

1. The meeting was resumed at 9:00 a.m. on 9.12.2013.
2. The following Members and the Secretary were present at the resumed meeting:

Mr Thomas T.M. Chow

Chairman

Mr Stanley Y.F. Wong

Vice-chairman

Professor S.C. Wong

Professor P.P. Ho

Professor Eddie C.M. Hui

Dr C.P. Lau

Mr Roger K.H. Luk

Ms Anita W.T. Ma

Dr W.K. Yau

Ms Bonnie J.Y. Chan

Mr Lincoln L.H. Huang

Ms Janice W.M. Lai

Mr Dominic K.K. Lam

Mr Patrick H.T. Lau

Mr Stephen H.B. Yau

Mr F.C. Chan

Deputy Director of Lands (General)

Mr Jeff Y.T. Lam

Director of Planning

Mr K.K. Ling

Presentation and Question Session

[Open Hearing]

3. The following government representatives and the commenters 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 Lam Chun Tak	Senior Engineer/Hong Kong (SE/HK), Civil Engineering and Development Department (CEDD)

C6014 (Chan Tze Chung)

Mr Chan Tze Chung	Commenter
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C6315 (Albert Lai)

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

5. In response to the Chairman's question, Mr Albert Lai (C6315) said that he would request 30 to 40 minutes for his oral submission. The Chairman said that an extra 30 minutes in addition to the 10 minutes' speaking time which made up a total of 40 minutes would be allowed for the oral submission of Mr Albert Lai. He then invited the representatives of PlanD to brief Members on the background to the case.

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

7. The Chairman then invited the commenters to elaborate on their comments.

C6014 - Chan Tze Chung

8. Mr Chan Tze Chung made the following main points:

- (a) as noted from newspapers, Ms Gladys Li stated that the Government was not absolutely bound by DLA to construct a military dock at the subject site. There was room for further negotiation;
- (b) from the point of view of a Hong Kong citizen, land for military use in Hong Kong was adequate and the former naval base at Tamar Basin had been relocated to Stonecutters Island. There was no need to construct the military dock at such a central location which should be used for a waterfront promenade for public enjoyment instead. CMD with a frontage of 150m would obstruct the scenic view from the promenade towards Victoria Harbour;
- (c) the opening arrangement of CMD to the public when not in military use was not guaranteed by any legal documents and could only be decided by PLA;
- (d) the operation of CMD could follow that of the former Queen's Pier, i.e. only temporary closure of the pier for military use such as ceremonial

function or the landing and boarding of PLA officials;

- (e) the CMD site at such a central location only served to proclaim the sovereignty of the People's Republic of China (PRC) in Hong Kong. Hong Kong was no longer a Colony. There was no need for PRC to proclaim sovereignty as the British Government did in the past. Besides, the usage rate of CMD would be low;
- (f) the Government should adopt a people-oriented approach to return the harbour which was an important public assets for the public's enjoyment; and
- (g) the PRC Government and PLA were increasingly influential in Hong Kong. The HKSAR Government should listen to the views of the public and abandon the rezoning of the CMD site for military use.

[Actual speaking time of C6014: 5 minutes]

C6315 - Albert Lai

9. Mr Albert Lai expressed his disagreement with the Board's imposition of extra restrictions on the representers/commenters attending the meeting especially on speaking time limit. He said that the Chairman, as the Permanent Secretary of Planning and Lands (PSPL), had role conflict to chair the meeting since PSPL, as a Government official, had already had a clear stance on the subject matter. The meeting could not be conducted in a fair manner if it was chaired by the Chairman. Mr Lai requested the Chairman to withdraw from the meeting and a non-official Member of the Board to chair the meeting. In response, the Chairman said that legal advice on the issue had been sought and considered by the Board, and Members had agreed that he would continue to chair the meeting.

