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Panel on Transport
Meeting on 17 June 2022

**Background brief on take-over arrangement of
Build-Operate-Transfer tunnels and previous toll adjustment proposal
relating to Western Harbour Crossing**

Purpose

This paper provides background information on the take-over arrangement of Build-Operate-Transfer (“BOT”) tunnels and toll adjustment proposal put forward by the Administration in the past relating to Western Harbour Crossing (“WHC”). It also summarizes the major views and concerns expressed by the Panel on Transport (“the Panel”) on the above two subjects.

Background

Takeover arrangement of Build-Operate-Transfer tunnels

2. Under the BOT tunnel arrangement, a franchisee is responsible for the construction, operation and maintenance of the tunnel concerned during the franchise period. The two major principles of the Government in adopting the BOT mode in constructing and operating tunnels are: (a) the Government should encourage private participation and optimize the use of public resources; and (b) as investors are required to make substantial upfront capital investment, they should be given the opportunity to make a reasonable return on their investment while bearing the commercial risk.

3. Upon the expiry of the franchise, the tunnel will be transferred to the Government. A recent takeover of BOT franchise by the Government took place on 11 July 2018 upon expiry of the 30-year franchise of the Tate’s Cairn Tunnel (“TCT”), which has since then become a Government tunnel. In line with the operation of other Government tunnels, the Legislative Council passed an Amendment Bill on 7 February 2018 to subsume the operation of TCT under the

legal framework of the Road Tunnels (Government) Ordinance (Cap. 368) and its subsidiary legislation.

4. According to the Administration, the Transport Department will grant, through open tender, a management, operation and maintenance (“MOM”) contract for the operation and management of a BOT tunnel upon expiry of the franchise.

Toll arrangement of WHC

5. The WHC was constructed by the Western Harbour Tunnel company Limited (“WHTCL”) on a 30-year franchise, i.e. from 1993 to 2023. The Western Harbour Crossing Ordinance (Cap. 436) stipulates the toll adjustment mechanism in respect of WHC.¹ According to the mechanism, tolls stipulated in Cap. 436 are called “statutory tolls”, the adjustment of which do not require the Government’s approval.

6. Regarding the toll levels of Government tunnels, including WHC which will be transferred to the Government in August 2023, the Administration has indicated that a Study on “Congestion Charging” has commenced. The said study will adopt the principle of “Efficiency First” to determine different toll levels for different vehicle classes and during different periods, and to devise a mechanism for future adjustment of toll levels. The Administration plans to consult relevant stakeholders, including the Panel, Transport Advisory Committee and the transport trade on the recommendations of the Study in due course.

Toll adjustment proposal relating to WHC

7. In view of the worsening traffic congestion at the road harbour crossings (“RHCs”), namely Cross Harbour Tunnel (“CHT”), Eastern Harbour Crossing (“EHC”) and WHC, the Administration conducted a consultancy study in 2008 (“2008 study”) with the objective of identifying the optimum level of traffic for the three RHCs, taking into account their geographic locations and the capacity of

¹ The mechanism stipulates that the franchisee may effect toll increases on six specified dates (i.e. 1 January on 2001, 2005, 2009, 2013, 2017 and 2021) (known as “anticipated toll increases”) on the condition that the Actual Net Revenue of the franchisee in respect of a year ending immediately before a specified date is less than the Upper Estimated Net Revenue for that year as stipulated in Schedule 5 to Cap. 436. In addition, if in any year the Actual Net Revenue of the franchisee is less than the Minimum Estimated Net Revenue for that year as stipulated in Schedule 5 to Cap. 436, the franchisee may advance an anticipated toll increase, and may implement an additional toll increase (known as “additional toll increase”) if all the anticipated toll increases have been effected. Regardless of whether it is an anticipated toll increase or additional toll increase, the magnitude of each toll increase must not exceed that stipulated in Cap. 436 for various categories of vehicles.

connecting road networks, and recommending feasible options. The 2008 study concluded that to rationalize the traffic distribution among the three RHCs, their tolls would need to be adjusted. Subsequently between 2010 and 2014, the Administration consulted the Panel on the toll adjustment options and embarked on several rounds of public consultations on the options. Due to diverse public views over these options and concerns of the relevant districts over the possible traffic congestion caused by the diverted traffic, the Administration decided to put in abeyance the implementation of the toll adjustment trial scheme in February 2014.

