

1 Monday, 3 December 2018

2 (10.00 am)

3 MR LEUNG FOK VENG, ANDY (on former affirmation in Punti)

4 Examination by MR PENNICOTT (continued)

5 MR PENNICOTT: Good morning, Mr Leung.

6 A. 早晨。

7 Q. When we finished on Friday afternoon, I was asking you
8 some questions about your email of 25 July 2015. In
9 that context, could I ask you, please, to look at
10 a paragraph in Mr Kit Chan's witness statement. You
11 will find that at B1 -- the document starts at 262, and
12 the paragraph I need is paragraph 51, which is at
13 page 280.

14 Have you read Mr Chan's witness statement, Mr Leung?

15 A. 有。

16 Q. What he says here at paragraph 51 is:

17 "LCAL [that's Leighton] proceeded with the
18 'through-bar method' in constructing the EWL slab in the
19 rest of areas B and C starting with area C1-3 on
20 29 August 2015. The construction management team was
21 under the impression that the design management team
22 would update the working drawings of the EWL slab
23 reinforcement and thereafter obtain approval from BD."

24 Mr Chan goes on to say:

25 "This was because in the email dated 25 July ...
26 from Andy Leung to Mr Justin Taylor" -- the one we were

1 looking at on Friday -- "which was copied to James Ho,
2 Mr Andy Leung pointed out that ..."

3 Then he sets out the text of your email. Then he
4 says:

5 "Reading this email together with the email chain
6 prior to this email, James Ho and I understood this to
7 mean that the sensible thing to do was to cast the EWL
8 slab, OTE wall and the top of the east diaphragm wall
9 monolithically so that there would not be multiple
10 construction joints between the EWL slab, diaphragm wall
11 and OTE slab."

12 Mr Leung, can I ask you this: was, in your view,
13 Mr Chan and apparently Mr Ho justified in being under
14 the impression that you would update the working
15 drawings?

16 A. 係唔合理嘅。

17 Q. Why do you say he was not justified?

18 A. 或者我要詳細解釋，喺呢段statement嗰度，佢哋係提咗C1-3，喺8月29號
19 就開始即係話做，同埋就係話我會update張working drawing，但係其實
20 佢哋冇講嘅，就係話喺EWL呢塊slab頭第一、二倉就其實--第一倉就喺7月
21 28號做嘅，而我呢張email係7月25號嘅，而7月第一倉做C1-1，我哋叫做
22 bay C1-1，佢係跟番我哋個coupler connection嗰個detail做嘅，而
23 如果我7月25號嗰張email係佢哋嘅impression或者係佢哋嘅理解嘅話，
24 我就唔明點解係C1-1呢倉佢哋係唔跟我呢張email去做，而又跟番原本嗰張
25 working drawing做，即係我睇唔到個邏輯性喺呢度。

1 Q. All right. We can ask, obviously, Mr Chan in due course
2 why he was under that impression.

3 Can I ask you this, however, perhaps more
4 importantly, Mr Leung. If you had known about the
5 through-bar method, as Mr Chan calls it, in let's say
6 August 2015, would you have regarded that change as
7 something that you needed to consult the Buildings
8 Department about?

9 A. 一定需要。

10 Q. Do you say that you would have consulted the Buildings
11 Department before that change was implemented?

12 A. 如果我知道嘅話，我就一定會通知咗屋宇署先。

13 Q. Before the change was implemented?

14 A. 正確，正確。

15 Q. Okay. So, just wrapping this point up, Mr Leung, it's
16 quite clear, is it not, that there was a difference of
17 view or a difference of impression, a miscommunication,
18 however you wish to describe it, between yourself, as
19 the head of the design team, and Mr Kit Chan, the head
20 of the construction team, about this particular issue?

21 A. 喺呢個case，我就完全唔覺得即係好似第一個change，即係我哋上個禮拜
22 五講嘅第一個change，呢度有個miscommunication喺度，因為喺呢個
23 case，我哋設計團隊係完全唔知道有呢個change嘅，而喺上個禮拜五個個
24 第一個change，正如喺我statement度有講，嗰個改變係曾經將email係
25 copy過咗畀我哋嘅設計團隊嘅，喺嗰個情形之下，我覺得我哋係有個責任喺

1 度嘅，但係喺呢個情形，係我哋係完全可以咁講，係蒙在鼓裏，我哋係--喺
2 我本人嚟講，我係今年嘅7月初，我然後至知道，所以我就回應你呢個問題，
3 就係話唔係miscommunication嘅問題。

4 Q. Well, miscommunication in this sense, Mr Leung, that the
5 construction team clearly knew about the change and they
6 didn't communicate it to you, on your evidence.

7 A. 正確。

8 Q. Right. Whereas Mr Chan's position appears to be -- and
9 obviously we'll ask him some questions about it soon --
10 that he was under the impression that you did know about
11 it and that you were going to produce some working
12 drawings?

13 A. Sorry, 你可唔可以重複個問題?

14 Q. Yes: whereas Mr Chan was under the impression that you
15 did know about the change and that you were going to
16 produce some working drawings reflecting the change?

17 A. 我唔知佢點解有咁嘅印象，正如我所講，我哋設計團隊係完全唔知道呢個改
18 動。

19 Q. Okay. Can I just move on -- it's sort of on the same
20 topic but a different arena. Could I ask you, please,
21 to be shown J1/92.

22 This is, as we can see, Mr Leung, a report,
23 deliverable number TWD-004B2, dated May 2015, and it was
24 a design report prepared by Atkins on behalf of Leighton
25 for the primary structure, primary slabs for temporary

1 load cases area C, part I; do you see that?

2 A. 係。

3 Q. If we could look, please, at the next page, I think, and
4 the next page -- right, pause there; that's J94 -- this
5 was the fourth issue, as we can see, of this document,
6 and what one can see is "May 2015", and I think prepared
7 or reviewed and approved -- revised by a number of
8 people, that's "Various", reviewed by Mr David Wilson
9 and approved by Mr McCrae; do you see?

10 A. 正確。

11 Q. Then if you could go, please, to page 106 in this file,
12 J1/106, we see there paragraph 1.3.5. I'm not going to
13 read it all out, but the first sentence says:

14 "Secondary measures of provision of additional rebar
15 at mid-span due to missing U-bar in diaphragm wall."

16 And so forth, and so on.

17 Then if we could go over the page, please, one sees
18 this diagram, figure 1.4, "Rebar arrangement for EWL and
19 OTE slab"; do you see that, Mr Leung?

20 A. 見到。

21 Q. In May of 2015, Mr Leung, did you see this version of
22 the report?

23 A. 冇。

24 Q. If you could please, therefore, go to B10/7256. This is
25 a letter of 29 July, which we looked at briefly on

1 Friday, 2015, where you're submitting a design report,
2 amongst other things, to the Buildings Department; do
3 you see that?

4 A. 正確。

5 Q. If we could go, please, to page 7262, that's the front
6 sheet of the report, and if we could go two more pages
7 on, please -- thank you, and slightly blow that up;
8 thank you very much -- so this is the fifth issue of the
9 report that we were just looking at in the previous
10 file; do you see that, Mr Leung?

11 A. 見到。

12 Q. And again reviewed -- sorry, revised by various,
13 reviewed by Mr Wilson and approved by Mr Rob McCrae.

14 And obviously you did see this version of the report
15 at the time, Mr Leung, because you were submitting it to
16 the Buildings Department?

17 A. 嚴格嚟講，當時我就有親自處理呢個report，我係--即係經我同事處理咗
18 之後，我係簽咗封信，入咗畀屋宇署嘅。

19 Q. All right. So are you saying that you didn't review the
20 report before you sent it?

21 A. 冇錯，喺我個statement都講咗嘅，就係話我2015年嗰陣時係冇--我自己
22 冇親身睇過呢個report嘅，就prepare呢個statement嗰陣時，我係重新
23 再檢閱過呢啲相關嘅report，包括呢個report。

24 Q. Right. If we could go, please, to page 7277. Right.

25 You see in paragraph 1.3.5 there, Mr Leung, the

1 first sentence is the same as I read out in relation to
2 the earlier report; do you see that?

3 A. 見到。

4 Q. The next sentence or subparagraph is new; do you see
5 that?

6 A. 見到。

7 Q. And -- we can check over the page if necessary but
8 I don't think we need to -- the figure, 1.4, the diagram
9 that we saw in the previous report, has disappeared.
10 I think, in the light of your previous answers, you're
11 not going to be able to answer this question: do you
12 know why figure 1.4 and the remainder of paragraph 1.3.5
13 was removed in this version?

14 A. 唔知道。

15 Q. Okay. I will ask you, please, Mr Leung, to look at
16 paragraph 60 of your witness statement. It's at B1/257.
17 At paragraph 60, you refer to the fact that there were
18 weekly technical meetings between Leighton and MTR's
19 construction management and design management teams; do
20 you see that?

21 A. 見到。

22 Q. You say in the last sentence:

23 "However, I have also reviewed the minutes of
24 [those] meetings but no proposals in relation to the
25 demolition of the top portion of the diaphragm wall were

1 mentioned or discussed in the weekly technical
2 meetings."

3 A. 正確。

4 Q. Mr Leung, am I right in thinking that reports were
5 prepared, weekly reports were prepared, for those
6 meetings, in consideration of those meetings?

7 A. 正確。

8 Q. Could I ask you, please, to be shown B16/12540. If we
9 could blow the top up just slightly so we can get the
10 date. This is week 31/15, that is the period 24 July to
11 30 July 2015, Mr Leung; do you see that?

12 A. 見到。

13 Q. If you could please go to page 12545, and drop down to
14 the bottom of the page, please, at 3.11, right at the
15 bottom of the page, it says this:

16 "The alignment between couplers at D-wall panels and
17 rebar at EWL slab had deviated by 40 to [70] millimetres
18 were found in area C1. Breaking out of D-wall to remove
19 the installed couplers is the short-term solution.
20 A longer solution is still being sought to overcome this
21 problem especially for the NSL slab."

22 If we could go over the page, please, and then it
23 says this at 3.12:

24 "LCAL Atkins [Atkins B] recently advised that the
25 OTE wall and EWL slab must be cast together, which was
26 not the original plan since such criteria was not stated

1 on the drawing. Therefore OTE wall and EWL slab will
2 have to be cast in one go for future pours."

3 Do you recall reading either of those two paragraphs
4 that we've just looked at, Mr Leung, either at the time
5 or more recently?

6 A. 冇，當時同埋最近都未睇到--都有睇過，今次係我第一次見到呢兩句
7 statement。

8 Q. Right. They are in fact referred to in the witness
9 statement of Mr Ho, James Ho, one of your colleagues.
10 That's why we've managed to find them; we probably
11 wouldn't have done otherwise. But you've not looked at
12 this, Mr Leung?

13 A. 係，冇錯。

14 Q. It's just that obviously this report is for the week of
15 25 to 30 July, the very week that you submitted the
16 report that we were just looking at, on 29 July, to the
17 Buildings Department, and the same week, 25 July, when
18 you sent your email. It was all happening during that
19 week, Mr Leung, but you don't have any recollection of
20 seeing this at the time?

21 A. 我有印象見過。

22 Q. Okay. Could we look at something entirely different
23 now, Mr Leung, the quality supervision plan. I think
24 I can do this very quickly.

25 First of all, could you be shown, please, H9/3873.

1 This is the BD's acceptance letter in relation to
2 area A, I believe. Yes. One can pick that up from the
3 gridlines, Mr Leung.

4 A. 正確。

5 Q. At page 3903, please, at the bottom of the page -- we
6 don't need to read all this out; we've looked at it
7 before -- this is where the Buildings Department are
8 saying they wish to have -- it was a condition of
9 acceptance, they wished to have a quality supervision
10 plan of the competent person, the registered building
11 contractor and the registered specialist contractor, in
12 relation to the mechanical coupler works; do you see
13 that?

14 A. 見到。

15 Q. If you can agree this with me, Mr Leung, we don't need
16 to go to the documents: there were similar acceptance
17 letters and similar conditions in relation to both
18 areas B and C?

19 A. 正確。

20 Q. And if we could, please, to H9/4263, on 12 August 2013
21 you submitted, on behalf of MTR, to the Buildings
22 Department, the quality supervision plan?

23 A. 正確。

24 Q. As I understand it -- well, let's ask this question: did
25 you read the quality supervision plan at the time,

1 Mr Leung?

2 A. 係冇嘅，因為呢啲質量控制計劃就係由我哋嘅建造團隊準備嘅，而我作為一
3 個設計管理經理，就喺呢啲咁嘅--即係關於建造嘅文件，我哋就係作為一個
4 聯絡人，就呈交界屋宇署嘅，內面--入面嘅information都係由建造團隊
5 準備同埋負責。

6 Q. Right. My understanding is that this QSP was a bit of
7 a joint effort, Mr Leung, prepared by Leighton, by BOSA,
8 and perhaps with some input by MTRC, but certainly
9 MTRC's approval was given to it. Is that your
10 understanding, or don't you know?

11 A. 正如頭先我所講，我哋--即係同埋喺我嘅證供度都講咗，即係話關於一啲建
12 造嘅要求，屋宇署喺批核我哋嘅圖則嗰時嘅建設要求通常都由建造團隊去負
13 責嘅，入面係唔係有即係禮頓、人和同埋我哋建造團隊嘅input呢？我係唔
14 可以，即係我係冇咁嘅knowledge嘅。

15 Q. Okay. Would this also be right, Mr Leung, that we can
16 see from the quality site supervision plan, if we read
17 it, that it requires -- I will put it in general
18 terms -- various records to be prepared and kept, and
19 would I be right in thinking that you played no part, as
20 it were, going forward, as to whether or not those
21 records were indeed kept?

22 A. 正確。

23 Q. Okay. In that case, that saves more questions.

24 A final topic, Mr Leung. In October 2015, you had
25 a bit of a disagreement with Mr Justin Taylor of

1 Leighton, about the updating of working drawings; do you
2 recall that in general terms, Mr Leung?

3 A. 記號，但係就唔係話意見不合，只不過係一個管理上嘅topic，一個subject
4 嚟嘅。

5 Q. Right. So there was some discussion between you and
6 Mr Taylor about this particular design management issue;
7 would that be a better way of putting it?

8 A. 我咁--我覺得係正確好多。

9 Q. Right. Good. Essentially, you were suggesting to
10 Mr Taylor that he had failed to provide certain
11 proposals in respect of design changes?

12 A. 係，冇錯。

13 Q. And he was suggesting to you that he, in a rather
14 detailed response, with lots of accompanying
15 documents -- that he had or Leighton had done what they
16 were required to do and it was MTRC that had failed to
17 update the working drawings?

18 A. 我諗喺我statement都有提過，其實就係兩方面都係有個責任喺度嘅，有一
19 部分佢哋啲圖--佢哋係未入到proposal畀我哋嘅，而我哋自己亦都係有啲
20 圖係未完全update晒嘅，喺一個咁--即係一個紅磡站咁複雜嘅工程，呢啲
21 其實都唔係一個uncommon嘅問題嚟嘅。

22 Q. But in your own words now, Mr Leung, what was the
23 underlying issue exactly between you and Mr Taylor?
24 What was the real problem, as you saw it?

25 A. 最主要個問題就係話喺我呢張email之前，我就已經喺一段時間就追過

1 Justin Taylor就交一啲formal proposal，關於佢哋轉咗我哋嘅
2 permanent work嘅design嘅，即係我想emphasis我而家--我哋呢
3 張email，我唔係追佢啲圖，我係追佢要入一個proposal，因為喺個
4 段時間，就我哋好多啲working drawing就已經係加咗佢哋propose
5 嘅change，而係我係冇被通知到嘅，就呢個喺一個設計管理上，係一個
6 唔健康嘅情形嘅。

7 我就作為一個設計經理，我係要負責呢個合約之內所有嘅working
8 drawing嘅，其實你--如果你對應番即係我哋喺呢一、兩日講嘅第一個
9 change同第二個change，就係其實就係呢個問題，就係話如果冇一啲
10 formal proposal交到嚟，我哋設計團隊就好難去跟進，同屋宇署去
11 跟進，直至到我哋係可以得到屋宇署嘅批核同埋update番啲working
12 drawing。

13 Q. Mr Leung, I and others have read the email exchange that
14 you had with Mr Taylor, and indeed Mr Taylor was taken
15 through that exchange by Mr Cheuk, and what we can't
16 find is whether this issue that you had in October 2015
17 was actually resolved. Did you sort it all out with
18 Mr Taylor?

19 A. 當然有喇，其實就我哋其實每個禮拜四，喺當時，2015年，甚至2016年，
20 我哋當時就係每個禮拜四，我哋都有一個較為senior level嘅design
21 coordination meeting嘅，禮頓嘅project director、我哋嘅GM、
22 甚至我、Justin Taylor都有參與嘅。

23 喺個段時間，就喺我出呢個email之前，我就已經係追咗佢一段時間，

1 要佢提交嘅proposal，就喺10月19號之前我都係未收到嘅，所以我出呢個
2 email。其實就你可以當成一個management嘅technique，就係話當你追
3 咗一段時間，佢哋都係冇適當嘅反應或者適當嘅action畀到我嘅話，我就一
4 定要take一個較為強硬嘅position，就係話如果佢再唔入proposal，
5 我就唔再畀Atkins嘅team A再改我嘅圖。

6 亦都因為我呢張email，喺我張email我都提過，我哋就會跟住嗰個禮
7 拜四就開會，跟住之後我哋都好快解決咗呢個drawing個update嘅問題。

8 Q. Right. And throughout that process of resolving the
9 issue that had arisen, you're clear, are you, in your
10 own mind that this second change that we've been talking
11 about was never raised, that is the through-bar change?

12 A. 我可以咁講，喺任何嘅禮頓嘅proposal都有提過呢樣嘢。

13 MR PENNICOTT: Sir, I have no further questions for
14 Mr Leung.

15 MR CHANG: No questions from Leighton.

16 MR SO: No questions from China Technology.

17 Cross-examination by MR CHOW

18 MR CHOW: Mr Chairman, I have a few questions for Mr Leung.

19 Good morning, Mr Leung. My name is Anthony Chow and
20 I represent the government. We have just a few
21 questions for you.

22 Mr Leung, in relation to the incident of missing bar
23 at the top of the diaphragm wall which were not
24 discovered until a very late stage -- as far as I know,
25 it's until as-built drawings were prepared and the

1 certificate of completion was applied for -- do you
2 recall that incident?

3 A. 記得。

4 Q. Now, because of that incident, MTRC has prepared
5 an incident report.

6 A. 正確。

7 Q. Have you got a chance to look at the details of the
8 incident report?

9 A. 有。

10 Q. Can I trouble you to go to one particular part of your
11 report, at bundle H11, page 5545, please.

12 Basically, what MTRC does in this report is to
13 report as to why the incidents occurred and make
14 recommendation as to how to prevent similar incidents
15 from recurring, and this report was submitted to the
16 Buildings Department.

17 Now, in paragraph 3.3.6 of the report, MTR says:

18 "In order to improve the robustness of the controls
19 to track progress of all proposed design changes until
20 they are approved and incorporated into the working
21 drawings, the contractor has developed and is
22 implementing an additional control procedure defined as
23 the technical query process. TQs will be used to
24 provide robust monitoring of design progress,
25 clarification of design, instruction of design change,
26 modification and/or carrying out new design works."

1 Mr Leung, are you aware of how these -- first of
2 all, perhaps, was there a new additional procedure
3 implemented by Leighton regarding the so-called
4 technical queries process?

5 A. 係有個咁嘅TQ procedure嘅，但係--sorry，係唔係因為呢個incident
6 report之後additional呢？因為TQ係一個process，係between禮頓同
7 佢哋Atkins team B嘅process嚟嘅，所以我就唔知道係咪佢哋係新嘢，
8 抑或係原本已經有。

9 Q. Right. Over the past few days, we have heard about
10 TQ33, TQ34. Am I correct in saying that, for example,
11 for those two TQs, they were issued under the usual TQ
12 procedure but may not be under a so-called additional TQ
13 procedure; is that right?

14 A. 正如我所講，呢個係禮頓同Atkins team B嘅一個process，呢樣嘢就要
15 由佢哋答番係較為正確--較為適合啲。

16 Q. Okay. Thank you.

17 Now, the next topic I would like to discuss with
18 you -- just now, Mr Pennicott has taken you to the two
19 versions of the design report, 4B2 and 4B3. Do you
20 still recall that?

21 A. 記得。

22 Q. The later version, 4B3, was submitted to the Buildings
23 Department on 29 July 2015 as part of the temporary
24 works submission; correct?

25 A. 正確。

1 Q. In your witness statement, you also mentioned the
2 response from the Buildings Department dated 8 December
3 2015. You also recall that part of your statement;
4 right?

5 A. 正確。

6 Q. In your statement, you specifically mention what the
7 Buildings Department said in its response under
8 paragraph 15, where the Buildings Department said --
9 I beg your pardon, I need to find -- yes. The Buildings
10 Department said:

11 "It is noted that steel rebar details of permanent
12 station structure has been included in this temporary
13 works design submission. In order to avoid ambiguity,
14 the steel rebar details is treated as providing
15 information to justify that the ELS effects has been
16 considered in the permanent works design. You are
17 required to submit all change in the permanent station
18 structure in the appropriate design package for
19 consultation/agreement."

