

1. The meeting was resumed at 9:05 a.m. on 25.11.2013.
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

Mr Timothy K.W. Ma

Professor Eddie C.M. Hui

Ms Julia M.K. Lau

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Dr W.K. Yau

Ms Bonnie J.Y. Chan

Professor K.C. Chau

Mr Ivan C.S. Fu

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Mr F.C. Chan

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Miss Winnie M.W. Wong

Deputy Director of Lands (General)
Mr Jeff Y.T. Lam

Director of Planning
Mr K.K. Ling

[Closed Meeting]

3. Members noted that a letter of 22.11.2013 by Mr Paul Zimmerman of Designing Hong Kong Limited (R42) addressed to the Town Planning Board (the Board) was tabled at the meeting. Regarding R42's request for the Board to ensure that representatives from the Home Affairs Bureau, Leisure and Culture Services Department (LCSD) and Security Bureau would attend the hearing, the Chairman said that under the established practice, the Board would only invite relevant government departments/bureaux to attend the meeting if considered necessary. Members agreed that so far, there was no need to invite these departments/bureaux to the hearing.

Presentation and Question Session

[Open meeting]

4. The following Government representatives, the representers/commenters and their 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 C.B. Mak - Chief Engineer/Hong Kong (1) (CE/HK1),
Civil Engineering and Development
Department (CEDD)

R15 – Mr Chan Ka Lok

Mr Chan Ka Lok - Representer

R2841 – Leslie Chan

Mr Leslie Chan - Representer

R9507 – Tam Wai Chee

Mr Tam Wai Chee - Representer

R29 – Central & Western Concern Group

C12 – Katty Law Ngan Ning

Ms Katty Law - Representer's/Commenter's representative

R9672 – Sarah Wong

R9788 – Irene Lee

C18 – Society for Protection of the Harbour

C23 – Quinnie Lau

C146 – Jeffrey Tse

C224 – Woo Yun Lam James

Mr Dennis Li]

Mr Ian Brownlee]

Mr Hardy Lok] Representers'/commenters' Representatives

Mr Jeff Tse]

Ms Kira Brownlee]

Mr Chu Ka Shing]

C6 – Fung Yu Chuen

Mr Fung Yu Chuen - Commenter

C19 – Mary Mulvihill

Ms Mary Mulvihill - Commenter

5. 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 would be allocated a total of 10-minute 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 the oral submission from a representer/commenter or his authorized representative would be considered by the Board and the Board retained the discretion

whether to allow such which would only be exercised upon sufficient cause shown and after taking into account all relevant circumstances. If his request was allowed by the Board, he would be either given further time in the same allotted session to make his submission (if time permitted), or notified of the date when he would be invited to return for such purpose. He then invited the representatives of PlanD to brief Members on the background to the case.

[Ms Anita W.T. Ma, Mr Dominic K.K. Lam and Ms Bonnie J.Y. Chan returned to join the meeting at this point.]

6. With the aid of a Powerpoint presentation, Miss Elsa Cheuk, CTP/SD of PlanD, 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.

7. The Chairman then invited the representers, commenters and their representatives to elaborate on their representations and comments. The Chairman said that the presentation should be confined to an elaboration of the written submissions already made and that any new information submitted/presented would not be taken into consideration by the Board.

R9507 – Tam Wai Chee

8. Mr Tam Wai Chee made the following main points:

- (a) he objected to the imposition of a 10-minute time limit on the oral submission of each representer/commenter by the Board, which was against procedural justice;
- (b) a military base with high security facilities had already been provided at Stonecutters Island. There was no need for another one at the city centre;
- (c) the Central Military Dock (CMD) was located at the middle of the harbour. Military vessels could have difficulty in entering into the

narrow harbour. Hence, CMD could not serve a defence purpose and the Garrison would not make use of it; and

- (d) the Board should reject the zoning amendment for the good of future generation. The waterfront should be returned for public use.

[Actual speaking time of R9507: 5 minutes]

[Ms Julia M. K. Lau returned to join the meeting at this point.]

R15 – Mr Chan Ka Lok

9. Mr Chan Ka Lok made the following main points:

- (a) as a Legislative Council (LegCo) Member, he represented his voters and objected to the zoning amendment of the CMD site.
- (b) he reckoned that his objection to the time limit imposed on the oral submission of representers/commenters and the conflict of roles of the Chairman of the Board would be dealt with in a separate venue in future;
- (c) he would continue to present his arguments against the zoning amendment of the CMD site from planning, historical and legal perspectives which would cover the following documents and events:
 - (i) the statement made by the Chief Executive (CE) at the LegCo meeting on 9.5.2013;
 - (ii) the 1994 Defence Land Agreement (DLA);
 - (iii) the statement made by the then Secretary for Security in 1994;
 - (iv) the Central & Western District Council (C&WDC) meeting on 13.5.2010 and a telephone interview during a radio programme in April 2013;
 - (v) some recent press reports on the Board's hearing;
 - (vi) some recent commentaries on the CMD site; and

(vii) the 1996 Garrison Law;

Statement made by CE at the LegCo Meeting on 9.5.2013

(d) at the LegCo meeting on 9.5.2013, CE stated the following:

“Military sites are for the defence of Hong Kong. Both the HKSAR Government and Hong Kong people must render their support and co-operation. In the 10 years before the reunification, the British Garrison required Hong Kong to pay more than \$12 billion as defence costs. Right in front of the British Garrison headquarters building, there was an exclusive berth. The waterfront over there was a military restricted zone which was never opened to the public, regardless of whether the berth was occupied by any military vessels. After the reunification, the country does not require Hong Kong to pay any military costs; the People’s Liberation Army (PLA) maintains a low-profile presence in Hong Kong, observing strict military disciplines. The former British Garrison headquarters is now the headquarters of the PLA’s Hong Kong Garrison, and as a result of the reclamation in front of the headquarters building to meet Hong Kong’s own development needs, the headquarters building is no longer directly accessible by sea. Following reclamation, a section of the shoreline there may at times be used by military vessels, but the Garrison has agreed to open the berth areas as a public leisure zone when the berth is not in use. This is a well-intentioned arrangement meant to accommodate Hong Kong people’s need. A few months ago, the Government put forward amendments to the Central District (Extension) Outline Zoning Plan (OZP), in a bid to complete the process of establishing a military berth that has spanned more than a decade. But this has aroused some people’s objection. The allegations made by some people are unfounded and heedless of the nature, origin, process and history of the issue. The HKSAR Government will continue to do the task of offering explanation and clarification to opponents.”;

- (e) CE was wrong to state that the opening of the CMD site was a well-intention arrangement by the Garrison which meant to accommodate Hong Kong people's need. Public fund had been used for the reclamation of the new Central harbourfront. All along, it was the understanding of the public, LegCo and District Councils that the waterfront would be used as public open space and part of the waterfront (150m long) would occasionally be used for berthing of military vessels to accommodate the need of the Garrison. It was totally opposite to what CE had said in LegCo. The public was not aware of the need for rezoning and carving out 0.3ha of the waterfront area permanently for military use until the gazettal of the OZP. The Government tried to mislead the public and the Board by stating that it was only a technical amendment;

- (f) the public and political parties were worried that, if the CMD site was rezoned for military use or declared as military restricted area, possible nuisances would be created by future military activities and the public's right to know would be deprived since there was a lack of transparency in the operation of the Garrison;

DLA

- (g) DLA was an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland (UK) and the Government of the People's Republic of China (PRC) on the arrangements for the future use of military sites in Hong Kong, in order to meet the needs of the military forces stationed in the HKSAR for defence purposes by the PRC Government as from 1.7.1997 and to accommodate Hong Kong's needs for social and economic development. The following declarations were made under DLA with regard to the use of military sites by the Garrison:

“1. The Government of the PRC shall, as from 1.7.1997, be responsible for the defence of the HKSAR. In addition to abiding by national laws, members of the Garrison stationed in the HKSAR for defence

tasks shall abide by the laws of the HKSAR. While ensuring the effective discharge of its defence responsibilities, the Garrison will abide by the relevant stipulations of the Government of the HKSAR on the development and use of land and on urban construction and planning.

