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**Report of the Bills Committee
on Tsing Sha Control Area Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Tsing Sha Control Area Bill.

Background

2. Route 8 is a strategic road linking Sha Tin and North Lantau. The western section of Route 8 is the Tsing Ma Control Area (TMCA) linking Tsing Yi and North Lantau, which came into operation in 1997. The remaining section of Route 8 between Tsing Yi and Sha Tin is under construction. This section is about 15 km in length, and comprises three road tunnels (Sha Tin Heights Tunnel, Eagle's Nest Tunnel and Nam Wan Tunnel), a cable-stayed bridge across the Rambler Channel (Stonecutters Bridge), four viaducts (Lai Chi Kok Viaduct, Ngong Shuen Chau Viaduct, Nam Wan East Viaduct and Nam Wan West Viaduct), as well as several interchanges and slip roads.

3. The construction of Route 8 between Tsing Yi and Sha Tin is underway, and will be completed in stages. The section between Sha Tin and Cheung Sha Wan is scheduled to open in late 2007/early 2008, followed by the Nam Wan Tunnel and viaducts at Tsing Yi in late 2008 and the Stonecutters Bridge in mid-2009.

4. On completion, Route 8 will provide a direct road link between Chek Lap Kok and the Northeast New Territories via Tsing Yi and Cheung Sha Wan. It will also provide additional road capacity to cope with the increasing traffic along the Lion Rock Tunnel, Tate's Cairn Tunnel, Shing Mun Tunnels, Cheung Tsing Highway, Cheung Tsing Tunnel and Tsing Kwai Highway.

5. For effective and efficient traffic control and incident management, the section of Route 8 between Tsing Yi and Sha Tin will form one single control area – the Tsing Sha Control Area (TSCA). The management,

operation and maintenance of the TSCA will be outsourced to an operator through open tender. This is similar to the arrangement for the TMCA. The ownership of the whole of Route 8, including both the TMCA and the TSCA, will remain with the Government.

The Bill

6. The main object of the Tsing Sha Control Area Bill (the Bill) is to provide for the management, operation and maintenance of the TSCA.

The Bills Committee

7. At its meeting on 20 April 2007, the House Committee agreed to form a Bills Committee to study the Bill. Hon LAU Kong-wah was elected Chairman of the Bills Committee. There are a total of seven members on the Bills Committee. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has held one meeting with the Administration to discuss the Bill.

Deliberations of the Bills Committee

8. The Bills Committee is generally in support of the Bill, which is modelled on the Tsing Ma Control Area Ordinance (Cap. 498).

Financial penalties imposed on operator (clause 24)

9. The Bills Committee notes that the management, operation and maintenance of the TSCA will be outsourced to an operator through open tender. The term of the management agreement is for a period of five years. The Bills Committee has examined whether the management agreement with the operator can be terminated in case of default by the operator, and whether there is a need to include suitable provisions in the Bill to safeguard the interests of the Government.

10. The Administration advises that the management agreement to be entered into with the operator will set out in detail the operator's duties and obligations in respect of the management, operation and maintenance of the TSCA, including, inter alia, provisions on how the tolls, fees and other charges are to be collected, and how road closure, traffic accidents and other emergency situations are to be handled. The Government is entitled to unilaterally terminate the agreement if the operator has failed to duly and punctually perform or has persistently or flagrantly failed to comply fully and punctually with any of its obligations or duties under the agreement. The relevant terms of

the management agreement would appropriately safeguard the interests of the Government and the public in general, as well as ensure satisfactory performance by the operator. Similar arrangements have been made in respect of the TMCA and other Government tunnels and have worked well. Given the extensiveness of the relevant provisions of the management agreement, the Administration considers that it would not be appropriate to provide for the same in the Bill.

11. The Bills Committee has also examined the procedures for imposing financial penalty on the operator if he fails to comply with any requirement of the Bill or is in breach of a management agreement.

12. The Administration advises that before a financial penalty can be imposed on the operator pursuant to the provisions of the Bill, the operator will be notified about the case against him in advance as well as given a chance to explain his case. This is implicit under the requirement of natural justice in administrative law, and can therefore be an administrative procedure. Clause 24(3) provides for prior notice to be given to the operator and a reasonable opportunity for the operator to remedy the breach before a financial penalty can be imposed. The operator will be invited to explain his case when the prior notice is served.