10. Mr Albert Lai then made the following main points:

- (a) his oral submission would cover four aspects, namely, legal rationale;

original planning intention; management ‘blackhole’ and the mastermind behind. These four aspects were related to the responses of the Government including PlanD to the views already expressed at the meeting;

*Legal Rationale*

- (b) the only justification that the Government had for the subject rezoning was to follow DLA. The Government, which claimed its responsibility to fulfill DLA, had misunderstood its constitutional status and derogated the sovereignty of the PRC;
- (c) according to the memoirs of Mr Chen Zuo'er, the former Executive Deputy-Director of the Hong Kong and Macao Affairs Office of the State Council and Chinese representative in the Sino-British Joint Liaison Group, the handover of military sites in Hong Kong was part of the handover of defence responsibility of Hong Kong between the Chinese and British governments. Any type of participation from a third party, i.e. the so-called ‘three-legged stool’ theory, had no benefit. The British Government had the responsibility to ensure proper maintenance of the military sites in Hong Kong before their handover to the PRC Government, and should not pass the buck to the Hong Kong Government;
- (d) as quoted from Mr Neoh’s legal advice, the 1994 DLA was an international agreement between the Governments of the PRC and UK. Responsibilities covered by DLA should be completed before 1 July 1997. The HKSAR Government thus did not have any international responsibility with regard to DLA. The HKSAR Government had misunderstood the nature of DLA and the constitutional status of the Government;
- (e) despite Hong Kong’s reunification with the Mainland, the Chief Executive (CE) and the Secretary for Development (SDEV) still stated

that the Government had the responsibility to fulfill DLA. The PRC Government needed not instruct the HKSAR Government to fulfill DLA, which was an international agreement, and this might deviate from the Basic Law. The only explanation was that the HKSAR Government voluntarily took up the responsibility of the then Hong Kong Government. Indeed, the Government could not use the fulfillment of DLA as an excuse for the subject rezoning. Any rezoning should be based on the local legal framework, i.e. the Town Planning Ordinance (the Ordinance);

*Original Planning Intention*

- (f) the Government could not demonstrate how the subject rezoning from “O” to “OU(MU)1” could fulfill the functions of the Board, i.e. to promote the health, safety, convenience and general welfare of the community; and could meet the “overriding public need” test laid down by the Court relating to the presumption against reclamation under the Protection of the Harbour Ordinance (PHO);
- (g) there was no provision in the Garrison Law that PLA had privilege to acquire military sites bypassing the laws of Hong Kong;
- (h) under DLA, the then Hong Kong Government would only be required to leave free 150 metres (m) of the eventual permanent waterfront in the plans for the Central and Wanchai Reclamation for the construction of the military dock after 1997. The Government had misinterpreted that it was required to designate a permanent military site with an area of about 30,000 sq. ft. at the CMD site under PLA’s jurisdiction;
- (i) CE said in LegCo that Hong Kong people had forgotten the history, and that the opening arrangement of CMD to the public when it was not in military use was a better arrangement than the then military dock of the British army headquarters in the past which was designated as a military restricted zone at all times. CE was alleging that Hong Kong people

could not see the bigger issue and were not grateful to the improvement made, which was similar to the allegation made by SDEV;

- (j) CE's statement was not in line with the historical fact. When occupying Hong Kong in 1841, the British navy had already set up a naval warehouse on the waterfront of Central. Subsequently around the Second Opium War (from 1856 to 1860), the naval warehouse was relocated to Admiralty and expanded to include a new dockyard and barracks. Tamar was a troop carrier of the British navy which had moored at Hong Kong since 1897 until its destruction in December 1941. After the Second World War, the British navy decided to build a modern naval base at the then Wellington Barrack at Admiralty by reclamation and expansion of military facilities on land. The then Prince of Wales building, i.e. the current PLA Hong Kong Building, was completed in 1978. The entire naval base was named Tamar Naval Base;
- (k) as stated in DLA, the Tamar Naval Base was required to be relocated to Stonecutters Island. Annex III of the DLA also stipulated the requirements of the new naval base on the south shore of Stonecutters Island. The standards of construction and fixed facilities would be equivalent to those of the former Tamar Naval Base. About \$1.1 billion had been spent by the Government to construct the new naval base. Although the naval base had been relocated to Stonecutters Island, the then Prince of Wales building had been retained for the use by the Garrison, leading to inclusion of an extra requirement in DLA for construction of CMD near the building. CE had twisted the historical fact by packaging the opening of CMD to the public as a bonus to the public.;
- (l) the claim that CMD was required for defence of Hong Kong was exaggerating. This was because even without CMD for 15 years since the reunification with the Mainland, there was no defence problem in Hong Kong. The construction of CMD at the Central harbourfront was intended for increasing prestige and improving public relations of PLA

rather than for the genuine need of defence;

