

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
APPOINTED PURSUANT TO SECTION 2 OF THE COMMISSION OF INQUIRY
ORDINANCE (CHAPTER 86) ON 10 JULY 2018

WITNESS STATEMENT OF CHEUNG TIN CHEUNG

I, CHEUNG Tin Cheung, Director of Buildings, Buildings Department of 18th Floor, Pioneer Centre, 750 Nathan Road, Mongkok, Kowloon, do say as follows :-

1. I am the Director of the Buildings Department (“**BD**”). I joined the former Buildings Ordinance Office (re-organized as the BD in 1993) in 1982 and have taken up the office of Director of Buildings since 23 January 2017. As the Director of Buildings, I am responsible for leading and managing the operation of the BD, as well as formulating and reviewing policies governing the control and facilitation of private development in Hong Kong. As the Building Authority (“**BA**”)¹, I perform the functions and exercise the power vested in me under the Buildings Ordinance (“**BO**”) (Cap. 123). In respect of academic and professional qualifications, I hold a Bachelor of Science Degree in Estate Management from the University of Reading, UK, a Master of Science Degree in Construction Management from the University of Bath, UK, and a Doctor of Philosophy Degree in Fire Engineering from the City University of Hong Kong. In addition, I am a Fellow of the Hong Kong Institute of Surveyors.
2. I make this Witness Statement pursuant to the request of the Commission of Inquiry (“**the Commission**”) into the Diaphragm Wall and Platform Slab Construction Works at the Hung Hom Station Extension under the Shatin to Central Link (“**SCL**”) Project, set out in a letter from Messrs. Lo & Lo to the Development Bureau (“**DevB**”) and

¹ Under section 2(1) of the Buildings Ordinance, the Director of Buildings is the BA.

Director of Buildings dated 6 August 2018 (“**the 6 August Letter**”). Save where otherwise appears, the facts deposed hereto are within my personal knowledge or are derived from office files and records and sources to which I have access and are true to the best of my knowledge, information and belief. Save as otherwise specified, this Statement adopts the same abbreviations and nomenclature as in the 6 August Letter.

3. In this witness statement I shall address Questions 1 and 8(b) at pages 6 and 8 of the 6 August Letter. Other questions which are within BD’s purview will be addressed in the witness statements of other relevant officers of the BD to the Commission. I understand that matters that fall within the purview of the policy bureau, i.e. DevB, will be addressed in the witness statements of the relevant officers of the DevB to the Commission.

A. Roles, Powers, Duties and Responsibilities of BD

4. BD is responsible for promoting building safety, setting and enforcing safety, health and environmental standards for private buildings, as well as improving the quality of building development. BD provides services to owners and occupants in both existing and new private buildings through enforcement of the BO. The BO covers the planning, design, and construction of buildings and associated works by setting building safety and health standards for private development in Hong Kong. Pursuant to the powers under the BO, BD is responsible for enforcing these standards, and building owners are required to appoint and seek advice from registered building professionals or registered contractors (“**RC**”) if they wish to carry out building works or street works.
5. The building control regime under the BO is a self-regulatory system, which requires every person for whom building works are to be carried out to appoint relevant personnel registered under the BO, viz. an Authorized Person (“**AP**”) and if necessary a Registered Structural Engineer (“**RSE**”) and a Registered Geotechnical Engineer (“**RGE**”). Pursuant to section 4(3) of the BO, the AP, RSE and RGE appointed shall:

- (1) supervise the carrying out of the building works or street works, as the case may be, in accordance with the supervision plan;
 - (2) notify the BA of any contravention of the regulations which would result from the carrying out of any work shown in any plan approved by the BA in respect of the building works or street works; and
 - (3) comply generally with the BO.
6. In addition, the person for whom building works are to be carried out is required to appoint contractors registered under the BO unless the proposed building works are exempted building works. There are three registers for RC, namely the general building contractors' register, the specialist contractors' register and the minor works contractors' register. For the specialist contractors' register, sub-registers of different categories of specialised works (such as foundation works) are maintained. Under sections 9(5) and 9(6) of the BO, the registered general building contractor and registered specialist contractor appointed shall:
- (1) provide continuous supervision to the carrying out of the works in accordance with his supervision plan;
 - (2) notify the BA of any contravention of the regulations that would result from carrying out of the works shown in the plan approved by the BA for the works; and
 - (3) comply generally with the BO.
7. While BD has been carrying out curtailed² and audit checks on plan submissions and audit checks on completed building works and street works, it is the responsibility of the registered building professionals and RC to ensure that the works fully comply with the BO, its subsidiary legislation and any other relevant laws, codes of practice and practice notes.

