

LEGISLATIVE COUNCIL BRIEF

APPOINTMENT OF A COMMISSION OF INQUIRY INTO THE DIAPHRAGM WALL AND PLATFORM SLAB CONSTRUCTION WORKS AT THE HUNG HOM STATION EXTENSION UNDER THE SHATIN TO CENTRAL LINK PROJECT

INTRODUCTION

At the meeting of the Executive Council on 10 July 2018, the Council ADVISED and the Chief Executive ORDERED that –

- (a) a Commission of Inquiry (“the Commission”) be appointed under the Commissions of Inquiry Ordinance (Chapter 86) (“the Ordinance”) to look into the facts and circumstances surrounding the steel reinforcement fixing works and any other works which raise concerns about public safety in respect of the diaphragm wall and platform slab construction works at the Hung Hom Station Extension under the Shatin to Central Link (“SCL”) Project implemented by the MTR Corporation Limited (“MTRCL”);
- (b) Mr Michael John HARTMANN be appointed Chairman and Commissioner and Professor Peter George HANSFORD be appointed Commissioner; and
- (c) the Commission be appointed through the instruments at **Annex A** with the terms of reference contained therein.

THE INCIDENT

2. SCL is a territory-wide strategic railway project (see alignment layout at **Annex B**), comprising the following two sections –

- (a) Tai Wai to Hung Hom Section: an extension of the Ma On Shan Line from Tai Wai via Southeast Kowloon to Hung Hom where it will join the West Rail Line; and

- (b) Hung Hom to Admiralty Section: an extension of the existing East Rail Line from Hung Hom across the Victoria Harbour to Wan Chai North and Admiralty.

Apart from bringing improvements to the existing Tai Wai Station, the SCL Project involves the construction of new stations and the extension of existing stations (including the Hung Hom Station Extension).

3. Under the concession approach, the Government funds the SCL Project and MTRCL has been entrusted to carry out the design, site investigation, construction and commissioning of the project. The current target commissioning date of the Tai Wai to Hung Hom Section¹ is mid-2019 while that of the Hung Hom to Admiralty Section² is 2021.

4. The steel reinforcement fixing works in respect of the diaphragm wall and platform slab construction works at the Hung Hom Station Extension under the SCL Project form part of Contract No. 1112 “Hung Hom Station and Stabling Sidings” awarded by MTRCL to Leighton Contractors (Asia) Limited (“Leighton”). In accordance with the Entrustment Agreement signed between MTRCL and the Government for the SCL Project, MTRCL, as the project manager, shall ensure that all the design requirements are reflected in the works contracts signed with the contractors and sub-contractors so as to ensure that the quality of works complies with the requirements of the Entrustment Agreement and the works carried out by the contractors and sub-contractors comply with specifications during construction.

5. On 30 May 2018, there were media reports about the cutting of some steel reinforcement bars used in the platform slab construction works under Contract No. 1112 at the Hung Hom Station Extension under the SCL Project. On 31 May 2018, the Director of Highways (“DHy”) required MTRCL to submit an incident report within a week. In order to allay public concern, DHy further required MTRCL to arrange an independent third-party expert to carry out load tests as soon as possible and provide a test report to demonstrate that the structures concerned could sustain the design loads.

¹ Upon commissioning in 2019, the Tai Wai to Hung Hom Section, the Ma On Shan Line and the West Rail Line will be named as the Tuen Ma Line to signify the new railway connecting Tuen Mun and Ma On Shan.

² As the Hung Hom to Admiralty Section will extend the current East Rail Line to Hong Kong Island, the entire railway will continue to be named as the East Rail Line after its commissioning in 2021.

