

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
(“THE COMMISSION”)

OPENING ADDRESS BY COUNSEL FOR THE COMMISSION
(for Preliminary Hearing on 24 September 2018)

A. The Commission

1. On 10 July 2018, the Commission was appointed by the Chief Executive in Council of the Hong Kong SAR under section 2 of the Commissions of Inquiry Ordinance (Cap. 86). The Terms of Reference (“ToR”) of the Commission will be found at **Annex 1** hereto. The Chairman and Commissioner is Mr. Michael Hartmann, with Professor Peter Hansford as the other Commissioner.

2. The Chief Executive in Council has further directed that the Chairman of the Commission may sit alone to consider procedural matters and to give directions for the efficient conduct of the inquiry. As Commissioner Professor Hansford is presently unable to come to Hong Kong due to prior commitments, in the interest of time, the Chairman has decided to conduct the Preliminary Hearing today, in Professor Hansford’s absence, to determine the rules and procedures of the Inquiry so that Substantive Hearing can begin at an early date.

B. Background

3. Since May 2018, reports began to appear in the local media which suggested that steel fixing works in the diaphragm walls and platform slabs at the Hung Hom Station Extension, constructed as part of the Shatin to Central Link project (“the SCL Project”) under MTR Corporation Limited Contract 1112, might be defective.
4. Contract 1112 involves the expansion of the existing Hung Hom Station and comprises, amongst other things, two additional platform (track) slabs for the East West Corridor (Tai Wai to Hung Hom) (“EWL”) and North South Corridor (Hung Hom to Admiralty) (“NSL”).
5. There were allegations made that an unknown number of steel bars (which were designed to be connected by couplers) embedded in the concrete of the completed diaphragm walls and EWL Slab were either deliberately shortened (or cut) or never properly connected to the couplers before concrete pouring.
6. As a result of the allegations made, public concern has arisen over the quality of works and safety of the Hung Hom expanded station, which is still under construction.
7. On 31 May 2018, the Director of the Highways Department (“HyD”) requested MTR Corporation Limited (“MTRCL”), as project manager of the SCL Project, to prepare and submit a report on the alleged non-compliant steel fixing works at the *“joints between diaphragm walls and the platform slabs at Hung Hom Station under Contract 1112”*.

8. On 15 June 2018, MTRCL published and submitted its report to the Railway Development Office (“RDO”) of HyD (“the MTRCL Report”). The MTRCL Report was limited to a review of the “EWL Slab”. In the MTRCL Report it is apparent that the terms “*EWL platform slab*”, “*EWL platform slab works*”, “*EWL slab*” and “*EWL track slab*” are used interchangeably (as to which see further below). It has subsequently emerged that there are inaccuracies in the MTRCL Report which may be relevant to the Commission of Inquiry.
9. On 21 June 2018, MTRCL announced that the Capital Works Committee under the MTRCL Board of Directors would conduct a review of the processes and procedures for the SCL Project, and engage external consultants to assist in the review.
10. On 22 June 2018, MTRCL submitted a preliminary load test proposal prepared by an independent expert to HyD and the Buildings Department (“BD”). The proposed load test has not yet been carried out.
11. On 10 July 2018, the Commission was appointed by the Chief Executive in Council of the Hong Kong SAR as stated above.

C. The ToR

12. It has been drawn to the attention of the Commission that there may be a technical distinction between, on the one hand, the “EWL/NSL platform slab” and, on the other hand, “the EWL/NSL track slab”. It has been suggested that, strictly speaking, the platform slabs (properly so called) are constructed on top of the track slabs. The ToR use the term “*platform slab*”, as does the Director of the HyD’s request referred to in paragraph 7 above and the MTRCL Report. Whilst the

Commission does not believe the terminology used in the ToR has caused any confusion, the Commission clarifies, for the avoidance of any doubt, that the Inquiry is concerned with the diaphragm walls and the track slabs, which will be referred to as the “EWL Slab’ and the “NSL Slab.”

D. The Commission and its powers

13. The Commission has wide statutory powers. Persons may be compelled to disclose documents and give evidence; witnesses may be examined on oath or affirmation. Oral evidence of witnesses will be adduced in public and in the presence of involved parties who, subject to the Commission’s permission, will have the opportunity to ask questions of witnesses and make such submissions to the Commission as may be appropriate.
14. It should be noted that the inquisitorial procedure adopted by the Commission is not the same as that adopted in ordinary adversarial civil litigation or more formal arbitration proceedings. The Commission may take a proactive role in investigating the subject matter of its ToR, and the course of the proceedings is not directed by any involved party. Within the ToR, a number of lines of inquiry can be opened up and old lines of inquiry can be closed down, all within a short timeframe, subject to procedural fairness to the parties.
15. Potentially, the Commission’s final report to be submitted to the Chief Executive (“the Report”) could subject individuals, companies, institutions or departments to criticisms, and make recommendations which may have a long term impact on the future conduct of such entities. There is, therefore, a need to ensure fairness to all parties who

may be affected by the Commission's work or criticised in the Report. Consequently, at this Preliminary Hearing and pursuant to the Notice published on 10 September 2018, the Commission will deal with applications by individuals or entities who may apply to participate in the Substantive Hearing and also hear the involved parties on any particular directions they may wish to seek.

