

# 立法會

## *Legislative Council*

LC Paper No. CB(1)632/08-09

(These minutes have been  
seen by the Administration)

Ref : CB1/PL/TP/1

### **Panel on Transport**

#### **Minutes of meeting held on Friday, 28 November 2008, at 8:30 am in Conference Room A of the Legislative Council Building**

**Members present** : Hon CHEUNG Hok-ming, SBS, JP (Chairman)  
Hon Andrew CHENG Kar-foo (Deputy Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LI Fung-ying, BBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon WONG Kwok-hing, MH  
Hon LEE Wing-tat  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon LEUNG Kwok-hung  
Hon Ronny TONG Ka-wah, SC  
Hon KAM Nai-wai, MH  
Hon WONG Sing-chi  
Hon IP Wai-ming, MH  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public officers  
attending** : **Agenda item IV**

Ms Eva CHENG  
Secretary for Transport and Housing

Mr Alan K M CHU  
Deputy Secretary for Transport and Housing  
(Transport) 3

Miss LUI Ying  
Assistant Commissioner/Administration & Licensing  
Transport Department

**Agenda item V**

Mr YAU Shing-mu  
Under Secretary for Transport and Housing

Mr Philip YUNG  
Deputy Secretary for Transport and Housing  
(Transport) 1

Mr KWONG Hing-ip  
Project Manager (New Territories East)  
Civil Engineering and Development Department

Mrs Joanna KWOK TAM Yuk-ying  
Deputy Project Manager (New Territories East)  
Civil Engineering and Development Department

Mr David TO Kam-biu  
Assistant Commissioner / Planning  
Transport Department

**Agenda item VI**

Mr YAU Shing-mu  
Under Secretary for Transport and Housing

Mr Alan K M CHU  
Deputy Secretary for Transport and Housing  
(Transport) 3

Miss Rosanna LAW  
Principal Assistant Secretary for Transport and  
Housing (Transport) 2

**Clerk in attendance :** Ms Joanne MAK  
Chief Council Secretary (1)2

**Staff in attendance:** Mr Kelvin LEE  
Assistant Legal Adviser 1

Ms Sarah YUEN  
Senior Council Secretary (1)6

Miss Winnie CHENG  
Legislative Assistant (1)5

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Action

**I Confirmation of minutes and matters arising**

(LC Paper No. CB(1)251/08-09 - Minutes of the meeting held on 24 October 2008)

The minutes of the meeting held on 24 October 2008 were confirmed.

**II Information papers issued since the meeting on 14 October 2008**

(LC Paper No. CB(1)52/08-09(01) - Submission on rationalization of franchised bus routes 101 and 113

LC Paper No. CB(1)56/08-09(01) - Submission on restructuring of some cross-harbour bus routes and the Administration's written response

LC Papers Nos. CB(1)70/08-09(01) and (02) - Two submissions on restructuring of some cross-harbour bus routes

LC Paper No. CB(1)126/08-09(01) - Administration's paper on the Net Revenue Statement for 2007-2008 submitted by the Western Harbour Tunnel Company Limited

LC Paper No. CB(1)126/08-09(02) - Administration's paper on the Net Revenue Statement for 2007-2008 submitted by the Route 3 (Country Park Section) Company Limited

LC Paper No. CB(1)161/08-09(01) - Submission on headlights of vehicles

LC Paper No. CB(1)269/08-09(01) - Administration's paper on 7811TH – Ping Ha Road Improvement – remaining works (Ha Tsuen Section)

LC Papers Nos. CB(1)284/08-09(01) - (03) - Submission on restructuring of some cross-harbour bus

routes and the Administration's written response)

2. Members noted the information papers issued since last meeting.

**III Items for discussion at the next meeting scheduled for 19 December 2008**

- (LC Paper No. CB(1)253/08-09(01) - List of outstanding items for discussion  
LC Paper No. CB(1)253/08-09(02) - List of follow-up actions  
LC Paper No. CB(1)253/08-09(03) - List of items on which the Administration intends to brief the Panel through the submission of information papers)

3. Members agreed that the following items proposed by the Administration would be discussed at the next regular meeting on Friday, 19 December 2008, at 8:30 am –

- (a) Hong Kong - Zhuhai - Macao Bridge;
- (b) Proposed creation of two Chief Engineer posts in the Highways Department;
- (c) Proposed creation of one permanent Principal Transport Officer post in the Management and Paratransit Branch of Transport Department (TD); and
- (d) PWP Item 6720TH – Widening of Tolo Highway/Fanling Highway between Island House Interchange and Fanling – Stage 1.

