

# 立法會 *Legislative Council*

LC Paper No. CB(1)2273/02-03

(These minutes have been seen  
by the Administration)

Ref : CB1/PL/TP/1

## **Panel on Transport**

### **Minutes of meeting held on Friday, 27 June 2003, at 11:45 am in the Chamber of the Legislative Council Building**

**Members present** : Hon Miriam LAU Kin-yee, JP (Chairman)  
Dr Hon David CHU Yu-lin, JP  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon CHAN Kwok-keung  
Hon LAU Kong-wah  
Hon Andrew CHENG Kar-foo  
Hon TAM Yiu-chung, GBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Albert CHAN Wai-yip  
Hon LEUNG Fu-wah, MH, JP

**Non-Panel Members attending** : Hon Eric LI Ka-cheung, JP  
Hon CHEUNG Man-kwong  
Hon CHAN Kam-lam, JP

**Members absent** : Hon Abraham SHEK Lai-him, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP  
Hon Andrew WONG Wang-fat, JP  
Hon LAU Chin-shek, JP  
Dr Hon TANG Siu-tong, JP  
Hon WONG Sing-chi  
Hon LAU Ping-cheung

Action

- Public Officers attending** : Environment, Transport and Works Bureau  
Miss Margaret FONG  
Deputy Secretary for the Environment, Transport and Works  
(Transport and Works)  
  
Mrs Sharon YIP  
Principal Assistant Secretary for the Environment, Transport  
and Works (Transport and Works)
- Attendance by invitation** : New Hong Kong Tunnel Co Ltd  
  
Mr Alexander CHAN  
General Manager
- Clerk in attendance** : Mr Andy LAU  
Chief Assistant Secretary (1)2
- Staff in attendance** : Ms Alice AU  
Senior Assistant Secretary (1)5  
  
Miss Winnie CHENG  
Legislative Assistant 5

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Action

- I Confirmation of minutes and matters arising**  
(LC Paper No. CB(1)2040/02-03 - Minutes of meeting held on 23 May 2003)  
  
The minutes of meeting held on 23 May 2003 were confirmed.
- II Endorsement of the report of the Panel for submission to the Council**  
(LC Paper No. CB(1)2041/02-03 - Draft report of the Panel on Transport for  
submission to the Legislative Council)
2. Members endorsed the draft report of the Panel for submission to the Legislative Council on 9 July 2003 (LC Paper No. CB(1)2041/02-03).

Action

**III Information papers issued since last meeting**

- (LC Paper No. CB(1)1833/02-03(01) - Referral from Legislative Council Members' meeting with Central & Western District Council regarding the provision of public transport services;
- LC Paper No. CB(1)1868/02-03(01) - Information paper on "Tender Exercise for Occupation, Modification and Use of Part of Tuen Mun Ferry Pier for Operation of Cross-boundary Passenger Ferry Services" provided by the Administration;
- LC Paper No. CB(1)1884/02-03(01) - Information paper on "New Lantau Bus Company (1973) Limited - Fuller Disclosure of Financial and Operational Information";
- LC Paper No. CB(1)1940/02-03(01) - Views from Tai Po District Council on Speed limit review;
- LC Paper No. CB(1)2049/02-03(01) - Information paper on "Improvement of directional signing" provided by the Administration;
- LC Paper No. CB(1)2050/02-03(01) - Information paper on "Report on Parking Demand Supply and Progress of Improvement Measures" provided by the Administration; and
- LC Paper No. CB(1)2061/02-03 - Referral from Legislative Council Members' meeting with the Yuen Long District Council Members regarding the provision of transport infrastructure and services)

3. Members noted the above information papers issued since last meeting. In particular, the Chairman drew members' attention to the information paper provided by the Administration on "Improvement of directional signing" (LC Paper No. CB(1)2049/02-03(01)). The Chairman said that the Administration intended to implement a set of recommended measures as outlined in the paper to improve the directional signing in the territory in the coming years. Members did not raise any specific comments on the proposed improvement measures.