E. The involved parties

16. Thus far, the Commission has issued (a) letters requesting documentation and witness statements and (b) "Salmon letters" (that is letters giving advance notice to entities who might be the subject of criticism) to the parties identified below ("the involved parties"). Those parties have been asked to consider participating in, and having separate legal representation at, the Substantive Hearing. The Commission's current understanding of each involved party's role in the SCL Project is also briefly described.

17. There are four Government departments or bureaux involved namely the (1) Transport and Housing Bureau ("THB"), (2) HyD including the RDO, (3) Development Bureau ("DevB") and (4) BD. The first two entities performed a monitoring role in the SCL Project and the latter two carried out their statutory duties and functions. The four entities are represented by the Department of Justice ("DoJ").

18. MTRCL was appointed by THB on behalf of the Government under an Entrustment Agreement dated 24 November 2008 to design and carry out site investigation works for the SCL Project, by a further Entrustment Agreement dated 17 May 2011 to carry out certain advance works as defined therein and by a further Entrustment

Agreement dated 29 May 2012 (“the Entrustment Agreement”) to project manage the construction and commissioning of the SCL Project. The Government is the majority shareholder of MTRCL.

19. Leighton Contractors (Asia) Limited (“Leighton”) was the main contractor engaged by MTRCL to construct, amongst many other things, the relevant diaphragm wall and EWL/NSL slab works under Contract 1112 dated 7 March 2013. Contract 1112 was a target cost contract.

20. Pursuant to a sub-contract dated 6 September 2013, Intrafor Hong Kong Limited (“Intrafor”) was Leighton’s sub-contractor responsible for, amongst other things, the diaphragm wall construction works, including re-bar preparation, bending and coupler installation.

21. Pursuant to a sub-contract dated 28 August 2015, Fang Sheung Construction Company (“Fang Sheung”) was Leighton’s sub-contractor responsible for carrying out the steel reinforcement bar cutting, bending and fixing works for the EWL/NSL slabs and associated structures, as well as the South Approach Tunnel.

22. Pursuant to a sub-contract dated 8 May 2015, China Technology Corporation Limited (“China Technology”) was Leighton’s sub-contractor responsible for erecting formwork, including blinding concrete, soffit formwork and slab and side construction joint formwork, installation of electrical and cast-in items, carrying out cleaning prior to pouring concrete and pouring the concrete to form, amongst other things, the EWL slab and the NSL slab.

F. Witness statement and documents

23. Pursuant to the Commission's requests, witness statements and documents of the abovementioned parties have been delivered to Messrs. Lo & Lo, solicitors for the Commission.

24. To date, the Commission has received witness statements from in excess of 40 individuals. Further witness statements are expected and the final number of factual witnesses is currently anticipated to exceed 50. Unless notified otherwise, all such individuals will be required to give evidence at the Substantive Hearing.

25. Messrs. Lo & Lo are compiling the hearing bundles based on the witness statements and documents received. Parties can apply to receive the electronic version (in the form of a USB Drive/CD/DVD) of the hearing bundles once the compilation tasks have been completed. The current index of the witness statements and documents will be available when the witness statements/documents are provided. To assist, the following bundle lettering has been adopted with the number of files compiled (as at 20 September 2018):

Bundle(s) A: the Commission [A1]

Bundle(s) B: MTRCL [B1-B10]

Bundle(s) C: Leighton [C1-C16]

Bundle(s) D: China Technology [D1-D2]

Bundle(s) E: Fang Sheung [E1-E6]

Bundle(s) F: Intrafor [F1-F34]

Bundle(s) G: THB and HyD & RDO [G1-G11]

Bundle(s) H: DevB and BD [H1-H14]

G. Site visit

26. Accompanied by representatives of MTRCL, the Chairman of the Commission and the Commission's legal team have visited the Hung Hom Station Extension of the Shatin to Central Link Project for the purpose of better understanding the as-constructed condition of the diaphragm walls and slabs.

