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<p>1 Thursday, 13 December 2018 2 (10.06 am) 3 MR CONNOR: Good morning, Mr Chairman. Good morning, 4 Professor. 5 The third of the witnesses on behalf of Atkins China 6 Ltd is sitting with us this morning. That's Mr WC Lee. 7 Mr Lee, you are Mr Lee Wan Cheung? 8 WITNESS: Yes. 9 MR CONNOR: And you are also known as WC Lee? 10 WITNESS: Yes. 11 MR CONNOR: Mr Lee, we are going to ask you to give the 12 affirmation, but just before you do so, I think you 13 would prefer to give your evidence in Cantonese but you 14 are able to assist the Commissioners in English as and 15 when required? 16 WITNESS: Yes. 17 MR CONNOR: Please. 18 MR LEE WAN CHEUNG (affirmed) 19 Examination-in-chief by MR CONNOR 20 MR CONNOR: Mr Lee, good morning again. 21 Mr Lee, you are a technical director for Meinhardt 22 Infrastructure & Environment Ltd? 23 A. Yes. 24 Q. But you formerly worked for Atkins China Ltd? 25 A. Yes.</p>	<p>1 page J4531, we then see your CV, running over several 2 pages to J4534. 3 A. Yes. 4 Q. Thank you. Is this the evidence which you have prepared 5 for the purposes of this Commission? 6 A. Yes. 7 Q. Thank you. Do you prepare and present that evidence in 8 your statement, as accompanied by your CV, to this 9 Commission? 10 A. Yes. 11 Q. And is it true to the best of your knowledge and belief? 12 A. Correct, true. 13 Q. Just for the sake of completeness, when you were working 14 with Atkins in relation to the project which the 15 Commission is considering, you were part of the detailed 16 design consulting team -- 17 A. That's correct. 18 Q. -- namely team A, working for MTRC? 19 A. Right. 20 Q. But is it also the case that from time to time, as the 21 work increased during the project, you also provided 22 some help and support to team B? 23 A. Yes. 24 Q. Just for the sake of completeness, in that regard, could 25 you have on the screen the statement of John Blackwood</p>
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<p>1 Q. And in that capacity you were an associate director? 2 A. Yes. 3 Q. And you were there, in Atkins China, in that role from 4 October 2013 until the end of September 2015? 5 A. That's correct. 6 Q. In that regard, you were mostly involved, over that 7 period, in working for an MTR project -- 8 A. Yes. 9 Q. -- namely the one that is being considered by this 10 Commission? 11 A. Yes. 12 Q. Thank you. 13 Would you have on the screen before you, please, 14 your witness statement, which is in bundle J6 and 15 item 22. 16 Do you recognise this as being your statement to 17 this Commission, Mr Lee? 18 A. Yes. 19 Q. We'll see that that begins on page J4523, and it 20 continues for some pages, up to and including J4529. 21 A. Yes. 22 Q. If we turn to that page, please, we'll see a date of 23 3 December and a signature. Is that your signature? 24 A. Yes. 25 Q. Thank you. If you continue in the same bundle to</p>	<p>1 and in particular the attachment to John Blackwood's 2 statement, JB-5, which is found at page J89. 3 Thank you very much. 4 This is a figure which is prepared and presented to 5 the Commission by Mr Blackwood. If you scroll down this 6 page, I think we see your name, Mr Lee, to the 7 right-hand side, under "Civil & Structural"? 8 A. Yes. 9 Q. That is you? 10 A. That's me, yes. 11 Q. Thank you very much. For the sake of completeness, if 12 we turn to page J90, which is the next page, we see 13 an organogram for I think what is team B, supporting 14 Leighton; do you see that? 15 Do you see that, sir? 16 A. Sorry ... 17 Q. There's a hard copy just being shown to you. 18 A. Yes. 19 Q. If you look to the far left-hand side, we see under 20 "Civil/Structures" your name under Mr Wilson's, "Wan 21 Cheung Lee"; do you see that, on the far left-hand side? 22 A. Yes. 23 Q. Thank you. That is you? 24 A. That's me. 25 Q. Thank you.</p>

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<p>1 Then finally, on J91, which is the next page, which 2 is the position as at October 2015, I think we see your 3 name again -- 4 A. Yes. 5 Q. -- under Mr Wilson, under team B? 6 A. Yes. 7 Q. That is reflective of the support that you were 8 providing to team B as the project progressed? 9 A. Yes. 10 Q. Thank you very much. Now, if I may stop there, at this 11 point, Mr Lee, that's all the questions I have for you 12 at this stage. You will, as we mentioned earlier on, be 13 giving your evidence primarily in Cantonese but 14 sometimes in English to help the Commissioners. 15 A. Yes. 16 Q. May I just ask you to give your evidence in Cantonese 17 slowly because it will be translated. 18 A. Okay. 19 Q. And give time for that to be translated -- 20 A. Yes. 21 Q. -- and we will help you with that as matters progress. 22 You have seen a little bit of these proceedings, but 23 just for your explanation, I can tell you that when 24 I finish in a few seconds, Mr Cheuk on behalf of the 25 Commission will be asking you some questions --</p>	<p>1 Q. You also tell us you were part of what we call team A of 2 Atkins? 3 A. Yes. 4 Q. There was some suggestion, for example, from Mr Buckland 5 of Leighton, that there was really no real distinction 6 between team A and team B so far as he was concerned. 7 I just wonder what is your comment in relation to that 8 suggestion. 9 A. I don't think it's true, actually. Team A is separate 10 to team B. But we just gave assistance to team B as the 11 design work died off during the later period in 2013 and 12 we're just helping out team B. 13 So it's not as what Mr Boulding suggests, there's no 14 difference between two teams. There is definitely 15 a difference. 16 MR BOULDING: Not Mr Boulding. 17 MR CHEUK: Mr Buckland. 18 A. Oh, Mr Buckland, sorry. I apologise. 19 Q. Of Leighton. 20 A. Okay. 21 Q. So your evidence is that when you responded to queries 22 from, for example, Leighton -- 23 A. Yes. 24 Q. -- you were still acting in the capacity of team A? 25 A. Yes.</p>	
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<p>1 A. Okay. 2 Q. -- and then some of the other counsel in this room may 3 have some questions for you. Most importantly, the 4 Chairman and the professor may have questions for you 5 from time to time, and if it is helpful I may have some 6 closing questions for you later on. 7 A. Okay. 8 MR CONNOR: With that, thank you very much and I will pass 9 you to Mr Cheuk. 10 Examination by MR CHEUK 11 MR CHEUK: Good morning, Mr Lee. 12 A. Good morning. 13 Q. My name is Calvin Cheuk, I'm one of the counsel for the 14 Commission. Thank you for coming here today to assist 15 the Commission. I will have a few questions for you 16 today; okay? 17 First of all, if we look at J6, your witness 18 statement, 4523. Here, first of all, you explain to us 19 you worked for Atkins from October 2013 to September 20 2015. 21 A. Yes. 22 Q. In paragraph 3 in particular, you explain to us that you 23 initially responded to queries from MTRC, and later on 24 also from Leighton; is that correct? 25 A. Yes.</p>	<p>1 Q. And only to provide assistance -- 2 A. Correct. 3 Q. -- to Leighton? 4 A. Yes. 5 Q. But if that's the case, how -- let me rephrase again -- 6 because what we heard, the proper procedure from 7 Mr Blackwood was that team A would review and comment on 8 the design of team B. That's the original intention. 9 A. Right. 10 Q. So if, at the very beginning, when Leighton raised 11 a query, instead of letting team B to have a go at it 12 first, and you, as a member of team A, directly and 13 immediately responded to that query without waiting for 14 team B to respond to it first? 15 A. Yes. Which query you refer to? 16 Q. I will take you to one example, TQ33. If we look at one 17 example, B5/2986. This is TQ33. 18 A. Right. 19 Q. We can see -- we can go down, we can see it's raised by 20 Mr Buckland -- 21 A. Yes. 22 Q. -- of Leighton. Then if we go to 2997 -- if we can go 23 down again and carry on to go down -- we see that's your 24 response. 25 A. Yes.</p>	

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<p>1 Q. So you are saying that you responded to this query as 2 a member of team A? 3 A. Yes. 4 Q. But shouldn't this query be responded by team B? 5 A. Yes, but already responded earlier via email. I just 6 simply complete the question, so I just complete the TQ 7 and then issue back to the contractor. 8 Q. But am I right in understanding that the normal 9 procedure would be for team B to fill in the response in 10 this query, in this kind of query raised by Leighton? 11 A. Yes. 12 Q. And then the response or any suggestion would be passed 13 to team A for further checking and review? That would 14 be the normal intended -- 15 A. Normally, yes. 16 Q. But for example, in this case, you, as a member of 17 team A, actually already stepped into a direct response. 18 A. Maybe I did too quickly, probably. 19 Q. Can I also ask you, how did you tell yourself, when you, 20 for example, were responding to this query, there is -- 21 separate yourself from -- let me rephrase again. 22 How did you tell yourself that you are actually 23 acting in the capacity -- let me try again. 24 Did you receive any comments from team B first, 25 before you responded to this TQ?</p>	<p>1 A. The cast against 2, so it must be touching 2, is it? 2 Q. Yes. Can you explain -- if we use the elements 1, 2 and 3 3 again, can you explain to me, when you use the word 4 "monolithically", what exactly do you mean? 5 A. Well, at the time of the design, the EWL slab, if that's 6 got to be cast, it must be cast together with the OTE 7 slab, now, to provide the full tension anchorage, in 8 order to get the assumption work. 9 Q. Yes. Can you slow down, please. 10 A. Yes, okay. 11 So the EWL slab will be cast together at the same 12 time with the OTE slab, and that's done to get the 13 design assumption work. 14 Q. You say the EWL slab will be cast together at the same 15 time with the OTE slab. So you are talking about 16 element 1, that's the EWL slab -- 17 A. Yes. 18 Q. -- and the OTE slab, that's element 3? 19 A. Yes. 20 Q. 1 and 3 to be cast at the same time? 21 A. Correct. 22 Q. How about 2? Will you need to touch 2, ie the top part 23 of the D-wall, when you say they cast at the same time? 24 A. No. My understanding, the D-wall is already there, and 25 it's cast together to make it one structure.</p>
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<p>1 A. I can't remember exactly, but it is some time ago, 2 whether I get a comment on that or not. 3 Q. Let's move on to a slightly different topic. You, in 4 your evidence -- if we go to J6/4529, in paragraph 39, 5 you say here, "I was not aware of any trimming of the 6 D-wall" -- during your working for Atkins; correct? 7 A. Correct. 8 Q. If we also go to 4526 and paragraph 22 -- maybe the next 9 page, 4527, paragraph 23 -- you also tell us: 10 "By monolithically, I meant the OTE wall and the EWL 11 slab on each side of the D-wall cast at the same time to 12 ensure full tension anchorage for the 3m EWL slab." 13 So what I would now try to discuss with you is 14 really this topic about casting monolithically; okay? 15 A. Mm-hmm. 16 Q. I think we can conveniently say there are three elements 17 in that connection between EWL slab, D-wall and the OTE. 18 A. Yes. 19 Q. We can separate it. Let's call EWL slab the first 20 element; the D-wall is the second element; and the OTE 21 slab is the third element. 22 What I understand your evidence here is that by 23 "monolithically", your understanding is that 1 and 3 24 should be cast at the same time without touching 2; do 25 I understand your evidence correctly?</p>	<p>1 Q. So your understanding is that 1 and 3 will be cast at 2 the same time, but there will be no trimming of 3 D-wall -- 4 A. Correct. 5 Q. -- during the process? 6 A. That's right. 7 Q. Now, I might take you to some documents -- 8 A. Okay. 9 Q. -- to see if you can assist us on understanding of this 10 word "monolithic". 11 If we go to F34, page 23939, we see -- in the 12 middle, we see there's an email. 13 Can we go up again a little bit. 14 It's dated 28th -- can we go down a little bit -- 15 yes, 28 February, 1.11 pm, that's from David Wilson to 16 Betty Ng? 17 A. Mmm. 18 Q. David Wilson was Team B of Atkins, right? 19 A. Yes. 20 Q. And Betty Ng belongs to Leighton? 21 A. Yes. 22 Q. It's attaching a review of package of some design 23 reports. 24 First of all, have you seen this email before? 25 A. My name is on the list?</p>