² Pursuant to Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineer ADM-19 issued by the BD, a curtailed check system has been adopted to check on fundamental issues only in processing plan submissions, whilst non-fundamental issues will not be checked and will not be raised as disapproval items. After commencement of works, any contravention of the BO and its subsidiary regulations should be rectified as and when they are discovered and in any event, before certification of completion of works.

8. The BA acts as a regulator with powers conferred by the BO (e.g. disciplinary action and prosecution action) to enforce the health and safety standards set out in the BO³. The BA may instigate prosecution against any person who commits an offence under section 40 of the BO. Examples of the statutory offences are the use of defective materials or improper mixing / preparation / fixing of materials (see section 40(2A) of the BO), and carrying out building works in such manner as is likely to cause a risk of injury to any person or damage to any property (see section 40(2B) of the BO). For building professionals or contractors registered under the BO, the BA may also instigate disciplinary action in relation to the matters stipulated in sections 7 and 13 of the BO, such as negligence, misconduct, and conviction of an offence related to carrying out of professional duties or building works. Where necessary, the BA may also issue statutory orders under sections 23 and 24A of the BO to require dangerous building works to cease or require such work as the BA may specify to be carried out to ensure that the works will cease to constitute a risk.

B. Building Works relating to Railway Projects

9. Having regard to the exceptional nature of building works related to railway construction, the BA, in accordance with section 54(2) of the Mass Transit Railway Ordinance (Cap 556) (“**MTRO**”), may exempt any of those works from any provision of the BO.
10. As a matter of background, during the project planning/design stage of a railway construction project, the Mass Transit Railway Company Limited (“**MTRCL**”) may apply to the BA for exemption of the project from certain provisions of the BO and submit a Project Management Plan (“**PMP**”) for the agreement of the BA and other relevant Government departments. The PMP shall set out the standards and procedures to be adopted by MTRCL for the implementation of the project with a view to meeting all requirements under the BO and outline the proposed organisational structure of the MTRCL’s project team, MTRCL’s quality systems, the chains of command and the

³ For the due administration of the BO, the duties and powers thereunder have been delegated in accordance with section 2(2) of the BO either generally or specifically to officers of the BD.

responsibilities of individuals in respect of their statutory and professional obligations.

11. Subject to a satisfactory PMP, the BA may exempt the administrative procedures and requirement by issuing an instrument of exemption for the project, accompanied with a reference schedule setting out what types of works would be exempted with conditions stipulated.
12. Normally, the exemption under the instrument of exemption would be confined to those procedures and requirements relating to the appointment of AP, RSE and RGE, approval of plans, consent to commencements and resumption of works, and occupation of buildings whereas the design and constructions of the building works shall still comply with the safety standards required under the BO. With the instrument of exemption in place, the exempted works would need to go through a consultation process instead of a full BO approval process.

C. The SCL Project

13. The SCL Project consists of two parts, namely, the East West Line (“**EWL**”) and the North South Line (“**NSL**”). The Hung Hom Station Extension (“**HUH**”) is the interchange station for EWL and NSL. Building works of the SCL Project may fall under the purview of the BA or the Highways Department (“**HyD**”). Those works to which the BO applies will be regulated by the BA.
 - (1) The expansion of HUH Station and the construction of Sung Wong Toi Station of the SCL Project are within the land leased to the Kowloon-Canton Railway Corporation and the Government land given to the MTRCL respectively. The construction works at these locations are therefore subject to the BO and the building safety and health standards therein. Following the scheme explained in section B above, the BA issued an Instrument of Exemption dated 5 December 2012 (“**IoE**”) to exempt MTRCL from several requirements under the BO in relation to the leased land portion of the SCL Project.
 - (2) On the other hand, pursuant to section 41(1) of the BO, building

works of the SCL Project which are located at Government land and unleased land are exempted from the control of the BO. For these building works, the Director of Highways (“**DHy**”), in accordance with the Entrustment Agreement signed between the Government and MTRCL, issued an Instrument of Compliance (“**IoC**”) requiring MTRCL to follow the administrative procedures and requirements as stipulated in the IoC for carrying out building works. The objective is to ensure that the quality of these building works to be not inferior to the standards as required by the BO and its subsidiary legislations.

