

**COMMISSION OF INQUIRY INTO
THE CONSTRUCTION WORKS AT
AND NEAR THE HUNG HOM
STATION EXTENSION UNDER
THE SHATIN TO CENTRAL LINK
PROJECT**

**(formerly 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)**

**Rules of Procedure and Practice for
the Extended Inquiry**

[made at the Preliminary Hearing on 6 May 2019
("the Preliminary Hearing")]

1. The Commission's proceedings will address the matters set out in its Expanded Terms of Reference stipulated in the Gazette Notice No. 1539 dated 22 February 2019. These proceedings are referred to herein as the "Extended Inquiry". The part of the Inquiry covered by the original Terms of Reference in respect of which an Interim Report was submitted by the Commission to the Chief Executive on 25 February 2019 shall be referred to as the "Original Inquiry".
2. Parties permitted to participate and/or be legally represented at the Original Inquiry will be referred to hereinafter as the "original involved parties" or "original involved party." Parties permitted to

participate and/or be legally represented at the Extended Inquiry will be referred to hereinafter as “the involved parties” or “involved party”. As at the date of the Preliminary Hearing, the involved parties are those named in the “Opening Address for the Preliminary Hearing” by Counsel for the Commission in the Extended Inquiry.

I. General

Public hearings

3. Unless otherwise directed, the hearings of the Extended Inquiry will be open to the public.

Prohibition on photography, audio/video recordings without the authorisation of the Commission

4. Without the authorisation of the Commission, no photographs may be taken or audio/video recordings made in the Hearing Room, the hearing transmission gallery, hall area or any other areas in the former Tsuen Wan Law Courts Building (“the Building”) used for the purposes of this Extended Inquiry.

Language

5. The proceedings will be conducted in English, although witnesses may give their evidence in any language or dialect of their own choice. Testimony given in a language other than English will be translated into English. The Commission will provide simultaneous interpretation services when appropriate.

Access to documents

6. The Secretariat of the Commission has compiled, and will update regularly, an index of documents and materials provided to the Commission for the purposes of the Extended Inquiry. Any involved party who wishes to gain access to such documents or materials may apply in writing to the Secretariat of the Commission. At its discretion, the Commission shall determine whether or not, when and to what extent access may be permitted, and what conditions, if any, should be imposed upon the grant of such access. Given that access may be restricted and conditions may be imposed, documents and materials provided to an involved party shall not be disclosed or disseminated to other involved parties or unrelated persons without the consent in writing of the Commission.
7. If access is permitted to any involved party, only soft copies of the documents and materials to which access has been permitted by the Commission will be provided. The cost of obtaining such copies shall be borne by the party obtaining such copies.

Use of materials provided by the Commission

8. All materials supplied by the Commission to any of the involved parties shall be used only for the purposes of the Extended Inquiry. Public dissemination of any of such materials and the information therein shall not be allowed until and unless they have been adduced as evidence and expressly referred to in the Extended Inquiry.

9. The Extended Inquiry is deemed a judicial proceeding. Any unauthorised disclosure of materials and information in breach of paragraph 8 above constitutes a contempt of court. For the avoidance of doubt, the direction under paragraph 8 above applies to the involved parties, including their witnesses, experts, staff and other related persons. In respect of the materials and information supplied by the Commission, the involved parties shall ensure that their witnesses, experts, staff and other related persons (if they have access to such materials and information and any parts thereof) are fully aware of and strictly comply with the direction under the foregoing paragraph.

II. Standing

Written witness statements

10. Insofar as not already provided, the involved parties and other parties or individuals who have been directed by the Commission to provide written statements for the purposes of the Extended Inquiry shall provide such statements by the date specified by the Commission, subject to applications for extension of time as approved by the Commission.
11. No further responsive statement(s) shall be filed by any involved party unless leave is given by the Commission. The Commission will not consider any application for leave to adduce a further responsive statement unless such written application is made in good time and accompanied by the proposed responsive written statement(s). Any

written statement(s) which are not responsive in nature will not be allowed.

12. Any involved party who wishes to adduce expert evidence on any issue relevant to the Extended Inquiry must make an application to do so on reasonable notice to the Commission, and any such application shall be made to the Commission through its solicitors and accompanied by the provision of 3 copies of the written report signed by the expert concerned together with a soft copy. If the Commission grants any such application, it will give directions as to when the expert is required to be called to give evidence at the Substantive Hearing. The Commission will not grant any such application if it is not satisfied that the evidence to be tendered is independent expert evidence.

The participation and legal representation of other parties

13. Any party (apart from the involved parties currently named in the Extended Inquiry) who wishes to (1) participate in the Extended Inquiry (if leave to participate has not yet been granted by the Commission); (2) call any witnesses; and/or (3) adduce any witness statements and/or materials for the purposes of the Extended Inquiry, shall apply in writing to the Commission by **Tuesday, 14 May 2019**.
14. If the Commission decides that an application referred to in paragraph 13 above be granted, the party in question shall (unless otherwise directed by the Commission) provide the witness statement(s) of the witness(es) to be called and/or material(s) to the Commission within such period as the Commission may consider appropriate.