- (m) the first generation of Queen's Pier completed in 1925 was not open to the public. However, since the completion of the second generation of Queen's Pier in 1953, the pier and the adjacent open space had been open to the public and were not under the administration of the British army. There were temporary control measures only when it was occasionally used by the then Governors of Hong Kong. Hong Kong planning would go backward by 60 years to 1953 if the rezoning of the CMD site for military use by PLA was approved;
- (n) the CMD site would be open to the public only when not used by PLA. Assuming that CMD was visited by military vessels once a year with each time lasting for 8 to 10 days, it seemed to be unreasonable for PLA to manage with their own resources a site which would be used by the public in majority of the time. The Garrison might in fact plan to occupy CMD permanently. The Government's representatives could not properly explain and make any promise regarding the arrangement for opening of CMD to the public. They even implied that CMD would need to be closed at certain times daily for maintenance or military training. If this was the case, the CMD site would indeed be for military uses rather than solely as a military dock. Such arrangement would be contrary to the Government's promise made in the past ten years;
- (o) the subject rezoning for military use by PLA would adversely affect the relations between PLA and Hong Kong people. The reputation and acceptability of PLA in Hong Kong continued to drop recently;

*Management 'Blackhole'*

- (p) the general public might think that the designation of only 0.3 ha out of about 9 ha of the waterfront promenade on the Central harbourfront for military use would have minimal impact. However, the rezoning would

indeed hamper the business development in Hong Kong as this might be perceived as changing the nature of the “One Country, Two Systems”;

- (q) if the “O” zoning of the CMD site was retained, each time when the Garrison needed to use CMD, the Government would need to declare CMD as a temporary military restricted zone in the Government Gazette. If the CMD site was rezoned to “OU(MU(1))”, the CMD site would become a military restricted zone and military vessels could always berth at CMD without the need to inform the Government in advance. Such rezoning would lead to the change in the nature of CMD from being temporarily used by PLA to a permanent military dock. The military vessels berthed at CMD would be eye-catching in Victoria Harbour, which was not desirable;
- (r) the Garrison was not under the control and monitoring by CE, LegCo and the courts in Hong Kong. The regular berthing of military vessels near the Central Business District (CBD) would worsen the confidence of Hong Kong people on the PRC Government and the “One Country, Two Systems”;
- (s) the confidence from the international world on the systems and rule of law in Hong Kong was the key to success of the free market economy of Hong Kong. Should the CMD site be rezoned for military use, military vessels would be permitted to berth at the Central harbourfront which was only a few hundred metres away from the CBD, LegCo and the Consulates of the UK and USA. The public would perceive the Garrison as an army occupying Hong Kong and military vessels as a military threat. This would adversely affect the confidence of the business sector and international world on Hong Kong;
- (t) berthing British military vessels at Tamar Basin during the colonial period was a symbol to proclaim British’s governance in Hong Kong. Since Hong Kong was now a financial city and no longer a British colony, there was no reason for the Government to rezone the CMD site

to pave way for the berthing of military vessels at the Central harbourfront;

- (u) it would be counter-productive to use the berthing of military vessels at the site as a military threat to suppress the increasing public opposition. Hong Kong people usually expressed their opposition by leaving Hong Kong for good. If so, the most suffered party would be the Mainland enterprises which had half of the market value of Hong Kong stock market. More and more people became dissatisfied with the Government's policies and ultimately leading to more civil disobedience in Hong Kong;
- (v) arising from the incident of granting free television licences, the public was already dissatisfied with the 'black-box operation' in the Executive Council and the Government. The approval of the draft OZP incorporating the subject zoning amendment by the Chief Executive in Council (CE in C) to allow the berthing of military vessels at CMD would attract strong public oppositions. The business sector would be suffered. This would lead to the split of the pro-Government camp too;
- (w) there were already 18 military sites in Hong Kong under PLA's jurisdiction and designated as military restricted zones. The Garrison Law stipulated that without the permission of the Commander of the Hong Kong Garrison or other officers as he might authorize to give such permission, no person, vehicle, ship or aircraft other than the ones of the Hong Kong Garrison should enter the military restricted zones. Guards of the military restricted zones should have the right to stop, according to the law, any unauthorized entry into any military restricted zone or any act which would damage or endanger any military facilities. SDEV had indicated that the CMD site would be handed over to PLA and put under their management. In other words, any Hong Kong citizens or tourists visiting the promenade in the CMD site would step into the area under PLA's jurisdiction. Any activities within this site would need permission from PLA, meaning that the basic rights that Hong Kong

