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本局檔號 OUR REF.: THB(T)CR 1/4651/00
來函檔號 YOUR REF.: LS/B/11/15-16

(By Fax : 2877 5029)

15 February 2016

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Legislative Council Complex
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Hong Kong

Dear Miss LEE,

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Thank you for your letter dated 15 January 2016, enquiring about the legal implications in the event that the Eastern Harbour Crossing Legislation (Amendment) Bill 2015 (“the Bill”) could not be passed before the prorogation of the Fifth Legislative Council (“LegCo”). Our response is set out at the **Annex**.

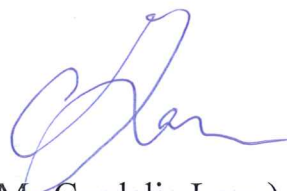
In the unfortunate event that the Bill were not passed before the prorogation of the Fifth LegCo, it could not commence before the expiry of the Build-Operate-Transfer (“BOT”) franchise of the Eastern Harbour Crossing (“EHC”) on 7 August 2016. As detailed in the Annex, this will lead to dire consequences, adversely affecting the livelihood of Hong Kong people.

As LegCo Members are aware, the traffic at EHC and its connecting roads during peak hours is already very congested. Indeed, the traffic in the Kwun Tong area is so heavy that a minor traffic incident could trigger serious and prolonged traffic congestion as in the case of the recent traffic gridlock happened on 22 January 2016. If the Bill were not passed, in the absence of the necessary legal backing, the smooth operation of EHC as a strategic road harbour crossing will be in jeopardy. The traffic conditions at EHC and the nearby road networks will be substantially aggravated, creating traffic congestion that will have serious impact on the 680 000 living population and 540 000 working population in the Eastern District, Kwun Tong and Tseung Kwan O in particular, and potentially in other parts of Hong Kong as well given the inter-connectedness of the road network.

Further, it will also result in a loss of at least 100 jobs for the existing frontline EHC staff expected to be retained in employment by the MOM contractor since they can no longer carry out toll collection and traffic enforcement duties. These adverse consequences will persist not for days or weeks, but for months given the time required to complete the necessary legislative procedures in the new LegCo term, hence causing protracted disruption to Hong Kong as a whole.

The Bill aims to facilitate a seamless takeover of EHC by the Government on the expiry of the BOT franchise. It is technical in nature and does not involve any policy change. To allow adequate time for Members to scrutinise the Bill, we introduced the Bill into LegCo on 16 December 2015. We appeal to Members to timely process the Bill, before the prorogation of the Council, for the benefit of the public and the economy of Hong Kong.

Yours sincerely,



(Ms Cordelia Lam)

for Secretary for Transport and Housing

c.c. Department of Justice (Attn: Miss Emma WONG)
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This note sets out the implications in the event that the Eastern Harbour Crossing Legislation (Amendment) Bill 2015 (“the Bill”) could not be passed before the prorogation of the Fifth Legislative Council (“LegCo”).

Purpose of the Bill

2. The 30-year Build-Operate-Transfer (“BOT”) franchise of the Eastern Harbour Crossing (“EHC”) will **expire on 7 August 2016**. Currently, the Eastern Harbour Crossing Ordinance (Cap. 215) (“EHC Ordinance”) and its subsidiary legislation provide the legal backing for the operation and management of EHC as a BOT tunnel. Section 70(4) of the EHC Ordinance provides that EHC, which is currently an asset of the franchisee, will vest in the Government on the franchise expiry.

3. The purpose of the Bill is to provide the necessary legal backing for EHC to operate and be managed as a Government tunnel on the expiry of the BOT franchise. The Bill seeks to subsume EHC under the legal framework of the Road Tunnels (Government) Ordinance (Cap. 368) (“the Ordinance”) and the Road Tunnels (Government) Regulations (“the Regulations”). The Government’s stated policy intention is that the takeover of EHC by the Government will bring no material change to the actual tunnel operation from a tunnel user’s point of view. In particular, the prevailing toll levels (at **Appendix I**) are not intended to be affected and will be incorporated under the Regulations.

4. In addition, the Bill seeks to repeal the EHC Ordinance and its subsidiary legislation on the expiry of the BOT franchise; provide for the necessary savings and transitional arrangements; and make consequential amendments to repeal the references to the EHC Ordinance or the franchisee in other legislation.

5. The purposes of the Bill as set out in paragraphs 3 and 4 above have been unequivocally reflected in its long title as follows –

“A Bill to amend the Road Tunnels (Government) Ordinance and its subsidiary legislation to extend their application to the Eastern

Harbour Crossing and incorporate the existing tolls chargeable under the Eastern Harbour Crossing Ordinance; to repeal the Eastern Harbour Crossing Ordinance and its subsidiary legislation; to provide for transitional matters; and to make related and other minor amendments.”

