

立法會
Legislative Council

LC Paper No. CB(1)1841/12-13
(These minutes have been seen
by the Administration)

Ref: CB1/SS/10/12

**Subcommittee on Tate's Cairn Tunnel Ordinance
(Amendment of Schedule) Notice 2013**

**Minutes of meeting held on
Monday, 3 June 2013, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon TANG Ka-piu

Public officers attending : **Agenda item III**

Mr Patrick CHAN Chi-king, JP
Deputy Secretary for Transport and Housing
(Transport)3

Ms Cordelia LAM Wai-ki
Principal Assistant Secretary for Transport and
Housing (Transport)2

Mr Josiah TAU Chung-hong
Principal Assistant Secretary for Transport and
Housing (Transport) Financial Review

Mr Albert SU Yau-on
Assistant Commissioner/Management and
Paratransit
Transport Department

Mr Manuel NG
Government Counsel
Department of Justice

**Attendance by
invitation** : **Agenda item III**

Tate's Cairn Tunnel Company Limited

Mr WONG Tze-kin
General Manager

Ms Rowena LEE
Head of Finance and Administration Department

Ms Donna YIP
Corporate Affairs Manager

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Katherine CHAN
Council Secretary (1)2

Ms Emily LIU
Legislative Assistant (1)2

Action

I Election of Chairman

Mr James TIEN, the member who had the highest precedence among those present at the meeting, presided at the election of Chairman of the Subcommittee. He invited nominations for the chairmanship of the

Action

Subcommittee.

2. Mr TANG Ka-piu nominated Mr James TIEN, and the nomination was seconded by Mr WU Chi-wai. Mr James TIEN accepted the nomination.

3. There being no other nominations, Mr James TIEN was elected Chairman of the Subcommittee.

II Consideration of the late application for membership by Hon Frankie YICK Chi-ming

(LC Paper No. CB(1)1195/12-13(01) - Letter dated 31 May 2013 from Hon Frankie YICK Chi-ming)

4. The Chairman referred to Mr Frankie YICK's letter dated 31 May 2013 and invited members' views on the late application for membership by Mr YICK. Members agreed to accept Mr YICK's late application for membership.

III Meeting with the Administration

(L.N. 70 of 2013

- Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013

File Ref: THB(T) CR 1/4651/94

- The Legislative Council Brief issued by the Transport and Housing Bureau

LC Paper No. LS 54/12-13

- Legal Service Division Report

LC Paper No. CB(1)1195/12-13(02)

- Marked-up copy of the Schedule to Tate's Cairn Tunnel Ordinance (Cap. 393) prepared by the Legal Service Division

LC Paper No. CB(1)1195/12-13(03)

- Paper on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013 prepared by the Legislative Council Secretariat (background brief))

5. At the invitation of the Chairman, the Administration briefed members on the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013. The Subcommittee deliberated (index of proceedings attached at **Annex**).

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6. The Subcommittee noted the content of the Notice and completed its deliberations on the Notice and agreed to report its deliberations to the House Committee on 28 June 2013. The Chairman advised that since the scrutiny period of the Notice would expire on 19 June 2013 if not extended, he would move a motion at the Council meeting on 19 June 2013 to extend the scrutiny period to 10 July 2013. The Clerk was requested to prepare a report to the House Committee.

IV Any other business

7. There being no other business, the meeting ended at 11:45 am.

Council Business Division 1
Legislative Council Secretariat
27 September 2013

**Proceedings of the meeting of
Subcommittee on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013
on Monday, 3 June 2013, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000930 – 000948	Mr James TIEN Mr TANG Ka-piu Mr WU Chi-wai	- Election of Chairman. - Mr James TIEN was elected Chairman of the Subcommittee.	
Agenda item II – Consideration of the late application for membership by Hon Frankie YICK Chi-ming			
000949 – 001008	Chairman	- The Chairman referred to Mr Frankie YICK's letter dated 31 May 2013 and invited members' views on the late application for membership by Mr YICK. Members agreed to accept Mr YICK's late application for membership.	
Agenda item III – Meeting with the Administration			
001009 – 001032	Chairman	- The Chairman reminded members to disclose any pecuniary interest, whether direct or indirect, relating to the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013 ("Notice"). No such interest was reported by members.	
001033 – 001943	Chairman Administration	- Briefing by the Administration on the Notice.	
001944 – 002419	Chairman Mr TANG Ka-piu Administration	- Mr TANG Ka-piu made the following enquiries: (a) Whether the Administration would consider rejecting the Tate's Cairn Tunnel Company Limited's ("TCTC") toll increase application and resorting to arbitration. The recent experience from the Eastern Harbour Crossing's ("EHC") case indicated that the Arbitrator might rule in favour of the Administration; (b) The sixth TCTC's application for toll increase, which was made in July 2009, came into effect in December 2010. TCTC applied for the current toll increase in November 2012 and the Administration proposed the effective date to be 1 August 2013. Mr TANG requested the Administration to explain the shortened process time for the recent application, i.e. 10 months, compared to 18 months for	