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<p>1 Q. No, I don't see your name on the list.</p> <p>2 A. Yeah, so --</p> <p>3 Q. One --</p> <p>4 A. -- perhaps I didn't have -- perhaps I didn't see it,</p> <p>5 because it's not addressed to me.</p> <p>6 Q. Yes. But if we go to F34/23946, we can see the design</p> <p>7 report attached to the email, and what we can see</p> <p>8 here -- first of all, it says, "Prepared by SR". Who is</p> <p>9 "SR"; do you know?</p> <p>10 A. (Shook head).</p> <p>11 Q. You don't, okay.</p> <p>12 And "Checked by ST"; do you know who is "ST"? You</p> <p>13 don't. But if there is a logo of Atkins, they should</p> <p>14 belong to -- they should work for Atkins?</p> <p>15 A. It doesn't ring a bell.</p> <p>16 Q. Okay. We see it's dated 25 February 2015; right? Do</p> <p>17 you see the date?</p> <p>18 A. Yes.</p> <p>19 Q. If we go down to the next page, and another page --</p> <p>20 yes -- if we go to this page, it explains this report is</p> <p>21 a summary.</p> <p>22 If we go down to the middle -- yes -- it says:</p> <p>23 "However as the slab reinforcement has been made</p> <p>24 continuous over the D-wall support without proper</p> <p>25 anchorage into the D-wall for panel EH107, it is</p>	<p>1 reviewed by David Wilson, and can we go up a little bit,</p> <p>2 it is approved by Mr McCrae. We know that David Wilson</p> <p>3 belongs to team B.</p> <p>4 A. Yes.</p> <p>5 Q. If we go to 106, for example, we see there's a paragraph</p> <p>6 which mentions -- provides:</p> <p>7 "Secondary measures of provision of additional rebar</p> <p>8 at mid-span due to missing U-bar in diaphragm wall."</p> <p>9 Does it ring any bell to you? Have you seen this</p> <p>10 report?</p> <p>11 A. No.</p> <p>12 Q. I see.</p> <p>13 A. I can't remember.</p> <p>14 Q. I see.</p> <p>15 A. It does ring a bell, but I just can't remember the exact</p> <p>16 content in that report.</p> <p>17 Q. Okay. If we go to the next page, 107, we see there's</p> <p>18 a figure 1.4, which refers to the rebar arrangement at</p> <p>19 the top of the diaphragm wall; okay?</p> <p>20 A. Mmm.</p> <p>21 Q. We see there's a hatched area, and the annotation of the</p> <p>22 hatched says "OTE and EWL slab to be concreted</p> <p>23 concurrently". We see the hatched area covers, from the</p> <p>24 left-hand side, the OTE slab, the top part of the</p> <p>25 diaphragm wall, and also, on the right-hand side, the</p>
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<p>1 proposed to demolish the top portion of D-wall and add</p> <p>2 the required number and diameter of rebar as per design</p> <p>3 drawings and achieve the full anchorage length with the</p> <p>4 D-wall vertical reinforcement. For details refer to</p> <p>5 attached sketch."</p> <p>6 Would you agree with me what this proposal suggested</p> <p>7 here was in response to the problem arising from the</p> <p>8 lack of anchorage and missing U-bar?</p> <p>9 A. I'm not sure because I've never seen this report.</p> <p>10 Q. I see, you've never seen this report before?</p> <p>11 A. So I can't comment on it, sorry.</p> <p>12 Q. It's okay. But we see there's a mention of a proposal</p> <p>13 to demolish the top part of the D-wall here. We do see</p> <p>14 that. But you were not aware of that?</p> <p>15 A. No.</p> <p>16 Q. Now if we can move on to J1/92, now we come to May 2015</p> <p>17 This is a design report prepared by Atkins called</p> <p>18 TWD-004B2.</p> <p>19 You can take it from me that it's prepared by</p> <p>20 team B.</p> <p>21 A. (Nodded head).</p> <p>22 Q. Did you read the report at the time?</p> <p>23 A. I don't even know what's in there, actually. Can you</p> <p>24 look into -- just look at the front page, I just --</p> <p>25 Q. Yes, we can go to page 94, we see, first of all, it's</p>	<p>1 EWL slab.</p> <p>2 Would you agree, what it suggests to me is that,</p> <p>3 reading from this figure, the top part of the diaphragm</p> <p>4 wall would need to be concreted together with the EWL</p> <p>5 slab and the OTE slab in one piece?</p> <p>6 A. That's what the figures show, but not my original design</p> <p>7 intention.</p> <p>8 Q. So far as you can tell, you did not see it before?</p> <p>9 A. I haven't seen it before, yeah.</p> <p>10 COMMISSIONER HANSFORD: Sorry, what was that answer, "what</p> <p>11 the figures show, but not my" -- something "design"?</p> <p>12 A. Oh, my original design is not like that. The D-wall was</p> <p>13 already constructed.</p> <p>14 COMMISSIONER HANSFORD: You said "not my original design</p> <p>15 intention", did you?</p> <p>16 A. No, this is not my design, sorry, sorry. I don't know</p> <p>17 who did this.</p> <p>18 COMMISSIONER HANSFORD: That's fine. I'm trying to</p> <p>19 understand what's on the [draft] transcript. It says</p> <p>20 "not my ...", and then there's a gap, "... design</p> <p>21 intention".</p> <p>22 MR CHEUK: I think he said "not my design intention".</p> <p>23 COMMISSIONER HANSFORD: "Not my original design intention"?</p> <p>24 MR CHEUK: "Not my original design intention".</p> <p>25 COMMISSIONER HANSFORD: Thank you.</p>

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<p>1 MR CHEUK: Could I just clarify with you: what you are 2 saying, you would agree with me this figure suggests the 3 three parts, elements 1, 2 and 3, should be cast in one 4 piece, but this was not your original design intention? 5 A. Yes. 6 Q. If we go up also to page 142, this is the construction 7 sequence contained in the TWD design report. 8 The highlighted part, if I may draw to your 9 attention -- it says: 10 "The top of diaphragm wall panel will be trimmed to 11 the lowest level of top rebar for the EWL slab (minimum 12 420 millimetres below the top level of EWL slab). 13 The top rebar of EWL slab at the D-wall panel will 14 then fix to the top rebar of OTE slab to achieve full 15 tension laps. 16 The EWL slab and OTE slab will be casted 17 concurrently with temporary openings around the existing 18 columns and pile caps." 19 Would you agree, again, with me that according to 20 what is stated here, what was contemplated at the time 21 of this -- in this report was there would first be 22 demolition of the top part of the D-wall, and then the 23 three elements -- ie the EWL slab, the top part of the 24 D-wall, and the OTE wall -- will be cast in one piece? 25 A. According to that, yes.</p>	<p>1 So that's a reference to PNAP APP-68. Are you 2 familiar with APP-68, PNAP? 3 A. Not offhand, no. 4 Q. If we go to the PNAP APP-68, it's at bundle C16/10677. 5 We see this is the PNAP APP-68. If we can go to 6 10773 -- if we go to 10776 -- 10786, sorry, 10786 7 first -- if we look at paragraph 2: 8 "The construction of cantilevered structures should 9 satisfy the following requirements". 10 Then (a) refers to: 11 "All cantilevered structures should be cast 12 monolithically with and at the same time as the directly 13 supporting members. Construction joints should not be 14 located along the external edge of the supporting 15 members." 16 First of all, my understanding of this PNAP is that 17 the word "monolithically" again means "in one piece". 18 Is that also your understanding? 19 A. But this is a little bit different here. Our design at 20 that time was trying to provide full tension anchorage, 21 and that's why we needed the OTE slab and wall to be 22 cast together, to fulfil that design requirement. 23 That's what "monolithic" mean at the time I prepared 24 that sketch. 25 Q. Yes. Mr Lee, I'm certainly not criticising you in any</p>
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<p>1 Q. And you did not have knowledge at the time about this? 2 A. No. 3 Q. Okay. Now, if we come to July 2015, if we can go to 4 B10/7255. 5 This, we can see, is an email from Mr McCrae of 6 Atkins to Mr Brendan Reilly of MTRC. 7 A. Yes. 8 Q. Mr McCrae says: 9 "Following your discussion with CK Chan (RSE) ..." 10 Who also works for Atkins; correct? 11 A. Mmm. 12 Q. "... on whether it is necessary to cast the EWL slab and 13 OTE monolithically I confirm his conversation." 14 Okay? Then: 15 "[This] is in the BD letter ..." 16 Maybe pausing here, you were not copied in in this 17 email. 18 A. Yes. 19 Q. Again, can I ask you, did you read the email at the 20 time, or is this the first time you read this email? 21 A. This is the first time I see this email, yes. 22 Q. Okay. If we look at the second paragraph: 23 "[This] is in the BD letter dated 4 December 2014] 24 they stated in comment A3 that construction joint should 25 be cast in accordance with PNAP APP-68."</p>	<p>1 way. I'm really trying to find out the word 2 "monolithic" understood by different people at different 3 times. Different people might interpret the word 4 differently. 5 A. Yes. 6 Q. I'm really trying to find out the fact. 7 A. Yes, I understand, yes. 8 Q. But what -- if we go -- for example, if we look at this 9 PNAP, it contains the word "monolithic"? 10 A. Yes. 11 Q. And this PNAP was expressly referred to in the previous 12 email I took you to? 13 A. Yes. 14 Q. And then if we look at, for example, the diagram 15 C16/10772 -- 16 A. Sorry, can I just correct something? 17 Q. Yes. 18 A. This PNAP here refers to cantilevered slab exposed to 19 weather. 20 Q. Yes. 21 A. Our design is covered by the station above. It's not 22 exposed to weather. 23 Q. Yes. I understand your point. You are saying that -- 24 A. Maybe through this BD. 25 Q. Yes. You are saying that this might not be directly</p>