2. 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. If a site used by the Garrison is no longer needed for defence purposes, it shall be handed over, without compensation, to the Government of the HKSAR for disposal.”;
- (h) despite the above declarations, the public was concerned that future activities within the CMD site would be under the direct control of the PRC Government after the site was rezoned for military use and became a closed area. All activities of the Garrison, the construction of new facilities and the rights of the public at the CMD site would no longer be governed or protected by Hong Kong laws;
 - (i) DLA required that military sites handed over to the Garrison should be used exclusively for defence purposes. The right to use the military sites should not be transferred and the sites should not be made available to others for purposes other than defence. As such, a logical conclusion would be that a military use and an open space use (i.e. a non-defence purpose) could not co-exist at the same site. The public and the Board should investigate in depth this legal issue, rather than believing in the Garrison’s promise that the CMD site would be open to the public as a part of the promenade when it was not in military use;
 - (j) Annex III (paragraph 5) of DLA only stipulated 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.”

Statement made by the then Secretary for Security in 1994

- (k) the then Secretary for Security made a statement in 1994 on the future of the defence estates. In relation to the Chinese Government policy on the use of defence land after 1997, the statement covered the following three points:
 - (i) the Chinese Garrison would use the land exclusively for defence purposes;
 - (ii) the right to use the sites would not be transferred and they would not be made available to others for non-defence purposes; and
 - (iii) if the Chinese Garrison no longer needed a site for defence, it would be released without compensation to the Hong Kong Government for disposal;

- (l) given that a military site could only be used for defence purpose, the opening of the CMD site to the public as a part of the promenade would depart from the original intention of DLA and the statement made by the then Secretary for Security. There was no authorization for the Board or the Government to change the original policy intention;

The C&WDC Meeting on 13.5.2010

- (m) on 13.5.2010, the C&WDC was consulted by the Government (including PlanD, CEDD, LCSD and the Architectural Services Department) on the proposed advance works for the promenade at the new Central harbourfront. The Government committed that a vibrant and accessible promenade would be provided there in future. The focus of the consultation was mainly on how the advance works would blend in with the long term planning and design of the waterfront promenade. However, the need to rezone 0.3 ha of waterfront area for military use was not mentioned in the consultation paper submitted to C&WDC

(C&WDC Paper No.59/2010). The drawings in the paper only showed the perspective views of the landscape area, instead of the design of the military dock. At the meeting, some C&WDC members asked about the future opening arrangement of the military dock for public use but the Government responded that it would be open to the public when it was not in military use without giving any details. Hence, it was not true for PlanD to state that the Government had already consulted C&WDC on the CMD site;

- (n) at an interview during a radio programme on 19.4.2013, Ms Cheng Lai King, a C&WDC member who attended the meeting on 13.5.2010, confirmed that she was not aware that part of the waterfront promenade would be put to military use and the Garrison would have the priority in using the CMD site. On the contrary, it had always been the understanding of the C&WDC that the public would have the priority to use the site as open space;

Recent Press Reports on the Board's Hearing

- (o) according to some recent press reports, in addressing the public concern on the details of the operating hours of the CMD site, it was explained by the PlanD's representative at the hearing that the Board was only empowered under the Town Planning Ordinance (the Ordinance) to set out the land use of the CMD site but not its opening hours. No details of the opening hours of the CMD site for public use had ever been provided to the public. It was unclear who would be able to provide such details. Under such circumstances, the public should not assume that the CMD site would be open to the public as a part of the promenade when it was not in military use, unless the zoning of the CMD site could be retained as "Open Space" ("O");
- (p) PlanD's representative also explained at the hearing that after the zoning amendment, the CMD site would be used and managed by the Garrison under the Garrison Law. At the same time, the HKSAR Government

could also take enforcement actions at the CMD site in accordance with Hong Kong laws if there were cases involving breaching of law and order. It seemed to suggest that both the Garrison Law and Hong Kong laws would be equally in force at the CMD site and would not be mutually exclusive. However, in his view, the above statements were self-conflicting. The public should seek further clarification from the Government on which law would override the other when the site was closed for military use;

Recent Commentaries on the CMD Site

- (q) Ms Ng Ngoi Yee, a former LegCo member, said that the Government had only indicated to LegCo in the consultation undertaken a few years ago that 150m of the waterfront would be set aside for the berthing of military vessels but did not mention that the site would be rezoned for military use. She said that a “military facility” should not be confused with a “military use”;
- (r) Ms Ng Ngoi Yee’s comment was then criticised by another LegCo Member, Mr Ip Kwok Him and Dr Song xiaozhuang (宋小莊). On the Hong Kong Commercial Daily, Mr Ip stated that it was more proper for the Garrison to station at a site zoned “military use” rather than “O”. Dr Song also stated on the Ta Kung Pao that the power of interpretation of a “military use” and a “military facility” should rest with the Central Military Commission (CMC). As the “military use” was far more important than other land uses, priority should be given in considering the use of the Central waterfront for a military dock;
- (s) the above commentaries aroused a major public concern that the CMD site would be entirely under the control of the CMC after rezoning. PlanD could not guarantee that it would be open to the public as a part of the promenade when it was not in military use. Without a written agreement from the Chairman of CMC, Mr Xi Jinping, there would be no legal basis that the Garrison would keep its promise to open the CMD

site for public use. Just like a recent aircraft accident at Shek Kong military site, the Hong Kong Police Force could only enter the military site with permission from the Garrison;

- (t) before making a decision on the rezoning, the Board should seek legal advice and clarifications from the Government on the law enforcement power at the CMD site in order not to damage Hong Kong's judicial system and to protect the rights and freedom of Hong Kong people;
- (u) a military site should only be used for defence purpose in accordance with DLA. If the CMD site was rezoned for military use, it could not be used for non-defence purposes. On the other hand, if the Garrison considered that the CMD site would seldom be used for defence purpose and majority of the time could be open to the public, there was no need for the rezoning and the CMD site should be retained as "O" so as to preserve the integrity and connectivity of the waterfront promenade;

The Garrison Law

- (v) the Garrison Law was adopted at the 23rd Meeting of the Standing Committee of the Eighth National People's Congress on 30.12.1996. There was a close relationship between various provisions under the Garrison Law and the current zoning amendment for the CMD site;

Article 5

- (w) Article 5 of the Garrison Law –
“The Hong Kong Garrison shall perform the following defence functions and responsibilities:
 - (1) preparing against and resisting aggression, and safeguarding the security of the HKSAR;
 - (2) carrying out defence duties;
 - (3) controlling military facilities; and
 - (4) handling foreign-related military affairs”;

- (x) apart from the above defence functions and responsibilities, the Garrison had no responsibility to assist the HKSAR Government to manage a public open space nor to accommodate the need of the Hong Kong people. There was no legal basis and policy document for the Government to state that the Garrison would open the CMD site for public to use in future which would contravene the original policy intention and legal provision;

Article 7

- (y) Article 7 of the Garrison Law –
“No weapon and equipment, such as aircraft and vessels, and no material of the Hong Kong Garrison, and no member or vehicle of the Garrison that bears a certificate or a document of certification issued by the Hong Kong Garrison showing that the bearer is on official duty, shall be inspected, searched, seized or detained by any law-enforcing officer of the HKSAR. The Hong Kong Garrison and its members shall also enjoy other rights and immunities prescribed by the laws in force in the HKSAR”;
- (z) all members and facilities of the Garrison were exempted from Hong Kong laws and inspection by the law-enforcing officers of the HKSAR under the above provision. There was no need for the Garrison to seek approval from the HKSAR Government on any modification of the existing facilities or construction/installation of new facilities at the CMD site, e.g. cannons and CCTVs, as long as they were for defence purposes. The installation of CCTVs would violate the privacy of the public but the Garrison would be exempted from the Privacy Policy;
- (aa) as confirmed by the former Secretary for Security, Hon Regina Ip Lau Suk-ye, the Garrison had the full authority to determine the use and facilities for defence purposes at a military site which was outside the control of the HKSAR Government;

- (bb) there was no legal basis for PlanD to claim that both the Garrison Law and Hong Kong laws would equally be applied at the CMD site after it was returned to the Garrison. If the CMD site was rezoned for military use, the HKSAR Government could not take enforcement actions in accordance with Hong Kong laws;

Article 8

- (cc) Article 8 of the Garrison Law –
“Members of the Hong Kong Garrison may, in accordance with the provisions of the laws in force in the HKSAR, take measures to stop any act which obstructs their performance of official duties”;
- (dd) it was unclear who would and how to determine which act would obstruct the Garrison to perform their official duties. Besides, the word “may” implied that there was no obligation that the Garrison must follow Hong Kong laws;

Article 12

- (ee) Article 12 of the Garrison Law -
“The Hong Kong Garrison and the Government of the HKSAR shall jointly protect the military facilities within the HKSAR.
The Hong Kong Garrison shall delimit military restricted zones in conjunction with the Government of the HKSAR. The locations and boundaries of the military restricted zones shall be declared by the Government of the HKSAR.
The Government of the HKSAR shall assist the Hong Kong Garrison in maintaining the security of the military restricted zones.
Without permission of the Commander of the Hong Kong Garrison or other officers as he may authorize to give such permission, no person, vehicle, ship or aircraft other than the ones of the Hong Kong Garrison shall enter the military restricted zones. Guards of the military

restricted zones shall have the right to stop according to law any unauthorized entry into any military restricted zone or any act which damages or endangers any military facilities.