20 So you also recall that part of the Buildings
21 Department's response; right?

22 COMMISSIONER HANSFORD: Sorry, Mr Chow, which section have
23 you just taken us to?

24 MR PENNICOTT: Where are you reading from?

25 MR CHOW: Perhaps this is the second response. I beg your
26 pardon. Yes. Can I invite you to paragraph 50(b) at

1 bundle B1/254, please. Under subparagraph (b), you set
2 out paragraph 15 of the Buildings Department response
3 dated 8 December 2015, in which the Buildings Department
4 said:

5 "It is noted that the reinforcement details of
6 permanent slab of the station have been included in this
7 temporary works design submission. In order to avoid
8 ambiguity, it is recorded that the said reinforcement
9 details were submitted for information only and you are
10 required to ensure the corresponding permanent station
11 structure submission are fully compatible with this ELS
12 design submission."

13 Right? So this is part of the BD's response to the
14 first submission.

15 Professor, the paragraph that I just cited actually
16 is BD's response to the second submission, so they are
17 of similar nature.

18 COMMISSIONER HANSFORD: Okay. Thank you.

19 MR CHOW: Mr Leung, actually I only have one question in
20 relation to this. After receiving a response from BD --
21 now, earlier you told us that you actually did not look
22 at the details of the submission, version 4B3, because
23 it was prepared by your colleague and you just signed on
24 the covering letter and despatched it to the Buildings
25 Department; right?

26 Now, having received a response, specific response

1 from the Buildings Department, at the time have you got
2 a chance to look at BD's detailed responses, including
3 this particular paragraph?

4 A. 係冇嘅。

5 Q. So obviously you were not in a position at that time to
6 follow up on this matter, in that case; right?

7 A. 正確。

8 Q. Mr Leung, the last area I would like to explore with you
9 is -- Mr Clement Ngai, in paragraph 13 of his witness
10 statement, bundle B1, page 238.1. Mr Ngai said, after
11 he had received the email from Mr Jason Poon, he
12 forwarded the email to you and asked you to follow up.

13 My only question to you is: have you taken any
14 action to follow up on this matter at that time?

15 A. 係冇嘅，喺設計層面上，我哋冇做過任何嘢。

16 MR CHOW: Thank you, Mr Leung. I have no more questions for
17 you.

18 MR CONNOR: No questions from Atkins, sir. Thank you.

19 CHAIRMAN: Thank you.

20 Re-examination by MR BOULDING

21 MR BOULDING: Good morning, Mr Leung. I just have one
22 matter I'd like to ask you about. I would like you to
23 cast your mind back to Friday, please.

24 Do you remember being asked about the first change
25 by counsel for the Commission of Inquiry?

1 A. 有。

2 Q. It involved, did it not, in simple terms, the removal of
3 the U-bars at the top of the diaphragm wall; correct?

4 A. 正確。

5 Q. Do you remember agreeing with counsel for the Inquiry
6 that the first change should have been submitted to the
7 Buildings Department for agreement or consultation prior
8 to commencement of the work that changed the detail?

9 A. 正確。

10 Q. The transcript records you saying that your complaint so
11 far as Leighton was concerned was that they made no
12 formal submission to the MTR and sought to amend the
13 permanent works design by way of a shop drawing
14 submission. Do you remember giving that answer to
15 Mr Pennicott?

16 A. 可唔可以再翻譯多一次？因為聽得唔係好清楚，sorry。

17 Q. Yes, okay.

18 The transcript records you saying that your
19 complaint so far as Leighton was concerned was that they
20 made no formal submission to the MTR, and instead sought
21 to amend a permanent works design by way of a shop
22 drawing submission. Do you remember that?

23 A. 記得。

24 Q. I wonder if we could just look at the transcript for
25 Friday, at page 121. If you could look at line 15,

1 where Mr Pennicott says:

2 "Just one last question on that then, Mr Leung.

3 When you say, or when you agreed with me that some
4 formal proposal should have been made, what form should
5 that have taken? What do you mean by a formal
6 proposal?"

7 Then you answer at line 19:

8 "In contract 1112, there was a work proposal
9 mechanism, a work proposal meeting, and in those
10 meetings, the contractor was provided with a forum to
11 raise proposals relating to changes in permanent works,
12 and on that platform or at the proposal group, then we
13 could discuss whether to proceed with the changes,
14 considering whether there were benefits to be brought to
15 the project."

16 You will remember giving that evidence, I assume?

17 A. 有，記得。

18 Q. Now, I wonder whether you can assist me with identifying
19 the provision or provisions in contract 1112 that you
20 had in mind. For that purpose, can we please go to
21 C3/2217.

22 There, do you see, Mr Leung, clause 7.6.2 of the
23 Particular Specification?

24 A. 見到。

25 Q. Is that one of the provisions you had in mind when you
26 gave your answer that I have just read to you, Mr Leung?

1 A. 係，呢個係其中一部分，係。

2 Q. And, if it was part of it, perhaps we can look at C3 at
3 2209. If you could look there, please, at
4 clause P7.1.4, is that another provision of the contract
5 that you had in mind when you gave your answer to
6 Mr Pennicott?

7 A. 正確。

8 Q. Then finally, I think, if you could stay on page 2209
9 but if we could focus on clause 7.1.1, and if you could
10 just read that to yourself, and then tell me whether
11 that is another provision you have in mind when you gave
12 the answer to my learned friend.

13 A. 正確。

14 MR BOULDING: Thank you very much, Mr Leung. I have no
15 further questions for you. I don't know whether the
16 learned professor or the Commissioner have anything to
17 ask you.

18 CHAIRMAN: No. Thank you very much indeed, Mr Leung. Your
19 evidence is now completed. Thank you very much.

20 (The witness was released)

21 MR BOULDING: My next witness, sir, is Mr Kit Chan.

22 MR PENNICOTT: Sir, before Mr Chan -- Mr Boulding has just
23 remembered what I told him -- is called --

24 COMMISSIONER HANSFORD: He's coming in now.

25 MR PENNICOTT: It doesn't matter if he hears this. It's
26 fine. It's nothing to do with his evidence.

1 If you would like to take a seat, please, Mr Chan.

2 WITNESS: Thank you, sir.

3 MR PENNICOTT: We'll be with you shortly.

4 WITNESS: No problem.

5 H O U S E K E E P I N G

6 MR PENNICOTT: Sir, I've got six, I think, an ever-growing
7 list, of housekeeping matters that I would like to
8 mention. They are as follows. They are not in any
9 particular order but I'll mention perhaps the most
10 important one first.

11 Sir, on 14 November 2018, the solicitors for the
12 Commission received a letter from the Director of Public
13 Prosecutions. The content of the letter, in gist, was
14 that the ICAC had taken and obtained a statement from
15 Mr Jason Poon, and the letter from the Director of
16 Public Prosecutions offered to give the Commission
17 a copy of that witness statement.

18 That offer was taken up by the Commission, the
19 Commission's legal team, and on 15 November a copy of
20 the statement provided by Mr Poon to the ICAC was
21 provided to us.

22 Due consideration has been given to the witness
23 statement by me, junior counsel and by those instructing
24 us, and sir, I know that you have also seen a copy, as
25 has Prof Hansford.

26 We have formed the considered view, and it has taken

1 us a little while to look at it and form a proper view,
2 that it would not be appropriate to introduce that
3 statement into these proceedings. We do not think it
4 takes any of the matters that have been ventilated in
5 this Inquiry any further, and therefore we are satisfied
6 that it can, as it were, remain with us and not be taken
7 any further.

8 Sir, that was the first thing I wished to mention,
9 so that everybody knows and that there is no attempt by
10 us, as it were, to not be as transparent as we possibly
11 can.

12 CHAIRMAN: Thank you very much. On behalf of myself and
13 Prof Hansford, it just needs to be recorded that when we
14 were informed that a statement had been made and that it
15 could be put before us for consideration, both myself
16 and Prof Hansford were of the view that it should be,
17 and we therefore supported the request.

18 The statement was provided. We were aware that
19 Mr Pennicott and his team had looked at it. Entirely
20 separately, without any consultation with Mr Pennicott,
21 both myself and Prof Hansford had a look at it, and
22 entirely separately and independently the two of us
23 reached the view that it would not advance any of the
24 matters which have arisen in this Commission of Inquiry,
25 and therefore that statement itself would form no part
26 whatsoever, direct or indirect, of this Commission's

1 decision-making process.

2 We then informed Mr Pennicott, who informed us that
3 his team had come to the same decision independently.

4 So that is the position. The document was put
5 forward so that we could exhaust any possibilities of
6 relevance, and we have done so. Thank you.

7 MR PENNICOTT: Thank you very much, sir.

8 Sir, the remaining items are really to do with the
9 witnesses, as we go forward. A further provisional
10 timetable for the next three weeks, or at least part of
11 it, was uploaded on to the Commission's website on
12 Friday evening, I believe, and whilst I'm sure those
13 sitting behind me have been paying particular attention
14 to the new timetable, can I just emphasise a couple of
15 points so there are no misunderstandings.

16 The first point to note, chronologically, is that
17 Mr Aidan Rooney, one of the MTR's witnesses, will,
18 because of logistical issues, be called this week, on
19 Wednesday, 5 December. Precisely when he will go into
20 the witness box, it will certainly be in the morning,
21 whether we need to finish off a witness and whether he
22 will be able to go straight in at 10 o'clock we will see
23 how we are fixed tomorrow night, but Mr Rooney will be
24 giving evidence on Wednesday.

25 The next point is that in discussions and ultimate
26 agreement with Pypun and their legal team, the two Pypun

1 witnesses will be giving evidence on 13 December, that
2 is Thursday week. We've also reserved the 14th as well,
3 but at the moment we're not anticipating that two days
4 will be required. So the Pypun witnesses will be on
5 13 December.

6 Sir, the next point is that Mr Robert McCrae, one of
7 the Atkins witnesses, will be giving evidence by
8 videolink from London. A date has yet to be fixed for
9 that to take place. I'm in discussions with Mr Connor
10 about that and we are working towards trying to achieve
11 a date that is agreeable to everybody, but I'm afraid
12 that it is going to require at least one evening where
13 we probably have to start Mr McCrae at perhaps 4 o'clock
14 in the afternoon and sit for as long as it takes to take
15 his evidence, but as I say I will advise everybody as
16 soon as I possibly can when we have a fixed date and
17 time for that to happen.

18 CHAIRMAN: I can mention here at this stage that both myself
19 and Prof Hansford have also looked at our diaries, if it
20 may assist everybody. The only evening next week which
21 causes us difficulties is the 13th. I in fact have
22 a hearing in another tribunal starting in the evening,
23 after this conclusion, so I can't obviously set that
24 aside. Otherwise, every evening that week we are
25 available.

26 MR PENNICOTT: Thank you for that indication, sir. I should

1 have added it won't be this week. It's likely, if it's
2 not the following week, it may well be the last week, if
3 necessary.

4 COMMISSIONER HANSFORD: Just to add to what the Chairman
5 said, in the last week I am unavailable late evening on
6 the 18th.

7 MR PENNICOTT: Right, which is the Tuesday.

8 COMMISSIONER HANSFORD: Yes.

9 MR PENNICOTT: That's helpful. I think the two dates we
10 were looking at were indeed the 13th and the 17th, which
11 is the Monday. So it looks as though we are honing in
12 on the Monday, the 17th.

13 CHAIRMAN: That's effectively two weeks' time.

14 MR PENNICOTT: Yes. We will work on that. Thank you very
15 much for that.

16 The next thing is this. The government witnesses --
17 first of all, as I think may have been mentioned
18 already, all parties are agreed that eight of the
19 government witnesses need not be called for any
20 examination or cross-examination, but their witness
21 statements will in due course be uploaded onto the
22 website in the usual way and their witness statements
23 can be referred to and relied upon as necessary or
24 appropriate.

25 What has happened this morning, after some further
26 weekend working, is I have given Mr Khaw, on

1 a provisional basis, a running list of the government
2 witnesses, as I say, for his consideration and to see
3 whether there are any difficulties that may arise with
4 that running order.

5 Going out to all parties, I think, at some stage
6 today will be that provisional list -- I emphasise that
7 it is provisional, not yet set in stone -- and the
8 parties will see that against four of the government
9 witness names there will be an asterisk. What that
10 asterisk means, as will be indicated in the covering
11 letter, is that the Commission itself -- that's me, in
12 this regard -- the Commission's team, will not wish to
13 ask any questions of those four government witnesses.
14 Three of them deal with the visit to the MTRC's offices
15 to view various records in June of this year, and as
16 I say the Commission will not wish or I will not wish to
17 ask those four witnesses any questions.

18 However, of course I recognise fully that other
19 interested parties may wish to ask questions, and the
20 other interested parties will be invited to say whether
21 they wish to ask those identified witnesses, as
22 probably -- yes, I've just been told that's going out
23 already and all parties are being asked to indicate
24 whether they wish to cross-examine the four witnesses by
25 6 December, so by Thursday.

26 So that's that.

1 Lastly, sir, I haven't managed to speak to everybody
2 but I have spoken to most people: I understand we will
3 be having a 4.30 finish today.

4 CHAIRMAN: Yes. Thank you. I feel somewhat embarrassed.

5 I set myself up as the task master, and then I'm the
6 first seeking an indulgence, under my own strict regime.
7 I'm a trustee of a particular organisation and a matter
8 has blown up over the weekend, and in order to get into
9 town to attend that meeting I've had to seek your
10 indulgence. Thank you very much indeed. So 4.30 today.

11 MR PENNICOTT: Unless anybody else has any observations,
12 those were my six points. At that point, I will sit
13 down and let Mr Boulding deal with Mr Chan.

14 CHAIRMAN: Good.

15 MR BOULDING: Good morning, Mr Chan.

16 WITNESS: Good morning, sir.

17 MR CHAN KIT LAM, KIT (affirmed)

18 Examination-in-chief by MR BOULDING

19 MR BOULDING: You have given us your full name, so what I'd
20 like to do now is go to the two witness statements that
21 you've provided for the assistance of the Commission.
22 If you could be taken first, please, to page B262. Do
23 we there see, Mr Chan, the first page of your first
24 witness statement?

25 A. Yes.

26 Q. If you could go on to page B287, we see, do we not, your

1 signature under the date of 13 September 2018?

2 A. Yes.

3 Q. But I understand that you'd like to make some
4 corrections to that. If we then go to B287.1, and do we
5 there see a corrigendum to your first witness statement,
6 Mr Chan?

7 A. Yes.

8 Q. Subject to those corrections, are the contents of your
9 first witness statement true to the best of your
10 knowledge and belief?

11 A. Yes, true to the best of my knowledge.

12 Q. Then if we could go, please, to your reply witness
13 statement, and for that purpose we need to go to B13619.
14 We're there already; excellent.

15 There do we see the first page of your reply witness
16 statement, Mr Chan?

17 A. Yes.

18 Q. Please go on to page B13621. There do we see your
19 signature under the date of 12 October 2018?

20 A. Yes.

21 Q. Are the contents of those statements true to the best of
22 your knowledge and belief?

23 A. Yes.

24 Q. Do you adopt those statements for the purpose of giving
25 your evidence to the Commission of Inquiry?

26 A. Yes.

1 Q. What I'd just like to do, before you are questioned by
2 various of the lawyers in this room, is just to show
3 your position, if I may, in the MTR organisation.

4 If you could be taken, please, to B566. We can see,
5 can we not, from the top left-hand corner, that this was
6 effective as of January 2015; correct?

7 A. Yes.

8 Q. Then we can see your smiling face, can we not, right at
9 the top, with your name against it?

10 A. Yes.

11 Q. But things moved on slightly, so to get a true picture
12 of where you were, if you could then go on, please, to
13 B576, and this, we can see, was effective as at 31 March
14 2016, the top left-hand corner; correct?

15 A. Yes.

16 Q. So far as your picture is concerned, you are now one
17 line down; is that correct?

18 A. Yes.

19 Q. Both of those organisation charts show, do they not,
20 where you were in the MTR organisation at those
21 particular times?

22 A. Yes.

23 Q. Thank you, Mr Chan, what's going to happen now is that
24 you will be cross-examined by various lawyers in the
25 room, starting with Mr Pennicott or Mr Cheuk for the
26 Commission of Inquiry, and then at the end I might need

1 to ask you one or two additional questions, and
2 of course Prof Hansford and the Commissioner can ask you
3 anything they want at any time, if it takes their
4 interest.

5 A. Thank you, sir.

6 MR BOULDING: Thank you very much.

7 Examination by MR PENNICOTT

8 MR PENNICOTT: Good morning, Mr Chan.

9 A. Good morning, sir.

10 Q. As Mr Boulding has indicated, I'm one of the counsel for
11 the Commission and I'm going to ask you some questions
12 first.

13 A. No problem.

14 Q. Thank you very much for coming to give evidence to the
15 Commission this morning.

16 Mr Chan, as we've just seen from the organisation
17 chart, you were MTRC's construction manager for
18 contract 1112 for the period November 2014 to May 2016?

19 A. Yes, sir.

20 Q. And, in effect, as I understand it, you were the head of
21 the construction management team for that particular
22 contract?

23 A. Yes.

24 Q. You also tell us that you were appointed as the
25 competent person's representative in December 2014?

26 A. Yes.

1 Q. And you have explained in various paragraphs of your
2 witness statement the duties and responsibilities as the
3 construction manager and as the competent person's
4 representative?

5 A. Yes.

6 Q. So I'm not going to go through all that with you.

7 Would I be right in thinking, Mr Chan, that insofar
8 as other witnesses that are coming along to give us some
9 evidence, Mr James Ho, Mr Derek Ma and Mr Louis Kwan
10 were all members of your team?

11 A. Yes.

12 Q. And they reported to you?

13 A. Yes.

14 Q. And they reported to you?

15 A. Yes.

16 Q. Generally, as I understand it, your role was to oversee
17 the supervision and the supervision requirements for the
18 contract?

19 A. Yes.

20 Q. And you were responsible for allocating supervisory
21 resources to the contract?

22 A. Yes.

23 Q. And, in a nutshell, you had to try to ensure that you
24 got the right people in the right place at the right
25 time?

26 A. Yes.

1 Q. So far as the competent person's representative is
2 concerned, my understanding is that initially you
3 reported to Mr Rooney, that is between September 2013
4 and February 2015; is that right?

5 A. Can you repeat your question?

6 Q. Yes. So far as the competent person's representative is
7 concerned, you would first of all be assisting
8 Mr Rooney, who was the competent person between
9 September 2013 and February 2015?

10 A. Yes.

11 Q. And then subsequently to Mr Jason Wong?

12 A. Yes.

13 Q. As we know and we have been discussing with various
14 witnesses, Mr Chan, there were at least two changes, the
15 first change and the second change --

16 A. Agree.

17 Q. -- to the design or the detail, and my understanding is
18 that you have no personal knowledge of the first
19 change -- to the diaphragm wall, the missing U-bars --
20 because that all happened before you took up your
21 position?

22 A. Yes, sir.

23 Q. So far as the second change is concerned, however, you
24 have quite a lot to say about it?

25 A. I agree.

26 Q. We are going to spend a little time just looking at what

1 you do say about that second change.

2 Could I ask you, in that context, please, to go to
3 paragraph 40 of your witness statement, where you deal
4 with panel EH74 and technical query 34.

5 A. Yes.

6 Q. As I understand it, because of the problem that was
7 raised in the technical query, there was, as it were,
8 two elements to the solution which you have set out at
9 (i) and (ii) of paragraph 40.

10 A. Yes.

11 Q. If you like, the most significant change was that, at
12 (i), the T1 layer of cast-in couplers and diaphragm wall
13 concrete were trimmed down, and a through-bar was used
14 at T1?

15 A. Yes.

16 Q. But the layers T3 and T5, the starter bars and couplers,
17 were retained?

18 A. Yes.

19 Q. As I understand it, from paragraph 41 of your statement,
20 that same solution was adopted for area C1-2; is that
21 correct?

22 A. Yes, sir.

23 Q. Going into paragraph 42 of your witness statement, and
24 indeed paragraph 41 right through to paragraph 47 -- can
25 I summarise those paragraphs in this way, Mr Chan.

26 A. No problem.

1 Q. What you do is you describe a number of issues or
2 difficulties which were discovered or encountered during
3 the fixing of the rebar to the eastern D-wall.

4 A. Yes, sir.

5 Q. Then you refer to a number of communications that
6 themselves refer to casting the OTE wall and the EWL
7 slab monolithically.

8 A. Yes.

9 Q. The upshot of that, that is the encountering the
10 difficulties and casting monolithically, we come to
11 paragraph 48 of your witness statement. If you could
12 look at that, please. You say:

13 "In light of the need to proceed in accordance with
14 the design intent/assumption and to overcome various
15 problems relating to the couplers connections as noted
16 [above], which would be time-consuming and costly,
17 I discussed the matter with my team and the
18 representatives of ..."

19 Then you mention Mr Plummer, Mr Rawsthorne and
20 Mr Gary Chow, all of whom we have heard from, but you
21 say you can't remember in particular who you spoke to
22 and when?

23 A. Yes.

24 Q. The conclusion was, following those discussions:

25 "... it was not feasible to continue implementing
26 the construction detail of connecting reinforcement bars

1 of the EWL slab with the three or four layers of cast-in
2 couplers on the excavation side of the east diaphragm
3 wall."

4 A. Yes.

5 Q. Therefore, in paragraph 49, you say:

6 "Based on [those discussions that you had with
7 Leighton], the construction management teams of both MTR
8 and Leighton eventually ..."

9 And this is the bit I'm most concerned with for you
10 to explain, Mr Chan, to start with:

11 "... the construction management teams of both MTR
12 and Leighton eventually decided in or around August 2015
13 to revert back to the original construction detail of
14 having two layers of reinforcement bars with uniform
15 spacing at the top of the east diaphragm wall for the
16 rest of the panels in areas B and C ..."

17 What do you mean by "reverting back to the original
18 construction detail"? The original construction detail
19 was starter bars and couplers, as I understand it, so
20 I'm a bit confused by what you mean there.

