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Legislative Council

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Panel on Transport

Subcommittee on matters relating to railways

**Minutes of meeting on
Wednesday, 27 November 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, 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 Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
Hon LAU Ping-cheung

Public Officers attending : **Agenda Item III**
Environment, Transport and Works Bureau

Mr Arthur HO
Deputy Secretary for the Environment, Transport and
Works (Transport and Works) T2

Mr William SHIU
Principal Assistant Secretary for the Environment,
Transport and Works (Transport and Works) T4

Agenda Item IV

Environment, Transport and Works Bureau

Mr William SHIU
Principal Assistant Secretary for the Environment,
Transport and Works (Transport and Works) T4

Highways Department

Mr L T MA
Government Engineer, Railway Development

Mr P K CHAN
Chief Engineer, Railway Development

Attendance by invitation : **Agenda Item III**

Kowloon-Canton Railway Corporation

Mr K Y YEUNG
Chief Executive Officer

Mr James BLAKE
Senior Director, Capital Projects

Mr Samuel LAI
Senior Director, Finance & Management

Mr K K LEE
Director, East Rail Extensions

Mrs Irene YAU
General Manager, Corporate Affairs

Mr David FLEMING
Company Secretary & General Counsel

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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I Confirmation of minutes and matters arising

(LC Paper No. CB(1)284/02-03 - Minutes of meeting held on 8 November 2002)

The minutes of meeting held on 8 November 2002 were confirmed.

II Date of and items for discussion at the next meeting

(LC Paper No. CB(1)342/02-03(01) - List of railways and projects)

2. Members agreed that the next meeting of the Subcommittee would be held on Friday, 20 December 2002, at 4:30 pm to discuss the following items proposed by the Administration:

- (a) Reorganization of Light Rail Transit services upon commissioning of West Rail; and
- (b) Better co-ordination of public transport services in North West New Territories arising from the commissioning of West Rail.

3. Members noted that Civic Exchange had offered to make a presentation to the Transport Panel/Subcommittee on its findings on rail financing. Members agreed to invite Civic Exchange to provide written information to the Subcommittee for consideration.

III Kowloon-Canton Railway Corporation's tender evaluation criteria for railway contracts

(LC Paper No. CB(1)342/02-03(02) - Information paper provided by the Kowloon-Canton Railway Corporation)

4. The Chairman relayed the apology expressed by Mr Michael TIEN, Chairman of the Kowloon-Canton Railway Corporation (KCRC), for not being able to attend the present meeting due to prior engagements.

5. Members noted the information paper provided by KCRC on its tender evaluation criteria for railway contracts (LC Paper No. CB(1)342/02-03(02)).

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Spur Line's tunnelling contract LDB-201

Tender evaluation

6. The Chairman asked whether it was the Corporation's general practice to award its railway contracts to the lowest-priced tenderer. In reply, Mr K Y YEUNG, the Chief Executive Officer of KCRC (CEO of KCRC), explained that for procurements where the tender specifications were well defined and tenderers were required to meet pre-determined minimum standards, a simple pass/fail system would be used in technical evaluation. Those tenders which had earned a pass became conforming tenders and the contract would then be awarded to the lowest-priced conforming tender. For those procurements where the product or construction had to meet stringent design, delivery, programme and other requirements with a high degree of certainty, the Corporation would adopt a technical/price weighting approach to determine the overall ranking of tenders. In the case of such contracts, awards would be made to those tenders which had earned the highest combined score.

7. Mr TAM Yiu-chung sought information about the number of pre-qualified tenderers for the Spur Line's tunnelling contract LDB-201. Mr LAU Kong-wah also asked whether the contract was awarded to the lowest-priced tenderer. Mr K K LEE, the Director, East Rail Extensions of KCRC (D/ERE, KCRC), responded that out of the six consortia which had submitted expressions of interest, the Corporate Tender Board (CTB) approved a shortlist of four as pre-qualified tenderers. With the approval of the Managing Board, the contract was eventually awarded to the Dragages (HK) Joint Venture. CEO of KCRC added that out of the four tenders received, one was found to be technically non-conforming. As such, the Corporation had not considered the price offered in this tender.