Consequences in the event that the Bill were not passed

6. If the Bill were not passed before the prorogation of the Fifth LegCo, the Bill could not commence before the expiry of the BOT franchise on 7 August 2016. This will cause the following grave consequences –

- (a) seriously aggravating the traffic conditions at EHC and the road networks nearby, affecting the living and working population in the vicinity, including but not limited to the Eastern District, Kwun Tong and Tseung Kwan O;
- (b) jeopardising the smooth operation of EHC as a strategic road harbour crossing;
- (c) adversely affecting the employment of the frontline tunnel staff at EHC; and
- (d) causing protracted disruption to Hong Kong as a whole.

(a) Adverse impact on traffic

7. Opened to traffic in 1989, EHC links up Quarry Bay on Hong Kong Island and Cha Kwo Ling in the Eastern Kowloon. The 2.2-kilometre (“km”) long EHC is the longest among the three road harbour crossings. The traffic flow at EHC has been on the rise. It has recorded an annual growth of 2% over the past 5 years and is standing at **75 000 vehicles per day** as at end-December 2015. We estimate that **245 000 persons per day**, including motorists and passengers on public transport, are now using EHC. With the growing traffic at EHC in recent years, traffic congestion is already a common scene at the

connecting roads of EHC during peak hours. In East Kowloon, as shown in **Appendix IIa**, long traffic queues are formed in Kwun Tong Bypass, Kwun Tong Road and Lei Yue Mun Road during the morning peak on weekdays at present. These traffic queues sometimes tail back to the adjacent local roads causing traffic congestion in Kwun Tong Business Area and Kwun Tong Town Centre. The existing traffic queues in Kwun Tong Bypass and Kwun Tong Road during the evening peak period are shown in **Appendix IIb**. Similar to the morning peak situation, there is traffic congestion in Kwun Tong Business Area and Kwun Tong Town Centre. The existing traffic queues in the Eastern District during the morning peak and evening peak are shown in **Appendix IIc** and **Appendix IId** respectively. The traffic queues in westbound Island Eastern Corridor (“IEC”) sometimes tail back to adjacent roads causing traffic congestion in Sai Wan Ho during the morning peak period. Indeed, the traffic in the Kwun Tong area is so heavy that a minor traffic incident could trigger serious and prolonged traffic congestion as in the case of the recent traffic gridlock happened on 22 January 2016.

8. Pursuant to section 48(1) of the EHC Ordinance, the provisions of the Road Traffic Ordinance (Cap. 374) (“RTO”) will apply to the roads in the tunnel area of EHC only to the extent that they are not inconsistent with any regulations or by-laws made under the EHC Ordinance. Pursuant to section 70(2)(d) of the EHC Ordinance, upon the franchise expiry, the BOT franchisee will no longer have the rights and obligations to manage and operate EHC. In other words, as from the expiry of the franchise, the provisions in the EHC Ordinance where the BOT franchisee should perform the operation/regulatory functions (e.g. regulating traffic and collection of tolls) could no longer be in effective operation. In the unfortunate event that the Bill were not passed before the franchise expiry, despite the fact that EHC will vest in the Government, it could not be managed and operated as a Government tunnel under the Ordinance and the Regulations. While the Government could rely on the provisions of the RTO and those provisions of the EHC Ordinance which are not related to the rights and obligations of the franchisee (“the remaining applicable provisions of the EHC Ordinance”) (see **Appendix IV**) to manage the EHC, there will be some areas of tunnel operation not properly covered. In particular, the Government

will not be able to collect tolls from vehicles passing through EHC. Toll is an important traffic management tool for traffic regulation.

9. Currently, there are about **255 000 vehicles per day** plying between two sides of the harbour. If EHC were to be operated toll-free, a significant proportion of cross-harbour traffic originally using the Cross Harbour Tunnel (“CHT”), together with a proportion of the traffic currently using the Western Harbour Crossing (“WHC”), would likely switch to EHC. Some additional cross-harbour trips would also be induced. It is roughly estimated that the traffic volume at EHC would increase by about 34 000 vehicles (45%) per day and, during the peak period, by 1 300 (about 25%) per hour. From the traffic point of view, the road situation in the areas near to EHC will be disastrous. We expect that –

