

**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) (“the Commission”)**

**RESPONSIVE WITNESS STATEMENT OF
CHEUNG YICK MING
FOR WING & KWONG STEEL ENGINEERING CO., LIMITED**

I, Cheung Yick Ming, of Unit 709, 7/F, Lakeside 2, Phase 2, Hong Kong Science Park, Shatin, New Territories, do make the following responsive witness statement to the best of my knowledge, information and belief, as follows:-

A. INTRODUCTION

1. I am the Quantity Surveyor Manager of Wing & Kwong Steel Engineering Co., Limited (“W&K”), a position which I have held since 2011. I am duly authorized by W&K to give this responsive witness statement on its behalf.
2. I understand that on 19 February 2019, the Chief Executive in Council approved the expansion of terms of reference of the Commission (“**the Expanded TOR**”).
3. By two letters both dated 29 March 2019, Messrs. Lo & Lo (“**Lo & Lo**”), solicitors for the Commission, required W&K to provide responsive witness statement(s) relevant to the matters in the Expanded TOR, specifically as to those matters requested from W&K as set out in the letter from Lo & Lo dated 29 March 2019 regarding the Hung Hom Stabling Sidings, referred to as “**HHS**” in the letter (“**the HHS Letter**”) and the letter from Lo & Lo

dated 29 March 2019 regarding the North Approach Tunnels, referred to as “NAT” in the letter (“**the NAT Letter**”).

4. This responsive statement is made pursuant to the request of the two letters stated above.
5. Unless otherwise stated, the facts stated here are within my personal knowledge and are true. Where the facts and matters stated here are not within my own knowledge, they are based on the stated sources and are true to the best of my knowledge, information and belief. As the relevant matters / events took place some time ago, I will use my best endeavors to assist the Commission to the best of my knowledge, information and belief.
6. Furthermore, unless otherwise stated, in order to maintain consistency the terms and abbreviations used in the Lo & Lo letters will be adopted in this statement.

A1. My main job duties

7. As the Quantity Surveyor Manager of W&K, my main job duties broadly include the following:-
 - (1) giving preliminary cost advices;
 - (2) conducting feasibility studies, cost planning and budgeting;
 - (3) handling contractual documents;
 - (4) carrying out project control;
 - (5) submitting interim payments and settling final accounts; and
 - (6) evaluating variations of contract works.
8. However, as to specific day to day running and management of the rebar fixing workers and the rebar fixing works, a foreman is engaged at the relevant construction site to oversee those tasks. In relation to HHS and NAT, the subject of the Inquiry, W&K engaged Mr. Ng Man Chun (known

as “Ah Chun” or “**Chun**”) of Loyal Ease Engineering Ltd (a subcontractor) (“**Loyal Ease**”) as site supervisor for this purpose. All rebar fixing workers engaged by W&K in relation to rebar fixing works at HHS and NAT were employees of Loyal Ease.

B. THE HHS LETTER

B1. *Paragraph 1.1 of the HHS Letter*

Describe and explain generally the rebar fixing works at HHS

9. W&K was established in 1998. Since its establishment its main scope of business has been in rebar fixing works. W&K has therefore over 20 years of experience in rebar fixing works which includes coupler installation. There is now produced and shown to me marked exhibit “**CYM-1**” a list of W&K’s relevant experience in rebar fixing works between 2011-2019.
10. Insofar as the rebar fixing works at HHS (“**the Sub-Contract works**”) are concerned, W&K as the sub-contractor entered into a sub-contract (No. H2601/SC/096) with Leighton Contractors (Asia) Limited (“**Leighton**”) as the contractor on or around 28 April 2015 (“**the Original Sub-Contract**”). There is now produced and shown to me marked exhibit “**CYM-2**” a copy of the Original Sub-Contract. The Original Sub-Contract as exhibited here is an unsigned copy, as will be explained below, W&K signed two copies of the Original Sub-Contract and returned them to Leighton for their signature, but Leighton claimed that they had lost or misplaced them, and later Leighton asked W&K to sign another version of the subcontract which we later realize contain additional matters in comparison with the Original Sub-Contract. Hence, W&K was never provided with a signed and executed copy of the Original Sub-Contract.
11. Prior to the execution of the Original Sub-Contract, W&K went through an open tender process in or around August 2014 in which Leighton invited

various subcontractors to submit tenders for the Sub-Contract Works. W&K obtained the relevant tender documents in or around August 2014. There is now produced and shown to me marked exhibit “**CYM-3**” a copy of the relevant tender documents (“**the Tender Documents**”).

12. Among the Tender Documents was a copy of the bill of quantities, which shows that the Sub-Contract Works was to be priced based on the unit weight (kg) of the materials to be used. Based on that bill of quantities, I, together with Mr. Joe Leung and Mr. Philip Leung, worked out the proposed contract price in the sum of HK\$57,153,254 to be submitted on behalf of W&K. By a letter dated 26 September 2014 sent by me to Leighton (attn Mr. Malcolm Plummer – Leighton’s Project Director), W&K submitted its tender. There is now produced and shown to me marked exhibit “**CYM-3-a**” a copy of the letter dated 26 September 2014.
13. I should add here that the actual amount of couplers involved for the Sub-Contract Works was significantly higher from the quantities as set out in the bill of quantities. Whilst it was originally projected that approximately 1,700 couplers would be used, from my recollection the actual number of couplers used was about 57,000.
14. After W&K submitted its tender for the Sub-Contract Works, there were further negotiations on the contract price between myself on behalf of W&K and Mr. Horace Li of Leighton. Eventually, by an email dated 22 November 2014 sent by Mr. Kelvin C.K. Cheung of Leighton to me, I was notified that W&K won the tender and was chosen as the subcontractor for the Sub-Contract Works. There is now produced and shown to me marked exhibit “**CYM-4**” a copy of the email dated 22 November 2014.
15. The rebar fixing works to be carried out by W&K at HHS are set out in the “scope of the Sub-Contract Works” in the Original Sub-Contract. As set out in the Second Schedule to the Original Sub-Contract, the Sub-Contract Works was to involve the “*provision of all necessary labour, supervision,*

plant, equipment and materials for Reinforcement bar Cutting, Bending and Fixing for Stabling Sidings (HHS) and Associated Structures package in full compliance with the requirements of this Sub-Contract, including all necessary transportation, samples, reports, quality plan, safety and environmental plans, method statements and everything else necessary to complete the works”.