14. The IoE referred to at paragraph 13(1) above for the SCL Project is at **Annex HHK-1** of the Witness Statement of HO Hon Kit. The exemption granted under the IoE related to the buildings and associated buildings works detailed in the Reference Schedule attached to the IoE (“**the Reference Schedule**”), which included the diaphragm walls and platforms slabs under Contract 1112⁴. The Reference Schedule also sets out the actions which would need to be taken. Further, it was clearly stated in the IoE that the BA would retain the duties and sanctioning powers to ensure standards of health and safety. In particular, the IoE expressly provided that:
 - (1) The BA would reserve the right to take any action including requiring the suspension and the preventive or remedial action in the event of any works materially deviating from the agreed design or working procedure.
 - (2) The exemption may be withdrawn if any of the conditions contained in the IoE are not observed or in other circumstances necessitating such withdrawal.
15. Moreover, the exemption in the IoE is confined to those procedures and requirements relating to the appointment of AP and RSE as appropriate, approval of plans, consent to commencement and resumption of works and occupation of buildings provided for in section 4, sections 14 to 17A and sections 19 to 21 of the BO, while the appointments of RGE (if

⁴ See Category 2 of the Reference Schedule of IoE, which requires consultation with BD on structural engineering aspects for compliance with the BO and effects on existing or proposed nearby private buildings.

necessary) and RC are still required. In this connection, the IoE specifies that conditions are to be imposed under the MTRO requiring MTRCL to, among other things:

- (1) appoint a Competent Person (“CP”) who shall take up the responsibilities and duties of AP and RSE to coordinate and supervise the works, and to submit plans for consultation. The appointment of CP shall be subject to prior agreement of BD with regard to qualifications and experience;
- (2) appoint a RGE for building works involving significant geotechnical content; and
- (3) instigate an assurance system and control scheme to ensure that management of the construction of the works are at a standard not inferior to that required under the BO and regulations. This assurance system and control scheme comes in the form of a PMP of the SCL Project. A copy of the PMP (versions D, E & F) of the SCL Project is at **Annex HHK-2** of the Witness Statement of Ho Hon Kit.

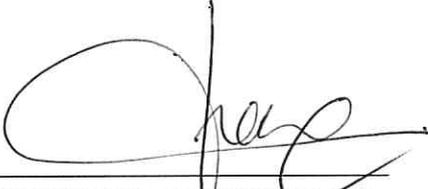
16. As explained at paragraph 13(1) above, the construction works at HUH are subject to the requirements under the BO. In other words, the IoE is *not* for exemption from compliance with BO standards. Pursuant to paragraph 2(a) of the IoE, Category 2 of the Reference Schedule and item (a) of the General Notes and Conditions to the Reference Schedule, MTRCL should implement a consultation process with BD on, among others, the structural engineering aspects of the diaphragm walls and platform slabs (under Contract 1112) for compliance with the BO by submission of such drawings and calculations and other details for vetting and agreement by the BD in a timely manner and ahead of site construction. The consultation process includes subsequent certification of satisfactory implementation of the agreed proposals prior to the operation of the railway.
17. Furthermore, the CP appointed by MTRCL should draw up a site supervision plan (“SSP”) as defined in section 2(1) of the BO for the proposed works and submit the same to the BD in accordance with item

(l) of the General Notes and Conditions to the Reference Schedule and Clause 5.2.1(c) of the PMP. The CP, RGE and the Authorised Signatory of the RC, should provide site supervision at a frequency in accordance with the SSP (see sections 4(3), 9(5) and 9(6) of the BO). The above parties should notify the BA of any contravention of the regulations made under the BO that would result from carrying out the works shown in the plans accepted by the BA in respect of the building works, and shall comply generally with the BO.

18. Consultation submissions from MTRCL are processed by the BO Team in the Railway Development Office of HyD. The BO Team, comprising professional staff seconded from the BD, handles matters relating to the IoE and IoC for the SCL Project and the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Railway Link. The BO Team advises on the building safety standards, practices and procedures of the BD. Apart from carrying out witness site tests on structural matters, the BO Team conducts completion inspection to random check whether the works are generally completed in accordance with the agreed building layout plans and to check the relevant supporting documents for the completed works.
19. I will defer to my colleagues in the BD to elaborate on the matters stated above and provide details on other Questions raised in the 6 August Letter in their respective Witness Statements to the Commission.
20. Since the media reports on the suspected Defective Steel Works (as defined in the 6 August Letter), the BD has been taking steps to carry out investigations. Some of the steps taken have been recorded in the documents which will be exhibited to my colleagues' Witness Statements to the Commission.
21. BD is seriously concerned about the suspected irregularities in the construction works of the SCL Project. We welcome the establishment of the Commission and will use our best endeavours to assist in the Commission's work and follow up on any recommendations the Commission may make.

22. I confirm that the contents of this Witness Statement are true to the best of my knowledge, information and belief.

Dated this 12th day of September 2018



(CHEUNG TIN CHEUNG)