

立法會

Legislative Council

LC Paper No. CB(1)2089/04-05
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by the Administration)

Ref : CB1/PL/TP/1

Panel on Transport

**Minutes of special meeting held on
Wednesday, 15 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 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 LAU Chin-shek, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, 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

Members absent : Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP

**Public Officers
attending** : **Agenda items I and II**

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
Environment, Transport and Works Bureau

Miss LUI Ying
Principal Transport Officer
Transport Department

**Attendance by
invitation**

: Agenda item I

Route 3 (CPS) Company Limited

Mr Vincent FONG
General Manager

Mr Kenneth TSE
Deputy General Manager

Ms Anita LEE
Corporate Communications Manager

Agenda item II

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

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

Miss Winnie CHENG

Action

I Route 3 (Country Park Section) Toll Increase

(LC Paper No. CB(1)1764/04-05(01) - Information paper provided by the Administration

LC Paper No. CB(1)1764/04-05(02) - Letter dated 10 June 2005 from Route 3 (CPS) Company Limited)

II Tate's Cairn Tunnel Toll Increase

(File Ref: ETWB(T)CR 1/4651/94 - Legislative Council Brief)

The Chairman said that the toll increase of Route 3 (Country Park Section) (Route 3) had not been discussed at the Panel. The Panel had discussed the application for toll increase by Tate's Cairn Tunnel Company Limited (TCTCL) on 2 February 2005. At that meeting, the Panel passed the following motion –

“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。”

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.”

The Chairman further said that without reverting to the Panel on the toll increase application by TCTCL, the Administration gazetted the notice on the new tolls on 10 June 2005. Panel members considered it necessary to hold an urgent meeting to discuss the toll increase of the two tunnels with the Administration. He also informed members that the Panel had invited the Secretary for the Environment, Transport and Works (SETW) to attend this meeting but the Administration replied that SETW could not attend due to other official commitments.

2. The Chairman suggested and members agreed that the Panel would discuss the toll increase of the two tunnels together as a single item.

3. The Deputy Secretary for the Environment, Transport and Works (DS/ETW) said that the respective mechanisms for toll adjustment of the two tunnels were set out in the Administration's information papers. In this instance of toll increase of the two tunnels, the Administration followed the same respective practices as those adopted for past instances of toll increase of Route 3 and Tate's Cairn Tunnel (TCT). In the previous three instances of the toll increase of TCT, the Administration would first consult the Panel on the toll increase application, and thereafter the application would be presented to the Executive Council (ExCo) for consideration. When ExCo had taken a decision that the toll application should be approved, the Administration would announce the

Action

decision and gazette the notice to amend the Schedule to the Tate's Cairn Tunnel Ordinance (Cap. 393) (TCTO) accordingly.

4. Mr WONG Kwok-hing expressed strong dissatisfaction that the toll increase of Route 3 was gazetted without consulting the Panel at all, and for the toll increase of TCT, notwithstanding that the Panel had passed a motion expressing objection to the toll increase application, the Administration gazetted the notice on the new tolls without first reverting to the Panel. He considered that the way the Administration had handled the toll increases was grossly disrespectful to the Legislative Council (LegCo). He questioned why the Administration had simply acceded to the demand of the tunnel companies for toll increases without giving due regard to the interest of the general public. He also questioned why the Administration had not first come to the Panel to explain its position on the toll increases before announcing the new tolls and publishing the relevant Gazette notices.

5. DS/ETW said that the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap.474) (TLT & YLAR Ordinance) provided for a specified toll adjustment mechanism in respect of Route 3. There was no need for the tunnel company to seek approval from the Government to effect toll increases. It was stipulated in the TLT & YLAR Ordinance that the Commissioner for Transport (C for T) should by notice published in the Gazette amend Schedule 1, in which the tunnel tolls were specified, where there was a toll increase made in accordance with the specified toll adjustment mechanism. Section 45(3) of TLT & YLAR Ordinance also expressly provided that section 34 of the Interpretation and General Clauses Ordinance (Cap 1) should not apply in respect of a notice published by C for T to reflect the new toll levels allowed under the TLT & YLAR Ordinance. In the present instance of toll increase of Route 3, the Administration had simply followed the practice of the previous two instances of toll increase in April 2000 and April 2001, which was to announce the decision of the Route 3 (CPS) Company Limited (Route 3 Company) on the toll increase of Route 3 and publish a gazette notice accordingly.