16. The scope of the rebar fixing works to be carried out by W&K at HHS under the Original Sub-Contract is set out at the Third Schedule to the Original Sub-contract as follows:-

“The Sub-Contract Works involves the rebar cutting, bending and fixing for the construction and modification works of the new and existing Hung Hom Station. ...

The reinforcement bar cutting, bending and fixing works include but are not limited to the following locations:

- 1. Transformer Rooms Block 1B*
- 2. Store Rooms Block 1A*
- 3. Office Rooms Block 2*
- 4. Plant Room Block 3*
- 5. Water Tanks and Pump Room Block 4*
- 6. Sprinkler water tank and pump room Block 5*
- 7. Transformer Room Block 6&7*
- 8. Dangerous Goods Store Block 8*
- 9. Additional and Alternation (“A&A” hereafter) works on the existing Means of Escape (“MoE” hereafter) between Grid Line A-9 and A-14.*
- 10. Pedestrian underpass at Grid Line A-16*
- 11. Pedestrian underpass at Grid Line A-22*
- 12. A&A works on the existing MoE between Grid Line A-21 and A-23.*

13. A&A works for Drencher Tank between Grid Line A-9 and A-14”

17. My understanding is that the locations referred to above fall within the purview of HHS but does not cover any part of NAT. There is now produced and shown to me marked exhibit “CYM-5” a copy of the site layout plan in respect of Contract 1112 illustrating some of the specific areas of HHS covered by the Sub-Contract Works in the Original Sub-Contract, which have been coloured in pink and marked with the corresponding number of the various locations stated in paragraph 16 above.
18. The Third Schedule to the Original Sub-Contract further sets out the scope of the Sub-Contract Works including:-

“The scope of the Sub-Contract Works shall include but not be limited to the following:-

- i) Receive reinforcement bars and couplers from suppliers, store on site within designated areas, and arrange samples for testing.*
- ii) Cut, bend and fix in position reinforcement bars in accordance with the M&W Specification, General Specification and the most current working drawings.*
- iii) Coordinate with other sub-contractors and Designated Contractors to install cast-in bolts, anchor plates, embeds, electrical conduits, junction boxes and other pipes and pipe fittings for MEP provisions. (installation of MEP provisions, bolts, embeds, brackets by others);*
...”

19. As stated above, W&K did not receive a signed copy of the Original Sub-Contract from Leighton. On or around 13 March 2017, Calvin Tse of Leighton wrote me an email to inform me that the signed copies of the Original Sub-Contract which were in Leighton’s possession had been lost,

and requested that I sign another copy of the Original Sub-Contract for Leighton's record. In the same email, Calvin Tse said that "*the original contract doc. is lost. Now the same set of doc is ready for you to collect, chop and sign. Please find me on coming Wednesday*". There is now produced and shown to me marked exhibit "**CYM-6**" a copy of email sent at 2:35 p.m. on 13 March 2017 from Calvin Tse to me.

20. Relying on what Calvin Tse had said to me at the time and what was stated in the email (i.e. that it was "*the same set of doc*"), I had no hesitation in agreeing to Leighton's request since I thought at the time that it was a mere formality and that the contents of the contract to be signed would be the same as the Original Sub-Contract. I therefore agreed to Leighton's request. I then asked my staff to attend Leighton's office to collect the two copies of what I thought was a copy of the Original Sub-contract (For ease of reference I will refer to this as "**the Second Contract Document**").
21. At the time when the Second Contract Document was collected, it was a clean document in the sense that it had not yet been signed by either party.
22. By an email sent to me by Calvin Tse on 16 March 2017 at 1:14 p.m., Calvin Tse sent to me by way of email attachments 2 documents and said that they represent the replacement pages for this Second Contract Document (with only change as to format) and told me to use these pages to replace the corresponding pages of this Second Contract Document. There is now produced and shown to me marked exhibit "**CYM-7**" a copy of the email dated 16 March 2017 sent by Calvin Tse to me.
23. At the time I did not look at the contents of this Second Contract Document obtained from Calvin Tse in detail as I assumed that the contents are exactly the same as the Original Sub-contract.

24. After signing and chopping the 2 copies of this Second Contract Document, I arranged for them to be sent back to Leighton, without making an extra copy because as I had said above, Leighton had not yet signed on the Second Contract Document. I had then expected Leighton to send back to me a hard copy of the Second Contract Document once they had signed it, but they never did.
25. It was not until I received the two letters dated 29 March 2019 from Lo & Lo that I wrote to Mr. Kenneth Lau (QS manager of Leighton) to request for a copy of the signed version of the Second Contract Document. There is now produced and shown to me marked exhibit “CYM-8” a copy of the email dated 4 April 2019 sent by me to Kenneth Lau. There was no reply to this email, so I called Kenneth Lau and asked him for a copy of the signed Second Contract Document. Shortly thereafter, Kenneth Lau provided a copy of the signed Second Contract Document to me.
26. As I read this Second Contract Document in detail, I noticed that some of the terms were different from the Original Sub-Contract despite bearing the same subcontract no. H2601/SC/096 as the Original Sub-Contract.
27. For example, there were additional matters contained in the “Sub-Contract Scope of Work” in Appendix 1 of the Second Contract Document comparing with the Third Schedule to the Original Sub-Contract in that it covered not only works at HHS, but also that at NAT (“**the Enlarged Scope of Works**”) (the underlined part below represents the Enlarged Scope of Works which was not covered under the Original Sub-Contract):-

“The Sub-Contract Works involves the rebar cutting, bending and fixing for the construction and modification works of the new and existing Hung Hom Station. ...