8. In 2017, the Administration commenced another study on the overall strategy for the rationalization of traffic distribution among the three RHCs and three land tunnels, namely the TCT, Lion Rock Tunnel (“LRT”) and Eagle's Nest and Sha Tin Heights Tunnels (“Route 8K”). The Study examined the relationship between the toll levels of these six tunnels and their traffic flows. The Administration proposed that to achieve a noticeable traffic diversion, a substantial increase in CHT and EHC tolls, coupled with a reduction in WHC tolls on Targeted Vehicles² is needed.³

9. To encourage motorists of Targeted Vehicles to make more use of the capacity of WHC, the Administration agreed in principle with WHTCL on an arrangement that the Administration would compensate WHTCL on the differences between lowered tolls paid by motorists of Targeted Vehicles using WHC and the anticipated future toll levels of WHTCL as outlined in the business plan of the franchisee of WHTCL until the end of the franchise on 1 August 2023.⁴ Details of the business plan can be found at Appendix IV of CB(4)179/18-19(06).

10. In brief, the Proposed WHC Toll Compensation Scheme would include the below arrangements:

- (a) the actual tolls payable by motorists for Targeted Vehicles using WHC will be fixed at \$50 for private cars, \$20 for motorcycles, \$36 for taxis (with passengers) and \$15 for taxis (without passengers) from 1 January 2020 until the franchise expiry on 1 August 2023;
- (b) for each single journey made by a Targeted Vehicle using WHC, the Government will compensate WHTCL the difference between the

² According to the Government, private cars, taxis and motorcycles constitute about 75% of cross-harbour traffic volume at present. These vehicles are not efficient road users, given the average number of passengers they carry. To encourage more efficient use of road space, toll adjustments should focus on these vehicle types (“Targeted Vehicles”).

³ For details of the toll adjustment proposal, please refer to paragraph 12 of CB(4)179/18-19(06).

⁴ See Appendix IV of CB(4)179/18-19(06).

Proposed Prescribed Toll and the anticipated future toll levels of WHTCL; and

- (c) the total compensation payable by the Government in respect of Targeted Vehicles during the entire compensation period will be capped at \$1,800 million.

11. On 22 January 2019, the Government announced at a press conference that it would not move a motion proposing to adjust the tolls of private cars, taxis and motorcycles using the three road harbour crossings to rationalize cross-harbour traffic in the Legislative Council on 23 January 2019. The Secretary for Transport and Housing told the media that the proposal was supported by the community, academics, professional bodies, the taxi trade and even some lawmakers. However, the legislators had differences of opinion on the proposal, making it unlikely that the motion would be passed at tomorrow's LegCo meeting.

12. The Administration planned to move the second time a motion without legislative effect on 27 March 2019 to implement the toll adjustment proposal. However, on 26 March 2019, the Administration announced that it decided to withdraw the motion due to a lack of sufficient support from the Legislative Council.⁵

Major views and concerns of members

Takeover arrangements of BOT tunnels

13. When the Panel discussed the takeover arrangements of BOT tunnels including TCT and EHC at previous meetings in 2015 and 2017, there was a concern over different toll levels of different tunnels and a suggestion that the Administration should align the tolls of all tunnels. There was also a view that the Administration should establish a Tunnels and Bridges Authority and buy back all tunnels to solve the problems relating to tunnels.

14. The Administration advised at that time that it would consider a number of factors when determining the toll levels, including the adoption of "user pays" principle, the cost of operating the tunnels and traffic implications. The issue of different toll levels would be addressed in the overall strategy of the rationalization of traffic distribution among the three RHCs and three land tunnels proposed by the Administration.

⁵ For details, please refer to the press release "[Tunnel toll plan shelved](#)".

15. Members generally expressed concern over the protection of the interests of existing tunnel staff upon the take-over of BOT tunnels by the Administration. Some members considered it necessary to make provisions in the MOM contract requiring the contractor to guarantee that the pay, benefits and conditions of service would not be less favourable than before. The Administration advised that there would be provisions in the MOM contract relating to the protection of the employment and salary levels of the existing tunnel staff. Proposals which offered better fringe benefits to tunnel staff would score higher marks. That said, the Administration advised that it would also be necessary to strike a balance between protection of the benefits of tunnel staff and the business operation of the MOM contractor.

Toll Adjustment Proposal and the Proposed WHC Toll Compensation Scheme (“proposed WHC Scheme”)

16. The Administration consulted the Panel on the “Rationalization of Traffic Distribution Among Six Tunnels” at the meeting on 16 November 2018 and details of the proposed WHC Scheme as mentioned in paragraph 10 above. The proposed prescribed toll levels for private cars using CHT, EHC and WHC would be \$40, \$40 and \$50 respectively. Details can be found in paragraph 8 of the Administration’s paper CB(4)17/18-19(01). At the meeting, members expressed diverse views on the toll adjustment proposal of rationalizing traffic among the three RCHs and three land tunnels. Members opposing the proposal cast doubt on the effectiveness of the proposal in re-distributing traffic from CHT and EHC to WHC because of the congestion problems at the connecting roads. In particular, the congestion problems at Tai Po Road (Shatin Section) would deter the effective diversion of traffic from the Northern and Shatin districts to Route 8K and WHC respectively.