21 A. I would like to clarify that.

22 Q. Please do.

23 A. Back in 2013, the first approved drawing for rebar for
24 EWL slab showed two layers of top rebar connected to
25 coupler inside the top portion of the D-wall, two
26 layers, uniform spacing. That is the reason why I say

1 "original construction detail", that back to the 2013
2 approved shop drawings.

3 Q. Right.

4 A. That is what I mean by "original construction detail".

5 It's always saying that the top rebar, two layers,
6 uniform spacing, from EWL slab all the way to the top of
7 the east diaphragm wall.

8 Q. Right. So you are reverting to that, two layers,
9 uniform spacing --

10 A. Exactly.

11 Q. -- but, as I understand it, not, this time, with
12 couplers?

13 A. Exactly.

14 Q. So with through-bars?

15 A. Yes.

16 Q. Okay. You then go on to say -- obviously, there's
17 an exception with regard to areas C1-1 and C1-2, because
18 effectively they've already been done, as we've seen --
19 and you say:

20 "... which was possible because the concrete had
21 been cast for the east diaphragm wall by then and the
22 tremie pipes had since been abandoned, although Atkins
23 did not formalise any revisions to the working drawings
24 at the time as far as I am aware."

25 Now, did you expect Atkins to formalise revisions to
26 the working drawings at the time?

1 A. I would like to explain my view on this topic. I think
2 all staff from the end of July, around 24 July, the
3 Leighton design team issued an email to the construction
4 team of both Leighton and MTR, saying that there's a new
5 design requirement. During the construction of EWL
6 slab, D-wall and OTE, we've got to cast these three
7 portions monolithically. That is a very important new
8 design requirement, from a construction point of view,
9 we consider may cast monolithically, these three
10 elements must be cast in one go, at the same time.

11 And again, in the reply to TQ33, Leighton designer
12 reiterated that, the same new design requirement, saying
13 that the three elements -- the EWL slab, the top portion
14 of the east diaphragm wall and the OTE -- must be cast
15 monolithically.

16 When you go to other available documents, this new
17 design requirement basically comes from the permanent
18 works design report, to address the missing U-bar at the
19 D-wall; right? That means based on all this relevant
20 information, I understand that the design team is fully
21 aware that there's a new requirement, the three elements
22 must be cast monolithically, somehow they should make
23 some changes, although the changes are very minor as far
24 as I'm concerned. They can do the changes at any time
25 they like, as long as you do the changes before the BA14
26 submission. This is based on my past experience in any

1 MTR projects.

2 Q. Can we just pause for a moment, Mr Chan. In your
3 witness statement, as I just read out, you say that
4 "although Atkins did not formalise any revisions to the
5 working drawings".

6 Now, my question was, having, as it were, had your
7 discussions with Leighton, jointly agreed, it would
8 appear, to adopt the through-bar solution, was your
9 expectation that Atkins would produce formal revised
10 working drawings?

11 A. At that time, I was under the impression that this
12 change was very minor, and as long as the contractor and
13 his design consultant team make these changes before the
14 BA14 submission for EWL slab, it will be okay. There is
15 no urgency to make these changes in writing, to me.

16 Q. All right. Let me try again. So, first of all, when
17 you say "Atkins", do you mean Atkins team A or --

18 A. Team B.

19 Q. All right. So Leighton/Atkins?

20 A. Agree.

21 Q. But, you say, you did not believe or you were not under
22 the impression that those revised working drawings
23 needed to be produced back in August 2015? Is that your
24 position?

25 A. Can you repeat your question again? Sorry about that.

26 Q. It's no problem. Your belief/impression/understanding

1 was that in August 2015, it was unnecessary for Atkins
2 team B to produce the working drawings at that time?

3 A. No. I prefer they would update the working drawings, if
4 possible, but I mention there is no time limit to update
5 the working drawings, because it's minor changes.
6 According to my past experience in other MTR projects,
7 as long as they did that before they submit the BA14,
8 they can do it. If they do that, update working
9 drawings, better than not doing it; right? But
10 I emphasise that there's no time limit to update these
11 drawings.

12 Q. All right. And you realise, I think, that there is
13 quite a fundamental clash between your view and the view
14 of Mr Leung, from whom we have just heard, who said not
15 only should working drawings have been produced but the
16 BD should have been informed and consulted prior --
17 before this change was implemented. That sounds to me
18 as though that's not a view you share.

19 A. I didn't share his view because I considered, from the
20 very beginning, the second change is very minor in
21 nature. But, based on my past experience in any MTR
22 project and IoE, these changes can be addressed as long
23 as before the BA14 submission for EWL slab while the
24 final amendment.

25 Q. And when you say --

26 CHAIRMAN: Sorry, I just want to make sure -- you say the

1 BA14 or the B14 --

2 A. No. Chairman, it's BA14 submission for EWL slab, which
3 we haven't done yet.

4 COMMISSIONER HANSFORD: Okay.

5 MR PENNICOTT: So this is the submission, as I understand
6 it, Mr Chan, that comes right at the end of the day --

7 A. Exactly.

8 Q. -- when everything is completed and you make a BA14
9 submission, and a certificate of completion and so
10 forth, right at the end of the day?

11 A. What I'm trying to say is that before you submit the
12 BA14 submission for EWL slab, you've got to address all
13 the minor amendments while a final amendment submission
14 to BD, like what we did for the D-wall; right? Before
15 you submit the BA14 for D-wall, you also make a final
16 amendment for D-wall. That's the process.

17 Q. Yes. I understand that, Mr Chan. As I understand it,
18 the reason why you say this alteration, this change, was
19 minor is that the principle of the rebar fixing, that is
20 the two layers, albeit it was through-bars rather than
21 couplers, the principle was essentially the same?

22 A. Agree. Can I elaborate my view on the second change?

23 If you look at the second change, basically, we
24 consider two parts. The first part is deletion two
25 vertical joints, one between the EWL slab and the
26 D-wall; another vertical joint is between the D-wall and

1 OTE. This change to me is a change of construction
2 sequence. It provides a better construction detail for
3 the whole connection between the slab and the wall.

4 The second point is we -- going back to the same
5 original construction detail for the rebar fixing from
6 EWL slab to the D-wall, I mean two layers of top rebar
7 at uniform spacing. In fact, these changes, we don't
8 need any design calculation or justification, because
9 this arrangement, they already approved by the BD back
10 in 2013. So, from an engineering point of view, this is
11 very simple and no change.

12 Q. I understand those two points that you make, Mr Chan,
13 but are you forgetting one rather important aspect of
14 the change: that is, that the D-wall has already been
15 built and completed, and you've got to knock down the
16 top half a metre of it in order to effect the changes?

17 A. My view on this topic is that the BA14 submission D-wall
18 is the work done by Intrafor. What I'm doing now is
19 something totally different from the Intrafor work.

20 Q. You are changing the permanent work for which approval
21 has already or is in the course of being obtained.
22 That's the problem, isn't it, Mr Chan?

23 A. That is the opinion I make at that time, like the shear
24 key; right? We also knock down some D-wall concrete to
25 form the shear key. A very similar situation; agree,
26 sir? We have to form the shear key afterwards, right?

1 When you do the EWL slab, we also don't inform the BD
2 that we knock down the shear key. They know that. It's
3 part of the construction for the superstructure. It's
4 very common, from a construction point of view.

5 Q. Do you agree that the decision as to whether the BD
6 should be consulted and approval be obtained for the
7 second change, let's call it -- the decision rested with
8 your design management team?

9 A. I shouldn't put in that way. I didn't specifically ask
10 the design management team to make that change, because
11 I was under the impression that they knew that that
12 second change has come from the recommendation in the
13 permanent works design report. They should know it;
14 right? Because this report was prepared, a joint effort
15 between MTR and Leighton. That monolithic requirement
16 has come from that permanent works design report. I got
17 the impression that if they want to make the change,
18 they will do in due course. That's why I didn't
19 specifically ask them, "Make the change as quickly as
20 possible." That is the impression I had and the
21 judgment I made at that particular point.

22 Q. Right. We looked at a couple of reports earlier today
23 with Mr Leung. Those were the temporary works design
24 reports 4B2 and 4B3. Do you have knowledge of those two
25 reports, Mr Chan?

26 A. I have some knowledge now because I go through the

1 report, but I can't remember whether I read the report
2 three years ago, but recently I go through the report.

3 Q. Right, that was my question, the question I was going to
4 ask you: whether you personally saw those reports back
5 in 2015?

6 A. I can't remember, honestly. There are so many things
7 I read; right? But based on what I saw, that report
8 copied to me, I should have read it or someone had
9 consult me there's a certain element in that report.
10 But actually whether I read it, I can't remember,
11 honestly.

12 Q. Right. And the permanent works report -- those were
13 both temporary works design reports?

14 A. Yes.

15 Q. And the permanent report that you're referring to is
16 which one?

17 A. I think 59, because the permanent works design report do
18 address the missing U-bar, that is the fundamental,
19 that's where the monolithic requirement come from, and
20 the designers from both teams should be aware of that
21 recommendation. That's why the Leighton design team
22 issued an email to the construction team of MTR, say,
23 "Look, there's a new design requirement. You got to
24 case OTE, D-wall and EWL monolithically." That's why
25 the construction team follow that requirement
26 straightaway. If you look at the record, except the

1 first bay, C1-1, we cannot follow that requirement,
2 however we got a concession from the CP and decide this
3 is a special case, it can do without monolithic
4 requirement. Start from C1-2, we cast monolithically
5 already.

6 Q. But you're referring to the permanent works design
7 report 59A3; is that right?

8 A. Yes, I think so. This all comes from that monolithic
9 recommendation.

10 Q. Let's have a quick look at that. It's at B10/7322,
11 I hope.

12 CHAIRMAN: At a time when you think it's convenient for the
13 mid-morning break.

14 MR PENNICOTT: I'll just deal with this point.

15 CHAIRMAN: When you're ready.

16 MR PENNICOTT: Thank you, sir.

17 7324 is the front sheet. Have you got the front
18 sheet, 7324, Mr Chan? Is this the report you're
19 referring to?

20 A. Yes, sir.

21 Q. As I understand it, as I think you've just indicated,
22 the primary purpose of this report was to provide
23 justification to the Buildings Department for the
24 approval of the certificate of completion and plans for
25 the diaphragm walls --

26 A. Agree.

1 Q. -- as constructed by Intrafor?

2 A. Yes, sir.

3 Q. And the remedial proposal put forward here was to
4 address the change of the missing U-bars and so forth;
5 yes?

6 A. Agree.

7 Q. And there's no -- am I right in thinking, Mr Chan,
8 there's no actual specific reference to trimming down
9 the D-wall in this report, or would you say there is?

10 A. I think you have to look at the context of the last --
11 page 6, the conclusion. Page 6, paragraph 5,
12 "Conclusion".

13 Q. Yes. So that's --

14 A. Second-last paragraph.

15 Q. So that's page B10/7334?

16 A. Exactly, right. It's the second-last paragraph. That
17 is where it comes from, the monolithically.

18 Q. Right.

19 A. And from a construction point of view, when you want to
20 cast three elements monolithically, you've got to make
21 sure that the top of the diaphragm wall got to knock
22 down, otherwise you can't fulfil this requirement.
23 I just make my professional judgment at that time,
24 although they didn't specify how much to knock it down,
25 but as a construction professional that's what we did
26 on site.

1 Q. So what you're saying, as I understand it, is although
2 there's no specific reference to trimming down or
3 reducing the height of the as-built diaphragm wall,
4 implicit in what is said here, that is the monolithic
5 construction method, it would necessarily involve some
6 trimming down?

7 A. Agree, plus when you look at the other temporary work
8 design, 6.2, they also mention this idea about knock
9 down 450. In fact I think there's a lot of discussion
10 among different people at that time. That's why they
11 won't have the 6.2 in the report. All these statements
12 are compatible.

13 Q. Right. But the other thing it doesn't mention
14 specifically in this report is the use of through-bars,
15 does it?

16 A. Totally agree, but it's implicit term; right? In order
17 to achieve that one, very sensible thing is to remove
18 the coupler. Since you remove the concrete, the cover
19 all gone, and then you just look at through-bar, back to
20 the original construction details.

21 Q. You see, Mr Chan, I think that's where I have some
22 difficulty. I understand your first point about
23 monolithic construction -- well, you might be able to
24 imply that you've got to take out some of the D-wall in
25 order to enable you to construct monolithically, I can
26 see that -- but, on the other hand, monolithic

1 construction is not inconsistent or incompatible with
2 retaining the couplers. You can have the bars, you can
3 have the couplers in situ, you can have the starter
4 bars, and you can have it as per the approved drawings,
5 that is the couplers, and then cast it monolithically.
6 I mean, why get rid of all the couplers if they're
7 perfectly all right?

8 A. I think if you look at the other documents like TQ34 and
9 TQ33 -- right, TQ34 mentioned that they have problem of
10 misalignment of the top layer, the best solution is
11 knock off the concrete and then cast monolithically and
12 solve that problem. This kind of problem quite commonly
13 happened in other panels, and TQ33, if you look at TQ33,
14 they list out a lot of rebar fixing problems caused by
15 the cast in situ coupler.

16 When you look at the monolithic requirement and the
17 difficulty facing the site team, the sensible thing is
18 to knock all down this together. That's why come to
19 that conclusion, based on TQ33 and TQ34, and also the
20 new design requirements, all these come together, not
21 one individual instance. That's why we develop that
22 construction detail, C1-1, only one panel, C1-2, all
23 panels, and the remaining panel, knock off everything.
24 It's gradual progression, to meet all the design
25 requirements to solve all the site problems together, at
26 one go.

1 Q. I know you've said you can't recall whether you saw this
2 report at the time --

3 A. Which report?

4 Q. The one we were just looking at. Sorry, did you --
5 perhaps I should ask you the question about this one --
6 did you see this report?

7 A. 4B3?

8 Q. No, the one we've just been looking at, 59, PWD; did you
9 see this report at the time?

10 A. I can't remember whether I see that one. But I was
11 copied this one, I assume that I read it. Plus, when
12 you look at other emails, I just tell you that the
13 requirement all come from this report, fundamental.
14 Very, very important. The design team aware that.

15 Q. But, Mr Chan, the problem is you've given us your
16 explanation this morning, and we can see what you say
17 about what is implicit in that particular paragraph --
18 why wasn't it spelt out in clear, unequivocal terms to
19 the Buildings Department that, "By the way, we're going
20 to take off the top half a metre of this diaphragm wall,
21 we are going to take away the couplers, we are going to
22 put in through-bars"; why wasn't that absolutely
23 clearly, unequivocally, stated to the Buildings
24 Department?

25 A. Again, I mention to you I considered at that time, the
26 material time, this is very minor changes, based on my

1 past experience in MTR projects. These changes, as long
2 as we address that before we submit the BA14 for EWL,
3 that should be okay. There's no time limit that you
4 must make all these changes. There are many other
5 changes, we did the same thing, practical, because at
6 that time there are so many more important issues to be
7 addressed by the design team, like underpinning, ground
8 settlement, all this. In real life, always have
9 everything agreed, but in practice it's not practical to
10 have everything agreed with BD before we proceed
11 on site, especially for any minor changes.

12 Q. But the BD might say to you, Mr Chan, well, the reason
13 you didn't spell out what you had in mind was that, on
14 the one hand, you were applying for the certificate of
15 completion for the diaphragm walls as completed by
16 Intrafor, but on the other hand you'd be telling them
17 you were about to knock down the top half a metre of the
18 wall, and those two things were completely incompatible.

19 A. I do not really share your view on that particular
20 topic. BA14 for D-wall reflects the work done by
21 Intrafor independently. Cannot mix up with the
22 subsequent changes. As far as I'm concerned, it's just
23 the BD submission process or strategy. Like I mentioned
24 earlier, the shear key, we also knock it down, because
25 it's shown in the drawings; right?

26 Q. But the problem here, Mr Chan, is that these two things

1 were happening at exactly the same time. You were
2 submitting on 30 July this report, and then within
3 days -- in fact you know this is going to happen
4 already -- you're discussing with Leighton the
5 demolition of the top half-metre of the wall and the
6 changing of the detail of the rebar. It's going on at
7 the same time. And that really is a fundamental
8 difficulty that both you and Leighton were facing
9 vis-a-vis the Buildings Department at the time. That's
10 right, isn't it?

11 A. Again, I mention that as long as we can consider it's
12 minor changes, that can be addressed later on. We don't
13 want to give too much on the literal meaning of changes.
14 We are practical. We've got to address the site issues
15 and proceed as quickly as possible, not to affect the
16 progress and quality of the works. That's my major
17 concern. If you don't make these changes, the quality
18 of the work will be compromised because too many coupler
19 connections is no good for the construction. I think
20 I've got to make a professional judgment at that time.

21 As I mentioned earlier, that changes, based on my
22 past experience, not necessary to make those changes --
23 there's no time limit, you've got to make the changes
24 before you proceed. As long as you can make the changes
25 while the final amendment submission, before you submit
26 the BA14 submission, that should be okay. That is the

1 judgment we make. I have to reiterate my view on that
2 one. Although the BD may have a different view -- sorry
3 about that -- it's not my intention to upset. I just
4 want to get the job done, in good quality and within
5 time limit. That is my own purpose.

6 MR PENNICOTT: Understood. I have a few more questions
7 about this area and from your statements. Perhaps we
8 will come back to them in 15 minutes.

9 CHAIRMAN: Yes, certainly. 15 minutes.

10 MR PENNICOTT: Thank you.

11 (11.47 am)

12 (A short adjournment)

13 (12.05 pm)

14 MR PENNICOTT: Mr Chan, a few more questions from me.

15 Can I ask you, please, to look at paragraph 51 of
16 your witness statement, a paragraph that we looked at
17 with Mr Leung earlier. It's on page B1/280.

18 You say there:

19 "Leighton proceeded with the 'through-bar method' in
20 constructing the EWL slab in the rest of areas B and C
21 starting with area C1-3 on 29 August 2015."

22 Just pausing there, Mr Chan, I think -- have you
23 been involved in the preparation of the as-built
24 material, the agreed statement between Leighton and MTR,
25 that's been produced recently? Have you been involved
26 in that process or not?

1 A. Yes. I assist in certain aspect.

2 Q. Right. I think, looking at that, without going into any
3 detail with you, you would accept, I think, that in
4 certain bays or panels in area B, in fact the coupler
5 solution or the coupler design was retained?

6 A. Yes.

7 Q. So it wasn't all of the areas in area B; it was done
8 much more, presumably, what, on an as-necessary basis;
9 is that right?

10 A. Agree, sir.

11 Q. So, as you worked your way along the diaphragm wall, in
12 the different areas of the different bays, a decision
13 would be made whether to run with the through-bars or to
14 retain, in certain areas, the coupler connections?

15 A. Agree.

16 Q. Would that be done by a process of discussion and
17 agreement between yourselves, that's the MTRC
18 construction team, and the Leighton construction team?

19 A. I would put it that way, because the decision to go for
20 the through-bar had been established. Those minor site
21 details should be resolved at a working level between my
22 SConE and their construction managers, as it requires,
23 because there are so many things happening every day so
24 those are minor. As long as they follow the same
25 principle, I will delegate that authority to them to
26 work out the details.

1 Q. Let me follow up that a little bit. So, when you
2 started to do area B, which I think was sort of at the
3 end of 2015/going into 2016 --

4 A. Agree.

5 Q. -- and you encountered a particular area where we now
6 know or we now believe that couplers were retained --

7 A. Agree, because those areas are basically to cater for
8 the underpinning support.

9 Q. Right.

10 A. That is quite a logical decision to leave that one,
11 because we cannot remove the coupler otherwise the
12 underpinning work will be affected.

13 Q. I'm not making any criticism, all I'm suggesting is that
14 as you worked your way along different areas, different
15 bays, decisions, practical decisions, had to be made as
16 the matter developed?

17 A. Totally agree.

18 COMMISSIONER HANSFORD: Sorry, Mr Chan, just to understand
19 that a bit further. When those decisions were made, was
20 it recorded which sections had through-bars and which
21 sections the couplers were retained?

22 A. According to the available records, those changes are
23 not put in writing but we use the record photos to
24 support what are the changes. That's why we can produce
25 the changes now, based on the record -- we get a lot of
26 photos. The record photo is more reliable than

1 sketches.

2 COMMISSIONER HANSFORD: So the only way you could -- the
3 only records you had of which sections this detail had
4 been changed and which sections it had not been changed,
5 the only records were photographs; is that right?

6 A. Not necessarily, plus the underpinning shop drawing,
7 that photo and the shop drawing for underpinning can
8 work together. Then you know exactly the extent of the
9 area affected by -- anyway, shown in the shop drawing.
10 So I think the site team would use the shop drawing for
11 underpinning work plus the relevant record photo will
12 record all the changes.

13 COMMISSIONER HANSFORD: Okay. I haven't quite worked out
14 where the underpinning was required yet, but that is
15 something I can do offline. Thank you.

16 A. In fact all those areas which the couplers are still
17 there, mainly caused by the underpinning works, that we
18 checked on site on our existing records they are
19 compatible.

20 COMMISSIONER HANSFORD: Thank you very much. That's
21 helpful.

22 MR PENNICOTT: When you carried out the process of looking
23 at the photographs, and so forth, which I was going to
24 come to a little bit later, what about the Fang Sheung
25 drawings that we looked at with some of the Fang Sheung
26 witnesses? Did you look at or have access to and look

1 at those drawings?