6. On structural safety, as the Hung Hom Station Extension is located on private land, it is subject to the provisions of the Buildings Ordinance (Chapter 123)³. However, taking into account the unique nature of buildings works related to railway projects vis-à-vis general building works, the Building Authority has exempted certain prescribed building works at the afore-mentioned location from specific provisions of the Buildings Ordinance via an Instrument of Exemption, which was made in accordance with section 54(2) of the Mass Transit Railway Ordinance (Chapter 556)⁴. Depending on the facts and circumstances of the incident, the Buildings Department (“BD”) may consider taking enforcement or other follow-up action in accordance with the Buildings Ordinance and/or the provisions under the Instrument of Exemption.

7. At a press conference held on 6 June 2018, MTRCL gave an account of the incident but was unable to confirm the number of steel reinforcement bars that were cut, the person(s) who cut the steel reinforcement bars and the motive behind. On 15 June 2018, MTRCL submitted an incident report as required by the Highways Department (“HyD”). The report, which covered several occurrences of substandard steel reinforcement fixing works, mentioned that the statements given by one of the sub-contractors of Leighton were not consistent with those given by Leighton to MTRCL, in which Leighton denied the allegations of substandard steel reinforcement fixing works. MTRCL did not express any opinion on the matter.

8. Having regard to additional information received separately from MTRCL on the same day, HyD considered that criminal elements might be involved and thus referred the matter to the Hong Kong Police Force for follow-up action. In parallel, HyD is examining MTRCL’s incident report in detail and will continue to require MTRCL to make clarifications and provide supplementary information, as necessary.

9. On 21 June 2018, MTRCL announced that it would conduct a review of the processes and procedures for the SCL Project within its project management system and engage external consultants to assist with the review.

³ Under section 41 of the Buildings Ordinance, all projects located on government land or unleased land are exempt from the provisions of the Buildings Ordinance.

⁴ The exemption is confined to those procedures and requirements relating to appointment of Authorized Person and Registered Structural Engineer, approval of plans, consent to commencement and resumption of works and occupation of buildings.

CONSIDERATIONS

A statutory commission of inquiry

10. Public safety is of overriding importance. While relevant Government bureaux / departments have embarked on investigations in accordance with relevant statutory procedures and administrative guidelines, given the uncertainty over the extent of substandard works and whether rectification action has been taken as well as the conflicting information provided by various parties involved in the incident, an independent and objective inquiry conducted by a commission equipped with the full range of powers under the Ordinance is called for in order to ascertain the facts and recommend improvement measures expeditiously.

11. A Commission of Inquiry set up under the Ordinance is appropriate in the present case for the following reasons –

- (a) It may compel persons to give evidence and disclose documents, and witnesses can be examined on oath. Any evidence given by any persons before the Commission shall not in general be admissible in any civil or criminal proceedings by or against them. Besides, the Commission and witnesses are given statutory protection in relation to the proceedings. A non-statutory committee does not have similar powers to summon witnesses, order the production of documents or take evidence on oath and any cross-examination and disclosure may only be done by consent of the witnesses and/or the interested parties;
- (b) There is likely to be substantial dispute on the facts and circumstances surrounding the works in question. The power of the Commission to examine witnesses on oath and cross-examine them would be essential to the fact-finding process. We expect that evidence would normally (subject to, for example, any consideration of confidentiality or prejudice to possible criminal proceedings) be taken in public in the presence of other interested parties who would then have the opportunity to cross-examine witnesses and make submissions on evidence; and
- (c) In criminal prosecution, the court will determine whether the accused has committed the criminal offence for which he is charged based only on the evidence before it. On the other hand, a Commission of Inquiry can be tasked to conduct a more

comprehensive investigation into matters as specified in its terms of reference from a broader perspective and make appropriate recommendations.

12. In the light of these considerations, the Chief Executive announced on 12 June 2018 her decision to set up a Commission of Inquiry to conduct an independent and comprehensive investigation into this matter and that she had obtained the agreement of Mr Michael John HARTMANN, a former Non-Permanent Judge of the Court of Final Appeal, to head the Commission if so approved by the Chief Executive in Council. The Commission was expected to submit its report in about six months after the commencement of its operation.

