

立法會

Legislative Council

LC Paper No. CB(1)1082/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/TP/1

Panel on Transport

Minutes of meeting held on Wednesday, 2 February 2005, at 8:30 am in the Chamber of the Legislative Council Building

Members present : Hon LAU Kong-wah, JP (Chairman)
Hon Albert CHAN Wai-yip (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon Patrick LAU Sau-shing, SBS, JP

Member absent : Hon LAU Chin-shek, JP

Public Officers attending : Agenda item IV

Ms Annie CHOI
Deputy Secretary for the Environment, Transport and Works
(Transport)³

Mr Clement LAU
Principal Assistant Secretary for the Environment, Transport
and Works (Acting)

Agenda item V

Miss Cathy CHU
Deputy Secretary for the Environment, Transport and Works
(Transport)2

Miss Angela LEE
Principal Assistant Secretary for the Environment, Transport
and Works

Ms Carolina YIP
Assistant Commissioner for Transport/
Administration and Licensing

Mr Albert SU
Chief Transport Officer/Corporate Communication
Transport Department

Agenda item VI

Miss Cathy CHU
Deputy Secretary for the Environment, Transport and Works
(Transport)2

Miss Angela LEE
Principal Assistant Secretary for the Environment, Transport
and Works

Mr Don HO
Assistant Commissioner for Transport/
Management and Paratransit

Mr Ken HUI
Chief Transport Officer/Taxi Planning
Transport Department

**Attendance by
invitation**

: Agenda item IV

Tate's Cairn Tunnel Company Limited

Mr George LEE
General Manager

Mr Rick MAN
Head of Finance & Administration

Ms Donna YIP
Corporate Affairs Manager

Mr Fred BROWN
Traffic Consultant
MVA Hong Kong Limited

Agenda item V

Public Omnibus Operators Association Limited

Mr YEUNG Wai-hung
Chairman

Mr WONG Leung-pak
Vice Chairman

Hongkong Guangdong Boundary Crossing Bus Association

Mr CHOW Hing-wong
Chief Secretary

Mr CHEUNG Kim-ping
Vice-Chairman

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

Staff in attendance : Ms Anita SIT
Senior Council Secretary (1)9

Miss Winnie CHENG
Legislative Assistant (1)5

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I Confirmation of minutes and matters arising

- (LC Paper No. CB(1)729/04-05 - Minutes of the meeting held on 14 December 2004
LC Paper No. CB(1)679/04-05 - Minutes of the meeting held on 17 December 2004)

The minutes of the meeting held on 17 December 2004 were confirmed.

2. The Chairman said that Mr CHENG Kar-foo had requested to revise the minutes of the special meeting held on 14 December 2004 as follows:

To add “Mrs Selina CHOW said that if the Administration wanted to prevent the occurrence of all traffic offences, it could simply introduce legislation to prohibit motorists from driving.” at the beginning of paragraph 69.

Mr CHENG’s letter was tabled at the meeting for members’ reference.

3. Mr CHENG Kar-foo recalled that there had been a heated debate on the Administration’s proposal to raise the penalty levels for red light jumping at that meeting. As the Panel proceeded to vote on Mrs Miriam LAU’s motion, Mrs Selina CHOW had already left the meeting. He had a vivid memory of Mrs CHOW’s above remarks. He was of the view that, as a Member of both the Executive Council and Legislative Council, Mrs CHOW’s such important comments on the Administration’s proposals to raise the penalty levels for red light jumping should be fully reflected in the minutes of the meeting. As the draft minutes of the meeting did not have records in this respect, he therefore requested to make the above revision.

4. Mrs Selina CHOW said that her remark was of a sarcastic nature. She remembered that her remark had prompted laughs and clapping of hands from those present at the meeting, indicating that most of them had appreciated the sarcastic nature of the remark. She was of the view that the remark should not be put into the minutes of the meeting. She explained that this matter had touched upon the principles of how to write minutes of meeting. Members often used some terms for emphasis and sarcastic remarks to make their views more persuasive at meetings. It had not been the Secretariat’s practice to write records of meetings in verbatim. Such remarks were not normally included in the minutes of meetings, otherwise, the minutes of meetings would be several times longer than the present ones. In view of this long-established principle of writing minutes of meetings, she disagreed to put the remark in question into the minutes of the meeting.

5. Ms Miriam LAU said that she was also present at that moment but did not clearly catch the content of the remark in question. If Mrs Selina CHOW had intended to use the remark as her viewpoint rather than a joke, her focus at that time would have been on whether the Government should introduce legislation or not, but that was obviously not her focus or viewpoint at that time. Her impressions were that Mrs CHOW had made those remarks in a humorous way, which had prompted laughs and clapping of hands

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from those present at the meeting. They seemed to have appreciated her sense of humour. Mrs LAU was of the view that according to the long-established principles of writing minutes of meetings, it was not necessary to put Mrs CHOW's remark in question into the minutes of the meeting.

6. Mr Albert CHAN said that those remarks which had prompted laughs could also be viewpoints. Different people might have different opinions of the nature of a particular remark. He was not present at that moment, but in his opinion, Mrs Selina CHOW's remark in question was more than a harmless joke but the expression of a very important position and opinion and was related to the public, which should be put into the minutes of the meeting. If the remark was treated as a joke and omitted from the minutes, it would constitute a disrespect to the Chamber of the Legislative Council and records of its meetings. He expressed regret at such views.

