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4 July 2005

Dr Sarah LIAO, JP
Secretary for the Environment, Transport and Works
10/F, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Dr LIAO,

**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**

Thank you for your letter of 30 June 2005.

At the first meeting of the Subcommittee held on 23 June 2005, members raised various concerns about the recent toll increases for Tate's Cairn Tunnel and Tai Lam Tunnel and how the toll adjustment mechanisms for these Tunnels could be improved. In this connection, the Subcommittee decided that your goodself and representatives of the two tunnel companies concerned should be invited to attend the next meeting for discussion with members on the relevant issues. I understand that the Clerk to Subcommittee has since then followed up with your colleagues to explore the possible timeslot(s) at which you would be able to attend the meeting of the Subcommittee.

Referring to paragraph 2 of your letter, I have not previously discussed with you the need for you to attend before the Subcommittee. Nevertheless, given that significant public interests are involved, I hope you would agree that it is prudent for the Subcommittee to discuss with you the relevant issues in detail. The list of issues is set out in the **Appendix** for your reference. You are invited to exchange views with the Subcommittee on items 1 to 5 of the list. As regards item 6 of the list, you are invited to advise whether and how far the Administration has honoured its three undertakings made during the resumption of the Second Reading debate on the Tai Lam Tunnel and Yuen Long Approach Road Bill on 24 May 1995. A copy of the relevant page of the Hansard of the Council meeting on 24 May 1995 is also attached for your reference.

I earnestly hope that you would accept the Subcommittee's invitation to attend its next meeting. As the current legislative session is drawing to a close, I would suggest that the next meeting be scheduled before mid-July. Please let me know which timeslot is convenient to you and I would consult members of the Subcommittee accordingly.

Looking forward to your early reply.

Yours sincerely,

original signed

(LAU Kong-wah)
Chairman of the Subcommittee

Encl.

**Issues to be discussed with the
Secretary for the Environment, Transport and Works (SETW)**

Toll increase for Tate's Cairn Tunnel

1. For the current toll increase exercise, what are the factors considered by the Administration before reaching a decision that the application for toll increase should be approved?
2. Given that the Tate's Cairn Tunnel Ordinance (Cap. 393) has not set out the criteria for determination of toll adjustments by the Chief Executive in Council, it is not clear on what basis the Administration has reached a decision that an application for toll increase should be approved and arbitration should not be resorted to. How can the current mechanism be improved to address this issue?

Toll increase for Tai Lam Tunnel

3. For the current toll increase exercise, what are the relevant factors and information that SETW has considered before coming to a view that she is satisfied with the franchisee's 2000-01 Actual Net Revenue (ANR) Statement? Whether SETW has considered referring the matter to an independent expert for resolution; if not, please provide the reasons.
4. As revealed from the information provided by the franchisee, its ANR for 2001-02, 2002-03 and 2003-04 are less than the Minimum Estimated Net Revenue for the respective years as specified in Schedule 4 to the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474). In other words, the franchisee may apply to SETW again in the near future to give effect to the next anticipated toll increase. To address the problem once and for all, a long-term solution needs to be identified. In this connection, SETW is invited to consider:
 - (a) whether a deadline or timetable should be set for the current negotiation between the Administration and the franchisee on the need to extend the franchise period; and
 - (b) whether, and if so, how, Schedule 4 to the Ordinance could be amended; and the implications, if any, of the amendments.
5. To enhance the transparency of the operation and performance of the franchisee, the Subcommittee is of the view that information about the ANR of the franchisee should be disclosed to the public and should not be kept confidential. In this connection, what are the justifications and legal basis on which the Administration comes to the view that it could not disclose such information to the public?

6. Whether and how far the Administration has honoured the undertaking made by the then Secretary for Transport during the resumption of the Second Reading debate on the Tai Lam Tunnel and Yuen Long Approach Road Bill on 24 May 1995 that the Administration would adopt the following steps to enhance the transparency of the franchisee's plans and performance:
- (a) The Administration will require the tabling in the Legislative Council (LegCo) in July each year (before the summer recess) the franchisee's plan as embodied in its three-year rolling projection of net revenue and its annual budget of operating costs, together with a statement;
 - (b) The Administration will table in LegCo in October each year the franchisee's annual audited statement of ANR, and will make a statement on that occasion on both the figures and any application for a toll increase; and
 - (c) The Administration will brief the LegCo Panel on Transport on the Administration's findings before deciding by the end of October whether a toll increase should be agreed or whether the Administration should proceed to arbitration. Members will then have the opportunity to debate the findings if they so wish.

