

# 立法會

## *Legislative Council*

LC Paper No. CB(1)2150/09-10

Ref. : CB1/SS/8/09

### **Subcommittee on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010**

#### **Background brief**

#### **Purpose**

This paper provides background information on the toll adjustment mechanism for Tate's Cairn Tunnel (TCT) and summarizes concerns expressed by Legislative Council (LegCo) Members on toll increases of TCT.

#### **Background**

##### Tate's Cairn Tunnel and the toll adjustment mechanism

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

3. Section 36(3) of TCTO provides that the tolls specified in the Schedule to TCTO may be varied by agreement between the Chief Executive-in-Council (CE-in-Council) and TCTC. If an agreement cannot be reached, either party may resort to arbitration. TCTO 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 TCTO.

4. The Administration informed the Panel on Transport on 25 April 2008 that, in considering TCTC's Base Toll Proposal in 1988, the Administration had agreed to the initial tolls but had given no undertaking in respect of subsequent toll adjustments. Neither was there any agreement on a guaranteed rate of return. However, based on the Base Toll Proposal which accompanied TCTC's franchise bid, the Administration noted that TCTC expected to achieve an Internal Rate of Return (IRR) of 13.02% over the 30-year franchise period. The Administration has also advised that TCTC's target IRR is the lowest among the four Build-Operate-Transfer (BOT) tunnels in Hong Kong. Route 3 (Country

Park Section) aims at a target IRR of 15.18%, while the targets for the Eastern Harbour Crossing and the Western Harbour Crossing are both 16.5%.

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

5. In considering TCTC's applications for toll increase, the Administration would seek the views of the Panel on Transport and the Transport Advisory Committee, before seeking the approval of CE-in-Council for the applications.

6. After an agreement on revision to toll levels is reached between CE-in-Council and TCTC, the Commissioner for Transport (C for T) shall amend the Schedule to TCTO by notice in the Gazette as soon as practicable. Such a notice is a piece of subsidiary legislation subject to the negative vetting procedure of LegCo. The power of C for T to make the gazette notice on the toll increase of TCT does 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 power of LegCo to amend subsidiary legislation has to be consistent with the power to make such subsidiary legislation. In other words, there is little room for LegCo to amend such notices other than making minor technical amendments.

7. Similarly, LegCo cannot repeal the notice as the exercise of such power is also inconsistent with the power of C for T to make the gazette notice.

#### **Toll increases for TCT**

8. So far, TCT has had five toll increases that came into effect in May 1995, November 1996, January 2000, August 2005, and November 2008 respectively.

#### **The recent application for toll increases**

9. TCTC applied for its sixth toll increases in July 2009, proposing a \$1 toll increase for each vehicle category. Having regard to the views expressed by the Panel on Transport and following further consultations with the Administration, TCTC submitted a revised application in January 2010. While maintaining its earlier proposal of a \$1 toll increase for most vehicle categories, TCTC proposes not to increase the toll for public light buses (PLBs) (and to provide \$1 promotional discount for empty taxis between midnight and 6 a.m). The revised toll increases range from 0% to 9% for different vehicle types. A comparison of the existing and new tolls is set out in **Appendix I**.

## **Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010**

10. At the meeting of the Executive Council on 11 May 2010, the Council advised and the CE ordered that TCTC's application for toll increases should be approved, and that the new tolls should take effect from 25 December 2010. The Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 reflecting the increases of the tolls payable under TCTO was gazetted on 20 May 2010.

11. At the meeting of the House Committee on 28 May 2010, Members decided to form a subcommittee to examine the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010.

### **Concerns expressed by Members on previous toll increases**

#### Toll increases in 2005

12. When the Panel on Transport discussed the toll increases applied by TCTC in 2005 at its meeting on 2 February 2005, members were worried that the proposed toll increases 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 franchisee to defer the toll increases. Members expressed the view that the Administration should hold discussions with TCTC in accordance with section 36 of TCTO and refer the matter for arbitration if an agreement could not be reached with the franchisee. 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。"

(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."

13. 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 on Transport was disappointed that the Administration had not consulted it again prior to gazettal of the relevant notices. The Panel held a meeting on 15 June 2005 to discuss the matter with the Administration and the franchisees concerned.