2 A. Fang Sheung, the bending schedules. Normally in
3 Hong Kong, when the steel fixers start to cut and bend
4 the steel, they have their foremen prepare the bending
5 schedule, although it's not required under the contract
6 submitted to us, but this is general good practice.
7 They will base on the relevant working drawings, the RC
8 drawings, and other RFI, underpinning work, to make
9 their first planning, I would put it that way. This may
10 not be exactly what they put on site. Normally they got
11 first planning, they roughly cut 80 or 90 per cent of
12 the rebar, based on the major dimensions, then go to
13 site, they do another on site amendment, and bending
14 schedule Leighton produced to MTR sometime in July.

15 So that's another objective evidence to support what
16 had been built on site.

17 Q. So you did look at those bending schedules?

18 A. Yes.

19 Q. More recently?

20 A. Recently, yes. And it makes sense, all these bending
21 schedules are compatible with other information.

22 Q. Right.

23 A. Like monolithically record -- there are all, like
24 a puzzle, all matched together.

25 Q. All right. Understood.

26 Back to your witness statement, paragraph 51 -- you

1 say:

2 The construction management team was under the
3 impression that the design management team would update
4 the working drawings of the EWL slab reinforcement and
5 thereafter obtain approval from BD."

6 Now, we know that didn't happen; there were no
7 updated working drawings, correct?

8 A. Agree.

9 Q. And I assume, given the stance that you take, that is
10 that all this could be done at the stage of the BA14
11 submission, you didn't think it was necessary, back in
12 2015, to chase the design team for revised working
13 drawings?

14 A. Agree. That is the judgment I made at that time, and
15 based on my past experience in other MTR projects. As
16 long as it's a minor change, we can do that.

17 Q. Okay. Anyway --

18 CHAIRMAN: Could I just ask here -- I confess this does not
19 come from myself but in discussing progress of the
20 Inquiry, Prof Hansford has mentioned to me an issue of
21 the relevant parties in any construction project
22 liaising with each other and communicating. Looking
23 back now, what was your view as to the daily
24 communications between the various parties so that you
25 could work together to make sure that there were no
26 misunderstandings? Because clearly here there was one,

1 I think.

2 A. Chairman, I agree with you. There's always room for
3 improvement in what we did every day. With hindsight,
4 you have better communication, you sit down and put some
5 schedule, then we don't have this problem. But in real
6 life things are not perfect, and those misunderstandings
7 quite often happen everywhere; right? But as long as
8 this misunderstanding doesn't lead to any major problem,
9 that should be addressed later on. We are in a big
10 construction project, we have several hundreds of people
11 working, there are so many things happening at the same
12 time. So some minor misunderstanding to me is
13 unavoidable, as long as this misunderstanding can be
14 addressed later on. I think we are in a big
15 construction site, under a lot of pressure, we don't
16 expect that we do everything perfectly. We always have
17 room for improvement in what we did every day.

18 CHAIRMAN: Okay, good. Thank you.

19 MR PENNICOTT: Just pursuing that point a bit further, since
20 the Chairman has asked the question, perhaps I can ask
21 a similar but perhaps more specific question. How did
22 you, Mr Chan, view the liaison that ought to have taken
23 place between Atkins A and Atkins B? Did you have any
24 view about that at the time?

25 A. The communication system that we adopt on this
26 particular project serves most of the function, although

1 there is always room for improvement to improve the
2 communication, in hindsight; right? Bear in mind we are
3 talking about a very fast-track, very complicated
4 project. They are bound to have something that may not
5 be perfect, they are bound to have some designers --
6 there are too many people involved in these big
7 projects, right, so fast track? You can't expect
8 everything we did is perfect and no misunderstanding.
9 That to me would be a surprise -- if everything we did
10 was perfect, it would be a surprise to me. That's why
11 we kept a check and balance system. That's why we know
12 if any misunderstanding, we can address with final
13 amendment, as long as it's minor changes at that time.

14 Q. The reason I'm asking that question, about Atkins in
15 particular, Mr Chan, is that in a passage that we read
16 earlier, in paragraph 49 of your statement, you say
17 Atkins did not formalise any revisions to the working
18 drawings, and then down at paragraph 51 you say
19 the design management team, that's of MTR, would update
20 the working drawings of EWL slab, and I'm just a little
21 unclear as to what you think -- forget about the time --
22 what the process ought to have been. Was it Atkins B
23 that should have produced revised working drawings,
24 given them to either the MTRC design management team or
25 Atkins A, to produce, as it were, the final version of
26 the working drawings? How did you see the process?

1 A. In a perfect world, team B of Atkins should submit
2 updated working drawings to reflect these changes as
3 soon as possible, in a timely manner. But, however, in
4 real life, they may be too busy and forget to update
5 these minor changes on time; right? There are so many
6 things happening. That, to me, these changes are very
7 minor in nature compared with other important issues
8 relating to underpinning works, to attaching of the
9 railway line of Hung Hom Station and ground settlement.
10 There are many more changes, more pressing, more
11 complicated, more urgent than these minor changes. That
12 may be the reason why team B, Leighton/Atkins, did not
13 update the drawings in a timely manner. That's the only
14 thing I can think of.

15 But we have a mechanism to address this work, as
16 long as we sort it out in the BA14 submission, while the
17 final amendment. We still have a mechanism to address
18 all these imperfections we did on site.

19 Q. Okay.

20 A. So frankly speaking, please understand the difficulty
21 facing the construction team at that time. We are not
22 superhuman beings. We are bound to make some mistakes.
23 As long as the mistakes can be addressed and rectified
24 later on, that we should be more considerate.

25 CHAIRMAN: Could I just -- for me, where I have a little
26 difficulty in understanding matters as to communication

1 is, for example, the communication from Mr Leung of the
2 design team, which you say that you read as being
3 an agreement to proceed or an instruction to proceed to
4 a monolithic pour -- I think it's in one of the
5 paragraphs in your statement; okay?

6 A. Yes.

7 CHAIRMAN: Now, Mr Leung didn't -- from my understanding of
8 his evidence, he didn't see that as being an instruction
9 to go ahead. He saw it as something I think a little
10 more ambiguous, a discussion point. You saw it as
11 an instruction to go ahead.

12 Now, often simple confirmations in simple English
13 would perhaps avoid that, eg, you know, "Do I take this
14 as a confirmation to proceed to this?" "No." Do you
15 see what I mean? It seems that sometimes, because you
16 are busy, that simple English confirmation of what's
17 happening can avoid proceeding to expensive issues
18 wrongfully, but also, often more importantly, can avoid
19 proceeding to dangerous issues.

20 A. I agree with you, Chairman. There's always room for
21 improvement, to improve our communication. But
22 I emphasise that this misunderstanding doesn't lead to
23 any major problem on site. We still got time based on
24 the current arrangement to address this misperfection;
25 right? It's not the end of the day, not the end of the
26 world. We still can manage to address this imperfection

1 or misunderstanding with the current system.

2 CHAIRMAN: Yes, I'm not talking about this particular issue.

3 I appreciate the point you are making here. But
4 sometimes that lack of communication, simply by plain
5 English "Confirm and agree", it seems to me can perhaps
6 lead to dangerous outcomes, as opposed to merely
7 procedural difficulties with the Buildings Department or
8 some other arm of government.

9 A. Chairman, I totally agree with what you said. With
10 hindsight, next time when you do a similar thing, I can
11 probably improve that, make sure simple English, a note
12 for confirmation. Make sure you have a discussion
13 rather than communication by email; direct discussion
14 face to face, that may be helpful.

15 CHAIRMAN: I suppose it's easy for me. I'm sitting here --
16 so many, many years ago, as a judge, I discovered that
17 one of the great benefits you have is ignorance, because
18 you are able then to turn to counsel and say, "Explain
19 this to me in simple terms", and if they don't, then
20 it's their fault, not yours, because counsel are paid
21 good money to explain in clear, comprehensive terms
22 difficult concepts. And so it seems often, whatever
23 profession you are in, even engineering, sometimes you
24 can get lost in the science of your own language. Do
25 you see the point I make?

26 A. I totally agree, Chairman. My practice, I will note to

1 my colleague -- I don't like to discuss issues by email.
2 That's why most of the emails are not copied to me.
3 When I have a problem, I normally talk to my
4 counterpart, agree what we agree and put it in very
5 simple English. This is my style.

6 But in this particular instance, you see the emails
7 are not copied to me.

8 CHAIRMAN: No, they weren't.

9 A. If it is copied to me, I probably adopt my style: talk
10 to your counterpart and say, "Look, that's what it
11 means, put it in very simple, 'Agree, further to our
12 discussion, I wish to record the salient points', blah,
13 blah, blah; that would solve all this problem.

14 CHAIRMAN: Yes.

15 A. But, as I mentioned, I totally agree with your
16 suggestion, that I will recommend my team in future to
17 follow your recommendation, agree first and put
18 something in writing, then use email for discussion
19 purpose. That's what happened, leading to all this
20 misunderstanding, unfortunately; I totally agree.

21 CHAIRMAN: Thank you very much. Sorry, while I'm at it, and
22 I know I'm moving slightly backwards but it does help me
23 because I might forget it otherwise -- I notice at the
24 beginning of your statement you talk about NCRs.

25 A. Yes.

26 CHAIRMAN: And you talk about NCRs in terms of you will only

1 issue them if they repeat or if they are serious, and
2 I just wonder, again, there's an issue, as Prof Hansford
3 and I have followed this forward, that it interests us
4 that NCRs are non-conformance reports, and that
5 sometimes waiting until it's really serious, even though
6 there's been non-conformance before, may not perhaps be
7 the wisest way of proceeding.

8 So, in this instance, for example, with the cutting
9 of the rebars, the engineer said that there had been two
10 earlier incidents but they just hadn't been that big.
11 So those had been tolerated, even though that's not bad
12 workmanship, that's -- you can't cut a rebar and pretend
13 to stick it in -- of course it's bad workmanship, but
14 it's more than that; it's intended incorrect
15 workmanship. And maybe if there had been earlier NCRs,
16 that might have stopped the matter.

17 A. Look at that, the incident, in that way; right? In MTR,
18 NCR, we are not going to issue NCR that easily. It's
19 normally a last resort. Like the PIMs, the guideline
20 says if any minor defect discovered in a routine
21 inspection, it does not justify the issue of NCR.

22 CHAIRMAN: I appreciate that, but I think if you're talking
23 about what clearly is some form of intended malpractice,
24 even if it just happens once, it means somebody has
25 said, "Okay, I will make sure nobody is looking and
26 I will now cut the end off -- the threads off this bar

1 and I will stick it in." He does it once, it's found,
2 everybody says, "Redo it properly", and you do that.
3 But that's clearly a non-conformance. I just wonder if
4 that whole process might sometimes be done where there
5 are issues that could have serious ramifications or
6 where they indicate an intention to avoid proper
7 construction process -- could be done and thereby
8 prevent greater damage later, and Prof Hansford, in our
9 discussion, spoke of dangerous issues, for example.

10 So an NCR, where there's been a near miss, may
11 prevent an actual accident at a later stage. I know we
12 are off the subject slightly, and please accept my
13 apologies.

14 A. I understand your concern, but look at the available
15 records. My inspector discovered these minor defects,
16 like according to the records there are five instances
17 discovered by my inspector. The first instance, he
18 discovered less than five couplers had been spotted
19 during the routine inspection and had been rectified on
20 the same day under MTR supervision. The same instance,
21 similar things. But if you look at that, every bay we
22 have hundreds of couplers, we are talking about less
23 than 1 per cent. In Hong Kong you are aware that many
24 steel fixers are daily paid. The quality of the steel
25 fixers varies a lot. That's the reason why we have
26 these minor defects happen quite a lot. I'm pretty sure

1 that if you go to other construction sites in Hong Kong,
2 this kind of defect about couplers improperly installed
3 is not uncommon.

4 Then we've got a checking system in Hong Kong that
5 the inspector will go there continuously regularly,
6 anything they discover, they rectify at the same time.
7 Then on the third instance, because the number of
8 discoveries is five number, that's why they elevate that
9 one more step. They do it step by step; right? Elevate
10 to the counterpart by email saying that, "You got to do
11 something", that's why Leighton issued an NCR. After
12 that, there may be two more minor incidents around the
13 same time, but after that no more. That means probably
14 the message passed to the sub-contractor or the relevant
15 person you that cannot do any more non-conforming work
16 in coupler installation.

17 I think my inspector still making a proper judgment
18 in carrying out due diligence. Discover some minor
19 defect about coupler installation in Hong Kong, it's not
20 surprising to me. You are talking one to three number
21 out of several hundreds and they happen maybe once
22 a month in different locations. You've got to accept
23 the Hong Kong practice. A lot of steel fixers, they
24 don't have a lot of sense of belonging of what they did.
25 They just get paid daily. They get a job done and go
26 away. That's why we need full-time supervision on site,

1 to prevent all this substandard workmanship carried out
2 by unconscious steel fixers.

3 I don't believe that there's a systematic or
4 widespread cheating on site, because otherwise we see 10
5 or 20 in a single location and that happening very
6 often.

7 CHAIRMAN: No, I'm not talking here about conspiracies or
8 some form of "Let's try and do wholesale deceit." I'm
9 talking about the sort of things you're talking about,
10 but even though you're poorly paid -- I'm not saying
11 poorly paid -- even though you're on a daily wage as
12 opposed to a monthly salary, it's a tough job; no doubt
13 there's lots of temptations, at the end of a day, your
14 muscles are weary, to perhaps try to cut corners. But
15 there would not be mortal sins, would there not, one of
16 them being don't cut the threads off the end of rebars?

17 A. Based on the recent incident, I'm sure MTR has
18 strengthened their supervision. Now we have video or
19 100 per cent supervision of coupler installation to
20 prevent similar things happen. In hindsight we don't
21 know that's causing so much public concern. Once we
22 know the public is so much concerned about this issue,
23 MTR stepped up the supervision on coupler installation
24 on site for all existing projects now.

25 CHAIRMAN: I think the concern is that the public aren't
26 structural engineers. One in a few thousand maybe, but

1 otherwise not, so they see this kind of thing and it
2 understandably raises concern.

3 I don't want to go too deeply into it, but I see
4 what you mean, that the NCR, would it be correct as far
5 as you were concerned, was something to indicate real
6 concern? If you can deal with it earlier, before
7 there's any real concern, on site, quickly, then do so.
8 If it's persisting then the NCR comes in almost like
9 it's a yellow card saying, "You get one more and you're
10 off for the entire project"?

11 A. Exactly. I do agree with you. That's why we issue --

12 CHAIRMAN: That's how you saw them?

13 A. Yes. That's why Leighton issued an NCR in the third
14 instance.

15 CHAIRMAN: Thank you. I'm sorry I've digressed sideways,
16 Mr Pennicott. My apologies.

17 COMMISSIONER HANSFORD: There was a very small point a
18 little earlier on. You talked about you might get
19 "unconscious steel fixers". I assume you mean
20 "unconscientious" or something like that?

21 A. Yes. Sorry about that. English is not my mother
22 language.

23 COMMISSIONER HANSFORD: I assume that was the case. I just
24 want to get the record straight.

25 A. Yes. Sorry about that.

26 CHAIRMAN: We can return now to questions.

1 MR PENNICOTT: I will just actually ask the couple of
2 questions I had on NCRs, since we are here. We know --
3 as the Chairman has pointed out, Mr Chan, you deal
4 briefly with NCR no. 157 at the beginning of your
5 statement, in paragraphs 24 and 25.

6 A. Yes.

7 Q. And you were copied in, I think, on the email and the
8 NCR.

9 The situation with regard to NCR157 was that MTR,
10 Mr Kobe Wong --

11 A. Yes.

12 Q. -- sent the email to Leighton with the photographs.
13 There was no instruction by -- first of all, MTR itself
14 did not feel it necessary or appropriate to issue an NCR
15 to Leighton for that particular incident. That's
16 correct, is it not?

17 A. Yes, because according to the guideline in the relevant
18 PIMS, it always prefers to ask the contractor to issue
19 their own NCR first. If it doesn't work, then we
20 issue NCR to Leighton. That is the recommendation of
21 guidelines stated in the PIMS.

22 Q. Although Mr Wong's email itself didn't instruct or
23 request Leighton to issue an NCR, he just told them to
24 make sure their sub-contractor didn't do it again. So
25 it was Leighton's decision to issue the NCR?

26 A. I think there's a kind of mutual understanding during

1 the construction; right? If there's something
2 non-conforming that is significant, he always prefer
3 Leighton to do the job first. If Leighton cannot
4 resolve the problem, but agent ends up to their
5 sub-contractor, MTR will step in and help. That is the
6 process, we are working on that.

7 Q. Understood.

8 A. And then to avoid too many administrative matters.

9 Q. But MTR require any contractor's NCR that's issued to
10 a sub-contractor to be copied to MTR, understandably,
11 and that's what happened?

12 A. Yes. This is good practice. Because Leighton have to
13 respond to our concern saying, "Thank you for your
14 reminder, I did what I have to do, to keep you informed
15 about what happened on site." I think this is a good
16 practice.

17 Q. So MTR receive a copy of Leighton's NCR to Fang Sheung.

18 A. Yes.

19 Q. What does MTR actually do about it? I mean, does it
20 just put it in a file? Does it follow it up? Does it
21 monitor what's happening?

22 A. No.

23 Q. What's the position? What does MTR do?

24 A. I will tell you my recollection; right? When I read
25 this NCR to end of December, after I come back from my
26 three weeks' holiday in December, I return to work on

1 28 December, when I received -- read this NCR,
2 immediately I talked to my colleague who had knowledge
3 about the history and I asked him, "What happened? Have
4 you resolved it?" Then I the reply from my colleague is
5 saying that the issue had been resolved satisfactorily
6 on the same day. Then I talked to -- second action
7 I did, I talked to my counterpart from Leighton who knew
8 the history, most likely Gary or Ian, because that's the
9 name shown in the NCR.

10 Q. So Gary Chow --

11 A. I asked Gary or Ian, because these are the two names
12 right? I won't talk to everyone because too many
13 people, too many things happened. So I talked to one of
14 them and he gave me a similar reply.

15 After that, I also reminded all my team members,
16 "Please let me know directly if similar incidents recur
17 on site." To put the record straight, the two previous
18 incidents, nobody informed me, for some reason. Perhaps
19 they think it's so minor thing, there's so many minor
20 defects every day, they can't report everything to me,
21 otherwise they are not doing their job. They have to
22 make their own judgment, like I make my own judgment
23 which thing I've got to report to my CP or to my senior,
24 I can't report everything to them otherwise I'm not
25 doing my job. That's the three actions I take. If
26 anyone reports to me, I definitely take a yellow card as

1 suggested by the Chairman, yellow card, then red card,
2 off. This is my style. I have must take this action.
3 No more tolerance. Three times is the limit.

4 Q. You've explained quite clearly what further action you
5 took when --

6 A. Yes.

7 Q. -- you came to see the NCR, but what I was driving at
8 was a rather more general question which you may or may
9 not know the answer to, Mr Chan, which is does MTR have
10 a process by which it follows up the contractor's NCRs
11 and monitors that they have all been closed out and
12 dealt with satisfactorily? I know this particular one
13 was virtually dealt with there and then, on the spot, as
14 it were, but what is the general process?

15 A. General process, for NCRs issued by MTR to Leighton,
16 I will regularly review that on a monthly basis on the
17 progress report, progress meeting. For Leighton's own
18 NCRs, I most likely rely on its own internal process,
19 but my inspectors involved in this kind of NCR will
20 definitely make sure it's closed off, although may not
21 be a piece of paper, they must have a RISC form to
22 record that the matters stated in Leighton's NCR had
23 been closed off on time. If they are not closed off,
24 they will definitely elevate to his senior or me during
25 the weekly meetings with them.

26 Q. Ultimately, when this came to be closed out, I think

1 Leighton asked you for some sort of confirmation.

2 A. Yes, they confirmed that, because that NCR had been
3 closed off on the same day, according to the answer from
4 my colleague to me, had been closed off on the same day
5 under MTR supervision.

6 Q. The documents may have been completed later --

7 A. Yes, maybe.

8 Q. -- but the actual physical work was done on the same
9 day?

10 A. I would like to explain to everyone this project is very
11 complicated, probably the most complicated project on
12 NSL-EWL line. So many things happened. The site team
13 may not follow 100 per cent the documentation but the
14 main thing is the work had been done, whether recorded
15 properly on time, that may be secondary. With
16 hindsight, you are mindful to look at every procedure.
17 It's bound to have some imperfection, but the key thing
18 is whether the job was done properly under the
19 supervision of the responsible party. That is the key
20 point.

21 Q. All right.

22 Back to the second change, briefly. If you would be
23 good enough, please, to go back to paragraph 52 of your
24 witness statement and I'll try to summarise where we had
25 reached or where you had reached in your evidence. You
26 say there:

1 "Leighton/Atkins team B should have submitted
2 proposal for change in permanent works design to the
3 design management team [that is the MTRC design
4 management team] and Atkins team A for their review and
5 approval, who would then issue working drawings for
6 construction to Leighton. On this occasion, they failed
7 to do so."

8 Now, again, I don't want to split hairs with you,
9 Mr Chan, but you do say there that working drawings
10 should be issued for construction, not at the end of the
11 day when the BA14 is being submitted. Do you see the
12 distinction?

13 A. My view on this topic is that it's always better to
14 resolve all these changes as soon as possible, but it's
15 not the end of the day if you didn't do it. Let's say
16 I just should have; right? It's always good practice,
17 housekeeping as soon as possible, but you somehow miss
18 out one minor thing, it's not the end of the world,
19 because we've still got a check and balance system to
20 address this missing, at the end of the day.