4. The Chairman further said that if members wished to discuss any items in relation to these information papers at future Panel meetings, they could inform the Clerk after the meeting.

5. Referring to LC Paper Nos. CB(1)1833/02-03, CB(1)1940/02-03(01) and CB(1)2061/02-03, the Chairman said that from time to time, views and concerns on various traffic and transport matters raised by District Council (DC) Members during their meetings with Legislative Council (LegCo) Members were referred to the Panel for consideration. She invited members' view on how to deal with such referrals.

## Action

6. Members said that the Panel would always welcome views from DCs and would render the best possible assistance to address the issues of concern raised by DC Members. Members also agreed that in order to ensure that these matters were dealt with properly, the Panel would follow up on wider policy issues arising from such matters as appropriate. Whereas in case of localized issues, they should be referred to the Administration for a written reply in the first instance after the relevant meetings with DC Members through the Convenor so that the DCs concerned would be informed of the follow-up actions being taken. The Chairman requested the Secretariat to draw the attention of the Convenor of DC meetings of the relevant arrangements.

### **IV Items for discussion at the next meeting scheduled for 25 July 2003**

(LC Paper No. CB(1)2042/02-03(01) - List of outstanding items for discussion; and  
LC Paper No. CB(1)2042/02-03(02) - List of follow-up actions)

7. Members noted that as informed by the Administration, the Kowloon-Canton Railway Corporation was expected to decide on West Rail fares at the end of July. The Administration hence suggested that the next regular meeting of the Panel be deferred until 1 August 2003 to discuss the following items:

- (a) Public Transport Fares;
- (b) West Rail Fares; and
- (c) North West New Territories Transport Review.

8. After deliberation, members agreed that the next regular Panel meeting would be held on Friday, 1 August 2003 at 10:45 am in Conference Room A, instead of on 25 July 2003 as originally scheduled, to discuss the above three items as proposed by the Administration.

*(Post-meeting note: The meeting scheduled for 1 August 2003 had subsequently been advanced to be held from 10:00 am as a result of the inclusion of an additional item on "Meeting with deputations to receive views on North West New Territories traffic and transport matters".)*

9. Regarding the item on "Provision and operation of tunnels and tollways" which the Panel had previously decided to discuss again in July 2003, members noted that the Administration would revert to the Panel before the end of this year.

Action

**V Eastern Harbour Crossing toll increase**

(LC Paper No. CB(1)2042/02-03(03) - Information paper provided by the Administration; and

LC Paper No. CB(1)2042/02-03(04) - Letter dated 17 June 2003 from Eastern District Council on toll level of Eastern Harbour Crossing)

10. Members noted the view expressed by Eastern DC on the toll level of Eastern Harbour Crossing as set out in its letter vide LC Paper No. CB(1)2042/02-03(04).

11. At the invitation of the Chairman, the Deputy Secretary for the Environment, Transport and Works (DS for ETW) briefly introduced the paper provided by the Administration on the application made by New Hong Kong Tunnel Company Limited (NHKTC) to increase the tolls of the Eastern Harbour Crossing (EHC) (LC Paper No. CB(1)2042/02-03(03)). On 27 September 2002, NHKTC submitted an application for a \$5 or 33.3% toll increase for private cars with proportionate increases for other categories of vehicles to take effect from 1 January 2003. Upon receipt of the application, the Administration had urged NHKTC to reconsider the need and the timing for any toll increase under the current economic situation. The Administration had also reminded the Company of the importance of striking a balance between the interest of the community at large and commercial considerations in devising their tolling strategy but to no avail. NHKTC maintained that the application be submitted to the Chief Executive-in-Council for consideration as soon as possible.

