

## **Society For Protection of the Harbour: Submission on Planning Matters - Skeleton Arguments**

### **1. Lack of Continuing Public Engagement**

Public distrust and objection have been created by proceeding with the proposed amendment without prior public engagement. Public engagement was held in the early stages of the project because of the Urban Design Study (UDS), where the site was always zoned as Open Space. There was never any proposal that the site would be rezoned for military use. Once the UDS was finalized in 2011, engagement with the public stopped. After the amendments had been gazetted on 15 February 2013, it was presented as a fait accompli to the CWDC and HCTF.

### **2. Not a Technical Amendment**

In the TPB Paper a "technical amendment" is mentioned many times - page 18 para 5.4.2 (f), page 18 para. (ee); page 25 para 7.2 (b) – as a reason why the TPB should not accept any of the proposals submitted. The proposed amendments were not technical planning amendments, but are substantive and substantial changes to a statutory plan. The full implications of the change in zoning to OU(Military Use) were therefore not before the MPC at that time, nor were any alternatives presented. These issues were not part of that consideration, particularly the legal aspects, seriously underplaying the significance of the changes.

### **3. The Urban Design Study**

The proposed amendments are in complete conflict with what was presented to the public in the UDS. It had an Open Space zoning, and described what the PLA berth would consist of in operational terms – see Figures 2 and 11, Plans 12 and 13.

In the TPB Paper and responses to comments, PlanD has made frequent references to the UDS in support of the amendment (page 22 para (z); page 24 (ff); page 26 reason (c)). It was also used for justification of the zoning in the MPC paper. The proposed amendments are completely in conflict with the UDS and the public's legitimate expectation of the area remaining as public open space.

### **4. Harbourfront Commission HKTF**

MPC Minutes, para. 88 record that CEDD had already consulted the Harbourfront Commission (also TPB Paper Page 5 para 2.9). On the 6 October 2010 CEDD made a presentation where images of the advance promenade past the PLA berth were shown. They indicated the public having full use and access to the site, and that the area past the military facilities was a public promenade (Figs 7, 8 and 9).

There was no mention that it was intended to rezone this site to OU (Military Use). SPH as a member of the HKTF had a legitimate expectation of public access and public open space being the main purpose of the site, as the design images had confirmed that.

## **5. Berth or Dock**

In all the previous documents, such as the UDS and the previous OZP (S/H24/7), the proposal was described as a berth (para. 8.5(a) of the ES for OZP S/H24/7 and the annotation on the OZP itself).

In the current OZP (S/H24/8) amendment, it can be seen the planning intention has been significantly changed. Paragraph 8.5(a) of the ES now includes "to the north of the PLA Hong Kong Garrison Headquarters, an area of about 0.3ha is also zoned for military use as a military dock".

The change in the use of the term berth to the term dock is significant (in both English and Chinese). Berths are where ships tie up whereas docks are where ships are loaded and repaired and have workshops and warehouses, etc.

## **6. Planning Intention Change**

SPH therefore object to this change in planning intention from a simple length of the waterfront alongside which the PLA could moor a ship, to a more complex use - marine dock – military use of a large area of waterfront previously promised to the public and zoned as public open space. This therefore is not a 'technical amendment', but a substantial change in zoning and planning intention.

The function of the Board contained in Section 3 of the TPO is to look after the welfare of Hong Kong people. It is not for the TPB to decide which sites are to become military land and therefore not legally available for use by the people of Hong Kong. It is arguable that the Board has exceeded its authority and statutory duties by changing this land use zoning to OU (MU). There is a legal process set out for land to be made available to the military. This has been explained in the SPH representations, and it has not been followed.

## **7. Inconsistencies On the OZP**

UDS para 8.3.3(i) is clear that the access road and the public promenade would only be closed to the public when there is to be a military ship berthed at the waterfront, and open to the public the remainder of the time. In view of this it would be logical to expect that both of these areas would be zoned the same, and that both areas should represent the prime planning purpose by being zoned as public open space. However, under the amendment the access road has been

zoned public "open space", while the public open space adjacent to the sea wall has been included within the "OU (Military Use)" zone. There is no logic in this.

## **8. Inadequate Development Control**

Under the Notes to the "OU(Military Use)1" zone the only development restriction is a maximum building height of 10mPD. This permits a continuous structure with 100% site coverage across the whole site up to a height of 10mPD. There is no restriction regarding maximum GFA, maximum PR, non-building areas, building set-back or maximum site coverage which are often applied to sites in sensitive areas.