H. The Commission's Experts

27. The Commission has instructed the following experts for the purpose of assisting in the Inquiry.

Professor Don McQuillan

28. Professor McQuillan is a director of RPS Consulting Engineers. He is a Chartered Engineer, a Royal Academy of Engineering Visiting Professor of Engineering Design at Queen's University Belfast and Vice President of the Institution of Structural Engineers.

29. On the basis of the available factual evidence, it is expected that Professor McQuillan will assist the Commission in providing his expert opinion on the following matters:-

- (i) the identification, if any, of matters of non-compliance ("the defects") which may affect the structural safety and integrity of the diaphragm walls and platform slabs and, if so, the cause or causes of such defects;
- (ii) the provision of an opinion on how such defects may be rectified and how, if required, the diaphragm walls and platform

slabs may be strengthened to ensure public safety.

Mr. Steve Rowsell

30. Mr. Rowsell has worked for over 40 years in the public and private sectors on major transport infrastructure projects in the highways and rail sectors. He is the Director of Rowsell Wright Ltd, a procurement consultancy formed in 2007, providing advice across a range of public sector infrastructure projects. He is a Chartered Engineer. He was the President of the Chartered Institution of Highways and Transportation in the UK in 2016/2017. He has extensive experience and knowledge of target cost contracts.

31. On the basis of the available factual evidence, it is expected that Mr. Rowsell will assist the Commission in providing his expert opinion on the following matters:-

- (i) the system of supervision, monitoring, control and management of the SCL Project and the identification of issues of non-compliances, inadequacies and deficiencies (if any);
- (ii) the provision of an opinion (with a view to promoting public safety and assurance on quality of works) on how the system of supervision, monitoring, control and management may be strengthened and enhanced to avoid future incidents of non-compliances, inadequacies and deficiencies.

32. If any of the involved parties is desirous of adducing expert evidence, an application should be made to the Commission on reasonable notice, and any such application should be accompanied by a written report of the proposed expert. The Commission will deal with any

such application as soon as possible and, in the event that the application is granted, give directions as to when the expert concerned is to be called to give evidence. For guidance, the Commission expects any expert evidence to be based on the relevant factual evidence of all witnesses (not just the party seeking to call the expert); there should be no attempt at factual analysis by the expert, although factual assumptions may be stated when necessary or appropriate; factual witnesses should not seek to rely on, refer to or adopt matters set out in an expert report, and an expert report will not be admitted unless the Commission is satisfied as to the independence of the expert.

I. The Commission's Directions

33. At the Preliminary Hearing on 24 September 2018, the Commission will give directions on the further conduct of the proceedings. At **Annex 2** hereto is a document entitled 'Rules of Procedure and Practice' which sets out the directions which the Commission intends to make. Particular attention is drawn to the following:

- (i) Paragraphs 6 and 7 which deal with the procedures to be adopted by any involved party who wishes to gain access to the documents received by the Commission.
- (ii) Paragraph 17 which deals with the procedure by which the Commission will receive oral evidence.
- (iii) Paragraphs 19 to 21 which deal with the timing of the Substantive Hearing.

34. With specific regard to paragraph 17(1), the Commission's current intention is to call the factual evidence of the involved parties in the

order set out below. It is emphasised, however, that the process is flexible and, if the Commission concludes that it wishes to hear from a particular witness (or witnesses) at a particular stage, it will issue appropriate directions.

(1) Intrafor

(2) China Technology

(3) Fang Sheung

(4) Leighton

(5) MTRC

(6) Government (THB, HyD, DevB & BD).

35. Whilst it is not possible, at this stage, to give even a rough timetable of when each involved party's witnesses will be called, it is hoped that the indication above will, at least in broad terms, assist the planning of each involved party. All that can be stated with some certainty at this moment is that the witnesses from Intrafor and China Technology will be required to attend to give evidence in the first week of the Substantive Hearing.

36. Further, the Commission's legal team will, in due course, set out the order in which it would prefer each involved party's witnesses to be called. If, however, any involved party wishes, for good reason, to alter the preferred order, the Commission's legal team is prepared to be flexible and accommodate any reasonable alteration request. In this regard, any involved party should give reasonable notice to the Commission's Solicitors of any desired alteration to minimise any

potential disruption to the hearing.

37. It is anticipated that the Commission's experts will be called at the end or at least towards the end of the hearing, with their reports being made available a reasonable time beforehand. Again, however, it is emphasised that if the Commission concludes that it would assist the efficiency of the Inquiry to call the Commission's expert(s) earlier (for example, in an endeavour to close out a particular issue or line of inquiry) then appropriate directions will be issued.

Dated 24 September 2018

Ian Pennicott SC

Calvin Cheuk

Solomon Lam

Counsel for the Commission