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Panel on Economic Development
Meeting on 25 June 2018

Updated background brief on the peak tramway

Purpose

This paper provides background information on the peak tramway. It also summarizes the major views and concerns expressed by Members in previous discussions on related matters.

Background

2. The peak tramway has been in operation since 1888 and is a popular tourism and recreational facility for locals and tourist alike. Currently, it is run and operated by the Peak Tramways Company Limited ("PTC"). Its 1.4-km tram track and four intermediate stations are constructed on government land, while the termini at both ends of the track on Garden Road and at the Peak are situated on sites owned by PTC. Since the 1980s, the peak tramway has been operated by PTC on the strength of an operating right granted by the Governor/Chief Executive ("CE") in Council under the Peak Tramway Ordinance (Cap. 265) ("the Ordinance"), subject to terms agreed between the Government and PTC.

3. When the right to operate the peak tramway was to expire on 31 December 2013, PTC made an application to the Government to continue to operate the service, and indicated that it had plans to make heavy long-term investment to increase the capacity of the facility and improve its service. PTC also asked whether the Government could grant them an operating right of 20 years so that the upgrading plan would be financially viable.

4. Since detailed legal analysis subsequently found that the Ordinance did not provide for any post-2013 arrangements¹, the Government decided to adopt a two-stage approach to handle the issues –

- (a) first stage: to amend the Ordinance in order to grant a two-year interim operating right (from 1 January 2014 to 31 December 2015) to PTC; and
- (b) second stage: to look into the feasibility and merits of PTC's upgrading plan during the above two-year interim operating right. At the same time, the Government also studied and decided on how the operating right of the peak tramway should be granted, extended and terminated when necessary in the long run, taking into account the PTC's plan to enhance the facilities and improve service. Upon completion of the study, the Government needed to further amend the Ordinance to provide for the long-term arrangements of the peak tramway to facilitate its continued operation after end-2015.

5. The above legislative amendment exercises were completed with the passage of the Peak Tramway (Amendment) Bill 2013 (first stage approach) and the Peak Tramway (Amendment) Bill 2015 (second stage approach) by the Legislative Council ("LegCo") on 20 November 2013 and 28 October 2015 respectively. Bills Committees were formed to study the two Amendment Bills.

6. With the passage of the Peak Tramway (Amendment) Bill 2015, the CE in Council may grant future operating right commencing on or after 1 January 2016. The CE in Council may from time to time grant the operating right of the peak tramway to a suitable operator in any manner that the CE in Council thinks fit. Each operating right should not exceed ten years. The operating right is subject to terms agreed between the Government and the operator. It may be extended for a further period of not exceeding ten years if the operator can satisfy the CE in Council that it is committed to and has the ability to undertake an upgrading plan conducive to maintaining the peak tramway as an important tourism and recreational facility. This means the total period of an operating right could be up to 20 years, through a "ten-plus-ten-year" arrangement.

¹ It was the original understanding of the Government and PTC that sections 2A(5) and 2A(6) of the Ordinance provided the necessary basis for the continued operation of the peak tramway beyond 2013, subject to application by PTC, payment of a premium by PTC and approval by the Executive Council. However, upon detailed legal analysis, it came to the Government's attention that sections 2A(5) and 2A(6) were one-off provisions and would not allow further extensions beyond 2013. Thus the Administration needed to amend the Ordinance to enable CE in Council to grant the operating right for the peak tramway again to PTC.

7. Noting that PTC had planned to, once the 10-year operating right commencing on 1 January 2016 was granted, apply immediately for a further 10-year operating right commencing on 1 January 2026 together with a submission of its upgrading plan, the Bills Committee on Peak Tramway (Amendment) Bill 2015 considered it necessary to require the CE in Council to consider the views of the public before granting a new operating right. The Administration agreed that upon the receipt of such application, it would consult LegCo before making a recommendation to CE in Council on the granting of the operating right. The Administration would also report to LegCo the performance of the peak tramway service at an appropriate juncture, such as before the grant or extension of an operating right.

8. On 1 December 2015, the CE in Council approved the grant of a new operating right of the peak tramway to PTC for a ten-year period commencing 1 January 2016. Under the new operating right, PTC would pay to the Government annually a sum of consideration equivalent to 12% of its total annual revenue received in the year for the occupation and use of Government land on which the track of the peak tramway and the four intermediate stations lie. PTC should also set a service pledge on service frequency of the peak tramway.

9. According to the LegCo Brief issued by the Administration in December 2015 (File ref: TC CR T3 22/22/9), the Government had also discussed with PTC issues relating to its upgrading plan for the tramway system². Without pre-empting any decisions that the CE in Council might make in future, the Government had conveyed to PTC that –

- (a) the basis on which the sum of consideration chargeable for the new operating right would basically apply to the second ten-year operating right, barring any material difference in business performance and prospects of the operation of peak tramway. If the upgrading plan would materialise in the end and the second ten-year operating right would be granted to PTC, the sum of

² PTC's upgrading plan, at an estimated cost of some HK\$650 million, would include the following key features –

- (a) replacement of tramcars with new ones that can increase carrying capacity from 120 to 200 (i.e. by over 60%);
- (b) substantial improvement of the two termini to expand the holding capacity and improve the waiting environment;
- (c) installation of an upgraded haulage system to operate the enlarged tramcars whilst maintaining safety and reliability; and
- (d) replacement of all track rails and structural improvement of track foundation and tramway bridges.