13. The statutory Commission approach does have some disadvantages. Its procedures tend to be more elaborate and would normally require more resources and take a longer time to complete than a non-statutory panel or committee. Moreover, persons appearing before a Commission may find it necessary to have legal representation (though they are not required to do so). In view of the circumstances of this case and for the reasons outlined in paragraph 11 above, we consider that the merits of a statutory commission outweigh its disadvantages for such a matter of public importance. The Commission's inquiry may proceed in parallel with any investigations carried out by Government authorities.

Terms of reference of the Commission

14. The terms of reference of the Commission are set out in **Annex A**. The underlying considerations are highlighted below –

- (a) The subject of inquiry should be firmly focussed on the problems exposed in respect of the diaphragm wall and platform slab construction works at the Hung Hom Station Extension under the SCL Project. Despite calls in some quarters for expanding the scope of the inquiry to cover substandard construction works found at other stations under the SCL Project (such as the substandard construction works for the reinforced concrete wall adjacent to the staircases at the To Kwa Wan Station platform, the non-conforming excavation works at the Exhibition Centre Station and the incident involving misplaced reinforcement for the diaphragm wall at the Exhibition Centre Station) or even the entire SCL Project, these other incidents are not comparable to the incident at the Hung Hom Station Extension in terms of their nature and

complexity. Moreover, they are already being dealt with by the relevant Government authorities under the established mechanisms and procedures, and rectification steps have been taken/are being worked out. In the circumstances, expanding the terms of reference of the Commission would inevitably prolong the inquiry process and delay the findings on the more serious incident at the Hung Hom Station Extension; and

- (b) The inquiry will be evidence-based. In addition to ascertaining the facts and circumstances of specified construction works carried out at the Hung Hom Station Extension, the Commission is required to comprehensively review the relevant aspects of MTRCL's project management and supervision system, quality assurance and quality control system, risk management system, site supervision and control system and processes, system on reporting to Government, system and processes for communication internally and with various stakeholders, etc. The Commission will also examine the adequacy of the monitoring mechanism adopted by the Transport and Housing Bureau and HyD under the institutional arrangement of an entrustment agreement for the delivery of railway projects by MTRCL as well as BD's regulatory control over building works in connection with railway facilities. These inquiry findings will, in turn, form the basis for the Commission to make recommendations on suitable improvement measures with the objective of promoting public safety and assurance on works quality.

Appointment of Commissioners

15. Mr Michael John HARTMANN and Professor Peter George HANSFORD are appointed as Commissioners in view of their esteemed standing in their respective professional fields. Mr Hartmann has an illustrious judicial career. Following his retirement from the Judiciary, he currently holds the chairmanship of the Market Misconduct Tribunal, the Securities and Futures Appeals Tribunal and the Higher Rights Assessment Board. Professor Hansford, an engineer by profession and currently Chair of Construction and Infrastructure Policy at University College London, has extensive experience in major infrastructure and building projects (including railway projects). Moreover, Mr Hartmann was the Chairman of the Independent Expert Panel established by the Government in 2014 to examine the project management systems and cost control mechanisms of MTRCL in overseeing the project of the

Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link⁵ and the monitoring processes of the Government, and Professor Hansford was one of the experts on the Panel. Both are thus very familiar with the implementation of railway projects in Hong Kong under a concession approach and such knowledge is very pertinent to the present inquiry.

16. The Commission will appoint counsel and solicitors to assist it in its work. A Secretariat will provide administrative support to the Commission.

17. The Commission will aim to submit a report to the Chief Executive within six months from the date of its appointment or such time as the Chief Executive in Council may allow.

IMPLICATIONS OF THE PROPOSAL

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has financial and civil service implications as set out in paragraphs 19 to 20 below.