citizens normally enjoyed in public open spaces would be deprived of. It would be legal for PLA to intervene any activities in this area. Section 23 of the Garrison Law stipulated that cases of tort arising from acts committed by members of the Hong Kong Garrison when performing their official duties should be subject to the jurisdiction of the Supreme People's Court of the People's Republic of China, thus the courts in Hong Kong had no authority to intervene. Therefore, should the CMD site be rezoned from "O" to "OU(MU(1))", any civil rights in the site would be overridden by PLA, and the site would become the 'Bermuda Triangle' within which Hong Kong citizens might 'disappear' without knowing the reason why;

- (x) rezoning the CMD site for military use would not only pose fear to Hong Kong people but also embarrass the HKSAR Government and the Garrison. The CMD site would definitely become a popular place for making protests. Any confrontation between the Government and the protesters at the CMD site would attract the attention from the press worldwide. If this section of the promenade would be closed at a certain period of time daily, confrontation might happen everyday if the protesters refused to leave the CMD site. To avoid any possible confrontation, PLA might eventually choose to close the CMD site permanently;

#### *Mastermind Behind*

- (y) the subject rezoning had three violations. First, it violated the Government's promise of "returning the Harbour to the people" in that the continuous promenade along the northern shoreline of Hong Kong Island would be lost. Second, it violated the Court of Final Appeal's (CFA's) intention of allowing reclamation at Victoria Harbour since construction of military facilities in Central did not meet the "overriding public need" test. Third, it violated the Harbour Planning Principles formulated by then Harbourfront Enhancement Committee, especially Principle 7 in relation to unrestricted and convenient pedestrian access

and Principle 8 in relation to maximisation of opportunities for public enjoyment of the harbourfront;

- (z) a photo on an extracted page of the Executive Summary of UDS published in 2011 shown on the visualiser indicated that Mrs Carrie Lam was taking charge of a public consultation forum of UDS. In fact, Mrs Carrie Lam had been the major Government official responsible for harbourfront planning since 2004, including setting up of then Harbourfront Enhancement Committee in 2004; taking charge of a series of public consultation activities for UDS since 2008; as well as setting up of the Harbourfront Commission in 2010;

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

- (aa) paragraph 1.1.3 of page 1 of the Final Report of UDS shown on the visualiser stated that in considering several rezoning requests/applications in 2005-2006, the TPB reaffirmed the land use zonings for the new Central harbourfront, but requested PlanD to refine the urban design framework and to prepare planning and design briefs to guide the future development of the key sites in Central Reclamation Phases I and III. This showed that the planning intention at that time was that the entire Central harbourfront was intended for public open space;

[Dr C.P. Lau left the meeting temporarily at this point.]

- (bb) the Central harbourfront including the CMD site had been zoned “O” in the 2000 approved Central District (Extension) OZP until the last draft OZP which was gazetted on 16 March 2012. The subject OZP amendment was made known to the public when the Government submitted it to the TPB for consideration on 25 January 2013 and later gazetted it on 15 February 2013;
- (cc) in other words, the change in planning intention of the CMD site only

took place after Mr Leung had assumed office as CE on 1 July 2012;