The Hong Kong Garrison shall protect the natural resources, historical relics and monuments, and other non-military rights and interests within the military restricted zones in accordance with the laws of the HKSAR”;

(ff) there was concern that the CMD site would be declared as a military restricted area such that law-enforcing officers of the HKSAR would need to seek permission from the Garrison before entering into the site. Even if the public were allowed to enter into the CMD site when it was not military use, there was no guarantee that their rights and freedom under Hong Kong laws would be protected. The Garrison had also no responsibility to manage an open space site for public use under the Garrison Law;

(gg) according to a report of the Audit Commission, there were over a thousand of historical relics and monuments within the military sites in Hong Kong. However, as they all fell within the military restricted areas, there was no proper system within the HKSAR Government to monitor, study and protect them;

Article 13

(hh) Article 13 of the Garrison Law –

“Any land used by the Hong Kong Garrison for military purposes, when approved by the Central People’s Government to be no longer needed for defence purposes shall be turned over without compensation to the Government of the HKSAR for disposal.

If the Government of the HKSAR needs for public use any part of the land used for military purposes by the Hong Kong Garrison, it shall seek approval of the Central People’s Government; where approval is obtained, the Government of the HKSAR shall in return provide land

and military facilities for the Hong Kong Garrison at such sites as agreed to by the Central People's Government, and shall bear all the expenses and costs entailed”;

- (ii) under the above provision, a military site no longer needed for defence purposes had to be returned to the HKSAR Government. If the HKSAR Government needed to use any part of the military site for public use, it had to seek approval from the Central People's Government. The CMD site was originally zoned “O” and belonged to the public. By retaining its original “O” zoning, it would be unnecessary to seek approval from the Garrison to use the site for public use as required under the provision of Garrison Law;

Article 26

- (jj) Article 26 of the Garrison Law –
“Acts of State, such as actions for defence taken by the Hong Kong Garrison, shall not be subject to the jurisdiction of the courts of the HKSAR”;
- (kk) there was no clear definition on what constituted “acts of State” which would solely be determined by the Garrison. There was no guarantee that the rights and freedom of Hong Kong people would be protected by the Basic Law if public meetings and protests were undertaken at the CMD site in future. If the rezoning was accepted, it would be unclear what measures could be adopted to protect the basic civil and political rights of Hong Kong people;
- (ll) the Garrison Law would override Hong Kong laws after the CMD site was rezoned for military use. However, the Government had never mentioned to the public and District Councils during public consultation that the Garrison Law would be applicable to the CMD site. Even after it had admitted that the Garrison Law would be applicable, it did not explain any details to the public;

- (mm) the Government should resolve the above legal issues and law enforcement problems before considering the zoning amendment. If the Government considered that a new legislation was necessary to resolve all the above concerns and conflicts, the zoning amendment should first be withdrawn;
- (nn) the CMD site should be retained as “O” and open for the use of the Garrison whenever there was a military need. In the past, the former Queen’s Pier and Star Ferry Pier were temporarily closed for the use of the military and Government officials during protocol visits. The existing provisions under Hong Kong laws would be sufficient to cater for such circumstances. There was no need to rezone the land for military use and then to apply the Garrison Law;
- (oo) the Government stated that the Board was not empowered under the Ordinance to specify the operational details or arrangement of the CMD site. Currently, there was only a building height restriction imposed on the CMD site on the OZP. With any future political and social changes, it would be very easy for the Garrison to make use of the Garrison Law to manage and control the CMD site, which would override the HKSAR Government as well as the rights of the Hong Kong people;

Military Access

- (pp) to facilitate a direct vehicular access between CMD and the Central Barracks, a military access over Road P2 had been reserved. When the military access was in use, temporary traffic arrangements would be undertaken by the Hong Kong Police Force to ensure the safety of the pedestrians and other road users. This arrangement complied with Hong Kong laws and the principle of “one country two systems”. There was no reason why similar arrangement could not be adopted at the CMD site such that there would be no need to rezone it as “military use”. When there was a need for berthing military vessels, the

Government could issue a temporary order to declare the CMD site as a restricted area and notify the public of such arrangement;

Intrusion of Privacy

(qq) with regard to the public concern on the installation of CCTVs at the CMD site which would intrude privacy, the Government stated that it was related to the operational details of the area and was outside the ambit of the Board. However, the Board had a responsibility to consider the operational details of the area before making a decision on the zoning amendment;

Notes and Explanatory Statement (ES) of the OZP

(rr) some representers proposed to include additional statements to the Notes and the ES of the OZP to explicitly allow public access to the CMD site under the “Other Specified Uses” annotated “Military Use (1)” (“OU(MU(1))”) zone whenever there was no military activity. However, such proposal was rejected by the Government for the reason that the Board should only include appropriate and relevant matters in the Notes and ES which aimed to reflect the planning intention and objectives of various land use zonings on the OZP;

[Mr Roger K.H. Luk returned to join the meeting while Professor Eddie C.M. Hui left the meeting temporarily at this point.]

Conclusion

(ss) he and his voters objected to the rezoning of the CMD site to “OU(MU(1))” and made the following requests:

(i) the Board should reject the zoning amendment. The waterfront promenade including the CMD site should be retained as “O” and reserved for public use. The CMD site should be governed by

Hong Kong laws but not the Garrison Law;

- (ii) the Government should respond to all the queries raised by the public during the consideration of the zoning amendment. Evidence should be provided to demonstrate that the CMD site, if rezoned for “military use”, could be used for non-defence purpose and could allow free public access; and if so, whether there had been a change of policy on the military sites since 1994; and
- (iii) the same arrangement for the military access between the CMD and the Central Barracks should be adopted for the CMD site to address the concerns.

[Total actual speaking time of R15: 135 minutes]

[The meeting was adjourned for a five-minute break.]

[Miss Winnie M.W. Wong, Ms Janice W.M. Lai and Mr Dominic K.K. Lam left the meeting temporarily at this point.]

R2841 – Leslie Chan

10. Mr Leslie Chan made the following main points:

- (a) he was not satisfied with the hearing arrangement which deprived the public of their rights to be heard at the Board’s hearing. He was originally given two dates to select for attending the hearing but was later told to attend on another date on which he was not available. It was only due to his persistence that he was given a date on which he was able to attend;
- (b) when the Star Ferry Pier and Queen’s Pier were demolished, the public were told by the Government that the reclamation was to provide land for the construction of the Airport Railway extended overrun tunnel and

to return the waterfront to the public. However, CMD had now taken up the most beautiful part of the waterfront;

- (c) the current zoning amendment had ceded part of the waterfront to the Garrison. The Hong Kong Police Force could not enforce laws at the CMD site and had to seek permission from the Garrison before carrying its duties, even in time of emergency;
- (d) some organizations had fought for a proposal to construct a cycle track along the waterfront of Hong Kong Island North for about five to six years. There were also annual events with over a thousand people supporting the proposal. CMD would however disrupt the continuity of the proposed cycle track; and
- (e) there was no military/defence need to justify the construction of CMD at the Central harbourfront. There was already a military dock at Stonecutters Island. If necessary, a military dock should be constructed at Diaoyu Islands.