- (a) with the significant increase in traffic volume at EHC (which is on top of its daily 75 000 vehicles) and the nearby road networks, there will be extensive queues on its approach roads in East Kowloon and the Eastern District;
- (b) in East Kowloon, as shown in **Appendix IIIa**, during the morning peak, the traffic queues tailed back from EHC in Kwun Tong Bypass, Kwun Tong Road, Lei Yue Mun Road and Tseung Kwan O Road would likely increase by about 4.1 km (240%), 2.7 km (140%), 0.4 km (40%) and 0.5 km (500%) respectively. These long traffic queues could tail back to the adjacent local roads causing severe traffic congestion in Kwun Tong, Kowloon Bay, Ngau Tau Kok, Lam Tin and Yau Tong, and would affect traffic going to Tseung Kwan O Tunnel. The long traffic queues from EHC will cause very serious traffic impact to non-EHC traffic creating serious knock-on effect on adjacent road network. It is roughly estimated that, during the morning peak hour, 3 000 to 4 000 vehicle trips using Kwun Tong Bypass and Kwun Tong Road, including non-EHC traffic, would be affected. As shown in **Appendix IIIb**, during the evening peak, the traffic queues in Kwun Tong Bypass, Kwun Tong Road, Lei Yue Mun Road and Tseung Kwan O Road could increase by about 5.9 km (400%), 3.1 km (160%), 0.2 km (no existing traffic queue) and 0.2 km

(200%) respectively. These long traffic queues would tail back to the adjacent local roads causing severe traffic congestion in Kwun Tong, Kowloon Bay and Ngau Tau Kok, and would affect traffic going to Tseung Kwan O Tunnel. The long traffic queues from EHC will cause very serious traffic impact to non-EHC traffic creating serious knock-on effect on adjacent road network. It is estimated that, during the evening peak hour, 4 000 to 5 000 vehicle trips using Kwun Tong Bypass and Kwun Tong Road, including non-EHC traffic heading for East Kowloon and Tseung Kwan O areas, would be affected;

(c) in the Eastern District, as shown in **Appendix IIIc**, during the morning peak, the traffic queues in the east bound and west bound IEC would likely increase by about 0.7 km (120%) and 4.6 km (310%) respectively. These long traffic queues would tail back to the adjacent local roads causing severe traffic congestion in Tai Koo Shing, Sai Wan Ho, Shau Kei Wan and even Heng Fa Chuen. It is roughly estimated that 2 000 to 3 000 vehicle trips, during the morning peak hour, using the IEC would be affected. As shown in **Appendix III d**, during the evening peak, the traffic queues in the eastbound and westbound IEC would increase by about 3.3 km (240%) and 1 km (no existing traffic queue) respectively. These long traffic queues could tail back to the adjacent local roads, affecting also the non-EHC traffic and causing severe traffic congestion in Tin Hau, North Point and Quarry Bay, and may even merge with the traffic queues of the Cross Harbour Tunnel. It is estimated that, during the evening peak hour, 2 000 to 3 000 vehicle trips using the IEC would be affected; and

(d) the traffic queues in (b) and (c) above will create **traffic gridlocks in local road network**, seriously affecting and even blocking the non-EHC traffic in the areas concerned.

10. There are around 1.5 million living population and 0.7 million working population in the Eastern District, Kwun Tong and Tseung Kwan O. It is roughly estimated that the congestion resulted from EHC operating toll-free would affect about 680 000 living population and 540 000 working population in the areas concerned. The

deterioration in the traffic situation will certainly result in worsened air and noise pollution in the areas concerned and cause disturbance to the general public. Other areas of Hong Kong may also be affected to different extents.

(b) Jeopardising smooth operation of EHC

11. As mentioned in paragraph 8 above, section 70(2)(d) of the EHC Ordinance provides that all rights and obligations of the franchisee under the EHC Ordinance shall determine on the franchise expiry. Hence, the current functions taken up by the BOT franchisee will cease and the Government must take over the operation of EHC on 7 August 2016.

12. Currently, all Government tunnels are operated and managed under the legal framework of the Ordinance and the Regulations, which contain regulatory requirements specific to the operating needs and environments of tunnels. Neither the RTO nor the remaining applicable provisions of the EHC Ordinance give the Government similar legislative backing to operate and manage the EHC as a Government tunnel.

13. This arrangement will not be in the interest of the public. Unlike ordinary open roads, EHC is an enclosed structure under water and is much more sophisticated in terms of design and operations.

14. Without the necessary legislative backing as provided by the Bill, the Government does not have the power to appoint authorised personnel (i.e. staff employed by operators under management, operation and maintenance (“MOM”) contracts) to regulate traffic at EHC (such as to execute emergency procedures in case of traffic incidents). We have to rely on the Police to direct traffic and take enforcement actions. Given the substantial traffic at EHC, it would seriously strain the Police manpower which should be deployed for more gainful use.