21 Q. But we know what's happened, Mr Chan, is that because of
22 the absence of the issue of working drawings at the time
23 that this change was implemented back in August 2015,
24 you now, together with all your colleagues, have to
25 resort to looking at photographs to try to establish the
26 as-built position. It's not very satisfactory, is it?

1 A. I totally agree. With hindsight, always record all
2 these changes on the spot, but as I mentioned to you,
3 during the course of construction, especially in that
4 August 2015, there are so many things that happened at
5 the same time need our attention more urgently than
6 that. Think about it, this is not in a factory, it's
7 a construction site, it's so difficult, it's
8 a brownfield site, that means we are working adjacent to
9 a live railway station. The more pressing problems for
10 the construction team to address is to prevent any
11 disruption to the railway station; public safety,
12 a major concern. So two major concerns that draw our
13 attention to all these more important, pressing
14 problems.

15 This updated drawing, they make other drawings
16 update, because they update at the same time, they are
17 not in our top priority list, put it that way. We most
18 consider about the pressures facing the construction
19 team. We've got to prioritise what we have to do every
20 day.

21 Q. All right.

22 A. Sorry about that, but please consider it; right? The
23 construction team is under a lot of pressure at that
24 time. There's so many things happening more important
25 this thing, as far as I'm concerned.

26 CHAIRMAN: I think you can accept from the Commission,

1 Mr Chan -- one of the reasons why I sit with
2 Prof Hansford is because he has day-to-day experience,
3 over many years, of actually working on these types of
4 projects, and I wouldn't like you to think that we don't
5 have empathy for the very real challenges that you face
6 on a day-to-day basis. We do, and certainly neither of
7 us will try to impose entirely unrealistic expectations
8 on you or those who have worked with you.

9 A. Chairman, I totally have confidence on your impartial
10 and your experience. Don't worry about that.

11 CHAIRMAN: No, that's not the issue. The issue is purely
12 one of -- I think you can take it that we have empathy.
13 We accept that to get a job done in these circumstances
14 requires good, practical leadership, and we have to take
15 that into account.

16 That's all I wish to say. Thank you.

17 A. Thank you very much, Chairman, for your statement on
18 this topic. I appreciate that. Professor too.

19 MR PENNICOTT: Good. Can I just explore one further
20 possibly related topic with you, Mr Chan. I don't know
21 whether I need to show you any documents -- possibly
22 I do, maybe I don't; let's just try. Mr Gillard from
23 Intrafor -- I don't know whether you know him?

24 A. Recently -- I can remember briefly now, because three
25 years ago, to be honest, my memory is not that good, but
26 I should know him; right?

1 Q. He gave some evidence, what seems a lifetime ago now but
2 some weeks ago, about some particular panels: 104, 105,
3 I think, 106, 108 and 109. I may not have got the
4 numbers exactly right but we can --

5 A. I know what you are talking about. I read the
6 transcript of -- no problem on that.

7 Q. So five particular panels where Intrafor was instructed
8 to reduce the level of concrete at the diaphragm wall in
9 relation to those panels, or at least not take it up to
10 2.82. Do you remember that?

11 A. I remember reading this transcript, and then I checked
12 the real records and I fully know the history about this
13 one.

14 Q. You do? Excellent. I have obviously struck upon the
15 right witness to ask. What a relief!

16 What is your recollection, Mr Chan, as to why that
17 instruction was given to Intrafor?

18 A. I saw some email back in 2015, there's an intention for
19 Leighton to address the missing U-bar problem so that
20 they want to reduce the concrete level for those
21 particular panels. In fact, according to my memory,
22 they only instruct him for one panel, but somehow the
23 second do five panels, right, for some reason.

24 Q. Your memory is very good, Mr Chan, if I may say so,
25 because there's a specific instruction to 106.

26 A. Because all these emails -- this is the main reason

1 because, from a practical point of view, you want to
2 knock off the concrete to cater for some anchorage bar,
3 there's no point to cast too high. It's a sensible
4 thing; right? That's why there's a discussion in some
5 email, saying that, "Why not reduce the concrete level,
6 to a certain level, so that in future we don't have to
7 knock off so many concrete?" That is the logic.

8 Q. I think the point I really want to get to -- and we will
9 look at the drawing in a moment -- is was that
10 instruction in any way related to the through-bar
11 ultimately used solution, or was it completely
12 unconnected?

13 A. I don't think they are 100 per cent the same, because
14 those email chains, if you look at that, it's not clear,
15 just saying there is an intention to knock off concrete
16 at certain panels due to missing U-bar or whatever;
17 right? I don't know the exact technical reason, but
18 there's a discussion that there's an intention to reduce
19 the concrete level because they will knock off some
20 concrete at that time, and that concrete is 1.5 metres,
21 that shouldn't relate to the through-bar. Through-bar
22 only 400 to 500; right? It may not be the same.

23 But eventually they didn't adopt this scheme,
24 I guess. They had no more discussion on that. They
25 just say that, "In order to avoid extensive abortive
26 work, please don't cast the concrete too high because we

1 can do it afterwards." That is a sensible thing to me;
2 right?

3 Q. Okay. But, as I understand it, in relation to those
4 five panels, what's shown on the joint statement from
5 Leighton and MTR is that the through-bar solution was
6 ultimately adopted on those panels.

7 A. Agree.

8 Q. Okay. And so presumably that made life easier in the
9 sense that you didn't have to reduce the concrete
10 because it wasn't there in the first place?

11 A. Yes.

12 Q. So, whether the two things were related, it certainly
13 had that consequence?

14 A. Yes, exactly. I agree with you.

15 COMMISSIONER HANSFORD: Sorry, just trying to understand
16 that -- Mr Chan, if the concrete had been -- given that
17 the concrete had been stopped at a lower level, would
18 there have ever been any point of having couplers? Was
19 there any need for couplers?

20 A. No more, because no need to install the coupler.

21 COMMISSIONER HANSFORD: Exactly.

22 A. Ah, I would put it this way -- sorry about that,
23 Professor -- although the concrete at those panels has
24 been reduced, but the steel cage fixing had no change.

25 COMMISSIONER HANSFORD: Yes.

26 A. That's why the cut-off level remains the same, because

1 the cut-off level has a direct relationship with the top
2 of the steel cages, because the steel cages never
3 changed. They still fix the steel cage in the same
4 configuration.

5 COMMISSIONER HANSFORD: I do understand that. But wasn't
6 the point of couplers in the original design to enable
7 a connection between reinforcement that had been
8 concreted and the next bay? Wasn't that the whole point
9 of couplers? And if the concrete had not been put in
10 place for the diaphragm walls, why would couplers be
11 needed at all?

12 A. I think, when we look at that one, this discussion just
13 starts off very quickly. The stage cage, probably have
14 a shop drawing to work with; right?

15 COMMISSIONER HANSFORD: Yes.

16 A. And the steel fixers don't get the message, just still
17 fix the steel cages according to the shop drawing.

18 COMMISSIONER HANSFORD: Yes.

19 A. No one tells them to change the steel cages, only reduce
20 the concrete level, to avoid unnecessary abortive work.
21 That's the reason why the couplers still there.

22 COMMISSIONER HANSFORD: Ah. Now I understand.

23 MR PENNICOTT: I think the point is, Mr Chan, that the cages
24 for the diaphragm wall would have been fabricated in any
25 event --

26 A. Yes, already.

1 Q. -- already, and the instruction not to concrete all the
2 way up came after all that had been done?

3 A. Yes.

4 Q. And the diaphragm wall cages had been, as it were,
5 dropped into the diaphragm wall itself?

6 A. Yes.

7 COMMISSIONER HANSFORD: I totally understand. Thank you.

8 MR PENNICOTT: I will just look at the email that I think
9 you made mention of just a moment ago, Mr Chan, because
10 there are a couple of quite interesting drawings
11 attached which may help to explain one or two points.

12 If we can go, please, to F34/23935. Is this the
13 email that you made reference to earlier, Mr Chan?

14 A. Yes, this is the email issued by the Leighton engineer
15 to Intrafor --

16 Q. Yes, that's right.

17 A. -- saying they want to reduce the concrete level for one
18 particular panel only.

19 Q. Yes, EH106?

20 A. Yes.

21 Q. It's dated 24 April 2015. So, on one view, slightly
22 before -- a month or two, three or four months perhaps,
23 before the through-bar solution really came into effect?

24 A. Yes.

25 Q. Thank you. We can see there -- and this is sent to
26 Intrafor but also copied to a number of your colleagues

1 in the construction management team?

2 A. Agree.

3 Q. Mr Ho being one of them, and that's James Ho?

4 A. Agree.

5 Q. What is said here is:

6 "Please be informed that we have agreed with MTR
7 regards the concrete cut-off level in panel EH106, taken
8 into account the problem with the rebar anchorage ...
9 for slab connections."

10 Then it says about the conclusion and the level.

11 "Therefore, for EH106, please cast the concrete up
12 to plus 2 ... we need to make sure the concrete quality
13 below plus 1 ...", and so forth.

14 So this is the email that you researched when you
15 saw Mr Gillard's statement?

16 A. Yes.

17 Q. Right. If you go to page 23947, we have a front sheet
18 introduction of a report by Atkins. Did you look at
19 this when you were doing your research?

20 A. No, I don't think I read this report.

21 Q. All right. Not to worry.

22 If you go to the next page, please, at 23948, what
23 it says is:

24 "This task involves the checking of coupler shop
25 drawings against design drawings. This submission is
26 with respect to the future panels as listed below."

1 The ones I'm interested in are 105 and 107; do you
2 see those? That's EH --

3 A. Yes. 105, 107, yes.

4 Q. Dropping down to the third paragraph, he says:

5 "However as the slab reinforcement has been made
6 continuous over the D-wall support without proper
7 anchorage into the D-wall for panel ... 107, it is
8 proposed to demolish the top portion of D-wall and add
9 the required number and diameter of rebar as per design
10 drawings and achieve the full anchorage length with the
11 D-wall vertical reinforcement. For details, refer to
12 attached sketch."

13 And that's 107. If you could be taken, please, to
14 23970. That's the sketch for 107; do you see that?

15 I appreciate this is probably not a document you've
16 seen before, Mr Chan, and I can ask others about it, if
17 necessary, in particular Atkins, if I feel like it. Do
18 you understand what they are talking about when they say
19 "demolish the top portion of D-wall and add the required
20 number and diameter of rebar as per design"?

21 A. I think, what my understanding from the sketch is, if
22 the D-wall are cast to the original concrete level, the
23 contractor had to knock off about 1.5 metre concrete
24 afterwards to provide this anchorage arrangement. That
25 is my understanding. That's the reason why the site
26 team say, "Look, I have to knock off, why not reduce the

1 concrete, to save the abortive work." That is the whole
2 logic.

3 Q. Right. But this is not, as I understand it, showing
4 a through-bar arrangement?

5 A. No, I don't think it is, because you see the time is
6 sometime April/May --

7 Q. It's February, actually.

8 A. -- before we know there's a monolithic requirement, in
9 fact in July. So they are not related.

10 Q. Understood. This is the point I'm coming to. They seem
11 to be, as I understand it, unrelated.

12 A. Yes, because the timing, it doesn't make sense; right?

13 Q. All right. Understood.

14 But so far as EH105 is concerned, again it says --
15 sorry, back at 23948, the last paragraph:

16 "... for panel EH105 as the D-wall reinforcement
17 [does] not have the required anchorage length with the
18 slab reinforcement to transfer the forces, [again] it is
19 proposed to demolish the top portion of D-wall and add
20 the required number and diameter of rebar as per design
21 drawings and achieve the full anchorage length ..."

22 If you go then to the sketch at 23971, again there's
23 a slightly different detail this time?

24 A. Agree.

25 Q. Still requiring the demolition of part of the concrete,
26 but still retaining couplers?

1 A. Yes.

2 Q. So, despite these changes that appear to have been made
3 in February -- April or February 2015, nonetheless, some
4 months later, Leighton/MTR agreed that this area would
5 have through-bars?

6 A. I think so.

7 MR PENNICOTT: Okay.

8 Sir, thank you. I have no further questions for
9 Mr Chan.

10 CHAIRMAN: Thank you very much indeed.

11 MR CHANG: No questions from Leighton.

12 CHAIRMAN: Thank you.

13 MR CHOW: Mr Chairman, there are some questions from the
14 government, but I see the time is almost 1 o'clock.

15 CHAIRMAN: Yes. That's fine.

16 Perhaps just as an indication for this afternoon --
17 will there be questions other than from government?

18 MR SO: There will be some questions from China Technology.

19 MR CONNOR: And a few from Atkins.

20 CHAIRMAN: All right. Thank you. Good.

21 2.15. Thank you.

22 (12.58 pm)

23 (The luncheon adjournment)

24 (2.18 pm)

25 MR PENNICOTT: Sir, good afternoon. Before I sit down, I've
26 just had a brief chat with the transcript writers, and

1 they are having a little difficulty catching every
2 single word Mr Chan is saying so could we please ask him
3 if he would slow down a bit.

4 That's the request, if you would be so good.

5 WITNESS: Okay.

6 Cross-examination by MR SO

7 MR SO: Chairman, Professor, I'm told I will be going first,
8 instead of the government. I have some questions for
9 Mr Chan.

10 Mr Chan, I am Simon So, I am counsel for China
11 Technology. I have some few questions to discuss with
12 you on different areas.

13 Mr Chairman, this morning my learned friend
14 Mr Pennicott was discussing the NCRs with you. Do you
15 recall that, about the systems of NCR?

16 A. Yes, sir.

17 Q. And we have been discussing NCRs that MTR issued to
18 Leighton and NCRs that Leighton issued to
19 sub-contractors; right?

20 A. Yes.

21 Q. I would like to focus on the NCRs that Leighton issued
22 to sub-contractors now, for the time being; all right?

23 A. Okay.

24 Q. Can I bring you back to your witness statement, which is
25 on B271. I want to focus on paragraphs 24 and 25. This
26 is the paragraphs which you have described how you come

1 to notice an NCR that Leighton issued to the
2 sub-contractor, Fang Sheung, and we are all very
3 familiar with this NCR, the NCR157; correct?

4 A. Yes.

5 Q. You told us this morning, which you have repeated in
6 your oral answers to my learned friend Mr Pennicott,
7 that you were brought to awareness of this NCR after you
8 had leave in December; correct.

9 A. Yes.

10 Q. Can I bring you back to the draft transcript of today's
11 answers, which is in [draft] page 75 of the draft
12 transcript, line 24. I'm afraid that I would not be
13 able to show for you, but I can read it out for
14 convenience.

15 You were being asked by my learned friend
16 Mr Pennicott on how you come to notice that, and that's
17 your answer. You said:

18 "I will tell you my recollection; right? When
19 I read this NCR to end of December, after I come back
20 from my three weeks' holiday in December, I return to
21 work on 28 December, when I received -- read this NCR,
22 immediately I talked to my colleague who had knowledge
23 about the history and I asked him, "What happened? Have
24 you resolved it?" Then I the reply from my colleague is
25 saying that the issue had been resolved satisfactorily
26 on the same day. Then I talked to -- second action

1 I did, I talked to my counterpart from Leighton who knew
2 the history, most likely Gary or Ian ..."

3 Pausing there, Mr Chan, "Gary" later you have
4 clarified to be Gary Chow of Leighton; right?

5 A. Yes.

6 Q. And when you talked about "Ian", do you mean Mr Ian
7 Rawsthorne?

8 A. Yes.

9 Q. Right. During your conversation with Mr Rawsthorne or
10 Mr Chow, which you told us now that you could not be too
11 sure who you actually talked to, did you ask them, "Hey,
12 after your investigation or review, do you know who
13 actually cut the rebars?"

14 A. I can't remember I asked this question because so many
15 years ago. I just asked him, comes to my recollection,
16 "How did you resolve this problem? Did you resolve this
17 satisfactorily, all this?"

18 Q. We all know that there needs to be continuous
19 supervision on the part of Leighton on the rebar fixers;
20 is that your understanding too?

21 A. According to relevant requirement in the QSP plan for
22 ductile coupler, that is the requirement.

23 Q. So, when you received this NCR, did it not shock you or
24 did it not come to your mind that you should go and find
25 Gary or Ian, in your words, to see who actually cut the
26 rebars?

1 A. According to my understanding at that time, these minor
2 defects was discovered by my inspector during routine
3 inspection. It looked to me that the system worked. If
4 my inspector don't discover this kind of minor defect
5 during this kind of routine inspection, I would be
6 surprised.

7 Q. So, in short, you did not ask Mr Chow or Mr Rawsthorne
8 whether they know which particular worker cut the
9 rebars; did I put it fairly?

10 A. As I mentioned earlier, I can't remember the exact
11 conversation I talked to either Gary or Ian. I just
12 remember that -- I just want to know whether the problem
13 had been resolved satisfactorily, in a timely manner.
14 That is the most important thing I would concern.

15 Q. Let me put it another way. It has never been your
16 concern to find out who actually, which particular
17 worker actually cut the rebars; is that correct?

18 A. I wouldn't say that because this is the first time
19 I aware that. With benefit of the doubt, we have to
20 give all relevant parties a second chance. That's the
21 reason why, when I aware this NCR, I talked to my
22 colleagues saying, "You've got to report similar
23 incident to me immediately, then I will take action."
24 Just like what the Chairman said today, we've got to
25 give a yellow card first, give them a chance to correct
26 their mistake. If they repeat the same thing, we issue

1 a red card.

2 Q. Let me go back to the conversation you had with either
3 Mr Chow or Mr Rawsthorne.

4 Did you ask about the particulars of the NCR with
5 Mr Chow or Mr Rawsthorne?

6 A. I think if we look at the NCR, this says there are about
7 five numbers of couplers, scattered in different areas,
8 within bay C2-2 or C2-3, and ask him how they are going
9 to resolve that. They give the same answer: that had
10 been resolved on the same day under MTR supervision, it
11 had been rectified.

12 Q. And most importantly, in NCR157, you know, Mr Rawsthorne
13 knows or Mr Chow knows, there are five couplers being
14 cut; is that correct?

15 A. According to the NCR, that's what they recorded, five
16 couplers scattered at different locations in that bay,
17 not in one location.

18 Q. Being cut?

19 A. Yes.

20 Q. Would you agree with me, the incident recorded by the
21 NCR is not just poor workmanship; it is a deliberate,
22 conscientious decision to cheat, in effect, correct?

23 A. Sorry, sir, I don't agree with you. As I mentioned
24 earlier, these minor defects were discovered by my
25 inspector during regular, routine inspection; right? As
26 I earlier mentioned --

1 CHAIRMAN: Sorry, I think the question was that the cutting
2 of rebars is not merely an accident or bad workmanship;
3 it has to be a conscious decision to cheat on the part
4 of the workman who does it.

5 A. You can say that one particular workman, maybe he
6 intends to cheat. Let's say he do it; right? You can
7 put it that way.

8 CHAIRMAN: Yes.

9 A. But as I mentioned earlier, there are so many workers
10 working on the site, some workers are not as good as
11 others, that's why we have these kind of minor defects
12 occur on site. I think in many construction projects in
13 Hong Kong, this kind of thing can happen too, because
14 couplers have been used in Hong Kong for many, many
15 projects, many years, and they are using the same system
16 to check all this kind of installation.

17 MR SO: Mr Chow, I recall this morning, when you were having
18 an exchange with the learned Chairman, you also did
19 mention similar things, and therefore you said, in order
20 to prevent the rebar fixers to cheat, there must be good
21 supervision, and good supervision is very crucial. Do
22 you remember your answers?

23 A. Agree, good supervision, that's what we have on site,
24 good supervision. That's why my inspector discovered
25 these minor defects during the routine inspection.

26 Q. Mr Chan, then I was a bit curious, why did you not go or

1 ask your subordinates to go and find which particular
2 worker is cheating outside?

3 A. I think even you ask this question, they may not find
4 the answers. There are so many people working on there,
5 no one will admit it in front of you, unless you caught
6 them on the spot. It's impractical to find the truth,
7 because that happened already.

8 Q. So what measures have you done in order to have
9 a strengthened supervision to ensure the worker does not
10 do the same thing?

11 A. I believe my inspector carried out their work in due
12 diligence. That's why they discovered these minor
13 defects. And I take my last action after I aware of
14 this answer, is ask them to report any incident to me in
15 future so that I can take more stringent action. This
16 is the first time I know. I think this is -- you've
17 give the benefit of the doubt, or this sub-contractor,
18 they've got to be given an opportunity to resolve their
19 supervision themselves.

20 Q. Mr Chan, I wish to turn to another topic. Is
21 paragraph 24 still in front of you?

22 A. Yes.

23 Q. I want you to focus on the last sentence of
24 paragraph 24. In the last sentence, you said that you
25 understood that the NCR had since been closed out.

26 My question is this: from whom do you know this NCR

1 was closed out?

2 A. From my colleagues, and from my counterpart from
3 Leighton. He said the defect had been rectified on the
4 same day, under MTR supervision. That's why
5 I considered that NCR had been closed.

6 Q. In terms of the time frame, is that the same day that
7 when you come back after your holiday and read the NCR,
8 that you know the NCR has been closed out since then?

9 A. When I say NCR had been closed, it's when I read the
10 NCR, around end of December, I can't remember exactly
11 day, then I talked to my colleague, I talked to my
12 counterpart on the same day. They gave me the similar
13 answer. So I think all the minor defects had been
14 rectified on the same day, namely on 15 December, so
15 I considered physically the NCR had been closed. Maybe
16 the paperwork not been closed, that's possible, but the
17 work had been rectified. That is what I mean by NCR had
18 been closed.

19 Q. I see. I understand what you mean. Thank you.

20 The last thing is can I bring you to two parts of
21 the transcript. Do you know that Mr Gary Chow and
22 Mr Ian Rawsthorne have given evidence in this Commission
23 of Inquiry?