8. Supplementing on the tender evaluation process, Mr James BLAKE, the Senior Director, Capital Projects of KCRC (SD/CP, KCRC), said that before tenders were invited for the contract, the CTB had drawn up a very detailed and explicit tender evaluation plan. Accordingly, the instructions to tenderers were issued in very prescriptive terms, specifying the level of technical details as well as financial information required from the tenderers in their submissions. Under the circumstances, the Corporation was able to compare the submissions objectively against a list of pre-agreed criteria.

9. Citing the engineering complexity of the project, Ir Dr Raymond HO opined that given the overriding need for the tenderers to conform technically in their submissions, the contract should be awarded to the lowest conforming tenderer. SD/CP, KCRC responded that the question about the relative rate of the technical and financial aspects of contract LDB-201 had been duly considered by the CTB. To ensure objectiveness and fairness between technical and financial assessment, the CTB decided to use a 50%:50% technical/price weighting for the tender evaluation plan. Technical and financial assessments were conducted by separate teams. Only those tenders which were found to be technically conforming would have their prices

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evaluated. Markings were then given to the tenders accordingly. The conforming tender with the highest combined score was awarded the contract. CEO of KCRC also said that according to the World Trade Organization's Agreement on Government Procurement, the employer was allowed to determine the assessment criteria in complex contracts of this nature and award the contract to the tenderer which was found to be most advantageous.

10. Apart from technical requirements, Mr LEUNG Fu-wah asked whether other factors such as the employment of local labourers and staff relationship, etc. had also been considered when deciding on the award of contract LDB-201. CEO of KCRC replied that the technical assessment for contract LDB-201 included areas such as staffing and labour as well as safety and quality as such would impact on programme and risk management.

11. Dr David CHU remarked that the tenderers' business ethic was also an important consideration as some contractors might seek to bid for contracts at low price and increase the project cost by submitting excessive claims and variations thereafter. CEO of KCRC responded that one of the major criteria for technical evaluation was the tenderers' past performance. In this respect, he attested to Dragages's good track record with the Corporation when it undertook the tunneling works for the West Rail (WR) project.

12. While stressing the importance for Members of the Legislative Council to ensure the prudent use of public funds, Mr Abraham SHEK remarked that tender award was a complicated matter and he believed that the Corporation should be allowed to make its decision according to prudent commercial principles. Having reviewed the tendering documents, Mr SHEK considered that the tender award was made appropriately. Looking forward, he called on the Corporation to be more vigilant in monitoring the contractor's performance so as to ensure that the tunnelling works were undertaken smoothly.

Safeguards to ensure the contractor's compliance

13. Members generally expressed serious concern about the potential environmental impact caused by the tunnelling operation on the wetlands in Long Valley and the need to ensure the contractor's compliance with the environmental permit conditions.

14. Responding to Mr LEUNG Fu-wah, D/ERE, KCRC explained that detailed conditions had been specified in the project's environmental permit. If there was a breach of any such conditions, the Director of Environmental Protection (DEP) could order the cessation of associated work until remedial actions were taken in respect of the resultant environmental damage.

15. Mr LAU Kong-wah was gravely concerned that notwithstanding DEP's authority to suspend the project and KCRC's intention to require the contractor to

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apply design skills and tunnelling resources of the very highest order throughout the project, irreparable damage would be caused to the wetlands in Long Valley if the groundwater level was impacted by the tunnelling works. Should this happen, the additional \$2.8 billion incurred for constructing the bored tunnels to preserve the wetlands would be wasted completely. In this connection, he stressed that the Corporation should learn from its past mistakes and provide additional contractual safeguards to ensure that public monies spent on the bored tunnel option would be adequately compensated for in case of such eventuality.