15. Worse still, when it comes to a point at which EHC is considered unsafe or unsuitable to be allowed free flow traffic, the Government may have to temporarily close the access to EHC¹ pursuant

¹ Regulation 28 of the Road Traffic (Traffic Control) Regulations provides that the

to the Road Traffic (Traffic Control) Regulations (Cap. 374G). If such case materialises, a large proportion of daily traffic which are now using EHC (i.e. 75 000 vehicles) can be expected to be diverted to CHT, and with some to WHC. CHT is already suffering from severe traffic congestion during peak hours. With this additional traffic, the duration of the traffic congestion will be much lengthened and its severity significantly worsened. The traffic queues in the approach roads on both sides of CHT will be lengthened substantially, and would tail back to their adjacent road networks, resulting in wide spread gridlock situation in Kowloon and on Hong Kong Island north.

16. In view of the very congested traffic at EHC and its areas nearby, some drivers may choose not to drive and use public transport. The switch of drivers and passengers to public transport will bring about sudden and substantial surge in the usage of cross-harbour rail links and cross-harbour buses, causing significant stress for these services. Besides, there are currently many fixed-route public transport services using EHC. They will have to be re-routed. It should also be noted that there will be inadequate space to accommodate more buses stopping near CHT. Longer time will be required for alighting/boarding of passengers which will, in turn, worsen the traffic congestion further. The existing severe and prolonged traffic congestion on both sides of CHT would be worsened drastically, and this will not be acceptable to the general public.

(c) **Adversely affecting the employment of tunnel staff**

17. In line with the practice of existing Government tunnels, EHC, upon Government's takeover, will be managed and operated by an MOM contractor selected through open tender. To allow sufficient time for the MOM contractor to gear up for a smooth takeover, the Transport Department has already commenced the MOM selection procedures and the tender results will be available shortly. Under the MOM contract,

Commissioner for Transport or the Commissioner of Police may close any road or part of it to all traffic or any particular kind of traffic for any period not exceeding 72 hours. Regulation 27 of the same Regulations also provides that the Commissioner for Transport may close a road or any part of it to all or any particular kind of traffic, if he/she considers necessary. A notice of such closure shall be published in the Gazette or in the newspaper.

MOM contractor will be responsible for toll collection, traffic regulation and enforcement, operation and maintenance in regard of EHC. The successful MOM contractor is required to make first offer of employment to about 200 (or 85%) of the staff of the franchisee at the existing salary levels.

18. If the Bill were not passed, EHC could not be managed and operated as a Government tunnel. This will affect the arrangements of engaging the MOM contractor, which in turn adversely affect staff employed by the existing franchisee and jeopardise the new jobs to be created. Since EHC cannot be tolled and the MOM contractor will not be empowered to collect tolls and carry out traffic enforcement duties, the employment of at least 100 frontline staff of the franchisee who are currently carrying out toll collection and enforcement duties is likely to discontinue after the franchise expiry. With only the capacity to carry out limited backend operation and maintenance duties, the MOM contractor will not be able to create new jobs in addition to retaining the employees of the franchisee.

(d) Protracted disruption to Hong Kong

19. If the Bill were not passed before the prorogation of the Fifth LegCo, generally speaking, the Government would be obliged to introduce the Bill again in the new LegCo term and the legislative procedures will need to start afresh. Following past practice, newly elected LegCo Members will swear in by October 2016, the earliest. While we will re-introduce the Bill as soon as practicable, the gap between the prorogation date and the re-introduction of the Bill is a matter of months. The adverse consequences and disturbance to members of the public set out in paragraphs 6 to 18 above will hence persist not for days, or weeks, but for months.

20. The vast majority of users of the three road harbour crossings will be adversely affected as they must make the cross-harbour trips for school, work, goods delivery and business operation. Non-harbour crossing motorists and passengers, including those on public transport, will suffer as well because the long traffic queues will cause gridlock to the road traffic network. As such, the failure to pass the Bill

will have serious impact for the mobility and livelihood of Hong Kong people, thereby adversely affecting the economy.

Provisions under EHC Ordinance

21. Regarding the information on the operation of provisions under the EHC Ordinance in the event that the Bill were not passed before the franchise expiry, please refer to **Appendix IV**.

Importance of timely passage of the Bill

22. We would like to reiterate that the Bill is technical in nature. It is not complicated nor does it involve any policy change. The Bill aims to facilitate a seamless takeover of EHC by the Government upon the expiry of the BOT franchise. We introduced the Bill into LegCo on 16 December 2015 to allow adequate time for Members to scrutinise the Bill. We therefore appeal to LegCo Members to timely process the Bill before the prorogation of the Council for the benefit of the public and the economy of Hong Kong, in particular for those members of the public who are working, living and frequently travelling in the areas near EHC.