24 A. Yes.

25 Q. Can I bring you to the transcript of Day 18, page 51,
26 line 25. This is Mr Rawsthorne being cross-examined by

1 my learned friend Mr Pennicott. Mr Pennicott said:

2 "NCR157, perhaps we can take a look at that.
3 C12/1834, please. This is a document that we've looked
4 at a number of times and no doubt this won't be the
5 last, NCR157. You mention this in your witness
6 statement.

7 Answer: Yes.

8 Question: I think broadly you say you have no
9 specific recollection of it; would that be right?

10 Answer: This is the truth, yes."

11 I wish to take you to another part of the
12 transcript. It's Day 19, page 122, line 17. This is
13 Mr Gary Chow, again being cross-examined by my learned
14 friend Mr Pennicott:

15 "Question: All right. But, in any event, you
16 simply have no recollection whatsoever of this NCR; is
17 that correct.

18 Answer: I've not seen it. It was only when
19 I assisted in the MTRC's investigation [which is in this
20 year, 2018] did I see it for the first time."

21 Mr Chan, can you please tell us, are you saying that
22 Mr Chow and Mr Rawsthorne were not being truthful in
23 these answers? Is that your position?

24 A. No, because the conversation happened many years ago.
25 You can't rely on people's recollection of what
26 happened. Even myself, I can't exactly remember who

1 I talked to, because you're talking three years ago.

2 MR SO: Thank you very much, Mr Chan. I have no further
3 questions.

4 CHAIRMAN: Thank you.

5 Yes, Mr Chow.

6 Cross-examination by MR CHOW

7 MR CHOW: Good afternoon, Mr Chan.

8 A. Good afternoon.

9 Q. My name is Anthony Chow and I represent the government
10 and we have a few questions for you.

11 Mr Chan, this morning you had a discussion with
12 Mr Pennicott on the issue of whether changes involving
13 hacking down part of the completed diaphragm wall need
14 to have a prior consultation with BD. Do you recall
15 that part of the exchange?

16 A. Yes.

17 Q. Then you quote an example regarding shear key, the
18 formation of shear key; do you recall that?

19 A. Yes.

20 Q. You quote this example to show that performing further
21 work on the completed diaphragm wall does not
22 necessarily require prior consultation with BD, and that
23 was the reason why you quoted that example; is that
24 correct?

25 A. Yes, this is my judgment at that time.

26 Q. Would you agree with me that the fact that you allowed

1 at the time Leighton to form a shear key on the
2 diaphragm wall is because the shear key was shown on
3 an accepted plan?

4 A. Yes.

5 Q. So do you see the distinction here? The shear key, the
6 example that you use, is actually something that has
7 been accepted by BD, and that was the reason why, when
8 later on Leighton performed further work on the
9 completed diaphragm wall, Leighton of course, or MTRC
10 for that matter, would not need to have a prior
11 consultation with BD?

12 A. What I'm trying to say is that to remove part the D-wall
13 is a minor change; right? It's necessary to seek the
14 approval of the BD, based on our past experience in
15 other MTR projects. This is the main reason.

16 Q. Just to complete the picture, could I refer you to the
17 relevant drawings, at bundle H14, page 32918.

18 If we can go to look at the diagram at the top
19 left-hand corner. Can we blow it up a little bit? Yes.
20 Now, you see, at the middle of the diagram, we see -- is
21 that the shear key that you talk about?

22 A. Yes, sir.

23 Q. With two dimensions, A and B. Do you see the
24 dimension B represents the height of the inner part of
25 the shear key; right?

26 A. Yes.

1 Q. And also we see another dimension, represented by
2 a letter A; do you see that?

3 A. Yes.

4 Q. If we can now move down a little bit to the table, so
5 the table below shows, at various areas, the dimension
6 of the shear key to be formed; is that correct?

7 A. Yes.

8 Q. So this is something that formed part of the original
9 design, which has been accepted by the Buildings
10 Department; can you confirm that?

11 A. Yes.

12 Q. The next topic I would like to explore with you is
13 that -- those instructing me have carried out a search
14 on the website of the registered professional engineers,
15 the list of registered professional engineers of the
16 Engineers Registration Board yesterday, and we noticed
17 that you are registered as a civil engineer, under the
18 civil engineer list.

19 A. Yes.

20 Q. Without disrespect, can you confirm that you are not
21 a structural engineer?

22 A. Yes, I'm not a structural -- no, I'm not a structural
23 engineer.

24 Q. So presumably you would not be a registered structural
25 engineer in Hong Kong?

26 A. No, I'm not.

1 Q. Is it fair to say that you have no expertise in relation
2 to the statutory procedure of the Buildings Department?

3 A. Not really. I based on my judgment, on my past
4 experience in other MTR projects under IoE arrangement.

5 Q. Mr Chan, I'm talking about the procedure in relation to
6 submission of plan and approval for projects governed by
7 the Buildings Ordinance. Do you have any expertise or
8 experience in relation to --

9 A. I have some experience about BD submission, but not as
10 good as other -- RSE or AP.

11 Q. May I move on to my third topic, the quality supervision
12 plan. Are you familiar with the quality supervision
13 plan?

14 A. Yes. When I start to assist the CP to prepare the BA14
15 submission for D-wall in early 2015, where there's
16 a requirement in the QSP for ductile coupler
17 installation.

18 Q. Right. So you will be familiar with the enhanced
19 supervision requirement in relation to the splicing
20 assembly works, as required under the QSP?

21 A. Yes, QSP for ductile coupler.

22 Q. Right. So you would agree with me that one of those
23 requirements concerns the appointment of a quality
24 control supervisor on the part of the competent person,
25 to supervise the couplers installation work?

26 A. Yes.

1 Q. And that quality control supervisor has to be of
2 an experience equivalent to a grade T3 TCP?

3 A. Yes.

4 Q. Can you tell us who was the person that MTRC designated
5 at the time to be the quality control supervisor for the
6 purpose of the coupling works?

7 A. It should be my -- during the D-wall construction, it
8 should be the inspector of works, Kobe Wong, or
9 equivalent.

10 Q. How about the EWL and NSL slabs?

11 A. The requirement for QSP plan for ductile coupler also
12 apply to D-wall and slab construction. As long as they
13 are ductile coupler, the same requirement applies. So
14 I expect my inspector to know the requirement for
15 ductile coupler in the QSP for EWL slab too, because the
16 inspector who supervised the D-wall are also the same
17 inspector who supervise the EWL slab.

18 Q. So are you telling us that for the purpose of the QSP,
19 the quality control supervisor designated to take care
20 of the supervision of the ductile couplers installation
21 was Kobe Wong?

22 A. Yes.

23 Q. So it's not Derek Ma?

24 A. No. Derek Ma is an engineer who's responsible for rebar
25 checking. The coupler installation checking, based on
26 the arrangement at that time, material time, are the

1 inspectors.

2 Q. Right. And do you know whether Mr Kobe Wong himself was
3 aware of that special responsibility?

4 A. Based on my understanding, Kobe Wong should know it,
5 because when we submit the QSP plan for ductile coupler,
6 that submission was copied to the construction manager,
7 back in 2013, and based on that an arrangement, the
8 senior inspector at that time should know the
9 requirement, and the senior inspector has a duty to
10 inform the inspector about the requirement for QSP plan
11 for ductile coupler. So I expect Kobe Wong should know
12 the requirement.

13 Q. Kobe Wong, in his witness statement, tells us that he
14 was only the T3 under the registered geotechnical
15 engineer stream and he was not supposed to countersign
16 on the record sheets.

17 A. My understanding --

18 Q. Do you have any comment on that?

19 A. My understanding about the T3 requirement -- the QSP
20 says that that person must have a qualification equal to
21 T3; doesn't mean that he had to be a T3 in the CP
22 stream. As long as he has that qualification, he can do
23 the job.

24 Q. So, if he was aware of a special responsibility in
25 relation to the steel fixing work of the slab, then he
26 would have agreed to sign or countersign on the record

1 sheets prepared or to be prepared by Leighton, because
2 that was what was required under the QSP?

3 A. So what is your question?

4 Q. Do you agree with my proposition?

5 A. I think, at that time, I expect Kobe Wong should know
6 the requirement for QSP for ductile coupler; right? He
7 should follow the requirement, at that time. That is my
8 understanding. Because I never come across any problem,
9 when I collect the information for checking of the
10 splicing assembly, during the BA14 submission for
11 D-wall, so I expect the same team to follow the same
12 arrangement.

13 Q. Okay. Can I ask you to go back to paragraph 22 of your
14 statement, bundle B1, page 270, please.

15 The part that I would like to refer you to is
16 actually paragraph 23, the last sentence, where you
17 said:

18 "... I assisted the CP in checking the logbooks
19 signed by the quality control supervisor and quality
20 control coordinator, as the case may be. I also signed
21 off two QSRs as TCP-T5."

22 Do you see that?

23 A. Yes.

24 Q. The logbooks that you refer to, am I right that what you
25 refer to is the logbook in relation to the diaphragm
26 wall?

1 A. What I refer is the quality supervision record or
2 report, which we submit to BD for record. It's not the
3 logbook I refer to. The QSR means quality supervision
4 report, as specified in the requirement for QSP for
5 ductile coupler installation.

6 Q. Sorry, it is my fault. It's the second-last sentence.
7 In the second-last sentence, you said:

8 "... I assisted the CP in checking the logbooks
9 signed by the quality control supervisor and quality
10 control coordinator ..."

11 So the logbooks that you refer to there are the
12 logbooks in relation to the diaphragm wall prepared by
13 Intrafor?

14 A. Yes, this is the logbook I refer to, not the EWL slab.

15 Q. I see. So you would expect similar checklists would
16 have to be prepared for recording the supervision and
17 inspection of the coupler installation for the slab; do
18 you agree?

19 A. Yes.

20 Q. And do you agree that, as a matter of fact, at the time
21 of the execution of the slab, no such checklist was ever
22 devised by either Leighton or MTRC, no such record was
23 kept?

24 A. I only aware that when I found out recently, because
25 I left the project in mid-2016, right? During my time,
26 I didn't specifically ask for this checklist, because

1 I think that should be automatically carried out by both
2 teams.

3 Q. Right. So you expect your subordinates would do it
4 automatically because of what is set out in the QSP and
5 you personally have not verified whether that was
6 complied with; is that right?

7 A. Exactly, because they did a good job in the D-wall
8 supervision, I expect they would do a similar thing for
9 EWL slab, because carried out by the same people.

10 Q. Okay. I need to move on to the NCR -- sorry, I have to
11 go back to this, but my angle is a little bit different.

12 This morning, when you answer to questions from
13 Mr Pennicott and also just now to Mr So, you repeatedly
14 described the cutting of the threads as "minor defects".

15 A. Yes.

16 Q. Is that what you --

17 A. Yes.

18 Q. The question of whether someone cutting the threaded
19 part of the rebar was a serious defect actually has been
20 posed to a number of witnesses before, and from my
21 recollection you are really the first one who says that
22 this is a minor defect. All the others thought it was
23 quite serious, it's a quite serious non-conformance.
24 Can you tell us why this kind of conduct is considered
25 by you as a minor defect?

26 A. When I say "minor defect", this is according to the

1 non-conformance, minor in nature. Maybe the guy who
2 actually cut is not very good reason.

3 Q. Right.

4 A. That's the reason why my inspector follow the same
5 principle. They are minor, they spot it, rectify it,
6 then report to me. If they consider it a serious
7 non-conformance, they will elevate it to his senior and
8 to my level in the first instance. That's why I say
9 minor. That kind of non-conformance can be resolved
10 very quickly, without any major problems, because
11 sometimes this term "serious" or "minor" is very
12 subjective, depending on your definition.

13 Q. All right. I'm sure you will agree with me that the
14 load transfer capacity of the couplers really depends on
15 whether the threaded part are fully screwed into the
16 couplers?

17 A. Agree.

18 Q. Right. So if someone cuts half of the threaded part, we
19 can safely deduce that at least half of the capacity has
20 gone; do you agree?

21 A. Yes, for that particular coupler.

22 CHAIRMAN: Would that actually be the case? If you were to
23 sit down with the necessary mechanics and mathematics,
24 would it become half, or would you be able to say that
25 there would be a material reduction?

26 A. I agree with you, Chairman. I think you interpret

1 better than my answer. I can't say just half, but some
2 adverse effect; right? But how much, I can't just say
3 based on this information.

4 MR CHOW: So in terms of the nature of this conduct, would
5 you agree with me it's quite serious?

6 A. When you look at the whole thing in a more holistic
7 picture, we are talking about several hundreds of
8 couplers in each layer. Then you are talking about one
9 or two where some minor defects have been spotted. That
10 shouldn't be a major alarm to anyone, because we are
11 talking much less than 1 per cent. There are many
12 non-conformities, like I say, not enough cover, the lap
13 length is not enough, there's bound to have certain
14 things happen on site, and then if you are talking about
15 the percentage so small, and that minor defect has been
16 rectified on the same day, on the same spot, that
17 shouldn't be a major concern to us. That keeps
18 repeating and repeating and in bigger and bigger
19 numbers.

20 Q. You told us that when you returned from your leave, you
21 immediately looked at the details of the NCR, and
22 obviously you would have noticed by then that it
23 involved someone cutting the threaded part of the bars;
24 right?

25 A. Yes.

26 Q. Do you agree with me that as a matter of common sense,

1 it would at least appear to you that -- or to
2 an ordinary person, one would immediately think why was
3 there a need to cut it in the first place? What is the
4 problem encountered by the steel fixer which led them to
5 cut the threaded bar? Did it occur to you that this
6 kind of question -- does it arise?

7 A. As I mentioned earlier this morning, many steel fixers
8 in Hong Kong are daily pay. Their standard differs
9 quite a lot, depends one worker from the others; right?
10 I'm pretty sure these kind of minor defects happen in
11 many other construction sites occasionally. Right?

12 Q. Right.

13 A. You go other sites, they probably have similar discovery
14 during the routine inspection. As long as that one will
15 not recur again, or not in a widespread manner, that
16 should give them a chance to rectify. That's why, this
17 is the first time I know, 157, then I immediately inform
18 my colleague, "You've got to report to me in future",
19 then I will take more drastic action. I give him
20 a yellow card first. If he don't listen to our warning,
21 then I give him a red card, and off site immediately.

22 Q. You are absolutely right. Do you agree with me that in
23 order to prevent are the same thing from happening
24 again, the safest way is to find out the reason why in
25 the first place that particular unknown steel fixer
26 finds it necessary to cut the threaded bar so that then

1 you can take care of the difficulties that they
2 encounter and there won't be any further need to do it
3 again?

4 A. I think it's so easy to say you can find out the reason,
5 because there are so many workers on each particular
6 day, maybe that minor defect, that cut had been there
7 for one or two days already. You will never know who
8 did it. Even the guy who knows it, he won't tell anyone
9 because he may have left the site already. To spend
10 effort to find out the answer may not be productive.
11 No one will tell you the truth. The only thing they
12 want to do is tighten the supervision, make sure that no
13 more minor defects like that happen again or in
14 a systematic or widespread manner. That is the key, the
15 end product counts. Like the QSP just say make sure the
16 supervision of splicing assembly, that is the key. The
17 end product is always the most important part to look
18 after.

19 CHAIRMAN: Sorry, I do apologise for interrupting. I think
20 perhaps the concern may be -- and it's been expressed
21 earlier -- that if you come across several cutting of
22 rebars, and the evidence is that in fact when the NCR
23 was issued there had been two earlier occasions when
24 rebars had been found cut, is this the tip of the
25 iceberg? In other words, this has been seen; what is
26 the risk, what is the danger, that there may be a number

1 of others that were not picked up, and therefore you may
2 have a larger problem than at first appears?

3 A. I not 100 per cent agree with your interpretation,
4 because this is the first time I aware that one to five
5 numbers out of several hundreds, and my colleagues keep
6 assuring me that that has been rectified in a timely
7 manner. I've got to give the benefit of the doubt to
8 all these people, to have second chance. That's why
9 I ask my team to let me know if their second chance,
10 similar incident happen again, then I will definitely
11 take more drastic action to address this issue. Is it
12 fair to you?

13 CHAIRMAN: No, I'm not in any way debating that. I'm just
14 pointing to the fact that earlier evidence has
15 suggested -- in fact Mr Jason Poon suggested -- that
16 what he was able to see, if he worked on the basis that
17 these people probably didn't just do it for his benefit
18 but we doing it more as a concerted action as and when
19 they came across difficulties, that there might
20 therefore be a larger number of incidents than are
21 actually identified from time to time.

22 A. Based on what I aware, end of December 2015, this is the
23 first instance I'm aware. No one tells me others. If
24 other people tell me same, I probably take more drastic
25 action. If Jason Poon tells me, in September 2015, the
26 things are totally different. He never tell me,

1 although we had a lot of opportunity to communicate on
2 all issues, he never made any effort to tell me. If he
3 did one occasion, definitely I guarantee you I will take
4 a lot of action to be prevent this thing to happen.
5 I don't have an opportunity to do that.

6 CHAIRMAN: Could you tell me, just as a matter of interest,
7 what was your relationship like with Mr Jason Poon?
8 He's a man of quite strong character.

9 A. I only know him when he started work in my project back
10 in second quarter of 2015. Initially, what he did
11 on site are very simple work, only some formwork for
12 construction joint, blinding concrete, and his
13 performance was reasonable, because it's so simple, they
14 only got about 50 workers on site, on average, from
15 mid-September to end 2015. Then his performance starts
16 to create more problems; when he gets more difficult
17 work like back of house and other works in second
18 quarter of 2016, then he had more problems.

19 CHAIRMAN: Okay.

20 A. Whether he's a strong character, it's just like ordinary
21 sub-contractor too. When there's no problem, you can't
22 really see the nature of this gentleman.

23 CHAIRMAN: Good. Thank you very much.

24 Sorry, Mr Chow.

25 MR CHOW: Not at all, Mr Chairman.

26 Mr Chan, from the evidence before this Commission,

1 what we see is the several incidents of bar cutting were
2 discovered by MTRC's inspector, not by Leighton's
3 supervisor or inspector. Is that also your
4 understanding?

5 A. I can't comment on that topic.

6 Q. Okay.

7 A. Because I only aware there's only one incident, in
8 December. The other incident, I just read from the
9 report prepared by MTR, because I believe at that time,
10 when my inspector discovered the first and second
11 incidents, they think they are very minor defects,
12 that's why he made a judgment not to report to his
13 superior, because non-conforming couplers are quite
14 common in the industry; right? You don't expect all the
15 steel fixers will do their job 100 per cent correct.
16 Some steel fixers maybe do all kinds of things, you
17 never know. There's no point to find a reason. You
18 better spend more effort to stop that happen.

19 Q. Right. One of the core issues that this Commission is
20 to hopefully find out and determine is whether rebar
21 cutting was a widespread or systemic problem.

22 Now, I note that in your paragraph 25, you sort of
23 conclude that there was no reason at all to suspect any
24 systemic or widespread problem. Do you see that,
25 paragraph 25, page 271?

26 A. Yes.

1 Q. Of course this conclusion, I believe that everyone in
2 this room would hope that this is what happened, but the
3 evidence before us is there were several incidents
4 discovered. They were not discovered by Leighton; they
5 were discovered by MTRC's inspectors. The cause of bar
6 cutting was never ascertained. In other words, the
7 reason why the steel fixers carrying out the steel
8 fixing work needed to cut the threaded part of the rebar
9 was still an unknown.

10 Given that is the position, we want to understand
11 why are you so confident that all the cut bars had been
12 spotted by MTRC inspectors and it was not a widespread
13 problem on site?

14 A. I have mentioned earlier, when I made the statement,
15 25th -- paragraph 24, I base on -- I only know about one
16 incident at all. In end of December 2015, I'm not aware
17 of any other incidents. Only have one incident and
18 spotted by my inspector and have been rectified on the
19 same day in a timely manner. I've got to give the
20 benefit of the doubt to people involved, give them
21 a second chance. If they do the same thing again,
22 I share with you, that is a serious problem, I would
23 take action.

24 Q. I then move on to the last topic I would like to explore
25 with you, and that is in relation to the change. Before
26 that, are you aware that after the incident of the

1 U-bar, there was an incident report prepared by MTRC
2 which was submitted to BD, in which MTRC set out the
3 background and the reason why that problem occurred and
4 the recommendation that they would propose to the BD?
5 Are you aware of that incident report?

6 A. Yes, I aware this incident report.

7 Q. If I may refer you to part of the report: bundle H11,
8 starting at page 5538.

9 At 5538 is the covering letter, dated 29 July, so
10 this is the date when the incident report was submitted
11 by MTR to the Buildings Department. If we may then go
12 to paragraph 3.3.1 at page 5544. Under this paragraph,
13 if I may read it out:

14 "This non-conformity was largely as a result of
15 communicating and formalising the changes made by the
16 contractor. In this connection, CP has instructed his
17 TCPs and the construction manager to strictly follow the
18 working drawings which are prepared in accordance with
19 plans accepted by the Authority such as BD/GEO (accepted
20 plans) in the execution of the works. TCPs should bring
21 CP's attention to any deviations in a timely manner."

22 Then if we may turn over the page to 5545, under the
23 "Conclusions" section, paragraph 4.3, where MTRC says:

24 "In order to mitigate the impacts to the permanent
25 works and prevent the recurrence of non-conformity of
26 this nature, CP has instructed the following actions to

1 be taken by his TCPs and the contractor".

