

立法會
Legislative Council

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Subcommittee to Study
Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 and
Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Replacement of Schedule 1) Notice 2005

Minutes of the first meeting held on
Thursday, 23 June 2005, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Kwok-hung
- Public officers attending** : Ms Annie CHOI
Deputy Secretary for the Environment, Transport and Works
- Mr Clement LAU
Assistant Secretary for the Environment, Transport and Works

Mr K M LEE
Chief Treasury Accountant

Miss LUI Ying
Principal Transport Officer
Transport Department

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr Paul WOO
Senior Council Secretary (2)3

Action

I. Election of Chairman

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

II. Meeting with the Administration

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005

- (— L.N. 93 of 2005;
- Section 36 of Tate's Cairn Tunnel Ordinance (Cap. 393);
- Legislative Council Brief on "Application for Toll Increase by Tate's Cairn Tunnel Company Limited" issued by the Environment, Transport and Works Bureau;
- Paragraphs 3 to 14 of the revised Legal Service Division Report (LC Paper No. LS83/04-05); and
- Paper and minutes for the meeting of the Panel on Transport on 2 February 2005
 - Paper on "Toll increase application" provided by the Tate's Cairn Tunnel Company Limited (LC Paper No. CB(1)786/04-05(04)); and
 - Minutes of the meeting (LC Paper No. CB(1)1082/04-05.)

3. The Subcommittee noted that the Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 would come into operation on 1 August 2005. The Notice was subject to the negative vetting procedure of the Legislative Council (LegCo). The scrutiny period of the Notice would expire on the day after the second LegCo meeting in the next session, and might be extended to the first LegCo meeting held not earlier than 21 days after the day of that second meeting by resolution.

4. Assistant Legal Adviser 3 (ALA3) advised members that the mechanism for toll variation under section 36 of the Tate's Cairn Tunnel Ordinance (Cap. 393) was the same as that provided under section 55 of the Eastern Harbour Crossing Ordinance (Cap. 215). Under section 36 of Cap. 393, the tolls specified in the Schedule to the Ordinance might be varied by agreement between the Chief Executive in Council and the Tate's Cairn Tunnel Company Limited (TCTC), or in default of agreement, by submission of the question of the variation of tolls to arbitration. The Commissioner for Transport (C for T) should amend the Schedule by notice in the Gazette as soon as was practicable after such agreement or arbitration award. ALA3 pointed out that the power of the C for T to make the notice did not cover the determination of toll levels and the timing for implementation of the new tolls. According to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), LegCo's power to amend subsidiary legislation had to be consistent with the power to make such subsidiary legislation. In other words, there was little room for Members to amend the notice other than making minor technical amendments. Similarly, LegCo could not repeal the notice as the exercise of such power was also inconsistent with the power of the C for T to make the notice.

5. ALA3 further pointed out that if individual members considered it necessary to address LegCo on the Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 before the Notice came into operation on 1 August 2005, they might, in accordance with Rule 21(5) of the Rules of Procedure (RoP), seek the President's consent for addressing LegCo on the Notice at the last LegCo meeting of the current session to be held on 6 July 2005. Members should provide an advance copy of the intended address to enable the President to decide whether the address might provoke a debate, which was not permitted under Rule 21(6) of RoP. On the other hand, the Chairman of the Subcommittee might, in accordance with the Subcommittee's decision, present a report of the Subcommittee to LegCo and address LegCo thereon with the permission of the President under Rule 21(3) of RoP. Under Rule 21(6) of RoP, no debate might arise on any address so presented.

Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005

- (L.N. 95 of 2005;
Sections 39, 40, 44, 45, Schedules 3 and 4 to the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474);
Paragraphs 18 to 23 of the revised Legal Service Division Report (LC Paper No. LS83/04-05);
Papers for the meeting of the Panel on Transport on 15 June 2005
- Paper provided by the Administration (LC Paper No. CB(1)1764/04-05(01)); and
 - Letter dated 10 June 2005 from Route 3 (CPS) Company Limited to the Panel on Transport (Letter in English, and enclosures in both Chinese and English) (LC Paper No. CB(1)1764/04-05(02)).
- Confidential letter dated 16 June 2005 from Route 3 (CPS) Company Limited to the Panel on Transport (English version only) (LC Paper No. CB(1)1822/04-05(01).)