7. Mr Jeffrey LAM said that the person in question (i.e. Mrs Selina CHOW) was the most suitable person to interpret the true intention of the remark in question and she had clearly clarified that her remark was just a joke. If other people, particularly those who were not present at that moment, insisted arbitrarily that the remark represented an expression of a point of view, it would be unfair to the person in question. The Panel had an established practice to follow in the selection of contents for writing minutes of meetings. As Mrs CHOW had clarified that her remark in question did not represent an expression of a point of view or her position, other members should respect her.

8. Mr TAM Yiu-chung said that he was not present at that moment. It seemed to him that Mrs Selina CHOW's remark in question should be interpreted as a joke. Mrs Selina CHOW's remark had been prompted by her dissatisfaction with the Administration's response. People in general would understand that the suggestion made in the remark would be impractical in reality. If the remark was put into the minutes of the meeting, it would set a precedent for future records of meetings in that remarks of a similar nature would be put into the minutes. He did not believe that this would be the result that members had hoped for. In his opinion, Mrs CHOW's remark should not be put into the minutes of the meeting.

9. In response to Mr Albert CHAN's view, Mrs Selina CHOW said that members would clearly understand her true intention of her remark in question and find it a pure joke if they referred to the relevant paragraph (paragraph 69) of the minutes of meeting. If Mr CHENG Kar-foo insisted that her remark in question represented an expression of her position in a serious way, she would raise an objection.

10. Mr CHENG Kar-foo stressed that while he agreed that records of meetings should not be written in verbatim, his impression after hearing the remark was that a Member of the Executive Council had used such a so-called joke to bring out the spirit of a traffic regulation in order to win applause from those present at the meeting. Those present at the meeting might consider Mrs Selina CHOW, who was the Deputy Chairman of the Liberal Party and Member of both the Executive and Legislative Councils, one of their supporters. Mr CHENG continued that Mrs CHOW should have

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the courage to accept that her remark in question be put into the minutes of the meeting given that she had made such a remark of a humorous nature to win applause. Mr CHENG insisted that the remark should be put into the minutes of the meeting in order to clearly reflect that Mrs CHOW had made the remark for winning applause from the trade.

11. The Chairman said that as members had different views on Mr CHENG Kar-foo's request to revise the minutes of the meeting, he would put this matter to vote.

12. Ms LI Fung-ying said that members had not had the chance to hear the audio record of the remark. The Chairman responded that Mr CHENG Kar-foo had said that he had repeatedly heard the audio record of that meeting and the Clerk of the Panel had also reheard the record. Both of them had verified that Mrs Selina CHOW did make the remark. The focus of members' discussion was on whether the remark should be put into the minutes of the meeting.

13. Mr Albert CHAN said that in the past, if the minutes of a meeting were not consistent with the fact, the committee concerned would delete or correct the relevant parts. The question before the Panel was: a member had requested to put the remark of another member into the minutes of the meeting, i.e. to record a fact in the minutes. He asked the Clerk about the spirit and principles in writing minutes of meetings. He was particularly concerned about whether it was in conformity with such spirit and principles for a committee to refuse to put the remarks which a member did make at a meeting into the minutes of that meeting.

14. The Clerk said that as the minutes of meetings were not written in verbatim, the Secretariat would put the main points expressed by members and other people present at meetings into the minutes of meetings for future reference so that all parties concerned knew the concerns and views expressed by members and other people present at a meeting. The Clerk continued that past requests by individual members to revise the minutes of meetings were mainly related to speeches made by the members themselves and the representatives of the Administration. The Panel on Transport had never dealt with a request by a member to revise the minutes of meeting in respect of a remark made by another member.

15. Mr Albert CHAN further asked that in accordance with the principles of writing minutes of meetings, whether the Secretariat or committees would accept requests made by members or representatives of the Administration to have the facts about certain remarks deleted from or distorted in the minutes of meetings.

16. The Clerk responded that as the minutes of meetings were records of the main points expressed by members and other people present at meetings and the main proceedings of meetings for future reference, in writing minutes of meetings, the main considerations for the Secretariat were to record the main points made by members and other people present at meetings in a concise way as far as possible, which would inevitably result in the need to leave out some remarks or make a summary of what were

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said at meetings. Based on the same considerations, the Secretariat had selected the views expressed by Mrs Selina CHOW on the Administration's proposal to raise penalty levels for red light jumping when recording her speech on this subject.

17. The Chairman put the question of whether Mrs Selina CHOW's above-mentioned remark should be put into the minutes of the meeting held on 14 December 2004 to vote. Two members voted "yes" and seven members voted "no". According to the result of the vote, the Chairman declared that Mr CHENG Kar-foo's request had been rejected.

18. Members agreed to confirm the minutes of the meeting held on 14 December 2004 (LC Paper No. CB(1)729/04-05).

19. Mrs Selina CHOW said that the above discussion about minutes of meetings had touched upon the question of how to deal with jokes made at meetings. This was a general subject which, in her opinion, needed to be further studied.

20. The Chairman responded that the Panel had dealt with Mr CHENG Kar-foo's request to revise the minutes of the meeting held on 14 December 2004. Mrs Selina CHOW could raise her concern with the Committee on Rules of Procedure.

II Information papers issued since last meeting

- (LC Paper Nos. CB(1)625/04-05(01) & (02) - Submission dated 30 November 2004 from a member of the public regarding penalty for jaywalking and design of a signalized road crossing and the Administration's reply
- LC Paper No. CB(1)698/04-05(01) - Submission from a resident of Kam Tin, Yuen Long suggesting the provision of free shuttle bus service to/from Kam Sheung Road Station of West Rail
- LC Paper No. CB(1)766/04-05(01) - Information paper on "Trial Scheme for Taxi and Green Minibus Operation at Lok Ma Chau Control Point" provided by the Administration
- LC Paper No. CB(1)775/04-05(01) - New Lantao Bus Company (1973) Limited - Fuller disclosure of financial and operational information)

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21. Members noted the information papers issued since last meeting.