6. DS/ETW further advised that based on its 2000/01 Net Revenue Statement, Route 3 Company was entitled to increase tolls on 1 January 2002. In response to the Administration's request at that time, the company had agreed to defer the toll increase. When the company recently informed the Administration that its toll revenue had continued to fall short of what was needed to put the company in a healthy financial position and thus had decided to effect the toll increase on 19 June 2005, the Administration had discussed with the company the possibility of deferring the toll increase further. But the Company decided that the toll increase should not be further deferred.

7. For the toll increase of TCT, DS/ETW said that the mechanism for toll variation of TCT was the same as that for the Eastern Harbour Crossing (EHC). Under the relevant provision in the TCTO, the tolls might be varied by agreement between the Chief Executive-in-Council (CE-in-Council) and the TCTCL, or in default of agreement, by submission of the question of the variation of tolls to arbitration. C for T

Action

should by notice in the Gazette, as soon as was practicable after such agreement or arbitration award, amend the Schedule to the Ordinance to effect the toll variation. Upon receipt of the application for toll increase from TCTCL in October 2004, the Administration had arranged to consult the Panel and the relevant discussion was held at the Panel meeting on 2 February 2005. In putting up the application to ExCo for consideration, the Administration had reported the discussion at the Panel meeting including the motion passed by the Panel. As the CE-in-Council had decided that the toll increase application should be approved, C for T was obliged to publish a Gazette notice on the new tolls accordingly. In the previous three instances of toll increase of TCT in 1995, 1996 and 1999, the same procedures were followed. In all these previous instances, the Administration had not reverted to the Panel prior to publishing the Gazette notice but had issued a LegCo Brief to inform Members of ExCo's decision in parallel.

8. Mr CHEUNG Hok-ming expressed regret that the Administration had circumvented LegCo in approving the toll increases of the two tunnels. He said that all along, LegCo Members were concerned that after the commissioning of the Hong Kong – Shenzhen Western Corridor (HK-SWC), the existing road network in North West New Territories (NWNT) would not be able to cope with the increased traffic and thus NWNT would suffer from frequent traffic congestion. As such, Members had repeatedly called on the Administration to take prompt actions to divert traffic from Tuen Mun Road (TMR) to Route 3. Nevertheless, up to the present, little progress had been made in this regard. He asked whether the Administration had assessed the traffic impact of the toll increase of Route 3, taking into account the impending commissioning of HK-SWC.

9. DS/ETW said that it was envisaged that a majority of the traffic brought about by the HK-SWC would be freight traffic and in this instance of toll increase of Route 3, Route 3 Company had decided to retain the existing concessionary tolls for motorcycles, medium and heavy goods vehicles and vehicles with additional axles. The actual toll increase for private cars and taxis would be \$3 only. The other vehicle types for which there would be an actual toll increase mainly operated on fixed routes and thus these vehicles would have low propensity to switch from Route 3 to other carriageways. Taking all these factors into account, the Administration estimated that the traffic impact of the toll increase of Route 3 should be minimal. It was estimated that with the toll increase, about 1 000 vehicles would be diverted to Tolo Highway or TMR. With time, the impact might be reduced.

10. In response to Mr CHEUNG Hok-ming's request for information to substantiate the assessment that HK-SWC would mainly carry freight traffic, DS/ETW advised that this assessment was based on the traffic studies and projections made in planning HK-SWC. She undertook to provide the relevant information after the meeting.

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11. Mr CHENG Kar-foo recapitulated that when the toll increase application of TCTCL was discussed at the Panel meeting on 2 February 2005, he had moved a motion requesting the Administration to submit the matter to arbitration though the motion was

Action

negated. He opined that if the toll increases of tunnels could be justified on the ground that the tunnel companies could not obtain the expected toll revenue due to the economic difficulties in the past years, this would mean that the public would always have to shoulder the gap so arisen. This was grossly unfair to the public. Moreover, the toll increases would inevitably induce the fare increases of various public transport services.

