

**Minutes of 1045th Meeting of the
Town Planning Board held on 4.11.2013, 5.11.2013, 6.11.2013, 11.11.2013,
13.11.2013, 18.11.2013, 19.11.2013, 20.11.2013, 25.11.2013, 27.11.2013, 29.11.2013,
2.12.2013, 4.12.2013, 9.12.2013, 10.12.2013, 11.12.2013, 18.12.2013 and 14.2.2014**

Present

Permanent Secretary for Development
(Planning and Lands)

Mr Thomas T.M. Chow

Chairman

Mr Stanley Y.F. Wong

Vice-Chairman

Professor S.C. Wong

Mr Timothy K.W. Ma

Mr Edwin H.W. Chan

Mr Rock C.N. Chen

Professor P.P. Ho

Professor Eddie C.M. Hui

Dr C.P. Lau

Ms Julia M.K. Lau

Mr Clarence W.C. Leung

Mr Laurence L.J. Li

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Dr W.K. Yau

Ms Bonnie J.Y. Chan

Professor K.C. Chau

Mr H.W. Cheung

Dr Wilton W.T. Fok

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Mr Patrick H.T. Lau

Ms Christina M. Lee

Mr H.F. Leung

Mr Stephen H.B. Yau

Mr F.C. Chan

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Miss Winnie M.W. Wong/Mr Rico Tsang

Assistant Director (2), Home Affairs Department
Mr Eric K.S. Hui

Deputy Director of Environmental Protection
Mr C.W. Tse

Director of Lands/Deputy Director of Lands (General)
Ms Bernadette H.H. Linn/Mr. Jeff Y.T. Lam

Director of Planning
Mr K.K. Ling

Deputy Director of Planning/District
Miss Ophelia Y.S. Wong

Secretary

Absent with Apologies

Mr. Maurice W.M. Lee

In Attendance

Assistant Director of Planning/Board
Ms Brenda K.Y. Au

Chief Town Planner/Town Planning Board

Mr Louis K.H. Kau (13.11.2013, 18.11.2013, 20.11.2013, 27.11.2013, 10.12.2013 and 11.12.2013, morning sessions on 4.11.2013 and 25.11.2013)

Mr Edward W.M. Lo (5.11.2013, 6.11.2013, 11.11.2013, 19.11.2013, 29.11.2013, 2.12.2013, 4.12.2013, 9.12.2013 and 18.12.2013, afternoon sessions on 4.11.2013 and 25.11.2013)

Ms Lily Y.M. Yam (14.2.2014)

Senior Town Planner/Town Planning Board

Ms Donna Y.P. Tam (18.11.2013 and morning session on 4.11.2013)

Ms Caroline T.Y. Tang (11.12.2013, afternoon sessions on 4.11.2013 and 25.11.2013)

Mr Raymond H.F. Au (5.11.2013 and 20.11.2013)

Ms Doris S.Y. Ting (6.11.2013)

Ms Amy M.Y. Wu (13.11.2013 and morning session on 25.11.2013)

Mr Jerry Austin (19.11.2013)

Mr Stephen K.S. Lee (2.12.2013)

Ms Johanna W.Y. Cheng (18.12.2013 and 14.2.2014)

Town Planner/Town Planning Board

Mr Terence W.C. Leung (11.11.2013)

Miss Anny P.K. Tang (27.11.2013)

Ms Karen K.W. Chan (10.12.2013)

Miss Hannah H.N. Yick (4.12.2013)

Mr William W.L. Chan (9.12.2013)

Mr K.K. Lee (29.11.2013)

1. The following Members and the Secretary were present in the morning session on 4.11.2013:

Mr Thomas T.M. Chow

Chairman

Mr Stanley Y.F. Wong

Vice-Chairman

Professor S.C. Wong

Mr Timothy K.W. Ma

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms Julia M.K. Lau

Mr Roger K.H. Luk

Dr W.K. Yau

Mr Sunny L.K. Ho

Mr Lincoln L.H. Huang

Mr Dominic K.K. Lam

Mr Stephen H.B. Yau

Mr F.C. Chan

Principal Assistant Secretary (Transport)

Transport and Housing Bureau

Mr Rico Tsang

Director of Lands

Ms Bernadette H.H. Linn

Director of Planning

Mr K.K. Ling

Agenda Item 1

[The meeting was conducted in Cantonese.]

Matters Arising

[Closed Meeting]

2. The item was recorded under confidential cover.

Special Duties Section

Agenda Item 2

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments in Respect of
the Draft Central District (Extension) Outline Zoning Plan No. S/H24/8
(TPB Paper No. 9491)

[The hearing was conducted in Cantonese and English.]

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

Miss Elsa Cheuk	Chief Town Planner/Special Duties (CTP/SD), PlanD
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Mr Timothy Lui	Senior Town Planner/Special Duties (STP/SD), PlanD
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Mr C.B. Mak	Chief Engineer/Hong Kong (CE/HK), CEDD
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R3 (CW Power)

Mr Chan Wing Hang	Representer's Representative
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R15 (Hon. Chan Ka Lok, Legislative Council Member)

R575 (Cheng Sau Mei)

Hon. Chan Ka Lok	Representer and Representer's Representative
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R20 (Green Sense)

Ms Ho Ka Po	Representer's Representative
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special arrangement had been made and the hearing arrangements and procedure in the form of guidance notes had been sent to all representers and commenters together with the TPB Paper for the subject case;

- (b) each representer/commenter would be allotted a 10-minute speaking time. Where a representer/commenter had authorized a representative to speak on his behalf, such representative would take over the 10-minute time slot and speak on behalf of the representer/commenter. If an authorized representative was appointed by more than one representer/commenter to represent them, that authorized representative might use the cumulative time allotted to all the persons he represented at the same session to make his oral submission. Depending on the situation, the authorized representative representing representers/commenters of different session(s) would not be allowed to present at the same session and would be invited to return to the meeting at the allotted session(s);
- (c) a time-keeper would ring a bell/device two minutes before the allotted 10-minute time was up to alert the representer/commenter that the time limit of 10 minutes was about to expire and when the allotted 10-minute time limit was up. Upon the ringing of this device when the allotted 10-minute limit was up, the speaker must stop immediately;
- (d) requests for further time or adjournment of their oral submissions from representers and commenters would not normally be allowed, but the Board retained a discretion which would only be exercised upon sufficient cause shown and after taking into account all relevant circumstances. If, at the end of his allotted 10-minute time slot, a speaker requested for an extension of time, such request would be recorded and the Board might consider recalling those requesting for further time to return for further oral submissions, in which event they would be notified of the date when they would be invited to return for such purpose. All such time extensions, if granted, would be scheduled only after all representations and comments as of right had been heard;

- (e) each oral submission might highlight or elaborate further the essential points in support of the subject representation/comment. Such submission should be confined to the grounds of representation/comment already made to the Board;
- (f) to ensure the smooth and efficient conduct of the meeting, the presenter/commenter should not repeat unnecessarily the same points of arguments which had already been presented by the others at the same meeting. If the same point had already been made by other presenters, commenters or authorized representatives in the meeting, the Chairman could at his discretion disallow repetition;
- (g) in order not to unnecessarily prolong the meeting process, the oral submissions made in the meeting should avoid reading out or repeating statements contained in the written representations/comments already submitted;
- (h) during the meeting, the presenters, commenters, authorized representatives and representatives of Government department(s) might only address the Board at the invitation of the Chairman;
- (i) all attendees must behave in an orderly manner during the meeting. Photo-taking, recording or showing of protesting banners was not allowed in the meeting room. Any person who failed/refused to follow any of the rules or caused any disturbance to the conduct of the meeting would be given warnings by the Chairman. After repeated warnings, the Chairman could ask that person to leave the meeting room;
- (j) lunch break would be arranged at about 1 p.m. to 2 p.m. He would try to order one short break in the morning and two short breaks in the afternoon;
- (k) the representative from PlanD would first be invited to give a summary of the facts, background and PlanD's views on the case;

- (l) the representers/commenters/their authorized representatives would then be invited to make oral submissions in turn. The order of presentation to the Board would follow the reference number already given to each representation and comment;
- (m) after the submissions, Members would be invited to ask questions which might require the representers/commenters/their authorized representatives and/or the representatives of Government departments to respond. The Chairman might refer such questions to any specific representer, commenter, authorized representative and/or representative of Government departments; and
- (n) the Board would deliberate behind closed doors after hearing all the representations and comments and the Board's decision would be conveyed to the representers and commenters in writing by the Secretary of the Board after the Board's minutes of meeting had been confirmed.