III Items for discussion at the next meeting scheduled for 25 February 2005

(LC Paper No. CB(1)786/04-05(01) - List of outstanding items for discussion

LC Paper No. CB(1)786/04-05(02) - List of follow-up actions)

22. Members agreed that the following items proposed by the Administration would be discussed at the next meeting scheduled for 25 February 2005-

(a) West Hong Kong Island Line, South Hong Kong Island Line and Route 4;

(b) Proposed introduction of the probationary driving licence scheme for private cars and light goods vehicles; and

(c) Replacement of switchboards and transformers in the Aberdeen Tunnel.

23. In regard to item (a) above, Ms Miriam LAU recalled that during the discussion of the same subject at previous Panel meetings, the planning for future development of South Hong Kong Island was one major issue raised. She therefore suggested that to facilitate the discussion at the coming Panel meeting, officials responsible for planning matters be invited to attend the meeting. Members agreed.

24. Also in connection with item (a) above, the Chairman informed members that the Panel had received a request from 爭取地鐵西延大聯盟 to attend the meeting on 25 February 2005 to give oral views on the subject. He said that when the same subject was discussed at the Panel meeting on 28 May 2004, deputations from various interested parties had attended the meeting to give oral views. He then consulted members on the arrangements for the discussion on 25 February 2005. After deliberation, members agreed that the Panel would discuss the subject only with the Administration at the meeting on 25 February 2005. Thereafter, the Panel would consider whether a further meeting or session should be arranged for the Panel to receive oral views of interested parties.

IV Proposed adjustment of Tate's Cairn Tunnel tolls

(LC Paper No. CB(1)786/04-05(03) - Information paper provided by the Administration

LC Paper No. CB(1)786/04-05(04) - Information paper provided by the Tate's Cairn Tunnel Company Limited)

25. With the aid of Powerpoint, Mr George LEE, General Manager of Tate's Cairn Tunnel Company Limited (TCTC), gave a presentation on the proposed adjustment of Tate's Cairn Tunnel (TCT) tolls. The salient points were as follows –

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- (a) A reasonable return was a pre-requisite for attracting investment from the private sector for building infrastructure in Hong Kong. TCTC had invested about \$2 billion in building TCT. It was stated in Tate's Cairn Tunnel Ordinance (Cap. 393) (TCTO) that a "reasonable but not excessive return" should result from this investment.
- (b) In contrast to the expected Internal Rate of Return (IRR) of 13% in TCTC's Base Toll Proposal which accompanied the company's franchise bid, TCTC had accumulated a loss of \$453 million as at the end of June 2004 (i.e. after a period of 16 years since the start of the 30-year franchise) and no dividend had been paid to TCTC's shareholders yet.
- (c) The reasons for the financial underperformance of TCTC were not foreseeable in 1987 when the company decided to invest in the tunnel project. The main reasons included the relocation of the airport to Chek Lap Kok, the relocation of industrial activities to Mainland China and the prolonged economic difficulties over the past few years. Due to these reasons, the actual traffic volume of the tunnel had been significantly lower than the forecast traffic volume in TCTC's Base Toll Proposal.
- (d) TCTC had made strenuous efforts to improve the financial performance of the tunnel. On the revenue side, the company had experimented with various promotional programs and made service improvements to attract additional traffic. On the cost side, the company had exercised strict cost control and had reduced the tunnel's annual operating costs from \$86 million in 1996-97 to \$70 million in 2003-04. The cost reductions had been achieved without lowering service standards or launching employee redundancy programs. However, these efforts to increase traffic volume and reduce operating costs had limited effect on improving the financial performance of TCTC.
- (e) TCTC applied for the fourth toll increases in October 2000. On the advice of the Administration, the application had been deferred three times. The toll increases presently proposed were expected to generate additional revenue of about \$37 million per year to expedite elimination of TCTC's accumulated loss and eventually to achieve investment return.
- (f) The proposed toll increases were moderate and had balanced various considerations. The proposed toll increases for goods vehicles were particularly mild so as to minimize the impact on the freight transport trade. The proposed toll increases were expected to cause slight traffic diversion to Lion Rock Tunnel (about 940 vehicles daily or 1%) and Tai Po Road (about 260 vehicles daily or 0.8%).

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- (g) Having spent \$64 million in capital expenditure in the past seven years, TCTC planned to invest more than \$56 million capital expenditure in the next seven years to maintain various facilities and improve services.
- (h) According to TCTC's annual survey of customers' opinions, customers' overall satisfaction level had been improving steadily. The satisfactory rating had risen from 90% in 2002 to 95% in 2004.

26. Mr WONG Kwok-hing opined that it was inappropriate to raise TCT tolls at this stage. The local economy had just started the recovery process. TCTC started to make a profit in 2000-01 and its bank loan was fully repaid in October 2004. Given that the financial position of TCTC was improving, any toll increase for the TCT should be considered at a later stage when the local economy had further improved. He highlighted that the 20% and 30% toll increases for single-decker buses and double-decker buses respectively would induce significant increases in bus fares, thus aggravating the financial burden on local workers. Mr WONG also expressed concern about the traffic implications of the proposed toll increases, in particular the traffic diversion to Lion Rock Tunnel, which was already stretched beyond its capacity at present.