12. Mr CHENG further said that with the toll increase of TCT, a significant number of private cars and commercial vehicles would be diverted from TCT to the Lion Rock Tunnel, aggravating the traffic congestion at the latter. As had been repeatedly raised by LegCo Members, there was an urgent need for the Administration to overhaul its policy and strategies on the regulation of tunnels. It was now unequivocally clear that the Build-Operate-Transfer (BOT) mechanism had serious problems. He asked whether the Administration would, as in the case of the three road harbour crossings, initiate discussion with the two tunnel companies of TCT and Route 3 with the objective of securing control over the tunnel tolls. The option to be pursued might be common ownership of the tunnels by the Government and the respective tunnel companies or the Government buying back the ownership of the tunnels. For such a move, various options of financing could be considered including securitization of the tunnels.

13. Recalling that the two tunnel companies had in the past indicated their interest in the option of buying back the ownership of the tunnels by the Government, Mr LAU Chin-shek also asked whether the Administration would pursue this option so as to optimize the traffic diversion function of the two tunnels.

14. DS/ETW advised that the situation of TCT and that of the three road harbour crossings were different. For the latter, there was the problem of uneven distribution of traffic. In the case of TCT, motorists might choose other alternative routes, including the tolled Lion Rock Tunnel and Shing Mun Tunnels, which were owned by the Government. Instead of toll roads, motorists could also use Tai Po Road which was toll-free. At present, TCT, Lion Rock Tunnel and Shing Mun Tunnels each carried a daily traffic of about 60 000, 80 000 and 50 000 vehicles respectively. In terms of traffic throughput, the differential between TCT and its alternatives was not as substantial as the three road harbour crossings. Since the Government already owned Lion Rock Tunnel, Shing Mun Tunnels and Tai Po Road, the Administration did not see merits in the option of buying back the ownership of TCT, which would involve substantial public funds and was contrary to the principle of “big market, small government”. More importantly, there was a franchise agreement, which was a commercial contract, between the Government and TCTCL. Any attempt by the Government to terminate the contract and buy back the ownership of the tunnel might be perceived negatively and would have adverse effect on the image of Hong Kong as an international financial centre and a free market economy.

15. On the suggestion of Mr CHENG Kar-foo and Mr LAU Chin-shek that securitization could be an option for financing the buying back of the ownership of Route 3 and TCT, DS/ETW said that a number of complicated issues were involved in

Action

relation to securitization of public assets. In the case of the securitization of revenue of Government tolled tunnels and bridges completed in May 2004, there was no outstanding loan in respect of the tunnels and bridges and the revenue from the tunnels and bridges was very stable. Mr LAU said that he envisaged that the Government would make profits after buying back TCT and Route 3. He requested the Administration to carry out a detailed study on this option. DS/ETW agreed to further explore measures to enhance the utilization of tunnels.

16. Mr TAM Yiu-chung said that since Route 3 would probably be the primary beneficiary of the commissioning of HK-SWC and the Administration was also discussing with Route 3 Company measures to divert traffic from TMR, the present toll increase, which would be effected on 19 June 2005, was unjustified. Noting that the company had an accumulated loss of \$400 million, he enquired about the yearly net revenue of the company for the past years of operation.

17. DS/ETW confirmed that the Administration was discussing with Route 3 Company the option of extending the franchise period of Route 3 in conjunction with the construction of an Easterly Link Road (ELR) linking the Deep Bay Link and Route 3 and toll reduction. The Administration had made a similar point when the company recently informed the Administration of its decision to effect the toll increase. The company responded that the matters under discussion were of a longer term nature, whilst the financial position of the company called for an immediate measure, i.e. toll increase.

18. Mr Vincent FONG, General Manager of Route 3 Company, said that the company had invested a total of \$7 billion in the Route 3 project, and up to 31 July 2004, the company had an accumulated loss of \$400 million and an outstanding bank loan of \$3,700 million. In determining the toll increase, the company had tried its best to strike a balance between the financial pressure it faced and the public acceptability of the proposed toll increase.