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		<p>processing the sixth application; and</p> <p>(c) Having observed that the traffic throughput of the Tate's Cairn Tunnel ("TCT") had decreased as compared with the previous peaks, Mr TANG enquired when the Administration anticipated that TCTC would apply for a toll increase again if the current toll application was approved.</p> <p>- The Administration responded that:</p> <p>(a) The Administration cited the latest EHC toll increase arbitration to illustrate that the Administration was prepared to resort to arbitration to protect the interests of the general public in case of unjustified and excessive toll increase application. The decision of the Chief Executive-in-Council to approve TCTC's current toll increase application was made after all the relevant factors had been carefully considered and it was concluded that the toll increase application was not excessive and was justified;</p> <p>(b) The Administration clarified that TCTC first submitted their toll increase application in March 2012. The company subsequently submitted a revised toll increase application, i.e. the application in question, in November 2012 after being asked by the Administration to reduce the magnitude of the toll increases. The Administration added that the toll increase application was processed in accordance with the established procedures; and</p> <p>(c) It was estimated that with TCTC's proposed toll increases, about 500 vehicles would be diverted to the Lion Rock Tunnel ("LRT"), and fewer than 100 vehicles would be diverted to Tai Po Road and Route 8 per day. Since the opening of Route 8, the traffic conditions at TCT and LRT had improved. TCT currently had an average daily throughput of 55,800 vehicles, against its design capacity of 78,500 vehicles. The Administration therefore assessed that the traffic impact of the proposed toll increases</p>	

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		<p>on the road system linking Sha Tin and Kowloon would unlikely be significant.</p>	
002420 – 003053	Chairman Administration	<p>- In response to the Chairman's enquiry about arbitration, the Administration briefed members on the previous three EHC toll increase arbitration cases:</p> <p>(a) The Arbitrator in 1997 ruled that a reasonable but not excessive remuneration to the New Hong Kong Tunnel Company Limited ("NHKTC") fell within a range of 15% to 17% internal rate of return on equity after tax ("IRR"). To achieve this, a \$5 toll increase for private cars and taxis, and corresponding increases for other vehicles were necessary to prevent NHKTC's remuneration from falling below an IRR of about 15% (nominal);</p> <p>(b) In 2005, the Arbitrators ruled that NHKTC should be awarded a toll increase. According to the Arbitrators, the changes in Hong Kong's economic conditions since the tolls were last determined in 1997 were not material and sufficient to affect the overall level of reasonable but not excessive remuneration determined over the life of the tunnel franchise. In this connection, the level of reasonable but not excessive remuneration to NHKTC should continue to be a nominal IRR of between 15% and 17% over the life of the tunnel franchise. The Arbitrators determined that the tolls for private cars and taxis should be increased by \$10 from \$15 to \$25 with corresponding increases for other vehicles, which was higher than the initial toll application submitted to the Administration (i.e. application for a \$5 increase in tolls (from \$15 to \$20) for private cars, and corresponding increases for other vehicles); and</p> <p>(c) In the arbitration in 2012, the Arbitrators determined that NHKTC's application for an upward variation in the tolls failed and was dismissed. Although at the time of the arbitration in 1997, it might have been appropriate to fix the band of</p>	

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		<p>reasonableness of the IRR by reference to the expectations of the relevant parties, in particular NHKTC and its investors, at the time of tender, and to take account of other comparable projects being entered into at around the same time, the band of reasonableness of about 15% to 17% nominal IRR as determined in the 1997 Arbitration and adopted by the Arbitrators in the 2005 Arbitration was not immutable. As the years had passed, however, what might be regarded as a reasonable rate of return over the lifetime of the franchise might change and it was appropriate for such changes to be taken into account. The Arbitrators were also of the view that there was no good reason to exclude consideration of the real as opposed to the nominal IRR which would have been enjoyed by NHKTC over the period of the franchise. Furthermore, it was appropriate to take account of the financial and economic changes such as that in the inflation rates prevailing in Hong Kong over the franchise period. The Arbitrators were of the view that NHKTC would have enjoyed a real IRR substantially in excess of the forecast, and that no further increase in tolls was necessary or appropriate.</p> <p>- The Administration said that they had given careful consideration to and assessed the possibility that TCTC might resort to arbitration, with reference to EHC's arbitration cases.</p>	
003054 – 003631	Chairman Mr Frankie YICK Administration TCTC	<p>- Mr Frankie YICK expressed the following views and concerns:</p> <p>(a) TCTC projected that it would be able to achieve a nominal IRR of 6.76% (or real IRR of 3.38% after discounting the inflation factor) over the 30-year franchise period should the revised toll increase application be approved. Mr YICK opined that TCTC's return rates were not very attractive to investors, given such a low return for long-term investment in Build-Operate-Transfer ("BOT") tunnels and similar infrastructure projects;</p>	