27. Mr George LEE responded that the fourth toll adjustment for TCT had already been delayed by three years. Although TCTC had fully repaid its bank loan, half of the franchise period had already passed and the accumulated loss was over \$400 million. To eliminate the loss and maintain quality services, it was necessary to raise the tunnel tolls. TCTC had experimented with various promotional programs to draw additional traffic but the results showed that the incremental toll revenue generated by the increased traffic volume failed to compensate the discount given out.

28. Mr Fred BROWN, Traffic Consultant of MVA Hong Kong Limited, said that the traffic diversion of some 900 vehicles from TCT to Lion Rock Tunnel, which currently had a daily throughput around 89 000 vehicles, should have minimal impact on the latter's traffic flow. The commissioning of the Ma On Shan Rail had brought some traffic relief and reduced the impact of the small addition of diverted traffic on the Lion Rock Tunnel.

29. Mr WONG Kwok-hing maintained that he did not support the proposed toll increases given the improving financial position of TCTC, the possible traffic implications and the present economic situation. He opined that TCTC should focus its efforts on increasing the traffic volume of the tunnel thereby generating more revenue for the company.

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30. Mr CHENG Kar-foo said that the Democratic Party was opposed to the proposed toll increases. With regard to the guiding principle of “reasonable but not excessive remuneration”, he considered that the expected IRR of 13.02% in TCTC’s Base Toll Proposal was too optimistic under the present-day economic situation. The proposed toll increases would induce fare increases by other transport modes, especially buses. The Administration should formulate an objective and transparent toll adjustment mechanism for private tunnels to obviate unnecessary controversies on tunnel toll adjustment matters. On traffic implications, it was obvious that the traffic diversion from TCT to Lion Rock Tunnel would aggravate the traffic congestion at Lion Rock Tunnel. He enquired about the Administration’s position on the proposed toll increases and the course of action contemplated by the Administration on the matter.

31. The Deputy Secretary for the Environment, Transport and Works (Transport)3 (DS/ETW(T)3) advised that for each “build, operate and transfer (BOT)” tunnel, the procedure for making toll adjustments had been determined when the relevant franchise was granted to the franchisee, and the procedure was stipulated in the relevant ordinance. The Government must follow the prescribed procedure. In the case of TCT, section 36(3) of TCTO provided that the tolls specified in the Schedule to the Ordinance might be varied by agreement between the Chief Executive-in-Council and the tunnel company. If an agreement could not be reached, either party might resort to arbitration.

32. DS/ETW(T)3 further said that the Administration had not taken a position on TCTC’s toll increase proposal at this stage. The Administration would take into account Members’ views in deciding its position on the matter. She confirmed that the traffic implications of the proposed toll increases were a major concern of the Administration. The Administration agreed to TCTC’s assessment that with the proposed toll increases, about 960 vehicles would be diverted to Lion Rock Tunnel per day. Since Lion Rock Tunnel was already operating beyond its capacity, the additional traffic would aggravate the traffic congestion at Lion Rock Tunnel to some extent. However, the newly commissioned Ma On Shan Rail could alleviate the traffic congestion at Lion Rock Tunnel but the extent of the alleviation had yet to be fully assessed.

33. Mr CHENG Kar-foo said that given that the local economy had just started the recovery process, and having regard to the guiding principle of “reasonable but not excessive remuneration” and the anticipated traffic implications, TCTC’s proposal for toll increases was not justified. As it was provided in TCTO that either the Government or TCTC might resort to arbitration if an agreement on the toll increases could not be reached, he suggested that the Administration should take TCTC’s proposal for toll increases to arbitration. He then moved the following motion –

“本會要求政府當局就大老山隧道有限公司申請調整收費一事上，按照《仲裁條例》的規定訴諸仲裁。”

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English translation

“Regarding the application for toll adjustments by the Tate’s Cairn Tunnel Company Limited, this Panel requests the Administration to submit the matter to arbitration in accordance with the Arbitration Ordinance.”

Mr CHENG’s motion was seconded by Mr LEE Wing-tat. The wording of the motion was then copied and tabled before members at the meeting.

34. Ms Miriam LAU pointed out that the guiding principle of “reasonable but not excessive remuneration” referred to in paragraph 10 of the Administration’s information paper was, as stipulated under the TCTO, the principle by which the Arbitrator should be guided if any matter on toll adjustments was taken to arbitration. She considered that the Administration should first discuss the toll adjustment proposal with TCTC to see if an agreement could be reached before resorting to arbitration. As such, the Administration should have a position on the proposal presently submitted by TCTC. She then asked whether the Administration considered the IRR of 7.62% that could be achieved by the proposed toll increases, as assessed by TCTC, was reasonable or excessive.

35. DS/ETW(T)3 advised that the Administration had not taken a position on the application, and would take into account Members’ views and the relevant factors as set out in the Administration’s paper in deciding its position. The final decision was to be made by the Chief Executive-in-Council.

36. Ms Miriam LAU said that she was surprised to note that the Administration did not have an initial view on TCTC’s application, given that this was already the fourth time TCTC made the application for the fourth toll increases for TCT and the company had provided relevant financial information and traffic forecasts for the Administration’s consideration of the application. She then asked whether the Administration had entered into any agreement with TCTC regarding the IRR for the company.

37. DS/ETW(T)3 advised that TCTC expected that it would achieve an IRR of 13.02% on the basis of its Base Toll Proposal. The Government in granting the franchise to TCTC had only agreed on the initial tolls to be charged upon commissioning of the TCT. The Government had not entered into any agreement with TCTC on any subsequent toll variations or IRR for the tunnel company.

