

立法會
Legislative Council

LC Paper No. CB(1)86/06-07

Ref. : CB1/SS/5/05

Background Brief

**Subcommittee to Study Western Harbour Crossing Ordinance
(Replacement of Schedule 1) Notice 2006 and
Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Toll Increase) Notice 2006**

Purpose

This paper sets out the background to the recent adjustment of the statutory toll levels of the Western Harbour Crossing (WHC) and the Tai Lam Tunnel and Yuen Long Approach Road (Route 3).

Background

2. In 1993, Western Harbour Tunnel Company Limited was granted a 30-year franchise under the Western Harbour Crossing Ordinance (Cap. 436) to build and operate WHC under a Build-Operate-Transfer (BOT) contract. WHC was opened in April 1997.

3. In 1995, Route 3 (CPS) Company Limited (Route 3 Company) was granted a 30-year franchise under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to build and operate Route 3. Route 3 is also a BOT project and came into operation in May 1998.

Toll adjustment mechanism

4. For both WHC and Route 3, the governing legislation has provided for a specified toll adjustment mechanism. Briefly, the legislation has stipulated that the franchisee may give effect to toll increases on certain specified dates. However, if the franchisee's actual net revenue (ANR) in any year falls short of the minimum estimated net revenue (MENR) specified in the legislation for that year, the franchisee may apply to the Secretary for the Environment,

Transport and Works to advance the toll increase. Where a toll is increased in accordance with the legislation and the project agreement, the Commissioner for Transport (C for T) shall by notice published in the Gazette amend the relevant Schedule to the Ordinance to vary the tolls for different types of vehicles. The legislation also provides that Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of a notice published by C for T for the said purpose, and hence, such notice is not tabled before the Legislative Council and not subject to amendment by Legislative Council.

New statutory toll levels of WHC

5. Under the Western Harbour Crossing Ordinance, the franchisee of WHC may give effect to toll increases on six specified dates (i.e. 1 January of 2001, 2005, 2009, 2013, 2017 and 2021). According to the Administration, since the operation of WHC, the franchisee's net revenue has consistently fallen short of the specified levels. Hence, under the Ordinance, the franchisee would have been entitled to advance all the six rounds of toll increase by now. To date, the franchisee has raised its statutory tolls four times in December 2000, July 2002, February 2004 and July 2005 respectively. The last toll increase of WHC was made on the basis of its 2001/02 Net Revenue Statement (NRS). While the tolls took effect on 31 July 2005, the franchisee offered concessionary tolls for all vehicles from the same date so that the then prevailing toll levels were maintained.

6. The franchisee of WHC submitted its 2002/03 NRS in August 2003. As required under the specified toll adjustment mechanism, the Administration had examined the NRS of WHC and noted that the franchisee's net revenue of \$325 million was lower than the minimum net revenue of \$794 million for that year specified in Schedule 5 to the Ordinance. The franchisee recently notified the Administration its decision to exercise its right to a statutory toll increase on the basis of its 2002/03 NRS and to effect the new toll levels (at **Annex A**) on 31 July 2006. At the same time, the franchisee would continue to offer concessions to all types of vehicles so that the current toll levels would be maintained and users would not be affected.

New statutory toll levels of Route 3

7. Under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance, the franchisee may give effect to toll increases on three specified dates (i.e. 1 January of 2003, 2010 and 2017). Where the franchisee has effected all the anticipated toll increases and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year, the franchisee may apply for an additional toll increase. Since the operation of Route 3, the franchisee's net revenue has consistently fallen short of the specified levels. The franchisee has advanced the three anticipated toll increases: the first one in

April 2000 on the basis of its 1998/99 NRS, the second in April 2001 on the basis of the 1999/2000 NRS, and the third in June 2005 on the basis of the 2000/01 NRS. Concessionary tolls were offered to certain types of vehicles.

8. The franchisee submitted its 2001/02 NRS to the Administration in August 2002. According to the Administration, the ANR of \$238 million was lower than the MENR of \$264 million for that year specified in the Ordinance and hence the franchisee was entitled to a toll increase with effect from 1 January 2003. However, the franchisee had agreed to defer the toll increase temporarily in view of the economic condition at that time.