Council Business Division 1
Legislative Council Secretariat
4 July 2005

out by the Government instead of contracting it out to a consortium? Such arguments are really very strange. Amongst the projects which have been granted fund for construction by the Finance Committee, many are undertaken by the Government, and which were approved unanimously by both the Liberal Party and the Democratic Party. So do we become supporters of socialism whenever we approve any infrastructural project to be undertaken by the Government? These arguments actually cannot hold water. Let me ask Members to think about this, the question now is a simple one, which is whether or not we want to have the function of monitoring. Those who want it will vote in favour of us, whereas those who do not want it will vote against us. It is as simple as that. Why talk about -ism this or -ism that?

SECRETARY FOR TRANSPORT: Mr President, may I first express the Administration's sincere thanks to the Honourable Mrs Miriam LAU and all other honourable Members who served on the Bills Committee to vet the Tai Lam Tunnel and Yuen Long Approach Road Bill. I am grateful for their tremendous input and efforts in examining the Bill, and for completing their work so expeditiously. May I also thank honourable Members for the views they have expressed this afternoon. In this respect, the Honourable WONG Wai-yin's criticism that the Administration has failed to keep the Council informed is, in my view, unfounded. The Administration in fact provided three sitreps to the Legislative Council Transport Panel before the Bill was introduced, and the very fact that the Bills Committee has been able to complete its deliberations to allow the Second Reading to be resumed today is indicative of the fact that there has been adequate time to study the Bill.

Proposed terms of the franchise

The Bill seeks to award a franchise to the Route 3 (Country Park Section) Company to build and operate the Tai Lam Tunnel and Yuen Long Approach Road. Under the proposed terms of the franchise contained in the Bill, the franchisee is committed to building the project, at its own expense, within a very aggressive construction programme of 38 months. The budgeted project cost is \$7,254 million, and any cost overrun will have to be fully borne by the proposed franchisee and will not be part of the construction cost on which the permitted return is based. In other words, cost overruns will not be passed onto the road-users.

I must emphasize that the package offered by the Route 3 (CPS) Company is the best available, achieved through a competitive tendering exercise. The proposed BOT franchise will allow this urgently needed project to be completed in the shortest possible time and at the lowest cost. The tolls proposed by the franchisee will provide a low and stable toll regime. The Administration has no hesitation in commending this Bill to the Legislative Council. Some Members have referred to land hoardings in northwest New Territories by the Sun Hung Kai Group. This is totally irrelevant. The project has no associated property development right whatsoever.

Measures to enhance transparency

During the discussion in the Bills Committee, honourable Members sought various assurances regarding transparency and the operation of the Toll Stability Fund. I am happy, on behalf of the Administration, to provide these assurances. Honourable Members quite rightly expressed concern that there should be transparency in the operation of the franchise. The Administration fully agrees that there should be transparency and we will adopt the following steps to enhance the transparency of the franchisee's plans and performance:

- (a) we will require the tabling in the Legislative Council in July each year (before the summer recess) the franchisee's plan as embodied in its three-year rolling projection of net revenue and its annual budget of operating costs, together with a statement;
- (b) we will table in the Legislative Council in October each year the franchisee's annual audited statement of Actual Net Revenue, and will make a statement on that occasion on both the figures and any application for a toll increase; and
- (c) the Administration will brief the Legislative Council Transport Panel on the Administration's findings before deciding by the end of October whether a toll increase should be agreed or whether we should proceed to arbitration. Honourable Members will then have the opportunity to debate the findings if they so wish.

Members have also expressed concern regarding the management and use of the Toll Stability Fund, in particular as regards the Financial Secretary's power under clause 31(4) to transfer excess money in the Fund to General Revenue, and the discretionary power of the Toll Stability Fund Management Committee under clause 43 to use the Fund in deferring toll increases.

Although the Financial Secretary has powers under clause 31(4) of the Bill to transfer money from the Fund to General Revenue, he will not do so unless he is of the opinion that the amount to be transferred is in excess of what is required for deferring future toll increases for the rest of the franchise period. The Administration does not, therefore, envisage that there will ever be a need to re-transfer sums from General Revenue back to the Fund as a result of there being insufficient money left in the Fund for the purpose of deferring toll increases.

Nonetheless, to allay Members' concern, the Administration agrees that before any money is transferred from the Toll Stability Fund to General Revenue under clause 31(4), the Administration will first seek the views of the Legislative Council Transport Panel and provide a full explanation for such a transfer. The Administration also undertakes that should moneys be transferred out of the Toll Stability Fund to General Revenue under clause 31(4) of the Bill, this will not lead to any toll increase resulting from there being insufficient