

立法會
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Paper for the House Committee

**Report of the Subcommittee on Tate's Cairn Tunnel Ordinance
(Replacement of Schedule) Notice 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008.

Background

2. Tate's Cairn Tunnel Company Limited (TCTC) was granted a franchise under the Tate's Cairn Tunnel Ordinance (Cap. 393) (the Ordinance) to build and operate TCT for 30 years starting from July 1988, inclusive of the construction period. The tunnel was built at a cost of \$1.96 billion and was opened to traffic in June 1991. The franchise granted to TCTC will expire in July 2018.

3. Under section 36 of Cap. 393, the tolls specified in the Schedule to the Ordinance may be varied by agreement between the Chief Executive (CE) in Council and TCTC, or in default of agreement, by submission of the question of the variation of tolls to arbitration. The Commissioner for Transport shall amend the Schedule by notice in the Gazette as soon as is practicable after such agreement or arbitration award.

4. On 25 April 2008, the Administration briefed the Panel on Transport on the original application of TCTC for toll increase which ranged from 13% to 28%. The Panel considered the rate of the proposed toll increases, at over 20% on average, too significant and unacceptable to the public and was concerned about the traffic implications of the proposed toll increases. The Panel passed a motion at the meeting, stating the Panel's strong objection to the substantial increase in the tunnel tolls, and urging the Government to reject it.

5. According to the Administration, after the Panel meeting, the Administration continued to urge TCTC to consider its toll increase proposal in the light of public acceptability, and TCTC agreed in July 2008 to revise the application with the increase ranging from 9% to 20% for different vehicle types. In parallel, the Administration has commenced discussion with TCTC to explore the option of franchise extension.

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6. At the meeting of the Executive Council on 9 September 2008, the Council advised and the CE ordered that TCTC's application for toll increase, which ranged from 9% to 20%, should be approved, and that the new tolls should take effect from 30 November 2008.

7. The Notice on the new tolls, i.e. the Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008, was published in the Gazette on 3 October 2008 and tabled before the Legislative Council (LegCo) on 8 October 2008. The Notice substitutes the Schedule to the Ordinance with a new Schedule to reflect the increase of tolls payable under the Ordinance. The Notice shall come into operation on 30 November 2008. A comparison of the toll levels before and after the toll increase is set out in **Appendix I**.

The Subcommittee

8. At the meeting of the House Committee on 10 October 2008, Members decided to form a subcommittee to examine the details of the Notice. The Subcommittee held one meeting on 21 October 2008 under the chairmanship of Hon WONG Kwok-hing. The membership list of the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

9. The Subcommittee has noted that there is little room for Members to amend the Notice other than making minor technical amendments, and that LegCo could not repeal the Notice.¹

¹ The issue of the power that LegCo may exercise in respect of a notice made by the Commissioner for Transport under section 36 of Cap. 393 on toll adjustments for TCT had been deliberated in detail by the Subcommittee on Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005. The present Subcommittee has noted the relevant deliberations.

10. While taking note of the limited power which LegCo can exercise in respect of the Notice, the Subcommittee has discussed the magnitude and impacts of the toll increase and sought information from the Administration on the measures being undertaken to alleviate the pressure for future toll increases. Members in general consider the magnitude of the toll increase under the Notice too high to be acceptable. As the percentages of toll increase for buses are relatively high (17% to 19%), members are particularly concerned that the toll increase will add to the pressure for bus fare increase and hence will impose a greater financial burden on the commuting public.

11. Members are of the view that as in the case of other Build-Operate-Transfer (BOT) tunnels, given the existing franchise arrangement and toll adjustment mechanism for TCT, there is little the Administration or LegCo can do to prevent substantial toll increases at present and in future. It is therefore imperative for the Administration to iron out effective measures such as extending TCTC's franchise or buying back TCT at a reasonable price.

12. According to the Administration, they have spared no efforts in performing the "gate keeper" role by negotiating with the tunnel company for a lower toll increase on this occasion. Meanwhile, the Administration is actively discussing with the company to explore the option of franchise extension.

13. In connection with BOT tunnels, members have noted that the Government will commission a consultancy study on the toll levels of and traffic distribution among the three harbour crossings. The purpose of the study is to identify a long-term solution that is feasible in transport, financial and legal terms, and develop strategies for possible negotiations with tunnel companies in the future. Some members have expressed strong reservation on the need for the consultancy study, as the members consider that the possible measures to address the problems with the harbour crossings, two of which are operating under BOT franchises, have already been clearly identified in the past discussions in LegCo. Some other members are of the view that it would be worthwhile to commission the consultancy study if it can iron out practical solutions and provide solid bases for the Administration to proceed with negotiations with tunnel companies.

14. The Administration has assured members that the consultant will be required to put up concrete recommendations in respect of the harbour crossings. In parallel, the Administration will continue its discussion with TCTC on the franchise extension option.

15. The Administration and the Subcommittee will not move amendments to the Notice.

Advice sought

16. The House Committee is invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
28 October 2008

Appendix I

A comparison of the toll levels before and after the toll increase

Category	Vehicle	Toll (\$) (as from 30 November 2008)	Existing Toll (\$)	Percentage Increase
1.	Motorcycles, motor tricycles	11	10	10%
2.	Private cars, electrically powered passenger vehicles, taxis	14	12	17%
3.	Public and private light buses	21	18	17%
4.	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	21	18	17%
5.	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 5.5 tonnes but not exceeding 24 tonnes	25	23	9%
6.	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 24 tonnes but not exceeding 38 tonnes	25	23	9%
7.	Public and private single-decker buses	28	24	17%
8.	Public and private double-decker buses	31	26	19%
9.	Each additional axle in excess of 2	18	15	20%

**Subcommittee on Tate's Cairn Tunnel Ordinance
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Membership list

Chairman Hon WONG Kwok-hing, MH

Members Hon Miriam LAU Kin-ye, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC

(Total: 6 members)

Clerk Ms Anita SIT

Legal Adviser Miss Winnie LO

Date 21 October 2008