4. In view of the numerous items required to be discussed at the next meeting, members agreed to extend the meeting by one hour.

*(Post-meeting note: at the request of the Administration and with the concurrence of the Chairman, discussion on item (c) was subsequently deferred.)*

**IV Proposed amendments to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375)**

(LC Paper No. CB(1)253/08-09(04) - Administration's paper on legislative proposals to improve the service of summons under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375)

LC Paper No. CB(1)253/08-09(05) - Press cuttings on problems in the service of summonses under the Driving-offence Points system)

5. The Secretary for Transport and Housing (STH) briefed members on the legislative proposals for amending the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (the Ordinance) and the Road Traffic (Driving Licences) Regulations (Cap. 374B) (the Regulations) to improve the mechanism for the service of summonses under the Driving-offence Points (DOP) system. Members noted that to tackle problems in the service of summonses, where some drivers were believed to try to circumvent the DOP system by avoiding receiving summonses issued under the Ordinance and any disqualification order made against them, the Administration had drawn up legislative proposals to –

- (a) amend the Ordinance to the effect that a summons was deemed to have been served if it was served on a person by registered post at the person's address shown in the record of driving licences kept by the Commissioner for Transport (the Commissioner) under the Regulations, even if it was returned undelivered to the person (the proposed "deemed served" provision); and
- (b) amend the Regulations so that the Commissioner would not issue, reissue or renew a driving licence to a person if the person failed to appear in court to answer a summons served on him under the Ordinance, including a summons that was deemed to have been served.

Measures to enhance effectiveness of existing mechanism for the service of summonses

6. While welcoming the legislative proposals, Mr WONG Kwok-hing expressed concern that there were reportedly some 1 900 repeat traffic offenders who had incurred 15 or more DOPs and held on to their driving licence through circumventing the DOP system. He enquired about the

measures to safeguard public safety before improvements could be made to the existing mechanism for the service of summonses through enactment of legislation.

7. STH and the Deputy Secretary for Transport and Housing (Transport) 3 (DS(T)3) briefed members on the following measures already in place to address the circumvention problem –

- (a) With effect from May 2007, a person was required to provide an address to the Commissioner when making an application for the issue of a driving licence. Under regulation 44B of the Regulations, the Commissioner might also, in processing the application, require the applicant to produce proof of his address; and might suspend the processing of the application until the production of such proof. TD had already stepped up publicity on these requirements;
- (b) According to regulation 18 of the Regulations, a driver was required to notify the Commissioner if there was any change to his particulars, including his address, within 72 hours of the change (the notification requirement). Failure to comply could incur a maximum fine of \$2,000. TD had geared up publicity on the notification requirement;
- (c) TD would collaborate with other departments, such as the Immigration Department and the Housing Department, where appropriate, in updating drivers' addresses; and
- (d) Where there were reasons to believe that elements of fraud or other crimes were involved, the case would be referred to the Police for investigation of suspected fraud.

8. Mr WONG Kwok-hing asked what actions would be taken to deal with these 1 900 repeat traffic offenders once they were tracked down. STH responded that many of the 1 900 drivers were being lined up to go to the court for trial. DS(T)3 said that about 690 drivers had not successfully been served with summons. Among them, some 100 had been issued more than two summonses (i.e. they had incurred 30 DOPs or more).

9. Mr WONG Kwok-hing stressed the need for effective measures to track down repeat traffic offenders who had circumvented the DOP system. STH and DS(T)3 responded that other than the abovementioned measures, special arrangement had been made for police officers to serve summonses to repeat traffic offenders while they renewed their driving licences. This arrangement had enabled the service of summonses to a few dozens of such

drivers. Further, where appropriate, some of the undelivered cases would be referred to the Police for investigation.

10. Ms LI Fung-ying asked about the percentage of cases involving drivers who had circumvented the DOP system by avoiding receiving summonses, and their types (e.g. professional drivers). DS(T)3 said that only a minority of drivers had tried to evade service of summonses issued to them. Of the 4 460 summonses issued under the Ordinance in 2007, 4 053 disqualification orders (i.e. over 91%) had been successfully issued. The success rates in the past few years had been similarly high. He said that most of the drivers who had incurred DOPs had committed minor traffic offences. About 52% of the 150 000 drivers who had incurred DOPs in the first ten months of 2008 had committed speeding offences whereas others had committed offences such as failing to comply with traffic signals, crossing double white lines, etc. There was no information on the types of these drivers.

