

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

Background brief

Purpose

This paper provides background information on the toll adjustment mechanism for Tate's Cairn Tunnel (TCT), and summarizes Members' concerns about the toll increases of TCT and related matters.

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. Section 36(3) of the Ordinance provides that the tolls specified in the Schedule to the Ordinance may be varied by agreement between the Chief Executive-in-Council and TCTC. If an agreement cannot be reached, either party may resort to arbitration. The Ordinance has not set out the criteria for determining toll adjustments. It only stipulates that if the matter is submitted for arbitration, the arbitrator shall be guided by the need to ensure that TCTC is reasonably but not excessively remunerated for its obligations under the Tate's Cairn Tunnel Ordinance (TCTO).

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4. 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. The Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008 reflecting the increase of the tolls

payable under TCTO was gazetted on 3 October 2008 (L.N. 220). The Notice shall come into operation on 30 November 2008. At the meeting of the House Committee on 10 October 2008, Members decided to form a subcommittee to examine the details of the Notice.

5. Details of the proposals of TCTC for toll increase, TCTC's financial position, and the Administration's assessment of the proposal are set out in the Legislative Council Brief on Application for Toll Increase by Tate's Cairn Tunnel Company Limited issued by the Transport and Housing Bureau in September 2008 (File Ref : THB(T)CR 1/4651/94).

Previous toll increases and concerns raised by Members

6. So far, TCT has had four toll increases that came into effect in May 1995, November 1996, January 2000 and August 2005 respectively. The Panel on Transport (the Panel) discussed the application for the 2005 toll increase by TCTC on 2 February 2005. Panel members were worried that the proposed toll increase would aggravate the traffic congestion at Lion Rock Tunnel (LRT) and induce other public transport operators to increase their fares. They called on the Administration to request the tunnel company to defer the toll increase. Views were also expressed that the Administration should expeditiously make a decision on its position regarding the application for toll adjustments by TCTC and hold discussions with the company in accordance with section 36 of TCTO and it should refer the matter for arbitration as soon as possible if an agreement could not be reached.

7. On 2 February 2005, the Panel passed the following motion --

"鑒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。"

"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."

(Translation)

8. On 10 June 2005, the Government published in the Gazette the new Schedules to reflect the toll increases of TCT and Tai Lam Tunnel and Yuen Long Approach Road. The Panel was disappointed that the Administration did not consult the Panel prior to gazettal of the notices. The Panel held a meeting on 15 June 2005 to discuss the matter with the Administration and the tunnel companies.

9. At the meeting on 15 June 2005, the Panel reiterated its concern about the tunnel toll increases and their impact on traffic and the general public, and the request that the tunnel companies should defer the toll increases or offer concessionary tolls to motorists. The Panel also urged the Administration to review the decision of allowing the tunnel companies to increase their tolls. Recognizing the inherent problems associated with the Build-Operate-Transfer (BOT) tunnels whereby tunnel operators would only aim at maximizing their profit, the Panel called on the Administration to review the effectiveness and appropriateness of using the BOT approach in taking forward infrastructure projects.

10. The Panel passed a motion at the meeting on 15 June 2005, urging the Administration to withdraw the Gazette notices on the toll increases of TCT (L.N. 93 of 2005) and Route 3 (Country Park Section) (L.N. 95 of 2005).

11. The Subcommittee on Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 (the 2005 Subcommittee) was subsequently formed at the House Committee meeting on 17 June 2005 to study the above Gazette notices. The Subcommittee was gravely concerned whether the toll increases for TCT and Route 3 were justified, and the impact of the toll increases on the public and traffic flow. To better protect the interests of the public, the Subcommittee also examined a member's suggestion that the Administration should set up a task force to monitor the toll levels of the various tunnels in Hong Kong, in particular the three road harbour crossings, and to collect views on how the toll adjustment mechanisms could be improved.

12. The Administration advised the 2005 Subcommittee that toll adjustments for various tunnels were made in accordance with the requirements set out in the relevant ordinances and Project Agreements. Given that there were on-going discussions between the Administration and the operators of the three road harbour crossings and Route 3 on possible improvements to the existing toll adjustment mechanism, the Administration did not see the need to set up a task force as suggested.

13. The Council passed a motion on BOT tunnels at its meeting on 6 July 2005 urging the Government to improve their modes of construction and operation. The wording of the motion is in **Appendix I**.