19. As regards information on the yearly net revenue of the company, Mr Kenneth TSE, Deputy General Manager of Route 3 Company, advised that the accumulated loss of \$400 million was arrived at based on the audited accounts of the company. Mr Vincent FONG undertook to provide information on the net revenue and financial position of the company for the past years of operation.

(Post-meeting note: The information provided by Route 3 Company was issued vide LC Paper No. CB(1)1822/04-05 on 17 June 2005 under confidential cover.)

20. Mr Jeffrey LAM said that while he appreciated that the toll increases would affect users of the tunnels, he considered that being an international financial centre, it was of paramount importance for Hong Kong to uphold the spirit of contract. He however requested the two tunnel companies to offer concessionary tolls for users. In the case of Route 3, he considered that the main reason for the toll increase was the low utilization of the tunnel. With the commissioning of HK-SWC, the traffic demand on TMR, which

Action

was already operating at near capacity, would inevitably increase. Increasing the utilization of Route 3 could relieve the traffic demand on TMR and ease the financial pressure faced by the company and the need to further increase tunnel tolls. Recalling that Members had repeatedly called on the Administration to consider building an ELR between Deep Bay Link and Route 3 to divert traffic from TMR, he enquired about the present position of the Easterly Link Road and its implementation timetable.

21. DS/ETW advised that as explained earlier on, it was estimated that the traffic implications of the toll increase of Route 3 on other roads would not be significant, with some 1 000 vehicles diverted to TMR and Tolo Highway. In the case of TCT, it was estimated that some 900 vehicles would be diverted to the Lion Rock Tunnel per day. The additional traffic should not have significant effect on the traffic flow at the Lion Rock Tunnel, which carried a daily traffic of over 80 000 vehicles at present. Nevertheless, the Administration would closely monitor the situation.

22. DS/ETW said that the ELR could only reduce the journey time by 2 to 4 minutes. As Route 3 Company would directly benefit from the provision of the link road, the Administration considered that using the public-private-partnership (PPP) approach to provide the link road could be a viable option. It would thus be up to the company to assess whether the project was worth pursuing taking into account the forecast additional traffic that the link road would bring for Route 3.

23. Mr Jeffrey LAM considered that the Government had the responsibility to address the uneven traffic distribution between TMR and Route 3. While the current estimate was that the link road could shorten the journey time by 2 to 4 minutes only, when the traffic demand increased after the opening of HK-SWC, the traffic congestion situation in Tin Shui Wai and Tuen Mun areas would become serious. The increased traffic jams in NWNT would inevitably generate more vehicle emissions thereby aggravating the air pollution problem. He thus cautioned that without the ELR, more air pollution and traffic congestion would be resulted. He thus requested the Administration to consider viable options, including the provision of the Easterly Link Road and/or other link roads, to divert traffic from TMR to Route 3. He also enquired about the traffic management measures to cope with the increased traffic demand on other roads after the toll increase of Route 3.

24. DS/ETW said that the Administration would continue to study viable measures and options to cope with the increasing traffic demand on the road network in NWNT and the traffic situation would be closely monitored in the context of the Northwest New Territories Traffic and Infrastructure Review. Without the ELR, Yuen Long Highway would continue to serve as the main link road between Deep Bay Link and Route 3. Currently, the widening of Yuen Long Highway was underway. The Administration held the view that the effectiveness of the ELR, was limited and therefore did not consider it justified to use public funds to build the link road. As regards the concern on air pollution, she confirmed that this was an essential parameter. Indeed, in planning any highway project, the air quality impact at both the construction and the operation stages would be carefully assessed.

Action

25. Mr Jeffrey LAM commented that taking into account both the air pollution and the traffic congestion factors, the benefits that could be brought about by the ELR should be much more than a reduction of 2 to 4 minutes in journey time. He urged the Administration to carefully re-assess the cost-effectiveness of the link road, and take prompt actions accordingly.

