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Approval for road rejected by judge

By EMMA BATHA

A HIGH Court judge overturned approval for a major new road yesterday, in what is thought to be the first successful court challenge against a decision by the Governor in Council.

The case concerned government plans for a new route from Smithfield Road to Pokfulam Road, which would slice in two a Caltex petrol station.

When the oil giant came up with an alternative route, transport bosses said it was not safe or feasible.

But it was not until three weeks later that the Highways Department informed the petrol company.

Caltex then came back with a modified proposal, but this was not put before the Governor in Council when the road scheme was authorised on May 10.

Anthony Neoh, QC, counsel for Caltex Oil HK Ltd, said the company was not given a fair chance to explain its objections and alternative proposal.

He said the Governor in Council was also unaware Caltex had sent in a revised scheme in response to safety concerns.

Mr Justice Sears quashed the Governor in Council's decision, saying Caltex had not been given a "fair crack of the whip".

"They had a legitimate expectation that their updated objection would be dealt with by the [Transport] Department and would have been brought to the attention of Exco," he said. "As a result, I consider Caltex have suffered serious prejudice."

The scheme will now be sent back to the Governor in Council to reconsider.

Mr Justice Sears said Caltex's objections were "sophisticated" and a "new departure" for Hong Kong.

He compared the system in the territory to that of Britain where a public inquiry is held into any major road project.

Outside court, Mr Neoh said he believed it was the first time a company had successfully challenged a decision by the Governor in Council.