11. Ms Miriam LAU enquired how the driving licence of a disqualified driver could be revoked if he had not brought it when he attended the relevant disqualification proceedings. The Assistant Commissioner for Transport/Administration & Licensing (AC for T/A&L) responded that under the circumstances, the court could order the driver to surrender his licence to the court within a specified time and, if the driver did not comply, legal procedures were available for dealing with breach of court orders. In response to Ms LAU, AC for T/A&L said that she did not have information on any case of failure to surrender a revoked licence.

#### The proposed "deemed served" provision

12. Mr WONG Sing-chi expressed concern that if the proposed "deemed served" provision was enacted, whether other government departments, e.g. the Inland Revenue Department, could then make reference to this new provision and regard that any letter issued by them would also be deemed to have been served to the recipient even though the latter failed to receive the letter for reasons such as home removal.

13. STH responded that the proposed legislative amendment would not have such an implication. As far as the service of summonses was concerned, unless otherwise specified, the service of a summons issued by the magistrate was governed by section 8(2) to (4) of the Magistrates Ordinance (MO) (Cap. 227) and the relevant mechanism was explained in paragraph 3 of the Administration's paper.

14. STH further said that the proposed "deemed served" provision was considered reasonable and justified for the following reasons –

- (a) The proposed "deemed served" provision would only be invoked when the summons was served for the second or more times by post (except for the initial service by ordinary post, all by registered post); and
- (b) TD's existing arrangement that when eight DOPs or more had been incurred by a driver, TD would issue an Advice of DOP to remind him of the consequences of the accumulation of more points. Hence, the driver should be aware of the traffic offences he had committed and the DOPs so incurred.

15. Mr Ronny TONG enquired whether the service of summonses by post was permitted under any other criminal procedure. DS(T)3 responded that there were similar "deemed served" arrangements under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). Mr TONG considered that the quoted example might not be appropriate for comparison. He suggested that in considering the proposed "deemed served" provision and related procedure, reference should be made to the relevant civil procedure under which the service of summonses by post was permitted though, the court had to be satisfied that every alternative means had been exhausted in serving the summons, and that a notice had to be published in three newspapers in relation to the service of the summons, before the summons was deemed served.

16. STH responded that the "deemed served" provision as currently proposed was considered appropriate because, given the notification requirement under the Regulations, it was reasonable and fair for the Commissioner to believe that the driver's address kept in TD's record was up to date and could be used for the service of summons to him (if issued) under the Ordinance. She reiterated that the proposed "deemed served" provision would only be invoked when the summons was served for the second or more times by post as explained above.

17. Mr Ronny TONG expressed concern that, if a driver's address kept in TD's record was wrong and so he had all along failed to receive fixed penalty notices and summonses, it was possible that the driver was not aware that he had incurred 15 or more DOPs. AC for T/A&L said that DOPs would only be accumulated and recorded in TD's computer system after the driver concerned had paid or ordered by the court to pay a fixed penalty or was convicted by court. As such, a driver who had accumulated 15 or more DOPs should be aware of the traffic offences he had committed and the DOPs so incurred. In the event that the driver failed to pay the fixed penalty that he was liable to pay, the Police could apply to the court for imposition of an additional penalty on him. Moreover, the Commissioner was empowered under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) to refuse issue or renewal of his driving licence due to failure to pay fixed penalties.



Effect of the legislative proposals and protection of human rights

18. Referring to paragraphs 12 and 13 of the Administration's paper, Ms LI Fung-ying asked what concrete improvements would be brought about by the proposed "deemed served" provision, if another new provision was proposed to be added to the Ordinance to provide expressly that the magistrate was not empowered to order a person to be disqualified from driving in the absence of that person.

19. STH explained that the new provision was proposed mainly based on the consideration of the need to safeguard a person's rights for a fair hearing, which was protected under Article 10 of the Hong Kong Bill of Rights. She pointed out that under the existing DOP system, it was up to the court to consider making a disqualification order and the period of disqualification. In view of the profound impact of a disqualification order particularly on the livelihood of a professional driver, the Administration considered it necessary to give a driver, even though he had incurred 15 or more DOPs, a chance to be heard in court and to participate in the disqualification proceedings.