16. Citing the Siemens incident where KCRC had failed to hold the defaulting contractor liable for its mistakes, Mr CHENG Kar-foo was worried that the same thing might happen for this very complex contract. He thus asked whether any improvements had been made so that the contractor would have no way to evade its contractual responsibility on the pretext of unforeseeable circumstances.

17. In response, D/ERE, KCRC assured members that every effort had been made by the Corporation to tackle the environmental issues arising from this project from the planning stages. For this purpose, a comprehensive risk assessment had been carried out and then effective mitigation measures were proposed. Legal advice had also been sought correspondingly to ensure that the contractor's responsibilities and liabilities were clearly written into the contract. He further explained that as this was a design and build contract, the contractor would be required to assume full responsibility for any adverse impact caused by the tunnelling operation on groundwater levels and surface settlement. Apart from strict compliance with the environmental permit conditions, the contractor must also use an Earth Pressure Balance Tunnel Boring Machine for the tunnelling operation as this technology had been proven in the WR project for preventing ingress of groundwater.

18. SD/CP, KCRC also stressed that the most important improvement on this contract was that an anticipatory approach was adopted. By anticipating the problem before it happened, the eventuality could be written into the prescriptive specifications of the contract so that by a certain point of time, the contractor must stop and take all necessary actions at his own cost to correct the problem before he could proceed further.

19. D/ERE, KCRC added that during construction, groundwater levels and surface settlement would be intensively monitored. Action and contingency plans had also been prepared for implementation if necessary. CEO of KCRC also said that even in case of *force majeure*, the contractor would be under a duty to take reasonable steps to mitigate any loss.

20. As far as legal remedy was concerned, D/ERE, KCRC said that the contract contained provisions for liquidated damages in case of any delay caused by the contractor. Mr David FLEMING, the Company Secretary & General Counsel of KCRC (CS&GC/KCRC), added that under the Corporation's General Conditions of Contract, there was a general damages provision which clearly made the contractor

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liable for all damages caused as a result of his negligence.

21. Addressing members' concern about the effectiveness of contract provisions for safeguarding the Corporation's interest in case of the contractor's non-performance, CS&GC, KCRC advised that contract LBD-201 was fundamentally the same as the Corporation's General Conditions of Contract for civil works. Such terms and conditions were proven and conformed with industry norms. For the present contract, the Corporation had taken extra care to ensure that the specifications for compliance were so definitive and prescriptive that it would extremely difficulty for the contractor to argue that he could side-step the provisions because they lacked clarity.

22. While acknowledging the added protection given by specific contract provisions, Mr Abraham SHEK cautioned that a right balance should be maintained as this would invariably attract a higher tender price.

23. CEO of KCRC also drew members' attention to the Environmental Committee set up by the Corporation for the Spur Line project in accordance with the environmental permit conditions. Chaired by SD/CP, KCRC, the Committee comprised representatives from green groups, environmental consultants and senior management of KCRC. It would provide an effective forum to advise on and monitor the implementation of the proposed mitigation measures of the project.

24. Both Mr CHENG Kar-foo and Mr LAU Kong-wah cautioned that the Corporation should not be complacent about the improvements made. They considered that it would be most important for the Corporation to closely monitor the contractors' performance throughout the project. At Mr CHENG's request, CEO of KCRC agreed to provide details about the findings of the risk assessment in relation to the tunnelling works of the Spur Line.

KCRC

25. Regarding the Administration's role in this matter, the Deputy Secretary for the Environment, Transport and Works said that members' concern about the contractor's performance was shared by the Administration. Through its representatives on KCRC's Managing Board, the Administration had all along supported the Corporation's initiatives to seek improvements for this contract. Now that the contract had been awarded to a contractor selected under a comprehensive tender evaluation mechanism with sufficient contractual and technical safeguards put in place, the Administration would seek to ensure that the contractor's performance and progress were properly monitored by the Corporation's management. In case any difficulty was encountered, the matter would be promptly brought to the attention of the Managing Board so that early solutions could be identified.