38. At this juncture, the Chairman informed members that Mr WONG Kwok-hing had handed to him the following motion in writing –

“鑑於大老山隧道公司的財務狀況漸入佳境，本會認為在現階段不宜加價。”

Action

English translation

“In view of the gradually improving financial position of the Tate’s Cairn Tunnel Company Limited, this Panel considers it inappropriate to increase the tunnel tolls at this stage.”

Mr WONG’s motion was seconded by Ms LI Fung-ying. The motion was copied and tabled at the meeting.

39. Mr LAU Sau-shing said that as the local economic condition was improving and with the Government’s promulgated policy of facilitating the development of the recycling industries in the New Territories, TCTC’s financial performance might have a better prospect than it anticipated. He considered that TCTC should try out more promotional programs to increase the traffic volume of TCT, instead of raising its tolls resulting in traffic diversion to other roads/tunnels. He enquired how the estimated traffic diversion to Lion Rock Tunnel and Tai Po Road was arrived at.

40. Mr George LEE replied that at the last instance of TCT toll increases in January 2000, the total traffic diversion was some 1000 vehicles per day. Regarding the future traffic demand on TCT, Mr Fred BROWN said that the types of industries relocated to the Mainland were those that used to generate a lot of truck trips in Hong Kong. The new industries being developed in the Kwun Tong area were more service oriented than the relocated industries and thus would not generate a lot of truck trips. The logistics industry was developing in Hong Kong but the traffic generated by logistics activities was mainly focused on the western side of the territory near the port and airport. As regards the development of new industries in the New Territories, Mr BROWN said that those industries mainly involved high-technology operations and again, they were not expected to generate a lot of truck trips.

41. Ir Dr Raymond HO shared Ms Miriam LAU’s view that the Administration should have revealed its stance on TCTC’s application for toll increases when it put forth the application to the Panel for consideration. He referred to the reasons for the financial underperformance of TCTC as cited by the company itself and sought elaboration on the extent of their respective effects. He also queried whether those factors were foreseeable to some extent at the time the company bid for the franchise. He remarked that the relocation of industrial activities to the Mainland had already started in early 1980s and there were indications some time in the 1980s that the Government planned to relocate the airport to Chek Lap Kok.

42. Mr George LEE said that as a result of the relocation of industrial activities to the Mainland, the number of truck trips using TCT had reduced from 6 million in 1997-98 to 4 million in 2003-04. The relocation of the airport to Chek Lap Kok had resulted in about 10% reduction in TCT’s traffic volume. At the time of bidding the franchise, TCTC had made its assessments mainly on the basis of the planning data provided by the Government.

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43. Ms LI Fung-ying expressed disappointment that the Administration did not have a stance on TCTC's application for toll increases. Noting that TCTC had deferred the application for three times due to the poor economic situation over the past three years, she pointed out that the present economic situation had not improved much. The general public generally felt that travelling expenses constituted a significant financial burden on them. Based on the discussion on the matter so far, she observed that members of the Panel were generally of the view that there should not be any toll increase at this stage. She asked whether the Administration, having regard to members' views, now had a stance on the matter, and thus would persuade TCTC to defer its toll increase application. She also remarked that the traffic diversion caused by the proposed toll increases might result in reduction in TCTC's toll revenue. She requested TCTC to reconsider its application giving due regard to the social responsibility factor.

44. The Chairman asked whether the Administration had advised TCTC to defer its application on this occasion.

45. Mr George LEE said that the last toll increase in January 2000 had a very positive effect on TCTC's financial position, though there had been slight traffic diversion from TCT after the toll increase. He stressed that even with the proposed toll increases, TCT's tolls were still the lowest among the private tunnels in the territory.

46. DS/ETW(T)3 reiterated that the Administration would take into account all relevant factors including the views of Members in arriving at a recommendation to the Executive Council on the toll increase application. She was not in a position to indicate support or otherwise in regard to TCTC's application, but she had made known to members in the paper provided to the Panel the major factors that the Administration would take into account in considering the application. DS/ETW(T)3 further said that on receipt of TCTC's recent application, the Administration had discussed with TCTC, drawing its attention to the prevailing economic situation, and had requested the company to consider further deferring its application. As TCTC maintained its position, the Administration was obliged to handle the application according to the prescribed procedure.

47. Mr TAM Yiu-chung said that TCTC might have been too optimistic about the prospective investment return when it decided to invest in the tunnel project. Now TCTC seemed to be too pessimistic in its financial projections. He considered it acceptable that the Administration did not have a stance on the application at this stage as it wished to solicit views from Members before making a decision on the application. He also considered that the Panel should indicate its position on the application. He expressed support for the motion moved by Mr WONG Kwok-hing as the motion could clearly reflect the position of the Panel on the matter. He also commented that there was no need for the Panel to advise the Administration to take the matter to arbitration as the procedure for handling the application was already prescribed in TCTO.

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48. Mrs Selina CHOW considered that it was incumbent upon the Administration to reveal to members how it considered the justifications for the toll increase application put forth by TCTC. For example, the Administration should indicate what level of IRR could be considered as reasonable and not excessive, and whether it concurred with TCTC on the reasons cited by the company for its financial underperformance. It seemed that ETWB was now deferring the matter to the Panel and the Executive Council and evading its responsibility. This was not consistent with the principle of maintaining an executive-led government. She expressed the view that the tunnel company should be allowed to achieve reasonable profits in return for its investment.

