

立法會
Legislative Council

LC Paper No. PWSC90/07-08

Ref : CB1/F/2/5
Tel : 2509 4602
Date : 8 May 2008
From : Clerk to the Public Works Subcommittee
To : Members of the Public Works Subcommittee

Public Works Subcommittee

Follow-up to meeting on 23 April 2008

**Funding approach for 51TR - Shatin to Central Link
-design and site investigation**

At the captioned meeting when members of the Public Works Subcommittee (PWSC) considered the funding proposal for the design and site investigation for the Shatin to Central Link (SCL), Hon Albert CHAN expressed grave concern about the legal basis for the Administration's decision to provide funding for the SCL under the Capital Works Reserve Fund. Pursuant to the request of Hon Albert CHAN and with the concurrence of Ir Dr Hon Raymond HO, Subcommittee Chairman, I attach for members' information a paper prepared by the Legal Service Division of the Legislative Council Secretariat (LC Paper No. LS83/07-08).

2. The recommendation of PWSC on the item will be considered by the Finance Committee (FC) at its meeting on 9 May 2008. Members are invited to note that the above item will be voted on separately at the FC meeting and the Administration has been requested to arrange for attendance of relevant public officers to respond to members' questions at the meeting.

(Ms Rosalind MA)
Clerk to the Public Works Subcommittee

Encl.

c.c. Other members of the Finance Committee

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Legislative Council

LC Paper No. LS83/07-08

Paper for the Public Works Subcommittee

Funding for 51TR – Shatin to Central Link

Background

At the meeting of the Public Works Subcommittee on 23 April 2008, concerns were expressed about the legal basis for the Administration's decision to provide funding for the Shatin to Central Link (SCL) out of the Capital Works Reserve Fund (Cap. 2 sub. leg. A) (CWRF). This paper sets out the comments of the Legal Service Division on the Administration's position.

The Administration's Position

2. Subsequent to the meeting, the Clerk to the Public Works Subcommittee has asked the Administration to clarify the legal basis for the funding arrangement. In the written response dated 30 April 2008, the Administration has expressed the following views –

- (a) there are two funding approaches for implementing new railway projects: the ownership approach and the concession approach;
- (b) SCL is to be implemented under the concession approach where the Government will provide at its own costs, the necessary railway infrastructure of SCL. Upon completion of SCL, the Mass Transit Railway Corporation Limited will be granted a service concession and pay the Government service concession payments for the right to operate SCL. The ownership of SCL will remain with the Government;

- (c) The Administration considers that SCL is a government works project as the Government has decided to implement the project by the concession approach. The SCL project involves the design and construction of a railway line, and the associated architectural, electrical and mechanical, signalling and control works. It serves to improve the mobility of the public. Under the concession approach, the SCL is no different from other highway projects which are funded by Head 706 under CWRP for their design and construction.

3. In a subsequent letter dated 6 May 2008, the Administration supplements that projects under the Government's Public Works Programme (PWP) are those under Heads 702-707, 709 and 711, which are generally funded and undertaken by the Government. These projects include highways, roads and bridges, railways and railway development, etc. The relevant correspondences are attached at **Annexes I to IV** for members' reference.

Comments

4. CWRP was established by a resolution of the Legislative Council under section 29 of the Public Finance Ordinance (Cap. 2). The current resolution governing CWRP came into effect on 1 January 1998, paragraph (c)(i) of which provides that –

"the Financial Secretary may expend moneys from the Fund for –
(i) the purposes of the Government's public works programme;"

5. There is no definition in the Resolution nor in the principal Ordinance of "the Government's public works programme", nor are there any requirements regulating the programme. As such, the programme is essentially an administrative measure.

6. For the reasons given by Administration, SCL is regarded as a government works project no different from other highways projects and as such is to be funded as a project as part of PWP under Head 706 - Highways. Moneys may therefore be expended from CWRP for its expenditure.