On page 18 of the TPB paper PlanD responds by stating that the BHR has reflected the approximate height of the existing 4 single-storey buildings with an actual height of about 5.8m above ground level. In paragraph (j) it is stated that

*"the Board does not impose development restriction on military sites (except for the three sites zoned for residential uses). It would be inconsistent and inappropriate to include development restrictions on the zoning unless there are exceptional circumstances".*

The Board has imposed a BHR restriction on this site so it must therefore be a special circumstance because it is on the waterfront. The intention is to limit development to the existing 4 buildings, but the zoning and restrictions in the Notes are completely inadequate. It is necessary to limit the location of current and any future development to the existing buildings through imposition of further controls.

The Notes therefore permit a huge obstructive building as of right, one which is excessive and inappropriate for a public waterfront location.

Logically speaking, there is only justification to regularize the exclusive right of the PLA to use the berth and the 4 existing buildings. There is simply no justification to give away any more development rights at the expense of the public.

## **9 Explanatory Statement**

The TPB Paper and the UDS state that the 'OU (Military Use)" site will be open to the public when not used by the PLA. In the previous version of the OZP, No.S/H24/7 this intention was clearly stated in the Explanatory Statement in paragraph Para 8.5(a) but has been deleted from the current OZP.

TPB Paper pages 19 and 20 under the heading "Public Access and Traffic Arrangement" (paragraphs (m) to (p)) are important. Paragraphs (m) and (n) make public access seem the primary intention while (o) and (p) comment that the opening of the military dock area and the direct access are beyond the purview of the TPB to consider, and cannot specify the operational details of a specific site in its Notes. Paragraph (gg) basically says that the only use of the site is

for military purposes and there will be no public access. This is why the SPH is so concerned, as without proper zoning and proper documentation in the ES, the public will have no rights to the use and enjoyment of this waterfront land.

If there is no mention in the ES of the public access to the OU(MU) zone, and of the PLA access through the O zones, there is no statutory planning reference anywhere that the "Military Dock" will actually be open for public access.

At the MPC meeting (minutes paras 86 & 87) members were concerned about public access to the Military site and were informed by the PlanD representative at several places that public access would be provided. However, none of the other important matters raised in this submission were discussed by the MPC when the proposed amendments were considered.

#### **10. Proposal to Meet the Representation and Comment**

The purpose of SPH is to come to a practical solution which honours the promises made by the TPB and the government for continuous public open space along the central waterfront, and also provides for the requirements of the military berth. The following objectives appear generally accepted:-

1. Subject to the occasional use of the site by the military, the site shall be freely used and enjoyed by the public as a permanent, open, continuous and unobstructed public waterfront promenade;
2. To comply with the 1994 DLA, the PLA shall have exclusive right to use the military berth of 150m for mooring ships;
3. To accept the existence of the 4 buildings now constructed in the vicinity of the dock;
4. To provide for the site to be closed off for the exclusive use of the PLA whenever a military vessel needs the use of the military berth, and for a direct access to be provided to the Central Barracks.

Given the legal context and limitations under the Garrison Law, it is considered that these objectives could best be achieved by not zoning areas for military purposes.

SPH therefore has a proposal that could achieve these objectives

#### **Proposal**

The proposal is shown in **Figure 1** attached.

1. The delineation of the "150m Military Berth" be retained as on the **previous** version of the OZP but the words "(subject to detailed design)" be deleted as the detailed design has been completed;
2. The public "Open Space" zone on the previous OZP be retained;
3. The 4 small buildings be located within the public open space zone as they have been considered by government to be authorized, and if this is accepted by the Board, they therefore do not need zoning .

This would ensure that the primary use of the waterfront was for public access and enjoyment. The military berth facilities would not be specifically identified. However, the ES would include the following statement or something similar:-

"Public open space to be used for a permanent, open, continuous and unobstructed public waterfront promenade. 150m of the sea wall, as shown on the Plan, will be for the exclusive use by the Peoples' Liberation Army for the berthing of military vessels. Public access to various areas may be restricted or prohibited when the site is used in relation to the berthing of a military vessel."

## **11. Conclusion**

It is essential that the TPB have a proper legal context when addressing the issues before it. This is also not a simple 'technical' amendment. The OU (Military Use) zoning would be setting a precedent in that it would be the first piece of new land zoned for military use since 1997, and is setting a precedent in how the HKSAR Govt., the State Council and the PLA are to interact. The conclusion is that there is no legal basis for the zoning and the precedent should not be set.

No alternatives were presented to the MPC and no assessment of the potential implications was made. SPH is now offering an alternative which is logical way for resolving the issues identified and within the law.

Masterplan Limited  
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Figure 1 : Proposal to Meet the Representation  
Zoned as Open Space