6. Ms Katty Law (R29) made the following main points:

- (a) setting a 10-minute time limit for oral submission was unreasonable and unfair and there had never been such a restriction in all previous Board's hearings;
- (b) 10 minutes were not enough for representers to complete the submission with their points clearly presented to the Board. The planning of the Central harbourfront had a long history and the representers would need to explain their arguments in terms of legal, planning and public aspiration aspects step by step. Breaking up the oral submission in parts would affect the presentation of representers' argument clearly to Members; and
- (c) her own submission would not be finished in 10 minutes' time and she objected to the 10-minute time limit.

7. Ms Ho Loy (R32) made the following main points:
- (a) she concurred with Ms Katty Law's view and objected to the 10-minute time limit; and
 - (b) the 10-minute time limit was against the intention of the Board's hearing, which was to serve as a platform for communication between Members of the Board and the public. All parties participating in the hearing should be respected and representers should be allowed to present their whole submissions;
8. Hon. Chan Ka Lok (R15) made the following main points:
- (a) while the Government might consider that the amendments to the OZP were minor in nature, the large number of objections raised by the public on the amendment reflected that the issue was in fact not a simple one;
 - (b) the zoning amendment involved complicated legal issues relating to the Garrison Law and the 1994 Exchange of Notes 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). Members should not rely only on information given by PlanD on those complicated legal issues;
 - (c) 10 minutes were not enough for him to explain in detail such complicated legal issues and exchange views with Members. He objected to the 10-minute time limit and there was no such rule in all the previous hearings;
 - (d) there was no intention to filibuster and the representers' submissions had substances; and
 - (e) the Chairman, also as the Permanent Secretary for Planning and Lands,

would have a conflict of role.

9. Ms Mary Mulvhill (R43) asked if the house rules, in particular the 10-minute time limit for oral submission, were proposed for the subject case only or if there was a change to the general rules. If the Board decided to adopt a new set of rules for conducting hearing, a public consultation on the rules should be conducted as the rules affected the right of the public to present their views. The Board had no jurisdiction to set new rules arbitrarily. Since only a few representers attended the meeting, there was plenty of time for the representers to make their submissions.

10. Mr Chan Wing Hang (R3) supported the setting of the 10-minute time limit for oral submission and said that the rule was fair as it applied to all representers/commenters. Mr Chan asked if the time just spent by the representers to speak about the time-limit would be counted towards the 10 minutes allowed for each of them.

11. Mr Winston K.S. Chu (R41) made the following main points:

- (a) the Board was a quasi-judicial body with wide and important powers affecting the whole community by its judgment. The Board should act reasonably and provide a fair hearing;
- (b) there was no substantiation of any legal grounds on setting the 10-minute time limit for oral submission. The entitlement to a fair hearing was a fundamental constitutional right in any civilized society. The Board negated this right in not allowing representers to speak in the hearing;
- (c) the over 19,000 objections received indicated that the decision of the Board on the amendment was subject to serious public challenge. The public had the right to speak to the Board and the Board should listen to these public views. The Board should allow time for the public to speak;
- (d) the Society for Protection of the Harbour (SPH) had written to the Board to raise objection to the 10-minute time limit. This matter would be subject to judicial review (JR);

- (e) when he was a Member of the Board in the past, there was a discussion on a proposal to extend the Legislative Council (LegCo) Building to Charter Garden. The then Chairman, Mr Tony Eason, ruled that to avoid conflict of interest, all Government officials, though allowed to participate in the discussion to provide relevant information to the Board, were not allowed to participate in the decision-making process. Such ruling was supported by some law cases; and
- (f) the Board was handling a very important issue which would affect the future generations. The Board should uphold its statutory duty to protect the health, safety and general welfare of the community. It should therefore act independently.

12. Ms Chan Ka Lam (R42) concurred with the view that the 10-minute time limit was unreasonable and there had never been such rule in all previous Board's hearings. There was no ground to set such time limit which made it difficult for representers to present their views.

13. In response to the above comments, the Chairman made the following main points:

- (a) the Board had a thorough discussion before it decided to set a 10-minute time limit for each representer/commenter in the subject hearing. The time limit was not set arbitrarily. The main reason was that a total of 19,040 valid representations and comments were received and over 1,000 representers/commenters had registered to attend the meeting. The Board needed to consider all these representations and comments within the statutory time limit;
- (b) copies of all representations and comments submitted to the Board had been passed to Members and Members would have read these submissions before attending the hearing. The oral submissions were not to repeat the

same points that had already been made in the written representations/comments, but to elaborate further or highlight the essential points in the representations/comments;

- (c) in view of the large number of representations/comments, there was a practical need to set a time limit for oral submissions. However, if an authorized representative was appointed by more than one representer to represent them, that authorized representative might use the cumulative time allotted to all the persons he represented to make his oral submission. Flexibility was also allowed for a representer to seek time extension and to swap his time slot with another representer who had been allotted a different session on a one-to-one mutually agreed basis. The same would apply to the commenters; and
- (d) it was not considered that there was a conflict of interest for the Permanent Secretary for Planning and Lands to be the Chairman of the Board in the subject hearing. As the issue might be subject to JR as mentioned by R41, he would make no further comment at this stage.

14. Ms Ho Loy (R32) made the following main points:

- (a) she reiterated her objection against the house rules for hearing. It was against the intention of the Board's hearing. The Board in adopting these rules had misunderstood its principle and obligation, which should be to provide a platform for the Board to understand the views of the public on the planning proposals. The 10-minute time limit would inhibit Board Members to fully understand the public views; and
- (b) she had two identities in the subject hearing, one as a general member of the public and the other one as the convener of the group on planning of a cycle track along Hong Kong Island North. Her submission in the capacity of a general member of the public already contained four main aspects with different levels of analyses. It also included public views on how the PLA dock would affect the planning of the waterfront. It was difficult to

understand how the 10-minute time limit was determined. This was unlawful and she objected to it.

15. Ms Katty Law (R29) made the following main points:

- (a) the public had the right under the Town Planning Ordinance (TPO) to explain in detail their views to the Board during hearing. The subject case was very special and had aroused concerns of many people. All representers/commenters who came to the hearing wanted to make use of the chance to explain their views in detail. They had spent a lot of time to study and to do research on the subject matter. They hoped that the Board could consider their views. They had no intention to delay the process or to filibuster;
- (b) the rights of the public to speak and Members to listen were affected through the imposition of a time limit. It was an abuse of power by the Board;
- (c) it was doubtful if all Members fully understood all the written submissions made by the representers/commenters. In fact, the written submissions were made months ago and the Government had made responses to these submissions during this period. It was necessary for the representers/commenters to also respond to the Government responses, including details of the Garrison Law and how the Garrison Law would affect public enjoyment of the public space; and
- (d) the representers wanted to finish their submissions, but not to delay. Their right to speak should not be deprived.