- (dd) PlanD's representative had explained that the rezoning of the CMD site for military use could not be proposed earlier since PlanD had to wait for the detailed design of CMD to be ready. However, this explanation was not convincing since SDEV admitted in his blog on 21 April 2013 that the detailed design had already been available in 2010 for consultation with the District Council, and the reports of UDS showed that the detailed design had already been completed in 2011. Hence, CE made up the idea of rezoning the CMD site for military use after he had been elected, and made the decision of rezoning after he had taken office as CE;
- (ee) the campaign of "Occupying Central with Love and Peace" should not be the major factor leading to the rezoning of the CMD site for military use. It was submitted that the most reasonable guess was that CE discussed with the Garrison about the rezoning proposal after taking office on 1 July 2012; and
- (ff) it was evident that the masterminds behind the subject rezoning were Mrs Carrie Lam who did not stand firm to her promise to the people, and Mr Leung Chun-ying who carried out "black-box operation". TPB Members should consider the rezoning carefully since approving the rezoning would not only lead to exploitation of rights of the people but also induced a change in the nature of the "One Country, Two Systems";

[Actual speaking time of C6315: 40 minutes]

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

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

12. In response to Mr K.K. Ling's questions, Mr Albert Lai said that the remarks

of “three-legged stool” made by Mr Chen Zuo’er was quoted from his Memoirs which was published four or five years ago, and Mr Chen probably made this remarks in 1994 during the negotiation with the UK government on DLA. Miss Elsa Cheuk replied to the other question and said that UDS and its public consultation documents did not mention that CMD was for ceremonial visits purpose. In response to a Member’s question, Miss Elsa Cheuk said that the naval base at Stonecutters Island was completed before 1997.

#### *Fulfillment of DLA*

13. Some Members asked whether the undertaking stipulated in Annex III of the DLA i.e. “leave free 150 metres of the eventual permanent waterfront in the plans for the Central and Wanchai Reclamation for the construction of a military dock after 1997” had already been fulfilled by the Government. A Member said that although the Government had already left free the permanent waterfront on the OZP for construction of the military dock, there needed to be a party to follow up and complete the construction of the military dock.

14. In response, Mr Albert Lai said that the Government had already fulfilled the aforesaid undertaking by leaving free 150m of the permanent waterfront for the construction of the military dock. The aforesaid undertaking should be ignored when considering the rezoning of the CMD site for military use. Under normal situations, the land use of the CMD site should be determined based on a number of considerations, including the compliance with the preamble of the Ordinance to promote the health, safety, convenience and general welfare of the community, as well as meeting the “overriding public need” test laid down by the CFA in relation to PHO and compliance with the Harbour Planning Principles. Based on these considerations, the CMD site should be zoned “O” rather than for military use. Besides, the “O” zoning would not be in conflict with the operation of CMD which had already been built. The Government had no ground to rezone the CMD site for military use unless there was any justification which could override the aforesaid considerations. However, based on his understanding, those parties closely related to CMD including the Security Bureau, the Garrison/PLA or the PRC Government had not provided any written documents to justify the necessity of zoning the CMD site for military use. Therefore, the CMD site should not be zoned for military use if no justification was available.

15. Mr Albert Lai continued to say that the HKSAR Government misunderstood its constitutional status to fulfill the international agreement (i.e. DLA) for the UK Government by constructing the military dock. Given that DLA was an agreement between the UK and PRC governments, there was no jurisdiction for HKSAR Government to fulfill DLA on behalf of the UK Government. The HKSAR Government could determine the land use of the CMD site according to Hong Kong laws;

*Land Portion of Military Dock*

16. A Member said that usually a military dock would have a portion on land which would be occupied by some related facilities (e.g. landing facilities for military vessels). It was rational to rezone the land portion of CMD for military use. In response, Mr Albert Lai quoted the example of the former Queen's Pier which was for the use by the British army or the Governors of Hong Kong. The land area along Queen's Pier was not zoned for military use in the past. Mr Lai further said that his concern was mainly on the military use zoning of the site rather than the military facilities at CMD. It was considered that the military facilities built at CMD could already suit the needs of the Garrison. The Government had indicated that the Garrison had no plan to construct more facilities in CMD.

[Ms Bonnie J.Y. Chan returned to join the meeting at this point.]