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IV East Rail Extension - Essential infrastructure work for Sheung Shui to Lok Ma Chau Spur Line

(LC Paper No. CB(1)342/02-03(03) - Information paper provided by the Administration)

26. With the aid of PowerPoint, the Government Engineer, Railway Development (GE/RD) introduced the scope of essential public infrastructure works (EPIW) for the Sheung Shui to Lok Ma Chau Spur Line (Spur Line) covered under the present funding proposal as set out in LC Paper No. CB(1)342/02-03(03).

27. Members noted that the scope of EPIW with an estimated cost of \$656.6 million comprised:

- (a) provision for cross-boundary facilities for the Government portion of the Lok Ma Chau (LMC) Terminus;
- (b) construction and provision of the passenger linkage facilities between the LMC Terminus and the Huanggang Station; and
- (c) widening and upgrading of an existing access road to the LMC Terminus.

Members also noted that the Administration intended to submit the funding proposal to the Public Works Subcommittee (PWSC) for consideration at its meeting on 18 December 2002.

On-cost payable to KCRC

28. Citing the prevailing economic conditions, Mr Abraham SHEK considered that the payment of 16.5% on-cost to KCRC for entrustment works was too high as compared to that of 9% payable to the Shenzhen Municipal Government. He believed that much savings could be achieved if the works were tendered out to the private sector. In this connection, he asked whether the Administration had attempted to negotiate a lower rate with KCRC or go out to the private sector for a more competitive price.

29. In reply, the Principal Assistant Secretary for the Environment, Transport and Works (Transport and Works) T4 (PAS for ETW(T)4) stated that 16.5% was a standard rate agreed by the Government and the two railway corporations for all entrustment projects. GE/RD supplemented that in January 2001, the Administration had completed an internal review on the 16.5% on-cost formula. Having compared the 16.5% on-cost formula for entrustment works with comparable on-costs for recently-completed and on-going government projects that had been outsourced to consultants, the Administration was of the view that the 16.5% on-cost for entrustment works remained appropriate given the increasingly stringent requirements in respect of project management and site supervision, such as those related to environmental

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mitigation and construction safety. To ensure interface and co-ordination between the EPIW and the Spur Line, the Administration considered it appropriate to entrust the relevant works to KCRC.

30. As regards the different on-cost rates payable to KCRC and the Shenzhen Municipal Government, GE/RD explained that KCRC was entrusted with a much broader scope of works which entailed technical studies, design, project management and construction supervision of the EPIW while the Shenzhen Municipal Government was only responsible for project management and construction supervision of the entrusted works. The 9% on-cost rate was the same as that for stage III of the Shenzhen River regulation project.

Design and provision of facilities at LMC Terminus

31. Referring to the overcrowding condition at Lo Wu Station during peak periods, Mr LAU Kong-wah enquired about the design and provision of facilities at the LMC Terminus as well as the Passenger Bridge Link to improve crowd control and passenger safety. Mr LAU Ping-cheung also enquired about similar provisions on the Shenzhen side.

32. In reply, GE/RD explained that unlike the vertical layout of the Lo Wu Station, horizontal access and egress routes between station platforms and cross-boundary facilities were adopted at the LMC Terminus, allowing a much better flow of passengers. Escalators would be installed at the arrival and departure halls to allow contra-flow operation. This could help improve passenger circulation and thus, meet greater demand during peak periods.

33. GE/RD further said that the proposed 16.5-metre (m) wide double-deck Passenger Bridge was capable of handling a much larger volume of passengers. To improve throughput and passenger comfort, travellers and air-conditioning would be provided. On the Hong Kong Special Administrative Region side, a 15-m long Link Bridge would connect the Passenger Bridge to the LMC Terminus. Two staircases, one on each side of the Link Bridge and leading to ground level, would be provided as emergency escapes. GE/RD also confirmed that while the design of the Shenzhen connection to the Passenger Bridge had yet to be finalized, similar provision for emergency escapes would be made. Air-conditioning would also be provided at the Huanggang Station.