49. Ms Miriam LAU, with the support of Mrs Selina CHOW, moved amendments to the motion moved by Mr CHENG Kar-foo. Mr CHENG's motion as amended by Ms Miriam LAU's proposed amendments read as follows-

“本會要求政府當局就大老山隧道有限公司申請調整收費一事上，盡快決定其立場，按照《大老山隧道條例》第36條與隧道公司商討，若未能達成協定，則盡快訴諸仲裁。”

English translation

“This Panel requests the Administration to expeditiously make a decision on its position regarding the application for toll adjustments by the Tate's Cairn Tunnel Company Limited and hold discussions with the company in accordance with section 36 of the Tate's Cairn Tunnel Ordinance. It should submit this matter to arbitration as soon as possible if an agreement cannot be reached.”

Copies of Mr CHENG's motion as amended by Ms Miriam LAU's proposed amendments were tabled at the meeting.

50. Mr Albert CHAN said that compared with the proposals for tariff/ fare/ toll increases of other public utility companies, TCTC's application in question was less unreasonable. He sought clarification on why TCTC did not pursue toll increases in the past few years when the company was sustaining operating losses. He also sought the Administration's confirmation on whether it had vetted the financial information provided by TCTC and thus could confirm on the accuracy of the information. He considered that if no agreement could be reached between the Administration and TCTC on the toll increase application, arbitration was the appropriate course of action.

51. DS/ETW(T)3 said that the Administration had set out the relevant issues for consideration of TCTC's application in paragraphs 10 to 12 of the Administration's information paper. The Administration basically agreed with TCTC's financial projections, estimation on the traffic implications of the proposed toll increases and analysis of the reasons for TCTC's financial underperformance. She advised that at the time of the feasibility study for the TCT, the relocation of the airport to Chek Lap Kok was not a factor included in the study. Nevertheless, in the 1987 Policy Address, it was

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revealed that a new airport would be constructed in the west of the territory. The final tender bids for the TCT franchise were submitted in 1988. The Administration concurred with TCTC that the relocation of industrial activities to the Mainland and the prolonged economic difficulties had affected the traffic volume of TCT.

52. Mr George LEE said that according to the schedule for toll adjustments in the Basic Toll Proposal, the fourth toll adjustment for TCT should have been effected in July 2002. On account of various reasons including the poor economic situation, TCTC had deferred the application three times. According to his understanding, the decision to relocate the airport to Chek Lap Kok was revealed in the 1989 Policy Address.

53. The Chairman recapitulated that Mr CHENG Kar-foo and then Mr WONG Kwok-hing had each moved a motion. Ms Miriam LAU had moved amendments to Mr CHENG's motion. He said that he would first put the amendments moved by Ms Miriam LAU to vote, and then put the motion of Mr CHENG Kar-foo (as amended by Ms Miriam LAU if Ms LAU's proposed amendments were passed) to vote. Thereafter, he would put Mr WONG's motion to vote.

54. Mr WONG Kwok-hing said that it was necessary for the Panel to express a clear position on the matter, and the motion he moved could serve the purpose. As stated in his motion, the main reason that he considered it inappropriate for TCTC to increase tunnel tolls was the improving financial position of the company. The increase in TCT tolls at this point of time, given the prevailing economic situation, would have important implications. Other public utility companies would follow suit and this would have serious impact on the livelihood of the general public. He appealed to members to support his motion. He also said that he would not support the motion moved by Mr CHENG Kar-foo and the amendments moved by Ms Miriam LAU, as the motion and the amendments did not reveal a clear position on TCTC's application for toll increases.

55. Mr CHENG Kar-foo said that he supported Mr WONG's motion. His motion urging the Administration to take the matter to arbitration already implied that the Panel did not agree to the toll increases proposed by TCTC. If the Administration took heed of the Panel's view, it would not reach an agreement with TCTC on the matter. Based on the spirit of contract, the appropriate course of action was to take the matter to arbitration. He could not support the amendments moved by Ms Miriam LAU. If the amendments were passed, it would provide a leeway for the Administration and TCTC to agree on the proposed toll increases or a modified package of toll increases. Since such a package of toll increases agreed between the Administration and TCTC might not be acceptable to the Democratic Party, he would not support the amendments.

56. Mrs Selina CHOW said that the suggested way of handling TCTC's application in Mr WONG Kwok-hing's motion was at variance with that suggested by the Liberal Party. The Liberal Party could not accept that the Administration did not have a position on the matter and considered that the Administration should first decide its position and then proceed to discuss the matter with TCTC. If the Administration and TCTC could

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not reach an agreement on the matter after discussion, the Administration should follow the prescribed procedure by taking the matter to arbitration.

57. Ms Miriam LAU supplemented that the Liberal Party urged the Administration to act according to the law and fulfill its responsibility according to the principle of maintaining an executive-led government. The Liberal Party was in support of the guiding principle of “reasonable but not excessive remuneration”, given that TCT was operated on a commercial basis. The Administration should have a better grasp of the financial and operational circumstances of the tunnel company and thus was in a better position than members to determine whether the proposed toll increases were concordant with the said guiding principle. If no agreement could be reached, the Administration should resort to arbitration as provided under TCTO.

58. DS/ETW(T)3 clarified that the Administration would certainly take a position on the matter. However, at this point in time, the Administration did not have a position yet and would like to hear Members’ views before taking a position. She affirmed that the Administration would follow the prescribed procedure provided in TCTO in handling the matter.

59. Mr Abraham SHEK declared interest that he was a non-executive director of NWS Holdings Limited. He said that The Alliance was in support of the motion moved by Mr CHENG Kar-foo as amended by Ms Miriam LAU.