III. The hearing procedure

Opening addresses

15. Counsel for the Commission may make a written and oral opening address. Counsel for the involved parties may make their own opening addresses provided an application to do so (enclosing a written opening address which should not be longer than **25** pages and provided in font size 14 with single spacing and no footnotes other than for document references) has been made by **Wednesday, 22 May 2019**. If the Commission accedes to such application, the oral addresses will be made immediately after the address of Counsel for the Commission. The Commission may determine the sequence and length of such oral addresses.

Evidence

16. The Commission notes that section 4(1) of the Commissions of Inquiry Ordinance, Cap. 86 provides that in conducting the Extended Inquiry, it may:

“(a) 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.”

The examination of witnesses

17. Oral evidence will be given under oath or affirmation.

18. The procedure by which the Commission will receive oral evidence is as follows:

- (1) The Commission shall determine the sequence in which oral evidence be given in the Extended Inquiry.
- (2) Counsel for the Commission will lead the evidence of witnesses called by the Commission; Counsel for any involved party may apply to the Commission for leave to question a particular witness and the Commission will determine the sequence of cross examination by those Counsel whose application for cross examination has been granted; Counsel for the Commission may re-examine the witness.
- (3) Unless otherwise directed by the Commission, Counsel for an involved party may lead the evidence of witnesses who testify on behalf of such a party, after which Counsel for the Commission may question such witness. Thereafter, Counsel for other involved parties may apply to the Commission for leave to question such witness and the Commission will determine the sequence of cross examination by those Counsel whose application for cross examination has been granted. Finally, Counsel for the involved party leading the evidence of the witness may re-examine such witness.
- (4) Unless otherwise directed by the Commission, insofar as any witness wishes to adopt his or her witness statement as his or her evidence (with or without modification or elaboration), the contents of his or her witness statement will not be read out.

Witness statements adduced as evidence at the hearing will be uploaded (without exhibits) to the Commission's website.

- (5) At any stage of the Extended Inquiry the Commission may ask questions of any witness.
- (6) The Commission may give directions to each party limiting the length of examination of witnesses and submissions.
- (7) The Commission shall inform all involved parties as and when the witness statements and/or expert reports of the witnesses to be called by the Commission become available.
- (8) The Commission may recall any person who has given oral evidence to answer further questions.

“Witnesses” referred to above shall include factual and expert witnesses.

Closing addresses

19. Counsel for the Commission and Counsel for the involved parties may make written and, if the Commission so directs, oral closing addresses. The Commission may determine the sequence and length (both written and oral) of such addresses.

The Substantive Hearing

20. The Substantive Hearing of the Extended Inquiry shall commence on **27 May 2019 at 10 am** in the Building and shall, subject to any

adjournments that the Commission may consider necessary from time to time, continue until 19 June 2019.

21. During the period 27 May 2019 to 19 June 2019, the Substantive Hearing will only deal with the factual evidence in relation to paragraph (a)(2) of the Expanded Terms of Reference in respect of the construction works at the North Approach Tunnels, the South Approach Tunnels and the Hung Hom Stabling Sidings.
22. The Commission will make further directions in due course in relation to the other necessary areas of the Expanded Terms of Reference, including any further necessary evidence and/or hearing.
23. The Commission will also make further directions as necessary in relation to matters pertaining to the Original Inquiry, and the original involved parties shall be notified in writing accordingly in due course.
24. Unless otherwise directed, the Substantive Hearing for the Extended Inquiry will be held from 10 am to 1 pm and from 2.30 pm to 5 pm every weekday. The Commission may consider the Substantive Hearing being held on Saturdays during the period mentioned in paragraphs 20 and 21 above.
25. There will be a Real-time Transcript Streaming (“Transcend”) of the Substantive Hearing. Any applications for subscriptions to Transcend should be made in writing to the Secretariat of the Commission within 14 days of today (ie. by **Monday, 20 May 2019**), stating how many subscriptions are required and undertaking to pay the costs thereof. To

view the real-time transcript during the Substantive Hearing, subscribers will need to use their own laptops or notebook computers and make arrangement with the service provider directly.

26. An electronic bundle has been and continues to be prepared for use at the Substantive Hearing. This will be managed by the Secretariat. All involved parties should be able to read pages in the electronic bundle during the course of the Substantive Hearing on monitors provided by the Secretariat.
27. Seating arrangements in the Hearing Room during the course of the Substantive Hearing will be determined by the Secretariat on a day to day basis. Seating for Counsel and Solicitors for the Commission will be fixed throughout the Substantive Hearing but the representatives of the involved parties will be allocated seats depending upon the witness giving evidence, those parties who have been granted leave to cross-examine the witness and any other factors that the Secretariat deems relevant. The Commission expects the parties' representatives to fully co-operate with each other in respect of the seating arrangements in the Hearing Room. By **Tuesday, 14 May 2019**, each involved party should nominate a single contact person and send his/her name, post title, name of firm, telephone number and email address to the Secretariat. The Secretariat will compile a contact list and use the list for disseminating messages in relation to seating and other hearing arrangements during the course of the Substantive Hearing.
28. At the discretion and determination of the Commission, each involved party may, subject to availability, be allocated a lockable room within the Building for its use for the duration of the Substantive Hearing.