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<p>1 relevant to the design for the project?</p> <p>2 A. At the time, yes, yes, especially when we talk about</p> <p>3 anchorage length rather than cantilevered structure,</p> <p>4 which -- that's referred to.</p> <p>5 Q. Yes, but I'm trying to -- I'm not trying to argue with</p> <p>6 you whether that's right or not. I'm trying to --</p> <p>7 because the previous email referred to this PNAP and the</p> <p>8 word "monolithic". What I'm trying to ascertain is how</p> <p>9 people understood the word "monolithic", in that</p> <p>10 context.</p> <p>11 A. Um ...</p> <p>12 Q. So -- I will put the question to you later, but I'm</p> <p>13 going to take you to the context of the question first;</p> <p>14 okay?</p> <p>15 A. Okay.</p> <p>16 Q. If we can go to page 10773, this is a diagram in the</p> <p>17 PNAP illustrating the monolithic concreting; correct?</p> <p>18 A. (Nodded head).</p> <p>19 Q. So it appears to me that the word "monolithic" as used</p> <p>20 in this PNAP really means "in one piece"; would you</p> <p>21 accept that, at least so far as this PNAP is concerned?</p> <p>22 Would you understand the concept in that way?</p> <p>23 A. Yes.</p> <p>24 Q. Now we are going back to the previous email, B10/7255.</p> <p>25 Mr Derek Ma was asked questions on this email by my</p>	<p>1 PNAP APP-68, actually it clearly stated that there was</p> <p>2 a definition for 'monolithically'. So, if</p> <p>3 I cross-reference PNAP APP-68, it is clear that at that</p> <p>4 time and even now I can say that 'cast monolithically'</p> <p>5 means in one go, that there would be no joints in</p> <p>6 between."</p> <p>7 This is how Mr Derek Ma understood or still</p> <p>8 understands that email to mean. Essentially, he says</p> <p>9 casting monolithically, he takes it to mean 1, 2 and 3</p> <p>10 in one piece, subject to some exemptions mentioned in</p> <p>11 that email.</p> <p>12 Now, if we can go back to that email and let you</p> <p>13 have a look at it again -- B10/7255 -- I know you did</p> <p>14 not read that email at the time, but now having the</p> <p>15 chance of reading the email now, would you agree that</p> <p>16 Mr Derek Ma's interpretation was a fair interpretation?</p> <p>17 A. If you look at PNAP APP-68, that refers to structures</p> <p>18 exposed to weather. Our structure is under cover, so</p> <p>19 may not directly apply to this case. So if does not</p> <p>20 apply in that case, "monolithically" may have different</p> <p>21 meaning, in this sense. But in my design, my intention</p> <p>22 is very clear: the EWL slab 3 metres cast together with</p> <p>23 the OTE.</p> <p>24 Now, how other people interpret it I don't know, but</p> <p>25 my intention is that.</p>
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<p>1 learned friend Mr Connor. His evidence we can find is</p> <p>2 at Day 7 -- can we go to the transcript -- Day 27,</p> <p>3 page 133, line 3, starting from line 3. Mr Ma says as</p> <p>4 follows:</p> <p>5 "Just from looking at this email" -- that is the</p> <p>6 email we have just discussed -- "I could see clearly</p> <p>7 that Rob was saying -- well, as you can see in the first</p> <p>8 sentence, the EWL slab and OTE must be cast</p> <p>9 monolithically. But underneath he put in some</p> <p>10 exemption -- well, this is my interpretation -- that is,</p> <p>11 from EM72 to EH74, because of certain reasons, maybe</p> <p>12 on site this could not be done, that is, they would not</p> <p>13 be able to comply with the requirement of cast</p> <p>14 monolithically. That is why they reviewed waterproofing</p> <p>15 details or related hydrophilic strips. He thought that</p> <p>16 this could be accepted by BD. So, in the circumstance,</p> <p>17 they gave exemption to the CM team at that time, that at</p> <p>18 the points mentioned by him, there could be cast in</p> <p>19 advance, and that is with a clear understanding of the</p> <p>20 OTE, meaning that they would not be able to comply with</p> <p>21 the requirement of monolithic casting."</p> <p>22 If we can carry on, next:</p> <p>23 "This is my understanding of the email.</p> <p>24 Question: Thank you very much.</p> <p>25 Answer: Sorry, plus he particularly said that the</p>	<p>1 Q. I understand.</p> <p>2 COMMISSIONER HANSFORD: Sorry, Mr Lee, you say "how other</p> <p>3 people interpret it". Isn't it rather important that</p> <p>4 the design intent is clearly understood by those that</p> <p>5 are going to build things?</p> <p>6 A. Yes, sir, I understand that, but if I want that -- at</p> <p>7 that time, I was told the D-wall was cast and we don't</p> <p>8 want to do any abortive work. That's the instruction</p> <p>9 I was asked to consider, when you consider how to</p> <p>10 resolve that missing U-bar issue and get the full</p> <p>11 tension lap.</p> <p>12 Now, if I want a D-wall to be demolished, it will be</p> <p>13 shown on my drawings. The other thing I think of, if we</p> <p>14 want it to be monolithically, the OTE slab is 1 metre</p> <p>15 thick, not 420.</p> <p>16 COMMISSIONER HANSFORD: Yes, I know.</p> <p>17 A. If it's more than 420, my assumption is you take it down</p> <p>18 all the way to the bottom, 1 metre, so you get that</p> <p>19 shape (demonstrating), rather than going like that</p> <p>20 (demonstrating), isn't it? That's what I think.</p> <p>21 Another thing, if my instruction is not very clear,</p> <p>22 I'm pretty sure there are so many channels to ask, such</p> <p>23 as TQ. Now, if that is the case, why did they issue</p> <p>24 TQ33? If they are going to demolish that, then there's</p> <p>25 no problem with have 20 bolts into that short space. Is</p>

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<p>1 that logical to look at it that way?</p> <p>2 MR CHEUK: But, Mr Lee, if we read the email here, would it</p> <p>3 be fair to say, rightly or wrongly, the people within</p> <p>4 the loop of this email probably did not understand the</p> <p>5 word "monolithic" as you understand?</p> <p>6 A. Yes.</p> <p>7 Q. Yes, right?</p> <p>8 A. Yes, but as I said --</p> <p>9 Q. I'm not saying you are wrong.</p> <p>10 A. -- they can always ask questions -- no, I'm not saying</p> <p>11 anybody is right or wrong, but what I'm saying is, if</p> <p>12 you are not clear what people say, you ask. If I don't</p> <p>13 understand what you said, I will ask you to repeat</p> <p>14 again. This is logical.</p> <p>15 COMMISSIONER HANSFORD: Yes, that may be your thinking, and</p> <p>16 I understand that, but actually, if somebody has a clear</p> <p>17 idea or they think they have a clear idea of what's been</p> <p>18 said, but actually it's a different interpretation of</p> <p>19 what's been said than was your intent, then why would</p> <p>20 they ask a question? They've got clear understanding.</p> <p>21 A. Yes, true. But then, if you look at TQ33 which we keep</p> <p>22 referring to, that question is asked: how are we going</p> <p>23 to bolt that bar, 33 diameter bar, in a short space?</p> <p>24 You just can't do it, with a 90-degree bend, short</p> <p>25 space. Now, if that's the interpretation, saying that</p>	<p>1 A. Can you show me a bit more of this report? I just have</p> <p>2 the front page, sorry.</p> <p>3 Q. Let's go to the executive summary page, 7271, this is</p> <p>4 the executive summary page.</p> <p>5 In front of you there will be a hard copy. You can</p> <p>6 flip through it if necessary.</p> <p>7 A. Okay.</p> <p>8 Q. Have you seen this document before?</p> <p>9 A. No, no, I haven't.</p> <p>10 Q. Again, if we go to 7277, this is paragraph 1.3.5 that</p> <p>11 I took you to in the last version.</p> <p>12 A. Yes.</p> <p>13 Q. But this has been amended and shortened. I presume you</p> <p>14 do not know the reason of this amendment.</p> <p>15 A. I don't remember, sorry.</p> <p>16 Q. If we go to 7312, this is section 6.2. The previous</p> <p>17 version I have already taken you to, the same wording</p> <p>18 was retained here. It talks about the trimming of the</p> <p>19 top of the D-wall and casting concurrently the three</p> <p>20 elements together, in one piece.</p> <p>21 You have not seen this document before?</p> <p>22 A. No.</p> <p>23 Q. I wonder -- this report was prepared by B team. Was it</p> <p>24 ever given to team A for approval before submission; no?</p> <p>25 A. No. I haven't seen this report.</p>
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<p>1 my interpretation of "monolithic" means I've got to trim</p> <p>2 that off, then that question doesn't exist, and they</p> <p>3 still ask that question.</p> <p>4 COMMISSIONER HANSFORD: All right. I'm sure Mr Cheuk is</p> <p>5 going to take us to TQ33 before too long, so I will</p> <p>6 leave it at this point.</p> <p>7 MR CHEUK: I'm following the chronology, so we are now at</p> <p>8 25 July 2015.</p> <p>9 Now if we can go to B10/7256, we now come to 9 July,</p> <p>10 a few days later, 2015. This is a submission by MTRC to</p> <p>11 the BD of -- if we can -- at the cover page, this is</p> <p>12 a submission of the TWD report to the BD.</p> <p>13 Again, were you involved in the preparation of the</p> <p>14 TWD report? Probably no, I presume.</p> <p>15 A. I can't remember, sorry.</p> <p>16 Q. Let me go to the next page.</p> <p>17 If we go to the first page, 7262, you see this is</p> <p>18 the cover page of the temporary design report. It's the</p> <p>19 same report that we've seen before, which was TWD-004B2.</p> <p>20 And this report is an updated version. That's why it's</p> <p>21 called TWD-004B3.</p> <p>22 Your previous answer to 004B2 was that you don't</p> <p>23 recall you've seen that document. That's why now I'm</p> <p>24 asking you this question again: do you have any</p> <p>25 recollection you've seen this document before?</p>	<p>1 Q. But looking at the documents I have taken you to from</p> <p>2 February 2015 to now July 2015, would you agree that</p> <p>3 from those documents it appears that Atkins, as a group</p> <p>4 of designers, was using the word "monolithically" or</p> <p>5 "concurrently" interchangeably, to mean essentially the</p> <p>6 same thing, casting in one piece? Would you agree with</p> <p>7 that statement?</p> <p>8 A. In my design, as I said before, "monolithic" in that</p> <p>9 sense is just two: 1 and 3.</p> <p>10 Q. I agree with your design, because -- now you have had</p> <p>11 the chance of reading this document, I'm just wondering,</p> <p>12 would you accept that -- from the face of the documents</p> <p>13 that I've taken you to, what they really suggest is --</p> <p>14 A. Sorry, I can't interpret other people's thinking, but</p> <p>15 looking at that, that's what it meant.</p> <p>16 Q. Now I come to 30 July 2015, B10/7322. This is the</p> <p>17 submission by MTRC to the BD of the PWD report prepared</p> <p>18 by team A. You were involved in the preparation of the</p> <p>19 PWD report; correct?</p> <p>20 If you need some reminder, I can take you to B7324</p> <p>21 first. This is the front page of the PWD report, and</p> <p>22 then 7326 we see your signature, from the first issue in</p> <p>23 June to the final issue submitted to the BD in July.</p> <p>24 A. Yes.</p> <p>25 Q. So you were the reviewer of this report?</p>