[Actual speaking time of R2841: 5 minutes]

R29 – Central & Western Concern Group

11. Ms Katty Law made the following main points:

- (a) on 4.11.2013, she attended the hearing but was very dissatisfied with the unreasonable time limit set on the oral submissions for the representers/commenters. So, she walked out in protest. Subsequently, she wrote to the Board to express her dissatisfaction with the time limit. However, as a representer who cared about the planning of the Central harbourfront, she felt that she had a responsibility to make her representation at the hearing to the Board. As a matter of courtesy, she had informed the Board she would require 30 to 45 minutes for her oral submission;

- (b) she objected to the current zoning amendment for military use at the CMD site as it was a breach of Government promise. It had been the public understanding from the Government during the past consultation on the planning of the Central harbourfront that there would be a world-class promenade and a public open space for the people of Hong Kong. The CMD site would only be used for military use when there was a special need;

- (c) the Final Report of the UDS (published in March 2011) summarised the findings and recommendations of the design of the new Central harbourfront including public opinions collected during the public engagement process. The background in the Final Report set out clearly that “in considering several rezoning requests/applications in 2005-2006, the Board reaffirmed the land use zonings for the new Central harbourfront on the Central District and Central District (Extension) OZPs, but requested PlanD to refine the urban design framework and to prepare planning and design briefs to guide the future development”. At that time, the planning intention and the land use zonings of the Central harbourfront had already been confirmed and a 150m military berth was reserved along the waterfront which was subject to detailed design (Figure 1 of the Final Report). Four ancillary structures for the military berth and the access road to the military berth were considered as site constraints for the study (Plan 12 of the Final Report);

- (d) Site 7, which covered the waterfront promenade and the military berth, was shown as ‘public open space’ on the Development Concept and Requirements Plan (Plan 23 of Final Report). It was also clearly stated in paragraph 8.8.4 (Summary of Planning and Development Parameters) of the Final Report that Site 7 was mainly zoned “O” and partly zoned “Comprehensive Development Area” and “Other Specified Uses” annotated “Waterfront-related Commercial and Leisure Uses”. There was no land use zoning for military use. The design of the

Central waterfront had already taken into account the need for military use. The current zoning amendment for military use was therefore unreasonable and unnecessary;

- (e) the public had all along been informed at District Council meetings, public forums and on other occasions that the Central harbourfront would be a continuous and uninterrupted public open space and it would only occasionally be required for the berthing of military vessels by the Garrison, e.g. during protocol visits;
- (f) so far, there had been no reasonable explanation and adequate information from the Government bureaux/departments on the need for the zoning amendment and the law enforcement arrangement after rezoning. The CMD site was also not one of 14 military sites under DLA which required to be handed over for use of the Garrison after 1997;
- (g) it was proposed that the “O” zoning should be retained for the CMD site and that the Notes of the OZP could stipulate that the site be temporarily closed for the use of the Garrison whenever there was a military need. This was similar to the arrangement for the military access between the CMD site and the Central Barracks; and
- (h) as the planning of the Central harbourfront and the use of the CMD site involved wide public interest, relevant Government bureaux/departments should be requested to attend the meeting to respond to the issues and questions raised by the representers/commenters and the discussion should be transparent and open to the public. Further information should also be submitted by the Government bureaux/departments and published for another round of public consultation. Both the further information and public comments should be further considered by the Board before a decision should be made on the zoning amendment. The Board had a responsibility to protect the interests of the public.

[Total actual speaking time of R29: 23 minutes]

12. The meeting was adjourned for lunch break at 12:30 p.m.

13. The meeting was resumed at 2:15 p.m. on 25.11.2013.

14. 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

Mr Timothy K.W. Ma

Dr C.P. Lau

Ms Julia M.K. Lau

Mr Roger K.H. Luk

Professor K.C. Chau

Dr Wilton W.T. Fok

Mr Lincoln L.H. Huang

Mr F.C. Chan

Principal Assistant Secretary (Transport)

Transport and Housing Bureau

Miss Winnie M.W. Wong

Deputy Director of Lands (General)

Mr Jeff Y.T. Lam

Director of Planning

Mr K.K. Ling

Presentation and Question Session

[Open meeting]

15. The following Government representatives, the commenters, and the representers' and commenters' 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, PlanD

Mr C.B. Mak - Chief Engineer/Hong Kong (1), Civil
Engineering and Development Department

R9672 – Sarah Wong

R9788 – Irene Lee

C18 – Society for Protection of the Harbour

C23 – Quinnie Lau

C146 – Jeffrey Tse

C224 – James Woo

Mr Dennis Li]

Mr Ian Brownlee]

Mr Hardy Lok] Representers' and Commenters'

Mr Chu Ka Shing] Representatives

Mr Jeff Tse]

Ms Kira Brownlee]

C1 – Morris Cheung

Mr Morris Cheung - Commenter

C5 – Chan Kong Man

Mr Po Chun Chung - Commenter's Representative

C6 – Fung Yu Chuen

Mr Fung Yu Chuen - Commenter

C9 – Ho Loy

Ms Ho Loy - Commenter

C12 – Katty Law

Ms Katty Law Ngar Ning - Commenter

C15 – Cheng Lai King

Ms Cheng Lai King - Commenter

C19 – Mary Mulvihill

Ms Mary Mulvihill - Commenter

C288 – Joe Lui

Mr Joe Lui - Commenter

16. 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.

17. With the aid of a Powerpoint presentation, Miss Elsa Cheuk, CTP/SD, PlanD, 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.

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

19. Mr Po Chun Chung (C5's representative) requested for making his presentation before 3:30 p.m. as he had to leave the meeting due to other commitments. The Chairman explained that the Board had to hear all the representations before proceeding to hear the comments. Since the representatives from the Society for Protection of the Harbour (SPH) (C18) attended the meeting as the representatives of two representers and four commenters, their presentation for the part for the representers should be completed before the Board began to hear the commenters. The Board considered that Mr Po's request could be acceded to subject to SPH's completion of the part of presentation for their representers by 3:30 p.m. and no objection from other commenters or their representatives. Mr Dennis Li of SPH indicated no objection to the proposed arrangement.

[Dr C.P. Lau, Dr Wilton W.T. Fok, Ms Julia M.K. Lau and Miss Winnie M.W. Wong returned to join the meeting at this point.]

R9672 – Sarah Wong

R9788 – Irene Lee

C18 – Society for Protection of the Harbour

C23 – Quinnie Lau

C146 – Jeffrey Tse

C224 – Woo Yun Lam James

20. Mr Dennis Li made the following main points:

- (a) he was the Deputy Chairman of SPH. Their Chairman Mr Hardy Lok, their Councillor Mr Carl Chu, their legal adviser Mr Jeff Tse, and their planning consultant Mr Ian Brownlee were also at the meeting;

- (b) a report containing their grounds of objection to the zoning amendment for the CMD site and the relevant documents was tabled at the meeting for Members' consideration. The major legal issues would be presented first and then Mr Ian Brownlee would present the planning issues;
- (c) the provision of berthing facilities at the site was not objected to, the subject of objection was the rezoning of the 0.3 ha of land from open space to military use;
- (d) the subject piece of Central harbourfront land was not included as one of the 14 military sites to be handed over to the Garrison by the British Government as listed out in Annex I of DLA. Annex III of DLA specified the military buildings and facilities to be reprovisioned. The first four items which were to be reprovisioned had specific areas or detailed dimensions. For the fifth item, it only required leaving free 150m of the eventual permanent waterfront in the plans for the Central and Wanchai Reclamation for the construction of a military dock. The former Tamar Naval Base had already been fully reprovisioned at Stonecutters Island in accordance with Annex III of DLA. As such, there was no obligation for the HKSAR Government to hand over the CMD site to the Garrison for military use. The rezoning of the CMD site to military use would mean the handing over of an additional 15th military site to the Garrison;
- (e) SPH's view was supported by Mr Anthony Neoh, Senior Counsel. Mr Neoh had given legal advice to SPH on this matter on 23.5.2013 and 22.11.2013, which was included in the report tabled at the meeting. Mr Neoh opined that DLA was only binding between China and Britain but not on the HKSAR Government. Moreover, it had no further effect after 1997. According to Article 16(2) of the Garrison Law, the Garrison was expressly required to abide by Hong Kong laws, including the Town Planning Ordinance (TPO), the Protection of Harbour Ordinance (PHO) and the relevant Court of Final Appeal (CFA)