FINANCIAL IMPLICATIONS

19. Section 14 of the Ordinance provides that the cost of an inquiry shall be a charge on the general revenue. Since the financial resource requirements will depend on the approach to the inquiry that the Commission will adopt, the number of hearings it will conduct and the number of witnesses involved, it is not possible to give an estimate of the financial implications of the proposal at this stage. For reference, the total cost of the 2015 Commission of Inquiry into the excess lead in drinking water was about \$43 million, covering the staff cost and other operating expenses of the Secretariat of the Commission; the cost for engaging counsel and solicitors for the Commission; the cost of engaging experts and the professional fees involved; and the expenditure on supporting services such as audio recording, preparation of transcripts, etc. We will seek to meet the funding required from existing provision. Should the need for supplementary provision arise, we will address it promptly in accordance with the established mechanism.

⁵ The Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link is also implemented under a concession approach, whereby the Government funds the project and MTRCL is entrusted to carry out the design, construction and commissioning of the project.

CIVIL SERVICE IMPLICATIONS

20. The Secretariat of the Commission, headed by a Secretary on non-civil service terms equivalent to D3 level, will be staffed by a small team of civil servants.

PUBLICITY

21. We will announce the appointment of the Commission of Inquiry by means of a press release. The appointment of the Commission will be published in the Gazette. A Government spokesman will be available for answering media enquiries.

BACKGROUND

22. The Ordinance empowers the Chief Executive in Council to appoint one or more Commissioners to “inquire into the conduct or management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance” (section 2(1)). When appointing a Commission, the Chief Executive in Council may “nominate a Chairman if 2 or more Commissioners are appointed, and confer on such Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings”. The Chief Executive in Council may also appoint a secretary, assistant secretaries and other staff, and a legal advisor to the Commission (section 2(2)).

23. Every inquiry held under the Ordinance shall be deemed to be a judicial proceeding (section 11). The Commission may, among other powers conferred on it under section 4, receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings; determine the manner in which such material shall be received; summon any person to attend to give evidence or to produce any article or document; issue warrants of arrest to compel attendance; prohibit the publication to or disclosure by any person attending before the Commission of all or part of the material received by the Commission; enter and inspect any premises; issue warrants for the searching of premises and the seizure therein of any article or document or any class of articles, etc. (section 4).

24. So far, 16 Commissions of Inquiry have been appointed under the Ordinance. The three most recent ones are the Inquiry into allegations relating to The Hong Kong Institute of Education in 2007, the Inquiry into the collision of vessels near Lamma Island in 2012 and the Inquiry into excess lead found in drinking water in 2015.

ENQUIRIES

25. For enquiries about this brief, please contact Ms Kitty CHOI, Director of Administration, at 2810 3838.

Administration Wing
Chief Secretary for Administration's Office
10 July 2018

Mr Michael John Hartmann, GBS

Dear Mr Hartmann,

Commissions of Inquiry Ordinance (Chapter 86)

The Chief Executive in Council has appointed you as Commissioner and Chairman of a Commission of Inquiry under section 2 of the Commissions of Inquiry Ordinance (Chapter 86) to inquire into the matters set out in the Terms of Reference below, being matters which are of public importance.

The Terms of Reference of the Commission shall be as follows –

“In respect of the diaphragm wall and platform slab construction works at the Hung Hom Station Extension under the MTR Corporation Limited (“MTRCL”)’s Contract No. 1112 (“Contract”) of the Shatin to Central Link Project,

- (a) (i) to inquire into the facts and circumstances surrounding the steel reinforcement fixing works, including but not limited to those works at locations that have given rise to extensive public concern about their safety since May 2018;
 - (ii) to inquire into the facts and circumstances surrounding any other works which raise concerns about public safety; and
 - (iii) to ascertain whether the works in (i) and (ii) above were executed in accordance with the Contract. If not, the reasons therefor and whether steps for rectification have been taken;
- (b) to review, in the light of (a) above,
- (i) the adequacy of the relevant aspects of MTRCL’s project management and supervision system, quality assurance and quality control system, risk management system, site supervision and control system and processes, system on reporting to Government, system and processes for communication internally and with various stakeholders, and

any other related systems, processes and practices, and the implementation thereof; and

- (ii) the extent and adequacy of the monitoring and control mechanisms of the Government, and the implementation thereof; and
- (c) in the light of (b) above, to make recommendations on suitable measures with a view to promoting public safety and assurance on quality of works.”