26. Ms LI Fung-ying said that the toll increases would inevitably aroused strong discontent in the community, given that the unemployment rate was still high and the wages of local workers had been on a downward trend. She was doubtful about the determination of the Administration to safeguard public interest on this occasion of toll increases. The Administration had repeatedly claimed that it had requested the tunnel companies to consider deferring the toll increases, but at the same time, it held the view that the magnitude of the toll increases was small and the traffic impacts would be minimal. She thus sought clarification on whether the Administration had completely accepted the toll increases sought by the tunnel companies or it would further discuss with the companies the possibility of deferring the toll increases, and whether it would appeal against the toll increases. Ms LI also asked whether the tunnel companies would take into account the prevailing economic conditions and public mood and thus agree to defer the toll increases.

27. Mr George LEE, General Manager of TCTCL, advised that at this juncture, the company had no plan to offer concessionary tolls. However, as in the past, the company would in future consider giving concessions in collaboration with other enterprises, taking into account the market demand of different user groups.

28. Mr Vincent FONG, General Manager of Route 3 Company said that the company had been offering concessionary tolls over the past years. The present toll increase had been deferred by more than three years having regard to the economic conditions during the period. The company would retain the existing concessionary tolls for motorcycles, medium and heavy goods vehicles and vehicles with additional axles and would continue to offer concessions to private cars, taxis and light goods vehicles after the toll increase. In formulating any strategy relating to concessions, the ultimate objective of the company was to achieve a higher total revenue for the company. In view of the huge financial pressure faced by the company, the toll increase needed to be effected as scheduled.

29. DS/ETW said that in the case of TCT, the toll increase application had been approved by CE-in-Council. In considering the application, the Government had taken into account the need to strike a balance between the franchisee's interest and the public interest. Since the commencement of the franchise period in July 1988, the shareholders of TCTCL had not received any dividends. The Administration considered that the magnitude of toll increase applied for was reasonable. The application for toll increase was first made in 2000 and had been deferred three times in response to the Administration's request. Taking all these factors into account, the CE-in-Council had approved the application. In the case of Route 3, the tunnel company was entitled to

Action

effect the toll increase in accordance with the specified toll adjustment mechanism in TLT & YLAR Ordinance. Hence, in both cases, the issue of appeal against the toll increases did not arise. DS/ETW stressed that all along, the Administration had maintained liaison with the companies to examine whether there were opportunities to offer concessionary tolls to increase the utilization of the tunnels.

30. Mrs Selina CHOW considered that SETW should attend this meeting to explain the Administration's position on the toll increases to Members. She was especially concerned about the failure of various BOT tunnels to effectively perform their traffic diversion function. In most cases, there were great disparities between the original traffic projections and the actual traffic throughput. Due to a much lower outturn traffic throughput, the operators were under financial pressure to increase tolls. She highlighted that NWNT would likely face serious traffic congestion upon the commissioning of HK-SWC. Given that TMR was a free road while Route 3 was a tolled road, there must be some incentives provided for motorists to switch to Route 3. The Administration had the responsibility to address the uneven traffic distribution between TMR and Route 3. She asked whether the Administration had a timetable for its negotiation with Route 3 Company.

31. DS/ETW said that she would like to convey the apology of SETW for not being able to attend this meeting due to other official commitments. Regarding traffic projections, she advised that for each BOT project, the respective bidders would make their own traffic and financial projections in their franchise bids. In the case of Route 3, the actual traffic throughput was lower than the base case projection of Route 3 Company due to the lower-than-expected population growth in NWNT and the downturn of the economy over the past years. Both the Administration and the tunnel companies could not have foreseen these factors.

32. Regarding the provision of the ELR, DS/ETW said that given that TMR was a toll-free road, it was estimated that the benefit of using the link road, i.e. a 2 to 4 minute reduction in journey time, would not provide sufficient incentive for motorists to switch to Route 3. The traffic demand on Route 3 mainly hinged on the level of tolls. Therefore, the Administration was negotiating with the tunnel company the possibility of lowering the tolls in conjunction with the construction of the ELR using a PPP approach and the possible extension of the franchise period. It would not be appropriate to set a deadline for the negotiation, as so doing would not be advantageous to the Government's position in the negotiation.