60. The Chairman said that as the issue in question was very important, he would also vote on the motions. He stated his position that he was opposed to the proposed toll increases for three reasons. Firstly, based on the information presented to the Panel so far, he could not see an urgency for TCTC to raise tolls. Deferring the toll increases to a later time should not have significant impact on TCTC’s financial position. Secondly, a 20% to 30% increase in the tolls for public buses at this time would pose a heavy burden on the commuting public. Thirdly, if the Administration approved the application, the Administration would be bringing out a very undesirable message with the effect of inducing increases in the tariffs/ tolls/ fares of other sectors. He considered that the Administration should proceed to discuss with TCTC on the basis that there should not be toll increases at this stage. If TCTC took the Administration’s advice and agreed not to pursue toll increases for the time being, there would be no need to go to arbitration. He supported Mr WONG Kwok-hing’s motion and was opposed to Mr CHENG Kar-foo’s motion and Ms Miriam LAU’s amendments.

61. The Chairman put the amendments moved by Ms Miriam LAU to vote. Five members voted for and six members voted against. The Chairman declared that the amendments were negated.

62. The Chairman put the motion moved by Mr CHENG Kar-foo to vote. One member voted for and five members voted against. The Chairman declared that the motion was negated.

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63. The Chairman put the motion moved by Mr WONG Kwok-hing to vote. Six members voted for and no member voted against. The Chairman declared that the motion was passed.

V Regulatory framework and licencing system for non-franchised bus operation

- (LC Paper No. CB(1)725/04-05(01) - Submission dated 14 January 2005 from Public Omnibus Operators Association Ltd.
- LC Paper No. CB(1)837/04-05(01) - Submission dated 28 January 2005 from Hongkong Guangdong Boundary Crossing Bus Association
- LC Paper No. CB(1)810/04-05(01) - Administration's response to the submission from Public Omnibus Operators Association Ltd (LC Paper No. CB(1)725/04-05(01))
- LC Paper No. CB(1)786/04-05(06) - Information paper provided by the Administration
- LC Paper No. CB(1)787/04-05 - Background brief on regulation of non-franchised bus operation prepared by the Secretariat
- LC Paper No. CB(1)640/04-05(01) - Submission from the Incorporated Owners of Beacon Heights
- LC Paper No. CB(1)810/04-05(02) - Administration's response to the submission from the Incorporated Owners of Beacon Heights (LC Paper No. CB(1)640/04-05(01))
- LC Paper No. CB(1)823/04-05(01) - Submission from G.M.B. Maxicab Operators General Association Ltd.
- LC Paper No. CB(1)823/04-05(02) - Submission from Environmental Light Bus Alliance
- LC Paper No. CB(1)837/04-05(01) - Submission from 的士、小權益關注大聯盟
- LC Paper No. CB(1)2351/03-04(06) - Information paper provided by the Administration for the meeting on 19 July 2004
- LC Paper No. CB(1)2505/03-04 - Minutes of the meeting on 19 July 2004)

64. The Chairman reported that prior to this meeting, two organizations from the non-franchised bus (NFB) trade had requested to attend this meeting to give oral views. Considering that the present agenda item was directly related to the trade, he had acceded to their requests. Subsequently, some other organizations from the public light bus (PLB) and taxi trades had also requested to attend this meeting. Given the scheduled meeting time, he anticipated that there would not be sufficient time for the

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Panel to receive views from various transport trades at this meeting. Thus, he had decided that the Panel should first listen to the views of the NFB trade, to be followed by other transport trades if considered necessary by the Panel. He invited members' views on the meeting arrangements and drew members' attention to the written submissions put forward by various parties including the public light bus and taxi trades.

65. The Deputy Secretary for the Environment, Transport and Works (Transport)2 (DS/ETW(T)2) introduced the Administration's proposals, highlighting that the review on NFB operations was made in response to the concerns raised by the transport trades on NFB operations. Concerns had been raised over an oversupply of NFBs, that some NFB operators had gone beyond the authorized scope of operation and some NFB operations were even in breach of the relevant traffic regulations. In response to the Administration's request, the Transport Advisory Committee set up a working group in late 2003 to conduct a review on the regulatory framework and licensing system for NFB operation. The review was completed in July 2004. All along, the Administration kept a close dialogue with the NFB trade. The views expressed by the trade during the Administration's consultations and the modifications made to the working group's recommendations after the consultations with the trade were already set out in the Administration's paper. She remarked that the objective of the proposed measures was to balance the concerns of various stakeholders and address the problems observed.

66. Mr YEUNG Wai-hung, Chairman of Public Omnibus Operators Association Limited (POOA), made the following points –

- (a) The NFB trade would accept Government's actions to combat unauthorized NFB operations/activities. POOA was strongly opposed to the imposition of further restrictions which would adversely affect the viable operation of existing NFB operators or would narrow down the established scope of NFB operations. The Administration should focus its efforts on combating unauthorized NFB activities/services.
- (b) The Administration had acknowledged that there was an oversupply of NFBs. POOA had requested that there should be a temporary freeze of the number of NFBs but the Administration declined to do so. The Administration's approach was to exercise very stringent control on new supply. POOA considered that this approach would not be effective as the NFB operators concerned might have to resort to extend their operations beyond the authorized scope of services in order to maintain viable operation. This would aggravate the problem of unauthorized NFB services and would also affect existing NFB operators.
- (c) A temporary freeze of the number of NFBs would provide a respite for the trade to discuss among themselves and make necessary adjustments to their operations.