Judgment. PHO required that all reclamations had to satisfy an “overriding public need” test and the CFA Judgment pronounced that “cogent and convincing materials” should be submitted to justify the reclamation. The Government’s justification for the Central Reclamation was only to construct the Central-Wanchai Bypass, transport infrastructures and a continuous waterfront promenade for public enjoyment, but not a military dock. The current rezoning was considered as a back-handed way to avoid the need to comply with PHO;

- (f) there was a legitimate expectation of the public that the Government, having made use of the public funding in creating the Central harbourfront, would keep its promise to provide a world-class harbourfront to the community. The military zoning was considered incompatible with the surrounding open space. It was the public’s legitimate expectation for the Government to oblige and keep the promise. Therefore, a large number of public objections to the rezoning of the CMD site were received by the Board;
- (g) the CMD site was only subject to a maximum building height of 10mPD without any plot ratio, gross floor area or site coverage restrictions. If approved, a huge structure could be built at the site by the People’s Liberation Army (PLA) without requiring any planning permission. Although the Garrison had promised that no further structures would be erected on the site and the site would be open to the public as part of the waterfront promenade when it was not in military use, the promise was too vague to be enforceable and had no legal effect;
- (h) once the site was rezoned to “OU(MU)1”, public use of the site would become unlawful under TPO as it was neither a Column 1 nor Column 2 use. Moreover, public use of a military site was prohibited under the Garrison Law. The consequence of rezoning it to military use would legally imply that the public could not use the site as of right. The only lawful use would be military use despite the promise made by PLA. Since the site would be handed over to the Garrison, neither the HKSAR

Government nor the Board would have further control on it in terms of planning and development control;

- (i) the wooden fenders and bollards had already been built along the Central harbourfront. There was no need for the rezoning as the existing arrangements had already met the needs of the Garrison. Even without the rezoning, the Garrison could use the site for the berthing of military vessels when needed;
- (j) according to the legal advice given by Mr Anthony Neoh, a dock could only mean berthing facilities. Hence, there was no need to rezone the site or to hand over the site to the Garrison. In this regard, the rezoning was not justifiable;
- (k) under the Garrison Law, all matters concerning the defence of the HKSAR Government were under the direct authority of the Central People's Government. The Garrison was directed not to interfere in any local matters and had no power to require the HKSAR Government to hand over the site to it. Only the Central People's Government had the authority to do so by an "act of State". They had written to the Chief Executive asking whether the Central People's Government had given any such directive but no reply was received. It could only be assumed that the Central People's Government had not intervened in the matter and the HKSAR Government was not relying on the "act of State" in the rezoning of the subject site;
- (l) the HKSAR Government could not give away a piece of land to the Garrison simply by way of rezoning. In all previous versions of the OZP, the military berth was represented by a straight line annotated "150m Military Berth (subject to detailed design)". There was no mention of any military dock or any change in the planning intention of the site, and a change in planning intention would need cogent evidence to support. Approval of the rezoning would be a misuse of the Board's power and would contravene the Basic Law and the Garrison Law.

Giving away such a piece of important land by rezoning was an undesirable precedent. The Board had the statutory duty to protect the public interests by exercising its independent thinking when making a decision in order to uphold procedural justice; and

- (m) the amendment to the OZP was irrational, improper and illegal and should not be approved by the Board.

21. Mr Ian Brownlee made the following main points:

- (a) SPH had participated in the public consultation exercise on the waterfront promenade since 2000 and the subsequent court proceedings on reclamation. SPH was also a member of the Harbourfront Commission and was represented on the Task Force on Harbourfront Developments on Hong Kong Island (HKTF);
- (b) upon the public consultation exercise of UDS, the subject site was zoned "O". However, once UDS was finalised, no further public consultation was conducted. The current thousands of objections to the zoning amendment were a result of the lack of continuous public engagement throughout the development process;
- (c) when the design scheme of the advance promenade was presented to the Harbour Commission's HKTF at its meeting on 6.10.2010, there was no mention that the CMD site would be rezoned for military use. SPH had raised concerns about the public access arrangement and management of the site at the meeting but no response was provided;
- (d) prior to the consideration of the proposed amendments to the OZP by the Metro Planning Committee of the Board on 25.1.2013, no public consultation was conducted. Only after the OZP was gazetted on 15.2.2013, it was presented as a fait accompli to HKTF on 21.2.2013, C&WDC on 21.3.2013 and 23.5.2013, and LegCo on 28.5.2013. According to the minutes of C&WDC and HKTF, a lot of questions had

been raised by their members;

- (e) the rezoning of a site, having an area of 0.3ha, from “O” to “OU(MU)1” was not a technical amendment, but a substantial and substantive change to the statutory plan. A technical change should be on clarification of technical terms and would not involve a rezoning. It would have legal implications and would set an undesirable precedent for the Garrison to take over other military land as this was the first site that had been rezoned to military use since the handover. There was no formal document from the Central People’s Government requiring this land to be handed over to the Garrison, which was a requirement under the Basic Law. The legality of the rezoning and the alternative proposals were not thoroughly discussed. Consideration should be given to the benefits of other alternative approaches;
- (f) the zoning amendment was completely different from what had been presented in UDS. All along the public had been provided with a public open space at the CMD site and a continuous waterfront promenade. The master layout plan of UDS indicated that the military berth was on the edge of the reclamation and there were four buildings. There was no proposal to zone the site for military use. Priority was given to the public use of the site and it would be closed only when it was used for occasional berthing of vessels. The public had legitimate expectation of the site for public use rather than the rezoning of the site to military use;
- (g) according to UDS and the previous versions of OZP, a military berth was reserved along the coastline at the Central harbourfront. However, the CMD site was currently zoned as military use for a military dock. There was objection to the change in planning intention from a length of the waterfront as a pier to a complex use and a large area of waterfront for a military dock. All previous documents including UDS and previous versions of the OZP indicated that it was a military berth. The change in the use of the term from “military berth” to “military dock”

was significant in both English and Chinese languages as the former referred to a place where vessels were tied up while the latter had a wider meaning which included wharfs and warehouses;

- (h) according to section 3 of TPO, the Board had the statutory duty to promote the health, safety, convenience and general welfare of the community. The rezoning of the CMD site for military use was not in line with the preamble of TPO. It was not for the Board to decide which sites should be for military use as it should be under the jurisdiction of the Central People's Government. It was arguable that the Board would have exceeded its authority by changing the subject site to military use without a formal directive from the Central People's Government;
- (i) it was noted that the north-south access between the CMD site and the Central Barracks remained to be zoned as "O" and the area would be closed as needed. There was no reason why the same approach could not be adopted for the CMD site; and
- (j) the CMD site was only subject to a maximum building height of 10mPD, which would allow a continuous structure of 100% site coverage at the site to be erected on the harbourfront. Hence, the development restrictions imposed were inadequate. It was reasonable to regularise the exclusive use of the military berth and the four existing structures by the Garrison, but there was no justification for allowing more development right at the expense of the public enjoyment of the harbourfront.

22. As it was already 3:15 p.m., the Chairman asked whether Mr Ian Brownlee could allow Mr Po Chun Chung (C5's representative) to make his presentation first. Mr Brownlee answered in the affirmative. The Chairman invited Mr Po to make his presentation.

23. Mr Po Chun Chung made the following main points:

- (a) he was the founder of the Defend Hong Kong Campaign (保衛香港運動) and supported the zoning amendment for the CMD site;
- (b) the presence of CMD for use by the Garrison symbolised the sovereignty of the People's Republic of China. It signified the end of the colonial era. The taking up of the defence responsibility for Hong Kong by the Garrison at no cost to the HKSAR Government was appreciated;
- (c) the open days of the military site at Stonecutters Islands were generally welcomed by the public. It reflected that many people were interested in visiting the naval base and its related military vessels and equipment;
- (d) after reunification, the former Tamar Basin was returned to the HKSAR Government for the development of its headquarters and a waterfront promenade, which had created a very pleasant environment. The provision of a military dock at the new Central harbourfront including the berthing of military vessels was compatible with the open space setting and would enhance the attractiveness of the waterfront promenade. In this regard, it would also help promote tourism in Hong Kong;
- (e) there was a functional need for CMD to be located in the Central District as this was a politically and financially important area. Besides, the threat of violence and riots in Hong Kong could not be underestimated in view of the recent campaign of "Occupying Central". The provision of a military dock at the location was good planning as it would allow berthing of military/rescue vessels in case of emergency especially when the land transport was paralysed. Thus, the military dock should be implemented as early as possible; and
- (f) it would be more appropriate for the Garrison rather than the HKSAR

Government to manage the CMD site. If the site was managed by the HKSAR Government and an application for berthing of military vessels at the site was required each time, the operation of the military dock would become inefficient and ineffective. It was hoped that the public could understand more the operation of the PLA at CMD on special festivals, e.g. 1 May, 1 July and 1 October.