33. On the concern about the additional traffic demand in NWNT with the commissioning of HK-SWC, DS/ETW advised that the current transport network of NWNT should be able to cope with the traffic demand for some years upon the commissioning of HK-SWC. For the longer term traffic demand, the Administration had formulated various options in the context Northwest New Territories Traffic and Infrastructure Review. The final combination of new roads would be taken forward as appropriate to tie in with the planning of various development proposals in NWNT and North Lantau.

Action

34. Ms Miriam LAU opined that for important matters as tunnel toll increases, SETW should take the initiative to brief the Panel on the relevant proposal/decision, rather than simply announcing the proposal/decision through the media and Gazette notices. Even if the Administration considered that the toll increases should be accepted, it should explain its position to Members. While the Panel had urged the Administration to examine options/measures to achieve a more balanced distribution of traffic among the road harbour crossings, the same principle should apply to Route 3 and TCT. The situation of Route 3 was particularly critical. It had been operating with substantial losses and competing with a toll-free road (i.e. TMR). She understood that it was the policy of some freight transport enterprises to avoid using Route 3 due to the high toll level unless under exceptional circumstances. She opined that the Administration had the responsibility to address the under-utilization of Route 3.

35. Ms LAU further said that if the financial position of the tunnel companies did not improve, they would very likely seek another toll increase in the near future. It was thus necessary for the Administration to solve the problem at root. The Administration should review why the BOT projects had failed to meet the transport objectives and examine viable measures to avoid further toll increases in the near future. The Environment, Transport and Works Bureau (ETWB) should also liaise with the Economic Development and Labour Bureau to examine the traffic demand of the logistics industry, and assess whether the relevant road networks could complement the development of the industry.

36. DS/ETW reiterated that in the present instance of toll increases of TCT and Route 3, the Administration had followed the same procedures as those followed in the past instances of toll increases of the two tunnels. She also reiterated that the Administration had been examining various options with the tunnel company to improve the utilization of Route 3. For TCT, in terms of traffic throughput, the differential between TCT and the government-owned tunnels and roads was not great, and the Administration did not see a need to formulate specific measures at this stage in respect of the toll level or traffic throughput of TCT.

37. Mr Albert CHAN commented that the toll increases of TCT and Route 3 were subject to very different consultation processes and there was great disparity in the extent of details in the respective papers provided by the Administration. He considered that the Administration had the responsibility to present a full picture on the operational situation of the tunnel companies, in particular the financial position of the companies. There was no such information in the paper regarding the toll increase of Route 3. He understood that the company was making profits in recent years but this was not revealed to the public at all. He therefore sought information on the net revenue of Route 3 Company for the previous year.

38. Mr Albert CHAN also commented that the helplessness of the Administration in face of the demand of the tunnel companies to raise tolls was attributed to the relevant unreasonable legislation and hence LegCo was partly responsible for the present

Action

predicament. On the other hand, the Administration had also failed to live up to the expectations of the public. With the commissioning of HK-SWC, the traffic conditions in NWNT would become critical. However, up to today, the Administration still did not have any concrete proposal to improve the utilization of Route 3. He further said that in view of the incompetence of the Transport Department as evidenced by a number of traffic fiascos, he asked whether the Administration would consider an overhaul of the organizational structure of ETWB and the department to achieve a more effective institutional setup.

39. DS/ETW responded that the respective papers on the toll increases of Route 3 and TCT were presented in a different manner mainly because the toll variation mechanisms were different. The presentation of the papers followed the relevant past papers for the previous instances of toll increases of TCT and Route 3.

40. Mr Vincent FONG of Route 3 Company said that the operational results of Route 3 had been improving progressively in recent years but there were still accumulated losses. Route 3 Company would provide information on the net revenue and the financial position of the company after the meeting. In response to Mr Albert CHAN's request for immediate release of the information on the company's revenue for the previous year at the meeting, Mr Kenneth TSE of Route 3 Company stressed that one should not take a snapshot view of the company's financial performance based on the operating profit/loss of a particular year, as the information alone could not adequately reflect the return on the company's investment in the Route 3 project. The company therefore did not wish to present the information in a partial manner at the meeting.