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- (d) The established scope of NFB operations had been progressively narrowed down by the Transport Department's refusal to renew passenger service licences and associated endorsements in many cases. NFB operations were getting more difficult. For example, last year, only 13 NFBs remained in operating shuttle services to/from shopping plazas. POOA urged the Administration to allow sufficient room for viable operation of NFBs.
- (e) POOA did not agree with most of the proposed measures set out in the Administration's paper. The paper was made available to POOA only on 28 January 2005. As such, the POOA had not had the needed time to consult the NFB trade on the proposed measures. There were some 1 600 operators, out of which some 1 200 operators possessed three or less NFB vehicles. The proposed measures would seriously affect the viability of the business or even the livelihood of NFB operators. There should be sufficient time for POOA to conduct consultations with NFB operators on the proposals.
- (f) One of the reasons put forth by the Administration for refusing to freeze the number of NFBs was to avoid speculative activities on the premium of NFB vehicle licences. On the other hand, the Administration had all along permitted this type of speculative activities within the PLB and taxi trades. The premium of a taxi vehicle licence had increased from some \$2.8 million to \$3.8 million over the past year and that of a PLB vehicle licence from \$4.5 million to \$6.8 million. If NFB operations had adversely affected the business of PLBs and taxis, the licence premiums would not have increased so significantly.

67. The Chairman requested the deputations to focus their presentations on NFB operations. Their making of comments on the operations of other transport trades was not appropriate as deputations from other transport trades were not present to respond to such comments.

68. Mr CHOW Hing-wong, Chief Secretary of Hongkong Guangdong Boundary Crossing Bus Association, said that boundary crossing buses (BCBs) were one type of NFBs. BCBs operated in the Mainland most of the time and were subject to the regulation of both the authorities in the Mainland and in Hong Kong. Freezing the number of NFBs would go directly against the healthy development of boundary crossing bus services. Over the past five years, the number of NFBs operating international passenger service (A05) only increased by 175 vehicles vis-à-vis the increase of 1 338 vehicles of NFBs in total. The implementation of various Government policies promoting passenger flows between the Mainland and Hong Kong had generated increasing demand for cross-boundary passenger transport services. At present, the Administration was already exercising stringent control over the issuance and renewal of passenger service licences for BCBs. Freezing the number of NFBs would further aggravate the shortfall of cross-boundary passenger transport services. Moreover, the premium for NFB vehicle licences would inevitably surge to a level beyond the financial capability of some operators.

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69. Since only five minutes were left for this item according to the agenda, and a number of members had indicated their wish to speak on the subject, the Chairman consulted members on how the Panel should pursue the subject.

70. Ms Miriam LAU said that given the time constraint, it would not be feasible to conduct in-depth discussion on such an important subject at this meeting. The Administration's proposals would affect not only the NFB trade, but also other transport trades. She suggested that the Panel should convene another meeting for discussion of the subject.

71. Mr Abraham SHEK said that the Administration had put in much effort to work out comprehensive proposals to address the problems relating to NFB operations. He expressed support for the proposals set out in the Administration's information paper.

72. Mr Albert CHAN said that some resident organizations were also very concerned about the issue. He suggested that resident organizations should be allowed to give oral views to the Panel.

73. Mr TAM Yiu-chung said that individual resident organizations might only be concerned about the NFB service for their estates, and thus their views might not focus on the policy on NFB operations.

74. Mr Albert CHAN said that for items on railway projects, interested resident organizations had also been allowed to give oral views to the Panel. Hence, not allowing resident organizations to give oral views on the present subject would be inconsistent with the Panel's past practice.

75. Mr CHENG Kar-foo said that many local communities had strong views on the matter as their traffic needs were directly affected by the policy. He also opined that the Panel should allow interested parties to present oral views to the Panel as far as possible. On this subject, he understood that many property management companies had been actively involved in the application for residents' services (A06). He suggested that the Panel might invite the property management sector to present their views on the subject.

76. After discussion, members agreed that the Panel would hold a special meeting lasting for about four hours to meet with deputations and the Administration to discuss the subject. The Panel would welcome any interested parties to give written views and/or attend the special meeting to give oral views on the subject.

77. The Chairman requested the Administration to further discuss the proposals with the trades prior to the special meeting.

(Post-meeting note: The special meeting was subsequently scheduled for 1 March 2005 from 9:00 am to 12:30 pm.)

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VI Permitted operating areas for New Territories taxis

(LC Paper No. CB(1)786/04-05(07) - Information paper provided by the Administration)

78. Mr WONG Kwok-hing expressed support for the proposal to extend the operating areas of New Territories taxis as detailed in the Administration's information paper, since the proposal would benefit both the public and the New Territories taxi trade. He had consulted the Taxi Branch of the Motor Transport Workers General Union, which welcomed the proposal and called for its early implementation.

79. Mr TAM Yiu-chung also expressed support for the proposal. In this connection, he pointed out that at present, taxis were not allowed to operate at Ma Wan. In light of the request of some residents in Ma Wan, he asked the Administration to review the existing arrangement.

80. DS/ETW(T)2 said that some residents in Ma Wan had raised the matter with the Administration. The Administration was looking into the matter having regard to traffic flows and other relevant factors. She added that the matter was related to urban taxis only as Ma Wan was not within the operating area of NT taxis.

81. Mr WONG Kwok-hing recalled that at a recent meeting between Legislative Council Members and Tsuen Wan District Council members. The District Council members had made a strong request that taxis should be allowed to operate at Ma Wan. He thus urged the Administration to look into the matter expeditiously.

VII Any other business

82. There being no other business, the meeting ended at 10:35 am.