16. Ms Mary Mulvhill (R43) made the following main points:

- (a) it was doubtful if Members had read through all the written submissions made by the representers/commenters, or just the Paper prepared by PlanD which had only 35 pages containing their own observations and views only.

The Paper did not include some points made in her written submission; and

- (b) even if a representer repeated some points which had already been raised by others, it was still the representer's right to ensure that Members had heard all the points raised by the representers/commenters.

17. Ms Ho Ka Po (R20) made the following main points:

- (a) she attended previous hearings of the Board and there was no time limit set for oral submission;
- (b) in replying to the Secretariat on attendance of this hearing, the time required for making oral submission had been indicated, which was more than 10 minutes;
- (c) the right to express views should not be deprived of and the oral submission to be made contained substantial information for Members to consider; and
- (d) she objected to the 10-minute time limit.

18. Hon. Chan Ka Lok (R15) made the following main points:

- (a) he raised strong objection to the 10-minute time limit. His submission could not be finished in 10 minutes' time as he had to explain in detail the facts and justifications related to his representation. This had been made clear to the Secretariat before the hearing. However, he had been suggested to seek authorizations from other representers such that he could have more time to speak. It was just noted that he would be invited to come back at another time slot allotted. This was not a fair arrangement for a representer/commenter who wanted to present his/her argument holistically. In addition, there was no information on the arrangement of Members' attendance at different sessions of the hearing. There was no guarantee that Members could have a thorough understanding of the submission if it was broken into parts;

- (b) the last amendments to TPO had an objective to allow more scope for discussion in the planning process. However, the current arrangement was eroding the core value of public participation in the town planning process; and
- (c) his strong objection to the 10-minute time limit should be recorded.

19. In response, the Chairman reiterated the following main points:

- (a) as 19,040 representations/comments had been received and over 1,000 representers/commenters had registered to attend the meeting, there was a practical need for the Board to make special arrangements for the subject hearing. The Board had a thorough discussion and considered them appropriate before the arrangements were adopted. There was no abuse of power;
- (b) full copies of all written submissions were sent to Members prior to the hearing. In fact, most of the submissions were similar;
- (c) the request for not repeating was to ensure that the time allowed for the hearing could be effectively utilized;
- (d) a representer might seek authorization from other representers/commenters such that he could speak longer. It was noted that Hon. Chan Ka Lok had obtained an authorization from another representer and as such a total time of 20 minutes would be allowed for his oral submission; and
- (e) in addition, any request for extension of time to speak would be recorded by the Secretariat. The Board would consider if the request was justified and after taking into account relevant considerations, an extension might be allowed.

20. In response to the request of Ms Ho Loy (R32) for making further response on

this issue, the Chairman said that sufficient time had already been used for the discussion of their views on the hearing arrangements. The hearing should commence with presentation by Government representatives.

21. The Chairman then invited the representative of PlanD to brief Members on the background of the representations. With the aid of a Powerpoint presentation, Miss Elsa Cheuk, CTP/SD, made the following main points as detailed in the Paper:

Background

- (a) on 15.2.2013, the draft Central District (Extension) Outline Zoning Plan (OZP) No. S/H24/8 was exhibited for public inspection under section 7 of TPO. The amendments included: rezoning of a strip of waterfront site to the north of the existing People's Liberation Army (PLA) Hong Kong Garrison (the Garrison) Headquarters from "Open Space" ("O") to "Other Specified Uses" annotated "Military Use (1)" ("OU(MU)1"); deletion of the straight line with annotation "150m Military Berth (subject to detailed design)" from the OZP; and amendment to the Notes to impose a building height restriction (BHR) of 10mPD and to add minor relaxation clause for the "OU(MU)1" zone;
- (b) the site for the Central Military Dock (CMD) included a dock area of about 0.3 ha and four single-storey structures (including office, washroom, fire services pump room and electricity supply facilities) with a total area of about 220m² and a height not exceeding 4.5m (8.7mPD)) for supporting the operational need of the Garrison;
- (c) under Annex III of the Defence Land Agreement (DLA) (1994), the Hong Kong Government would "leave free the 150m of the eventual permanent waterfront in the plans for the Central and Wanchai Reclamation at a place close to the Prince of Wales Barracks for the construction of a military dock after 1997". 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. After reunification, the HKSAR Government took up the construction of CMD and associated facilities at the Central harbourfront;

- (d) on the OZP No. S/H24/2 first approved by the Chief Executive in Council (CE in C) in 2000, CMD was represented by a straight line annotated “150m Military Berth (subject to detailed design)”. The annotation had remained unchanged until the subject amendments were incorporated into the OZP No. S/H24/8;
- (e) as the detailed design and delineation of the military dock had been confirmed and the construction works were reaching their final stages, PlanD in accordance with the usual practice proceeded to propose technical amendments to the OZP to reflect the final delineation and the land use of the military dock;
- (f) the Garrison agreed in 2000 that it would open the land area of the military dock (except for the utilities, ancillary structures and landing steps) to the public as a part of the promenade when the dock was not in military use, having regard to its operation and need for protecting the military dock. The HKSAR Government had publicly made known on several occasions the Garrison’s agreement to open the land area of the military dock to the public when it was not in military use;
- (g) the amendments incorporated into the OZP were presented to the Harbourfront Commission’s Task Force on Harbourfront Developments on Hong Kong Island (HKTF) on 21.2.2013, the Central and Western District Council (C&WDC) on 21.3.2013 and 23.5.2013, and LegCo Panel on Development on 28.5.2013 respectively;

The Representations and Comments

- (h) a total of 9,815 representations and 9,242 comments were received during the plan exhibition period. There were 3 ‘representers’ and 14 ‘commenters’ who subsequently wrote to the Secretariat of the Board indicating that they had not submitted any representation or comment. Hence, the total numbers of valid representations and valid comments were 9,812 and 9,228 respectively. The 9,812 valid representations were all related to the CMD site (the representation site);
- (i) R1 to R10 supported the amendments. Five of them were submitted by local organisations: CW Power, 山水摯友, 同心網絡, Fong Chung Social Service Centre and Hong Kong Central and Western District Woman Association;
- (j) the remaining 9,802 representations opposed the amendments. They included two LegCo members, Hon. Chan Ka Lok and Hon. Albert Chan (R15 and R28), Neo Democrats and Democratic Party (R26 and R38), Green Sense, Central & Western Concern Group, SPH, Designing Hong Kong Limited, Save Our Shorelines, HK重建關注組 and 反對香港被規劃行動組 (R20, R29, R41, R42, R47, R3390 and R5840) and members of the public. Amongst the adverse representations, about 8,291 representations were submitted in 20 types of standard or similar emails/ letters;

Grounds of Representations and Representers’ Proposals

Supporting Representations

- (k) R1 to R10 supported the amendments to the OZP on the following grounds:
 - (i) the proposed amendments were in accordance with DLA as well as the relevant legislation. The presence of the Garrison symbolized

national sovereignty;

- (ii) the location of the military dock had long been annotated on the OZP. The current OZP amendment was to reflect the final delineation and the land use of the military dock in the OZP;
- (iii) the Garrison had agreed to open the military dock for public use as part of the waterfront promenade when it was not in military use. This had already been clearly explained to LegCo, DC and the Board. The design of the dock had taken account of this consideration that it was fitted with folding gates which would be opened to allow public access when the dock was not in use; and
- (iv) the OZP amendment proposal was considered reasonable as it had struck a balance between the requirement for military security and public usage of the harbourfront;

Adverse Representations

- (1) R11 to R9815 opposed the amendments and the major grounds were:

The Reprovisioning for the Military Dock at the Central Harbourfront

- (i) it was the common understanding that the military dock would only be used for occasional berthing of military vessels. The original “O” zoning could accommodate this use and there was no justification for the proposed change of zoning for a permanent military use;
- (ii) there were already many military sites in Hong Kong with low utilization rate. The Government should, under Article 13 of the Garrison Law, liaise with the Garrison for the return of the military sites which were no longer required for military use;

- (iii) the former naval base at Tamar Basin adjacent to the current Central Barracks had been reprovisioned at Stonecutters Island. There was no strong need and urgency to expand military facilities at the precious Central waterfront;
- (iv) there was no precedent case in other overseas cities to have military use at the city core and there were queries on the necessity of CMD. CMD did not comply with Article 5 of the Garrison Law and DLA (i.e. all military sites should be used for defence purpose). The Garrison, who would have access along the Central harbourfront, would be a threat to the people of Hong Kong;

Need for Zoning Amendment

- (v) the waterfront was the common asset of Hong Kong people. The amendments had changed the nature of the site for “occasional berthing of military vessels” to a “permanent military use” under strict surveillance. The “privatisation and militarisation of the public asset” deviated from the Government’s commitment to the public to dedicate the harbourfront to the people;
- (vi) according to DLA, the Government was required to reserve area for berthing of vessels. It was unclear why the representation site was zoned “OU(MU)1”, but not “OU(Military Dock)”;

Design, Planning Parameters and Visual Impact

- (vii) the new zoning would allow a huge structure on the harbourfront which could be up to 3 storeys with a total GFA of 90,000 sq.ft. and no further planning application was required from the Board;
- (viii) the new zoning which allowed for erection of structures up to 10m high on the waterfront would be visually obstructive, blocking air ventilation, and would down-grade the internationally known Hong

Kong waterfront cityscape;

- (ix) there would be no control on the future uses within the representation site as there were no specific uses in Column 1 and Column 2 of the “OU(MU)1” zone;
- (x) there was no clear definition on what height relaxation would be considered as “minor” under the minor relaxation clause;

Public Access and Traffic Arrangement

- (xi) there was no guarantee for public entry to and usage of the military dock in future under the “OU(MU)1” zoning;
- (xii) the military dock would be incompatible with the uses in the adjoining waterfront area. It would interrupt the east-west connectivity in the waterfront promenade and affect the public’s appreciation of the spectacular view of Victoria Harbour;
- (xiii) the military dock would exert pressure on the existing road network and generate traffic impact on the Central area;
- (xiv) the Government should disclose more information to the public on the arrangement for the closure of the military dock in case berthing of military vessel was required and the estimated utilization rate of the military dock;
- (xv) the north-south military corridor from the military dock to the existing Central Barracks would interrupt the traffic at Lung Wo Road. The Government should assess the traffic impact and give concrete proposals for the future traffic arrangement and pedestrian safety system;
- (xvi) there were queries on the deletion of the relevant paragraph relating to the “proposed development of the pavement scheme to provide

uninterrupted movement for pedestrians” from the Explanatory Statement (ES) of the OZP;

(xvii) the military vessels would have adverse impact on the marine traffic in Victoria Harbour;

Open Space Provision

(xviii) there was an acute shortage of public open space in Central. The waterfront site should be reserved for the use of the public and visitors;

Compliance with Protection of the Harbour Ordinance (PHO) and TPO

(xix) the amendments were in breach of the Government’s commitment for priority and free access to the waterfront for enjoyment by the public; they would sterilize the most central and sensitive part of the Central Reclamation and interrupt public enjoyment of the continuous waterfront promenade in the east-west direction;

(xx) the military dock did not have overriding public interest and did not comply with PHO and the ‘Harbour Planning Principles’ (HPP) of maximising opportunities for public enjoyment and unrestricted physical access for pedestrians to Victoria Harbour and harbourfront areas as promulgated by the former Harbour-front Enhancement Committee;

(xxi) the amendments were not in line with the s.3(1) of TPO in that priority should be given to the general welfare of the Hong Kong community;

Public Consultation

(xxii) construction of CMD had started before the completion of

consultation on OZP amendments, which was against the principle of procedural justice;

(xxiii) no public consensus had been obtained and on many occasions, the military dock was deliberately hidden in design plans and publications of the public documents;

(xxiv) the consultation period of two months was too short and should be extended. There had been very limited coverage in the media. Further public consultation was needed in order to come up with a plan to reflect the best interest of the public; and

Intrusion of Privacy

(xxv) the military area might have maximum security and might be intensively monitored under strict surveillance. The CCTV monitors and camera control in the dock might violate the privacy of the public;

(m) the representers' proposals were:

(i) to revert to the "O" zoning, or reduce the "OU(MU)1" extent to the existing buildings only;

(ii) to open the representation site along the waterfront for public use. Any facilities including pier should be opened for public use and not for the sole use of the Garrison;

(iii) to reconsider the land use of the representation site as well as its nearby areas for other uses, including residential (public or private housing), commercial, tourism, community, cultural, arts, recreational and greenery uses, e.g. promenade, park, alfresco dining, cycle track, bazaar, pet garden, etc.;

- (iv) to develop military facilities/dock of the Garrison at other locations, e.g. the New Territories, outlying islands, etc.;
- (v) to insert additional statements in the Notes of the OZP to allow public access to the waterfront section inside the “OU(MU)1” zone whenever there was no military activity;
- (vi) to review the design of the corridor between the Garrison Headquarters and the military dock, e.g. opening the corridor for public use when the military pier was not in use or constructing the corridor underground;
- (vii) to re-assemble the Queen's Pier at the representation site;
- (viii) to delete the minor relaxation clause for the BHR; and
- (ix) to regularize the existing structures at the representation site with the formal approval by the Board/to demolish the existing structures on site/to construct the buildings in low-rise form;

Comments

- (n) there were 9,228 valid comments. C1 to C8, C9241 and C9242 were submitted by members of the public supporting the amendments. The remaining 9,218 comments opposed the amendments and supported the representations against CMD. They were submitted by a LegCo member Hon. Albert Chan (C14), a C&WDC member Ms. Cheng Lai King (C16), the Democratic Party (C17), several concern groups (C11, C12, C13, C16, C17 and C18) and members of the public. 9,127 comments were in a standard email with minor variations;

Supporting Comments

- (o) some of the supporting views from C1 to C8, C9241 and C9242 were the

same as the views of the representations in support of CMD. Other supportive views were:

- (i) the Garrison had the responsibility to safeguard the stability of Hong Kong and provide a safe environment for the general public and the investors. The proposed amendments would meet the service needs of the Garrison;
- (ii) the construction of CMD and its facilities were always permitted under the OZP; and
- (iii) taking into account the formation level of the waterfront, the BHR of 10mPD imposed under the zoning could only allow the dock structure of single storey high, instead of 3 storeys;

Adverse Comments

- (p) C9 to C9240 generally echoed most of the points raised by the representers against CMD. Other views were:

The Reprovisioning for the Military Dock at the Central Harbourfront

- (i) the Government should liaise with the Garrison to reconsider the need for the military dock. Temporary berthing arrangement could be made at the public piers to facilitate the embarking/disembarking of the Garrison's vessels.