Existing Tolls of the Eastern Harbour Crossing

1. Motorcycles, motor tricycles	\$13
2. Private cars, electrically powered passenger vehicles, taxis ¹	\$25
3. Public and private light buses	\$38
4. Light goods vehicles and special purpose vehicles of a permitted gross vehicle not exceeding 5.5 tonnes	\$38
5. Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 5.5 tonnes but not exceeding 24 tonnes	\$50
6. Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 24 tonnes but not exceeding 38 tonnes	\$75
7. Public and private single-decker buses	\$50
8. Public and private double-decker buses	\$75
9. Each additional axle in excess of two	\$25

¹ Tolls chargeable at manual toll booths to a taxi in which no passenger is carried is \$15.

Existing Traffic Queues in East Kowloon during AM Peak



Existing Traffic Queues in East Kowloon during PM Peak



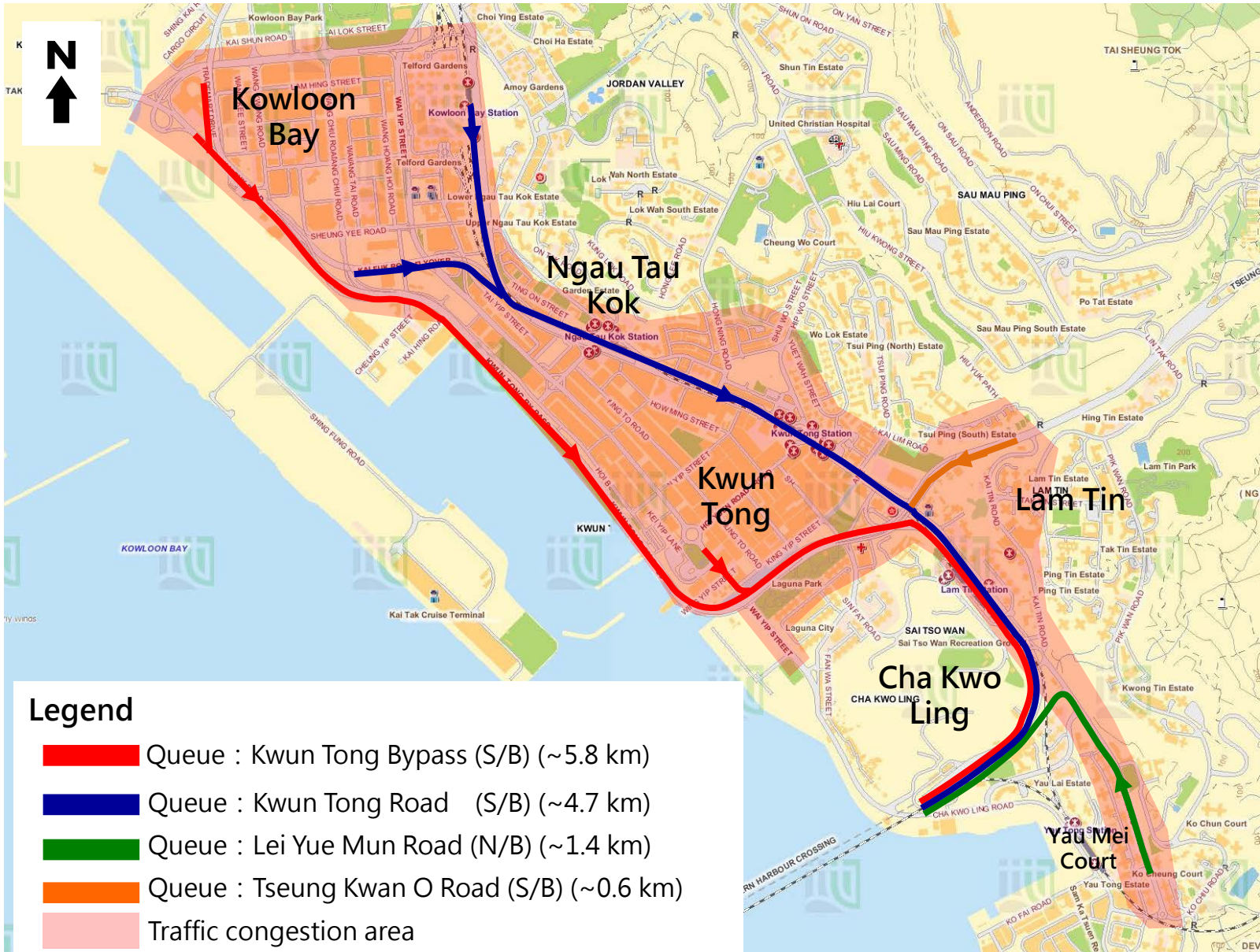
Existing Traffic Queues in Eastern District during AM Peak