14. At the meeting on 15 June 2005, the Panel on Transport urged that the tunnel companies concerned 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 concerned to increase tolls. Recognizing the inherent problems associated with 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. The Panel also passed a motion 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).

15. The Subcommittee on Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 was subsequently formed to study the above Gazette notices. The Subcommittee expressed grave concern about the justifications for the toll increases for TCT and Route 3 and their impacts on the public and traffic flow. A member suggested 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.

16. The Administration advised the 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 for the setting up of a task force as suggested.

17. At the Council meeting on 19 October 2005, the Subcommittee Chairman moved a motion for the adjournment of the Council meeting to enable Members to debate on the toll adjustment issues.

#### Toll increases in 2008

18. At the meeting of the Panel on Transport on 25 April 2008, the Panel was consulted on TCTC's 2008 application for toll increases. Panel members considered the rate, at over 20% on average, too significant and unacceptable to the public. The Panel passed a motion at the meeting stating the Panel's strong objection to the toll increase and urging the Government to reject it. The Panel also called on the Administration to consider buying back Tate's Cairn Tunnel or negotiating with TCTC on the option of franchise extension in exchange for toll reduction.

19. At the request of the Panel, the Administration had continued to urge TCTC to reconsider its toll increase proposal in the light of public acceptability. TCTC subsequently agreed in July 2008 to revise the increase rates originally ranging from 13% to 28% for different vehicle types to 9% to 20%. In parallel, the Administration had also commenced discussion with TCTC to explore the option of franchise extension.

20. CE-in-Council approved the revised toll increase application on 9 September 2008, and instructed that the new tolls should take effect from 30 November 2008. The Gazette notice on the new tolls, i.e. the Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008, was published on 3 October 2008. The Subcommittee on Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008 was formed to examine the details of the Notice. The Subcommittee expressed concerns about the rates of toll increases and the implications, and had called on the Administration to iron out effective measures such as extending TCTC's franchise or buying back TCT at a reasonable price. The Subcommittee noted that there was little room for it to amend the Notice other than making minor technical amendments, and that LegCo could not repeal the Notice.

21. The Administration assured the Subcommittee that it had spared no efforts in performing the "gate keeper" role by negotiating with the tunnel company for smaller toll increases. Meanwhile, the Administration was also actively discussing with TCTC to explore the option of franchise extension.

### **The latest application for toll increases**

22. The Panel on Transport was consulted on the application for toll increases made by TCTC in July 2009 at its meeting on 15 December 2009. Panel members expressed grave concern about the impacts of the proposed toll increases as it might induce public transport operators to raise fares of public transport services and divert more vehicles to LRT. These members called upon TCTC to refrain from increasing tolls, and if not, they considered that the Administration should negotiate for a smaller rate of toll increases. A member proposed that taxis and PLBs should be exempted from the proposed toll increases. Some members requested the Administration to liaise with TCTC on the buy-back option, or extension of its franchise or joint operation in return for a lower IRR or a new toll increase mechanism. The Panel requested the Administration to report the outcome of its consideration of the toll increase application before submitting the application to CE-in-Council for consideration. In response to issues raised by members at the Panel meeting on 15 December 2009, the Administration provided a written response on 19 May 2010, which is attached in **Appendix II** for members' easy reference.

### **Relevant papers**

23. A list of relevant papers is in **Appendix III**.

## Appendix I

### Tate's Cairn Tunnel Tolls

Category	Vehicle	Toll (\$) (as from 25 December 2010)	Existing Toll (\$)	Percentage Increase
1.	Motorcycles, motor tricycles	12	11	9%
2.	Private cars, electrically powered passenger vehicles, taxis	15	14	7%
3.	Public light buses	21	21	N/A
4.	Private light buses	22	21	5%
5.	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	22	21	5%
6.	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 5.5 tonnes but not exceeding 24 tonnes	26	25	4%
7.	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 24 tonnes but not exceeding 38 tonnes	26	25	4%
8.	Public and private single-decker buses	29	28	4%
9.	Public and private double-decker buses	32	31	3%
10.	Each additional axle in excess of 2	19	18	6%

**Information Requested by LegCo Panel on Transport at Meeting  
on 15 December 2009**

1. Increases in the fares of buses and public light buses after Tate's Cairn Tunnel's toll increase in 2008

No franchise bus or PLB using Tate's Cairn Tunnel has increased fare subsequent to the last toll increase of the tunnel in November 2008.