*Opening Arrangement of CMD*

17. In response to a Member's question, Mr Albert Lai said that he did not oppose to the construction of CMD which had been proposed for a long time since the previous public consultation exercises concerning the Central harbourfront. Instead, he opposed to rezone the CMD site to military use and requested to retain the original "O" zoning. He proposed that when the Garrison required to use CMD, the Government could declare CMD as a temporary military restricted zone in the Government Gazette. CMD could then be handed over to the Garrison immediately after the declaration. The military restricted zone would cease to have effect after the Garrison had finished using CMD. There was provision under the Garrison Law for the Government to make such declaration. Since normally the Garrison would inform the Government of the time schedule and

deployment of the Garrison in advance, the Government should have enough time to prepare for the declaration of military restricted zone. Such arrangement of opening CMD to the public would be more acceptable to the public. It would cause minimal disturbance to the public using the promenade and would at the same time allow the Garrison to use CMD.

18. The Chairman asked Mr Albert Lai whether his views were conflicting as he expressed no objection to CMD but worried about the adverse impact of CMD on the confidence of the international enterprises in Hong Kong. In response, Mr Albert Lai said that he only objected to the rezoning of the CMD site for military use which allowed permanent berthing of military vessels, which would adversely affect the confidence of international enterprises in Hong Kong. He did not object to CMD if it was only occasionally used for ceremonial visits.

19. In response to a Member's question on the practical feasibility of the proposal of designating temporary military restricted zone in case CMD turned out to be frequently used by the Garrison, Mr Albert Lai said that very frequent usage of CMD by the Garrison would most likely be opposed by the public as this might result in merely occasional opening of the site for public use. This could become a political issue which should not be dealt with by the Board. The Board should consider the optimal land use of the site from the planning viewpoint.

20. A Member asked whether the proposal from Mr Albert Lai could be reflected in the Notes or Explanatory Statement (ES) of the OZP. In response, Miss Elsa Cheuk said that the detailed management and arrangement of CMD would not be specified in the Notes or ES of the OZP since the Board was not empowered under the Ordinance to specify the operational details or arrangement of a specific site in the OZP or its Notes. The HKSAR Government would liaise with the Garrison to discuss the details in respect of the management arrangement of CMD including the opening and closure arrangements, and would notify the public about such arrangements.

#### *Interface Problems*

21. Some Members commented that the proposal to retain the "O" zoning of the

CMD site and to declare CMD as a temporary military restricted zone when it was in military use could still face the same problems raised by Mr Albert Lai, including the enforcement power of the Hong Kong Police Force in CMD as well as the interface problems during the opening and closing of the military pier.

22. In response, Mr Albert Lai said that there was a material difference between a permanent military site for berthing of military vessels and a site occasionally used for berthing by declaration as a temporary military restricted zone. The more frequent closure of CMD would result in a longer interface period and more conflicts. If CMD would be closed daily at certain time for maintenance purpose, there would be more chances of interface conflicts. On the other hand, if CMD was to be declared as a temporary military restricted zone for use by the Garrison when needed, CMD would be completely closed from public access during maintenance period, hence the interface conflicts between the Garrison and the public could be minimised. Besides, the public would not accept the Government's proposal since it was irrational to close CMD daily given occasional berthing of military vessels at CMD.

#### *Management of CMD*

23. A Member commented that Mr Albert Lai's concern was more on the management authority rather than the land use zoning of CMD. According to DLA, CMD would be administered by the Garrison. In response, Mr Albert Lai said that the management authority of CMD could not be separated from the land use zoning. Should CMD be under the zoning of military use, the Garrison would completely take over the CMD site. Hong Kong laws would not be applicable within CMD which would cause many problems. Should CMD be under "O" zone, CMD would be closed from public access only when CMD was declared as a military restricted zone for the use by the Garrison.

#### *Conventions for Zoning Piers and Related Structures*

24. A Member asked about the relationship between pier structures and the zoning for piers, and the statutory process for designating zonings for new piers and related structures on the adjacent land area. In response, Miss Elsa Cheuk said that at an early

stage of pier design where only the location of the pier was known, its approximate location would normally be shown on the OZP by some annotations such as dotted circles or lines indicating that they were subject to detailed design. After completion of the detailed design or upon development of the pier, PlanD would make technical amendments to the OZP to reflect the final delineation and the land use of the pier by rezoning the relevant area to a specific zoning designated for the pier.