34. In reply to Mr LAU Ping-cheung, GE/RD stated that the widening of a vehicular bridge along a section of Border Road would be entrusted to the Drainage Services Department (DSD) because it coincided with part of the works to be carried out by DSD under PWP item No. 73CD for the construction of San Tin Eastern Main Drainage Channel.

35. Mr LAU Kong-wah welcomed the improved design and facilities planned for the LMC Terminus and enquired about the estimated time required for immigration

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clearance at the new terminus. In reply, PAS for ETW(T)4 assured members that with the improvements in cross-boundary facilities including travellers on the passenger footbridge as well as the use of smart identity cards, passengers would be able to complete immigration clearance at the LMC Terminus quickly within a shorter time. He agreed to provide supplementary information to members after the meeting.

Access by other public transport services to LMC Terminus

36. Mr LAU Kong-wah reiterated the view that the Administration should consider opening up boundary control points to facilitate access by passengers via other means of transport such as taxis, minibuses or franchised buses. He was gravely dissatisfied that the Administration's proposed planning for the LMC Terminus was outdated and could not keep up with the increasing demand of cross-boundary passenger traffic.

37. Mr WONG Sing-chi expressed support for the provision of alternative transport services to the LMC Terminus to allow wider choice for the passengers.

38. Mr Albert CHAN considered that transport facilities at the boundary control points should be planned and provided from the users' point of view. As such, he was unconvinced that public funds were worthily spent to construct the new LMC Terminus merely to serve rail passengers. This had effectively prevented any real competition in the market and only served to protect KCRC's monopoly. In this connection, he asked whether the Administration would consider allowing other public transport services access to the LMC Terminus.

39. In response, PAS for ETW(T)4 stated that it was the Government's policy objective to continue with the planning and implementation of the further expansion of transport infrastructure with emphasis on railways which would form the backbone of Hong Kong's transport system. This policy was also generally accepted by the public. In order to cope with the upsurge of cross-boundary traffic and to relieve the increasing congestion at the Lo Wu crossing, the Government decided that the Spur Line should be constructed to connect the existing Sheung Shui Station of the East Rail to a new boundary crossing at LMC to serve as the second rail passenger crossing point. To complement the Spur Line, a package of EPIW would have to be provided in time and for which, funding approval was now being sought. PAS for ETW(T)4 also said that apart from railways, cross-boundary ferry and shuttle bus services were also provided at other control points to allow choices for the passengers. As such, there was no question of any monopoly by railways in the cross-boundary transport services.

40. To supplement, GE/RD stressed that the LMC Terminus was designed as a railway boundary crossing to complement the Spur Line's operation. The existing access to the proposed LMC Terminus via LMC Road, a village road and Border Road, would be widened to a two-lane carriageway as part of the EPIW only to form an emergency access to the LMC Terminus. Same as the current arrangement, access to a 1.9-kilometre section of the widened access road (consisting of Border Road and the

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village road within the Closed Area Boundary, and a 100-m stretch of LMC Road) would be restricted to holders of a Closed Area Permit after completion. He noted that the question raised by members involved issues on effective closed area control besides provision of transport services.

41. Mr LAU Kong-wah however opined that the Administration could initially allow limited green minibus (GMB) services to operate via the access to the LMC Terminus. This should not present too much problem from the point of view of boundary control. To allow for flexibility in respect of alternative transport arrangements, he requested that suitable provisions be made for the LMC Terminus in terms of land use requirement, transport facilities as well as immigration and customs clearance facilities. Otherwise, he would find it difficult to support the present funding proposal.

42. In response, PAS for ETW(T)4 said that as he understood, the Security Bureau (SB) had undertaken to review existing policy on Frontier Closed Area. Subject to the outcome of SB's review and with regard to land use planning, the Environment, Transport and Works Bureau (ETWB) would make necessary provision of public transport facilities to cope with the demand accordingly.