The reinforcement bar cutting, bending and fixing works include but are not limited to the following locations:

1. Stabling Sidings and associated structures
2. Stabling Sidings substructures and pile caps (provisional)
3. Transformer Rooms Block 1B
4. Store Rooms Block 1A
5. Office Rooms Block 2
6. Plant Room Block 3
7. Water Tanks and Pump Room Block 4
8. Sprinkler water tank and pump room Block 5
9. Transformer Room Block 6 and 7
10. Dangerous Goods Store Block 8
11. Additional and Alternation ("A&A" hereafter) works on the existing Means of Escape ("MoE" hereafter) between Grid Line A-9 and A-14.
12. Pedestrian underpass at Grid Line A-16
13. Pedestrian underpass at Grid Line A-22
14. A&A works on the existing MoE between Grid Line A-21 and A-23.
15. A&A works for Drencher Tank between Grid Line A-9 and A-14
16. North South Line ("NSL" hereafter) of South Approach Tunnel ("SAT" hereafter)
17. East West Line ("EWL" hereafter) of South Approach Tunnels and Launching Track
18. Re-provisioning, Remedial and Improvement works ("RRIW" hereafter)
19. North Fan Area Noise Enclosures (provisional)
20. Tunnel Ventilation System Room
21. NSL of North Approach Tunnel (provisional)
22. EWL of North Approach Tunnel (provisional)
23. Associated Works to North Approach Tunnel (provisional)"

There is now produced and shown to me marked exhibit “**CYM-8-a**” an extract of the Second Contract Document showing the Enlarged Scope of Works.

28. As will be explained below, whilst W&K agreed to carry out certain rebar fixing works at the NAT pursuant to various “sub-contractors’ instructions” (commonly known as “**SCIs**”) issued by Leighton to W&K, including SCI/2710, SCI/2711 and SCI/2806 (“**the NAT Works**”), such works were not included in the Original Sub-Contract. For these NAT Works the intention was that W&K would simply “provide labour”. However, I am now unable to locate the SCI/2710 and SCI/2806 from W&K’s files. But I expect that these SCIs should be kept by Leighton. Nevertheless, I was able to find SCI/2711, there is now produced and shown to me marked exhibit “**CYM-9**” a copy of SCI/2711. It can be seen from SCI/2711 that W&K was instructed to “*Provide 15 nos. of labour to carry out re-bar fixing work ... for NAT NSL tunnel bay 3 and 4 base slab*” and that the job was priced based on the number of labour hours provided. I was also able to find an email dated 5 December 2016 sent to me by Calvin Tse of Leighton titled “*SC-096 – SCI-2710 – Provisional of labour for NAT area*”, by which he notified me that the captioned SCI was then ready for collection. There is now produced and shown to me marked exhibit “**CYM-10**” a copy of the email dated 5 December 2016.
29. To illustrate how the NAT Works did not fall within the scope of the Original Sub-Contract, there is now produced and shown to me marked exhibit “**CYM-11**” 2 layout plans. The areas coloured in pink in the layout plan titled “*Sub-Contract Scope of Work in Original Contract*” shows the scope of works covered under the Original Sub-Contract, whereas the areas coloured in yellow in the layout plan titled “*Sub-Contract Scope of Work in New Contract*” illustrates the scope of works covered under the Enlarged Scope of works as set out under the Second Contract Document. One would see clearly that the scope of works had been much enlarged.

30. The pricing basis for the Sub-Contract Works at HHS as agreed under the Original Sub-Contract is different from that for the NAT Works. Whilst the former was to be priced based on the unit weight (kg) of the materials (i.e. rebars and couplers) to be used, the latter was to be priced by reference to the actual labour to be provided by W&K to Leighton. However, at the end of the whole project which W&K was involved in, for convenience of negotiation and settling of final accounts, we have included all charges, prices and labour fees for both HHS and NAT works as one lump sum to be settled by Leighton. This final lump sum subcontract price was agreed as HK\$62,500,000 on 16 March 2017.

Timeline for the construction and completion of the rebar fixing works at HHS

31. According to the Third Schedule to the Original Sub-Contract, the tentative start date of the Sub-Contract Works was 28 November 2014 and the tentative completion date was 28 February 2017.
32. However, eventually this tentative Construction Programme could not be followed by the parties because whilst W&K did in fact commence the Sub-Contract Works on site on or around 24 November 2014, there was significant delay on the part of the other parties including Leighton in relation to other parts of the construction project towards the end of 2015, which meant that W&K was only permitted to and could only conduct rebar fixing works as and when other parts of the project by other parties are completed. Due to the delay explained above, Leighton and W&K could not follow the tentative Construction Programme as set out in the Original Sub-Contract.
33. As to the timeline for the actual construction and completion of the Sub-Contract Works at HHS, there is now produced and shown to me marked exhibit “CYM-12” a table setting out the relevant timeline compiled based on drawings provided to Mr. Yeung Chun Bong of Loyal Ease, which were

provided by Leighton at regular intervals as the Sub-Contract Works progressed.

34. The attached table was compiled by W&K from information contained in a large number of actual drawings, these drawings are approximately over 4,000 pages in total, due to their large number they have not been exhibited to this statement. We do have electronic versions of these drawings, if they are needed for the Inquiry or by the Commission, W&K will be very happy to provide them.

B2. Paragraph 1.2 of the HHS Letter

35. As to paragraph 1.2.1 of the HHS Letter, since I am not personally involved in the carrying out of actual day-to-day rebar fixing works in the construction of HHS, I will defer to Chun who is also a witness in this Inquiry.

36. As to paragraph 1.2.2 of the HHS Letter, as the entire subcontract is before the Commission, I wish to respond as follows with reference to some of the terms of the Original Sub-Contract:-

- (1) Regarding the Sub-Contract Works, W&K as the subcontractor of Leighton, will liaise with Leighton in relation to the Sub-Contract Works. Under Clause 7.4 of the Original Sub-Contract, W&K was not allowed to directly communicate with MTRCL and/or its representative, engineer or architect without the Leighton's written consent.
- (2) According to Clauses 7.2 and 9 of the Original Sub-Contract, W&K shall, throughout the course of the Sub-Contract Works, receive directions, instructions and orders from Leighton as the contractor; and W&K shall also comply with instructions, decisions and orders given by MTRCL as the employer if they were confirmed in writing by Leighton and communicated to W&K by Leighton.

- (3) According to clause 10.3, Leighton has the right to omit work from the Sub-Contract Works and carry out such work itself or employ other contractors to carry out such omitted work.
- (4) Clause 16.6 deals in part with the settling of final accounts and payments after W&K had performed the obligations under the subcontract.
- (5) Section 2 “General Notes” and section 3 “Fixing” in the “Sub-Contract Scope of Work” of the Third Schedule of the Original Sub-Contract explains that:-
 - (a) Materials, including rebars and couplers, were to be provided to W&K free of charge by Leighton, subject to a wastage cap beyond which W&K will be liable for the costs of the materials;
 - (b) Testing of rebars and couplers were to be carried out by Leighton. W&K was only responsible for the preparatory work to facilitate the testing of these materials;
 - (c) In completing the rebar fixing works, W&K must follow the instructions of Leighton’s site teams in respect of speed, extent, timing, sequencing and staging;
 - (d) W&K must prepare and submit bending schedules to Leighton allowing Leighton sufficient time for the ordering of materials. There is now produced and shown to me marked exhibit “CYM-13” copies of some of the bending schedules or sketches (in other words, order records) prepared by W&K to Leighton in respect of the rebar fixing works at HHS. W&K has to follow the RC Detail provided by Leighton and do not

have the right to choose the type of the rebars or couplers to be ordered or used.