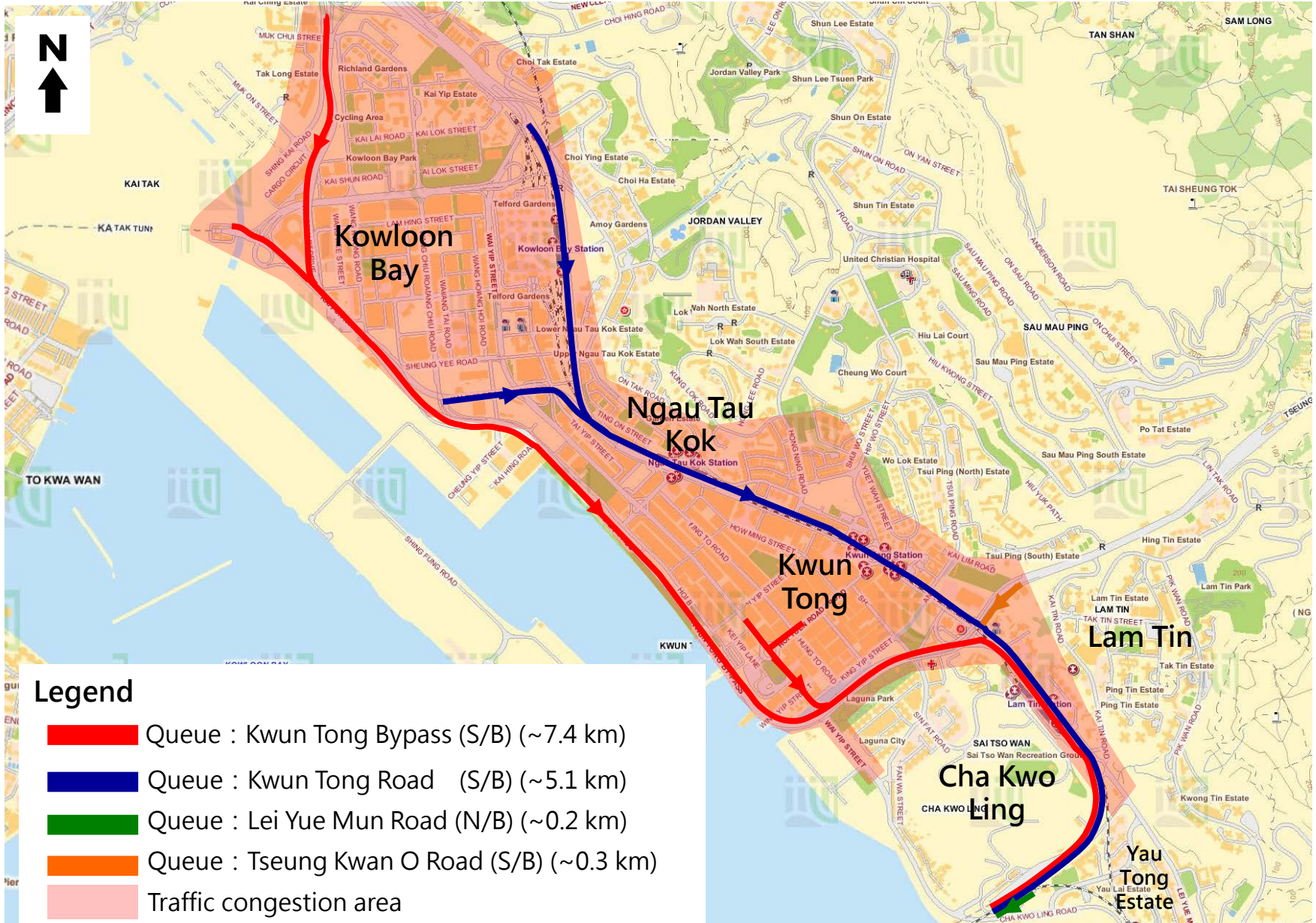
Existing Traffic Queues in Eastern District during PM Peak



