立法會
Legislative Council

LC Paper No. CB(1)119/05-06
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by the Administration)

Ref : CB1/SS/9/04

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 second meeting held on
Wednesday, 5 October 2005, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon LAU Kong-wah, JP (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Albert HO Chun-yan
Hon LEE Wing-tat
Hon LEUNG Kwok-hung

Public officers attending : Mr Joshua LAW, JP
Permanent Secretary for the Environment, Transport and Works

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

Attendance by invitation : Tate's Cairn Tunnel Company Limited

Mr George LEE
General Manager

Mr Rick MAN
Head of Finance & Administration Department

Ms Donna YIP
Corporate Affairs Manager

Route 3 (CPS) Company Limited

Mr Vincent FONG
General Manager

Mr Kenneth TSE
Deputy General Manager

Ms Anita LEE
Corporate Communications Manager

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 (1)3

I. Meeting with the Administration, the Tate's Cairn Tunnel Company Limited, and the Route 3 (CPS) Company Limited

(LC Paper No. CB(1)2138/04-05(01)	—	Letter dated 30 June 2005 from the Secretary for the Environment, Transport and Works (SETW) to the Chairman of the Subcommittee
LC Paper No. CB(1)2138/04-05(02)	—	Reply dated 4 July 2005 from the Chairman of the Subcommittee to SETW (with list of issues and extract from the Hansard of the Legislative Council meeting on 24 May 1995)
LC Paper No. CB(1)2138/04-05(03)	—	Reply dated 22 July 2005 from SETW to the Chairman of the Subcommittee
LC Paper No. CB(1)2321/04-05(01)	—	Reply dated 16 September 2005 from SETW, responding to the Chairman's letter dated 4 July 2005
LC Paper No. CB(1)2321/04-05(02)	—	Letter dated 16 September 2005 from the Clerk to the Subcommittee to SETW
LC Paper No. CB(1)2348/04-05(01)	—	Letter dated 27 September 2005 from the Clerk to the Subcommittee to SETW
LC Paper No. CB(1)2138/04-05(04)	—	First reply dated 4 July 2005 from Route 3 (CPS) Company Limited
LC Paper No. CB(1)2138/04-05(05)	—	Letter dated 5 July 2005 from the Clerk to Subcommittee to Route 3 (CPS) Company Limited

LC Paper No. CB(1)2138/04-05(06)	—	Second reply dated 7 July 2005 from Route 3 (CPS) Company Limited
LC Paper No. CB(1)2321/04-05(03)	—	Reply dated 26 September 2005 from SETW on the financial and traffic information for 2004/05 provided by the Tate's Cairn Tunnel Company Limited
LC Paper No. CB(1)2321/04-05(04)	—	"Follow-up to the first meeting on 23 June 2005" prepared by the Legislative Council Secretariat)

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

Follow-up actions to be taken by Route 3 (CPS) Company Limited (Route 3 Company)

2. The Subcommittee requested Route 3 Company to take the following actions -

(a) To consider disclosing the required information set out in the first two undertakings made by the then Secretary for Transport (S for T) in 1995 so as to enhance transparency and enable the Administration to fulfil the undertakings:

(i) The Administration would require the tabling in LegCo in July each year (before the summer recess) the franchisee's plan as embodied in its three-year rolling projection of net revenue and its annual budget of operating costs, together with a statement; and

(ii) The Administration would table in LegCo in October each year the franchisee's annual audited statement of Actual Net Revenue, and would make a statement on that occasion on both the figures and any application for a toll increase.

(b) To provide the Subcommittee with information on the amount of direct investment (exclusive of bank loans) by the company in the project and the amount of bank loans secured by the company.

Follow-up actions to be taken by the Administration

3. The Subcommittee also requested the Administration to take the following actions -

(a) To continue to liaise with Route 3 Company with a view to fulfilling the undertakings made by the then S for T as far as practicable; and

(b) To report to the Panel on Transport (TP) by the end of 2005 on the progress of discussion with the franchisee of Route 3 about various possible measures to enhance the utilization of Route 3 and the idea of extension of its franchise.

Way forward

4. In view of the limited power which LegCo could exercise in respect of the two Notices being examined by the Subcommittee, members agreed that the Subcommittee should conclude its deliberations and refer the relevant policy issues to the TP for its follow-up action.

5. Members also agreed that -

(a) The Chairman would present the Subcommittee's written report to the House Committee on 14 October 2005; and

(b) The Chairman would seek the President's permission for him to present the Subcommittee's written report to the Council on 19 October 2005 and address the Council thereon.