6. The Subcommittee noted that the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005 had already come into operation on 19 June 2005. ALA3 pointed out that under section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474), where a toll was increased in accordance with the provisions of the Ordinance, the C for T should by notice published in the Gazette amend Schedule 1 to the Ordinance, which specified the tolls. Section 45(3) of Cap. 474 expressly provided that section 34 of Cap. 1 should not apply in respect of such notice. Accordingly, the notice was not required to be tabled before LegCo and therefore not subject to the scrutiny of LegCo.

7. ALA3 also pointed out that under section 39(1) of Cap. 474, the franchisee might give effect to a toll increase on each specified date referred to in Schedule 3 to the Ordinance. However, under 40(1), if the Actual Net Revenue (ANR) of the franchisee for any year, which was not a year ending immediately before a specified date, was less than the Minimum Estimated Net Revenue (MENR) for that year as specified in Schedule 4 to the Ordinance, the franchisee might apply to the Secretary for the Environment, Transport and Works (SETW) to give effect to the next anticipated toll increase. Where SETW received such an application, she was required to act in accordance with section 39(4) but she had no power to disapprove the application.

8. The Subcommittee noted that in the current toll increase exercise, the franchisee submitted its 2000-01 ANR Statement which showed that its ANR of \$55 million was less than the MENR of \$149 million for that year as specified in Schedule 4 to Cap. 474. As revealed from the information provided by the franchisee, its ANR for 2001-02, 2002-03 and 2003-04 were less than the MENR for the respective years as specified in

Schedule 4 to Cap. 474. In other words, the franchisee might apply to SETW again in the near future to give effect to the next anticipated toll increase. To address the problem once and for all, members considered that a long-term solution needed to be identified. Deputy Secretary for the Environment, Transport and Works (DS/ETW) informed the Subcommittee that the Administration was exploring with the franchisee on various options, including an extension of the franchise period, with a view to coming to an agreement on a toll reduction. Members considered that the Administration should set a deadline or a timetable for the negotiation and report to LegCo on any progress. DS/ETW pointed out that as it took time to complete the negotiation, it might not be appropriate to set a deadline. Nevertheless, she undertook that the Administration would report to LegCo on any progress in due course.

Admin

Other follow-up actions

9. The Administration was requested to provide information on or written response to the following issues raised by members –

Admin

- (a) The actual profit or loss of TCTC in the year 2004-05 and the base case projection for that year;
- (b) The actual traffic throughput of Tate's Cairn Tunnel in the year 2004-05 and the base case forecast for that year in the franchise bid;
- (c) Given that public interests were involved in the toll increase of Tai Lam Tunnel, information on the ANR and financial position of Route 3 (CPS) Company Limited should be made known to the public. In this connection, the Administration should explain the justifications and legal basis on which it concluded that it could not disclose such information to the public; and
- (d) The Administration should advise whether, and if so, how, Schedule 4 to the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) could be amended; and the implications, if any, of such amendments.

10. On paragraph 9(c) above, the Subcommittee decided that the Clerk should write to Route 3 (CPS) Company Limited inviting the Company to make public the information on its ANR and financial position, which was contained in the Company's letter of 16 June 2005 to the Panel on Transport. If this was agreeable to the Company, the Subcommittee might refer to the information at its future meetings; if this was not agreeable, the Company should be invited to provide the relevant justifications.

11. The Subcommittee also decided that Route 3 (CPS) Company Limited should be invited to provide the reasons for the significant increase in its ANR in the year 2001-02

as compared with 2000-01.

Next meeting

12. The Subcommittee decided that SETW and representatives from TCTC and Route 3 (CPS) Company Limited should be invited to attend the next meeting. Subject to the availability of SETW, the next meeting would be held on Tuesday, 28 June 2005 at 4:30 pm or Monday, 27 June 2005 at 8:30 am.