Directions of authorized officers to be complied with (clause 11)

13. The Bills Committee has examined the safeguarding measures to prevent the possible abuse of powers by authorized officers in the discharge of their duties. The Administration points out that under clause 11(1), any order, direction, requirement or instruction so given or made by an authorized officer in the TSCA must be exercised in a fair and reasonable manner, and must be related to the management, operation or maintenance of the TSCA or control, restriction and safety of traffic in the TSCA. As such, it should not give rise to any possible abuse of powers by authorized officers.

Certificates of image capturing, image recording and image printing devices (clause 18)

14. The Bills Committee notes that within the TSCA, enforcement cameras would be installed to capture the images of any vehicle which passes through a toll booth without the payment of a toll, or which exceeds a speed limit. The Bills Committee is concerned whether this will give rise to any privacy intrusion issues. The Administration explains that as with other enforcement cameras in the territory, the enforcement cameras within the TSCA would only capture the registration marks of the vehicles concerned, and hence, it should not give rise to any particular privacy issues.

Closure of road, etc. in Control Area (clause 21)

15. The Bills Committee is concerned about the dissemination of information to members of the public about the closure of a road or any part of a road in the TSCA. The Administration advises that in the event that closure of a road (or any part of it) in the TSCA for emergency works for a period exceeding or likely to exceed 14 days is required, the Transport Department, in coordination with other relevant departments as necessary, will inform the public of the road closure in a timely manner through the media so as to assist the public in better planning their travelling routes and minimize traffic disruption.

Regulations (clause 26)

16. The Bills Committee is concerned about the determination of tunnel tolls. The Administration advises that the section of Route 8 between Cheung Sha Wan and Tsing Yi will not be tolled as vehicles can leave Route 8 through the slip roads at West Kowloon, and its major alternative routes are toll free. However, the section between Sha Tin and Cheung Sha Wan will be tolled. This is in line with the current practice at other major alternative routes i.e. Lion Rock Tunnel, Shing Mun Tunnels and Tate's Cairn Tunnel.

17. Regarding the toll determination mechanism, the Bills Committee notes that clause 26(1) of the Bill empowers the Chief Executive in Council to make regulations for the purposes of prescribing and providing for the payment of tolls and other fees and charges. Upon enactment of the Bill, the Administration will consult the Panel on Transport, and introduce the relevant subsidiary legislation into the Legislative Council for negative vetting by the Council.

Determination of boundaries (clause 5)

18. The Bills Committee has examined the empowering provision for the Commissioner for Transport to vary the boundaries of the TSCA and the circumstances under which the Commissioner will exercise such power. The Administration has advised that as the section of Route 8 between Tsing Yi and Sha Tin would be open to traffic in three phases, the Administration would need to amend the boundaries of the TSCA from time to time until the full opening of the TSCA.

Application of other Ordinances, etc. (clause 4)

19. The Bills Committee notes that in order to avoid doubt, clause 4 of the Bill provides that unless expressly excluded or modified by the Bill, the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) would apply to and operate in relation to the TSCA as if

the TSCA were a road. Clause 4 also provides that the TSCA is a public place.

Committee Stage amendment

20. The Administration has given notice on 23 May 2007 in accordance with Rule 29(1) of the Rules of Procedure of the intention to move a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at the meeting of the Legislative Council on 13 June 2007 to effect the transfer of statutory functions pursuant to the proposed re-organization plan of the Government Secretariat with effect from 1 July 2007. Pursuant to the re-organization plan, statutory functions exercisable by the Secretary for the Environment, Transport and Works (SETW) on matters relating to transport will be transferred to the Secretary for Transport and Housing with effect from 1 July 2007. This covers the statutory functions vested with SETW in the Bill. Subject to the passage of the resolution on 13 June 2007, the Administration will move Committee Stage Amendments to the Bill, in clause 1(2) and the definition of "Secretary" in clause 2(1), to amend references to "Secretary for the Environment, Transport and Works" to "Secretary for Transport and Housing". The Bills Committee will not move any Committee Stage amendment to the Bill.

Recommendation

21. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 27 June 2007.

Consultation with the House Committee

22. The House Committee at its meeting on 8 June 2007, supported the recommendation of the Bills Committee in paragraph 21 above.

Council Business Division 1
Legislative Council Secretariat
11 June 2007

Bills Committee on Tsing Sha Control Area Bill

Membership list

Chairman	Hon LAU Kong-wah, JP
Members	Hon Miriam LAU Kin-yee, GBS, JP Hon Andrew CHENG Kar-foo Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon CHEUNG Hok-ming, SBS, JP Hon Ronny TONG Ka-wah, SC (Total: 7 Members)
Clerk	Mr Andy LAU
Legal Adviser	Mr Kelvin LEE
Date	7 May 2007