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<p>1 A. Yes.</p> <p>2 Q. Am I right in understanding that the main purpose of</p> <p>3 this report was to justify the change constructed by</p> <p>4 Intrafor, ie the lack of anchorage, the missing U-bar</p> <p>5 change?</p> <p>6 A. Yes, I think this primarily addresses the missing U-bar.</p> <p>7 Q. Addresses the missing U-bar issue?</p> <p>8 A. Yes.</p> <p>9 Q. So that MTRC could obtain the certificate of completion</p> <p>10 in their BA14 submission?</p> <p>11 Do you recall the context? This is the time when</p> <p>12 MTRC making an application for certificate of</p> <p>13 completion. This is in July 2015.</p> <p>14 A. I don't remember, sorry, no.</p> <p>15 Q. Thank you. If we go to B10/7333, we can find</p> <p>16 a paragraph here concerning the modification of rebar</p> <p>17 connection slab/D-wall, and it states:</p> <p>18 "To provide the full tension anchorage for the slab</p> <p>19 rebar, the rebar are extended into the OTE slab/wall</p> <p>20 with full tension anchorage lap length, end of the bar</p> <p>21 with a standard bend-up hook as recommended in the</p> <p>22 Concrete Code 2013. To comply with this principle, the</p> <p>23 OTE slab/wall must be concrete</p> <p>24 monolithically/concurrently (ie at the same time) with</p> <p>25 the 3 metre EWL slab and provide adequate lap length</p>	<p>1 CHAIRMAN: As a matter of interest, how does that assist, if</p> <p>2 you've got it poured at the same time but not actually</p> <p>3 connecting with each other, but having something in</p> <p>4 between which has already been poured and has already</p> <p>5 dried and settled? How do you get that tension benefit?</p> <p>6 A. But the purpose is -- the rebars on the top of the EWL</p> <p>7 slab is in tension, and to provide the full anchorage,</p> <p>8 original design was anchored back to the D-wall, but</p> <p>9 somehow that was missed. So it provides -- the only way</p> <p>10 now remained, without any abortive work, to get the full</p> <p>11 tension anchorage is to cast the anchorage bar into the</p> <p>12 OTE wall. So that wall must be -- the OTE wall should</p> <p>13 be cast at the same time as that, not before -- you</p> <p>14 could cast before but not after. It must be either the</p> <p>15 OTE wall first, or together.</p> <p>16 CHAIRMAN: All right. I don't really understand that, but</p> <p>17 I understand it sufficiently to get an intellectual</p> <p>18 understanding of what's the requirement. Thank you.</p> <p>19 COMMISSIONER HANSFORD: Mr Lee, I think it probably is quite</p> <p>20 important that the Chairman does understand this. Are</p> <p>21 you saying that the way that's achieved is via the</p> <p>22 couplers, so you've got the reinforcement from area 1 --</p> <p>23 A. Yes.</p> <p>24 COMMISSIONER HANSFORD: -- and you've got the reinforcement</p> <p>25 in area 3, and the connection between 1 and 3 is made</p>
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<p>1 details for future OTE wall construction, detail refer</p> <p>2 to Appendix F of this report."</p> <p>3 The next page, 7334, again there's another reference</p> <p>4 of "monolithic". At the bottom, the second-last</p> <p>5 paragraph:</p> <p>6 "To comply with the full tension anchorage lap</p> <p>7 length ... from the slab rebar principle, the OTE wall</p> <p>8 must be concrete monolithically ... with EWL ... slab</p> <p>9 and the wall rebar to extend with full lap length ...</p> <p>10 provision from the OTE wall construction joint ... for</p> <p>11 future rebar connection."</p> <p>12 As I understand your evidence, your understanding of</p> <p>13 the word "monolithically" or "concurrently" used in this</p> <p>14 report, which you were involved in, refers to only</p> <p>15 casting of 1 and 3 at the same time?</p> <p>16 A. Yes.</p> <p>17 Q. But not 1, 2, 3 on one piece?</p> <p>18 A. Correct, yes.</p> <p>19 CHAIRMAN: Sorry, do 1 and 3 connect with each other at any</p> <p>20 point?</p> <p>21 MR CHEUK: No. It has a wedge, so-called. The D-wall is</p> <p>22 a wedge.</p> <p>23 CHAIRMAN: That's right. So 2 is in between them, so to</p> <p>24 speak?</p> <p>25 MR CHEUK: Yes.</p>	<p>1 through --</p> <p>2 A. The existing couplers.</p> <p>3 COMMISSIONER HANSFORD: -- the existing couplers?</p> <p>4 A. Yes.</p> <p>5 COMMISSIONER HANSFORD: That's your point, isn't it?</p> <p>6 A. Yes.</p> <p>7 CHAIRMAN: Ah.</p> <p>8 COMMISSIONER HANSFORD: So they are connected --</p> <p>9 A. They are connected.</p> <p>10 COMMISSIONER HANSFORD: -- through the reinforcement?</p> <p>11 A. Through the reinforcement, the couplers.</p> <p>12 COMMISSIONER HANSFORD: That is the point you are making?</p> <p>13 A. Yes.</p> <p>14 CHAIRMAN: Ah, so they are connected. So the concrete may</p> <p>15 not be connected when it's poured concurrently, but the</p> <p>16 reinforcement is.</p> <p>17 A. The concrete, they should have trimmed the side to make</p> <p>18 a good construction joint, so they are actually</p> <p>19 connected, in a sense, yes.</p> <p>20 CHAIRMAN: All right.</p> <p>21 COMMISSIONER HANSFORD: You see, I have a little bit of</p> <p>22 difficulty, because for me "concurrent" is a very clear</p> <p>23 word which means -- it's a time-based word, it's</p> <p>24 a temporal word, it means "at the same time". Whereas</p> <p>25 for me, "monolithic" is a spatial word, a physical term,</p>

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<p>1 and it means "in one piece". And "in one piece", which 2 is physical, and "at the same time", which is 3 time-based, are two different things. Unless I have 4 misunderstood those two terms.</p> <p>5 A. Yeah, actually, when the concept went out to MTR, in 6 fact Andy Leung actually called me up and he said, "Just 7 ensure nobody misunderstands what you've tried to say 8 here." He asked me to write "cast together at the same 9 time". That's why the words "cast together at the same 10 time" actually appear in the report.</p> <p>11 COMMISSIONER HANSFORD: "Cast together at the same time"? 12 A. Yes.</p> <p>13 MR CHEUK: It doesn't help that much, does it? "In one 14 piece" of course includes "at the same time".</p> <p>15 COMMISSIONER HANSFORD: I can see it may help a little bit, 16 but two things can be done together at the same time; 17 does that mean they are joined? I don't know. All I'm 18 really suggesting here, Mr Lee --</p> <p>19 A. Yes.</p> <p>20 COMMISSIONER HANSFORD: -- perhaps you'd like to agree with 21 me or disagree with me -- is there could be a little bit 22 of ambiguity.</p> <p>23 A. Yes. I probably agree, yes. We try to eliminate that, 24 that's why we put "at the same time".</p> <p>25 COMMISSIONER HANSFORD: Well, you may have helped.</p>	<p>1 "The rebar cannot provide 30 diameter 2 1200 millimetre anchorage length for some panels." 3 Then we look at your response. I only need you to 4 focus on the last sentence. You say: 5 "Please be reminded that in order to comply with the 6 design assumption, the OTE wall must be concrete/pour 7 together at the same time (monolithically) with the 8 3 metre EWL slab and the wall to extend to 9 300 millimetres above the chamfer section of the wall to 10 provide the kicker for the OTE wall above."</p> <p>11 Again, your understanding at the time was telling 12 Leighton and everybody that 1 and 3 should be cast at 13 the same time, without trimming of 2?</p> <p>14 A. Yes, that was my intention.</p> <p>15 Q. But now, with the benefit of hindsight, with all the 16 documents I have taken you to in a chronological way, 17 would you agree that first of all, that word was not 18 used in a very -- not in the most clear way, to make 19 sure everybody understands what you really intended?</p> <p>20 A. Probably, yes.</p> <p>21 Q. Would you also agree that Atkins, as a group of 22 designers, have actually used the words "monolithically" 23 and "concurrently" in a rather confusing way?</p> <p>24 A. If you look at the drawing at the same time, I don't 25 think it should confuse anybody, because we issued that</p>
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<p>1 CHAIRMAN: The problem with "at the same time", without 2 getting diverted into semantics, is that if you are 3 pouring monolithically, you are clearly pouring 4 everything at the same time.</p> <p>5 COMMISSIONER HANSFORD: Exactly.</p> <p>6 CHAIRMAN: I think that's -- yes.</p> <p>7 A. Okay.</p> <p>8 MR CHEUK: Yes. Without being too difficult on you, I will 9 move on to the TQ that you have mentioned. 10 If we go to B5/2986 again, this is the TQ33 that you 11 mentioned; right? 12 And, if we go to 2997, that's the page includes your 13 response; correct?</p> <p>14 A. Yes.</p> <p>15 Q. If we look at the query first, the first one is: 16 "The L-shape bar cannot be fixed onto the couplers 17 in the D-wall." 18 Right?</p> <p>19 A. Yes.</p> <p>20 Q. The second one is: 21 "The L-shape bar that lapped with the horizontal bar 22 does not have enough lapping lengths." 23 The third one is: 24 "The rebar for the chamfer cannot be fixed." 25 And the last one, there's a typo:</p>	<p>1 together with the sketch. The sketch clearly is showing 2 the bars there with the couplers on.</p> <p>3 Now, if we think it monolithically together, as 4 I said before, we should have removed those couplers and 5 draw a straight bar, and that was abundantly clear to 6 everybody and had to be removed. But the drawing shows 7 the couplers there, and then 1 and 3 need to be cast 8 together.</p> <p>9 Q. Yes, but you will recall the hatched area that I first 10 take you to in the TWD report, and also the section 6.2 11 mentioned a trimming down, and then the concrete 12 concurrently. I'm talking about as a group, you know, 13 from an outsider's point of view, receiving that 14 information from Atkins, when you intended "monolithic" 15 only means 1 and 3 at the same time, but actually other 16 reports, also issued by Atkins -- by other people, not 17 you -- were referring to, apparently, a completely 18 different process.</p> <p>19 A. Okay. If that confuses people -- assume it does confuse 20 people -- then this TQ33 should address that. They 21 should ask clearly what is the design intention. But 22 instead they asked -- they can't bolt the bar in because 23 there's insufficient space. Now, in that sense, to me, 24 they fully understand the design requirement because 25 then they have no intention to trim this bar.</p>

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<p>1 So, looking at that, I mean, that to me is clear.</p> <p>2 Q. Let's look at the outsiders from two groups; okay?</p> <p>3 A. Okay.</p> <p>4 Q. One group of people obviously is within either Leighton</p> <p>5 or MTRC site people, within the site. The problem of</p> <p>6 your suggestion is, as the professor pointed out, they</p> <p>7 thought they had a perfectly clear understanding of what</p> <p>8 Atkins means --</p> <p>9 A. Yes.</p> <p>10 Q. -- at the time; okay?</p> <p>11 A. Okay.</p> <p>12 Q. Now, the use of the word "monolithic" was consistent</p> <p>13 with everything -- 1, 2 and 3 -- in one piece all along,</p> <p>14 so why would they have raised any query?</p> <p>15 A. You mean here?</p> <p>16 Q. Yes, to seek further clarification, because they thought</p> <p>17 the meaning was perfectly clear.</p> <p>18 A. Well, this is not to clarify whether to trim off the</p> <p>19 bars or not. This is to clarify they can't bolt the bar</p> <p>20 in. In other words, they actually understand what the</p> <p>21 design intention is. If they don't understand it, then</p> <p>22 they should ask. I mean, the same people, Brett, raised</p> <p>23 that. He's the engineering manager; he issued this.</p> <p>24 COMMISSIONER HANSFORD: Sorry, I'm not quite understanding</p> <p>25 what you're saying, Mr Lee. Are you saying if they had</p>	<p>1 A. No. We presented this solution to BD before we made</p> <p>2 that submission, and there was a condition: we had to</p> <p>3 cast these two slabs and wall together, that was the</p> <p>4 condition, before we actually proceed with this</p> <p>5 solution. That was presented to BD.</p> <p>6 Q. When you say you presented to the BD, when was that?</p> <p>7 A. I can't remember the exact date, but it was members from</p> <p>8 Atkins and myself and Mr David Wilson, and</p> <p>9 representatives of BD, representatives of MTRC, we</p> <p>10 presented that in Hung Hom Station, the office above</p> <p>11 Hung Hom Station, that's where the presentation took</p> <p>12 place.</p> <p>13 I can't remember the exact date. Maybe it's in</p> <p>14 early June, maybe late May; I can't remember the date.</p> <p>15 Q. 2015?</p> <p>16 A. Yes.</p> <p>17 Q. The message that BD got from the presentation was there</p> <p>18 would be no trimming of D-wall?</p> <p>19 A. Correct.</p> <p>20 Q. Apart from you, you mention -- who was there</p> <p>21 representing Leighton? Anybody?</p> <p>22 A. From memory, nobody from Leightons.</p> <p>23 Q. Who was there representing MTRC?</p> <p>24 A. I think Kevin Yip and Andy Leung, if I don't remember</p> <p>25 wrong.</p>
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<p>1 not properly understood the design intent, they would</p> <p>2 not have issued this TQ; is that what you're saying?</p> <p>3 A. No. I'm saying if they fully understand the design</p> <p>4 intent, in their understanding "monolithic" means trim</p> <p>5 the top of that 400 off the D-wall -- now, if they fully</p> <p>6 understand the wording, then there's no point to issue</p> <p>7 this TQ. What's the point to issue a TQ if they are</p> <p>8 going to trim that off? This doesn't exist.</p> <p>9 MR CHEUK: Yes. But is it fair to say your reply, by using</p> <p>10 the word "monolithic", without --</p> <p>11 A. In brackets. That's in brackets.</p> <p>12 Q. -- that does not really clarify the issue in the most</p> <p>13 satisfactory way?</p> <p>14 A. I don't think so. I mean, we tell him the design</p> <p>15 intent, and the drawing reflects our design intent.</p> <p>16 It's just that word in brackets, okay, may be not the</p> <p>17 best use of that word in this instance, but the message</p> <p>18 is very clear, and they understood that by raising these</p> <p>19 questions.</p> <p>20 Q. The second group of outside people I would mention is</p> <p>21 the BD. The BD would receive the TWD report and the PWD</p> <p>22 report from MTRC, which we have seen. Would you accept</p> <p>23 that fair-minded people from BD would not have noticed,</p> <p>24 from reading those two reports, what Atkins intended to</p> <p>25 do actually with the top of the D-wall?</p>	<p>1 Q. Who was there representing the BD?</p> <p>2 A. Ron and -- Alex Wong, the senior structural engineer.</p> <p>3 Q. Ron, R-O-N?</p> <p>4 A. Yes.</p> <p>5 Q. And Alex Wong?</p> <p>6 A. Yes.</p> <p>7 Q. What's the surname of Ron?</p> <p>8 A. Sorry, I know him as Ron. Pypun.</p> <p>9 Q. Alex Wong is from Pypun?</p> <p>10 A. Yes.</p> <p>11 Q. Ron is from Pypun, I'm told.</p> <p>12 A. Yes, correct. Alex Wong is from BD.</p> <p>13 Q. Ron from Pypun and Alex Wong from BD?</p> <p>14 A. Yes.</p> <p>15 MR CHEUK: Thank you. I have no further questions -- sorry,</p> <p>16 I just ask whether it should be Alex Hung from BD or</p> <p>17 Alex Wong?</p> <p>18 A. I know him -- I recognise his face, but name-wise,</p> <p>19 I know -- sorry, I can't.</p> <p>20 COMMISSIONER HANSFORD: You don't have photographs?</p> <p>21 A. I know he's a senior structural engineer. He's now</p> <p>22 retired.</p> <p>23 MR CHEUK: Okay, thank you. I have no further questions.</p> <p>24 MR CHANG: No questions from Leighton.</p> <p>25 CHAIRMAN: Thank you.</p>