20. Ms Miriam LAU asked whether an employer, e.g. a taxi owner, would also be held liable if he hired a driver who had incurred 15 or more DOPs but still held on to his driving licence, through circumventing the DOP system or because of failure of the Police to track him down and arrest him. Ms LAU pointed out that in such situations, the driver's driving licence actually should have been disqualified had the Police been able to execute the relevant arrest warrant. STH responded that under the law, only the court could disqualify a driver from holding a driving licence and, in fact, 1 000-odd drivers who had incurred 15 or more DOPs were waiting to be heard. Before these drivers were disqualified by the court from holding their driving licence, they could continue to drive on the road. STH said that the Administration had explored the option of temporary suspension of a driving licence once the driver concerned had incurred 15 or more DOPs, but had dropped the idea mainly due to consideration of the need to safeguard a person's rights for a fair hearing.

21. While stating the support of Members belonging to the Democratic Party for the proposed legislative proposals, the Deputy Chairman considered it necessary to take more stringent measures, e.g. empowering the Commissioner to suspend the driving licence of a driver who had accumulated 30 or more DOPs and failed to appear in court to answer a summons served on him. Mr WONG Kwok-hing also expressed concern about the risk posed by the some 100 drivers who had accumulated 30 or more DOPs and failed to show up in court to answer summonses.

22. In response, STH reiterated the need to strike a balance between ensuring road safety and safeguarding a person's rights for a fair hearing. She pointed out that scheduling of disqualification proceedings took about four to five weeks upon service of summonses. She said that after internal deliberation and consulting the Department of Justice, the Administration did not intend to pursue the option of automatically suspending a driver's driving licence through administrative means.

23. The Deputy Chairman remained dissatisfied with the Administration's reply. He reiterated that repeat traffic offenders who had failed to comply with the requirement of furnishing a correct address to TD and had accumulated 30 or more DOPs should deserve more stringent actions to be taken against them in view of the danger they posed to the public. STH said that the Administration would further consider members' views.

**V PWP Item 7823TH – Tseung Kwan O-Lam Tin Tunnel and PWP Item 7822TH – Cross Bay Link, Tseung Kwan O**

(LC Paper No. CB(1)1999/07-08(01) - Administration's paper on 823TH – Tseung Kwan O-Lam Tin Tunnel and 822TH – Cross Bay Link, Tseung Kwan O

LC Paper No. CB(1)281/08-09(01) - Administration's supplementary information paper on 823TH – Tseung Kwan O-Lam Tin Tunnel and 822TH – Cross Bay Link, Tseung Kwan O

LC Paper No. CB(1)254/08-09 - Paper on 823TH – Tseung Kwan O-Lam Tin Tunnel and 822TH – Cross Bay Link, Tseung Kwan O prepared by the Legislative Council Secretariat (background brief))

24. The Under Secretary for Transport and Housing (USTH) briefed the Panel on the Administration's proposal of upgrading part of 823TH and 822TH to Category A to engage consultants to undertake the investigation and preliminary design (I&PD) and the associated site investigation works for the Tseung Kwan O – Lam Tin Tunnel (TKO-LT Tunnel) and Cross Bay Link (collectively referred to as the Projects hereafter). The Administration planned to start the I&PD studies in March 2009 for completion in May 2011.

25. In response to Mr WONG Kwok-hing's enquiry about the relevant District Councils' (DCs') views on the Projects, the Project Manager (New Territories East), Civil Engineering and Development Department (PM(NTE)/CEDD) said that as detailed in its paper, the Administration had carried out consultations with Sai Kung DC (SKDC), Kwun Tong DC (KTDC) and villagers' organizations. He informed members that refinements had been made to the Projects having regard to the concerns raised by DCs and affected residents. When consulted on the latest design of the Projects, the two DCs welcomed the proposed refinements and expressed support for the early implementation of the Projects.

26. Ms LI Fung-ying expressed support for the early implementation of the Projects to meet anticipated traffic needs and to create jobs in the construction industry. Referring to paragraphs 17 to 19 of the Administration's paper (LC Paper No. CB(1)1999/07-08(01)), Ms LI asked about the time frame for completing studies on the feasibility of the tunnel option for the road section at Cha Kwo Ling Village (CKLV). She suggested that in order to expedite the implementation work, the Administration should also study the feasibility of other options, if any, in parallel, so that information on all feasible options could be provided to DCs and the Finance Committee for consideration when they were consulted on the TKO-LT Tunnel.