41. In response to some members' request for the Administration to release the information on the net revenue of Route 3 Company for the previous year, DS/ETW said that she had no such information on hand. Moreover, the company had agreed to provide the requested information.

42. Mr WONG Kwok-hing expressed strong dissatisfaction that since the Administration was responsible for monitoring the tunnel companies on behalf of the public, it was inconceivable that the Administration did not know the net revenue of Route 3 Company for the previous year. While the two companies, being commercial entities, would understandably give primary consideration to maximizing profits, the Administration should not simply let the companies increase tolls and do nothing to safeguard public interest. In effect, the Administration was “助紂為虐”. He said that ETWB should be reprimanded.

43. DS/ETW clarified that the Administration was aware of the information but she did not have the information readily available. In any event, since the representatives of the company were present, the company should be able to provide the information.

44. DS/ETW further said that she took exception to the comment that the Administration was “助紂為虐”. She had already explained that the toll increase of

Action

Route 3 was not subject to the Government's approval. The toll adjustment mechanism was already specified in the legislation. Nevertheless, at the Administration's request, the company had deferred the toll increase by more than 3 years.

45. Mr CHENG Kar-foo said that one could reasonably believe that the financial position of the two tunnel companies had been improving year after year. The BOT mechanism was a historical mistake. The Administration should not allow the tunnel companies to make use of the economic downturn over the past years to seek toll increase. In this regard, he had repeatedly asked the Administration to make some decisive moves and changes to rectify the situation. He was disappointed with DS/ETW's comment that the toll increases on this occasion were mild. He considered that if LegCo did not agree to the toll increase, the Administration should not approve the toll increase. If necessary, the matter should be submitted to arbitration, as provided in the legislation. Although the result of arbitration could be worse, the principle should be upheld. He sought the tunnel companies' response on the options of the Government buying back the ownership of the tunnels and common ownership of the tunnels. He also sought legal advice as to whether LegCo had the power to make the Administration withdraw the Gazette notices.

46. Mr George LEE, General Manager of TCTCL, said that TCTCL held an open mind to any constructive suggestion regarding the operation of TCT. With regard to whether the BOT tunnels in Hong Kong were failures, he commented that due to historical reasons, the toll policy of all BOT tunnels was pegged to the respective construction costs of the tunnels. The tunnels were built at different times and their construction costs varied a lot. Since the tolls were mainly determined based on the construction costs, the result was that there was great toll differential among the tunnels, especially in the case of the three road harbour crossings. As regards the present predicament of uneven distribution of traffic among the harbour crossings, one might attribute this to the "fact" that the tolls of Western Harbour Crossing were too high or, on the contrary, the tolls of the Cross Harbour Tunnel were too low.

47. ALA3 advised that under section 36 of the TCTO, the tolls which might be collected should be those specified in the Schedule to TCTO. The tolls specified in the Schedule might be varied by agreement between the CE-in-Council and TCTCL, or in default of agreement, by submission of the question of the variation of tolls to arbitration. C for T should, by notice in the Gazette, as soon as was practicable after such agreement or arbitration award, amend the Schedule to the Ordinance. This mechanism for toll variation was the same as that provided under section 55 of Eastern Harbour Crossing Ordinance (Cap. 215). In the present case of toll increase of TCT, according to the Administration, the CE-in-Council had agreed to the toll increase proposed by TCTC. According to the above provision, C for T should, by notice in the Gazette, amend the Schedule to the Ordinance. Unless CE-in-Council changed its decision on the toll increase proposal of TCTC, there did not exist any question of C for T withdrawing the Gazette notice.

Action

48. Mr Albert CHAN said that he appreciated that the Administration could do little in respect of the toll increase of Route 3. That said, the Administration should take actions to remedy the situation by buying back the ownership of Route 3 and/or by providing new roads for traffic diversion, so that the tunnel company could not exploit the present predicament for its own benefit.