The Commission shall report to the Chief Executive within six months from the date of this appointment or such time as the Chief Executive in Council may allow.

The Chief Executive in Council has –

- (a) conferred on you as Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings;
- (b) directed that when hearing evidence the two Commissioners shall sit together but as Chairman, you may sit alone to consider procedural matters and to give directions for the efficient conduct of the inquiry;
- (c) directed that the Commission may appoint experts to provide reports or other forms of assistance on any matters covered by the inquiry;
- (d) directed that the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and
- (e) directed that the determination of any criminal or civil liability of any party (whether individual or legal entity) shall be outside the Terms of Reference of the Commission.

The Commission may submit interim reports on any aspects of the inquiry as it may see fit.

Mr Patrick Chan has been appointed as Secretary to the Commission to provide you with the necessary administrative support for

the inquiry. The Commission will also be provided with other support staff.

The Chief Executive in Council has appointed Professor Peter George Hansford as the other Commissioner of the Commission.

I am most grateful to you for your agreement to take on this important task.

Yours sincerely,

(Mrs Carrie Lam)
Chief Executive

Professor Peter George Hansford, FREng, FICE, FAPM, FRSA

Dear Professor Hansford,

Commissions of Inquiry Ordinance (Chapter 86)

The Chief Executive in Council has appointed you as Commissioner of a Commission of Inquiry under section 2 of the Commissions of Inquiry Ordinance (Chapter 86) to inquire into the matters set out in the Terms of Reference below, being matters which are of public importance.

The Terms of Reference of the Commission shall be as follows –

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 - (ii) to inquire into the facts and circumstances surrounding any other works which raise concerns about public safety; and
 - (iii) to ascertain whether the works in (i) and (ii) above were executed in accordance with the Contract. If not, the reasons therefor and whether steps for rectification have been taken;
- (b) to review, in the light of (a) above,
- (i) the adequacy of the relevant aspects of MTRCL’s project management and supervision system, quality assurance and quality control system, risk management system, site supervision and control system and processes, system on reporting to Government, system and processes for communication internally and with various stakeholders, and any other related systems, processes and practices, and the implementation thereof; and

- (ii) the extent and adequacy of the monitoring and control mechanisms of the Government, and the implementation thereof; and
- (c) in the light of (b) above, to make recommendations on suitable measures with a view to promoting public safety and assurance on quality of works.”

The Commission shall report to the Chief Executive within six months from the date of this appointment or such time as the Chief Executive in Council may allow.

The Chief Executive in Council has –

- (a) conferred on the Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings;
- (b) directed that when hearing evidence the two Commissioners shall sit together; but the Chairman may sit alone to consider procedural matters and to give such directions for the efficient conduct of the inquiry;
- (c) directed that the Commission may appoint experts to provide reports or other forms of assistance on any matters covered by the inquiry;
- (d) directed that the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and
- (e) directed that the determination of any criminal or civil liability of any party (whether individual or legal entity) shall be outside the Terms of Reference of the Commission.

The Commission may submit interim reports on any aspects of the inquiry as it may see fit.

Mr Patrick Chan has been appointed as Secretary to the Commission to provide you with the necessary administrative support for the inquiry. The Commission will also be provided with other support staff.

The Chief Executive in Council has appointed Mr Michael John Hartmann as the Chairman of the Commission.