B3. Paragraph 1.3 of the HHS Letter

37. Clause 2.5 of the Original Sub-Contract provides that W&K shall, subject to Clause 4, “... *provide all skilled, semi-skilled and unskilled labour, supervision, materials, Constructional Plant, Temporary Works, transport and everything whether of a permanent or temporary nature required for the execution, completion and maintenance of the Sub-Contract Works.*”
38. Item A of the Second Schedule to the Original Sub-Contract also provides that as part of the Sub-Contract Works, W&K was to provide “*all necessary labour, supervision, plant, equipment and materials for Reinforcement bar Cutting, Bending and Fixing for Stabling Sidings (HHS) and Associated Structures package in full compliance with the requirements of this Sub-Contract ...*”.
39. Item 2 of the Ninth Schedule states that W&K “*shall co-operate with and permit access for the purposes of inspection and testing to persons implementing the Quality System and representing the Contractor to any place where work under this Sub-Contract is being or is to be carried out.*”
40. To comply with W&K’s contractual obligations regarding the rebar fixing works for HHS, W&K has done the following amongst other things:-
- (1) We provided a safety supervisor on site to ensure the safety of workers in the course of their employment. The safety supervisor engaged by W&K in respect of the Sub-Contract Works is called Cheung Kin Yau (張建友). There is now produced and shown to me marked exhibit “CYM-14” a copy of the “Notice of Employment of Safety Supervisor” submitted by Joe Leung, the proprietor of W&K, on 26 November 2014;

- (2) We engaged Chun of Loyal Ease, a subcontractor of W&K, as the site supervisor / foreman in respect of the Sub-Contract Works as well as the NAT Works. Chun was stationed on site daily whilst the rebar fixing works were ongoing at HHS and NAT and would provide supervision as to the quality of workmanship and as to the progress of the works. He also liaised on W&K's behalf with Leighton's responsible persons on any difficulties or issues encountered in the carrying out of the Sub-Contract Works to ensure that the works are carried out in accordance with the latest instructions of Leighton; and
 - (3) The workers engaged by W&K in respect of the Sub-Contract Works and the NAT Works attended the induction programmes on safety and quality issues provided by Leighton prior to their formal commencement of work on site.
41. Since I am not personally involved in the day-to-day actual carrying out of the rebar fixing works in the construction of HHS, I will defer to Chun to explain the supervision and inspection system in place in respect of the rebar fixing works for HHS.
42. Nevertheless, as far as I am aware based mainly on updates given to me by Chun from time to time during the course of the Sub-Contract Works:-
- (1) Inspection did take place in respect of the Sub-Contract Works carried out by W&K at HHS after each bay (or 倉 in Chinese) was completed;
 - (2) These inspections would have been carried out by Leighton and MTRCL. It is our understanding that at each of these inspections, at least an engineer from Leighton and MTRCL would be present;

- (3) W&K would not be present at these inspections as they were not required to be present. Leighton and MTRCL did not require or request W&K to be present when they inspected the works.
- (4) If defects were found during these inspections, Chun will be informed and contacted immediately for any necessary rectification or remedial works to be carried out. Then Chun would instruct the rebar fixing workers to carry out such rectification works following the instructions from Leighton. Chun would not normally have to report to me about these remedial works as he is in charge of the day-to-day rebar fixing workers and any remedial works would be inspected by Leighton and MTRCL again to ensure that they are completed properly.
- (5) W&K was not requested or required to complete any inspection forms during these inspections. Also W&K was not requested or required to be involved in any inspection forms done by Leighton or MTRCL.
- (6) Specifically in relation to Issue 1 and Issue 2 as set out in the Lo & Lo letters to W&K, in none of the relevant inspections carried out in respect of the Sub-Contract Works at HHS was Chun or W&K questioned by Leighton or MTRCL in relation to the relevant rebar fixing works done. That is not surprising at all because, as will be explained below, although the matters explained in Issue 1 and Issue 2 were reported to Leighton by Chun at the time before the rebar fixing works were carried out in those areas, Leighton nonetheless directed W&K to continue to carry out the rebar fixing works as much as they could, notwithstanding Leighton knew full well at the time of the matters now set out in Issue 1 and Issue 2 as Chun had reported these matters to them. Therefore W&K was also not requested to conduct any remedial or rectification works at the time of inspection.

43. As W&K was not involved in these inspections, I do not have personal knowledge of the RISC form inspection set out as Issue 3 in the Lo & Lo letters.

B4. Paragraphs 2.5 to 2.8 of the HHS Letter

44. Matters relating to the timeline in the construction and completion of rebar fixing works in HHS have been set out above under my response to paragraph 1.1 of the HHS Letter.
45. As to the rest of paragraphs 2.5 to 2.8 of the HHS Letter, as explained above W&K was not involved in the RISC forms or RISC forms inspections conducted by MTRCL or Leighton. The Original Sub-Contract or the Second Contract Document do not refer to such "RISC form inspections". Therefore I am unable to provide information regarding the RISC form inspections conducted by MTRCL or Leighton.

B5. Paragraphs 2.9-2.12 of the HHS Letter

46. As to paragraphs 2.9-2.11 of the HHS Letter, as I am not involved in the day-to-day execution of the Sub-Contract Works, I do not have first hand knowledge of the said deviations at HHS set out in the HHS Letter. I will therefore defer these matters to be addressed by Chun.
47. As to paragraph 2.12 of the HHS Letter, I refer to my response above to paragraphs 2.5 to 2.8 of the HHS Letter.

B6. Paragraphs 2.13-2.16 of the HHS Letter

48. Similarly, I have no first hand knowledge of the matters set out in paragraphs 2.13 to 2.16 of the HHS Letter. I will therefore defer to Chun regarding these matters.