12. DS for ETW further said that according to section 55(3)(a) of the EHC Ordinance (EHCO) (Cap. 215), the tolls specified in the Schedule to the Ordinance might be varied by agreement between the Chief Executive-in-Council and the Company. If an agreement could not be reached, either side might resort to arbitration under the Arbitration Ordinance (Cap. 341). As stipulated under EHCO, if the matter was submitted for arbitration, the Arbitrator should be guided by the need to ensure that the Company was reasonably but not excessively remunerated for its obligations under the Ordinance. Back in 1996, the Company's application for a \$10 or 100% toll increase for private cars and similar percentage increases for other types of vehicles was submitted for arbitration after it had been rejected by the then Governor-in-Council. A Final Interim Award was made by the Arbitrator in April 1997 which specified that the toll for private cars and taxis should be increased by \$5 (from \$10 to \$15) with corresponding increases for other types of vehicles with effect from 1 January 1998. The ruling was, however, not binding on subsequent cases and each case had to be considered on its own merit. The Arbitrator was also required under the Ordinance to take account of any material change in the economic conditions of Hong Kong since the tolls were last determined.

13. Mr Alexander CHAN, General Manager of NHKTC (GM/NHKTC), said the Company's application was following the decision of the independent arbitrator who took all relevant facts into consideration in coming to his decision in 1997. He referred members to Annex C to LC Paper No. CB(1)2042/02-03(03) for the Company's justifications for the proposed toll increase. In brief, the Company considered that:

## Action

- (a) according to the arbitration award, a "reasonable return" was defined as an Internal Rate of Return (IRR) between 15% and 17%. Even with the current proposed toll increase, the IRR likely to be achieved over the life of EHC's franchise would be 14.76% which fell short of the lower range of a "reasonable return". Should there be no toll increases, the IRR over the whole franchise period would be 13.73% which was again less than the lower range of a reasonable IRR;
- (b) the Arbitrator also decided that the Company would be entitled to a toll increase if it could demonstrate that its return on equity would fall below the lower level of a reasonable return, i.e. 15%, over the franchise period. Before making the application, the Company had reviewed the assumptions in respect of traffic and financial projections in calculating the likely return on equity over the life of its franchise. However, there was no combination of reasonable assumptions in which the Company's return would get even close to the higher level of a reasonable return. Many cases tested showed a return below the lower level of a reasonable return established by the Arbitrator; and
- (c) postponement of the current proposed toll increase would mean a larger toll increase later to enable the Company to achieve a reasonable return. This would create an unfair situation where future tunnel users would in fact be subsidizing earlier users.

### Members' stance on the toll increase

14. Speaking on behalf of the Democratic Alliance for Betterment of Hong Kong and the Hong Kong Federation of Trade Unions, Mr TAM Yiu-chung said that given the healthy financial position of the Company, the proposed toll increase was utterly not justified. Considering the adverse impact the proposed toll increase would have on the burden of transport cost on the commuters as well as the existing congestion at the Cross Harbour Tunnel, he strongly called on the Administration not to support the Company's application when making its recommendation to the Chief Executive-in-Council.

15. Echoing Mr TAM Yiu-chung's view, Mr LEUNG Fu-wah pointed out that as the Company was already earning a substantial profit, its demand for a toll increase was grossly inappropriate under the existing economic conditions. He also expressed concern that the Company had sought to cut back the conditions of service of its staff even when it was earning a substantial profit.

16. Mr LAU Kong-wah also said that in view of the deteriorating economic situation, the Company should consider withdrawing its application for the proposed toll increase.

17. Mr CHENG Kar-foo criticized the Company for ignoring its social conscience in demanding a toll increase under the prevailing economic downturn. Hence, the

## Action

Company should not insist on resorting to arbitration if its application was rejected by the Chief Executive-in-Council.

18. Mr Albert CHAN also condemned the Company for demanding a toll increase at a time when Hong Kong was facing severe economic hardship while the Company was reaping substantial profits.