2. Details of the studies and discussions between the Government and TCTC in examination of the feasibility of buying back Tate's Cairn Tunnel

The Administration has consulted the TCTC. TCTC considers that the details of the discussions must not be disclosed to any third parties as the contents of the discussions involve commercially sensitive and strictly confidential information of the company.

3. Estimates on Tate's Cairn Tunnel's traffic flow if its tolls were decreased to encourage patronage of Tate's Cairn Tunnel

TCTC estimates that for a \$1 toll reduction, Tate's Cairn Tunnel's traffic flow will be increased by about 2% on average. However, the net toll revenue of Tate's Cairn Tunnel will be decreased by more than 3%.

4. Financial implications for exempting taxis and PLBs from proposed toll increases

TCTC's estimates are set out below:

	<b>Projected Annual Traffic Flow after Proposed Toll Increase</b>	<b>Change in Number if Tolls Remain Unchanged</b>	<b>Change in Traffic Flow %</b>	<b>Loss of Annual Revenue</b>
<b>Taxi</b>	1,700,0000	-	-	-\$1,700,000
<b>PLB</b>	26,700	-	-	-\$26,700
<b>Total</b>				-\$1,726,700

## Toll increases for Tate's Cairn Tunnel

Meeting date	Committee	Papers/Items
2 Feb 2005	Transport Panel (TP)	Administration's paper on Application for Toll Increase by Tate's Cairn Tunnel Company Limited  <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-786-3e.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-786-3e.pdf</a>
2 Feb 2005	TP	Tate's Cairn Tunnel Company Limited - Toll Increase Application Briefing Paper for Legislative Council Panel on Transport  <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-786-4e.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-786-4e.pdf</a>
2 Feb 2005	TP	Powerpoint presentation materials provided by Tate's Cairn Tunnel Company Limited  <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-854-1e.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp0202cb1-854-1e.pdf</a>
2 Feb 2005	TP	Minutes of meeting  <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp050202.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp050202.pdf</a>
15 June 2005	TP	Application for Toll Increase by Tate's Cairn Tunnel Company Limited  <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp-etwb_t_cr1465194-e.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp-etwb_t_cr1465194-e.pdf</a>
15 June 2005	TP	Minutes of meeting  <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp050615.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp050615.pdf</a>
6 July 2005	Council	Motion debate on "Reviewing the mode of construction and operation of transport infrastructure"  <a href="http://www.legco.gov.hk/yr04-05/chinese/counmtg/floor/cm0706ti-confirm-c.pdf">http://www.legco.gov.hk/yr04-05/chinese/counmtg/floor/cm0706ti-confirm-c.pdf</a>



Meeting date	Committee	Papers/Items
14 Oct 2005	House Committee	<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</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/hc/papers/hc1014cb1-31-e.pdf">http://www.legco.gov.hk/yr05-06/english/hc/papers/hc1014cb1-31-e.pdf</a></p>
		<p>Research Report on Operation of Toll Roads, Bridges and Tunnels in Selected Places</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/sec/library/0506rp03e.pdf">http://www.legco.gov.hk/yr05-06/english/sec/library/0506rp03e.pdf</a></p> <p>Information Note on The Adoption of the Build-Operate-Transfer Model and Its Variants in Developing Transport Infrastructures in Selected Places prepared by Research and Library Services Division</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/sec/library/0506in13e.pdf">http://www.legco.gov.hk/yr05-06/english/sec/library/0506in13e.pdf</a></p> <p>Information Note on Toll Increase of the Eastern Harbour Crossing prepared by Research and Library Services Division</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/sec/library/0506in14e.pdf">http://www.legco.gov.hk/yr05-06/english/sec/library/0506in14e.pdf</a></p> <p>Information Note on Nottingham Express Transit prepared by Research and Library Services Division</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/sec/library/0506in15e.pdf">http://www.legco.gov.hk/yr05-06/english/sec/library/0506in15e.pdf</a></p>
25 April 2008	TP	<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))</p> <p><a href="http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1317-3-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1317-3-e.pdf</a></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))</p> <p><a href="http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1317-6-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1317-6-e.pdf</a></p> <p>Paper on toll increases by Tate's Cairn Tunnel Company Limited prepared by the Legislative Council Secretariat (Background brief) (LC Paper No. CB(1)1347/07-08)</p> <p><a href="http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1347-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/tp/papers/tp0425cb1-1347-e.pdf</a></p>