Compliance with the Zoning Requirements

- (ii) the Government had violated the zoning requirement of "O" by building illegal pier structures on the representation site. No planning permission from the Board had been obtained;
- (iii) any developments for military berthing and access along the Central harbourfront should be limited to the existing four small structures and the landing steps in the dock area;

Future Management Responsibility of CMD

- (iv) it was unreasonable to have a site managed by PLA located in the middle of a sizable public open space and this would have serious law enforcement implications;
- (v) there were concerns on whether the CMD site, the military access and the “150m minimum clearance zone from CMD” in Victoria Harbour would be declared as Closed Area under Cap. 245B or Protected Place, as well as the future management responsibility of those areas;

Legal Submission

- (q) one commenter (i.e. C18 (SPH)) had submitted legal opinion on whether the Board could lawfully make the amendments (Items A and B) to the OZP. The major arguments were summarised below:

Compliance with DLA

- (i) the obligations under DLA were international obligations undertaken by the UK Government to the PRC Government, which were clearly envisaged to be implemented before 1.7.1997. The UK Government could not be asked to implement any residual obligations after 1.7.1997;
- (ii) the HKSAR had no international obligations under DLA and its insistence that it was complying with an international obligation was simply a misconception of the nature of DLA and its own constitutional status;

Compliance with PHO and TPO

- (iii) in undertaking the zoning amendment, the HKSAR had to comply with municipal laws, namely PHO and TPO;

- (iv) along the 150m water frontage designed for the military berth on the shoreline of the Central reclamation, bollards had been constructed to enable berthing. On OZP No. S/H24/6, there was no mention of buildings to be constructed for a military dock. The space adjoining the shoreline designed for berthing of military vessels was zoned “O” on the OZP which was completely consistent with that envisaged in DLA. As there was no justification for the construction of buildings to accommodate the berthing of military vessels, the construction of a dock and the proposed “OU(MU)1” zoning would not have passed s.3 of PHO. All necessary facilities (such as water pumping for fire-fighting or fresh water supply and electricity supply) could easily be accommodated underground and there was no need for an office. There was hence no necessity for any buildings;
- (v) the Court of Final Appeal’s interpretation of PHO required CE in C to consider whether there was an overriding public need. A need should only be overriding if there was a compelling and present need, and, where there was a reasonable alternative, an overriding need was not made out. When CE in C considered the approval of OZP No. S/H24/6, it could not have envisaged the proposed zoning of “OU(MU)1” but rather a berthing facility which would not occupy any land on the reclamation, as it was all that was necessary to provide berthing for military vessels. When military vessels berthed along the waterfront, temporary closure measures of the open space could be adopted. The zoning therefore did not comply with PHO;
- (vi) the Board was required under TPO to undertake the systematic preparation of draft plans, among other things, “with a view to the promotion of health, safety, convenience and general welfare of the community.” The zoning could not be said to be necessary for the welfare of the community which the Board was required to comply

with. As a berthing facility with bollards had already been constructed, the zoning of 30,000 sq.ft of land and depriving the community of this amount of open space in a prime scenic area was not for the benefit of the community; and

- (vii) therefore the zoning could not comply with PHO and TPO.

Responses to Grounds of Representations and Comments and Representers' Proposals

Supporting Representations and Comments

- (r) the 10 representations and 10 comments in support of the amendments to the OZP were noted;

Adverse Representations and Comments

- (s) responses to the adverse representations and comments were as follows:

The Reprovisioning of the Military Dock at the Central Harbourfront

- (i) the reprovisioning of CMD at the Central harbourfront was in accordance with DLA which set out the military buildings and fixed facilities to be reprovisioned for the Garrison. The HKSAR Government took up the construction of CMD after the reunification;
- (ii) before the reunification, the headquarters of the British Garrison used to have a naval basin and dock facilities in the former Tamar Basin, and they were affected by the Central Reclamation that commenced before the reunification. CMD, which was situated close to the Central Barracks, was a reprovision of the dock facilities for the previous Prince of Wales Barracks;
- (iii) Clause 3 of DLA stated that the facilities to be reprovisioned were

for defence purposes. CMD and its ancillary facilities were designed to meet the defence requirements of the Garrison;

- (iv) as CMD 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 as provided for under Item 5 of Annex III of DLA;

Need for Zoning Amendment

- (v) in accordance with Annex III of DLA, a military dock should be reprovisioned;
- (vi) when the draft OZP was first approved in 2000, the intention that there would be a military dock at the Central waterfront and its location had been clearly presented on the OZP. As the design that the dock would take and the area it would occupy had not yet been decided, it was represented by a straight line annotated “150m Military Berth (subject to detailed design)” on the OZP. As the detailed design and delineation of CMD was confirmed and the construction works were reaching their final stages, it was necessary to propose technical amendments to the OZP to reflect the final delineation and the land use of the military dock. The zoning of CMD was proposed to be amended to “OU(MU)1” to reflect the planning intention for the development of a military dock;
- (vii) the planning intention of the “OU(MU)1” zoning was intended for military use. Paragraph 8.5(a) of the ES clearly indicated that the land was intended for a military dock;

Design, Planning Parameters and Visual Impact

- (viii) the total area of CMD was about 0.3ha (i.e. 2,970m²). The

“OU(MU)1” zoning for CMD covered an area of about 0.3 ha, subject to a BHR of 10mPD. The BHR was imposed to respect the waterfront setting and to avoid creating visual intrusion to the developments behind. The BHR was in line with the proposed building height of 10mPD as recommended under the Urban Design Study for the New Central Harbourfront (UDS) for structures within the waterfront promenade at the new Central harbourfront, and UDS had gone through a comprehensive public engagement exercise and was noted by the Executive Council (ExCo), LegCo and the Board. It was also consistent with the building height profile of the surrounding “OU (Waterfront Related Commercial and Leisure Uses)” (i.e. “OU(1)”, “OU(2)” and “OU(3)”) zones with building height in the range of 13mPD to 25mPD. The present BHR had reflected approximately the height of the existing four single-storey buildings of about 8.7mPD/4.5m high. The four buildings with a total area of about 220m², as opposed to a 3-storey massive building as alleged by some representers, would unlikely result in adverse impacts on visual aspect and air ventilation;

- (ix) the maximum BHR imposed under the “OU(MU)1” zoning was 10mPD instead of 10m. Since the existing formation level of the site was about 4.2mPD, a BHR of 10mPD meant that the building thereon should not exceed 5.8m in height. A height of 5.8m would not be able to accommodate buildings of 3 storeys as claimed by some representers;
- (x) the Board did not impose any development restrictions on the military sites in Hong Kong (except for the three sites zoned for residential uses). It would be inconsistent and inappropriate to include development restrictions on the zoning unless there were exceptional circumstances;
- (xi) the Schedule of Uses for “OU(MU)1” zone was subsumed in the

“OU(For All Other Specified Uses (Not Listed Above)”. The Column 1 use was “as specified on the Plan”, i.e. the military use. For Column 2 uses which were Government uses, public and private utility installation, planning permission from the Board was required;

- (xii) it was the standard practice of the Board to include minor relaxation clause in all zonings with BHRs to cater for site specific circumstances. The clause was also included in other adjoining zonings on the waterfront like “OU(Pier)” and “OU(Pier and Associated Facilities)” on the OZP. The Garrison had indicated that they had no plan to build any further structures in CMD. The current buildings in the dock had been designed to take into account the operational need of the Garrison and the need for public enjoyment of the promenade;
- (xiii) in considering application for minor relaxation of the BHR, the Board would take account of various factors depending on site specific context and circumstances including provision of innovative building design, visual amenities and planning merits that would bring about improvements to the townscape of the locality;

Public Access and Traffic Arrangement

- (xiv) the land area of the military dock would be open to the public when it was not in military use. When CMD was closed for military use, the public could use the walkway to the immediate south of the dock area as a continuous east-west connection along the waterfront and go to other parts of the waterfront. As recommended in UDS, CMD had been designed to integrate with the promenade. The folding gates for fencing off the dock were hidden in the ancillary building structures when CMD was not in

use so as to avoid visual obstruction to the harbour and the waterfront promenade;