6. On paragraph 5(a) above, the Chairman requested the Administration and Route 3 Company to provide a written reply as soon as practicable so that their response could be incorporated in the Subcommittee's report to be issued to the House Committee.

(*Post-meeting note*: The replies from the Administration and Route 3 Company were issued to members vide LC Paper Nos. CB(1)2391/04-05(03), (04) and (06) on 10 October 2005.)

7. On paragraph 5(b) above, members noted that under Rule 21(6) of the Rules of Procedure, no debate might arise on the address so presented.

II. Any other business

8. There being no other business, the meeting ended at 9:40 am.

Council Business Division 1
Legislative Council Secretariat
24 October 2005

Appendix

Proceedings of the second 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 Wednesday, 5 October 2005, at 8:30 am
in Conference Room A of the Legislative Council Building

Time marker	Speaker	Subject(s)	Action Required
000000-000258	Chairman	Opening remarks (a) Issues of concern raised at the last meeting; (b) As informed by the Administration, Secretary for the Environment, Transport and Works (SETW) was not available to attend the meeting; and (c) Permanent Secretary for the Environment, Transport and Works (PS/ETW) would be leaving at around 9:15 am for other official commitment.	
000259-002218	Chairman Administration Mr Andrew CHENG	(a) Letter dated 16 September 2005 from SETW (LC Paper No. CB(1)2321/04-05(01)) responding to the issues set out in the Chairman's letter dated 4 July 2005 (LC Paper No. CB(1)2138/04-05(02)). (b) Member's query on why the Administration had not honoured the three undertakings	

Time marker	Speaker	Subject(s)	Action Required
		made by the then Secretary for Transport (S for T) during the resumption of the Second Reading debate on the Tai Lam Tunnel and Yuen Long Approach Road Bill at the Council meeting on 24 May 1995 to enhance the transparency of the franchisee's financial position and performance. (c) The Administration's response that the assurances given by the then S for T were to some extent not consistent with the provisions of the Project Agreement and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474), and the Administration had found it impracticable to implement the assurances in the manner suggested by the then S for T. Nevertheless, the Administration had over the years maintained the practice of informing the Legislative Council (LegCo) when the Company decided to exercise its entitlement to a toll increase. (d) Member's query on whether the Government's undertakings to LegCo were just empty promises, and whether the Government would honour its future undertakings, such as those related to the merger of the two railway corporations.	

Time marker	Speaker	Subject(s)	Action Required
		(e) Administration's explanation that during the various stages of a bill's passage through LegCo, it was not uncommon for the Administration to provide assurances to address certain concerns raised by Members. In some cases, the assurances were not enshrined in the legislation, and hence could only be implemented with the Administration's best endeavours through administrative means. What the Administration could require the franchisee of Route 3 to do was limited by the rights and obligations of the franchisee as stipulated in the relevant Project Agreement and the requirements under Cap. 474. Nevertheless, in the light of members' concern about the need to enhance transparency, the Administration had urged the franchisee to make available more information on its financial position and operation, and the information had been provided to the Subcommittee. (f) The Administration's confirmation that it would honour its future undertakings with its best endeavours, including those related to the merger of the two railway corporations.	

Time marker	Speaker	Subject(s)	Action Required
		(g) Member's concern about the financial impact of the "Build-Operate-Transfer" model on road users. (h) Member's concern about the toll adjustment mechanism provided in Cap. 474 and request for amending Schedule 4 to the Ordinance (i) The Administration's advice that as the estimated net revenue figures set out in Schedule 4 to Cap. 474 formed part of the agreement between the Government and the franchisee in awarding the franchise in 1995, the Government should not propose amendments to the Schedule unilaterally. (j) The Administration's advice that it would continue its discussion with the franchisee of Route 3 to optimize the utilization of Route 3.	
002219-002834	Mr WONG Kwok-hing Administration	(a) Member's concern that Tate's Cairn Tunnel Company Limited (TCTC) might submit at least six applications for toll increase in future as set out in the LegCo Brief. (b) The Administration's advice that the number of applications set out in the LegCo Brief was only TCTC's own estimate, and that the Administration would	