17. On the other hand, members in support of the proposal opined that narrowing the toll difference between CHT and WHC could induce more motorists to switch to WHC, thereby enhancing the utilization of WHC and ease the congestion problem of CHT. Members also cautioned that when implementing the toll adjustment proposal, the Administration should take into account the impact of non-tunnel traffic along the connecting roads of WHC, especially west-bound traffic in anticipation of the increase in tunnel usage.

18. The Administration advised that the objective of the toll adjustment proposal was to influence motorists' choice of tunnels such that overall tunnel traffic could be more optimally distributed, thereby tackling the congestion problem at CHT and EHC and their connecting roads. In addition, the effect of Central-Wan Chai Bypass in alleviating traffic pressure at the connecting roads of WHC had been taken into account. On the rationalization of traffic flow from

Shatin to Kowloon, the widening works of Tai Po Road (Shatin Section) was expected to be completed in 2023, after which the bottleneck leading to Route 8K would be removed.

19. Regarding members' suggestion of including the Tai Lam Tunnel ("TLT") in the toll adjustment proposal such that motorists from Shatin and New Territories would be encouraged to switch to WHC, the Administration advised that it would review toll level of TLT and other tunnels to ensure the efficient use of road space. In the long run, the concept of "congestion charging" and "efficiency first" would be applied to ensure efficient people carriers and vehicles that support economic activities would enjoy lower tolls.

20. Some members expressed grave concern that under the Proposed WHC Scheme, the Administration would subsidize WHTCL up to the cap of \$1,800 million. They found it unacceptable that public funds were to be used to compensate revenue forgone of a private company. These members called on the Administration to consider the feasibility of buy back WHC before the expiry of the relevant franchise in August 2023.

21. The Administration clarified that the Proposed WHC Scheme aimed to subsidize motorists and encourage them to use WHC. The objective was not about compensating WHTCL but to rationalize traffic distribution among the three RHCs. WHTCL had full discretion under the law to increase tolls once the conditions stipulated in the WHC Ordinance were met. Under the Scheme, toll level of WHC would be frozen at the prescribed level until franchise expiry in August 2023, and the Administration would subsidize WHC users on a per vehicle basis.

22. Regarding waiving the toll of franchised bus using tolled tunnels, some members opined that the initiative should also cover other public transport such as non-franchised buses and public light buses. The Administration explained that exemption of toll payment by franchised buses aimed to encourage more efficient use of road space by mass people carriers, and in the long term, the Administration would map out the appropriate level of toll for all Government tolled-tunnels and the two Control Areas.

Latest position

23. The Administration will consult the Panel on the tolling principles of congestion charging for RHCs and takeover arrangements of WHC at the Panel meeting to be held on 17 June 2022.

Relevant papers

24. A list of relevant papers is in **Appendix**.

Council Business Division 4
Legislative Council Secretariat
10 June 2022

Takeover arrangements of Western Harbour Crossing and tolling principles of congestion charging

List of relevant papers

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
22.10.2010	TP	Government's paper on Western Harbour Crossing Tolls	<u>CB(1)2681/09-10(01)</u>
9.11.2010 and 11.1.2011	TP	Government's paper on consultancy study on rationalizing the utilization of road harbour crossings	<u>CB(1)298/10-11(01)</u>
		Background brief on measures to rationalize utilization of Build-Operate-Transfer tunnels prepared by the Legislative Council Secretariat	<u>CB(1)304/10-11</u>
		Minutes of meeting	<u>CB(1)942/10-11</u>
		Government's supplementary paper on a breakdown of the vehicular flows at the Western Harbour Crossing at different times of the day (follow-up paper)	<u>CB(1)304/11-12(01)</u>
		Minutes of meeting	<u>CB(1)1920/10-11</u>
6.4.2011	Council meeting	<u>Hon CHIM Pui-chung raised a question on tolls of the three road harbour crossings</u>	

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
4.5.2011	Council meeting	<u>Hon CHIM Pui-chung raised a question on cross-harbour transport infrastructure</u>	
29.6.2011	Council meeting	<u>Hon CHAN Kam-lam raised a question on automatic toll collection system of tolled tunnels and roads</u>	
-	-	<u>Legislative Council Brief on Eastern Harbour Crossing Toll increase arbitration</u>	
18.1.2013	TP	<u>Government's paper on transport-related policy initiatives of the Transport and Housing Bureau under the 2013 Policy Address</u>	
-	-	<u>Press release on public consultation on ways to rationalise utilisation of road harbour crossings</u>	
22.2.2013	TP	Government's paper on proposed measures to improve the traffic distribution among the road harbour crossings	<u>CB(1)544/12-13(03)</u>
		Paper on measures to improve the traffic distribution among the road harbour crossings prepared by the Legislative Council Secretariat (Background brief)	<u>CB(1)544/12-13(04)</u>
		Minutes	<u>CB(1)1307/12-13</u>
15.3.2013	TP	Information paper provided by the Government on Western Harbour Crossing Tolls	<u>CB(1)361/12-13(01)</u>