(xv) the north-south access had been reserved at the Central and Western District Promenade – Central Section and it also served as an emergency vehicular access for the pump houses located at the promenade. Should the Garrison require temporary direct access between the Central Barracks and CMD via Lung Wo Road, the Government would make temporary traffic arrangement to facilitate such access while minimizing impact on pedestrians and road users, ensuring their safety and minimizing disturbance to the public enjoyment of the harbourfront. On such occasions, the pedestrians could use the pavement on both sides of the access road to walk between the waterfront and Lung Wo Road;

(xvi) the concerns on the opening of the military dock area and temporary traffic arrangement of the direct access between the Central Barracks and CMD via Lung Wo Road related to the operational details of the military site. They fell outside the purview of the Board to consider;

(xvii) the Board was not empowered under TPO to specify the operational details or arrangement of a specific site on the OZP or its Notes. The Board should only include appropriate and relevant matters in the ES that aimed to reflect the planning intention and objectives of the Board. The planning intention of the zoning of the CMD site as stated in the OZP was clear, which was intended to reflect the delineation of the military dock;

(xviii) adverse impacts on marine traffic along Victoria Harbour arising from the military vessels were quite limited;

Compliance with the Zoning Requirements

(xix) the construction of the facilities ancillary to the military dock was

part of the public works coordinated and implemented by the Government as part of the CRIII project. The military berth was shown on the Central District (Extension) OZP when it was first approved in 2000. Hence, military berth was a permitted use. As facilities directly related to a permitted use were always permitted and no separate planning permission from the Board was required, there was no question of the construction works for the military dock being unauthorized;

Open Space Provision

- (xx) with a total area about 59 ha of open space in the Central and Western District which was above the required 51 ha under the Hong Kong Planning Standards and Guidelines, there was no shortage of open space in the district. CMD with a total area of about 0.3 ha was minimal to the total waterfront open space in the New Central harbourfront (9.87 ha in area). CMD had been designed to integrate with the promenade as recommended in UDS, and would be open to the public as a part of the promenade when not in military use. Besides, CMD would not affect the design and integrity of the waterfront promenade;

Compliance with DLA

- (xxi) Annex III of DLA set out 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 for the construction of a military dock after 1997. DLA required that a naval base be reprovisioned on the south shore of Stonecutters Island and a military dock be reprovisioned near the Central Barracks. After reunification, the HKSAR Government took up the construction of CMD and associated facilities at the Central harbourfront;

Compliance with PHO and TPO

- (xxii) the CRIII was to provide land for essential transport infrastructure. The review of CRIII in 2004 had demonstrated that CRIII had adopted a minimum reclamation option and the extent of CRIII reclamation satisfied the overriding public need test set down by CFA in relation to PHO. Since the waterfront promenade including CMD did not require any extra reclamation as it was only developed on land formed for CWB and the re-provisioned facilities, the rezoning of the site of CMD would not engage PHO as it did not cause or give rise to any additional reclamation of the harbour;
- (xxiii) the land area of the CMD site would be open to the public when it was not in military use. The east-west connectivity along the waterfront area would not be affected when the dock was in use. The land use, location and design of the waterfront promenade including CMD had been deliberated at length in the past. The design of the waterfront area had also taken account of maximizing the opportunities for public enjoyment and unrestricted physical access for pedestrians to the harbourfront areas;
- (xxiv) the Hong Kong Electric Company did not permit the electrical supply buildings in CRIII (including the one in CMD) to be located underground because of the risks associated with flooding and the difficulties for fire fighting. The main structure of the fire service pump house (with water supply facilities) of CMD had already been constructed underground to minimize visual impact. The remaining above-ground part was essential to provide an enclosure for access, operation, equipment transport and ventilation;
- (xxv) the OZP amendments were to reflect the land use of CMD, and they were within the statutory functions of the Board and were in compliance with TPO;

Public Consultation

(xxvi) the construction of the facilities ancillary to the military dock was part of the public works coordinated and implemented by the Government as part of the CRIII project. The military berth was shown on the Central District (Extension) OZP when it was first approved in 2000. Hence, military berth was a permitted use. As facilities directly related to a permitted use were always permitted and no separate planning permission from the Board was required, there was no question of the construction works for the military dock being unauthorized;

(xxvii) the location and design of CMD at the Central harbourfront had been deliberated at length in the past, including the public engagement process for UDS in 2008. The conceptual design of CMD as part of the waterfront promenade and open for public access when it was not in military use had been made known to the public on several occasions. Further to the UDS public engagement exercise, the Government presented to C&WDC and HKTF in May and October 2010 respectively on the architectural design of CMD, as part of the works of the advance promenade at the new Central harbourfront;

(xxviii) the processing of the representations and comments in respect of the OZP was in accordance with the provisions of TPO. The representers and commenters were also invited to attend the Board meeting to present their views;

Future Management Responsibility of CMD

(xxix) under Article 5 of the Garrison Law, the defence functions and responsibilities that the Garrison should perform included, amongst others, controlling military facilities. CMD being one of the military facilities of the Garrison, would be under the management and use by the Garrison after the completion of works. No land

grant document was required between the Government and the Garrison for military sites. The Garrison had committed that having regard to its operation and need for protecting the military dock, the military dock would be open to public as part of the waterfront promenade when it was not in military use;

(xxx) the concerns on whether the CMD site, the military access and the “150m minimum clearance zone from CMD” in Victoria Harbour would be declared as Closed Area under Cap. 245B or Protected Place fell beyond the purview of the Board;

Intrusion of Privacy

(xxxi) the concern on the possible intrusion of privacy by CCTV cameras in CMD was related to the operational details of the area which was outside the ambit of the Board;

- (t) the responses to representers’ proposals were:
- (i) the planning intention to use the area at the Central waterfront for CMD was clearly indicated on the OZP since its first approval in 2000. Technical amendments to the OZP were made to reflect the final delineation and the land use of CMD. The “OU(MU)1” zoning covered the entire dock area which was required for the operation of the Garrison and did not include the buildings only. The proposals to revert the zoning back to “O”, opening the site for public use but not for the sole use of the Garrison, reducing the zoning extent to the existing buildings only and relocating the dock at other locations were not supported;
 - (ii) under the recommendations of UDS which had been widely engaged with the public, the waterfront area was designed with a park setting with a great variety of facilities for the public to appreciate the harbour. The proposals of reconsidering other land

uses in the site and the nearby areas including commercial, residential, etc. were not supported;

- (iii) the Notes and ES had clearly reflected the planning intention and objectives of the “OU(MU)1” zoning. The proposed inclusion of a statement in the OZP of allowing public access to the zone when there was no military activity was irrelevant in assisting the understanding or reflecting the planning intention of the OZP or the Notes;
- (iv) the north-south access between the Central Barracks and CMD was not the subject of amendments to the OZP. However, its design had been included in UDS for public consultation. On the proposal of constructing the access between the Central Barracks and CMD underground, it was technically not feasible due to the presence of the CWB Tunnel, leaving insufficient depth for the construction of an underground access. Besides, there were other technical problems including modification of existing seawall blocks underneath CMD, massive utilities diversion and extensive foundation works;
- (v) UDS had recommended that Queen’s Pier would be reassembled between Central Piers 9 and 10 to revive its pier function;
- (vi) it was the standard practice of the Board to include minor relaxation clause in all zonings with BHRs to cater for site specific circumstances. Minor relaxation of the BHR required planning permission from the Board, and the Board would scrutinize each case based on its own merits. The Garrison had indicated that they had no plan to build any further structures in CMD; and
- (vii) the existing buildings which were for the operation of CMD were permitted under the OZP and regularization was not required;

- (u) the support of R1 to R10 should be noted and the representations of R11 R9815 should not be upheld for the reasons set out in paragraph 7.2 of the Paper.