B7. Paragraph 3.1 of the HHS Letter

49. I am not aware of other problems or issues relating to the rebar fixing works carried out by W&K at HHS other than those explained by Chun. I am also not aware of other matters which may raise concerns about public safety or substantial works quality relating to the rebar fixing works carried out by W&K at HHS.

B8. Paragraph 4.1 of the HHS Letter

50. To the best of my belief and information, no statement has been given by W&K to the Police on matters concerning the 3 issues or paragraph (a)(2) of the Expanded TOR.

C. THE NAT LETTER

C1. Overall Response to Issues 1 and 2

51. Since I was not involved in the day-to-day execution of the rebar fixing works at HHS or NAT, I do not have any direct first-hand knowledge of Issues 1 and 2 but some information have been provided to me by Chun.
52. I first learnt of the potential problems with respect to the NAT Works on 7 February 2018, when I received a Whatsapp message from Ah Wai (I do not know his full name), a foreman of Leighton. In that Whatsapp message, he invited me to a meeting at the Hung Hom site office at 11 a.m. on the following day, i.e. 8 February 2018. He also sent me a picture, which shows that a threaded rebar was embedded in concrete without being connected to the couplers. I was not however given any information as to when or where this picture was taken. There is now produced and shown to me marked exhibit “CYM-15” a copy of the Whatsapp message sent to me by Ah Wai on 7 February 2018.

53. I was shocked to receive the Whatsapp message from Ah Wai. That is because, as will be explained below, except for one NCR (Non-Conformance Report) in this project which did not relate to the matters raised in Issue 1 and Issue 2 of the Lo & Lo letters, from my knowledge and recollection W&K did not receive any other NCRs in this project.
54. I therefore immediately called Ah Wai to confirm the meeting at 11 a.m. the next day. When I attended the site office at 11 a.m. on 8 February 2018, Ah Wai and a female engineer (I do not know her name) of Leighton showed me some site drawings and photos and told me that because of water leakages at the stitch joints at NAT, they chipped off some of the concrete at the NAT and found that some of the threaded rebars were not connected to the couplers. They then told me that rectification works would likely have to be carried out and that they would try to chip away the concrete at the joints over the Lunar New Year to further ascertain the situation before deciding how rectification works should be done.
55. In reply, as I recall, I said that it is unlikely that W&K is at fault for this because concrete would only be poured after the rebar fixing works have been inspected and approved by Leighton and MTRCL. If indeed this problem existed at the time, it would have been obvious at the time of the inspection and before concrete was poured. I also requested to be brought to the on-site location where the photo sent to me by Ah Wai was taken so I can see for myself. However, Ah Wai insisted that we should wait until more concrete is chipped away before any joint inspection take place as he needed to seek approval from his superior for such an on-site inspection in any event. I then said to Ah Wai and the female engineer that we should only determine who was responsible for the problem and who should be responsible for carrying out the rectification works after more concrete has been chipped off and after a joint inspection has taken place. Towards the end of this meeting, one foreigner whom I did not know, came into the room, and repeatedly stated to me that W&K was responsible for the problems, and that Leighton

would not pay W&K any money. I cannot recall exactly what I said to him in response but the foreigner then left.

56. But after that meeting with Ah Wai and the female engineer, I went over to the adjacent room at the site office to look for Jon Kitching to request for the outstanding balance of the contract price owed to W&K by Leighton. He said at the time that given the circumstances and the defects discovered, he was unable to settle the outstanding balance and told me to give him some time to see what he can do about it. I then left the site office.

57. As soon as I left the site office, I immediately called Chun to ask him what happened and why we were accused of defective rebar fixing works.

W&K proceeded with the works under Leighton's direction and instructions

58. Chun told me there was no way that the said water leakages was the fault of W&K. He briefly explained to me what had happened when the W&K rebar fixers were working and conducting rebar fixing works. He told me the following (although I cannot now recall word-for-word the conversation I had with Chun, but I can clearly recall the main gist of what Chun explained to me):-

- (1) when Chun and our rebar fixing workers were on the work site to do rebar fixing works, there was a situation where the couplers already installed and embedded within the concrete walls constructed as part of Contract 1111 were couplers with taper-cut threads (i.e. pointed or sharp end), whereas the rebars provided by Leighton in accordance with the working drawings (e.g. General Notes, RC Details etc.) supplied by Leighton and to be used by W&K were rebars with parallel threads (i.e. flat end), and there was also situation where the concrete covering the couplers was not hacked off fully by Leighton to allow for the fixing of the rebars.

- (2) For rebars with parallel threads, they could not be screwed properly into couplers with taper-cut threads (as they were of different end shapes). Even if one tries to screw the rebars in as much as possible, only 2-3 threads could be screwed into the couplers, whereas the remaining threads would remain visible outside the opening of the couplers.
- (3) Chun found out about this mismatch of materials when part of the concrete surface of the interface between Contract 1111 and Contract 1112 was hacked off about a day prior to the scheduled commencement of work on site when all rebars with parallel threads provided by Leighton to be used by W&K had already arrived on site ready to be used the next day.
- (4) Having discovered that, Chun immediately contacted Mr. Henry Lai (an engineer) of Leighton ("**Henry Lai**") to tell him about this problem and to ask him whether Leighton has any remedial measures (since it is Leighton that is supposed to supply the correct materials for rebar fixing and installation). Henry Lai replied by saying that there was no need because there was not enough time as Leighton was already behind schedule. Henry Lai therefore told Chun simply to proceed and to screw in the rebars as far as they could into the couplers notwithstanding the mismatch.
- (5) Chun was also told by Leighton (I assume also by Henry Lai) that because of differences in the design of the two contracts (1111 and 1112), Leighton believed there is no need to tighten the re-bars in all the couplers left by contract No.1111, therefore Leighton did not hack off all of the concrete which covered the couplers.
- (6) After W&K conducted the rebar fixing works following Leighton's instructions, Leighton and MTRCL would have performed the inspection and then directed the pouring of the concrete.