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<p>1 Mr Boulding, any questions?</p> <p>2 MR BOULDING: No, we've got no questions, sir.</p> <p>3 CHAIRMAN: Thank you.</p> <p>4 MR TO: No questions from China Technology.</p> <p>5 MR CHOW: Mr Chairman, there are some questions from the</p> <p>6 government.</p> <p>7 CHAIRMAN: Thank you.</p> <p>8 Cross-examination by MR CHOW</p> <p>9 MR CHOW: Good morning, Mr Lee.</p> <p>10 A. Good morning.</p> <p>11 Q. My name is Anthony Chow and I represent the government,</p> <p>12 and we have some questions for you.</p> <p>13 A. Okay.</p> <p>14 Q. Before I move on to the main subject that you talk about</p> <p>15 in your witness statement, can I just clarify one thing</p> <p>16 with you.</p> <p>17 In paragraph 1 of your witness statement, you said</p> <p>18 that you used to work for Atkins from October 2013 to</p> <p>19 the end of September 2015.</p> <p>20 A. Yes.</p> <p>21 Q. Were you still employed by Atkins in October 2015?</p> <p>22 A. No.</p> <p>23 Q. Because just now, in-chief, you were shown</p> <p>24 an organisation chart produced by, I believe,</p> <p>25 Mr Blackwood, dated October 2015, indicating that you</p>	<p>1 report, and Mr Cheuk has taken us to the report, to</p> <p>2 certain details, this morning. I am asking questions</p> <p>3 from the point of view of the government, the Buildings</p> <p>4 Department. As far as the Buildings Department is</p> <p>5 concerned, they have only received, for the present</p> <p>6 purpose, two reports. This is one of the reports, the</p> <p>7 report PWD-059A3, on 30 July 2015.</p> <p>8 Now, this report, if we may go to take a look at the</p> <p>9 report -- because as far as the government is concerned,</p> <p>10 this report and your design intent is not as confusing</p> <p>11 as people suggested earlier this morning. May I get</p> <p>12 some confirmation from you.</p> <p>13 First of all, let's go to the report in bundle B10,</p> <p>14 starting from page 7322. This is the report submitted</p> <p>15 to the Buildings Department on 30 July.</p> <p>16 Now, I prefer to use this because this copy is the</p> <p>17 one received by the Buildings Department. If we may</p> <p>18 then go to the details, page 7324 shows the covering of</p> <p>19 the report, PWD-059A3. If we can now go to page 7329,</p> <p>20 the opening paragraph, "Background", you put at the very</p> <p>21 beginning:</p> <p>22 "This report has been prepared to evaluate the</p> <p>23 as-constructed reinforcement detail at the joint between</p> <p>24 the diaphragm wall and the East West Line slab between</p> <p>25 gridlines 15 and 49/50."</p>
<p>Page 42</p> <p>1 were working as part of team -- or part of Leighton's</p> <p>2 team.</p> <p>3 If I can refer you to bundle J1, page 91. So that</p> <p>4 is an organisation chart from the bottom -- from the</p> <p>5 title block it seems to be prepared jointly by Leighton</p> <p>6 and Atkins, and the date was October 2015, and in the</p> <p>7 box in the bottom-left corner of the organisation chart,</p> <p>8 it shows that someone with the same name as you, Mr Lee.</p> <p>9 So do you have any comment? Do you know this guy,</p> <p>10 or perhaps it's just a mistake on the part of the person</p> <p>11 preparing this organisation chart?</p> <p>12 A. When I looked at it, when I looked at the date,</p> <p>13 I thought it was me.</p> <p>14 Q. Sorry?</p> <p>15 A. When I first looked at this chart, when I saw the date,</p> <p>16 I thought that was me. Because I left Atkins.</p> <p>17 I started work on 1 October with Sam Woo Bore Pile</p> <p>18 Foundation.</p> <p>19 COMMISSIONER HANSFORD: Sorry, is there another Wan Cheung</p> <p>20 Lee in Atkins?</p> <p>21 A. Not I know of.</p> <p>22 COMMISSIONER HANSFORD: Right.</p> <p>23 MR CHOW: All right. Now I will move on to the main subject</p> <p>24 area.</p> <p>25 In paragraphs 19 to 28, you talk about the design</p>	<p>Page 44</p> <p>1 So the primary purpose of this report is to justify</p> <p>2 what had been built at that time. Can you confirm that</p> <p>3 what has been built at that time is a diaphragm wall</p> <p>4 with horizontal reinforcement at the top, and with</p> <p>5 couplers on each end of the diaphragm wall?</p> <p>6 A. No, because I was responsible for design only. We're</p> <p>7 not -- I'm not for the supervision works, so I don't</p> <p>8 know exactly what's been built.</p> <p>9 Q. Right.</p> <p>10 A. I'm only given the information, and based on the</p> <p>11 information we carry out some sort of remedial work,</p> <p>12 remedial design, if you like.</p> <p>13 COMMISSIONER HANSFORD: Sorry, if I can just understand that</p> <p>14 answer -- so all you are saying is, all that's being</p> <p>15 shown here is what was intended to be built; you don't</p> <p>16 know what was built?</p> <p>17 A. No. What I'm saying is I don't know the construction</p> <p>18 stage, because I don't have access to site, because</p> <p>19 I only responsible for the design side of the works.</p> <p>20 COMMISSIONER HANSFORD: Yes.</p> <p>21 A. So at that time, when we look at this, we are just told</p> <p>22 they are missing a U-bars.</p> <p>23 COMMISSIONER HANSFORD: Right.</p> <p>24 MR CHOW: Perhaps I will re-frame my question. In preparing</p> <p>25 this report you make certain assumptions, and although</p>

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<p>1 you haven't gone to site to verify what was built, but</p> <p>2 you assume that it was built in accordance with the</p> <p>3 original design, with the exception that there were no</p> <p>4 U-bar and there were no downturn to provide the</p> <p>5 anchorage?</p> <p>6 A. Correct, this -- the report is not prepared by me</p> <p>7 although my signature appears on that, I really -- the</p> <p>8 key issue here, I just review the report.</p> <p>9 Q. Right.</p> <p>10 A. My contribution is to review the technical side of this</p> <p>11 report, whether that is feasible or not.</p> <p>12 Q. So are you saying that although you put -- or the</p> <p>13 drafter of the report put down in the opening paragraph</p> <p>14 saying that the purpose of the report is to evaluate the</p> <p>15 as-built reinforcement detail, but in actual fact when</p> <p>16 you reviewed it you did not know what was the as-built</p> <p>17 or as-constructed reinforcement details?</p> <p>18 A. Yeah, I just say -- if they say as-constructed</p> <p>19 reinforcement, I assume it's as-constructed information.</p> <p>20 Q. Okay. Let's move on then.</p> <p>21 If we can now go to page 7333, to the same paragraph</p> <p>22 Mr Cheuk has taken you to. Here, you use the word</p> <p>23 "monolithically" and "concurrently" at the same time,</p> <p>24 but at the same time you also put "ie at the same time".</p> <p>25 This part is a bit confusing, I fully accept. Shall we</p>	<p>1 length ... from the slab rebar principle, the OTE wall</p> <p>2 must be concrete[d] monolithically (ie at the same time)</p> <p>3 with EWL ... slab and the wall rebar to extend with full</p> <p>4 lap length ... provision from the OTE wall construction</p> <p>5 joint ... for future wall rebar connection."</p> <p>6 Then you refer to appendix F. So if we can now go</p> <p>7 to appendix F at page 7357, if we can blow up the two</p> <p>8 diagrams at the bottom of the page.</p> <p>9 Now, when BD received this design submission,</p> <p>10 reading the report as a whole together with these two</p> <p>11 diagrams, do you agree with me that a reasonable person</p> <p>12 would understand perfectly your design intent, and that</p> <p>13 is to keep the diaphragm wall intact?</p> <p>14 If we can further blow up the details of one of the</p> <p>15 two diagrams -- perhaps the one on the left, so we see</p> <p>16 that there are two straight lines showing the two sides</p> <p>17 of the diaphragm wall. We see the couplers embedded</p> <p>18 inside the diaphragm wall, and we see the reinforcement</p> <p>19 from the EWL slab being screwed into the left side of</p> <p>20 the diaphragm wall couplers, and the new OTE slab</p> <p>21 reinforcement being connected to the couplers embedded</p> <p>22 on the right side of the diaphragm wall. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. And we see similar details on the other diagram to the</p>
Page 46	Page 48
<p>1 move on to the "Conclusion" section over the page,</p> <p>2 73334.</p> <p>3 A. The whole purpose, putting in brackets "at the same</p> <p>4 time", we try to minimise confusion --</p> <p>5 Q. To make it clear.</p> <p>6 A. -- but I think -- I didn't realise that caused extra</p> <p>7 problem.</p> <p>8 Q. All right. Now, in the "Conclusions" section, you see</p> <p>9 the paragraph starting with, "With the above</p> <p>10 enhancement"; do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. You put:</p> <p>13 "With the above enhancement and full tension</p> <p>14 anchorage of all the primary tension reinforcement, it</p> <p>15 is considered the as-built reinforcement connection is</p> <p>16 in principle still able to fulfil the design fixity</p> <p>17 requirement at the diaphragm wall/slab connection."</p> <p>18 So do you agree, for Buildings Department, having</p> <p>19 read what you put, the Buildings Department would expect</p> <p>20 that this report was to justify what has been built</p> <p>21 rather than making alteration to the existing diaphragm</p> <p>22 wall?</p> <p>23 A. Yes.</p> <p>24 Q. Then you go on to say:</p> <p>25 "To comply with the full tension anchorage lap</p>	<p>1 right, if we can now scroll right.</p> <p>2 So do you agree with me that as far as BD is</p> <p>3 concerned, your design intent is pretty clear, which</p> <p>4 means no trimming down of the diaphragm wall, and the</p> <p>5 two -- the EWL slab and the OTE slab, as you have put</p> <p>6 down in your descriptives before, they were meant to be</p> <p>7 cast together at the same time --</p> <p>8 A. Yes.</p> <p>9 Q. -- with a construction joint on both sides of the</p> <p>10 diaphragm wall?</p> <p>11 A. Correct.</p> <p>12 Q. The other design reports that the Buildings Department</p> <p>13 have received is the one regarding the temporary work</p> <p>14 submission, that excavation and lateral support</p> <p>15 submission, to which a copy of the design report 4B3 was</p> <p>16 attached.</p> <p>17 Now, the 4B3 report has been referred to by Mr Cheuk</p> <p>18 earlier. This report was submitted just one day before</p> <p>19 the one that we have just looked at, 59A3. So these are</p> <p>20 the two reports that the Buildings Department has</p> <p>21 received.</p> <p>22 The lateral support submission, in this Inquiry, is</p> <p>23 heavily relied upon by Leighton in support of their</p> <p>24 assertion that the intended changes made to the top of</p> <p>25 the diaphragm wall had been notified to BD and even</p>