19. In response, GM/NHKTC stated that if the toll increase applications made by the Company in 1992 or 1994 had been approved, the Company would have no need to apply for toll increase now and according to the Company's calculations in 1995, a \$20 toll (for private cars) in 1995 would give a high probability of achieving a "reasonable return" over the life of the franchise without the need for further toll increase. He stressed that over the years, the Company had been making great efforts in reducing cost and enhancing operational efficiency. However, the Company was also under a duty to ensure a reasonable return to its shareholders.

20. GM/NHKTC maintained that the Company was following the decision of the Arbitrator in 1997. The toll increase subsequently effected in 1998 was NHKTC's first and only toll increase since EHT commenced operation in 1989. The Arbitrator also recommended that future toll increases of \$5 at approximately 5-year intervals would be appropriate. Hence, 1 January 2003 was the time recommended by the Arbitrator for a toll increase. He called on members' understanding that the principles behind the Arbitrator's recommendations in 1997 should be accepted and that it would be a waste of resources to enter into another arbitration on the same issues. He added that having gone so far in the application process, it was the Board's decision to see the application process through, which might take more than a year to complete.

21. GM/NHKTC further said that the process of applying for a toll increase which NHKTC initiated in September 2002 set a maximum toll that the Company might charge its customers. In formulating the toll charging strategy, the Company would be mindful of the economic environment in which it operated.

### The Administration's assessment

22. Advising members of the Administration's assessment on the matter, DS for ETW said that from the traffic management point of view, the design capacity of EHC was 78 500 vehicles per day and the average daily traffic throughput had been maintained at a level between 70 000 and 74 000 since the relocation of the airport. No undue congestion was observed at the tunnel's approach roads.

23. As far as the financial performance of NHKTC was concerned, DS for ETW confirmed that the Company had consistently enjoyed a healthy financial position with all bank loans fully repaid in July 2001. The Company's cumulative profit up to end 2002 stood at \$2,135 million. NHKTC started paying dividends from 1994 onwards and dividends had been paid on a monthly basis since October 2001.

24. DS for ETW further said that all these factors would be presented to the Chief

## Action

Executive-in-Council for consideration. If the toll increase application was rejected by the Chief Executive-in-Council, the Company might resort to arbitration. It was a decision to be taken by NHKTC. In case the matter was taken to arbitration, the arbitrator might make reference to the arbitration ruling in 1997 in determining what constituted a "reasonable but not excessive remuneration". However, she stressed that the ruling had no binding effect on subsequent arbitrations and each case had to be considered on its own merit. Under EHCO, the arbitrator was required to have regard to any material change in the economic conditions of Hong Kong since tolls were last determined. Given the significant economic downturn and the sustained deflationary environment since 1997, the Arbitrator might well hold a different view of what constituted a "reasonable but not excessive remuneration" under the current economic environment.

### Future toll adjustments

25. Citing the Administration's approach in handling the civil service pay cut, Mr Albert CHAN remarked that in view of the public interest at stake, the Administration should consider using legislative means to induce a downward toll adjustment by the Company.

26. Expressing concern that the existing arbitration mechanism could not adequately safeguard public interest against unreasonably high toll increases demanded by tunnel operators, Mr CHENG Kar-foo considered that the Administration should review whether the relevant provisions under EHCO should be amended. To ensure general public acceptance of any further toll adjustments proposed by tunnel operators, he reiterated his view that tunnel tolls should also be included under the fare adjustment mechanism being developed by the Administration.

27. In response, DS for ETW said that the existing tunnel toll adjustment mechanism of EHC was clearly stipulated in law. The Administration should abide by the spirit and the wording of the contract it entered into with the Company. The fare determination mechanism being contemplated by the Administration covered the fares of public transport services. As the operation of tunnel was quite different from that of public transport services, it would not be appropriate to include tunnel tolls under the proposed mechanism. She said that the Administration took note of members' concern about tunnel tolls and would take that into account in considering the toll adjustment mechanism for future tunnels.



Action

**VI Any other business**

28. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
29 July 2003