

立法會

Legislative Council

LC Paper No. CB(1)211/06-07

Ref. : CB1/SS/5/05

Paper for the House Committee meeting on 3 November 2006

Report of the Subcommittee to Study Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2006 and Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Toll Increase) Notice 2006

Purpose

This paper reports on the deliberations of the Subcommittee to Study Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2006 and Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Toll Increase) Notice 2006.

Background

Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2006

2. The Western Harbour Crossing Ordinance (Cap. 436) ("WHCO") provides for a specified toll adjustment mechanism in respect of the Western Harbour Crossing ("WHC"). Under Schedule 4 to WHCO, the Western Harbour Tunnel Company Limited ("WHTCL") or the franchisee may effect toll increases on six specified dates: 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021. Under section 46(1) of WHCO, however, if WHTCL's or the franchisee's net revenue in any year (which is not a year ending immediately before the specified dates) is less than the Minimum Estimated Net Revenue ("MENR") for that year specified in Schedule 5 to WHCO, WHTCL or the franchisee may apply to the Secretary for the Environment, Transport and Works ("SETW") to give effect to the next anticipated toll increase. The maximum levels of increase in respect of different categories of vehicles, from operating date up to 31 December 2010 or during the period of 13 years beginning on operating date, are specified in Schedule 2

to WHCO.

3. Under section 52(1) of WHCO, where a toll is increased in accordance with WHCO and the project agreement, the Commissioner for Transport ("C for T") shall by notice published in the Gazette amend Schedule 1 to vary the relevant tolls. Under section 52(2), WHTCL or the franchisee shall not give effect to more than one increase in the tolls in one year. The last toll increase came into effect on 31 July 2005. Section 52(3) provides that section 34 of the Interpretation of General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Accordingly, the notice is not required to be tabled before the Legislative Council and is not subject to amendment by Legislative Council.

4. The Western Harbour Crossing Ordinance (Replacement of Schedule 1) Notice 2006 replaces the existing Schedule 1 to WHCO to show the new tolls. A comparison of the toll levels before and after the toll increase on 31 July 2006 is attached in **Annex A**.

Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Toll Increase) Notice 2006

5. Under section 39(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) ("the Route 3 Ordinance"), the franchisee (Route 3 (CPS) Company Limited) ("the Route 3 Company") may give effect to toll increases on each of the three specified dates referred to in Schedule 3 to the Route 3 Ordinance (1 January 2003, 2010 and 2017). However, if the franchisee's actual net revenue ("ANR") for any year, which is not a year ending immediately before a specified date, is less than the MENR for that year as specified in Schedule 4 to the Route 3 Ordinance, the franchisee may advance an anticipated toll increase under section 40(1). Where the franchisee has effected all the anticipated toll increases pursuant to sections 39(1) and 40(1) and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year, the franchisee may apply to SETW under section 42 of the Route 3 Ordinance to give effect to an additional toll increase.

6. Schedule 1 to the Route 3 Ordinance specifies the Tai Lam Tunnel and Yuen Long Approach Road ("Route 3") Tolls. Under section 45(1), where a toll is increased, C for T shall by notice published in the Gazette amend Schedule 1. Section 45(3) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Accordingly, the notice is not required to be tabled before the Legislative Council and is not subject to Legislative Council's amendment.

7. The Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Toll Increase) Notice 2006 replaces Schedule 1 to the Route 3 Ordinance with a new Schedule 1 to reflect the increase of tolls payable under the Route 3 Ordinance. A comparison of the toll levels before and after the toll increase on 17 September 2006 is attached in **Annex B**.

The Subcommittee

8. The House Committee agreed at its meeting on 6 October 2006 to form a subcommittee to study the two Legal Notices. Chaired by Hon Miriam LAU Kin-yee, the Subcommittee held a meeting with the Administration and WHTCL and the Route 3 Company to discuss the related issues. The membership list of the Subcommittee is in **Annex C**.