[Actual speaking time of C5's representative: 10 minutes]

24. Ms Ho Loy (C9) said that she had to leave for a while and requested that her presentation be deferred to 4:30 p.m. or after. Considering that there were a number of commenters at the meeting who had not yet made their presentations, Ms Ho's request was allowed by the Chairman.

25. Mr Ian Brownlee continued his presentation and made the following main points:

- (a) the Garrison's undertaking that the land area of the military dock would be open to the public when it was not in military use was not included in the Notes or Explanatory Statement (ES) of the OZP. In this regard, there was no statutory planning reference that the military dock would be open for public access. PlanD's explanation that the Board was not empowered under TPO to specify the operational details or arrangement of a specific site in the OZP or its Notes was not convincing. The ES relating to the Star Ferry Pier which read "the area under the elevated structure will be retained as open space to facilitate easy access for future maintenance and so on" (OZP No. S/K1/28) was an example to illustrate that the ES could also include operational details of a specific site;
- (b) it was proposed that the delineation of the "150m Military Berth" should be retained but the wording "(subject to detailed design)" should be deleted; the "O" zone should be retained; and the four structures should remain within the open space as they were considered authorised by the Government and there was no need for any zoning amendment. This

would ensure that the primary use of the site was for public access and enjoyment. The military berth facilities would not be specifically identified; and

- (c) it was also proposed that the ES should be revised to indicate that the primary use of the site was open space and the need for access for the PLA to the berth was a subsidiary use. The suggested wording had been submitted to the Board.

[Total actual speaking time of R9672, R9788, C18, C23, C146 and C224's representatives: 50 minutes]

C1 – Morris Cheung

26. Mr Morris Cheung made the following main points:

- (a) the zoning amendment for the CMD site was supported from military defence point of view;
- (b) Hong Kong had been subject to a risk of war and hence there was a necessity for the Garrison to protect Hong Kong;
- (c) given that Central was the financial centre of Hong Kong and in view of possible riots such as the campaign of Occupying Central, the construction of a military dock in Central was required;
- (d) the nearest naval base was located in Guangzhou which was about 118km away from Hong Kong. It would take about four hours for the military vessels to come to Hong Kong;
- (e) CMD was constructed to support the Central Barracks. Besides, the military facilities provided at Stonecutters Islands were insufficient for defence purpose. It was necessary to have multiple points to meet the operational needs including supply of manpower, replenishment of

resources, repairing and maintenance of the military vessels, etc.;

- (f) if the site was zoned “O”, it would be impractical for the Garrison to make an application for berthing their vessels in the CMD site. When there was an outbreak of war, the Hong Kong people would not be protected in time due to the application procedure required;
- (g) if the rezoning was not approved, the Garrison had to rely on the airspace to perform the defence functions for Hong Kong that would require the construction of another runway by reclamation which was considered undesirable from the environmental point of view; and
- (h) the air force in Hong Kong was not strong enough to protect the territory when there were any terrorist attacks. Therefore, there was a need to strengthen the navy in Hong Kong.

[Actual speaking time of C1: 9 minutes]

C6 – Fung Yu Chuen

27. Mr Fung Yu Chuen made the following main points:

- (a) the zoning amendment for the CMD site was supported;
- (b) the proposed amendments were in accordance with DLA. The presence of the Garrison symbolised national sovereignty. The Garrison had already agreed that the CMD site would be open to the public as part of the waterfront promenade when it was not in military use;
- (c) the former Tamar Basin had long been a restricted area where public access was prohibited. There was no direct access to and along the waterfront at that time. Given that CMD would only occupy a small piece of land at the Central waterfront and the CMD site would be open for public use when it was not in military use, the integrity and

continuity of the waterfront promenade would not be adversely affected. Public access to the site had been taken into account in its design. Besides, there was also sufficient provision of open space in Central. Hence, the zoning amendment to reflect the final delineation and the land use of the military dock in the OZP was reasonable and justifiable;

- (d) the Garrison had the responsibility to safeguard the stability of Hong Kong and provide a safe environment for the general public to live and work; and
- (e) the objections against the rezoning of the CMD site could not be substantiated. Any application for judicial review would only lead to a waste of public fund.

[Actual speaking time of C6: 10 minutes]

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

[Mr Jeff Y.T. Lam and Mr K.K. Ling returned to join the meeting, and Dr C.P. Lau, Dr Wilton W.T. Fok and Miss Winnie M.W. Wong left the meeting temporary at this point.]

28. At this juncture, Ms Cheng Lai King (C15) requested for making her presentation first. There was no objection from other attendees. Ms Cheng's request was allowed by the Chairman.

C15 – Cheng Lai King

29. Ms Cheng Lai King made the following main points:

- (a) the Board might not have the authority to approve the military site in Hong Kong as defence matters were under the jurisdiction of the Central People's Government;
- (b) the former naval base at the Tamar Basin had been reprovisioned at Stonecutters Island in accordance with DLA and there was no need for

providing an additional military site in Central;

- (c) during the consultation of UDS, the public were only aware that there would be a waterfront promenade at the new Central harbourfront. There was no mention that the CMD site would be rezoned to a military site;
- (d) there were concerns on the future management responsibility of the CMD site. It was unclear whether the Hong Kong Police Force or the Garrison would be the responsible party for law enforcement within the CMD site. Law enforcement and safety issues might arise if the public unintentionally intruded into the CMD site. As such, the rezoning could not be considered as a technical amendment given that the CMD site would be handed over to the Garrison and the legal implications involved;
- (e) even if there was sufficient open space in Central, it did not mean that a piece of waterfront land should be handed over to the Garrison. The waterfront was the common asset of Hong Kong people and should be reserved for public enjoyment;
- (f) the military site at Stonecutters Island had its open day each year. There was no need to have a military dock in Central for public visit;
- (g) the military dock would exert pressure on the existing road network and generate traffic impact on the Central area;
- (h) the works on the military dock did not satisfy the “overriding public need” test. They were not justified for the reclamation and did not comply with PHO; and
- (i) the Board should be a gatekeeper of the planning system and the zoning of the CMD site should be reverted to “O”.

[Actual speaking time of C15: 10 minutes]

C12 – Katty Law

30. Ms Katty Law made the following main points:

- (a) since the Tamar Naval Basin had been completely reprovisioned at Stonecutters Island, the provision of the military dock on the Central waterfront was not in line with DLA. DLA only required the provision of a 150m long coastline of the eventual permanent waterfront. The zoning amendment for CMD had no legal basis;
- (b) there was no objection that the CMD site could be used for the berthing of military vessels on an occasional basis. However, it should not be rezoned to military use. Once it was rezoned, the site would be subject to enforcement under the Garrison Law;
- (c) in the public engagement exercises of UDS, the public were informed that the waterfront site would be kept as a public open space. There was no mention that the site would be rezoned for military use;
- (d) the Government had committed that the harbour would be preserved for public enjoyment. The CMD site should not be rezoned for military use all of a sudden. The rezoning was unreasonable and illogical. It was also doubtful whether the Board had the authority to rezone the site for military use;
- (e) the rezoning of the site from open space to military use had significant planning implications. Besides, there was no written guarantee from the Garrison that the site would be open for public use when it was not in military use. In this regard, the rezoning could not be regarded as a technical amendment;
- (f) some representers/commenters had made detailed submissions covering

DLA, the Garrison Law and functions of the Board at the meeting, the Board should take them into account in making a decision on the OZP. However, representatives from other concerned Government bureaux/departments were not at the meeting to answer questions raised by the representers/commenters;

- (g) the north-south access road between CMD and the Central Barracks remained to be zoned as “O” which would be closed only when military vessels were berthed at the waterfront. It was not understood why the same approach could not be adopted for the CMD site; and
- (h) in the past, the former Queen’s Pier would also be closed occasionally for ceremonial use and berthing of vessels, e.g. at the time when the Royal family visited Hong Kong, but that area had never been zoned as a military site. Similar approach should be considered for the CMD site.