Deliberations on the toll increase proposal for TCT in April 2008

14. On 25 April 2008, the Administration briefed the Panel on the application of TCTC for toll increase which ranged from 13% to 28%. The Panel was concerned about the traffic implications of the proposed toll increases, as the toll disparity between TCT and the Lion Rock Tunnel (LRT) would further increase and vehicles would be diverted to LRT as a result. Panel members

urged the Administration to map out other measures to obviate the need for the toll increase, such as extending TCTC's franchise or buying back TCT at a reasonable price. Panel members considered the rate of the proposed toll increases, at over 20% on average, too significant and unacceptable to the public. The Panel passed the following motion at the meeting on 25 April 2008 --

"本會強烈反對大老山隧道大幅加價，促請政府予以否決。"

"That this Panel strongly opposes the substantial increase in tolls for Tate's Cairn Tunnel, and urges the Government to reject it."
(Translation)

15. 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.

Legislative Council's power to amend the toll levels of TCT

16. When scrutinizing the Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005, the Subcommittee at that time noted, inter alia, that the power of the Commissioner for Transport to make the gazette notice on the toll increase of TCT did not cover the determination of toll levels and the timing for implementation of the new tolls. According to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Legislative Council (LegCo)'s power to amend subsidiary legislation had to be consistent with the power to make such subsidiary legislation. In other words, there was little room for Members to amend the notice other than making minor technical amendments. Similarly, LegCo could not repeal the notice as the exercise of such power would also be inconsistent with the power of the Commissioner for Transport to make the gazette notice.

Relevant papers

17. A list of relevant papers is at **Appendix II**.

Motion on
"Reviewing the mode of construction and
operation for transport infrastructure"
moved by Hon LAU Kong-wah as amended by Hon Miriam LAU Kin-ye
and further amended by Hon Andrew CHENG Kar-foo
at the Legislative Council meeting
of Wednesday, 6 July 2005

"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."

Appendix II

List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Transport	2 February 2005	<p>Administration's paper on Application for Toll Increase by Tate's Cairn Tunnel Company Limited http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-786-3e.pdf</p> <p>Tate's Cairn Tunnel Company Limited - Toll Increase Application Briefing Paper for Legislative Council Panel on Transport http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-786-4e.pdf</p> <p>Minutes of meeting http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp050202.pdf</p>
Panel on Transport	15 June 2005	<p>Application for Toll Increase by Tate's Cairn Tunnel Company Limited http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp-etwb_t_cr1465194-e.pdf</p> <p>Minutes of meeting http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp050615.pdf</p>
Council	6 July 2005	<p>Motion debate on "Reviewing the mode of construction and operation of transport infrastructure" http://www.legco.gov.hk/yr04-05/chinese/counmtg/floor/cm0706ti-confirm-c.pdf</p>
House Committee	14 October 2005	<p>Report of the Subcommittee to Study Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 and Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005 http://www.legco.gov.hk/yr05-06/english/hc/papers/hc1014cb1-31-e.pdf</p>

Council/Committee	Date of meeting	Paper
Panel on Transport	25 April 2008	<p>Administration's paper on "Application for Toll Increase by Tate's Cairn Tunnel Company Limited" (LC Paper No. CB(1)1317/07-08(03)) http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1317-3-e.pdf</p> <p>Paper on application for toll increase from the Tate's Cairn Tunnel Company Limited (LC Paper No. CB(1)1317/07-08(06)) http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1317-6-e.pdf</p> <p>Background brief on toll increases by Tate's Cairn Tunnel Company Limited prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1347/07-08) http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1347-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1975/07-08) http://www.legco.gov.hk/yr07-08/english/panels/tp/minutes/tp080425.pdf</p>
--	September 2008	<p>Legislative Council Brief on "Application for Toll Increase by Tate's Cairn Tunnel Company Limited" http://www.legco.gov.hk/yr08-09/english/subleg/brief/220_brf.pdf</p>
House Committee	10 October 2008	<p>Legal Service Division Report on Subsidiary Legislation in the Legislative Council between 25 June and 16 July and gazetted between 25 July and 3 October 2008 (LC Paper No. LS2/08-09, pages 6-8 of Appendix II) http://www.legco.gov.hk/yr08-09/english/hc/papers/hc1010ls-2-e.pdf</p>