7. The Administration has given no general objective criteria for delineating a project as a government works project that may be included in PWP. It is a matter for Members' judgment whether the Administration's decision to include SCL as part of PWP, thus authorising funding from CWRP, is sufficiently grounded

considering the explanations provided, including that SCL will be owned by the Government, that it serves to improve the mobility of the public, and that it is therefore no different from other highways projects.

Prepared by

LEE Ka-yun, Kelvin
Assistant Legal Adviser
Legislative Council Secretariat
8 May 2008



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LEGISLATIVE COUNCIL

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23 April 2008

Secretary for Financial Services and the Treasury
(Attn: Miss Sandra LAM)
Financial Services and the Treasury Bureau
4th floor, Main and East Wings
Central Government Offices
Hong Kong

Dear Sandra,

Public Works Subcommittee

Follow-up to meeting on 23 April 2008

Funding approach for 51TR - Shatin to Central Link

At the captioned meeting when members of the Public Works Subcommittee (PWSC) considered the funding proposal for the design and site investigation for the Shatin to Central Link (SCL), Hon Albert CHAN expressed grave concern about the legal basis for the Administration's decision to provide funding for the SCL under the Capital Works Reserve Fund. To facilitate PWSC members' understanding of the propriety or otherwise of the funding approach, I should be grateful if the Administration would provide the following information:

- (a) Rationale and the legal basis for the Administration to provide funding for the SCL under the Capital Works Reserve Fund;
- (b) Definition of projects which fell within the scope of Public Works Programme; for which money from the Capital Works Reserve Fund may be expended; and
- (c) Whether and in what ways the funding approach for SCL is considered consistent with the established principles and practices

for the management of public finance, illustrating with examples of previous funding proposals where possible.

I should be grateful if you would provide the Administration's written response to the above request in both Chinese and English (with softcopy) on or before 29 April 2008.

Please note that unless the Administration raises objection, the information provided to the Subcommittee will be made available to the media and public and placed in the Library of the Legislative Council. The information will also be available on the Web Site of the Council on the Internet.

With best regards,



(Ms Rosalind MA)

Clerk to Public Works Subcommittee

c.c. Ir Dr Hon Raymond HO, SBS, S.B.St.J., JP (Chairman)

THB(T)CR 10/1016/99

CB 1/F/2/6 (II)

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30 April 2008

Clerk to Public Works Subcommittee
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Rosalind MA)

Dear Rosalind,

Funding Approach for Shatin to Central Link (SCL)

I refer to your letter dated 23 April 2008 on the subject. Our views are as follows:

- (a) After the rail merger, there are two funding approaches for implementing new railway projects, such as the SCL, which are not New MTR Projects, namely the ownership approach and the concession approach.

Under the ownership approach, the MTRCL will be responsible for the funding, design, construction, operation and maintenance of the new railway project, and ultimately own the railway. The Government does not need to bear the risks associated with the construction and operation of the SCL. Funding support will be required from the Government if the project is not financially viable. In other words, the railway project to be implemented under this approach is the railway corporation's project.

Under the concession approach, the Government will provide, at its cost, the necessary railway infrastructure of the SCL. Upon completion of the railway, the MTRCL will be granted a service concession and pay the Government service concession payments

for the right to operate the railway. The ownership of the railway will rest with the Government.

In the case of the SCL, the Government has decided to implement the project by the concession approach. In other words, the SCL will be a government works project.

Item (c)(i) of Paragraph 4 of the Resolution made in respect of the Capital Works Reserve Fund (CWRF) (Cap 2A) provides that moneys may be expended from CWRF for the purposes of the Government's public works programme in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee. Funding for the SCL, which is a government works project, should therefore be provided under CWRF.