27. PM(NTE)/CEDD responded that the Administration aimed to actively pursue the tunnel option as this option could avoid the clearance of CKLV and preserve the village community. However, it was necessary for the Administration to investigate the geological conditions in the subsequent investigation stage in order to confirm the feasibility of the tunnel option. PM(NTE)/CEDD explained that the Administration would also need to carry out environmental impact assessments in association with the I&PD studies, as well as site investigation works to provide information for related design works. After the Administration had come up with preliminary views on the feasibility and alignment of the tunnel option, it would conduct further consultation with KTDC and CKLV presumably in early 2010. PM(NTE)/CEDD pointed out that the road section at CKLV was only about 500 metres long and the necessary investigation on the feasibility of the tunnel option would be conducted in a timely manner for the implementation of the TKO-LT Tunnel.

28. Mr Andrew CHENG said that the Projects had long been awaited by local residents as there was a pressing need to provide an alternative external road connection to the existing TKO Tunnel which was often saturated during peak hours. Considering that failures to properly address residents' concerns could lead to significant project delays, Mr CHENG suggested that the Administration should adopt the tunnel option to address villagers' concerns about preserving their village community notwithstanding the likely increase in project costs incurred by this option.

29. PM(NTE)/CEDD reiterated that it was the Administration's clear target to actively pursue the tunnel option, and the Administration was ready to address further concerns raised by DCs or villagers concerned. However, the implementation details could only be worked out after ascertaining the geological conditions in the investigation stage.

30. Mr Andrew CHENG further asked whether the costs of the Projects would go down with the economic downturn. He requested the Administration to provide updated cost figures when they submitted the current proposal to the Public Works Subcommittee (PWSC) for consideration in December 2008.

31. PM(NTE)/CEDD explained that the current proposal only aimed at seeking funding support for the I&PD studies and associated site investigations. He said that the estimated costs of the Projects set out in paragraph 7 of the Administration's paper and the possible extra HK\$ 2 billion for the tunnel option were for reference only. Updated project costs would be provided in the funding application for the construction works of the Projects to be submitted in due course.

32. In response to Mr Ronny TONG's question, USTH confirmed that the Government would not adopt the Build-Operate-Transfer mode (BOT) to deliver the TKO-LT Tunnel but would finance the project.

33. Summing up, the Chairman said that the Panel supported submission of the current proposal to PWSC for further consideration.

## **VI Measures to rationalize utilization of Build-Operate-Transfer tunnels**

- (LC Paper No. CB(1)253/08-09(06) - Administration's paper on measures to rationalize utilization of Build-Operate-Transfer (BOT) tunnels
- LC Paper No. CB(1)255/08-09 - Background brief prepared by the Legislative Council Secretariat)

34. Under Secretary for Transport and Housing (USTH) briefed members on the Administration's work objective to improve the utilization of the BOT tunnels as detailed in its paper.

35. Mr WONG Kwok-hing expressed regret at the lack of progress made by the Administration in improving the utilization of the BOT tunnels. In

response, USTH said that the Administration maintained close dialogue with franchisees of the BOT tunnels in this regard. However, the Administration could not disclose details of its negotiations with relevant tunnel companies, as sensitive commercial information was involved. He explained that given the difference between the Government and the relevant franchisees in the projection of future traffic flow and toll revenue, it was very difficult for a consensus to be reached. So far, no significant progress had been made in the discussion. Nevertheless, the Administration would continue to discuss actively with the franchisees of the BOT tunnels with a view to reaching an agreement.

36. Mr Ronny TONG said that Members belonging to the Civic Party opposed the franchise extension option, and suggested that the Government should pursue options such as buying-out, and common ownership. USTH responded that the Government maintained an open mind on all options. In striving to achieve reasonable traffic distribution among the three road harbour crossings (RHCs), the Administration had requested the relevant Consultant to examine all feasible options so as to form a basis for any possible future negotiations with the franchisees of the Eastern Harbour Crossing (EHC) and the Western Harbour Tunnel (WHC). He assured members that the Administration had been in dialogues with the relevant tunnel companies on all feasible options.