59. Chun told me that if there was water leakage, it was because Leighton, knowing the above rebars and couplers problems, still nonetheless directed W&K to proceed with the rebar fixing works as far as they could, and then ordered concrete to be poured notwithstanding the fact that they knew the rebars were not fully screwed into the couplers. W&K had no choice in relation to the materials to be used as they were supplied by Leighton.
60. Chun may also have said other matters to me in that conversation but I cannot now recall all the details.
61. Having been assured by Chun that it could not have been W&K's responsibility and because Ah Wai told me that they needed time to chip away more concrete surfaces in order to fully ascertain and assess the situation, I did not do anything specific in relation to this issue until I received the letter from Leighton dated 12 February 2018.
62. By a letter sent to W&K (addressed personally to me) by Jon Kitching, Project Director of Leighton dated 12 February 2018, i.e. almost a year after the final accounts have been agreed upon by both parties, Jon Kitching informed us of "*significant water leaks and structural cracking at the reinforced concrete stitch joints at the NAT NSL and EWL tunnel and trough structure respectively*" and threatened to recover costs against W&K "*should the cause of the water leaks and cracks be due to defective work undertaken or the materials supplied by [W&K]*". There is now produced and shown to me marked exhibit "**CYM-16**" a copy of the letter dated 12 February 2018.
63. Having received this letter, I instructed my colleague, Mr. Tommy Chan ("**Tommy**"), Senior Quantity Surveyor of W&K, to write in reply to Leighton based on what I have heard from Chun. There is now produced and shown to me marked exhibit "**CYM-17**" a copy of the letter dated 23 February 2018 from W&K to Leighton, which was the one drafted by Tommy, making it clear that (i) W&K was not the party at fault, (ii) the

materials were ordered by Leighton and W&K simply had no right to dictate which type of couplers to be used at the interface between Contracts 1111 and 1112 and (iii) all the works have been inspected by Leighton and other relevant parties upon completion and before concreting. In this letter, W&K further requested that Leighton settle the overdue payment in the sum of HK\$1.1 million owed to W&K as soon as possible (this sum of money remains to date outstanding). As a large sum of money was still owing from Leighton, I did not want to escalate the situation or dispute with Leighton.

64. In fact, prior to the letter dated 23 February 2018, W&K had repeatedly made such a request for all outstanding payments against Leighton since as early as November 2017. There is now produced and shown to me marked exhibit “**CYM-18**” a copy of some of the relevant emails in which W&K repeatedly requested for the outstanding payment.
65. Leighton then sent to W&K a “*Subcontractor Backcharge Notice*” purportedly in respect of “*Remedial Works for NAT NSL Stitch Joint Further to 1112-NCR-CM(SCLC)-QUM-000095*”. I assume this was provoked by our repeated requests for payment. There is now produced and shown to me marked exhibit “**CYM-19**” a copy of the said backcharge notice.
66. This backcharge notice is apparently issued to W&K because of a non-conformance report (“**NCR**”) no. 095 received by Leighton from MTRCL in respect of “*Water leakage and cracks were found at EWL & NSL stitch joints at 1111/1112 interface. No coupling of rebar was identified at the connection. ... No RISC form was submitted for inspection according to the ITP*”. There is now produced and shown to me marked exhibit “**CYM-20**” a copy of NCR 095.
67. On around 26 February 2018, I instructed Tommy to write to Leighton to object to the backcharge notice, because (i) the couplers and rebars were supplied by Leighton and W&K had no say on which type of couplers were to be used, (ii) in respect of the NAT Works, W&K were to provide labour

only and all materials were provided by Leighton and (iii) as soon as the concrete was hacked off in or around July 2017, Chun had already raised concerns with Henry Lai as to the mismatch between the types of couplers installed as part of Contract 1111 and the types of rebars provided by Leighton to be used. It was Leighton (through Henry Lai) who instructed W&K to proceed with the works on the ground that there was not enough time to rethread the rebars. Henry Lai further instructed Chun to try his best to tighten the parallel threaded rebars into the couplers as far as possible; and (iv) Leighton had decided not to hack off all the concrete that covered the couplers. It is completely unfair for Leighton to now accuse us when it was them who directed us to do so. W&K further requested for a joint inspection of the concerned stitch joint. There is now produced and shown to me marked exhibit “**CYM-21**” a copy of the letter dated 26 February 2018.

68. By a letter also dated 26 February 2018, Leighton (through Jon Kitching) wrote back to say that W&K is contractually liable for the carrying out of repair works in respect of the defects identified. He also said in the letter that rectification works of a substantial scale had to be carried out by fully demolishing and rebuilding the relevant stitch joints, which would inevitably result in the EWL having to be shutdown. Leighton further threatened to engage other subcontractors to complete the rectification works and to recover such costs against W&K. There is now produced and shown to me marked exhibit “**CYM-22**” a copy of the letter dated 26 February 2018 from Jon Kitching of Leighton.

69. In response, Tommy wrote back the next day reiterating the fact that W&K had no say whatsoever as to the type of couplers to be used. He further made clear that W&K is open to making good any defects identified as long as we were properly paid to do so. This must be right because it was Leighton who directed us to do the above said rebar fixing works notwithstanding the mismatch of materials and the concrete not fully hacked off as explained above. So W&K should not bear liability or costs for any rectification works. There is now produced and shown to me marked exhibit “**CYM-23**” a copy

of the letter dated 27 February 2018. In this letter, W&K also requested that overdue payment in the sum of HK\$500,000 be released by Leighton to W&K as soon as possible, as this was our entitlement have completed the Subcontract Works.

70. Thereafter there were several more rounds of correspondences between Leighton and W&K. There is now produced and shown to me marked exhibit “**CYM-24**” copies of the relevant letters.
71. Later, by a letter dated 1 June 2018 sent by Tommy on behalf of W&K to Leighton, we wanted to reiterate that (i) W&K was not liable for the alleged defects given that it was only contractually responsible for rebar fixing works using the materials supplied by Leighton over which W&K had no control, (ii) there were on-site inspections of the rebar fixing works carried out by Leighton every time upon the completion of such works and before concreting, (iii) all rebar fixing works carried out by W&K in respect of the stitch joints have been inspected and approved without any complaints of defects being made prior to concreting and (iv) the relevant rebar fixing works have long been completed in the 3rd quarter of 2017 and by signing the final account statement, Leighton had agreed that W&K’s works were completed satisfactorily. There is now produced and shown to me marked exhibit “**CYM-25**” a copy of the letter dated 1 June 2018.
72. Based on the documentary records I have been able to find so far, there is now produced and shown to me marked exhibit “**CYM-26**” a copy of all relevant subsequent correspondences between Leighton and W&K.