(Post-meeting note: The next meeting was deferred pending confirmation of the attendance of SETW.)

13. There being no other business, the meeting ended at 10:45 am.

Council Business Division 1
Legislative Council Secretariat
28 July 2005

**Proceedings of the first meeting of the
Subcommittee to Study
Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 and
Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Replacement of Schedule 1) Notice 2005
on Thursday, 23 June 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000135	Mr LAU Kong-wah Ms Miriam LAU Mr Tommy CHEUNG	Election of Chairman.	
000136-000238	Administration	Administration's briefing on the toll increases by Tate's Cairn Tunnel Company Limited (TCTC) and Route 3 (CPS) Company Limited.	
000239-000635	Mr WONG Kwok-hing Chairman Administration Clerk	Whether the confidential information provided by Route 3 (CPS) Company Limited on its actual net revenue (ANR) and financial position could be disclosed to the public and referred to by the Subcommittee at its meetings (LC Paper No. CB(1)1822/04-05(01) attached to LC Paper No. CB(1)1871/04-05).	
000636-003012	Mr WONG Kwok-hing Administration Ms Miriam LAU Assistant Legal Adviser 3 (ALA3) Chairman	(a) Members' concern about the justifications for the toll increase for Tai Lam Tunnel and that the toll increase would aggravate traffic congestion. (b) Members' concern about the	

Time marker	Speaker	Subject(s)	Action Required
		<p>toll adjustment mechanisms provided under the Tate's Cairn Tunnel Ordinance (Cap. 393) and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474).</p> <p>(c) ALA3's advice on the toll adjustment mechanisms and LegCo's power to amend or repeal the two Notices (L.N. 93 of 2005 and L.N. 95 of 2005).</p> <p>(d) Members' request for the Administration to explore options to address the issue of toll increase.</p> <p>(e) Administration's advice that various options were being explored with Route 3 (CPS) Company Limited, including extension of the franchise period, with a view to coming to an agreement on a toll reduction.</p> <p>(f) In connection with item (e) above, members' view that the Administration should set a deadline or timetable for the negotiation with the franchisee, and the Administration's view that it might not be appropriate to do so.</p> <p>(g) Administration's undertaking to report progress of the</p>	<p>Administration to follow up in due</p>

Time marker	Speaker	Subject(s)	Action Required
		negotiation to LegCo in due course.	course.
003013-005151	Mr Ronny TONG Administration Chairman	<p>(a) Actual profit or loss of TCTC and traffic throughput in comparison with their base case projections from 1991/92 to 2003/04.</p> <p>(b) In connection with item (a) above, member's concern that the relevant information for the year 2004-05 was not provided in the LegCo Brief.</p> <p>(c) Member's concern that it was not clear on what basis the Administration had reached a decision that an application for toll increase for Tate's Cairn Tunnel should be approved and arbitration should not be resorted to.</p> <p>(d) Administration's advice on the factors it had considered before approving the toll increase.</p> <p>(e) Member's view that the Administration should resort to the arbitration mechanism under section 36 of Cap. 393, which provided the guiding principle and a number of objective criteria to be considered by the arbitrators.</p>	Administration to provide the relevant information.