43. Mr CHENG Kar-foo was dissatisfied that instead of taking an active role to review this major transport initiative, ETWB had left the decision to SB. He pointed out that a rail-based strategy did not mean that other public transport modes were excluded. He thus urged ETWB to pursue the matter with SB expeditiously with a view to resolving the policy issue involved before the funding request for the EPIW was submitted to PWSC. Subject to the outcome of the review, relevant land use and resource provisions should be made for the LMC Terminus accordingly. Otherwise, he had strong reservation about giving his support to the present funding proposal.

44. In case there was any policy change after SB's review, the Chairman asked whether the transport and cross-boundary facilities already planned for the LMC Terminus could be suitably modified, in particular as regards the provision of a public transport interchange and additional immigration counters.

45. In reply, PAS for ETW(T)4 stated that the planned capacity for the Spur Line was 150 000 passengers per day initially, and it could be further increased to handle 300 000 passengers. Accordingly, the LMC Terminus had design provision to allow future expansion to double its immigration clearance capacity.

46. GE/RD also reiterated that as proposed, the LMC Terminus would only cater for cross-boundary railway passengers while other road-based passenger traffic was expected to make use of the existing passenger processing terminal at LMC Control Point. Currently, a GMB route No. 75 was providing services to the residents of Ha Wan Tsuen located within the Closed Area Boundary. Subject to SB's review, consideration could be given to allow limited services by other public transport modes to access the LMC Terminus to serve the residents nearby.

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Environmental concerns about the Spur Line project

47. Relaying the concerns expressed by local residents about the dumping of construction materials in the wetlands in Long Valley, Mr WONG Sing-chi enquired about the Administration's role in monitoring the adverse impact caused by such acts in the conservation of the wetlands in Long Valley.

48. In response, PAS for ETW(T)4 assured members that when taking forward the Spur Line project, KCRC would have to monitor and minimize the project's environmental impact in strict compliance with all the conditions set out in the environmental permit issued by Environmental Protection Department. Non-compliance with the permit requirements could result in suspension of construction works. KCRC had also set up community liaison groups in the districts to discuss and address community concerns including environmental issues arising from the construction of the Spur Line project.

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49. Referring to the fish pond land to be resumed for the Spur Line project, Mr Albert CHAN was concerned that if such loss was not adequately compensated, the wetlands in Long Valley might be adversely affected by the loss of underground water. At his request, the Administration agreed to provide supplementary information on the environmental measures to be taken to compensate for the loss of fish pond land resumed for the project.

Members' stance on the funding proposal

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50. Summarizing the discussion, the Chairman said that the majority of members considered that as a matter of policy, the Administration should consider opening up the control points to cater for access by other public transport services. As such, they expressed strong reservation about the Administration's proposal to construct the LMC Terminus and its supporting EPIW at a cost of \$656.5 million merely to serve rail passengers. Instead, the Administration should finalize its review of the existing policy expeditiously so that relevant land use planning and resource provision would be made for alternative transport arrangements at the LMC Terminus before the funding request for the EPIW was put to PWSC. While inviting the Administration to note the views and concerns expressed by members, the Chairman advised that she would report the Subcommittee's deliberation to PWSC for consideration.

51. While acknowledging members' concern about opening up the control points, PAS for ETW(T)4 called on members' understanding about the urgent need for the Spur Line to relieve the congestion at Lo Wu. For the purpose, the proposed EPIW would need to commence as soon as possible to tie in with the Spur Line's scheduled commissioning before mid-2007. In the meantime, he assured members that ETWB would liaise closely with SB and explore the possibility of suitable provision of transport facilities at the LMC Terminus area.

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IV Any other business

52. There being no other business, the meeting ended at 10:50 am.

Council Business Division 1
Legislative Council Secretariat
5 February 2003