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<p>1 accepted by BD. So this is the background I need to let 2 you know first before I take you to the report. 3 A. Okay. 4 Q. If we can now go to the report itself. Bundle B12, 5 page 9034, section 6.2, the construction sequence -- 6 now, this is the only part of the report relied upon by 7 Leighton in support of their assertion, and the 8 highlighted part are the three important paragraphs, at 9 least Leighton find it very important to their case. 10 If we can take a look at the three paragraphs. The 11 first paragraph, it is put as: 12 "The top of diaphragm wall panel will be trimmed to 13 the lowest level of top rebar for the EWL slab (minimum 14 420 millimetres below the top level of EWL slab). 15 The top rebar of EWL slab at the D-wall panel will 16 then fix to the top rebar of OTE slab to achieve full 17 tension laps." 18 The last paragraph: 19 "The EWL slab and OTE slab will be casted 20 concurrently with temporary openings around the existing 21 columns and pile caps." 22 Now, the third paragraph that Mr Cheuk has taken you 23 to, does it -- well, having looked at your design 24 intention, having looked at the diagram that is attached 25 in appendix F of your design report 59A3, do you agree</p>	<p>1 Q. -- that the first part of this sentence actually 2 corresponds to what you intended to do in the other 3 report? 4 A. Can you just repeat that question again, sorry? 5 Q. The first part, it says, "The EWL slab and OTE slab will 6 be cast concurrently"; correct? 7 A. Yes. 8 Q. Do you agree with me that this description is in line 9 with the diagram that we have seen in the other report? 10 A. Oh yes, yes. I was looking in the wrong paragraph, 11 sorry. 12 Q. All right. 13 A. Sorry, yes. 14 Q. Sorry, it must be my fault. 15 Now, this temporary works submission was made by 16 MTRC to the Buildings Department. According to the 17 procedure adopted at the time, can I assume that at 18 least this report has been passed to team A Atkins, for 19 Atkins team A -- I have heard what you have just said, 20 but ... 21 A. It may have, but team A is a large team. It could be 22 passed on to our geotech team, which primarily involves 23 the D-wall as part of the EWL systems. It could have 24 gone through the other part by team A, instead of 25 through me.</p>
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<p>1 with me the description in the third paragraph is 2 exactly what you have shown in the diagram? That is the 3 EWL slab and OTE slab will be cast concurrently with 4 temporary openings -- well, at least concurrently. 5 Now, Mr Cheuk mentioned about three elements. 6 I don't see the third element here. This third 7 paragraph only refers to two elements, that is the EWL 8 slab and OTE slab; do you agree with me? 9 A. Yes. The third one, "around the existing columns", 10 doesn't appear to apply to the first two cases. 11 Q. Yes. 12 A. That one I think is talking about columns within the 13 3-metre slab, where we had to transfer the column onto 14 the 3 metre slab, so we left a pocket there for 15 a later-stage transfer. So I don't think that applied 16 in this case. 17 Q. The second part I understand, but I'm talking about the 18 first part of the sentence. Here, it refers to "EWL 19 slab and OTE slab will be casted concurrently". My 20 question is, with reference to the diagram that you put 21 in the other report, which shows an intact -- 22 a diaphragm wall being intact and the two slabs on each 23 side of the diaphragm wall being cast at the same time, 24 do you agree with me -- 25 A. Yes.</p>	<p>1 COMMISSIONER HANSFORD: Sorry, but if it had, wouldn't we 2 able to see that somewhere? Wouldn't there be some 3 evidence of that? 4 A. Probably not. 5 COMMISSIONER HANSFORD: So it could have passed without even 6 showing that it has passed? 7 A. Yes, because our team -- we had different floor. 8 I think I'm level 14 and they are 13th floor. Different 9 locations. 10 COMMISSIONER HANSFORD: Yes. 11 MR CHOW: Having gone through all this, I have to confess 12 that the first paragraph, "The top of diaphragm wall 13 panel will be trimmed to the lowest level", this would 14 be at odds with the solution that you have intended, 15 right? 16 A. Yes, correct. 17 Q. So if this report has been passed to Atkins team A for 18 review -- 19 A. We would have picked it up. 20 Q. Yes. 21 COMMISSIONER HANSFORD: Well, you would hope so. 22 MR CHOW: Right. 23 Thank you, Mr Lee, I have no more questions for you. 24 I have no more questions, Mr Chairman. 25 CHAIRMAN: Thank you.</p>

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<p>1 Re-examination by MR CONNOR</p> <p>2 MR CONNOR: Thank you, sir.</p> <p>3 Mr Lee, just a couple of short questions for you,</p> <p>4 please.</p> <p>5 A. Yes.</p> <p>6 Q. I'll start with a very easy one, if I may.</p> <p>7 If you in front of you your statement, please, which</p> <p>8 is in bundle J6 at page J4523. This is the statement</p> <p>9 you looked at earlier. Mr Chow asked you a moment ago,</p> <p>10 at the beginning of his questions, about the dates of</p> <p>11 your involvement in the project, and he drew your</p> <p>12 attention to paragraph 1 where you talk about working</p> <p>13 with Atkins to the end of September 2015.</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall that? Thank you.</p> <p>16 You recall also that I asked you earlier to identify</p> <p>17 your CV. It is at page J4531. Do you have that before</p> <p>18 you? Thank you very much. That's the page.</p> <p>19 If you scroll down that page, you get to the bottom</p> <p>20 paragraph, and there is a note there, "Experience with</p> <p>21 Atkins China Ltd", and there's a reference to "2013 to</p> <p>22 October 2015"; do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. This might be really quite straightforward: did you</p> <p>25 leave at the end of September or start in your new job</p>	<p>1 "I was involved in the development of the connection</p> <p>2 detail with original couplers as shown in enclosure</p> <p>3 1 ..."</p> <p>4 Do you see that? Then you refer to a letter from</p> <p>5 Lo & Lo. Then in paragraph 21 you go on to say:</p> <p>6 "On or around May/June 2015, I attended</p> <p>7 a presentation to BD with Mr David Wilson on the</p> <p>8 alternative design assumption for the moment connection</p> <p>9 details between the EWL slab and the tension anchorage</p> <p>10 into the OTE wall."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Thank you. I think you mentioned to Mr Chow a moment</p> <p>14 ago a presentation or a meeting with BD. Is that the</p> <p>15 one you're referring to?</p> <p>16 A. That's right. That's correct. That's the meeting</p> <p>17 I refer to, yes.</p> <p>18 Q. Thank you.</p> <p>19 Then you go on to refer to the first version of</p> <p>20 a report known as PWD-059A3; do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Thank you. You go on to discuss your signing off on</p> <p>23 that, and then at the end of the paragraph you say:</p> <p>24 "I understand that on 30 July 2015, PWD-509A3 was</p> <p>25 submitted to BD by MTR ..."</p>
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<p>1 at the beginning of October or was there a slightly</p> <p>2 overlap in the dates?</p> <p>3 A. No, I left end of September, and 1 October being</p> <p>4 a public holiday, that's why I started on 3 October.</p> <p>5 Q. Okay. So that, you are clear on, at the very least?</p> <p>6 A. Yes, thank you.</p> <p>7 Q. You will be glad to hear I won't ask you too much about</p> <p>8 the design intent because you have already helped the</p> <p>9 Commissioners on that topic and you have also had a very</p> <p>10 full exchange with Mr Cheuk, and the professor and the</p> <p>11 Chairman, and indeed latterly with Mr Chow on the</p> <p>12 question of "monolithic", "built concurrently" and "at</p> <p>13 the same time". Your evidence is there for the</p> <p>14 Commissioners to consider, but you have expressed your</p> <p>15 view in relation to that.</p> <p>16 One thing you did mention, in the course of the</p> <p>17 questions, I think particularly from Mr Chow, was your</p> <p>18 engagement with BD.</p> <p>19 If I could ask you to turn to your statement, which</p> <p>20 is in bundle J6, starting, as you know, at page J4523.</p> <p>21 For the assistance of the Commissioners but also picking</p> <p>22 up a little bit on that question of design intent,</p> <p>23 paragraph 21, if you have that before you -- pardon me,</p> <p>24 even if I go back one paragraph to paragraph 20, you</p> <p>25 say:</p>	<p>1 And there was a reference to a page number. Do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. And it was accepted in September; you see that also,</p> <p>5 yes?</p> <p>6 A. Yes.</p> <p>7 Q. Just for a short point of detail, because you have</p> <p>8 helped the Commissioners on this already, but if you can</p> <p>9 have before you a page from that report, a drawing in</p> <p>10 particular, and that is one which appears at page B7428.</p> <p>11 This is a drawing which you will see -- it would be</p> <p>12 familiar to you, I'm sure; is that right?</p> <p>13 A. (Witness nodded).</p> <p>14 Q. This one is dated 25 August 2015, and it's checked by</p> <p>15 "WC". Is that you or is that someone else?</p> <p>16 A. I think it's me.</p> <p>17 Q. Thank you. So this, as we will see, is the position as</p> <p>18 at 25 August, at least as far as this drawing is</p> <p>19 concerned, and do you see, in the top left-hand corner</p> <p>20 of the drawing, a detail which will be familiar to you</p> <p>21 of the EWL slab, the diaphragm wall and the OTE slab;</p> <p>22 yes?</p> <p>23 A. Yes.</p> <p>24 Q. Again, at this time, at the end of August by this stage,</p> <p>25 when there had been submissions to the BD in relation to</p>

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<p>1 PWD-509A, there had been discussions regarding TQs 33 2 and 34 and indeed 44, we see reference in the drawing 3 here to "Section of OTE wall concrete cast together with 4 (at the same time) as EWL slab"; do you see that? 5 A. Yes. 6 Q. You see that appears once to the left of the detail, 7 D-wall slab configuration, and once again to the right 8 of that; do you see that? 9 A. Yes. 10 Q. Thank you. So when you describe to the Commissioners 11 your design intent, at least by the end of August, in 12 your production and checking of this drawing, your 13 design intent was intact, as far as you were concerned? 14 A. Yes, that's right. 15 Q. Did you ever produce, in your team A capacity, any 16 working drawings that showed the breaking down of the 17 D-wall and the choice of through-bars rather than the 18 use of couplers? 19 A. No. 20 Q. Did you ever, in your help to team B, ever do such 21 a thing? 22 A. No. 23 Q. Did you ever see such a drawing? 24 A. No. 25 Q. As far as you are concerned, by the time your time with</p>	<p>1 understood? 2 A. No, as far as I know, everybody -- I think everybody's 3 understood quite clearly, based on the drawings and the 4 reports. Never came across my mind that could confuse 5 people. 6 MR CONNOR: Thank you, Mr Lee. Unless there's anything else 7 that the Chairman or the professor has for you at this 8 stage, that is all I have. 9 Chairman. 10 CHAIRMAN: I just have one question, and for those who are 11 used to this there's probably a very obvious answer to 12 it, but if in your drawings themselves, as opposed to 13 any written directions -- if you were asking for certain 14 abortive work, as you have called it, certain 15 destructive work, for example trimming down and removal 16 of certain objects, would it appear in the drawing 17 itself, or would there be an instruction? 18 A. It would be on the drawing. And also, showing the 19 sequence how to trim the concrete off. It will be going 20 in details, how they trim in layers or per panel, that 21 detail will have to show on the drawings. 22 CHAIRMAN: All right. Thank you very much. 23 WITNESS: Thank you. 24 MR CONNOR: Thank you. Mr Chairman, if I may -- 25 CHAIRMAN: Yes.</p>
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<p>1 Atkins was up at the end of September/beginning of 2 October 2015, had there crossed your desk any design or 3 alteration to that original design intent? 4 A. No. 5 Q. And whatever might be a view about the use of the word 6 "monolithic" versus "concurrent" versus "at the same 7 time", was it ever raised with you, or with Atkins, to 8 your knowledge, that there was something unclear about 9 what you're describing in any of the work you did, as 10 regards that word, relative to that design intent? 11 A. For design intent, it's very clear. My intention is EWL 12 slab and the OTE wall. But in terms of trying to make 13 it clear, that's why all these three word come out 14 together, just try to make it clear, but ... 15 Q. But your understanding -- as Mr Cheuk has helped us with 16 this and you have had some questions helpfully from the 17 professor and the Chairman on this -- if you accept that 18 as at 2018 there might be asked a question as to whether 19 or not the words you chose were as clear as they might 20 have been, and I think you have -- 21 A. I don't accept that, no. 22 Q. But, at the time, was anything raised with you to 23 suggest that your design intent, as it remained intact 24 in the drawings that were being submitted to BD in the 25 late summer and early autumn of 2015, was not</p>	<p>1 MR CONNOR: -- arising from your question, it may be 2 a little bit helpful if we just ask Mr Lee to expand 3 a little bit on what he said, if you are agreeable to 4 that. 5 Your point there, Mr Lee, is that the trimming down 6 of a D-wall from a designer's point of view is something 7 you would be expected to ask to detail? 8 A. Yes. 9 Q. And that would appear, as I think, the Chairman has 10 asked, not just simply in words but in a drawing? 11 A. Yes, it would be on the drawings, yes, yes. 12 Q. And similarly a change of couplers? 13 A. Yes -- 14 Q. Sorry, a change of reinforcement from a coupler base to 15 a through-bar? 16 A. Yes, from coupler to -- it will have to go on the 17 drawings. And that should be for BD for approval as 18 well. 19 MR CONNOR: Thank you, sir. 20 There's nothing further from me, Mr Chairman, 21 Professor, Mr Lee. 22 CHAIRMAN: Thank you very much indeed, Mr Lee. 23 A. Thank you. 24 CHAIRMAN: Your evidence is completed now. Thank you very 25 much. You have no need to return. Thank you.</p>