Time marker	Speaker	Subject(s)	Action Required
005152-011606	Mr Andrew CHENG Administration	<p>(a) Member's view that it was wrong for the Administration to approve the current toll increase for Tate's Cairn Tunnel, as TCTC had been making profits in the recent few years.</p> <p>(b) Member's view that the option of submitting the question of a proposed toll variation to arbitration should be considered by the Administration in future toll adjustment cases.</p> <p>(c) Member's concern that the 20% toll increase for private cars for Tate's Cairn Tunnel was substantial and might have impact on the traffic volume on Lion Rock Tunnel, and the Administration's advice that the impact was minimal.</p> <p>(d) Member's view that given that public interests were involved in the toll increase for Tai Lam Tunnel, the Administration should disclose to the public the information provided by Route 3 (CPS) Company Limited on its ANR and financial position.</p> <p>(e) Administration's advice that according to legal advice, the Administration could not disclose the information</p>	<p>Administration to provide the justifications and legal basis for its</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>referred to item (d) above without the consent of Route 3 (CPS) Company Limited.</p> <p>(f) Review of “Build-Operate-Transfer” system of operation with a view to reducing tolls and uneven utilization of tunnel resources, e.g. by way of joint management of the tunnels by the Government and the franchisees concerned.</p>	view.
011607-012431	Mr Tommy CHEUNG Chairman ALA3	<p>(a) Member’s view that the Administration should work out a long-term solution to address the problem of toll increase of Tai Lam Tunnel, and set a deadline or timetable for the negotiation with Route 3 (CPS) Company Limited on the need to extend the franchise period.</p> <p>(b) Whether LegCo had the power to amend or repeal the two Notices.</p>	
012432-013721	Mr Albert HO Administration Chairman Ms Miriam LAU	<p>(a) Member’s concern that the automatic toll adjustment mechanism provided under Cap. 474 could lead to abuse, e.g. manipulation of the ANR figure for a particular year to bring it below the level of the minimum estimated net revenue in respect of that year specified in Schedule 4 to the Ordinance so as to</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>advance a toll increase.</p> <p>(b) Members' view that given that public interests were involved in the toll increase of Tai Lam Tunnel, Route 3 (CPS) Company Limited should disclose the information on its ANR and financial position to the public.</p> <p>(c) Administration's explanation on the provisions relating to the Tai Lam Tunnel and Yuen Long Approach Road Toll Stability Fund (the Fund) (sections 38 and 39 of Cap. 474).</p> <p>(d) Administration's confirmation that no money had been paid into the Fund.</p>	<p>Clerk to write to Route 3 (CPS) Company Limited</p>
013722-014522	<p>Mr WONG Kwok-hing Administration ALA3 Chairman Mr Ronny TONG</p>	<p>(a) Members' emphasis of the need to disclose to the public the ANR and financial information of the franchisee of Tai Lam Tunnel to enhance the transparency of the operation and performance of the franchisee.</p> <p>(b) Administration's advice that the ANR of the franchisee for the year 2000-01, which was the basis for the current toll increase, was disclosed.</p> <p>(c) Members' request for the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Administration to brief the Panel on Transport in future on any proposed toll increase before deciding whether the increase should be supported.</p> <p>(d) Administration's advice that it had briefed the Panel on Transport in February 2005 on the proposed toll increase for Tate's Cairn Tunnel, and that the Administration had no power to approve or disapprove the toll increase for Tai Lam Tunnel.</p> <p>(e) Member's concern that the Administration had not provided sufficient information for discussion by the Subcommittee.</p>	
014523-015846	Mr Andrew CHENG Chairman Administration	<p>(a) Respective responsibility of the Administration and LegCo in the passage of Schedule 4 to Cap. 474 in 1995.</p> <p>(b) Whether and how Schedule 4 to Cap. 474 could be amended, and the implications, if any, of the amendments.</p> <p>(c) Whether an Internal Rate of Return of 4.9% after the current toll increase for Tate's Cairn Tunnel was reasonable.</p> <p>(d) Chairman's concern about the</p>	<p>Administration to give a written response.</p> <p>Clerk to write to</p>

Time marker	Speaker	Subject(s)	Action Required
		significant increase in the ANR of Route 3 (CPS) Company Limited in the year 2001-02 as compared with 2000-01.	Route 3 (CPS) Company Limited.
015847-020039	Chairman Mr WONG Kwok-hing Mr Albert HO	Subcommittee's decision to invite SETW and representatives of TCTC and Route 3 (CPS) Company Limited to attend the next meeting.	
020040-020123	Chairman ALA3	Scrutiny period of the two Notices.	
020124-020330	Clerk Chairman	Date of next meeting.	