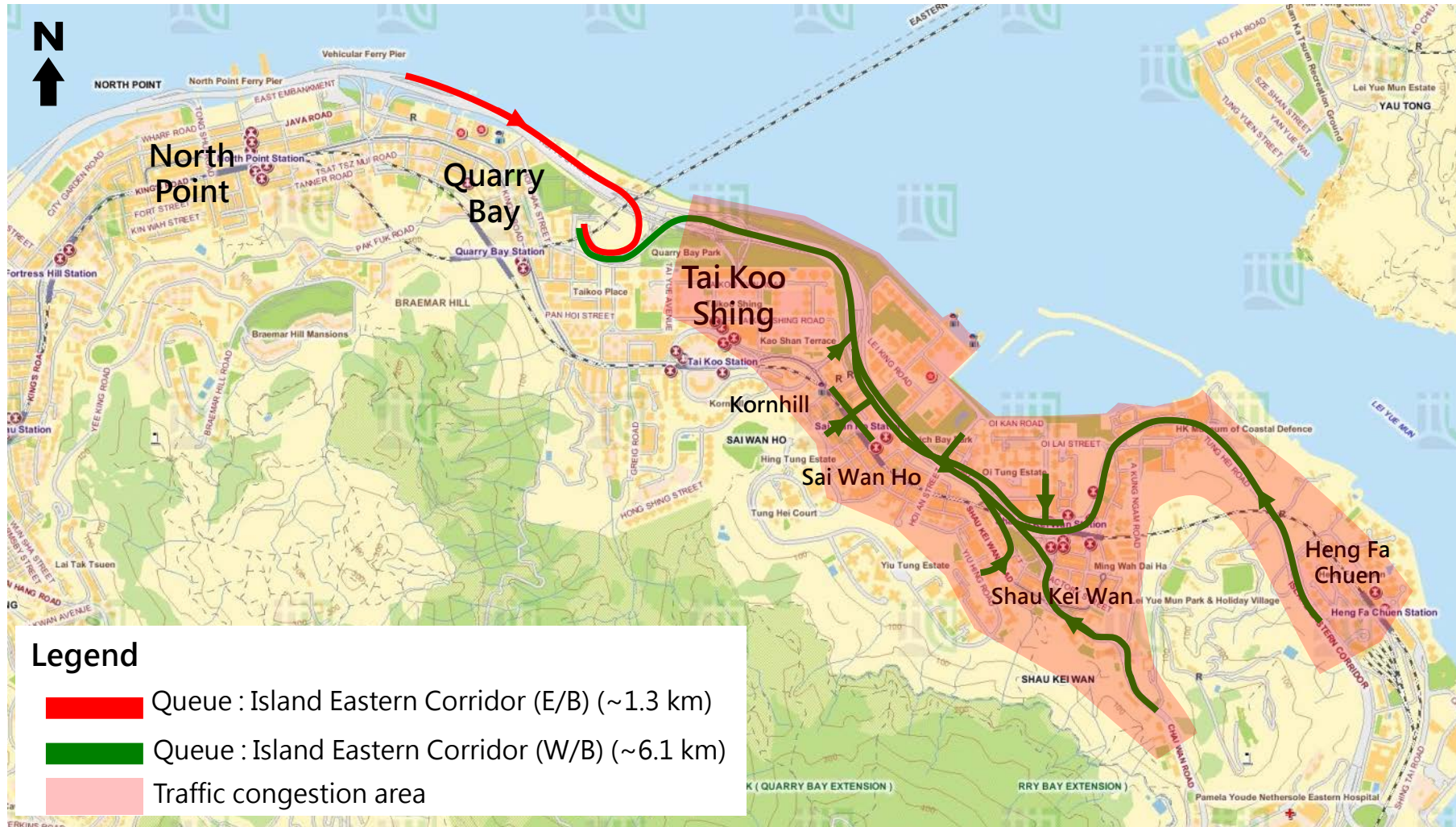
Traffic queues in East Kowloon during AM Peak for EHC operating toll-free