Meeting date	Committee	Papers/Items
		<p>Minutes of meeting (LC Paper No. CB(1)1975/07-08)</p> <p><a href="http://www.legco.gov.hk/yr07-08/english/panels/tp/minutes/tp080425.pdf">http://www.legco.gov.hk/yr07-08/english/panels/tp/minutes/tp080425.pdf</a></p>
21 October 2008	Subcommittee on Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008	<p>The Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008 (L.N. 220 of 2008)</p> <p><a href="http://www.legco.gov.hk/yr08-09/english/subleg/negative/ln220-08-e.pdf">http://www.legco.gov.hk/yr08-09/english/subleg/negative/ln220-08-e.pdf</a></p> <p>Legislative Council Brief (File Ref: THB(T)CR 1/4651/94)</p> <p><a href="http://www.legco.gov.hk/yr08-09/english/subleg/brief/220_brf.pdf">http://www.legco.gov.hk/yr08-09/english/subleg/brief/220_brf.pdf</a></p> <p>Legal Service Division Report (LC Paper No. LS2/08-09)</p> <p><a href="http://www.legco.gov.hk/yr08-09/english/hc/papers/hc1010ls-2-e.pdf">http://www.legco.gov.hk/yr08-09/english/hc/papers/hc1010ls-2-e.pdf</a></p> <p>Background brief on the Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2008 prepared by the Legislative Council Secretariat (LC Paper No. CB(1)74/08-09(01))</p> <p><a href="http://www.legco.gov.hk/yr08-09/english/hc/sub_leg/sc02/papers/sc021021cb1-74-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/hc/sub_leg/sc02/papers/sc021021cb1-74-1-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)192/08-09)</p> <p><a href="http://www.legco.gov.hk/yr08-09/english/hc/sub_leg/sc02/minutes/sc0220081021.pdf">http://www.legco.gov.hk/yr08-09/english/hc/sub_leg/sc02/minutes/sc0220081021.pdf</a></p> <p>Report (LC Paper No. CB(1)133/08-09)</p> <p><a href="http://www.legco.gov.hk/yr08-09/english/hc/papers/hccb1-133-e.pdf">http://www.legco.gov.hk/yr08-09/english/hc/papers/hccb1-133-e.pdf</a></p>
15 December 2009	TP	<p>Administration's paper on application for toll increase by Tate's Cairn Tunnel Company Limited (LC Paper No. CB(1)615/09-10(03))</p> <p><a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/papers/tp1215cb1-615-3-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/papers/tp1215cb1-615-3-e.pdf</a></p> <p>Paper on toll increase application provided by the Tate's Cairn Tunnel Company Limited (LC Paper No. CB(1)615/09-10(04))</p> <p><a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/papers/tp1215cb1-615-4-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/papers/tp1215cb1-615-4-e.pdf</a></p>

Meeting date	Committee	Papers/Items
		<p>Paper on Tate's Cairn Tunnel toll increase application prepared by the Legislative Council Secretariat (Background brief) (LC Paper No. CB(1)616/09-10)</p> <p><a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/papers/tp1215cb1-616-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/papers/tp1215cb1-616-e.pdf</a></p> <p>Minutes of meeting (LC Paper No. CB(1)1308/09-10)</p> <p><a href="http://www.legco.gov.hk/yr09-10/english/panels/tp/minutes/tp20091215.pdf">http://www.legco.gov.hk/yr09-10/english/panels/tp/minutes/tp20091215.pdf</a></p>

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