Deliberations of the Subcommittee

Adjustments of statutory tolls

9. Whilst recognizing that the increase of the statutory tolls of WHC and Route 3 are in compliance with the toll adjustment mechanisms provided in the relevant Ordinances, some members of the Subcommittee are gravely concerned whether there is an actual need for the two tunnel companies to do so. They are of the view that gazetting of the new statutory tolls of WHC and Route 3 had adversely affected the image of the companies despite the fact that the two tunnel companies offered concessionary tolls to all categories of vehicles so that the then prevailing toll levels were maintained and users had not been affected by the exercises. Some members are of the view that notwithstanding the economic downturns over the years, WHC has been able to earn an accumulated Net Revenue of some \$2 billion. As such, WHTCL should consider lowering its tolls.

10. The Subcommittee is advised by WHTCL that since the operation of WHC in 1997, its Net Revenue has consistently fallen short of the specified levels provided in WHCO. The main reasons for the shortfall in Net Revenue are that the actual traffic volume has been much less than forecast due to economic downturn, the large toll differential with other tunnels, and traffic congestion at the crossing approaches which has hindered motorists in making their way to WHC. Despite the implementation of a series of promotions, the increase in traffic flow is not sufficient to pay off the reduced toll level. Further, as at July 2006, the Company has \$1.9 billion and \$2.9 billion of bank loans and shareholders' loans respectively. In considering the Net Revenue of \$325 million for 2002/03, which is significantly lower than the MENR of \$794 million as specified in Schedule 5 to WHCO, the company decided to exercise its right to a statutory toll increase and to effect the new toll levels on 31 July

2006. Regarding the accumulated Net Revenue over the years, WHTCL has clarified that this has not taken into account the amount of depreciation and loan repayments.

11. Regarding the situation of Route 3, the Subcommittee is advised by the company that since the operation of Route 3 in 1998, the company's ANR has consistently fallen short of the specified levels provided in the Route 3 Ordinance. The main reasons for the shortfall in net revenue are that the actual traffic volume has been much less than forecast due to economic downturn, slow down of development in the Northwest New Territories (NWNT), the impact of the commissioning of West Rail, etc. Whilst the company has launched a series of promotion campaigns to boost utilization, the increase in traffic flow is not sufficient to pay off the reduced toll level. For the past 11 years, there has been no return to shareholders. Instead, shareholders needed to inject an additional of \$1 billion for refinancing in 2005. As the net revenue for 2001/02 is only \$238 million which is lower than the MENR of \$264 million as specified in Schedule 4 to the Route 3 Ordinance, the company decided to exercise its right to a statutory toll increase and to effect the new toll levels on 17 September 2006.

Future toll adjustment

12. The Subcommittee is also concerned about the high toll levels of WHC and Route 3 and the resultant impacts on traffic. It has examined the factors that would be taken into account by the tunnel companies in revising their future tolls. The Subcommittee notes from the two tunnel companies that they would take into account public affordability, the latest economic situation and the financial performance of the companies before revising their toll levels in future.

Usage rate of WHC and Route 3

13. The Subcommittee has queried why the Administration would over-estimate the usage rate of WHC and Route 3, which in turn had led to under-utilization of scarce tunnel resources and excessive toll levels. The Administration has pointed out that the MENRs were worked out years ago on the basis of the then prevailing traffic and economic assumptions. The MENRs for WHC and Route 3 were reflected in the relevant Ordinances after scrutiny by the Legislative Council. In this regard, Mr Albert CHAN has remarked that he has all along objected to the adoption of the existing toll adjustment mechanisms for Build-Operate-Transfer (BOT) tunnels.

14. To enhance the utilization of the tunnels which in turn would help improve the financial performance of WHC and Route 3, views have been expressed that tunnel companies should drastically reduce tunnel tolls to boost utilization and the Administration should consider allowing red minibuses to

operate via Route 3. The tunnel companies have pointed out that over the years, they have implemented a series of promotional campaigns to boost utilization. However, the majority of the toll promotions could only generate minor increase in traffic but lead to substantial loss in revenue. Notwithstanding this, they would continue to explore measures to improve their income. Regarding the public light bus policy, the Administration has advised that the existing policy on public light buses is to encourage the establishment of scheduled public light bus services in the form of green minibuses (GMBs) and GMBs are allowed to operate via Route 3.