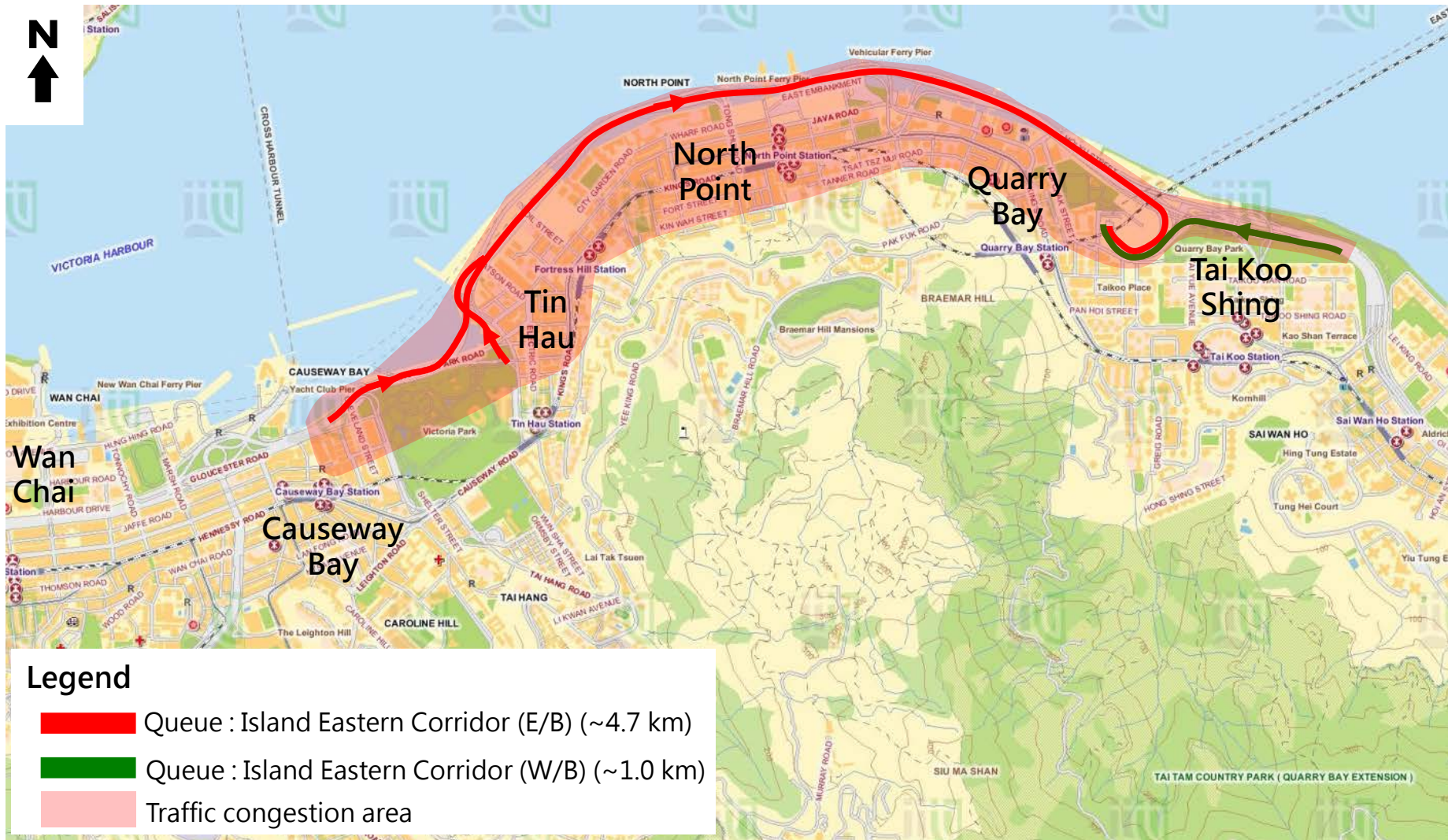
Traffic queues in East Kowloon during PM Peak for EHC operating toll-free



Traffic queues in Eastern District during AM Peak for EHC operating toll-free



Traffic queues in Eastern District during PM Peak for EHC operating toll-free



Operation of the Eastern Harbour Crossing Ordinance (Cap. 215) and its Subsidiary Legislation on the Expiry of the Franchise of the Eastern Harbour Crossing in the Event that the Bill is Not Passed before Prorogation of the Fifth Legislative Council

The Eastern Harbour Crossing Ordinance (Cap. 215) (“EHC Ordinance”) and its subsidiary legislation were enacted to govern the construction, operation and maintenance of the Eastern Harbour Crossing (“EHC”) during the franchise period. The Eastern Harbour Crossing Legislation (Amendment) Bill 2015 (“the Bill”) is to, among other amendments, repeal the EHC Ordinance and its subsidiary legislation and to make consequential amendments to repeal the references to the EHC Ordinance or the franchisee in other legislation upon the franchise expiry (i.e. on 7 August 2016).

2. Section 70(2)(d) of the EHC Ordinance provides that **all rights and obligations of the franchisee under the EHC Ordinance shall determine on the franchise expiry**. In other words, the provisions in the EHC Ordinance and its subsidiary legislation, to the extent that they are related to the rights and obligations of the franchisee, will be unable to operate on the expiry of the franchise even if the EHC Ordinance is not repealed. For instance, the franchisee will no longer be entitled to demand and collect tolls for use of EHC under section 55 of the EHC Ordinance. The provisions in the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215E) enabling the franchisee to control traffic in EHC through employing tunnel staff and processing permits for vehicles carrying certain types of dangerous goods and oversized vehicles, etc. will also cease to operate.

3. Provisions in EHC Ordinance and its subsidiary legislation which are not related to the rights and obligations of the franchisee may continue to survive if the Bill is not passed. For example, provisions requiring compliance with the requirement indicated by the prescribed traffic sign (e.g. the traffic sign requiring all traffic must proceed through EHC on dipped headlights), provisions prohibiting throwing or dropping anything from a vehicle inside the tunnel area or from the footbridge situated above the toll plaza, etc. will continue to operate.

4. As for provisions in other various Ordinances which are proposed to be repealed under the Bill, to the extent that they are not related to the rights and obligations of the franchisee, they will continue to have effect even if the Bill is not passed after the expiry of the

franchise. For example, if the Bill were not passed, offences against the EHC By-laws would remain in the Magistrates Ordinance (Cap. 227) as offences to which defendant may plead guilty by letter, notwithstanding that provisions relating to relevant offences as related to the rights and obligations of the franchisee has already ceased to operate. This would be undesirable and may cause confusion to our judiciary system.