9. The franchisee recently notified the Administration of its decision to exercise its right to a statutory toll increase on the basis of its 2001/02 NRS and to effect the new toll levels (at **Annex B**) on 17 September 2006. At the same time, the franchisee would continue to offer concessions to all types of vehicles so that the current toll levels would be maintained and users would not be affected.

The two Legal Notices

10. In accordance with the legislation, the Administration gazetted the new statutory tolls of WHC and Route 3 under the Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2006 (L.N. 181) and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Toll Increase) Notice 2006 (L.N. 186) on 28 July 2006 and 8 September 2006. L.N. 181 came into operation on 31 July 2006 whereas L.N. 186 on 17 September 2006.

11. At the House Committee meeting on 6 October 2006, members agreed to form a subcommittee to study the two Legal Notices.

Concerns raised by Members in previous discussions

Route 3 tolls

12. Last year, in considering the toll increases under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005, which took effect in June 2005, the Subcommittee formed to study the 2005 Notice had examined the justifications for the increases and ways to enhance the transparency of the franchisee's financial position and performance. Noting that the franchisee of Route 3 had been making profits in recent years, some members of the Subcommittee doubted whether the toll increases should be allowed. They also took the view that, apart from the franchisee's financial position, other factors such as traffic implications of toll increases for the road network in Northwest New Territories and public acceptability of the increases,

should be taken into account in considering whether the tolls for Route 3 should be increased. Measures to enhance the utilization of Route 3 to minimize the need for future toll increases should also be explored.

13. The Subcommittee considered that Schedule 4 to Cap. 474, which specified the MENRs for the respective years, was drawn up 10 years ago, and therefore might warrant amendment. On this issue, the Administration explained that the MENRs set out in Schedule 4 to Cap. 474 formed part of the Project Agreement between the Government and the franchisee when awarding the franchise and hence could not be unilaterally altered. Nevertheless, the Administration had undertaken to discuss the matter with the franchisee in the context of possible measures to enhance the utilization of Route 3 and extension of the franchise.

14. On enhancing the transparency of the franchisee's financial position and performance, the Subcommittee had urged that relevant information, including the ANR and actual profit and traffic statistics, should be made public on a regular basis. In the course of the Subcommittee's deliberation, the franchisee stated that it had no objection to the Administration disclosing to the Legislative Council each year its annual audited statement of ANR as well as making a statement on that occasion on the relevant figures and any application for a toll increase.

Motion passed by the Council on 6 July 2005 on the mode of construction and operation for transport infrastructure

15. At the Council meeting held on 6 July 2005, Members passed a motion on "Reviewing the mode of construction and operation for transport infrastructure". The wordings of the motion are as follows:

"That, in view of the toll increases by the operators of a number of transport infrastructures delivered through the Build-Operate-Transfer ('BOT') mode, which not only directly increase the burden of transport expenses on the public and lead to a rise in transportation costs for the business and industrial sectors, but also greatly aggravate the traffic congestion at other lower-toll tunnels or toll-free routes, thereby defeating the intended purpose of diverting traffic flows to various tunnels, this Council urges the Government to expeditiously put up, in six months' time, specific proposals for improvement regarding the following:

- (a) actively exploring with the tunnel companies which own the franchises of the tunnels ways to achieve effective distribution of traffic among various tunnels and to relieve the pressure on various tunnels to increase their tolls, such as extending the franchise periods, standardizing and reducing the tolls or adopting other feasible measure;

- (b) conducting a comprehensive review of the BOT mode and drawing conclusion from the relevant experience to serve as guidance in the financing, construction, toll charging and operation, etc, of future transport infrastructures, so as to avoid the above pitfalls and safeguard the interests of the public;
- (c) reviewing whether the current toll increase mechanisms under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and the Western Harbour Crossing Ordinance are in the public interest, and avoiding the introduction of similar mechanisms for future transport infrastructures; and
- (d) negotiating common ownership of the three road harbour crossings with the consortium which owns the franchises of both the Eastern Harbour Crossing and the Western Harbour Crossing, and presenting to this Council reports on the progress of the negotiations.”