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
		Paper on toll adjustments of Western Harbour Crossing and Route 3 (Country Park Section) prepared by the Legislative Council Secretariat (background brief)	<u>CB(1)544/12-13(06)</u>
		Minutes	<u>CB(1)1516/12-13</u>
20.3.2013	Council meeting	<u>Hon POON Siu-ping raised a question on traffic flow of road harbor crossings</u>	
-	-	<u>Press release on public consultation on proposed measures to improve traffic distribution among road harbour crossings ends on May 7</u>	
22.4.2013	TP	Minutes	<u>CB(1)386/13-14</u>
28.2.2014	TP	Government's paper on traffic distribution among road harbour crossings	<u>CB(1)912/13-14(05)</u>
		Paper on traffic distribution among road harbour crossings prepared by the Legislative Council Secretariat (background brief)	<u>CB(1)912/13-14(06)</u>
		Minutes	<u>CB(1)1574/13-14</u>

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
6.11.2015	TP	Government's paper on takeover arrangements of the Eastern Harbour Crossing	<u>CB(4)119/15-16(05)</u>
		Minutes	<u>CB(4)513/15-16</u>
6.1.2016	Council meeting	<u>Hon WONG Kwok-kin raised a question on traffic volumes and tolls of road harbour crossings</u>	
15.6.2016	Council meeting	<u>Hon Frankie YICK raised a question on traffic distribution among RHCs</u>	
20.1.2017	TP	Information paper provided by the Government on Western Harbour Crossing Tolls	<u>CB(4)355/16-17(01)</u>
22.2.2017	Council meeting	<u>Hon HO Kai-ming asked a question on Eastern Harbour Crossing ancillary facilities and Tseung Kwan O-Lam Tin Tunnel project</u>	
19.5.2017	TP	Government's paper on takeover arrangements of Tate's Cairn Tunnel	<u>CB(4)1021/16-17(07)</u>
		Paper on the Tate's Cairn Tunnel and the Government's takeover arrangements for Build-Operate-Transfer tunnels prepared by the Legislative Council Secretariat (background brief)	<u>CB(4)1021/16-17(08)</u>
		Minutes	<u>CB(4)13/17-18</u>

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
6.10.2017	House Committee	Legal Service Division Report on Road Tunnels (Government) (Amendment) Bill 2017	<u>LS98/16-17</u>
15.11.2017	Council meeting	<u>Hon HO Kai-ming asked a question on traffic distribution among vehicular tunnels</u>	
17.11.2017	TP	Government's paper on Preliminary findings of the toll rationalisation study of three road harbour crossings and three land tunnels between Kowloon and Sha Tin	<u>CB(4)182/17-18(07)</u>
		Paper on toll rationalisation among three road harbour crossings and three land tunnels between Kowloon and Sha Tin prepared by the Legislative Council Secretariat (Background brief)	<u>CB(4)182/17-18(08)</u>
		Minutes	<u>CB(4)705/17-18</u>
9.1.2018	TP	Minutes	<u>CB(4)1562/17-18</u>
-	TP	Government's paper on Rationalisation of Traffic Distribution Among Six Tunnels	<u>CB(4)17/18-19(01)</u>

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
19.10.2018	TP	Government's paper on Transport-related Policy Initiatives in 2018 Policy Address	<u>CB(4)19/18-19(01)</u>
16.11.2018	TP	Government's paper on Rationalisation of Traffic Distribution Among Six Tunnels	<u>CB(4)17/18-19(01)</u>
		Paper on toll rationalisation among three road harbour crossings and three land tunnels between Kowloon and Sha Tin prepared by the Legislative Council Secretariat (Updated background brief)	<u>CB(4)179/18-19(06)</u>
		Minutes of meeting	<u>CB(4)1172/18-19</u>
		Government's supplementary information on issues relating to Rationalisation of traffic distribution among three road harbour crossings and three land tunnels between Kowloon and Sha Tin and other tunnel-related proposals (follow-up paper)	<u>CB(4)383/18-19(01)</u>
5.2019	TP	Government's information paper on Western Harbour Crossing Tolls	<u>CB(4)951/18-19(01)</u>
5.6.2019	Council meeting	<u>Hon CHAN Hak-kin raised a question on tolls of road tunnels and control areas</u>	

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