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		<p>(b) TCTC should consider not to propose any further toll increase prior to the expiry of the franchise in 2018 due to the mild positive effect on the overall IRR so as to win the favour and support of the public and motorists; and</p> <p>(c) Mr YICK related the transport sector's concerns that the Administration would now take more than a year to process applications for toll / fare increase, which was much longer than in the past. He said this practice was unfair to the operators because the cost of operation had all gone up during the process and the toll increase would lag behind considerably.</p> <p>- In response, TCTC explained that having considered public acceptability at the request of the Administration, TCTC had reduced the magnitude of the toll increases which ranged from \$2 to \$6 in the original application submitted in March 2012 to \$2 for all types of vehicles and \$1 for motorcycles. Besides, one of the TCTC's major considerations was to maintain reasonable remuneration to the company. Mr YICK's suggestion of not proposing another toll increase in the remaining period of franchise would be taken into consideration for future planning and review.</p> <p>- The Administration supplemented that the processing time for each toll increase application varied. For instance, it took over two years for EHC's arbitration to come to a close. The Administration would handle each case in a fair and efficient manner.</p>	
003632 – 004626	Chairman Mr WU Chi-wai Administration	<p>- While noting that there was little room for the Legislative Council ("LegCo") to amend the Notice, Mr WU Chi-wai expressed the following views and concerns:</p> <p>(a) Mr WU suggested that the Transport Department should present a full picture of TCTC's toll increase application to the public, including TCTC's nominal IRR and real IRR;</p>	

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		<p>(b) As public interest was involved, Mr WU had no intention to urge the Administration to speed up the processing time of toll increase applications submitted by public transport operators;</p> <p>(c) Mr WU enquired about the target IRR of the 4 BOT tunnels in Hong Kong; and</p> <p>(d) Apart from inflation, Mr WU enquired whether other parameters, such as time and real IRR, should be used to explain to the public about the reasonableness of the magnitude of TCTC's toll increase. Using inflation as the only parameter might trigger public criticism. The public might be more receptive to the toll increase if the Administration was able to provide more information like real IRR.</p> <p>- The Administration responded that TCTC's target nominal IRR was the lowest among the 4 BOT tunnels in Hong Kong. Having regard to the scale of the project in the context of a long-term infrastructure investment, the Administration considered that a nominal IRR of 6.76% (or real IRR of 3.38% after discounting the inflation factor) under TCTC's current toll increase application would not be unreasonable or excessive.</p>	
004627 – 004712	Chairman Administration	- Clause-by-clause examination of the Notice.	
004713 – 004756	Chairman Mr WU Chi-wai Administration	- In response to Mr WU Chi-wai's enquiry, the Administration informed that in accordance with the Department of Justice's advice, there was little room for LegCo to repeal or to amend the Notice (e.g. the effective date and the proposed toll levels stipulated therein were not subject to amendment by LegCo), other than making minor technical amendments.	
004757 – 004849	Chairman Administration	- Clause-by-clause examination of the Notice.	
004850 – 005431	Chairman Mr WU Chi-wai Administration TCTC	- Mr WU Chi-wai made the following suggestions:	

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		<p>(a) TCTC to consider implementing concessionary measures to motorists (e.g. toll reductions for taxi-drivers during midnights) after the toll increase; and</p> <p>(b) The tunnel companies to consider launching early bird discount.</p> <p>- TCTC made the following response:</p> <p>(a) TCTC explained that they had already considered public affordability by lowering the magnitude of toll increases ranging from \$2 to \$6 in the original application submitted in March 2012 to \$2 for all types of vehicles and \$1 for motorcycles in the current application. TCTC was therefore unable to implement any concessionary measures at the present moment;</p> <p>(b) According to TCTC's survey of customers' opinions in 2012, 98% of the customers surveyed considered TCTC's service satisfactory. TCTC hoped that members and the public would appreciate TCTC's service performance; and</p> <p>(c) TCTC explained that the approach of early bird discount might not be effective for tunnel operation but they would take note of Mr WU's opinions for future planning. Furthermore, TCTC mentioned that they had carried out various measures to improve the traffic at TCT. For instance, if accidents happened, TCTC was able to communicate well with the Police to make necessary arrangements to reduce the traffic queues.</p> <p>- The Administration supplemented that they would consider Mr WU's suggestion for future planning.</p>	
005432 – 005710	Chairman	<p>- The Chairman concluded that there should be a balance struck between respecting the spirit of contract to allow the franchise company to have reasonable return according to the relevant governing ordinance and safeguarding public interest by ensuring that the toll level should be affordable and acceptable to the public.</p>	

Time marker	Speaker	Subject(s)	Action required
		- The Chairman to move a motion at the Council meeting of 19 June 2013 to extend the scrutiny period of the Notice to 10 July 2013.	The Clerk to prepare a report for submission to the House Committee.

Council Business Division 1
Legislative Council Secretariat
27 September 2013