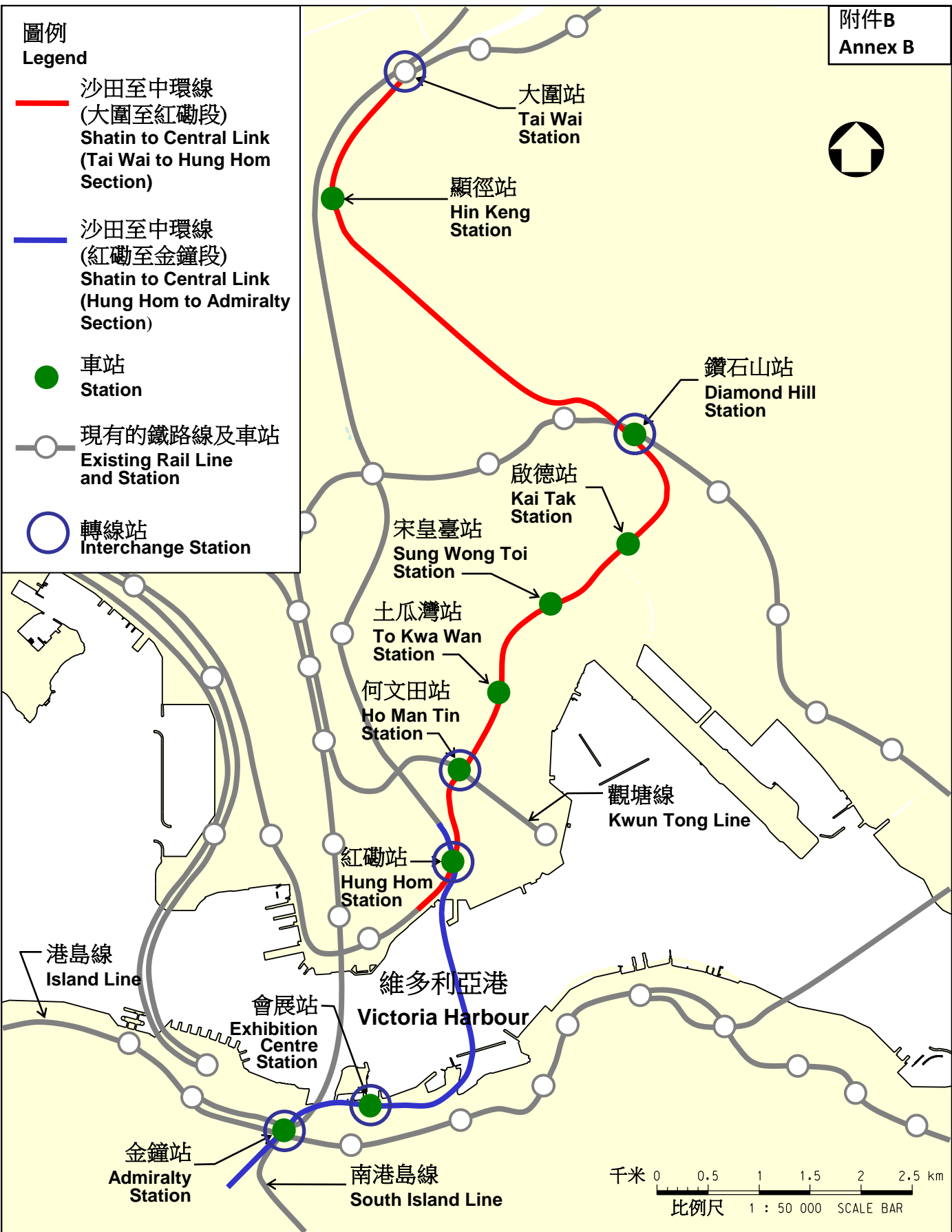
I am most grateful to you for your agreement to take on this important task.

Yours sincerely,

(Mrs Carrie Lam)
Chief Executive

圖例
Legend

- 沙田至中環線
(大圍至紅磡段)
Shatin to Central Link
(Tai Wai to Hung Hom Section)
- 沙田至中環線
(紅磡至金鐘段)
Shatin to Central Link
(Hung Hom to Admiralty Section)
- 車站
Station
- 現有的鐵路線及車站
Existing Rail Line and Station
- 轉線站
Interchange Station



圖則名稱 drawing title

沙田至中環線的走線

Alignment of the Shatin to Central Link

圖號 drawing no.
HRWSCLO03-SK0465

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