49. Ms Miriam LAU said that the problems relating to the BOT mechanism had manifested during and after the downturn of the local economy. In face of the problems, the Administration had exhibited a passive and indecisive attitude. She was also perplexed by the Administration's assessment that after the commissioning of HK-SWC and in the short to medium term, the existing road network could cope with the traffic demands and no new major highway projects would be required, notwithstanding that at present, the volume to capacity (v/c) ratio of Tuen Mun Road already stood at 1.1 and would reach 1.19 in the short to medium term. While she appreciated that the present toll increases of Route 3 and TCT were compliant with the relevant toll variation mechanisms provided in the law, it was important that the Administration could fully apprehend the imminent traffic problems and had the determination to work out viable solutions expeditiously.

50. DS/ETW appealed to members' understanding that the negotiation with Route 3 Company on measures to improve the effectiveness of Route 3 in performing the traffic diversion function involved complicated issues. She confirmed that the Administration had the determination to pursue the matter but there could not be a fixed timetable for the negotiation.

51. Mr Albert CHAN stressed that with the impending commissioning of HK-SWC, the implementation of improvement works on TMR in the coming few years and the toll increase of Route 3, the traffic conditions in NWNT would very likely deteriorate to a critical situation. He asked what concrete measures would be taken to ease the traffic conditions in NWNT.

52. DS/ETW said that as explained earlier on, the Administration estimated that the traffic impact of the toll increase of Route 3 should be minimal since there would be no actual toll increase for medium and heavy goods vehicles and the magnitude of the increase for other vehicle types was not great. The existing road network in NWNT should be able to cope with the traffic demands for some years upon the commissioning of HK-SWC. The longer term traffic demands in NWNT and North Lantau would be closely monitored for timely implementation of the optimum package of new highway projects. For the improvement works at TMR, the current plan was to maintain the existing number of traffic lanes at peak hours during the reconstruction period, thereby avoiding disruption to the traffic.

53. The Chairman read out the motion moved by Mr CHENG Kar-foo and seconded by Mr LAU Chin-shek and Mr WONG Kwok-hing as follows –

Action

“本會要求政府撤回批准三號幹線(郊野公園段)有限公司及大老山隧道有限公司加費的憲報公告。”

English translation

“That this Panel urges the Government to withdraw the notices published in the Gazette in relation to its approval for the toll increases of Route 3 (Country Park Section) Company Limited and Tate's Cairn Tunnel Company Limited.”

54. Mr CHENG Kar-foo stated his view that the Administration should withdraw the Gazette notices regarding the toll increases and then carry out discussions with the tunnel companies viable options to attain the traffic diversion objective. If no agreement could be reached in the case of TCT, the Administration should submit the matter to arbitration.

55. Mr TAM Yiu-chung said that he reckoned that the motion mainly served to reflect members' sentiment on the toll increases and would unlikely cause the decisions on the toll increases to be revoked. He said that members of the Democratic Alliance for the Betterment and Progress of Hong Kong did not support the suggestion of taking the matter to arbitration, as the result of arbitration was highly unpredictable and might be worse than the present situation.

56. Mr Albert CHAN suggested that the handling of the motion be deferred to a later meeting when the information from Route 3 Company had been received. He anticipated that more members would support the motion when they had better knowledge of the financial position of the company.

57. Ms Miriam LAU said that whilst members of the Liberal Party recognized that the toll increases would give rise to a lot of problems, they would not support the motion, which was basically a sentimental motion, on account of the fact that the toll increases were fully compliant with the legislation and there were justifications for the toll increases.

58. Mr WONG Kwok-hing suggested that irrespective of whether the motion was passed, the Administration should be asked to undertake a comprehensive review of the BOT mechanism. The Chairman said that Mr WONG's suggestion would be considered at the next regular Panel meeting.

59. Mr CHENG Kar-foo said that his motion should not be taken simply as an expression of discontent or a sentimental motion. The motion was meant to identify a rational course of actions. In view of the serious problems and implications of the toll increases, there was a need for the Administration to revoke its decision and take appropriate actions to rectify the situation. He appealed to all members who shared this view to support the motion. He added that if necessary, the Administration should resort to arbitration.

Action

60. The Chairman put the motion to vote. Six members voted for the motion, 4 members voted against, and 2 members abstained. The Chairman declared that the motion was passed by the Panel.

III Any other business

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

Council Business Division 1
Legislative Council Secretariat
18 July 2005