Consultation with Panel on Transport on measures to enhance utilization of BOT tunnels

16. At its meeting on 19 December 2005, the Panel was briefed on the progress made in implementing measures to improve the distribution of traffic among the three road harbour crossings and enhance the utilization of Route 3. The Administration informed members that it was in active discussion with the relevant franchisees on how rationalization of tolls might be implemented to achieve a more balanced traffic flow and ease traffic congestion before the prevailing franchises expired, as well as the duration of any franchise extension that might be required. Some members considered that the Administration should set a clear timeframe for concluding negotiations with the franchisees on franchise extension and toll rationalization, before any of them applied for new toll adjustments. Views had also been expressed that experience had shown that the BOT model for delivery of transport infrastructure projects had produced results that were not entirely satisfactory because the Administration had over-estimated the usage rate of the facilities, particularly WHC and Route 3, leading to under-utilization of resources and excessive toll levels. As such, the option of the Government buying out the franchise of WHC (and the Eastern Harbour Crossing) should not be ruled out.

17. Members have requested the Administration to provide further progress reports to the Panel at appropriate times on its discussions with the franchisees and explain the various options being considered.

Other relevant papers

18. Members may also wish to refer to the following papers for reference:
- (a) Information paper provided by the Administration on “Western Harbour Crossing Tolls” in July 2006 (LC Paper No. CB(1)1963/05-06(01))
 - (b) Information paper provided by the Administration on “Route 3 (Country Park Section) Tolls” in September 2006 (LC Paper No. CB(1)2185/05-06(01))
 - (c) Net Revenue Statement for 2004/05 submitted by the Route 3 Company in October 2005 (LC Paper No. CB(1) 207/05-06(02))
 - (d) Net Revenue Statement for 2004/05 submitted by the Western Harbour Tunnel Company Limited in October 2005 (LC Paper No. CB(1) 207/05-06(01))
 - (e) Financial information in regard to the Western Harbour Crossing provided by the Administration in July 2006 (LC Paper No. CB(1)2065/05-06(01))
 - (f) Paper provided by the Administration on “Progress Update on Possible Measures to Rationalize Utilization of Build-Operate-Transfer Tunnels” in December 2005 (LC Paper No. CB(1)526/05-06(02))

Council Business Division 1
Legislative Council Secretariat
20 October 2006

Existing and New Statutory Tolls of WHC

	Existing Tolls		New Tolls		Actual Increase
	Statutory	Concessionary	Statutory	Concessionary	
Motorcycles	\$35	\$22	\$40	\$22	\$0
Private cars	\$70	\$40	\$80	\$40	\$0
Taxis	\$70	\$35	\$80	\$35	\$0
Light buses	\$80	\$50	\$90	\$50	\$0
Light goods vehicles	\$105	\$55	\$120	\$55	\$0
Medium goods vehicles	\$145	\$80	\$165	\$80	\$0
Heavy goods vehicles	\$215	\$110	\$245	\$110	\$0
Single-decked buses	\$80	\$70	\$90	\$70	\$0
Double-decked buses	\$115	\$100	\$130	\$100	\$0
Additional axle	\$70	\$30	\$80	\$30	\$0

Annex B

Existing and New Tolls of Route 3

	Existing Tolls		New Tolls		Actual Increase
	Statutory	Concessionary	Statutory	Concessionary	
Motorcycles	\$25	\$17	\$30	\$17	\$0
Private cars and Taxi	\$30	\$25	\$35	\$25	\$0
Light bus	\$75	-	\$90	\$75	\$0
Light goods vehicle	\$75	\$28	\$90	\$28	\$0
Medium goods vehicle	\$85	\$35	\$100	\$35	\$0
Heavy goods vehicle	\$105	\$40	\$120	\$40	\$0
Single-decked bus	\$75	-	\$90	\$75	\$0
Double-decked bus	\$90	-	\$105	\$90	\$0
Extra axle	\$35	\$0	\$40	\$0	\$0