[Actual speaking time of C12: 15 minutes]

31. Ms Ho Loy (C9) said that as 10 minutes would be insufficient for her presentation, she wished to apply for an extension of time of 10 extra minutes in addition to her 10 minutes. Ms Ho agreed to make her presentation after all other commenters finished their presentations. Her application and request were allowed by the Chairman.

C19 – Mary Mulvihill

32. Ms Mary Mulvihill made the following main points:

- (a) according to the Sino-British Joint Declaration, Hong Kong’s previous capitalist system and its way of life would remain unchanged for a period of 50 years until 2047. This promise should be kept;
- (b) the public were told that the CMD site would be open to the public when it was not in military use. However, once the CMD site was designated as a restricted area, the people should be cautious of what they spoke and

what they did within the site;

- (c) the Government had misled the public during the public consultation exercise of UDS. All along the public had been promised a public open space at the CMD site and a continuous waterfront promenade. A public facility referred to in UDS and the military facility as shown on the current OZP were two different things. The public had legitimate expectation of open space use at the CMD site rather than the rezoning of the site to military use. It was not true to claim that the provision of CMD had gone through public consultation throughout the past years;
- (d) Article 9 of the Garrison Law stated that the Garrison should not interfere in the local affairs of the HKSAR. However, if the Garrison was responsible for managing the CMD site, it would have to involve in local matters to some extent;
- (e) according to DLA, military sites should be used exclusively for military purposes, and their use right was not transferrable and their use could not be for purposes other than defence. It was a concern 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; and
- (f) according to Article 12 of the Garrison Law, persons, vehicles, ships and aircraft outside the Garrison should not enter into military forbidden zones. It implied that permission would be required for access to military sites.

33. At this juncture, Ms Mary Mulvihill asked whether she could ask questions. The Chairman said that the meeting was to allow Members to hear the representations and comments as well as to ask the representers, commenters or Government representatives questions. She could raise her questions if she so wished but it would be up to the Members to decide whether they wanted to raise the same questions at the Question and Answer (Q&A) session.

34. Ms Mary Mulvihill continued to raise the following main points and questions:
- (a) once the site was rezoned, it would be difficult for the public to distinguish which part of the waterfront would be under the Garrison Law. Moreover, the commitment that the waterfront should be preserved for the public would be breached;
 - (b) why was the CMD site rezoned to “OU(MU)1” but the Chek Lap Kok military site was not?
 - (c) the right and freedom of the Hong Kong residents were under the jurisdiction of the Basic Law which was outside the purview of the Board. But how could the Board make a decision without knowing the consequences of the rezoning? and
 - (d) when did the Development Bureau become aware of the rezoning?

[Actual speaking time of C19: 9 minutes]

C288 – Joe Lui

35. Mr Joe Lui made the following main points:
- (a) objection was raised to the zoning amendment for the CMD site;
 - (b) under the current proposal, the CMD site with an area of 0.3ha at the new Central harbourfront would be zoned as “OU(MU)1” and an area of 14.63ha was zoned as “O” which included a north-south access between CMD and the Central Barracks when needed;
 - (c) the former Tamar Basin had already been fully reprovisioned at Stonecutters Island in accordance with DLA. DLA also required that a 150m long coastline be reserved at the Central waterfront for the berthing of military vessels. The common understanding was that the

operation of CMD would be similar to the former Queen's Pier, which had once been used for receiving the Royal family as well as other special ceremonies and events, under the management of the HKSAR Government. The former Queen's Pier had been operated for 54 years from 1954 to 2008, but it had never been rezoned as a military site or designated as a restricted area. The same approach should be adopted for the CMD site. When the CMD site was required to be declared as a temporary military restricted area, it was unlikely that such a request would be turned down by the HKSAR Government;

- (d) the reprovisioned naval base at Stonecutters Island was relatively large and well equipped with advanced military facilities. It had attracted a large number of visitors on its open days. The naval force in Hong Kong was sufficient for defence purposes; and
- (e) the 150m long waterfront was good enough for berthing of advanced military vessels. While the Sino-British Joint Declaration and DLA were international agreements that should be honoured, there was no requirement under DLA that the military dock should be designated as a military area and the whole site should be managed by the Garrison.

36. As the allotted 10-minute time slot was up, Mr Joe Lui requested for one additional minute for him to complete the presentation. The request was allowed by the Chairman. Mr Lui then continued his presentation and made the following main point:

- (a) it was hoped that upon completion of the fountain, which was being constructed at the new Central harbourfront, Hong Kong would become a harmonious society and the area would be developed into a famous world-class harbourfront in the future.

[Actual speaking time of C288: 11 minutes]

37. Ms Ho Loy repeated her request for an extension of time to a total of 20 minutes for her oral submission as she had some important points to make. The

Chairman allowed her request.

C9 – Ho Loy

38. Ms Ho Loy made the following main points:

- (a) she spoke in two capacities, one as a member of the general public and the other as the convener of the group on planning of a cycle track along Hong Kong Island north;
- (b) section 3 of TPO stipulated that the Board should facilitate the promotion of the health, safety, convenience and general welfare of the community. The role of the Board was to prepare and process statutory plans. The Board had the statutory duty to ensure that the legal right and the legitimate expectation of the public would be respected;
- (c) the Board should act in line with the Basic Law. She understood that the Board did not have an overriding right to deal with any issue that had constitutional conflict. Once the rezoning was approved, the site would be handed over to the Garrison and the management of the site would be governed by the Garrison Law. In any event, the right for the public use of the waterfront promenade should be protected;
- (d) the cycle track along the waterfront promenade that had been approved by the Government should be implemented as soon as possible. It was inappropriate for the military dock to be constructed prior to consultation and approval of the OZP. There was no justification to bypass all the necessary procedures;

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

- (e) the zoning amendment should be shelved by the Board at this stage pending confirmation under the Basic Law and the Garrison Law that the right for public enjoyment of the harbourfront would not be deprived of;

and

- (f) while it was noted that the provision of CMD had been included as one of the items under UDS for public consultation, a new round of public consultation should be conducted in respect of the rezoning of the CMD site to “OU(MU)1”.

[Actual speaking time of C9: 10 minutes]

39. As the presentation from the Government representatives, the commenters, and the representers’ and commenters’ representatives had been completed, the Chairman invited questions from Members.

40. The Chairman said that while some commenters and representers’ and commenters’ representatives had asked questions during their presentations, it would be up to the Members whether or not to ask these questions raised by them. Members could ask questions if they required additional information or clarification from the Government’s representatives, representers and commenters.

DLA

41. Noting that a representer’s representative alleged that rezoning the CMD site to military use would mean the handing over of the 15th military site to the Garrison, a Member requested PlanD to clarify the status of the CMD site under DLA. Miss Elsa Cheuk said that Annex I of DLA had set out the 14 military sites to be handed over to the Garrison by the Government of the United Kingdom, while Annex III of DLA listed out five sites with military buildings and fixed facilities to be reprovisioned for the Garrison, which included the CMD site. There were altogether 19 military sites in Hong Kong. Before the reunification, the headquarters of the British Garrison used to have a naval basin and dock facilities in the former Tamar Basin. As the Tamar Basin was planned to be reclaimed under the Central Reclamation, DLA provided that a naval base should be reprovisioned on the south shore of Stonecutters Island and a military dock should be reprovisioned near the Central Barracks. In this regard, Annex III of DLA provided that the then Hong Kong Government would leave free 150m of the eventual permanent

waterfront in the plans for the Central and Wanchai Reclamation at a place close to the Prince of Wales Barracks (i.e. the current Central Barracks) for the construction of a military dock after 1997.

42. Mr Dennis Li (representative of C18 and 5 other representers/commenters) said that CMD had become the 15th military site with the zoning amendments. The CMD site was not included as one of the 14 military sites in Annex I of DLA and all reprovisioned sites in Annex III of DLA had specified dimensions except the military dock. He reiterated that there was no obligation under DLA to handover the CMD site to the Garrison. There was no objection to the provision of the military berth at the subject site, but objection was raised to the rezoning of the CMD site to military use. In all previous versions of the OZP, only a military berth was indicated and the CMD site was rezoned to military use in February 2013.