- (b) The Government's Public Works Programme covers government works projects under eight heads of expenditure under the CWRF, namely Head 702 (Port and Airport Development), Head 703 (Buildings), Head 704 (Drainage), Head 705 (Civil Engineering), Head 706 (Highways), Head 707 (New Town and Urban Area Development), Head 709 (Waterworks) and Head 711 (Housing).
- (c) The SCL project involves the design and construction of a railway line, and the associated architectural, electrical & mechanical, signalling and control works. It serves to improve the mobility of the public. Under the concession approach, the SCL project, is no different from other highway projects, which are funded by **Head 706** under the CWRF for their design and construction. In view of the above, we consider that the funding for the SCL under the CWRF is consistent with the established principles and practices. In line with the arrangements for capital works projects, we propose to upgrade part of the project (i.e. **6051TR**) to Category A to cover the design and site investigation works. We will apply for the funding for the construction of the project in due course.

Yours sincerely,

(Henry Chan)
for Secretary for Transport and Housing

c.c.

FSTB (Attn.: Ms Sandra Lam)

HyD (Attn.: Mr ML Wan)



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LEGISLATIVE COUNCIL

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2 May 2008

Secretary for Transport and Housing
(Attn: Mr Henry CHAN)
Transport and Housing Bureau
Murray Building
Garden Road
Hong Kong

Dear Mr CHAN,

Public Works Subcommittee

Follow-up to meeting on 23 April 2008

Funding approach for 51TR - Shatin to Central Link

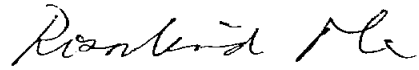
Thank you for your letter dated 30 April 2008 providing information on the funding approach for Shatin and Central Link.

In relation to item (b) of your letter, please clarify the definition of projects which fall within the scope of Public Works Programme (PWP). In this connection, please also elaborate on the factors for consideration and the internal procedures required to include a particular project as a public works project under PWP.

I should be grateful if you would provide the required information in both Chinese and English (with softcopy) **as soon as possible and by the close of play on 5 May 2008.**

Please note that unless the Administration raises objection, the information provided to the Subcommittee will be made available to the media and public and placed in the Library of the Legislative Council. The information will also be available on the Web Site of the Council on the Internet.

With best regards,

A handwritten signature in cursive script, appearing to read "Rosalind MA".

(Ms Rosalind MA)
Clerk to Public Works Subcommittee

c.c. Secretary for Financial Services and the Treasury
(Attn: Miss Sandra LAM)

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

Annex IV

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Clerk to Public Works Subcommittee
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Rosalind MA)

6 May 2008

Dear Rosalind,

Funding Approach for Shatin to Central Link (SCL)

I refer to your letter dated 2 May 2008 seeking further clarification. Having consulted the Development Bureau, and the Financial Services and the Treasury Bureau, I have the following response:

Projects under the Public Works Programme (PWP) are those funded under Head 702-Port and Airport Development, Head 703-Buildings, Head 704-Drainage, Head 705-Civil Engineering, Head 706-Highways, Head 707-New Towns and Urban Area Development, Head 709-Waterworks and Head 711-Housing. They are generally funded and undertaken by the Government. These projects include highways, road and bridges, railways and railway development, drainage works, port and airport development, waterworks, site formation, new town development, government building projects, etc.

Generally speaking, a public works project is initiated by a Policy Bureau. The project proposed attains a Category C status in the PWP upon submission of a Project Definition Statement by the client bureau and the approval of a Technical Feasibility Statement, which seeks to establish the technical feasibility on a prima facie basis, and provides the rough cost estimate

and cash flow requirements. Among these projects, those which have been earmarked funding in each year's Resource Allocation Exercise (RAE) attain Category B status in the PWP. In considering funding bids under the RAE, factors like the project's justifications and economic benefits will be taken into account. The upgrading of projects to Category B is to enable site investigations, preliminary/detailed planning and design, environmental impact assessment, traffic impacts studies, and preparation of tender documents to be carried out. Once a project is ready in all respect, the Administration will seek the approval of Public Works Subcommittee and Finance Committee to upgrade the project to Category A for commencement of construction.

Yours sincerely,



(Henry Chan)

for Secretary for Transport and Housing

c.c.

FSTB (Attn.: Ms Sandra Lam)

HyD (Attn.: Mr ML Wan)