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<p>1 MR CONNOR: Sir, that for now is the interim conclusion of 2 evidence from Atkins. As you know, there are two other 3 witnesses to come, one on Monday by videoconference from 4 London and the second on Tuesday, following the 5 witness's return from holiday. So I think it is back to 6 Mr Pennicott or Mr Cheuk, or indeed others, for the next 7 run of witnesses. 8 CHAIRMAN: Yes. 9 MR PENNICOTT: Sir, I imagine we will take a short break 10 now, but after the break we will be dealing with the 11 Pypun witnesses from Mr Coleman. 12 CHAIRMAN: Good. Thank you. 15 minutes. 13 (11.47 am) 14 (A short adjournment) 15 (12.06 pm) 16 MR PENNICOTT: If you want to sit down for a moment, Mr Mak, 17 I just have to deal with one point. 18 Sir, just one administrative point. It's not 19 directly connected to Mr Mak, who's about to be called, 20 but it is directly connected to the next witness, 21 Mr Yueng, who I will imagine we will get to at some 22 point this afternoon. 23 I was informed by my learned friend Mr Coleman 24 during the coffee break, and indeed almost 25 simultaneously by the government, that a series of</p>	<p>1 CHAIRMAN: Yes. 2 MR PENNICOTT: -- and it shouldn't cause any difficulty. 3 If it causes anybody else any difficulty, then 4 obviously they will have to let us know and we can then 5 take a view on how best to proceed. 6 COMMISSIONER HANSFORD: Mr Pennicott, you said it's a thick 7 report. 8 MR PENNICOTT: Yes. 9 COMMISSIONER HANSFORD: Does it have an executive summary? 10 MR PENNICOTT: It does have an executive summary and it has 11 a relatively -- it's not that long a report, actually, 12 at the front, the front end. It's just that there are 13 lots of appendices to it -- 14 COMMISSIONER HANSFORD: I see. 15 MR PENNICOTT: -- and to be honest, the more important 16 material for my purposes is actually one or two of the 17 appendices -- 18 COMMISSIONER HANSFORD: I see. 19 MR PENNICOTT: -- and that's why I will need to look at it. 20 All I've got to do is just make sure the 21 cross-references are in order, which I will endeavour to 22 do. 23 CHAIRMAN: Thank you. 24 Yes. 25 MR COLEMAN: Chairman, Professor, and perhaps on that same</p>
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<p>1 reports that are attached to or referred to by Mr Yueng, 2 attached to and referred to by Mr Yueng, that's the next 3 witness, in fact they have now been updated and there is 4 a final report that has been produced and, I think, 5 signed off by Pypun and indeed signed off by the 6 government -- only in the last couple of days, as 7 I understand it. That report has found its way to us. 8 It's been paginated; it is currently, I am told, being 9 uploaded onto the system, but the reason I'm standing up 10 is that it's going to be difficult for us to circulate 11 it to everybody, certainly by email, because it's a very 12 large, thick report. 13 I understand that DVDs are being prepared or have 14 been prepared and all parties will be given a copy of 15 that report by that means, by DVD. 16 Sir, I will certainly be asking Mr Yueng some 17 questions about that report. I had planned to do it, 18 obviously, by reference to the report that I've got at 19 the moment which was dated at the end of September, but 20 I will try my best over the lunch hour to modify the 21 questions so that I can address them to the final 22 report. I've seen it in soft copy very quickly and 23 there are a few changes, but it looks broadly the same, 24 with one or two additions and revisions, so I hope that 25 I will be able to accomplish that --</p>	<p>1 point I might just say as far as I'm aware from my own 2 view of the updated report, the final version of the 3 report, the appendices are largely the same as they were 4 from the previous version, which may give some comfort 5 to my learned friend. 6 I've moved here because of course it's the time for 7 Pypun's witnesses. It makes me much closer to you; that 8 may not be a good thing. It means that nevertheless 9 whatever I say is still going, as usual, over 10 Mr Pennicott's head, and perhaps I will start with 11 calling Mr Mak. 12 Mr Mak, could you please stand up. 13 WITNESS: Yes. 14 MR COLEMAN: You have told me that you wish to take the 15 affirmation and you will be giving evidence in 16 Cantonese. 17 WITNESS: Yes. 18 MR MAK YU MAN (affirmed in Punti) 19 (Simultaneous interpretation used only where specified) 20 Examination-in-chief by MR COLEMAN 21 MR COLEMAN: I wonder if you could be shown K11. Is that 22 your full name at the top, Mak Yu Man? 23 A. Yes. 24 Q. Does it show your professional address? 25 A. Yes.</p>

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<p>1 Q. Can you be taken, please, to K31. Is that your 2 signature on that page? 3 A. Yes, it is. 4 Q. Are the contents of this witness statement true and 5 correct, to the best of your knowledge and belief? 6 A. Yes, absolutely. 7 Q. Do you ask for the content of the witness statement to 8 be part of the evidence that you give to this 9 Commission? 10 A. Yes. 11 Q. Subject, of course, to a corrigendum which you have 12 produced, which is I think to be found at page K32.1, 13 which simply makes the small correction to the title of 14 a committee in your paragraph 53.4, to change it to 15 "project supervision committee". 16 A. Yes, because it was a typing error. Sorry about that. 17 Q. As is typical in these proceedings for someone who says 18 they are going to be giving evidence in Cantonese, so 19 far it's been in English. If you wish to give evidence 20 in Cantonese, please do so. If you break into English 21 at any point, I'm sure the members of the Commission 22 won't mind. Obviously if you are dealing with technical 23 terms it is likely that you will be using the English 24 language. 25 A. (Chinese spoken).</p>	<p>1 work on the SCL project? 2 A. (Via interpreter) Correct. 3 Q. And in particular they were to monitor and verify the 4 works of the MTR? 5 A. Yes. 6 Q. Would this be a fair description, Mr Mak -- and we can 7 look at a little bit more detail in a moment -- that, 8 broadly speaking, the Pypun personnel involved were 9 split into two teams, one of which one might describe as 10 the monitoring and verification team, the MT team? 11 A. Yes. 12 Q. And secondly the building submission review and 13 compliance team, also known as the BSRC team? 14 A. (Via interpreter) Correct. 15 Q. Mr Mak, am I right in saying that you were really 16 overseeing, in your role, both teams; would that be 17 a fair description? 18 A. (Via interpreter) Well, I am responsible for the direct 19 management of M&V team. For the BSRC team, also 20 reported to me. On the working level, BSRC team leader 21 was Mr Yueng. Because of the need in carrying out work, 22 he supported the BO team. So unless he had issues with 23 management and deployment which have got nothing to do 24 with BO team, he would talk to me. So, in theory, I am 25 responsible for the other -- for the entire contract and</p>
<p>Page 66</p> <p>1 MR COLEMAN: In a moment, Mr Pennicott will have some 2 questions for you. It may be that some other counsel 3 have questions, it may be that I will have some 4 questions at the end, and of course the Chairman and the 5 professor can ask questions at any time. 6 Yes, please just wait there. 7 Examination by MR PENNICOTT 8 MR PENNICOTT: Thank you. Good afternoon, Mr Mak. 9 A. Good afternoon, sir. 10 Q. As Mr Coleman has indicated, my name is Ian Pennicott 11 and I'm one of the counsel to the Commission. I have 12 one or two questions for you. 13 First of all, thank you very much for coming along 14 to give evidence to the Commission today. 15 A. It's my pleasure, sir. 16 Q. Mr Mak, my understanding is your personal involvement in 17 the SCL project, so far as Pypun is concerned, was in 18 about January 2016; is that right? 19 A. Yes, it is correct. 20 Q. The background to Pypun's involvement is that they 21 entered into a consultancy agreement back in 22 August 2012? 23 A. That's right. 24 Q. And Pypun was engaged as a monitoring and verification 25 consultant, to monitor and verify certain aspects of the</p>	<p>Page 68</p> <p>1 the agreement works. 2 Q. Yes. Okay. That's a helpful way of describing it. 3 Thank you very much. 4 Could I ask you, please -- sorry, let me just put 5 this to you. You took over from Mr Robert Lloyd; is 6 that right, Mr Mak? 7 A. Yes. 8 Q. Was Mr Lloyd, as it were, in your position, right from 9 the outset of the consultancy agreement in 2012, to your 10 knowledge? 11 A. Sorry, can you repeat? 12 Q. Yes. From 2012, when the consultancy agreement was 13 entered into, up to the time you took over, was it 14 Mr Lloyd that was in your position? 15 A. (Via interpreter) From what I know, yes. 16 Q. All right. I don't know if you know this, but Mr Lloyd 17 had worked for the government for about 30 years before 18 he took up his job with Pypun; were you aware of that? 19 A. (Via interpreter) I know that. 20 Q. As well as being a former England rugby international, 21 back in the 1960s. 22 Now, could we look at the contract, just a few 23 points on the consultancy contract. G9, please, 7638. 24 We've got a hard copy for you, Mr Mak. You can use the 25 hard copy or the screen, whichever you prefer.</p>