43. Referring to paragraph 6 in section 3 of SPH's written submission tabled at the meeting, Mr Dennis Li further said that Mr Anthony Neoh, Senior Counsel, was of the view that PlanD's claim that CMD, which was situated close to the Central Barracks, was a reprovisioning of the dock facilities for the previous Prince of Wales Barracks was a misinterpretation of the Treaty as the dock facilities had already been reprovisioned at Stonecutters Island. What DLA clearly envisaged was a berthing facility that was only to be used on the occasions when the dock facilities at Stonecutters Island could not be used. As the Central People's Government was responsible for the defence of Hong Kong, whether there was a need for an additional military site was a matter to be determined by the Central People's Government. In this regard, there was no justification for the handing over of the CMD site to the Garrison. Mr Neoh also advised that even assuming that the HKSAR Government had received a determination or decision from the Central People's Government that CMD was required for defence purposes, it would still have to observe the laws of Hong Kong. Article 64 of the Basic Law stated that the HKSAR Government should abide by the law and be accountable to the LegCo. Thus, in constructing any public facility, the HKSAR Government was to be guided in its actions by TPO and PHO. There was no "cogent and convincing evidence" to justify the construction of a military dock. As the "overriding public need" test was not satisfied, the Central Reclamation could not have included the military dock. The subject rezoning would represent a back-handed and improper way to side-track and avoid the

need to comply with PHO. There was also query as to why the Government could not have made known to the public earlier that the CMD site would be rezoned to military use but had to wait until February 2013.

44. Mr Dennis Li continued to say that that if the site was rezoned as proposed, the Government would have no control on the development scale of the CMD site given that no plot ratio or gross floor area restriction was imposed on the OZP.

45. A Member pointed out that Mr Anthony Neoh had wrongly quoted Item 5 of Annex III of DLA in his submission by omitting the word 'construction' of a military dock after 1997. Given that a military dock was to be constructed, it was impossible to confine it to the coastline, and it would definitely include some land area for its operational needs.

46. In response, Mr Dennis Li said that the omission of the word 'construction' was only a typographical mistake. Although the military berth would involve berthing facilities, fenders and bollards, it did not necessarily mean that the site should be rezoned to military use and handed over to the Garrison. All matters concerning the defence of Hong Kong were under the authority of the Central People's Government. However, there was no information to confirm that the Central People's Government had requested for a military site on the Central harbourfront. SPH did not object to the construction of the military berth, but they objected to the rezoning of the site to military use. SPH had written to the Chief Executive on 23.5.2013 asking whether there was any directive from the Central People's Government but no substantive reply from the Government had been received yet. It should be noted that while all other sites in Annex III of DLA had specified dimensions, it only required leaving free a 150m long waterfront for the military dock.

47. Miss Elsa Cheuk said that the CMD site was affected by the Central Reclamation Phase III (CRIII) project and the eventual permanent shoreline had not been confirmed when DLA was signed in 1994. 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 the dock would take and the area it would occupy were not decided, it was represented by a

straight line annotated “150m Military Berth (subject to detailed design)” on the OZP.

48. Mr Dennis Li pointed out that when DLA was signed, Stonecutters Island for the reprovisioning of the Tamar naval basin had not been built yet but its detailed facilities were listed out clearly in DLA. If CMD formed part of the reprovisioned Tamar naval basin, it should have also been specified with specific dimensions.

CR III

49. A Member enquired about the provision of CMD in relation to CRIII. Miss Elsa Cheuk said that the CRIII project was an integral part of the Central and Wanchai Reclamation developed since the 1990s. It was the final phase of reclamation in Central to provide land for essential transport infrastructure including the Central-Wanchai Bypass, the Road P2 network, the Airport Railway Extended Overrun Tunnel and the North Hong Kong Island Line, and to reprovision existing waterfront facilities (e.g. pumping stations providing cooling water for buildings in Central and Star Ferry piers) which would be affected by the reclamation. Under CRIII, 150m of the eventual permanent waterfront would be left free for the construction of a military dock. The construction of CMD did not involve any additional reclamation.

Operational Details and Law Enforcement

50. Noting that some representers were concerned about operational details and law enforcement, the Vice-chairman invited PlanD’s representatives to provide more information on this aspect. Miss Elsa Cheuk said that according to the Garrison Law, the management of military facilities was one of the defence functions and responsibilities of the Garrison. Hence, CMD, which was one of the military facilities, would be handed over to the Garrison for management and use after completion of works. CMD and its ancillary facilities were designed to meet the defence requirements of the Garrison. When the draft OZP was first approved in 2000, the intention that there would be a military dock on the Central waterfront and its location had been clearly presented in the OZP. As the design and exact area of the dock had not yet been decided at that time, it was represented by a straight line annotated “150m Military Berth (subject to detailed design)” on the OZP. The Garrison had agreed that it would open the land area of the

military dock (except the utilities, ancillary structures and landing steps) to the public when the site was not in military use. The HKSAR Government had publicly stated on several occasions, including at the PWSC Meeting in June 2002 when the Government sought LegCo's approval to the funding application for implementing the works of CR11, about the Garrison's agreement to open the land area of the military dock to the public when it was not in military use as well as the fact that dock included some ancillary facilities/structures. The HKSAR Government would continue to liaise with the Garrison on the details of the opening arrangement and make that known to the public when such information was available. Regarding the question on the responsible party to enforce the law and order within the CMD site in future, Miss Cheuk said that while the CMD site would be used and managed by the Garrison in future, the Hong Kong Police Force would be responsible for maintaining the law and order within the CMD site under the Hong Kong laws when CMD was open to the public.

51. Ms Mary Mulvihill said that as there were still uncertainties on law enforcement within the CMD site which was the concern of the general public, the representation consideration process should not be proceeded further. The Chairman remarked that the representation consideration process had not been completed and a number of sessions had yet to be held. Should Members require any further information or clarification, they could request for it at the upcoming sessions.

Land Ownership

52. In response to the Vice-chairman's enquiry on the land status of the CMD site, Miss Elsa Cheuk said that the reprovisioning of CMD on the Central harbourfront was in accordance with DLA and the Garrison Law, and the zoning amendment was to reflect the land use of CMD on the OZP. No land grant document was required between the HKSAR Government and the Garrison for the provision of CMD.

Consultation with Government Bureaux/Departments

53. In response to the Vice-chairman's enquiry on the consultation process with Government bureaux/departments of the CMD site, Miss Elsa Cheuk said that in processing the representations and comments, relevant Government bureaux/departments

including the Security Bureau, the Development Bureau and the Department of Justice had been consulted in accordance with the established practice. The Government bureaux/departments consulted were listed out in paragraph 6 of the TPB Paper and their views/comments had been incorporated into paragraph 5.4 of the TPB Paper. Detailed responses to individual representers and commenters were provided in Appendix II of the TPB Paper.

54. Mr Ian Brownlee said that as SPH's written submission tabled at the meeting contained further legal advice from Mr Anthony Neoh, it was inappropriate for PlanD's representatives to respond to the legal issues raised including the future management and law enforcement matters. The Board should consider seeking legal advice before making a decision on the OZP.

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

[Closed Meeting]

56. The Secretary said that a letter from Mr Tam Hoi Bong of Green Sense dated 23.11.2013 was tabled at the meeting for Member's information. In the letter, Mr Tam clarified that when he represented the Central Harbourfront Concern Group (CHCG) to attend the session of the meeting on 11.11.2013, he spoke as a member of CHCG in the first part of his presentation, and spoke in his own capacity in the second part of his presentation and during the Q&A session. Mr Tam requested that the above information be recorded in the relevant TPB minutes. The Secretary continued to say that according to the record, Mr Tam represented an individual representer (R4080) to attend that session of the meeting. At the presentation session of the meeting, Mr Tam had relayed CHCG's objection against the 10-minute time limit and CHCG's view that the Chairman of the Board should withdraw from the meeting. He also expressed his personal views on the operation of the Board. However, at the Q&A session, he did not mention whose views

he represented upon answering questions. The actual facts would be recorded in the relevant TPB minutes, as appropriate. The Board agreed that the Secretariat of the Board should reply to Mr Tam accordingly.

57. The meeting was adjourned at 6:00 p.m.