

立法會
Legislative Council

LC Paper No. CB(1)1384/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/SS/4/04

**Subcommittee to Study the Eastern Harbour Crossing Ordinance
(Amendment of Schedule) Notice 2005**

**Meeting on
Tuesday, 12 April 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Kong Wah, JP (Chairman)
Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
- Member absent** : Hon LEUNG Kwok-hung
- Public Officers Attending** : Ms Annie CHOI
Deputy Secretary for the Environment, Transport and Works
- Mr Clement LAU
Principal Assistant Secretary for the Environment,
Transport and Works (Acting)
- Miss LUI Ying
Principal Transport Officer
Transport Department
- Mr Dominic LAI
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Anita SIT
Senior Council Secretary (1)9

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I Election of Chairman

Mr LAU Kong-wah was elected Chairman of the Subcommittee.

II Meeting with the Administration

— L.N. 37 of 2005

— the Legal Service Division Report (LC Paper No. LS42/04-05) issued vide LC Paper No. CB(2) 1161/04-05 dated 30 March 2005

— the Legislative Council Brief issued by the Environment, Transport and Works Bureau on 11 March 2005 (File Ref: ETWB (T)CR 1/3/4651/92)

— Background Brief on the Toll Increase of the Eastern Harbour Crossing prepared by the Secretariat issued under LC Paper No. 1234/04-05

2. The Subcommittee deliberated (index of proceedings attached at **Annex A**).

3. The Subcommittee noted that the Notice to amend the toll schedule of Eastern Harbour Crossing (EHC) was subject to the negative vetting procedure. The Notice would come into operation on 1 May 2005, and it was not necessary for a motion on the Notice to be moved in Council to seek LegCo's approval, unless amendments were proposed before expiry of the scrutiny period. The scrutiny period of the Notice might be extended from 4 May 2005 to 25 May 2005 to allow more time for scrutiny. If the Subcommittee agreed to extend the scrutiny period, the Chairman would move a motion at a Council meeting on or before 4 May 2005. If not, the deadline for giving notice to amend the subsidiary legislation was 26 April 2005.

4. Regarding LegCo's power to amend the Notice, the Assistant Legal Adviser 3 advised that according to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), LegCo's amending power of subsidiary legislation had to be consistent with the power to make such subsidiary legislation. As the power of the Commissioner for Transport to make the Notice was restricted by section 55(5) and (6) of the EHC Ordinance (Cap. 215) and did not cover the determination of toll levels and the timing for implementation of new tolls, the power of Members to amend this Notice was similarly restricted. In other words, there was only little room for

Action

Members to amend the Notice other than minor technical amendments. She also added that LegCo could not repeal the Notice as the exercise of such power was also inconsistent with the power to make such subsidiary legislation.

5. The Subcommittee also noted that the Panel on Transport would discuss on 22 April 2005 the toll increase of the EHC and measures to address the uneven distribution of traffic among the three road harbour crossings with the Administration and the New Hong Kong Tunnel Company Limited. The Subcommittee agreed that pending the outcome of the discussion of the Panel on 22 April 2005, the Subcommittee would decide by 26 April 2005 whether it would convene further meeting(s) and the need to extend the scrutiny period.

III Any other business

6. There being no other business, the meeting ended at 10:37 am.

Council Business Division 1
Legislative Council Secretariat
26 April 2005

**Proceedings of the first meeting of
the Subcommittee to Study the Eastern Harbour Crossing Ordinance
(Amendment of Schedule) Notice 2005
Tuesday, 12 April 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Election of Chairman</i>			
000000 – 000047	Mrs Selina CHOW Mr WONG Kwok-hing Mr LAU Kong-wah	Election of Chairman	
<i>Agenda Item II – Meeting with the Administration</i>			
000048– 000641	Chairman Admin ALA3	<ul style="list-style-type: none"> - Administration’s explanation on the procedure for variation of the tunnel tolls as specified in Eastern Harbour Crossing Ordinance (Cap. 215) and the purpose of the Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005 (the Notice) - ALA3’s explanation on how far the Legislative Council (LegCo) could amend the Notice 	
000642– 002522	Mr WONG Kwok-hing Admin	<ul style="list-style-type: none"> - Mr WONG’s queries on the timing of the release of the result of the arbitration on the toll increase of the Eastern Harbour Crossing (EHC) and the undertaking made by the Administration at the meeting of the Transport Panel on 18 March 2005 regarding the gazettal of the Notice - Administration’s response to Mr WONG’s queries 	
002523– 003633	Mr CHAN Kam-lam Admin	<ul style="list-style-type: none"> - Mr CHAN’s queries on whether the determination of the arbitrators that the band of reasonable remuneration for New Hong Kong Tunnel Company Limited (NHKTC) was an internal rate of return (IRR) between 15% and 17% would apply to future toll variations of the EHC and how the Administration would handle the next application for toll increase of NHKTC - Administration’s response to Mr CHAN’s queries 	