37. Mr Ronny TONG enquired about the utilization rate of Route 8, which seemed to be also under-utilized as a result of the low utilization of WHC. The Principal Assistant Secretary for Transport and Housing (Transport) 2 advised that the average daily traffic of Route 8 was some 20 000, against its design daily capacity of 120 000. She said that the seemingly low usage was, however, not uncommon with new roads and tunnels because drivers needed time to adapt to new roads. Moreover, Route 8 was designed to be a trunk road linking Lantau Island and Sha Tin, and the road section between Cheung Sha Wan and Sha Tin commissioned in March 2008 was only a part of it. Route 8 would not be fully functional until its remaining section between Tsing Yi and Cheung Sha Wan (including Nam Wan Tunnel and a long span cable stayed bridge, i.e. Stonecutters Bridge) was completed and fully open to traffic.

38. Mr Ronny TONG opined that the adoption of the BOT mode had prevented the Government from optimizing the utilization of the tunnels concerned. Mr KAM Nai-wai highlighted the traffic congestion in Central and Wanchai which had arisen from the uneven distribution of traffic among the three RHCs. He considered that the failure to subject the toll adjustments of WHC and EHC to the approval of the Legislative Council (LegCo) was the main cause of uneven traffic distribution among the three RHCs. He called upon the Administration to refrain from adopting the BOT mode to deliver roads and tunnels in future.

39. Ir Dr Raymond HO suggested that the Administration should study in detail the relevant franchise agreements governing the toll adjustment mechanisms of the BOT tunnels, which to his understanding did not allow the franchisees concerned to arbitrarily increase toll. Pointing out that the BOT mode had been implemented successfully overseas, Ir Dr HO considered that the Administration should study overseas experience and look into why the adoption of the BOT mode in Hong Kong had not been successful.

40. Referring to Annex B to the Administration's paper, Mr WONG Kwok-hing enquired about details of the consultancy study (the Consultancy Study) commissioned to identify long-term measures conducive to the rationalisation of traffic flow among the three RHCs. USTH responded that, while the Consultancy Study would span one year, it would proceed in parallel with the Administration's negotiations with relevant tunnel operators on various possible options to rationalize traffic distribution among the three RHCs. He further pointed out that the scope of the Consultancy Study included traffic forecasts and analyses under different toll levels and toll adjustment mechanisms. The study would generate useful information and data to form a solid basis for negotiations with the relevant franchisees.

41. Ir Dr Raymond HO queried that as the Administration was still in the course of examining the valuation of RHCs, how the Administration was now able to engage in negotiations with the franchisees concerned over various options. He considered that the Administration might have engaged in preliminary discussion only with the franchisees concerned.

42. Members in general queried why the Consultancy Study had to take one year to complete. Mr LEE Wing-tat opined that it should take at most three months to complete because the Administration was left with only a few feasible options to examine. Ir Dr Raymond HO considered that four to six months should suffice for the Consultant to identify the optimum level of traffic for the three RHCs. Mr KAM Nai-wai queried the inclusion of the toll adjustment mechanisms of the BOT tunnels within the scope of the Consultancy Study since the Government had no say on this matter. He considered that the Consultancy Study should only focus on the valuation of the tunnels to facilitate negotiations on the buying-out option.

43. USTH and DS(T)3 stressed the need to conduct the Consultancy Study step by step because, to work out the remaining values and the valuations of the three RHCs, it would be necessary to first identify the optimum level of traffic for the three RHCs, taking into account their geographic locations and capacity of the connecting road networks. Mr LEE Wing-tat pointed out that the connecting roads, such as the Central-Wanchai Bypass, had long been planned and its capacity had been designed. So, it should not be dealt with by the Consultancy Study.

44. Mr KAM Nai-wai asked whether the Consultancy Study would examine the feasibility of establishing a Tunnels and Bridges Authority, as suggested by the Democratic Party (DP), to own and manage all tunnels and bridges, including the BOT tunnels after being bought back.

45. USTH responded that the proposal to establish a Tunnels and Bridges Authority could not be pursued without valuation of RHCs, which could only be determined on the basis of a set of assumed and estimated traffic and toll variables. Moreover, such information would come in handy in further exploring whether the operation of the proposed authority should be financed by bonds or shares issued by the authority, or by the Government. In reply to Mr KAM, USTH said that the cost of the Consultancy Study was some \$7 million. It would also advise on the preferred management and organizational structure of any new entity that might need to be set up, and the establishment of the proposed authority might be one of the options for consideration.