[Ms Bernadette H.H. Linn left the meeting temporarily at this point.]

22. The Chairman then invited the representers and their representatives to elaborate on their representations.

23. Ms Mary Mulvhill (R43) said that the Garrison Law should be read out so that Members could know the relevant clauses in considering the subject case. In response, the Chairman said that Members would take into account all relevant considerations in considering the representations/comments and the amendments to the OZP. Members would only deliberate after the completion of the hearing of all representations and comments.

24. The Chairman invited R3 to present and informed R3 that 10 minutes were allowed for the submission.

R3 CW Power

Mr Chan Wing Hang

25. Mr Chan Wing Hang made the following main points:

- (a) he was the deputy secretary of CW Power and CW Power supported the amendments to OZP for the PLA berth;
- (b) there were many objections against the Government and these objections were based on mistrust of the Government, the PRC Government and PLA. The objections against the PLA dock were not based on facts, but mere assumptions of the objectors. The Government should explain more to the public on the use of the PLA dock;

- (c) the provision of the PLA berth was to follow up the requirement under the Joint Declaration. Before the reunification, the headquarters of the British Garrison used to have a naval basin and dock facilities in the former Tamar Basin and the area occupied was much larger than the current PLA dock. Those areas were handed over to the Government to facilitate reclamation for the provision of new road network, bringing benefits to the general public at large;
- (d) there was a practical need for the amendments to the OZP. The construction works were reaching their final stages, the amendments to the OZP were to make sure that the land uses zoning was in line with the uses of the area;
- (e) at the request of the Government of HKSAR, the Garrison had already agreed that it would open the land area of the military dock to the public as a part of the promenade when the dock was not in military use. It was believed that the military dock would be open for public use in most of the time and it would not create much impact on public access to the area. The design of the military dock, including the folding gates, had taken into account the opening of it for public use when it was not in military use;
- (f) the LegCo, DC and the Board had been consulted on the amendments incorporated into the OZP. The consultation process complied with required procedures; and
- (g) the amendments to the OZP were supported as they were fair, reasonable and legally in order. With more information provided by the Government on the use of the military berth, it was believed that the proposal would have support from the general public.

[Actual speaking time of R3: 5 minutes]

[Professor S.C. Wong left the meeting temporarily at this point.]

R15 (Hon. Chan Ka Lok, LegCo Member)

R575 (Cheng Sau Mei)

Hon. Chan Ka Lok

26. The Chairman invited Hon. Chan Ka Lok (R15) to present. As R575 had authorized R15 to make submission, 20 minutes were allowed for Hon. Chan.

27. Hon. Chan Ka Lok made the follow main points:

- (a) he reiterated that the Chairman, being the Permanent Secretary for Planning and Lands, had conflict of role in the hearing. His submission was therefore made to the whole Board;
- (b) he also reiterated that his submission would not be finished within 20 minutes and he would continue his submission after 20 minutes, until his views were fully expressed and fairly treated. The Government representative had used considerable time to make her presentation. While some points in the Paper were repeated in the presentation, other relevant information such as the Garrison Law was not mentioned;

[Mr Jeff Lam arrived to join the meeting at this point. Professor S.C. Wong returned to join the meeting at this point.]

- (c) it was doubtful if there was any understanding of the Garrison Law and the 1994 Exchange of Notes between the Government of UK and the Government of PRC, and how these documents would affect the public use of the Central waterfront promenade with the rezoning for military use;
- (d) it was noted from the representative of a representer (R3) at the hearing that the objections raised were based on mistrust of the Government, the PRC Government and PLA. It was however considered that it was not a matter of trust, but grave concerns of the public on how the military use would affect the public. Members should note the grave concerns;

- (e) legal issues, civil rights, relationship among the PRC Government, PLA and HKSAR Government, as well as the public dimension were all relevant considerations which had to be dealt with in the subject case;
- (f) it was stated in the Paper that the concerns on possible intrusion of privacy by CCTV cameras in CMD was related to the operational details of the area which were outside the ambit of the Board. Such comment was irresponsible. The Board should be the gatekeeper for appropriate land use and it was not appropriate for the Board to approve the zoning amendment as a rubber stamp, without looking into the operational details of the military dock;
- (g) the recent speech made by the Chief Executive (CE) at LegCo, the Garrison Law including an Explanatory Note on the Garrison Law issued by PLA in June 1997, the 1994 Exchange of Notes, and a declaration made by the former Secretary for Security before the reunification were all important and relevant documents which would be presented to the Board in his submission;
- (h) the public was misled by the Government on details of the PLA berth until the site of 0.3 ha in area was rezoned from “O” to military use on the OZP. The Government had never mentioned to the public that there would be a rezoning for military use, but indicated that 150m long shoreline would be for military berth use subject to detailed design. The representation site was planned for open space use. The common understanding was that the military berth would only be used for occasional berthing of military vessels;
- (i) it was noted that should the Garrison require temporary direct access between the Central Barracks and CMD, the Government would make temporary traffic arrangement to facilitate such access while minimizing the impact on pedestrians and road users. There was no reason why such temporary arrangement could not be applied to the representation site;

- (j) the zoning proposal was not people-oriented, but PLA-oriented, as it was PLA which decided when the representation site would be opened for public use. The open space was constructed using Hong Kong tax payers' money. It was unfair and unjust to Hong Kong people with the current arrangement;
- (k) as said by CE in his opening remarks of the Question and Answer Session at LegCo on 9.5.2013: there was need for berthing of naval vessels at certain time, however PLA agreed that when the area of the military dock was not in use, it would be open to the public as open space use, this was out of goodwill and an arrangement to accommodate the public (..... 某些時間需要停靠艦艇，但解放軍駐港部隊同意碼頭範圍在不使用時，開放給市民進入休憩，這是出於好意和遷就香港市民的安排). It was not known from when the land in Hong Kong could only be used through the goodwill and arrangement of PLA;
- (l) on the other hand, in the 1994 Exchange of Notes, which listed out in detail the use of the military sites in Hong Kong after reunification, there was a document on the declaration of PRC that the military sites would all be used for defence purposes and the right of use would not be transferable. It was also stated that the military sites would not be made available to others for non-defence purposes. If the military sites were no longer used for defence purposes, they would be handed back to the HKSAR Government without compensation; and
- (m) if the rezoning was approved, in accordance with the said declaration made by the Ministry of Foreign Affairs of PRC in 1994, the representation site could only be used for defence purposes, but not other purposes. While PRC Government could make a written statement allowing the use of the representation site for other purposes, how this confirmation could be trusted?

28. As the 20-minute time allotted to R15 was up, the Chairman asked Hon. Chan Ka Lok how much additional time was required for his submission as it was expected that an extension of time for submission would be sought.

29. In response, Hon. Chan Ka Lok requested that he should be respected.

30. The Chairman said that the Board respected Hon. Chan and, as such, he would take that as his request for an extension of speaking time. The Chairman asked Hon. Chan if there were still lots of points to be made and how much additional time was required for his submission.

31. Hon. Chan Ka Lok complained that his microphone had been turned off. He could not estimate how much time he would need to make his submission as he was just referring to the first document.

32. The Chairman said that the extension of speaking time would be considered after the completion of submissions by all the eight representatives attending the hearing in this session of the meeting. The Chairman requested Hon. Chan Ka Lok to let the next representative to present first.