Time marker	Speaker	Subject(s)	Action required
003634– 004352	Mr LEE Cheuk-yan Chairman Admin	<ul style="list-style-type: none"> - Mr LEE’s views on the arbitration Award and queries on what the Administration could do in respect of the Award and what longer term measures and options the Administration would pursue to address the problems arising from the Award and from the existing mechanisms for toll variation of tunnels operated under Build-Operate-Transfer (BOT) franchises - Administration’s response to Mr LEE’s queries and views 	
004353– 005608	Ms LI Fung-ying Admin Chairman	<ul style="list-style-type: none"> - Ms LI’s enquiries on what actions the Administration had taken in response to the arbitration Award on the toll increase of EHC in 1997 and the number of meetings the Administration had held with NHKTC since the meeting of the Transport Panel on 18 March 2005 and the number of meetings to be held with NHKTC before 22 April 2005 - The Administration’s response to Ms LI’s enquiries 	
005609– 010239	Ms Emily LAU Admin Chairman	<ul style="list-style-type: none"> - Ms LAU’s understanding that given the legislative provisions governing the variation of tolls of EHC and the arbitration Award, the power of LegCo to change the toll increase was severely restricted - Ms LAU’s suggestion that Members of different political affiliations to discuss among themselves with a view to coming up with consensus views on the way forward in respect of the toll increase of EHC and other related issues - Ms LAU’s suggestion of inviting NHKTC to attend the next meeting of this Subcommittee - Administration’s response to Ms LAU’s question about the current position of NHKTC on the toll increase of EHC 	
010240– 011536	Mr Andrew CHENG Admin	<ul style="list-style-type: none"> - Mr CHENG’s comments on the toll increase of EHC and the reason for the strong public resentment towards the increase 	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> - Mr CHENG's demand that the Administration should come up with viable measures before 22 April 2005 to counter the toll increase scheduled to take effect on 1 May 2005 - Administration's explanation that whilst NHKTC was entitled to effect the new tolls on 1 May 2005 under the law, the company had the discretion to offer toll concessions any time by administrative means - Administration's explanation on the complexity of the work to identify viable measures/options to address the problem of uneven distribution of traffic among the three road harbour crossings 	
011537– 012232	Mr Jeffrey LAM Kin-fung Admin	<ul style="list-style-type: none"> - Mr LAM's enquiry on the approach adopted by the Administration for handling the initial toll increase application of NHKTC in 2002 - Administration's explanation on its position in respect of the toll application and hence the approach adopted for handling the application 	
012233– 012734	Mr Fred LI Wah-ming ALA3	<ul style="list-style-type: none"> - Mr LI's enquiries on whether the new tolls would take effect on 1 May 2005 as specified in the Notice irrespective of the extension of the scrutiny period of the Notice by LegCo and the extent of LegCo's power to amend or repeal the Notice - ALA3's advice in response to Mr LI's enquiries 	
012735– 014140	Ms Miriam LAU Chairman Admin	<ul style="list-style-type: none"> - Ms LAU's comment that in view of the arbitration Awards in 1997 and in the present case, the Administration should review its stance on the appropriate IRR for NHKTC over the franchise period, and adopt a pragmatic approach to further discuss with NHKTC with a view to coming up with viable measures to alleviate the impacts of the scheduled toll increase of EHC - The Chairman's enquiry on whether NHKTC had submitted a proposal a few years ago to address the uneven 	

Time marker	Speaker	Subject(s)	Action required
		<p>distribution of traffic among the three road harbour crossings</p> <ul style="list-style-type: none"> - The Administration's explanation on its position with regard to the IRR for NHKTC and advice on its plan to forward options to address the uneven distribution of traffic among the three road harbour crossings for consideration by the Transport Panel on 22 April 2005 - The Administration's advice regarding its discussion with the major shareholder of NHKTC 	
014141–014942	Mr WONG Kwok-hing Admin	<ul style="list-style-type: none"> - Mr WONG's concern about the chain effects of the toll increase of EHC and the resultant economic and social impacts - Mr WONG's enquiry on what concrete measures the Administration could and would take to alleviate the impacts of the toll increase on the public - Administration's response to Mr WONG's concern and enquiry 	
014943–015630	Mr CHAN Kam-lam Admin	<ul style="list-style-type: none"> - In response to Mr CHAN's enquiry, Administration's advice that the IRR on equity for NHKTC was 15.03% if the toll increase was effected as currently scheduled, followed by a further toll increase five years later - Mr CHAN's enquiry about the procedure for appointment of arbitrator(s) in the case of future arbitration on variation of tolls of EHC and the Administration's advice that the relevant procedure was prescribed in the Arbitration Ordinance (Cap. 341) 	
015631–020707	Chairman Mr CHAN Kam-lam Ms Emily LAU ALA3 Ms Miriam LAU Mr Jeffrey LAM-Kin-fung Mr Andrew CHENG Clerk	<ul style="list-style-type: none"> - The Subcommittee's discussion on the way forward - Ms Emily LAU's enquiry on whether there was any opportunity for Members to speak on the Notice at a Council meeting and ALA3's advice <p><i>(Post-meeting note: Subsequent to the meeting, on the advice of the Subcommittee Chairman, a circular setting out the relevant rules and</i></p>	

Time marker	Speaker	Subject(s)	Action required
		procedures was issued to members vide LC Paper No. CB(1) 1277/04-05.)	
<i>Agenda Item III – Any other business</i>			
	Chairman	The Chairman's declaration of close of meeting	

Council Business Division 1
Legislative Council Secretariat
26 April 2005