46. Mr Albert CHAN said that LegCo had been concerned about the uneven traffic distribution among the RHCs for years and it was unacceptable that the Administration still considered it necessary to conduct the Consultancy Study, instead of seizing the opportunity of CITIC Pacific (CITIC)'s lately financial troubles to buy back CITIC's shares in WHC and in EHC. Mr CHAN expressed objection to the conduct of the Consultancy Study and queried that the cost of the Consultancy Study had been deliberately set at \$7 million to obviate the need to seek the funding approval by the Finance Committee. He requested to put on record his regret over the Administration's failure to work in the best interest of the public and resorting to underhand means to bypass LegCo.

47. The Deputy Chairman expressed strong dissatisfaction with the Administration's lack of regard to his amendment urging the Administration not to conduct the Consultancy Study, which was passed by LegCo during the relevant motion debate on 19 November 2007. He considered that it was a waste of public money and the Administration's tactics of procrastination in spending some \$7 million to conduct the Consultancy Study.

48. Referring to Annex B to the Administration's paper, the Deputy Chairman queried that the objective of the Study, i.e. to recommend options which "should have the least financial burden to public expenditure", was problematic as such options would, from the profits' point of view, hardly attract tunnel operators. He also queried why the scope of the Consultancy Study was to identify a toll regime which could "ensure that the financial and traffic benefits to the public are maximized while also making commercial sense to the franchisees of EHC and WHC". He said that the only conclusion that could be drawn was that the Administration intended to increase the tolls of the Cross Harbour Tunnel. Ms Miriam LAU, however, considered that the

objective and scope of the Consultancy Study referred to by the Deputy Chairman were reasonable, as the Administration was obliged to achieve prudent use of public finances, and, on the other hand, to give the tunnel operators the opportunity to make a reasonable return on their investment.

49. The Deputy Chairman said that the Administration could not evade admitting the mistake it had committed in over-estimating the traffic flow of WHC and in allowing the franchisee to increase the toll if the expected returns (calculated based on the projected traffic flow) did not materialize. Ir Dr Raymond HO said that the Administration should not have adopted the BOT mode for the delivery of WHC. It should, instead, have shouldered some of the construction costs by entering into joint ventures with the company concerned. He said that this could have avoided a high toll level of WHC. USTH explained that the toll adjustment mechanisms of BOT tunnels had been made in the past under different historical contexts, and economic conditions in terms of interest rates and investment opportunities. The changes in economic conditions of Hong Kong before and after the Reunification as well as the relocation of the airport had all contributed to the uneven traffic distribution. Hence, it might not be appropriate to comment on the decisions made in the past with hindsight.

50. Mr IP Wai-ming also queried the need to conduct the Consultancy Study as the monitoring of the traffic flow of tunnels and their connecting roads should be the daily work of TD. Moreover, the relevant franchisees of WHC and EHC might not accept the findings of the Consultancy Study. He considered that the Administration should, rather, discuss with the franchisees on a trial scheme on toll reductions to test out the actual impact on the traffic distribution among the three RHCs.

51. USTH explained that the Consultancy Study was aimed at identifying reasonable traffic distribution models and the preferred toll regimes, which had to be worked out based on detailed study and comparative analysis. He said that as pointed out by some academics, toll reduction alone might only stimulate suppressed demand and lead to increased traffic flow. He said that it would require a detailed study in order to come up with really effective long-term measures to resolve the uneven traffic distribution.

52. Ms Miriam LAU expressed doubt about whether the Consultancy Study could really help the Administration reach a consensus with the franchisees concerned over the projection of traffic flows and toll revenues. She considered that a toll reduction pilot scheme should, instead, be launched to provide tested and reliable data on the actual impact on traffic flow for use by the Administration during negotiations with the franchisees on options to improve the utilization of the BOT tunnels. She also expressed grave concern about the accuracy of the traffic forecasts to be produced by the Consultancy Study, as it might be as erroneous as the past traffic forecasts conducted by



those consultants commissioned by the tunnel companies and the Administration respectively.

53. USTH responded that, while the Administration would not rule out the possibility of conducting the trial scheme as suggested by Ms Miriam LAU and Mr IP Wai-ming, the Consultancy Study should still be conducted in order to provide necessary information and data to form a basis for negotiations with the franchisees concerned. He added that consideration might be given to collaborating with the tunnel companies concerned in launching the proposed trial scheme in the course of conducting the Consultancy Study.

## **VII Any other business**

54. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1  
Legislative Council Secretariat  
22 January 2009