33. Hon. Chan Ka Lok indicated that he did not accept such arrangement.

34. The Chairman explained that the Chairman had the full discretion and had to manage the conduct of the meeting. He said that the hearing arrangements were fully deliberated by Members for adoption by the Board and should be respected. He again requested Hon. Chan Ka Lok to let the next representative present first.

35. Hon. Chan Ka Lok intended to continue his submission, and the Chairman explained that his request for extension of speaking time would be considered by the Board later.

36. Hon. Chan Ka Lok requested to record his strong objection to the arrangement.

37. The Chairman explained that the request for extension of speaking time of Hon. Chan Ka Lok would be considered later and that the meeting should proceed in accordance with the procedure for the hearing. The Chairman then invited Ms Ho Ka Po (R20) to present. In response to the request of Mr Winston K.S. Chu (R41) to speak on behalf of R20, the Chairman said that no authorization was received by the Board for Mr Chu to represent R20. The requirement for authorization was laid down in the Guidance Note for the subject hearing. He explained that, according to the sequence, R20 should be the next representer to make submission and R41 should make submission later.

38. Mr Winston K.S. Chu said that the arrangement would be subject to challenge at the Court, as there was no legal basis for that. Such arrangement would not happen at the Court in Hong Kong. Mr Chu said Hon. Chan Ka Lok was a LegCo Councillor and had an honourable status. He challenged how the Chairman could treat Hon. Chan in this manner. Mr Chu said he himself also had an honourable status and he was a Member of the Board a long time before the Chairman became Chairman of the Board. He should be respected too. Mr Chu raised strong objection and indicated that all representers would walk out of the meeting. Mr Chu said that he was not giving up his right and he reserved his right to complain against the matter.

39. The Chairman noted the complaint of Mr Winston K.S. Chu and invited R20 to present.

[All representers left the meeting at this point.]

40. The Chairman asked the Secretariat to check if any other representers had arrived.

41. Noting that no representer had arrived, the Chairman suggested adjourning the meeting. Members agreed.

[The meeting was adjourned at 11:10 am.]

[Professor P.P. Ho, Dr W.K. Yau and Mr Stephen H.B. Yau left the meeting temporarily at this point.]

[The meeting was resumed at 12:20 pm.]

Deliberation

42. The Chairman said that the meeting had been adjourned for an hour and Members should consider the arrangement for the remaining hearing sessions.

43. The Chairman said that the representers had been invited to attend the meeting at 9:00 am and to register with the Secretariat at 8:45 am. Since the start of the meeting, only eight representers turned up. While a lunch break at 1:00 pm had been scheduled, the meeting on that day should be regarded as one session according to the agreed arrangement of the meeting. Members should consider whether the meeting should be adjourned for some more time after lunch break to see if other representers would attend. In addition, it was noted that the representers who had walked out of the meeting room were meeting the media to talk about the hearing arrangement of the subject case and Members might consider whether a press statement to explain the situation should be issued.

44. The Vice-chairman said that since it was the first session of the meeting and a set of specific hearing arrangements had been adopted, Members might wait for some more time after lunch break to see if some more representers would come. He suggested that one-hour waiting time would be adequate. As for the remaining scheduled sessions, the adopted hearing arrangements should be followed. He agreed that a press statement should be issued to help the public understand the reasons why the special hearing arrangements for the subject case were adopted.

45. In response to a Member's questions, the Secretary provided the information that in response to the invitation from the Secretariat, more than 1,000 representers/comments had indicated that they would attend the hearing. As such, a total of 16 hearing sessions had been arranged. In the letter issued to the representers/commenters on 21.10.2013, the date of the allotted hearing session for each representer/commenter was indicated. Except for Mr Winston K.S. Chu (R41) who had further written to the Secretariat informing that he would like to attend on 25.11.2013, most representers/commenters had not further confirmed their attendance.

46. Members noted that R18 had arrived and asked when the Board would reconvene the hearing. However, R18 subsequently informed the staff of the Secretariat that he would not attend the hearing as he noted that other representers had already walked out of the meeting room.

47. Members then discussed the arrangements for those representers/ commenters who had not turned up as scheduled and the following main points were made:

- (a) according to the adopted practice, if representers/commenters failed to attend the scheduled hearing, the hearing would proceed in the absence of the representers/commenters. This practice was adopted for all hearings including review hearings under section 17 of TPO;
- (b) representers/commenters had the responsibility to attend the hearing according to the scheduled time, and to inform the Board if they could not attend or requested for other arrangement;
- (c) however, sympathetic consideration might be given if a representer/ commenter had valid reasons on his failure to attend;
- (d) for this particular case with 16 hearing sessions scheduled, flexibility might be given for requests for change of hearing sessions which might be allowed after other representers/ commenters had completed their oral submissions. However, such requests should not be encouraged and should not be entertained normally. Flexibility should only be given with reasonable grounds; and
- (e) the arrangement was in line with the provision under section 6B of TPO.

48. Members agreed that a press statement should be issued and should cover the following main points:

- (a) a total of 19,040 valid representations and comments were received, over

1,000 representers/commenters had registered to attend the meeting and the Board needed to consider all the representations and comments. Members had a thorough discussion before deciding to adopt the special hearing arrangement. In order to allow all representers/commenters to have a chance to make submission at the hearing, a 10-minute time limit was set. The arrangement was considered as a fair one as it was applicable to all representers/commenters;

- (b) the oral submissions were not to repeat the same points that had already been made in the representations/comments, but to elaborate further or highlight the essential points in the representations/comments for consideration by Members;
- (c) while a 10-minute time limit was set, two flexible arrangements were provided. Firstly, the representer/commenter might request for extension of speaking time and the Board had discretion to consider such requests with justifications. Secondly, if an authorized representative was appointed by more than one representer to represent them, that authorized representative could use the cumulative time allotted to all the persons he represented to make his oral submission; and
- (d) it was a pity that only eight representers had attended and only two had made submission in the first session of the meeting.

49. Regarding the information to be posted on the notice board in the Board's website, Members agreed that the following should be included:

- (a) the press statement to be issued by the Board regarding the first session of the meeting;
- (b) to remind all those representers and commenters who had replied that they would attend the meeting to attend the hearing as scheduled; and

- (c) to make clear that requests for further time or adjournment of the oral submissions from representers and commenters would not normally be allowed, but the Board retained a discretion which would only be exercised upon sufficient cause shown and after taking into account all relevant circumstances.

50. Since no representer had arrived, the meeting was adjourned for lunch break at 1:00 pm.

51. The meeting was resumed at 2:20 p.m.

52. The following Members and the Secretary were present in the afternoon of the first session of the meeting:

Mr Thomas T.M. Chow

Chairman

Mr Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Professor Edwin H.W. Chan

Dr C.P. Lau

Ms Julia M.K. Lau

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Ms Bonnie J.Y. Chan

Mr H.W. Cheung

Mr Ivan C.S. Fu

Mr Sunny L.K. Ho

Mr Lincoln L.H. Huang

Mr Patrick H.T. Lau

Mr F.C. Chan

Deputy Director of Environmental Protection
Mr C.W. Tse

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

Director of Planning
Mr K.K. Ling

53. Members noted that it was already 20 minutes past the scheduled meeting resuming time at 2:00 p.m. but no representer had turned up. The Chairman suggested and Members agreed that the meeting would be adjourned for one more hour.

[Professor Edwin H.W. Chan, Dr C.P. Lau, Ms Julia M.K. Lau, Ms Anita W.T. Ma and Mr H.W. Cheung arrived to join the meeting during the adjournment.]

54. Upon resuming the meeting at 3:20 p.m., there was still no representer present. The Board agreed that the meeting be adjourned and resumed at 9 a.m. on 5.11.2013.