Time marker	Speaker	Subject(s)	Action Required
		consider each application according to the then prevailing circumstances. (c) Possibility of applying a flexible toll adjustment mechanism to various public transport operators, under which the fees could be increased or reduced, and the Administration's advice that the proposed mechanism would only apply to public buses in the initial stage. (d) Balance in the Tai Lam Tunnel and Yuen Long Approach Road Toll Stability Fund.	
002835-004740	Mr Albert CHAN Route 3 (CPS) Co. Ltd. Administration Chairman	(a) Member's view that the undertakings by the then S for T in 1995 were made on behalf of the Government and failure to fulfill the undertakings demonstrated a lack of credibility of the Government. (b) The Administration further explained the impracticability of implementing the assurances in the manner suggested by the then S for T, and that it had over the years maintained the practice of informing LegCo when the Company decided to exercise its entitlement to a toll increase. (c) Information on the actual profit or loss of the franchisee of Route 3 vis-à-vis the base case	

Time marker	Speaker	Subject(s)	Action Required
		projections (LC Paper No. CB(1)2138/04-05(04)). (d) Amount of direct investment (exclusive of bank loans) by the franchisee of Route 3 in the project; the amount of bank loans secured by the franchisee and interest expenses incurred from the loans.	
004741-005114	Mr Ronny TONG Administration	(a) Member's suggestion that the Administration should set up a task force to monitor the toll levels of the various tunnels in Hong Kong, in particular the three road harbour crossings, and to collect views on how the toll adjustment mechanisms could be improved. (b) The Administration's advice that toll adjustments for various tunnels were made in accordance with the requirements set out in the relevant ordinances and Project Agreements. Given that on-going discussions had been held between the Administration and the operators of the three road harbour crossings and Route 3 on any possible improvements to the existing toll adjustment mechanism and measures to enhance utilization, the Administration did not see the need for the setting up of a task force as suggested.	

Time marker	Speaker	Subject(s)	Action Required
005115-005301	Mr Albert CHAN Administration	Disclosure of the amount of direct investment (exclusive of bank loans) by the franchisee of Route 3 in the project and the amount of bank loans secured by the franchisee.	
005302-005350	Tate's Cairn Tunnel Co. Ltd.	TCTC's advice that the Company's rate of return was calculated on the basis of the direct investment by shareholders and the Company's financial information was available in its annual reports.	
005351-005552	Mr Albert CHAN Route 3 (CPS) Co. Ltd. Chairman Administration	(a) Route 3 (CPS) Company Limited (Route 3 Company)'s advice that the Company had an accumulated loss and had not achieved any return on its investment on Route 3. Rising interest rates would make the Company's financial position in the coming future far more vulnerable. (b) Members' request for Route 3 Company - (i) to consider disclosing the information set out in the first two undertakings made by the then S for T so as to enhance transparency and enable the Administration to fulfil the undertakings; and (ii) to provide the Subcommittee with information on the amount of direct investment (exclusive of bank loans)	Route 3 Company and the Administration to respond in writing.

Time marker	Speaker	Subject(s)	Action Required
		by the Company in the project and the amount of bank loans secured by the Company. (c) Members' request for the Administration to continue to liaise with the franchisee of Route 3 with a view to fulfilling the undertakings made by the then S for T as far as practicable. (Remark: PS/ETW left at this juncture.)	
005553-010500	Ms Miriam LAU Administration Chairman	(a) Members' view that the Administration should take urgent steps to work out a long term solution to address the problems caused by the current toll adjustment mechanism and under-utilization of Route 3, and report to the LegCo Panel on Transport (TP) on the progress of discussion as soon as possible. (b) The Administration's reply that it would report progress of the discussion to the TP in due course. Given that the discussion had been going on for several years and that significant public interests were involved, members considered the Administration's reply not acceptable. (c) Members' request for the Administration to report to the	Administration to respond in writing.

Time marker	Speaker	Subject(s)	Action Required
		TP by the end of 2005 on the progress of the Administration's discussion with the franchisee of Route 3 about various possible measures to enhance the utilization of Route 3 and the idea of extension of its franchise.	
010501-010618	Chairman	Way forward (a) The Chairman to present the Subcommittee's written report to the House Committee on 14 October 2005. (b) The Chairman to seek the President's permission for him to present the Subcommittee's written report to the Council on 19 October 2005 and address the Council thereon.	
010619-010645	Mr Albert CHAN	Member's view that the Subcommittee's report should reflect the difference in the level of transparency of TCTC and Route 3 Company in providing financial information to the Subcommittee, and that the public should not be deprived of the right of access to such information.	

Council Business Division 1
Legislative Council Secretariat
24 October 2005