2 Then turn over the page, paragraph 4.4:

3 "In additional to the procedures ... stipulated for
4 reviewing contractor's submissions in MTRC's project
5 integrated management system which is included in the
6 PMP of SCL, TCPs shall not allow changes to be made to
7 the permanent works in contractor's shop drawing
8 submissions. TCPs in the CP stream shall supervise the
9 works to ensure they are executed in accordance with the
10 working drawings/accepted plans. They should bring CP's
11 attention to any deviations in a timely manner".

12 Now, this is the report submitted at the time when
13 the temporary works design was submitted to BD, in which
14 there is a section about construction sequence in which
15 the designer foreshadowed hacking down of part of the
16 diaphragm wall, that sort of thing. Do you recall that?
17 That is at about at the same time.

18 A. Yes, sir.

19 Q. Can I then now refer you to the inspection test plan, at
20 bundle B6, page 3772.

21 This is part of the inspection and testing
22 requirement. Under item 9, it talks about "Inspect
23 rebar fixing", and under the column with the heading
24 "Conformance criteria" -- do you see that column?

25 A. Yes.

26 Q. It is put down clearly and precisely that it has to be

1 the working drawings; in other words, the acceptance
2 criteria is whether the reinforcement fixed on site has
3 to comply -- complies with the working drawings.

4 Do you agree with my interpretation?

5 A. Yes.

6 Q. Given that almost at the same time MTRC emphasised to
7 the Buildings Department that they would not commit
8 similar error in relation to the diaphragm wall before,
9 and given that there is a clear requirement under the
10 inspection and test form for your inspector on site,
11 when they carry out steel inspection, to make sure that
12 the works carried out are in compliance with the working
13 drawings.

14 Now, can you tell us whether there was any reason
15 why this has not been implemented in the case of the
16 second change?

17 A. First of all, I would like to explain to you, when
18 I read the incident report, I got the impression that
19 this referred to any major change in future, like what
20 we did for the diaphragm wall, like omission of U-bar
21 and other changes.

22 And the second change, the later second change, is
23 a completely category from the first change. First of
24 all, when you talk about working drawing, our second
25 change, just to go back to the working drawings for RC
26 arrangement for D-wall, on top of the D-wall, back to

1 2013, which had been approved by BD already. We're not
2 changing this design. We just want to go back to the
3 original design intent. And hacking off the concrete
4 just to fit the new design requirement, just a matter of
5 change of construction sequence, it provides better
6 detail. That means the second change and the first
7 change are totally different categories. That's why we
8 don't think that we have to seek approval from the BD
9 prior to the execution of work, because there are so
10 many similar minor changes on the site. That is our
11 judgment and our interpretation of that report. Maybe
12 that may not be your interpretation but that is our
13 understanding at that time.

14 Q. All right.

15 My last question is if I may refer you back to the
16 incident report, bundle H11, page 5545, paragraph 3.3.6,
17 where MTRC said:

18 "In order to improve the robustness of the controls
19 to track progress of all proposed design changes until
20 they are approved and incorporated into the working
21 drawings, the contractor has developed and is
22 implementing an additional control procedure defined as
23 the technical query process."

24 Do you know whether Leighton has, in reality,
25 developed an additional procedure to make sure that the
26 working drawings will be updated timeously?

1 A. I'm not sure exactly what they did, but they had issued
2 a lot of TQs during the EWL construction, to address all
3 kinds of unexpected site problems.

4 Q. So am I right to say that as at the time of the
5 submission of the incident report, you didn't find any
6 additional procedure being implemented by Leighton;
7 right?

8 A. I can't quantify what additional measure they did, but
9 they have keep using TQ system to address all kinds of
10 potential site problems.

11 Q. But the TQ system had been in place all along, well
12 before July 2015; is that right?

13 A. Yes.

14 MR CHOW: Thank you, Mr Chan.

15 WITNESS: Thank you, sir.

16 MR CHOW: I have no more questions, Mr Chairman.

17 CHAIRMAN: Thank you very much.

18 Cross-examination by MR CONNOR

19 MR CONNOR: Thank you, sir.

20 Good afternoon, Mr Chan. I am Vincent Connor; I'm
21 going to ask you some questions on behalf of Atkins
22 China.

23 A. Thank you.

24 Q. Mr Chan, if you have on the screen, please, your witness
25 statement, which is B1/19. If you would have, in
26 particular, paragraph 49 on the screen in front of you.

1 You may recall being asked some questions about this by
2 Mr Pennicott this morning, but you will see in this
3 paragraph that you talk about -- at page B279 -- the
4 construction management teams of MTR and LCAL deciding
5 to revert back to original construction detail, and you
6 go on at the top of paragraph 49 on B280 to describe
7 what has happened.

8 Then you finished by saying, halfway down that
9 paragraph:

10 "... which is possible because the concrete had been
11 cast for the east diaphragm wall by then and the tremie
12 pipes had since been abandoned, although Atkins did not
13 formalise any revisions to the working drawings at the
14 time as far as I am aware."

15 Just focusing upon that last part of the sentence,
16 "although Atkins did not formalise any revisions to the
17 working drawings at the time as far as I am aware" --
18 you remember Mr Pennicott asked you some questions about
19 that, Mr Chan?

20 A. Yes.

21 Q. Of course, if I may just ask you this, sir, the
22 preparation of working drawings insofar as they were
23 required would be a matter for team B; is that so?

24 A. Yes, if the design change proposal are initiated by the
25 contractor, should be prepared by team B, Atkins.

26 Q. So, insofar as Atkins team B was asked or required to

1 prepare those working drawings, that's not something
2 within your knowledge?

3 A. Can you repeat your question?

4 Q. It is not within your knowledge as to whether or not
5 Atkins team B was asked or not to produce such drawings?

6 A. I expect the contractor will request their team B to
7 carry out these works.

8 Q. "As far as I am aware" are your words there; you're not
9 aware of whether or not they were asked?

10 A. What I say is that I would expect the contractor will
11 finalise these updated working drawings in due course.
12 When they do it, I don't know.

13 Q. I understand. We'll come back to that in a just
14 a moment. But just to close your evidence on that
15 point, as for when Atkins may do this, that's a point
16 I think in your evidence on which you are quite
17 comfortable, because we're not at the stage of
18 a submission to BD for the completion of this work; is
19 that right?

20 A. Yes.

21 Q. Thank you. If you pause there, please. Going down that
22 page, page B280, you will come to the description of the
23 work sequence which ensued on site; you will see that's
24 through to the end of paragraph 49. Then, skipping
25 paragraph 50, you come to paragraph 51 where there's
26 a reference to the through-bar method that you've told

1 the Commission about already.

2 Then you go on, in the course of paragraph 51, to
3 refer to an email. This is an email which is dated
4 25 July, where Mr Leung has written to Mr Taylor; do you
5 see that?

6 A. Yes.

7 Q. Then if you go over the page, please, to B281, you
8 eventually get to paragraph 52, and it's there that you
9 say:

10 "LCAL/Atkins team B should have submitted proposal
11 for change in permanent works ... for their review and
12 approval ..."

13 Again, we will come back to this, but your position
14 on this is that a proposal for change in permanent works
15 does require to be submitted, but again in your view
16 this can be done, and we are not within any time
17 constraint for that?

18 A. Yes.

19 Q. Thank you. What you go on to say at paragraph 53 is
20 that -- you refer to the non-submission by the stage of
21 your written statement for approval for change in
22 permanent works as a kind of failure on the part of
23 Leightons and Atkins team B which was persistent during
24 the construction phrase of contract 1112; do you see
25 that?

26 A. Yes.

1 Q. Then you go on to say:

2 "The design management team frequently had to chase
3 them to submit proposal for changes in construction
4 details."

5 Do you see that?

6 A. Yes.

7 Q. At this point, you refer to an email which I would ask
8 to have before you, in tab C6, and described as
9 B16/12529. Thank you.

10 Just pausing at that point, this is an email that
11 you received at the time. You will see that you are
12 copied in on this, and it's an email of 19 October 2015
13 from Mr Andy Leung to Mr Justin Taylor at Leighton; do
14 you see that?

15 A. Yes.

16 Q. Now, you make a couple of points about this, but firstly
17 you talk about a complaint where you are complaining to
18 Mr Taylor about the lack of proposals to incorporate
19 changes initiated by the team. Do you see that?

20 A. Yes.

21 Q. I'm sorry, this is a complaint by Mr Leung.

22 A. Mr Leung, not by me.

23 Q. Not by you, but one on which you have given evidence;
24 yes? Then you go on -- or rather Mr Leung goes on to
25 refer to Mr Rob, who I take to be Mr Rob McCrae of
26 Atkins?

1 A. Yes.

2 Q. He goes on to say:

3 "Please take note of this and you, as the C1106 DDC,
4 should not change any permanent works drawings under
5 C1106 without my instruction."

6 Do you see that?

7 A. Yes.

8 Q. Just pausing at that point, a couple of things you might
9 help us with here. The point that Mr Leung appeared to
10 be making to Mr McCrae at that time isn't a complaint
11 about the failure on his part to incorporate changes,
12 it's more of a reminder, isn't it, that as far as the
13 C1106 DDC is concerned, he has to await instruction
14 before he makes any such changes to permanent works?

15 A. Yes. That is a reminder from Andy Leung.

16 Q. Thank you very much. And in terms of what you open with
17 in this paragraph as being the persistent failures on
18 behalf of Leightons and Atkins team B, this is the only
19 example that you give really in relation to such
20 failures?

21 A. Yes.

22 Q. Thank you. And therefore it's the only one that you
23 offer to this Commission?

24 A. Yes.

25 Q. Thank you. Thank you very much. If you put this
26 statement to one side but we may come back to it.

1 Continuing the theme in relation to the preparation
2 of drawings -- you will remember this morning that
3 Mr Pennicott asked you some questions, and I will refer,
4 really for the purposes of the transcript, you to some
5 evidence that you gave, because we don't have the
6 transcript available for you yet to see. But you will
7 recall that Mr Pennicott had referred you to
8 paragraph 51 of your witness statement, which you've
9 just looked at. That is the paragraph, again, just for
10 fairness to you -- and this is witness statement B1/19,
11 it's B280 at paragraph 51.

12 Just to help you with the context here of my
13 question, and it's there that Mr Pennicott had put to
14 you the paragraph that begins:

15 "LCAL proceeded with the 'through-bar method' in
16 constructing the EWL slab in the rest of areas B
17 and C ..."

18 Do you see that?

19 A. Which paragraph?

20 Q. Paragraph 51, I beg your pardon, at page B280.

21 A. Mmm.

22 Yes, 51.

23 Q. You say:

24 "[They have] proceeded with the 'through-bar method'
25 in constructing the EWL slab in the rest of areas B and
26 C starting with area C1-3 on 29 August 2015."

1 Yes?

2 A. Yes.

3 Q. It was at that point that Mr Pennicott then asked you
4 about your involvement, if you might remember, Mr Chan,
5 this morning, in the preparation of the as-built
6 material between Leighton and MTR that forms part of the
7 joint statement presented to this Commission.

8 A. Yes.

9 Q. He had asked you whether or not you had been involved in
10 that process, and just for the transcript purposes this
11 is at [draft] pages 57 to 58 and those following, and
12 you confirm that you had been involved in that, Mr Chan.

13 What you were asked about was -- I think
14 Mr Pennicott put this way -- that without getting into
15 any detail, you would accept that in certain days or
16 panels in area B, the coupler solution was retained, and
17 you confirmed that that was so?

18 A. Yes.

19 Q. He went on to say:

20 "So it wasn't all of the areas in area B; it was
21 done much more, presumably, what, on an as-necessary
22 basis; is that right?"

23 And I think you confirmed that?

24 A. Yes.

25 Q. "So, as you worked your way along the diaphragm wall, in
26 the different areas of the different bays, a decision

1 would be made whether to run with the through-bars or to
2 retain, in certain areas, the coupler connections?"

3 And you agreed with that?

4 A. Yes.

5 Q. And I think, just to complete that, he put to you that
6 that would be done by a process of discussion and
7 agreement between MTR and Leighton as you went along?

8 A. Yes.

9 Q. Against that background, on this rolling basis of
10 decision as to what to do about the diaphragm wall panel
11 by panel, if it is the position of Atkins team B that in
12 fact they were not asked to produce working drawings,
13 then in fact that would be consistent with the fact that
14 the work that was done on the diaphragm wall was done on
15 an ad hoc, rolling basis as the work went along the
16 diaphragm wall.

17 A. Can you repeat your question?

18 Q. So the lack of preparation of working drawings, which is
19 something that you mention in your evidence, is not
20 really surprising in a situation where, as you have
21 described it to this Commission, the work in fact was
22 decided by yourselves and Leighton on an ongoing basis,
23 as you moved along the diaphragm wall?

24 A. I would put it that way. During the construction of the
25 EWL slab in areas B and C, Leighton should have
26 communicated or liaised with his team B to update the

1 changes. How they do it, I don't know. This is clearly
2 between Leighton and its team B.

3 Q. So it's not something you can help with?

4 A. I can't.

5 Q. Thank you very much.

6 What we do know then is, as you described earlier
7 on, there was discussed a change to the permanent works
8 design, and that's the one which is referred to in what
9 you've told the Commission about in terms of PWD-59A; do
10 you recall that?

11 A. Yes.

12 Q. If you might have before you, please, the statement of
13 Mr Blackwood, which appears at J70, that should be
14 appearing on the screen just in front of you now. If we
15 turn to paragraph 74 of that -- I just pause at this
16 point, Mr Chan, to ask you a short question: have you
17 seen Mr Blackwood's statement before today?

18 A. Yes.

19 Q. Thank you. Then at paragraph 74 you will see that he is
20 referring there to paragraph 1.3.5 of TWD-004B3 and
21 a reference made to permanent works submission which he
22 goes on to describe as being subsequently issued as
23 "Discussion on design amendment works D-wall
24 (PWD-059A3)"; yes?

25 A. Yes.

26 Q. He goes on to describe that as:

1 "This submission addressed the as-built
2 reinforcement to the D-wall and insufficient anchorage
3 for the tension reinforcement of the EWL slab. However,
4 it made no reference to the breaking down of the
5 D-wall."

6 Do you see that?

7 A. Yes.

8 Q. As a statement of the content of PWD-59A3, do you agree
9 with Mr Blackwood there?

10 A. I think what Blackwood said, literally there is no
11 mention in the report that you've got to break down the
12 D-wall, but it's an implied term in the report, that
13 says monolithically. From a construction point of view,
14 as a construction engineer, I would interpret that as
15 got to somehow break down some part of the D-wall,
16 become -- you can then EWL slab, D-wall and OTE cast
17 monolithically, it's an implied term. Although it's not
18 explicitly mentioned in the report, it's a judgment we
19 make between MTR construction team and Leighton
20 construction team.

21 Q. Yes, you have already advised the Commission of that.

22 A. It is our judgment at the time.

23 Q. And it is the case that at that time this particular
24 submission is related only to EH74 of the eastern
25 D-wall?

26 A. What do you mean by that? Can you pardon me?

1 Q. This submission PWD-059A3 relates simply to one panel?

2 A. I don't think so, relate to the omission of U-bar,
3 because that PWD report reply addressed all the issues
4 associated with the omission of U-bar for the east
5 diaphragm wall, not only one panel, all the panels.

6 Q. Okay. If you turn the page then at paragraph 77, where
7 there is reference there again to 59A3, the appendix
8 "provided the location of the remedial works and
9 indicative slab/D-wall detail. This was based on
10 couplers for the top steel and did not identify the need
11 to break down the D-wall."

12 Again, that's Mr Blackwood's view, but you say that
13 you understand what you says but it is implicit in it,
14 from your perspective?

15 A. Exactly. Monolithic, from a construction engineering
16 point of view, I reiterate that, that means the EWL
17 slab, the D-wall and OTE have to be cast at the same
18 time, together, as one piece.

19 Q. Okay. Moving along then down to paragraph 78, there's
20 then further reference by Mr Blackwood to the
21 development of a submission in response to technical
22 query 44, and that, we understand, again was based on
23 the use of couplers. This is TQ44, and again he says it
24 did not mention that the D-wall was to be broken down,
25 but he does go on to say:

26 "It showed that the OTE slab had to be cast at the

1 same time/monolithically, consistent with what was shown
2 in the working drawings and PWD-59A3."

3 A. Yes.

4 Q. Again, your position remains that despite the absence of
5 reference to the breaking down of the D-wall, one should
6 read that into it?

7 A. Exactly, I read the conclusion to say cast
8 monolithically. That is a very implied term.
9 I mentioned the conclusion in the report.

10 Q. So, if you carry on then to paragraph 84, you will see
11 reference in Mr Blackwood's statement on page J72 to the
12 raising of technical query 34 that was covered this
13 morning and I think also earlier this afternoon, and
14 that regarded the misalignment between rebar at the EWL
15 slab and couplers at panel EH74.

16 So, going back to correct myself, this is the
17 reference to EH74 that arises. And TQ34 I think,
18 Mr Chan, referred only to this particular panel?

19 A. Yes. TQ34 applied to the problem encountered at EH74.

20 Q. Yes.

21 A. However, the solution also inherits the spirit of "cast
22 monolithically".

23 Q. Thank you. I was just coming to that, because you will
24 see at paragraph 85 that:

25 "[That TQ] was raised in response to a construction
26 problem on panel EH74 where the top layer of

1 reinforcement had been incorrectly located. The
2 proposal ... break out the D-wall to just below this bar
3 and replace with a straight through-bar with a coupler
4 on the OTE side of the D-wall. This would be concreted
5 at the same time as the adjacent EWL slab and OTE."

6 Now, that, as a statement of what was required by
7 TQ34 and the work that proceeded, is something you agree
8 with?

9 A. Yes. What TQ34 exactly says is "replace with a straight
10 through-bar", in other words implies that part of the
11 D-wall has to be knocked off, otherwise it can't be
12 replaced by a straight through-bar. That means the
13 reply to TQ34 incorporates the spirit of monolithic.

14 Q. So, taking your evidence and what is set out by
15 Mr Blackwood then, the only distinction that you make is
16 that you agree with that genesis and evolution of the
17 various permanent works design submissions, the
18 technical queries 44 and 34, the limited nature of TQ34,
19 and the absence to an express reference to breaking down
20 the D-wall in those, but it's the monolithic or pouring
21 concurrently point that you say should be read from all
22 of that?

23 A. Exactly, because not only TQ34, even TQ33, the reply
24 also reiterates that cast OTE and D-wall and EWL slab
25 monolithically. It repeat and repeat in many different
26 locations, not only one-off.

1 Q. Yes. By this point, then, the work is proceeding, as
2 you have described already to the Commission, in terms
3 of breaking down the D-wall on an ongoing basis.

4 But if you move on to paragraphs 86 and 87, finally,
5 of Mr Blackwood's statement, you will see that the
6 following is said:

7 "On 29 July ... this detail was confirmed by team B
8 as acceptable and returned to Leighton. I believe that
9 Leighton then in turn submitted to MTR. However, team A
10 was not instructed to include this detail in
11 a subsequent BD submission."

12 Then he goes on in 87:

13 "I have learned subsequently (in 2018 following
14 requests for preparation of the as-built drawings) that
15 the upper part of the D-wall was broken out in a series
16 of works commencing in August 2015."

17 Just pausing at that point, you're aware of the
18 breaking out of the D-wall. From this evidence, it
19 would appear that Mr Blackwood at least was not aware of
20 it until June of 2018, when as-built drawings were
21 requested of Atkins. As far as that is concerned,
22 you're not in a position to help us in relation to the
23 state of knowledge of Atkins in relation to the breaking
24 out?

25 A. As I mentioned in my witness statement, I got under the
26 impression the design team from MTR and Leighton should

1 aware the monolithic, they should update the drawing in
2 due course. But obviously my understanding or
3 impression doesn't turn out to be correct, because both
4 design teams don't aware that monolithic means break
5 down some parts of the D-wall, and they update the
6 drawing accordingly. But anyway, whether they did that
7 or not is not the key issue. The key issue, from what
8 I understand, these minor changes can be addressed
9 before the BA14 submission, while the BA -- final
10 amendment. That is the key point.

11 Q. Just to conclude on your key point there, and to sum all
12 of that up, even if, from an Atkins perspective, the
13 evolution of those TQs and changes to design did not
14 signal to them that there was going to be a breakdown of
15 the D-wall, and even if they never knew that it had
16 happened, in your submission it doesn't matter because
17 there is still time to fix this and to do it through the
18 normal channels?

19 A. Can I put it that way: I don't know whether they know
20 about this requirement, I can't tell on their behalf.
21 But the second point, I agree with you. These minor
22 changes can be addressed while the final amendment
23 submission, before the BA14 submission. Two aspects.
24 The first part, I can't tell on behalf of Atkins whether
25 he know about how they should update the drawing, I
26 can't tell. It seems to be -- different people have

1 different understanding on this issue. But the second
2 part we all agree that this is minor change, we can
3 address that later on.

4 MR CONNOR: Thank you very much, Mr Chan.

5 Sir, I've got no further questions. Thank you.

6 CHAIRMAN: Thank you very much.

7 Re-examination by MR BOULDING

8 MR BOULDING: Good afternoon, Mr Chan. I have just one or
9 two questions for you arising out of questioning by
10 Mr Pennicott and Mr Connor in the first instance, and
11 I trust you will remember being asked by both of them
12 whether you were involved in the preparation of the
13 as-built drawings for the EWL slab and the agreed
14 statement between Leighton and MTR. Do you remember
15 that line of questioning?

16 A. Yes.

17 Q. You said to Mr Pennicott you had assisted in certain
18 respects; do you remember that?

19 A. For the second change, not the first change.

20 Q. The first change, yes.

21 A. The second change. The second change; right?

22 Q. And you told the Commissioners that in certain bays or
23 panels in area B, the coupler solution or design was
24 retained?