The so-called defects would have been obvious upon visual inspection

73. It is clear from the extended exchange of correspondences that Leighton has never tried to deny or dispute any part of the conversation between Henry Lai and Chun, or the directions and instructions given by Leighton at the relevant time as stated in W&K’s letters. I will defer to Chun to elaborate on what

was said by Henry Lai as he is the person with first hand knowledge of the matter.

74. In any event, whether for Issue 1 or Issue 2, the said defects would have been obvious and easily noticeable even upon casual visual inspection. For Issue 1 for example, the fact that a rebar is not connected to a coupler would be obvious to the naked eye even without the assistance of any kind of specialized equipment. This is clear from exhibit "**CYM-15**" above.
75. As far as I know, the common cause of Issue 1 defects is that Leighton had simply failed to properly chip away the concrete wall surface in which the couplers were embedded, therefore not all the couplers were expose and they remained embedded inside the concrete which means the rebars cannot be connected to them. Since couplers are placed at equidistance on a given concrete surface, the fact that there is a particularly large gap between 2 given couplers readily indicates that a coupler is missing and remains embedded in concrete which had not been properly chipped away. W&K had no right to direct Leighton to further chip away concrete or to chip away the concrete themselves. It was Leighton's obligation to chip away the concrete to expose the couplers fully so that rebars can be fixed to the couplers by our workers.
76. Similarly, in relation to the Issue 2 defects, the fact that there is a mismatch between the types of couplers and rebars such that a given rebar cannot be fully screwed into a coupler is obvious to the naked eye on any visual inspection, since there will be threads on the rebar that would remain outside of the couplers and clearly visible.
77. Similarly, if the rebar diameter is thinner than the diameter of the coupler, and that the rebar is simply inserted into the coupler without being properly screwed in, this will also be visually obvious upon inspection because there will be a big gap between the rebar and the coupler showing that it is not

screwed in. I will defer to Chun in this regard as he will have first-hand knowledge of any such defects.

78. It was Leighton's obligation to inspect the rebar fixing works, and if they were not content with any of the works upon inspection, they would have directed us to rectify it before the concrete was poured.

There was no incentive for workers or W&K to conduct rebar fixing improperly

79. Importantly, there is simply no motive or incentive whatsoever on the part of W&K to press ahead with the rebar fixing works in spite of the problems stated above regarding the rebars and the couplers. But for Leighton's directions and instructions (from Henry Lai), W&K and its workers would simply not have done so.
80. First, the chipping away of concrete surface to expose the couplers for connection with rebars, and the provision of the correct type of couplers and rebars, were solely the responsibilities of Leighton. If there was any delay in respect of the progress of rebar fixing works that was caused by the failure of Leighton to fully chip away the concrete or caused by any need to re-thread rebars or to replace couplers to make sure they fit, that was Leighton's responsibility and their delay would not have brought about any extra costs or liabilities to W&K.
81. Moreover, given how visually obvious the Issue 1 and Issue 2 defects are, without express direction and instruction from Leighton, W&K and its workers simply would not even attempt to perform rebar fixing works with knowing such defects were present. Because these defects were so visually obvious, therefore upon inspection anyone would have seen them, without express direction and instruction from Leighton, the work done with such defect would simply fail inspection and W&K would have been required to redo the works at W&K's own expense. Such costs is likely to be enormous,

particularly in view of the relatively small scale and thus limited financial capability of W&K.

82. Therefore there was simply no reason for W&K to proceed with the relevant rebar fixing works despite the defects unless this was done at Leighton's express instructions and directions. Indeed, as it was done at Leighton's express instructions and directions, if in the end the rebar fixing works were to fail inspections, the costs of any consequential rectification works would be borne by Leighton in full on the basis that they constitute abortive works for which W&K is entitled to separately charge for. So there would be no extra costs or liability on W&K.

83. Under the Original Sub-Contract, the contract price was determined based on the unit weight of materials expected to be needed. In respect of the NAT Works, they were to be charged on the basis of labour hours or labour provided. Nevertheless, apart from these 2 main bases of pricing, W&K was entitled to charge for certain extra cost items, for example:-

(1) Overtime and night shift undertaken by rebar fixing workers provided by W&K. There is now produced and shown to me marked to exhibit "CYM-27" showing a schedule of the overtime and night shift summary kept by W&K in respect of the rebar fixing works at HHS and NAT;

(2) Manual handling of rebars: under normal circumstances, Leighton was responsible for all logistical arrangements concerning the transport of rebars and other materials to the correct location for workers engaged by W&K to start work. However, in certain situation, due perhaps to environmental constraints or road blockages or lack of vehicular access to a particular location, rebars might have to be manually handled and transported by W&K. W&K is entitled to charge separately for these manual handling of rebars. There is now produced and shown to me marked to exhibit "CYM-28" showing a

schedule of the manual rebar handling summary kept by W&K in respect of the rebar fixing works at HHS and NAT;

- (3) Additional and abortive works: “Additional works” are common where Leighton requests for assistance from W&K for the cutting, bending or fixing of rebars for the use of other subcontractors. “Abortive works” are where rebar fixing works were completed properly by W&K but because of perhaps design defects or mistaken sequencing / programming on the part of Leighton, the properly completed rebar fixing works somehow had to be undone and then re-fixed at a later stage. W&K would be entitled to charge separately for these additional and abortive works. There is now produced and shown to me marked to exhibit “CYM-29” showing a schedule of the summary of additional and abortive works kept by W&K in respect of the rebar fixing works at HHS and NAT.

84. In the circumstances, without Leighton’s express instructions and directions to W&K to proceed as stated above, there is simply no reason or other logical explanation for Chun to allow the relevant rebar fixing works to proceed as it did.

85. Having set out my overall response to Issues 1 and 2, I now address the specific questions put forward by the Commission which have not been addressed above.

C2. Paragraphs 1.4 and 1.5 of the NAT Letter

86. Insofar as W&K’s experience in rebar fixing works is concerned, I refer to my response to paragraph 1.1 of the HHS Letter as set out above.

87. As set out above, the NAT Works were not within the scope of the Sub-Contract Works in the Original Sub-Contract. Nevertheless, as I understand from Chun, the nature of the rebar fixing works at HHS and at NAT are

similar and involve similar steps and procedures. As to this, I will defer to Chun to elaborate.

