military use;

- (g) the PE exercise of UDS involved a wide range of activities including public exhibitions, roving exhibitions, comment cards, face-to-face interviews, telephone polls, focus group workshop, community engagement forum, briefings to relevant public and advisory bodies, guided tours and consolidated forums. During the PE process of UDS, public comments on the military dock, including its design and location, the use of folding gates and an integrated design with the promenade, were received through a number of channels. In the Final Report of UDS, there was a section specifically discussing CMD as an issue raised by the public and the Government's response. For example, while there was public suggestion to provide the military berth at an off-shore location, it was considered inappropriate as reclamation would be required which would contravene the Protection of the Harbour Ordinance;
- (h) upon completion of UDS in 2011, the location, broad area and conceptual design of CMD and its ancillary facilities, including the folding gate design, had been indicated in the Information Digest and Final Report of UDS;
- (i) the Central and Western District Council (C&WDC) and the Task Force on Harbourfront Developments on Hong Kong Island (HKTF) under the Harbourfront Commission were briefed on the architectural design of CMD in 2010, as part of the works of the advance promenade of the new Central harbourfront;

- (j) the processing of representations in respect of the OZP was in accordance with the provisions of the Ordinance. The amendments to the OZP had been published in the Gazette for public inspection for two months during which representation could be made to the Board, and all representations received during the two-month plan exhibition period had been published for public inspection for three weeks for public comment. The representers and commenters had been invited to attend the Board meeting to present their views; and

- (k) amendments to the OZP were presented to HKTF on 21.2.2013, C&WDC on 21.3.2013 and 23.5.2013, and LegCo Panel on Development on 28.5.2013 respectively.

16. In response to the question of a Member, Mr Wong Kai Yeung (representative of R9106) said that DLA was an international agreement signed between the Chinese Government and the British Government. Under DLA, the legal responsibility for reserving the 150m coastline in Central for construction of the military berth vested with the British Government. As such, DLA should not be a relevant consideration for the HKSAR Government in respect of the zoning amendments for the CMD site. If such irrelevant consideration had been taken into account by the Board, it might have acted ultra vires and its decision could be subject to judicial review.

17. A Member said that the act of the HKSAR Government was bound by the Basic Law which was also an agreement signed between the Chinese Government and the British Government before the reunification. This Member asked the representative of R9106 if there was any precedent case that the HKSAR Government should not follow an international agreement. Mr Wong Kai Yeung said that DLA should be interpreted according to the principles of the international law rather than that of the common law. The legal obligations and responsibilities under international treaties were subject to the actual intent in drafting. As for DLA, the responsibility to reserve the 150m coastline in Central was clearly on the British Government. Mr Wong also said that the Basic Law would be a different matter as it was a constitutional legislation under the Constitution of the PRC and was therefore applicable to the HKSAR.

18. A Member asked the representative of R9106 whether the HKSAR Government had an obligation to fulfill the DLA requirement as the successor to the then Hong Kong Government. Mr Wong Kai Yeung said that DLA only required the British Government to reserve a 150m coastline in Central. The HKSAR Government, which was not a signatory to DLA, had no obligation to construct the military dock. DLA was therefore irrelevant in justifying the amendments to the OZP. Another Member asked Mr Wong whether DLA should be considered as a historical background in determining the use of the CMD site as reflected by the OZP amendments. Mr Wong said that as DLA was not a legally binding factor, the weight to be placed on it in considering the OZP amendments would be an issue. Nevertheless, as the military dock should be for defence purpose, its right of use should not be transferred or made available to the public as this would contravene DLA and the Garrison Law.

19. A Member noted that the design of CMD had been discussed in C&WDC in 2010 while the amendments to the OZP were exhibited for public inspection in 2013. This Member asked whether the change in office of the Government was relevant to the timing of the OZP amendments. Miss Elsa Cheuk said that UDS was only completed in 2011. As the detailed design and delineation of CMD had been confirmed and the construction works were reaching the final stages, PlanD proceeded with proposing the amendments to the OZP in early 2013.