consideration chargeable for the first and second ten-year operating rights had already taken into account PTC's upgrading plan which would cover use of that additional piece of government land (see (b) below), on top of the government land on which the track and the four intermediate stations lie;

- (b) any reasonable request put forth by PTC for "direct grant" of additional government land for the purpose of the upgrading plan would be considered in the context of maintaining the peak tramway as an important tourism and recreational facility as well as land and other relevant policies, land availability and proven genuine need. Such additional government land would be granted to PTC without additional charge through an appropriate instrument; and
- (c) the land lease of the terminus site of the Peak, expiring in 2031, would be extended on basically the existing terms by four years to end-2035, so that the expiry of the lease can be co-terminus with the end date of the second ten-year operating period. As advised by Lands Department, land premium for this extension, as per the prevailing land policy, will be determined nearer the time and would reflect the then market value.

Previous discussions

10. The Panel on Economic Development ("the Panel") was briefed on the Peak Tramway (Amendment) Bill 2013 and the Peak Tramway (Amendment) Bill 2015 at its meetings on 19 July 2013 and 23 March 2015 respectively. To better understand the PTC's improvement proposal, the Panel conducted a site visit to the peak tramway terminus at Garden Road on 9 April 2015. Bills Committees were formed on 11 October 2013 and 8 May 2015 respectively to scrutinize the two Amendment Bills. Major views and concerns expressed by members are summarized in the ensuing paragraphs.

11. Under the Peak Tramway (Amendment) Bill 2015, an exit mechanism was provided for the CE in Council to terminate the operating right before its expiry by requiring the owner of the terminus sites, related premises and other assets essential to peak tramway operation (e.g. tramcars and tram tracks) to lease the relevant parts of the terminus sites and premises, and sell the other assets that it owned to any party designated by the CE in Council under the mandatory lease and sale arrangements. Seeing the importance to avoid service disruption, some members asked if the exit mechanism could achieve a smooth transfer of operating right in the event that the lease terms became a subject of dispute.

12. The Administration advised that real value compensation should be made to the owner in the case of mandatory sale in accordance with the Basic Law ("BL"), and rent payable for the terminus sites and related premises would be set at market rate. Dispute, if any, over the sum of compensation and any other terms under the mandatory sale and lease arrangements would be subject to arbitration or resolved at the Lands Tribunal. Pending settlement of the dispute, the law also provided for the new operator to take possession of the land and assets first, to avoid service disruption. The Department of Justice had confirmed that mandatory lease and sale arrangements were consistent with the requirements for protection of private property under BL6 and BL105.

13. To facilitate the handover arrangement, members enquired if alternatives such as building an entirely new peak tramway on government land, or procuring the existing terminus sites through public funding could be considered. The Administration advised that it had considered building two new termini on government land or even constructing a new peak tramway altogether on government land. Both alternatives were not practicable. While it might be feasible to build two new termini in front of the existing ones on government land, construction of such facility would take time to complete and service suspension was inevitable. As to the option of building a new peak tramway altogether on government land, this should be a non-starter, when land in its vicinity was in short supply, costs would be a considerable concern, and construction would take even longer to complete. If the Government was to fund the purchase of the essential premises of PTC, a significant amount of public fund would be involved. Indeed, PTC had expressed objection to any compulsory acquisition of its land or premises which, in its opinion, would be an unjust encroachment of private property.

14. There was a view that fares of peak tramway should be subject to certain extent of regulation in order to keep its profits at reasonable level. An enquiry was raised whether the exit mechanism would be triggered on grounds of unreasonable fares set by PTC. The Administration explained that fares of the peak tramway had been de-regulated since 1980s as it had become a tourism and recreational facility rather than a mode of public transport. Thus it was more appropriate for market forces to decide the fares of the peak tramway.

Latest development

15. The Administration will seek Panel's support for PTC's upgrading plan and the granting of second 10-year operating right (i.e. from 2026 to 2035) to PTC as well as the granting of additional land requested by PTC in relation to its upgrading plan at the meeting on 25 June 2018.

16. At the same meeting, the Administration will also seek the Panel's support for the proposed legislative amendments to –

- (a) amend the definition of Plan by replacing the reference to the plan in the definition with a reference to another plan under section 3(3) and 3(4) of Peak Tramway Ordinance (Cap. 265) arising from the granting of additional land to PTC in relation to its upgrading plan; and
- (b) amend the maximum capacity of tramcar under Regulation 21 of Peak Tramway (Safety) Regulations (Cap. 265A) to reflect the carrying capacity of the new tramcar.

Relevant papers

17. A list of the relevant papers available on the LegCo Website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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List of relevant papers

Issued by	Meeting Date/ Issue Date	Paper
Panel on Transport	19 July 2013 (Item III)	Administration's paper Background brief Minutes
Panel on Economic Development	23 March 2015 (Item IV)	Administration's paper Background brief Minutes
Bill Committee on Peak Tramway (Amendment) Bill 2013	-	Legislative Council Brief Background brief Report
Bill Committee on Peak Tramway (Amendment) Bill 2015	-	Legislative Council Brief Background brief Report
Commerce and Economic Development Bureau	2 December 2015	Legislative Council Brief