Traffic-related matters

15. On traffic implications, members are concerned about the serious traffic congestion at the Cross-Harbour Tunnel and its surrounding approach roads. They have taken the opportunity to remind the Administration to formulate measures to even out the distribution of traffic among the three road harbour crossings. Regarding the traffic situation at NWNT after the commissioning of the Hong Kong – Shenzhen Western Corridor in July 2007, the Subcommittee has pointed out that despite the repeated calls from members to address the traffic problem at NWNT, there is not much progress in the matter. They are worried that the existing road network would not be able to cope with the increased traffic flow, and the existing traffic problems in Tuen Mun and Yuen Long districts would worsen. As the matter is of great public concern and has huge economic implications for the community, members consider that there is urgency in finding solutions to divert traffic from Tuen Mun Road to Route 3.

16. The Subcommittee notes that the Administration is in active discussion with the relevant franchisees on how rationalization of tolls may be implemented before the expiry of the current franchises, the traffic impacts of such a toll rationalization and the duration of any franchise extension that may be required.

17. In view that the Administration has been negotiating with the tunnel companies for several years on possible measures to enhance the utilization of their facilities, the Subcommittee considers that a deadline or timetable should be set for the negotiation. The Administration however takes the view that setting a deadline for the negotiation will reduce the Government's flexibility in getting a good deal, which in turn may not be in the best interest of the general public. Given that significant public interests are involved, the Subcommittee considers it essential for the Administration to speed up the related work so as to achieve traffic diversion among various BOT tunnels.

Advice sought

18. The House Committee is invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
2 November 2006

Existing and New Statutory Tolls of WHC

	Existing Tolls		New Tolls		Actual Increase
	Statutory	Concessionary	Statutory	Concessionary	
Motorcycles	\$35	\$22	\$40	\$22	\$0
Private cars	\$70	\$40	\$80	\$40	\$0
Taxis	\$70	\$35	\$80	\$35	\$0
Light buses	\$80	\$50	\$90	\$50	\$0
Light goods vehicles	\$105	\$55	\$120	\$55	\$0
Medium goods vehicles	\$145	\$80	\$165	\$80	\$0
Heavy goods vehicles	\$215	\$110	\$245	\$110	\$0
Single-decked buses	\$80	\$70	\$90	\$70	\$0
Double-decked buses	\$115	\$100	\$130	\$100	\$0
Additional axle	\$70	\$30	\$80	\$30	\$0

Annex B**Existing and New Tolls of Route 3**

	Existing Tolls		New Tolls		Actual Increase
	Statutory	Concessionary	Statutory	Concessionary	
Motorcycles	\$25	\$17	\$30	\$17	\$0
Private cars and Taxi	\$30	\$25	\$35	\$25	\$0
Light bus	\$75	-	\$90	\$75	\$0
Light goods vehicle	\$75	\$28	\$90	\$28	\$0
Medium goods vehicle	\$85	\$35	\$100	\$35	\$0
Heavy goods vehicle	\$105	\$40	\$120	\$40	\$0
Single-decked bus	\$75	-	\$90	\$75	\$0
Double-decked bus	\$90	-	\$105	\$90	\$0
Extra axle	\$35	\$0	\$40	\$0	\$0

**Subcommittee to Study Western Harbour Crossing Ordinance
(Replacement of Schedule 1) Notice 2006 and Tai Lam Tunnel and Yuen
Long Approach Road Ordinance (Toll Increase) Notice 2006**

Membership list

Chairman Hon Miriam LAU Kin-yee, GBS, JP

Members Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC

(Total: 10 Members)

Clerk Mr Andy LAU

Legal Adviser Ms Connie FUNG

Date 23 October 2006