88. There is now produced and shown to me marked exhibit “CYM-30” a table setting out the timeline for the construction and completion of the NAT Works.

C3. Paragraph 1.7 of the NAT Letter

89. There is no separate subcontract having been entered into between Leighton and W&K in respect of the NAT Works alone. In this regard I refer to paragraphs 28-29 above in which I have explained how the NAT Works came about.

C4. Paragraphs 1.8-1.15 of the NAT Letter

90. I will defer to Chun on these matters as he has first hand knowledge of them.

C5. Paragraph 1.16 of the NAT Letter

91. I refer to my response to paragraphs 2.5 to 2.8 of the HHS Letter above.

C6. Paragraphs 1.17-1.18 of the NAT Letter

92. W&K has not participated in the subsequent rectification works carried out on the 3 Stitch Joints, and Leighton did not allow W&K to perform any joint inspection on the site afterwards as explained in paragraphs 67 and 68 above.

C7. Paragraphs 1.120-1.21 of the NAT Letter

93. No non-conformance report (NCR) has been issued by Leighton to W&K in respect of the rebar fixing works carried out by W&K at the 3 Stitch Joints at NAT.

94. As far as I can recall and based on the documentary records W&K has kept, the only NCR report received by W&K from Leighton in respect of its rebar fixing works for Contract 1112 was one that was issued on 11 March 2015, which was entirely unrelated to either Issue 1 or Issue 2 for the purpose of the present Inquiry. There is now produced and shown to me marked exhibit “**CYM-31**” a copy of the relevant NCR Report issued on 11 March 2015 in which it was stated that “*The M&W specification Clause 10.10(1)(c1) states that the reinforcement shall be bent and cut in accordance with BS 8666 and BS EN ISO 4066 as appropriate to the specified shapes and dimension. However, the attached photos (E1) shows that the reinforcement bar for column at HHS Block 1B found variation centre line with the as built reference mark which does not comply with the requirement*”. I understand that this matter has already been rectified and resolved, otherwise one would expect that there will be further demand from Leighton to rectify the matter raised in the NCR.

C8. Paragraphs 1.22 and 1.23 of the NAT Letter

95. As a subcontractor for the rebar fixing works at the 3 Stitch Joints, W&K’s role and responsibilities were simply to install couplers and cut, bend and fix rebars in accordance with drawings and sketches provided to W&K by Leighton whilst following the instructions of Leighton’s site team in respect of speed, extent, timing, sequencing and staging of the relevant rebar fixing works.
96. W&K has fully complied with its contractual duties. As regards the structural safety of the NAT Works – which I understand was designed by a specialized team of experts, including quantity surveyors and engineers engaged by Leighton and MTRCL, and managed, supervised and inspected by professionals engaged by Leighton and MTRCL – as W&K is merely a subcontractor performing rebar fixing works, it does not have the required expertise to give material evidence in this regard, but I will give my best

efforts to assist the Commission in this regard in the upcoming Inquiry if asked to do so.

97. Save for the matters stated above, in the execution of the NAT Works, W&K has diligently complied with the drawings and sketches (including the General Notes and RC Details) provided to W&K by Leighton. Where it has not done so, as explained above, W&K was following the express directions and instructions given to it by Leighton through its employees or agents, as W&K was obliged to do so.

98. It is my understanding that the NAT Works completed by W&K would have been inspected by representatives from Leighton and MTRCL. As I had set out above, even though any defects would have been visually obvious, no issue or complaints were raised with W&K during or after any of these inspections. W&K relies, as it must, on the expertise and professional judgment of construction professionals engaged by Leighton and MTRCL.

C9. Paragraph 2.10 of the NAT Letter

99. I refer to and repeat my responses to paragraph 1.1 of the HHS Letter and paragraph 1.4 of the NAT Letter.

C10. Paragraph 2.11 of the NAT Letter

100. As I do not have first hand knowledge of these matters, I will defer to Chun on these matters.

C11. Paragraphs 2.12 and 2.13 of the NAT Letter

101. There is now produced and shown to me marked exhibit “CYM-32” copies of relevant drawings in respect of the Shunt Neck Joint. We have not been able to locate any site photos in respect of the Shunt Neck Joint.

C12. Paragraphs 2.14-2.20 of the NAT Letter

102. As I do not have first hand knowledge of these matters, I will defer to Chun on these matters.

C13. Paragraph 2.21 of the NAT Letter

103. I refer to my response to paragraphs 2.5 to 2.8 of the HHS Letter above.

C14. Paragraph 2.22 of the NAT Letter

104. W&K did not participate in any rectification works carried out or to be carried out on the Shunt Neck Joint. As stated above Leighton had denied W&K's request for a joint inspection of the relevant sites.

C15. Paragraphs 2.24 and 2.25 of the NAT Letter

105. To the best of my knowledge, information and belief, no non-conformance report (NCR) has been issued by Leighton to W&K in respect of the Shunt Neck Joint at NAT. In this regard I repeat my response to paragraphs 1.120-1.21 of the NAT Letter.

C16. Paragraphs 2.26 and 2.27 of the NAT Letter

106. I refer to and repeat my response to paragraphs 1.22 and 1.23 of the NAT Letter.

C17. Paragraphs 3.5 to 3.8 of the NAT Letter

107. I refer to and repeat my response to paragraphs 2.5 to 2.8 of the HHS Letter above.

C18. Paragraphs 3.9 to 3.16 of the NAT Letter

108. As I do not have first hand knowledge of these matters, I will defer to Chun on these matters.

C19. Paragraph 4.1 of the NAT Letter

109. I am not personally aware of any other problems or issues relating to the rebar fixing works carried out by W&K at NAT or matters which may raise concerns about public safety and/or substantial works quality.


C20. Paragraph 5.1 of the NAT Letter

110. To the best of my information and belief, no statement has been given by W&K to the Police on matters concerning the 3 issues and/or paragraph (a)(2) of the Expanded TOR.

111. I am still using my best efforts to look through materials in W&K's possession to locate any further materials which may be relevant to this Inquiry. If further relevant materials are found, I will be sure to notify the Commission and provide the Commission with the same immediately.

112. I confirm that the contents of this witness statement are true to the best of my knowledge, information and belief.

Dated this 10th day of May 2019



CHEUNG Yik Ming
Quantity Surveyor Manager
Wing & Kwong Steel Engineering Co., Limited