20. Another Member asked who would be responsible for the management of the CMD when it was not in military use. Miss Elsa Cheuk said that according to the Garrison Law, the Garrison would be responsible for the management of military sites. The Garrison had agreed to 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 promenade when it was not in military use, having regard to its operation and need for protecting the military dock. The HKSAR Government would liaise with the Garrison on the details of the opening and closure arrangements and would notify the public about such arrangements.

21. A Member said that the representative of R9106 seemed to agree that DLA would be part of the historical background in determining the use of the CMD site and was therefore not totally irrelevant, but the question was how much weight would be attributable to this factor. Mr Wong Kai Yeung said that DLA could only be regarded as

a historical context but not a legal requirement nor relevant consideration for the amendments to the OZP. If there was a legal obligation for the HKSAR Government to provide a military dock under DLA, much more weight could be placed on DLA in considering the OZP amendments.

22. Noting that CMD was represented by a straight line annotated “150m Military Berth (subject to detailed design)” on the previous OZPs, a Member asked whether the amendments to the OZP were intended to clarify the final design of CMD. Miss Elsa Cheuk said that 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. The said annotation was first incorporated into the approved OZP based on the available information at that time. It had remained unchanged until 2013 when the subject amendments to the OZP were made. As the detailed design and delineation of the military dock had been confirmed and the construction works were reaching their final stage, as a normal practice, amendments to OZP would be initiated to reflect the final delineation and the land use of the military dock. The same practice was also adopted for the amendments to the OZP in respect of Central Piers 9 and 10 under the same OZP.

23. A Member asked the representative of R9106 what legal obligation was to be fulfilled under DLA in respect of the reprovisioning of the military dock. Mr Wong Kai Yeung (representative of R9106) said that according to DLA, the British Government was only required to leave free 150m coastline for future construction of a military dock in Central. DLA did not require construction of the military dock. As Hong Kong was no longer a British colony after the reunification, the HKSAR Government had no obligation to fulfill any legal requirement under DLA on behalf of the British Government.

24. As all the representer and representers’ representatives attending the session had completed their presentations and Members had no further question to raise and no more representers arrived to attend the session at that moment, the Chairman thanked the representer, representers’ representatives and the Government representatives for attending the meeting. They all left the meeting at this point.

25. The meeting was adjourned for a 5-minute break.

[Mr Patrick H.T. Lau left the meeting temporarily at this point.]

[Closed Meeting]

26. The Chairman said that an additional session of the meeting had been originally reserved on 21.11.2013 to cater for those representers who could not attend their original sessions but explanations were provided to the satisfaction of the Board for their absence. The additional session was also intended for those representers who had previously walked out from the meeting on 4.11.2013 but wished to return to make their presentations. He said that this additional session might no longer be required as Ms Ho Loy (R32) and Designing Hong Kong (R42) had already indicated that they would not attend the meeting on 21.11.2013. The Secretary supplemented that for some representers who were unable to attend the session of meeting scheduled for them, they had chosen to attend those sessions scheduled after 25.11.2013 in the capacity of commenters. However, as the Board was satisfied with the reasons for not being able to attend the originally scheduled session of meeting given by Mr Nigel Kat (R48), he had been offered the session of the meeting on 21.11.2013 from 5:00 p.m. to 6:00 p.m. The Secretary said that Mr Kat had not yet confirmed whether he would attend the session of the meeting on 21.11.2013 or he would authorise a representative to attend on his behalf.

27. Some Members said that since no session of meeting was originally scheduled for 21.11.2013, Mr Kat should be requested to confirm his attendance by 5:00 p.m. on 20.11.2013 so that the Board could make the necessary arrangement. The Secretariat would notify the public through the Notice Board on the Board's website that a session of the meeting would be held on 21.11.2013, if necessary.

28. The meeting was adjourned at 11:30 a.m.