25 A. Yes.

26 Q. And you said -- and perhaps I can read from the

1 transcript here; this is [draft] page 59, lines 8 to
2 16 -- the question was put to you:

3 "-- and you encountered a particular area where we
4 now know or we now believe that couplers were
5 retained --"

6 And you said:

7 "Agree, because those areas are basically to cater
8 for the underpinning support.

9 Question: Right.

10 Answer: That is quite a logical decision to leave
11 that one, because we cannot remove the coupler otherwise
12 the underpinning work will be affected."

13 Do you remember that exchange?

14 A. Yes, I remember.

15 Q. Can you explain, at least for my benefit, how the
16 underpinning work would be affected if you removed the
17 couplers?

18 A. When you look at the working drawing, the shop drawing
19 for underpinning, in fact the support for the
20 underpinning above sit on top of the D-wall panel.
21 There's no way physically -- if you remove the coupler,
22 the support to the underpinning will be affected.
23 There's no more support to the underpinning. That's
24 physically impossible.

25 Q. I see. I wonder whether looking at a photograph might
26 at least assist me. Can you look at a photograph at

1 B25578. If we can turn that so we can look at it, and
2 perhaps we can reduce it slightly in size.

3 What are we looking at here, Mr Chan?

4 A. Here, you can see the support for the underpinning
5 column, the steel column, is the support for the
6 underpinning work, and then it sits on top of the
7 as-built D-wall. That's why, if you remove the coupler,
8 the support will be affected. That's why you've got to
9 keep the coupler there intact until we can finish the
10 underpinning works on top.

11 Q. Okay. Just for the avoidance of doubt, am I right in
12 thinking that this shows the underpinning frame?

13 A. Yes. The steel members are part of the underpinning
14 frames.

15 Q. And in layman's terms, what's the purpose of that
16 underpinning frame, please, Mr Chan; do you know?

17 A. I think in principle the underpinning is to provide
18 a temporary support, during the EWL's construction,
19 because during the EWL construction we excavate the
20 ground, and that means the support would be weakened.
21 That's why we use other kind of support, to support the
22 superstructure on top. That's what we call
23 underpinning.

24 Q. I see. Do you recall telling the learned Commissioners
25 that so far as the preparation of the as-built drawings
26 for the EWL slab was concerned, the site team would use

1 the shop drawings for the underpinning works to record
2 all the changes? Do you remember giving that evidence?

3 A. Yes, this is part of the evidence to support the
4 as-built records.

5 Q. And why, tell me, would the site team, in addition to
6 the photographs, use the shop drawings for the
7 underpinning works to record all the changes in the EWL
8 slab?

9 A. Can you repeat your question?

10 Q. Yes. Why would the site team use the shop drawings for
11 the underpinning works in addition to the site
12 photographs to record all the changes in the EWL slab?

13 A. Because, with the help of the shop drawing, you have
14 more certainty about the location of these couplers we
15 have retained on site. There's a check and balance
16 system. It gives more certainty about the exact
17 location of where the through-bar is.

18 Q. I see. Just to read an extract from the transcript
19 concerning this element of your evidence, Prof Hansford
20 said to you -- this is page [draft] 60:

21 "So the only way you could -- the only records you
22 had of which sections this detail had been changed and
23 which sections it had not been changed, the only records
24 were photographs; is that right?

25 Answer: Not necessarily, plus the underpinning shop
26 drawing, that photo and the shop drawing for

1 underpinning can work together. Then you know exactly
2 the extent of the area affected by -- anyway, shown in
3 the shop drawing. So I think the site team would use
4 the shop drawing for underpinning work plus the relevant
5 record photo will record all the changes."

6 Do you remember that answer?

7 A. Yes, I remember that.

8 Q. In terms of "working together", for my benefit, can you
9 just explain exactly what you meant by "the photos and
10 the shop drawings can work together"?

11 A. When you look at the photos, you know some couplers
12 a still intact; right? And the steel column, when you
13 look at the shop drawing, you know the gridline or
14 location of the steel column, then you compare the panel
15 number of the D-wall, then make sure all these
16 configurations are compatible.

17 Q. I see. And so far as you are concerned, does that
18 provide a sound basis for producing the as-built
19 drawings and what's in the EWL slab?

20 A. I believe so.

21 MR BOULDING: Thank you. Thank you, Mr Chan.

22 Sir, Professor, any further questions?

23 CHAIRMAN: No. Thank you. Mr Chan, thank you for your
24 help. Your evidence has been concluded. Thank you.
25 You can go now.

26 (The witness was released)

1 MR BOULDING: Sir, my next witness is Mr Ho. Would you like
2 to take the afternoon break?

3 CHAIRMAN: Yes, that's a good idea. 15 minutes.

4 (3.42 pm)

5 (A short adjournment)

6 (4.00 pm)

7 MR BOULDING: Good afternoon, Mr Ho.

8 WITNESS: Good afternoon.

9 MR HO HO PONG, JAMES (affirmed in Puntì)

10 Examination-in-chief by MR BOULDING

11 MR BOULDING: Thank you, Mr Ho. You have given your name to
12 the Commissioner, and it's right, is it not, that you've
13 produced two witness statements for the Commissioner's
14 assistance in this Commission of Inquiry?

15 A. 正確。

16 Q. If we could look at the first statement together,
17 please. I hope we will find the first page at
18 page B320. Is that the first page of your first
19 statement, Mr Ho?

20 A. 正確。

21 Q. If we could scroll down to B354, do we there see your
22 signature under the date of 14 September 2018?

23 A. 係, 正確。

24 Q. Are the contents of that statement true to the best of
25 your knowledge and belief?

1 A. 係，冇錯。

2 Q. Now we will go on to a second statement, if we may, and
3 B14482.

4 Mr Ho, do you want to put the headset on?

5 A. I'm okay.

6 Q. There, it's in Chinese, so it's not much good to me, but
7 that's the first page of your second statement, is it
8 not?

9 A. 係，呢個係畀警方嗰份嘅。

10 Q. Yes. If we go through to page B14486, there do we see
11 your signature, under the date of 8 October 2018?

12 A. 係，正確。

13 Q. Just for good measure, if we go to the following page,
14 I'm told that that's your signature under the same date,
15 8 October 2018, and that's the statement of truth;
16 correct?

17 A. 係，正確。

18 Q. Not least for my benefit, we can find, can we not, the
19 English version starting at B14496.1. Splendid.

20 So far as the contents of that second statement are
21 concerned, Mr Ho, are the contents true to the best of
22 your knowledge and belief?

23 A. 係嘅，冇錯。

24 Q. Are those statements the evidence that you'd like to put
25 before the Commission of Inquiry today?

1 A. 係嘅。

2 Q. Just to see where you were in the MTR organisation,
3 please could you go to B567. If you look, we've got
4 Mr Kit Chan at the very top, we can see his secretary,
5 and then if you just come down a bit, we can see that
6 you're on the second row, so to speak, "James Ho"?

7 A. Yes.

8 Q. And that accurately sets out, does it not, your position
9 in the MTR organisation chart as at the beginning of
10 February 2015; correct?

11 A. 係，正確，係。

12 MR BOULDING: Thank you. You probably realise how this
13 works, but first of all the counsel for the Commission
14 will ask you some questions, then you might be asked
15 some questions by other lawyers in the room. You can be
16 asked question by the Chairman and the professor at any
17 time, and I might ask you some questions at the end.

18 Thank you very much, Mr Ho. Please stay there.

19 Examination by MR PENNICOTT

20 MR PENNICOTT: Mr Ho, good afternoon.

21 A. Good afternoon.

22 Q. Thank you very much for coming to give evidence to the
23 Inquiry. My name is Ian Pennicott, I'm one of the
24 counsel for the Commission, and I do have a few
25 questions for you.

26 Mr Ho, you have been, as I understand it, MTRC's

1 senior construction engineer for contract 1112 since
2 February 2015?

3 A. 正確。

4 Q. As we've just seen with Mr Boulding, you report to
5 Mr Kit Chan?

6 A. 啱。

7 Q. I'm going to ask you, first of all, Mr Ho, some
8 questions about the coupler inspection records or the
9 lack thereafter.

10 A. Okay.

11 Q. Are you sure you don't need the headphones on?

12 A. I'm okay, thank you.

13 Q. All right. Now, paragraph 64 your witness statement,
14 please. You refer to the quality supervision plan for
15 the installation of couplers; do you see that?

16 A. Yes.

17 Q. When you joined the project in February 2015, were you
18 made aware of the quality supervision plan?

19 A. 當我入呢個diaphragm wall嘅BA14嘅時候，我係aware嘅。

20 Q. Yes, when you joined in February 2015, the diaphragm
21 wall works had about three or four months to go, because
22 they had finished around May/June 2015; yes?

23 A. Yes, but the first submission went in in January 2015,
24 first batch.

25 Q. All right. That's right. So, sorry, let me just recap.
26 When you first arrived in February 2015, you were

1 deployed to the diaphragm wall works, were you?

2 A. Yes.

3 Q. Okay. And it was in that context that you were made
4 aware, initially, of the quality supervision plan?

5 A. Correct.

6 Q. Okay. As I understand it, if you go to paragraph 46 of
7 your witness statement, you accept, as I understand it,
8 that the QSP applies not just to the diaphragm wall
9 works but also to the EWL slab works?

10 A. 正確。

11 Q. You say, in the last sentence of paragraph 46:

12 "... at the time of the EWL slab works, Leighton has
13 not provided any record sheets or inspection logbook to
14 MTR to be countersigned."

15 A. 正確。

16 Q. When you had finished and the diaphragm walls were
17 completed, as I understand it, you then were involved
18 with the EWL slab works; is that right?

19 A. 正確。

20 Q. Were you conscious of the fact, when you joined -- you
21 started having duties and responsibilities for the EWL
22 slab works, were you conscious of the fact that there
23 were no similar records as there had been on the
24 diaphragm wall works?

25 A. 喺嗰陣時，我係唔知嘅。

1 Q. Well, you must have known that there weren't any
2 records, surely?

3 A. 你“record”嘅意思係指嗰個logbook，係咪呀？

4 Q. I'm referring to record sheets or inspection logbooks,
5 because I'm looking at the last sentence of paragraph 46
6 of your statement. So let's start with record sheets.

7 You were aware, presumably, when you were working on
8 the EWL slab works, that there were no individual record
9 sheets of connection inspections?

10 A. 我clarify，我呢度嘅意思係喺17年嘅時候--2月嘅時候，我先知道嗰陣時
11 係有呢個inspection logbook或者record sheet嘅。

12 Q. Sorry, back in February 2015, do you mean?

13 A. 2017.

14 Q. Okay. Sorry, let's just recap, Mr Ho, because it may be
15 that I'm misunderstanding you. You were involved with
16 the EWL slab works?

17 A. 係。

18 Q. What were your duties and responsibilities in relation
19 to those works, the EWL slab works?

20 A. 嗰陣時我要有好多duty，就係所有construction-related，包括其他所
21 有submissions、temporary works、之後嘅planning、logistic。

22 Q. Right. Were you involved in any way with the inspection
23 of those works?

24 A. Inspection你講--如果係check鐵或者check coupler，我係冇份
25 involve嘅。

1 Q. Right. Were you involved in any way with the collation
2 of records and documents in relation to the EWL slab
3 works?

4 A. 我喺TCP嘅role，就會有involvement嘅。

5 Q. Right. What I'm trying to understand, Mr Ho, is
6 whether, even in your limited involvement, you were
7 aware that there were no record sheets of inspections of
8 the rebar connections to the couplers at the time, back
9 in 2015 and 2016.

10 A. 喺嗰陣時，我係唔知道嘅。

11 Q. Right. Is that because you simply hadn't turned your
12 mind to it, or it wasn't something that you were
13 particularly responsible for?

14 A. 兩方面都有，因為我係冇做嗰個rebar或者個coupler installation嗰
15 個inspection就唔係我負責，同埋base on diaphragm wall嘅時候，
16 我哋亦都係幫辦有做呢個record，所以我base on呢個assumption，佢
17 哋繼續會做呢樣嘢，所以我有特別去問嘅，嗰陣時。

18 Q. Right. So you made the assumption that there would be
19 such records?

20 A. 正確。

21 Q. Likewise, does that assumption apply to the inspection
22 logbook as well as record sheets?

23 A. 正確。

24 Q. Okay. Then you say:

25 "In or around early February 2017, Mr Carl Wu,

1 Mr Peter Fung, Mr Kobe Wong and [yourself] took part in
2 an internal quality assurance and quality control
3 review" -- which you have called an "internal review" --
4 "as a result of the email from China Technology to
5 Leighton which [you] have referred to ... above. At the
6 time, it came to light that Leighton did not keep any
7 record sheets or inspection logbook, and the inspectors
8 of works also confirmed that they had not been provided
9 with any record sheets for countersigning."

10 You go on to say:

11 "After the internal review, a report was issued on
12 8 February 2017 ..."

13 With some excitement, Mr Ho, we are going to look at
14 a document we've never looked at before, but don't get
15 too excited: B7/4516.

16 Now, you've probably heard or probably know, Mr Ho,
17 that in January 2017 going into February 2017, Mr Lumb
18 and his colleagues at Leighton provided or produced
19 an internal report into the bar cutting allegations;
20 yes?

21 A. 係，知道。

22 Q. As I understand it, the document we are just about to
23 look at -- it's B7/4516 -- is the MTR internal report.

24 A. 正確。

25 Q. Sort of the equivalent of the Leighton document, the
26 major difference being it's a lot shorter.

1 First of all, as we can see here from 4516, you and
2 Mr Kobe Wong were interviewed to assist in the
3 preparation of this report?

4 A. 正確。

5 Q. The review, it says, is to examine the construction
6 records to confirm that the steel reinforcement and
7 coupler for the EWL track slab have been installed in
8 accordance with the requirements of the quality
9 assurance and quality control regimes. That was the
10 objective.

11 Then we can see -- let's just look at the end of
12 it -- at 4520, the two authors of this report are
13 Mr Carl Wu, who we will be hearing from in the not too
14 distant future, and Mr Peter Fung?

15 A. 正確。

16 Q. We can see they date this 8 February 2017, two days
17 earlier than the final version of the Leighton report.

18 Did you get a chance of reviewing this report,
19 Mr Ho, back in February 2017?

20 A. 係有嘅。

21 Q. You were shown a copy of it?

22 A. 係。

23 Q. And the recommended follow-up actions are at
24 paragraph 4.3 at 4518. Do you see that?

25 A. 係，見到。

1 Q. What it says at the first bullet point there is:

2 "Obtain from Leighton the latest 'For Construction'
3 version of the ITP ... as described in the relevant
4 method statement", and then, importantly, "and confirm
5 that the construction records were consistent with the
6 requirements of the prescribed inspection and test
7 regime."

8 Mr Ho, to your recollection and knowledge, was that
9 follow-up action -- sorry, was that action followed up
10 or not?

11 A. 係，有嘅，因為我哋有ITP嘅，嗰陣時。

12 Q. Right. Did you discover whether or not the records were
13 consistent with that ITP?

14 A. "Record" 係指咩嘢record, sorry?

15 Q. Well, in this here, it says the action is to confirm
16 that the construction records -- construction records,
17 it's the words in this report -- were consistent with
18 the requirements of the inspection and test regime.

19 A. Sorry。係有嘅，冇錯，因為呢度係指啲RISC form，我哋嘅RISC form
20 個應該step係keep住係齊嘅，係跟足ITP嗰個hold point個要求嘅。

21 Q. So that's a reference to the RISC forms?

22 A. 係，正確。

23 Q. We can go on from there to the quality assurance scheme
24 of couplers. There's a reference to the QSP which we
25 have touched upon already, and then you or the report,

1 rather, sets out the key requirements of the QSP, which
2 we're familiar with. Then over the page, at 4519,
3 there's another heading "Recommended follow-up actions";
4 do you see that?

5 A. 見到嘅。

6 Q. At the second bullet point, it says:

7 "Confirm the frequency of Leighton and MTR
8 supervision were in compliance with the requirement of
9 the QSP, and were recorded on the record sheet
10 (appendix C of QSP)".

11 A. 係。

12 Q. And there was no record sheet, was there, Mr Ho, in
13 respect of the rebar -- starter bars connected to the
14 couplers for the purposes of the slab?

15 A. 正確。

16 Q. And the third bullet point says:

17 "Obtain confirmation from Leighton that their TCP
18 records could demonstrate full-time T3 supervision of
19 the mechanical coupler works per the BD requirement ..."

20 Did you ever obtain that confirmation, Mr Ho?

21 A. 我哋係有check過佢哋TCP record嘅，禮頓嗰個。

22 Q. And what was the result of that check?

23 A. 基本上係嗰陣時我哋check係冇問題嘅，係有TCP record嘅。

24 Q. Of a TP?

25 A. Of T3.

1 Q. All right.

2 Then at number 6 in the report, there's the "Control
3 of non-confirming" -- I think that should say
4 "non-conforming" -- "works", and there's a reference to
5 NCR157 under that heading; all right --

6 A. 係。

7 Q. -- which I'm not going to trouble you with.

8 Could I then just draw your attention to the
9 conclusion at 4520, where it says:

10 "It is concluded that, based on the above review of
11 the construction records, the steel reinforcement and
12 coupler for the EWL track slab ... had been installed in
13 accordance with the requirements of the [QA and QC]
14 regimes."

15 Is that a conclusion that you genuinely agreed with,
16 Mr Ho?

17 A. 呢個report因為就唔係我去prepare，個conclusion就唔係我draw嘅，
18 但係in general terms，我都係同意呢個conclusion嘅。

19 Q. Despite the fact that, as you accept, there were no
20 records by reference to appendix C to the QSP?

21 A. 係嘅，因為嗰陣時係問過我哋的幫辦，就佢要好肯定嗰陣時佢係fulfil咗
22 BD個要求。

23 Q. Right, even though you were not shown any such records
24 and you know such records do not exist now?

25 A. 係嘅，因為我一定要相信我哋幫辦去做--嗰陣時係做過inspection㗎嘛。

1 Q. Right. So you just relied on their say-so that they had
2 done the inspections, even though there were no physical
3 records?

4 A. 同埋我哋MTR嗰個internal quality system係用RISC form去記錄所
5 有--咁嗰個做得啱唔啱, 嗰陣時係有晒RISC form, for rebar fixing
6 work.

7 Q. All right. So, it's having spoken to the various
8 inspectors and the RISC forms combined?

9 A. Correct?

10 Q. All right. Now, could you please go to paragraph 50 of
11 your witness statement. Let's start at 49, I'm sorry,
12 which is at 335. You say:

13 "In or around early June 2018, after the media
14 reports on 30 May 2018 alleging defective steel works
15 and coupler installations in the diaphragm walls and EWL
16 slab, Leighton provided MTR with folders containing RISC
17 forms for each of the 32 bays, which attached certain
18 checklists entitled 'As-built for on-site assembly of
19 EWL slab to D-wall/slab couplers' ..."

20 Now, pausing there, Mr Ho -- prior to providing
21 those records or those checklists, they did in fact
22 provide a previous version or an earlier version, as
23 I understand it, which didn't have the words "As-built"
24 on it but had "Checklist"; do you recall that?

25 A. 係嘅, 冇錯。

26 Q. And it was those original checklists that found their

1 way or being attached to the RISC forms?

2 A. 係。

3 Q. And it was those checklists which were viewed by the
4 government officers who visited MTRC's offices in early
5 June this year?

6 A. 係。

7 Q. And only subsequently was their name changed from
8 "Checklist" to "As-built"?

9 A. 係，冇錯。

10 Q. All right.

11 You then go on in paragraph 50 to say this:

12 "Given that Leighton had never prepared any record
13 sheets or inspection logbook as required by the QSP ..."

14 And so, Mr Ho, just to get it clear, as I read your
15 evidence, you accept the proposition that such record
16 sheets and inspection logbook ought to have been
17 prepared by Leighton pursuant to the QSP?

18 A. 係，冇錯。

19 Q. You go on to say:

20 "... there was simply nothing for MTR to countersign
21 to fulfil the requirement under the QSP."

22 A. 正確。

23 Q. Now, you've given your evidence about the fact that you
24 assumed that such records would have been prepared.

25 Who, amongst the MTR personnel, would have known that

1 those records didn't exist at the time, in 2015-2016?

2 A. 我相信係幫辦。

3 Q. The inspectors?

4 A. 正確。

5 MR PENNICOTT: All right. We can ask them, as they are
6 coming soon.

7 Sir, I'm conscious of the fact that it must be about
8 4.26 or 4.27.

9 CHAIRMAN: If you are going to move on to a new topic --

10 MR PENNICOTT: I am. This is going to take a little while,
11 actually, so rather than pursue it, it's probably best
12 just to duck out at this stage.

13 CHAIRMAN: All right. Thank you. Good.

14 Mr Ho, you're giving your evidence at the moment.
15 We're adjourning now a little earlier than usual, but
16 we'll start tomorrow at 10.00, and so I would ask you to
17 return tomorrow.

18 Because you're in the middle of giving your
19 evidence, you're not entitled to discuss your evidence
20 with anybody else; okay?

21 WITNESS: Okay.

22 CHAIRMAN: Until that evidence is concluded. That's a thing
23 I tell all the witnesses.

24 WITNESS: Okay.

25 CHAIRMAN: So you must keep your evidence and everything
26 about it to yourself until it is completed.

1 WITNESS: Okay.

2 CHAIRMAN: Good. Thank you very much.

3 (4.28 pm)

4 (The hearing adjourned until 10.00 am the following day)

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