25. Miss Elsa Cheuk made reference to Central Piers No. 9 and 10 as well as CMD site, and said that they were located in the same OZP. The Central District (Extension) OZP No. S/H24/2 approved in 2000 reflected the reduced extent of CRIII. As the reclamation extent had just be reduced at that time, the locations of the piers (including Central Piers No. 9 and 10 and CMD) along the waterfront were still not confirmed. As such, the approved OZP only showed the rough delineation of Central Piers No. 9 and 10 as well as CMD by dotted circles and a straight line respectively with annotations stating that they were subject to detailed design. The Central harbourfront area, including the aforesaid piers, were zoned “O” on the approved OZP at that time. After completion of the detailed design of Central Piers No. 9 and 10, these piers and the related structures were rezoned from “O” to “OU” annotated “Pier”, “Pier and Associated Facilities” and/or “Waterfront Related Commercial and Leisure Uses” to reflect the final delineation and land use of the pier structures. The current amendments to the OZP to show the final delineation and land use of CMD was to follow the established practice. The “OU(MU(1))” zoning for the CMD site tallied with the zoning of the Central Barracks to its south.

26. In response, Mr Albert Lai said that the case of Central Piers No. 9 and 10 could not be compared with CMD since the former piers, though rezoned to “OU” zones, were open to the public at all times while the CMD site rezoned to military use would be under the Garrison’s control and only open to the public when not in military use.

#### *Detailed Design of CMD*

27. Mr Albert Lai added that it was not factually correct to say that the CMD site was rezoned for military use after the completion of the detailed design of CMD, since the detailed design had already been completed in 2010 but the CMD site was still not rezoned

in the last OZP amendment (i.e. No. S/H24/7) gazetted in March 2012. In response, Miss Elsa Cheuk said that since UDS was completed only in the latter half of 2011 and the concerned departments needed some time to confirm the detailed design of CMD, it was not ready to reflect CMD on the OZP in the previous round of OZP amendment.

28. In response to a Member's question, Mr Albert Lai said that he had no comment on the design of CMD since he had little information about the use and purpose of the existing structures of CMD. While noting that the Government had no plan to construct additional structures in CMD, he would accept any minor revision to the design of the existing structures in CMD.

*Public Consultation on the Zoning for Military Use*

29. A Member asked whether the Government had consulted the public on the zoning of the CMD site for military use.

30. Mr Albert Lai said that the public had not been consulted on the military use zoning for the CMD site. According to the plan extracted from the Final Report of UDS published in March 2011 showing the development concept and requirement of Site 7 at the Central harbourfront shown on the visualiser, the harbourfront area including CMD and its structures was annotated as public open space (POS) which was coloured green on the plan. By looking at that plan, the public could only perceive the Central harbourfront area including CMD as POS and could not imagine the CMD site of 0.3 ha within the Central harbourfront area would be rezoned for military use. Therefore, the public was not informed of the military use zoning during the public consultation. Besides, he was informed by some Government officials during the past consultation exercises that CMD would not be used by the Garrison frequently but only for occasional ceremonial visits.

31. Miss Elsa Cheuk said that the above plan (i.e. Plan 23 in the Final Report of UDS) quoted by Mr Lai was not intended to show the actual land use zoning but only to show the development concepts and requirements of the Central harbourfront such as the proposed alignment of cycle track and emergency vehicular access within Site 7. Besides, the relevant information of the military use zoning and/or CMD had been mentioned on several public occasions in the past. With the aid of the Powerpoint presentation, she

showed the extracts of relevant documents available to the public that had mentioned CMD. As mentioned in the Public Works Subcommittee of Finance Committee paper discussed in June 2002, CMD would have related facilities which would be open to the public when not in military use, and such arrangement had already been agreed by the Garrison in principle. The design of CMD (including the four ancillary structures and the folding gates), its integration with the promenade, and/or the arrangement of opening CMD to the public when not in military use were mentioned/shown in the documents/plans used in Stage 2 Public Engagement of UDS including the Consultation Digest (issued in April 2008) showing key design features of Site 7 and the Master Layout Plan, the Comment Card, the Final Report on the Public Opinion Collection Exercise (issued in December 2009); the Final Report and Information Digest of UDS (issued in March and July 2011 respectively); the LegCo Brief on UDS in November 2009; and the LegCo Panel on Development Paper in April 2008. A perspective (Figure 5) in the Central and Western District Council paper in May 2010 as well as perspectives (Figures 7, 8 and 9) in the Task Force on Harbourfront Developments on Hong Kong Island paper in October 2010 also showed the preliminary design of CMD and the four ancillary structures. The current OZP amendments showing the actual delineation and land use of CMD had been published following the Ordinance for public consultation and the public had submitted representations and comments to the amendments.

#### *Grounds of Objection by the Representatives*

32. The Chairman requested Miss Elsa Cheuk to respond to the points raised by Mr Albert Lai and Mr Chan Tze Chung, including the need to provide the military dock at the CMD site even though the naval base had been relocated from Tamar Basin to Stonecutters Island, the enforcement in CMD in the future, the compliance with CFA's judgment in relation to reclamation in Victoria Harbour, and the compliance with the Harbour Planning Principles in relation to public enjoyment and accessible harbour. Miss Elsa Cheuk then made the following points with the aid of the Powerpoint presentation:

- (a) 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, Annexes II and III of DLA provided that a naval base should be

reprovisioned on the south shore of Stonecutters Island and the military dock should be reprovisioned near the Central Barracks. Annex III of DLA provided that the then Hong Kong Government would “leave free 150 metres of the eventual permanent waterfront in the plans for the Central and Wanchai Reclamation at a place close to the Prince of Wales Barracks (i.e. the current Central Barracks) for the construction of a military dock after 1997”. When OZP No. S/H24/2 was first approved in 2000 by the CE in C, the design of and the exact area the dock would occupy were not decided at the time. It was therefore represented by a straight line annotated “150m Military Berth (subject to detailed design)” on the OZP. The annotation on the OZP had remained unchanged until the subject amendments were incorporated into OZP No. S/H24/8;

- (b) according to the Garrison Law, the defence responsibilities of the Hong Kong Garrison included the management of the military facilities. Just like other military facilities, CMD would be under the management of the Hong Kong Garrison and was for its use. However, irrespective of whether it was a private place or public place, if there were cases involving a breach of the peace or other crimes (e.g. graffiti and littering), the Police could take enforcement actions according to the law. With reference to CMD, the Garrison had made an undertaking that it would open the area of the CMD site to the public as a part of the promenade when it is not in military use, having regard to its operation and need for protecting CMD. In view of this undertaking, the Government was considering ways to clearly reflect the status of CMD in the legal perspective that, on one hand, CMD would be used as military facilities by the Garrison and be protected, and, on the other hand it would be used by the public as part of the waterfront promenade when it was not in military use. The authorities concerned would make appropriate legal arrangements;
- (c) CRIII was to provide land for essential transport infrastructure (e.g. CWB, Road P2, North Island Line, etc.) and to re-provision 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. In view of the wide public concerns over the need to protect the harbour, the scope of the CRIII project was further reviewed in 2004 by applying the CFA's "overriding public need" test. The review had demonstrated that CRIII had adopted a minimum reclamation option and satisfied the 'overriding public need' test set down by the CFA in relation to PHO. Given that 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; and

- (d) the design of the waterfront promenade including CMD had been deliberated at length in the past (e.g. public engagement activities of the UDS). The design had taken account of maximizing the opportunities for public enjoyment and unrestricted physical access for pedestrians to the harbourfront areas. To avoid any visual obstruction at the waterfront promenade, most facilities along the waterfront promenade would be provided underground and visual obstruction would be minimised. The east-west connectivity along the waterfront would not be affected when CMD was in use, since 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. Besides, the entire open space along the waterfront was free for public access.

#### *Other Issues*

33. In response to a Member's question, Miss Elsa Cheuk said that the terms of 'military berth' and 'military dock' used in different versions of OZP both referred to the proposed CMD which was for the berthing near the Central Barracks. Using the term 'military dock' in the current OZP amendment was to follow the wording used in DLA.

34. In response to the Chairman's question, Miss Elsa Cheuk said that one of the

four structures at the northwestern part of the CMD site was a toilet which would not be open to the public.

35. In response to a Member's question, Mr Albert Lai said that he did not deliberately oppose the Government on the subject matter, but was disappointed that the Government's promise of returning the Harbour to the people could not be fulfilled.

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

37. As no more commenters or their representatives had arrived to attend the session, the meeting was adjourned at 1:00 p.m.