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<p>1 A. Thank you.</p> <p>2 Q. We can see here, on 7638, that the consultancy agreement</p> <p>3 is really contained in five separate documents; do you</p> <p>4 see that on 7638? It's the front page. The green page,</p> <p>5 as it were.</p> <p>6 A. Ah, okay. Yes.</p> <p>7 Q. So it's the memorandum, the brief, general conditions,</p> <p>8 special conditions, and schedule of fees.</p> <p>9 Could I ask you, please, first of all, to go to the</p> <p>10 brief, and could we pick it up, please, at 7653 and</p> <p>11 clause 3.1 at the bottom, where the objectives of the</p> <p>12 assignment are set out.</p> <p>13 A. Yes.</p> <p>14 Q. We can see that:</p> <p>15 "The overall objective of the assignment is to</p> <p>16 provide monitoring and verification services in relation</p> <p>17 to the work undertaken by the MTRC (including</p> <p>18 submissions by its consultants, contractors or agent to</p> <p>19 MTRC) during the construction, testing and commissioning</p> <p>20 phase of the project so as to provide assurance that the</p> <p>21 MTR's obligations stated in the Entrustment Agreements</p> <p>22 for the SCL advance works and construction phases have</p> <p>23 been properly fulfilled."</p> <p>24 Then I think a sentence that you emphasise somewhat</p> <p>25 in your witness statement:</p>	<p>1 Having understood it, having mapped out the</p> <p>2 direction, then we would be able to understand whether</p> <p>3 the defect had anything to do with the government or the</p> <p>4 contractor.</p> <p>5 Q. All right. So do you accept that the word "cost" is</p> <p>6 capable of being given quite a wide definition, ie it is</p> <p>7 anything that might arise that might impact on cost or</p> <p>8 indeed on programme?</p> <p>9 A. (Via interpreter) Well, you can put it that way.</p> <p>10 Q. Okay. Could we then look at clause 4.1:</p> <p>11 "The assignment shall include but not be limited to</p> <p>12 the following", and then there's a list, "a review of</p> <p>13 the documents relating to the following", and there</p> <p>14 a list is given, and there's a general sweep-up clause</p> <p>15 at the end, that is (vi), "other key documents relating</p> <p>16 to the SCL works"; do you see that, Mr Mak?</p> <p>17 A. Yes.</p> <p>18 Q. Then (b):</p> <p>19 "Carrying out monitoring on MTRCL's works through</p> <p>20 a review of the concerned project documents and</p> <p>21 necessary site inspection and identification of and</p> <p>22 providing advice on key issues, which bear significant</p> <p>23 implications in respect of cost, programme and public</p> <p>24 safety to the Project".</p> <p>25 Then at 4.2:</p>
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<p>1 "The monitoring and verification shall focus on</p> <p>2 cost, programme and public safety of the project."</p> <p>3 A. Correct.</p> <p>4 Q. Mr Mak, it says "focus on cost, programme and public</p> <p>5 safety". Would you agree that that is not</p> <p>6 all-inclusive, that responsibilities may go outside the</p> <p>7 questions of cost, programme and public safety?</p> <p>8 A. Excuse me. The question again, please.</p> <p>9 Q. Of course. Whilst the objective is to focus on cost,</p> <p>10 programme and public safety, would you accept that that</p> <p>11 is not all-inclusive, and that Pypun had to look at</p> <p>12 other matters beyond cost, programme and public safety?</p> <p>13 A. I don't think so.</p> <p>14 Q. You don't think so? You disagree?</p> <p>15 A. Disagree.</p> <p>16 Q. Okay. Let me test that with an example. Let's suppose</p> <p>17 there were some defects in a particular contract.</p> <p>18 A. Mm-hmm.</p> <p>19 Q. And those defects required remedial works. Would you</p> <p>20 accept that that general topic would fall into the</p> <p>21 question or under the umbrella of cost?</p> <p>22 A. (Via interpreter) It depends on the actual situation of</p> <p>23 the defect and its impact. First, we would look at</p> <p>24 whether there is any impact on the programme, and also</p> <p>25 the cost of the defect itself.</p>	<p>1 "Notwithstanding Clause 4.1 ... the Consultants</p> <p>2 shall not be required to carry out site supervision or</p> <p>3 any checking of detailed design of the works."</p> <p>4 But I think we will see shortly, although there's no</p> <p>5 site supervision involved, there is provision for</p> <p>6 certain site inspections?</p> <p>7 A. No site inspections, sorry.</p> <p>8 Q. Well, certain -- to go to site to inspect certain things</p> <p>9 that are happening, like testing and the like, might be</p> <p>10 required.</p> <p>11 A. If we were instructed by RDO, yes.</p> <p>12 Q. Okay. If you then go to 5 on page 7655, there's</p> <p>13 a heading "Deliverables", and there's a schedule. These</p> <p>14 are a number of deliverables, that is documents that</p> <p>15 have to be produced by Pypun towards the beginning of</p> <p>16 the consultancy.</p> <p>17 A. Mm-hmm, yes.</p> <p>18 Q. And then provided to government.</p> <p>19 A. Yes.</p> <p>20 Q. The two I'm going to be looking at with you in a moment</p> <p>21 are number 2, the inception report; do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Just for the transcript, that's K1/37, but we will be</p> <p>24 going there shortly. And then the monitoring plan at</p> <p>25 number 5, that's K1/146. Do you see those two?</p>

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<p>1 A. Yes.</p> <p>2 Q. Thank you.</p> <p>3 Then if you could please go to number 6, clause 6,</p> <p>4 at 6.1.7 at the bottom of page 7658, it says:</p> <p>5 "The main roles of the Consultants is to appraise,</p> <p>6 monitor and audit the activities/processes of MTR, and</p> <p>7 verify that these activities/processes are carried out</p> <p>8 in accordance with the MTR's management and control</p> <p>9 procedures and in compliance with the 3 Entrustment</p> <p>10 Agreements for the SCL design and site investigation,</p> <p>11 advance works or construction phases ... Hence, the</p> <p>12 consultants shall be proactive, working closely with the</p> <p>13 Director's Representative and the MTRCL and timely</p> <p>14 adjust its work plan to suit the progress and programme</p> <p>15 of the SCL works."</p> <p>16 Now, you mentioned a moment ago in answer to</p> <p>17 a question that you would make site visits if requested</p> <p>18 to do so by RDO?</p> <p>19 A. Yes, the director's representative.</p> <p>20 Q. Yes. This clause suggests that Pypun should be</p> <p>21 proactive in their duties and responsibilities. As</p> <p>22 a general proposition, Mr Mak, is that something you</p> <p>23 accept?</p> <p>24 A. Yes, I agree. We should have -- be proactive to assist</p> <p>25 our client, yes.</p>	<p>1 because the inception plans, the inception reports, the</p> <p>2 monitoring plan and the verification plan, all these</p> <p>3 I needed to understand these documents, of course</p> <p>4 including PIMS, and I of course also had to work</p> <p>5 together with my team members to see how they went about</p> <p>6 their work before my time, and also how we should</p> <p>7 proactively perform our duties.</p> <p>8 As to PIMS, my understanding was that it was</p> <p>9 a massive document for project management and control.</p> <p>10 I am not a stranger to that, because in many large-scale</p> <p>11 projects in Hong Kong or even when I assisted in</p> <p>12 building railways of overseas companies, I made</p> <p>13 reference to PIMS, and I actually used a part of PIMS.</p> <p>14 So PIMS was not something that was strange to me.</p> <p>15 Q. All right.</p> <p>16 COMMISSIONER HANSFORD: Sorry, Mr Mak, when you are</p> <p>17 referring to PIMS, are you referring to MTR's PIMS?</p> <p>18 A. Yes, we are talking about MTR PIMS. Sorry, Professor.</p> <p>19 COMMISSIONER HANSFORD: No, that's fine. Thank you.</p> <p>20 MR PENNICOTT: Then just to pick up a couple of points that</p> <p>21 I mentioned earlier, which I think you agreed with -- at</p> <p>22 6.3.1 under the heading "Monitoring", it says:</p> <p>23 "The Consultants shall develop a comprehensive</p> <p>24 Monitoring Plan" -- as I say, we will look at a couple</p> <p>25 of parts of that in a moment -- "for the monitoring work</p>
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<p>1 Q. Yes, so the mindset, not necessarily going to see</p> <p>2 specific tests that RDO may want you to witness, but as</p> <p>3 a general proposition you would accept that you should</p> <p>4 be proactive?</p> <p>5 A. Yes, definitely should have.</p> <p>6 Q. Then at 6.2 there's a heading "Review reports", at the</p> <p>7 bottom of 7659, where it says:</p> <p>8 "The Consultants shall carry out the following --</p> <p>9 (a) acquaint themselves with MTRC's project</p> <p>10 management system and procedures (including the MTRC's</p> <p>11 internal audit systems); and</p> <p>12 (b) acquaint themselves with the contract documents</p> <p>13 for all construction and procurement activities."</p> <p>14 Pausing there, "acquaint themselves with the MTR's</p> <p>15 project management system", that includes, I think, the</p> <p>16 PIMS. Is that something that you became familiar with,</p> <p>17 Mr Mak, yourself?</p> <p>18 A. Yes, I agree.</p> <p>19 Q. Okay. Indeed, when you took up your post in</p> <p>20 January 2016, what did you do to acquaint yourself and</p> <p>21 appraise yourself of what had happened while Mr Lloyd</p> <p>22 was in charge?</p> <p>23 A. Of course I have to -- sorry.</p> <p>24 (Via interpreter) Of course, I need to read all the</p> <p>25 documents, including contract agreement, the brief,</p>	<p>1 covering the various aspects of the works throughout the</p> <p>2 advance works, construction, testing and commissioning</p> <p>3 phases of the Project. The Monitoring Plan shall</p> <p>4 include document review, site inspection together with</p> <p>5 other necessary processes or means to ensure that the</p> <p>6 objectives of the assignment would be satisfactorily</p> <p>7 met."</p> <p>8 Do you see that, Mr Mak?</p> <p>9 A. Yes.</p> <p>10 Q. Then in 6.3.2, and this is where we get the monitoring</p> <p>11 team from, it says:</p> <p>12 "In view of the intensity and tight programme of the</p> <p>13 construction works, the Consultants shall set up and</p> <p>14 maintain a Monitoring Team ... led by a professional</p> <p>15 staff ..."</p> <p>16 Then details are given as to that team, minimum</p> <p>17 requirements.</p> <p>18 A. Yes.</p> <p>19 Q. Can you confirm that those minimum requirements were</p> <p>20 met?</p> <p>21 A. Yes.</p> <p>22 Q. And are still being met?</p> <p>23 A. Well above, yes.</p> <p>24 Q. Then in 6.3.3 it says:</p> <p>25 "The Monitoring Team and the Building Submission</p>

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<p>1 Review & Compliance team ..."</p> <p>2 We'll see more about them in a moment.</p> <p>3 A. Yes.</p> <p>4 Q. "... as stipulated in Clause 6.6 shall maintain close</p> <p>5 liaison in carrying out their respective duties. The MT</p> <p>6 shall supplement the BSRC's duties such that there is no</p> <p>7 gap between their respective duties."</p> <p>8 A. Yes.</p> <p>9 Q. Then it goes on to say this, and this may be of some</p> <p>10 importance. It says:</p> <p>11 "The Consultants shall, on risk basis with focus on</p> <p>12 cost, programme and public safety aspects, carry out,</p> <p>13 but without limitation to, the following".</p> <p>14 Then there are a series of items (a) to (j) listed.</p> <p>15 Mr Mak, can you help us with this. Just looking at</p> <p>16 (a) through to (j), if you look at (h) first, "assess</p> <p>17 building submissions and the compliance with the</p> <p>18 building safety standards of the Project", my</p> <p>19 understanding is that that obligation would be fulfilled</p> <p>20 by the BSRC team?</p> <p>21 A. BSRC team.</p> <p>22 Q. Yes. And would I be right in thinking that (f) would</p> <p>23 also be within the BSRC team?</p> <p>24 A. I would say ...</p> <p>25 (Via interpreter) Well, with regard to method</p>	<p>1 correctly, to ensure that as clause 6.3.3 puts it, to</p> <p>2 ensure that nothing falls through the gaps, you have</p> <p>3 these meetings between the two teams -- or</p> <p>4 representatives of the two teams --</p> <p>5 A. Yes.</p> <p>6 Q. -- to ensure that nothing does fall down the gaps?</p> <p>7 A. That is my job.</p> <p>8 Q. That's your job. Okay. Just to look at a couple of</p> <p>9 specific items, if you go to 6.4.4 -- and we are under</p> <p>10 the heading "Verification now", we see that at the top</p> <p>11 of the page -- it says:</p> <p>12 "The Consultants shall carry out audits in sessions</p> <p>13 for each of the construction contracts at a minimum</p> <p>14 frequency as listed in Appendix G, with the first to be</p> <p>15 carried out no later than 6 months after the</p> <p>16 commencement of the Assignment. For the advance works</p> <p>17 commenced ..."</p> <p>18 We don't need to worry about that.</p> <p>19 "The extent and scope of the audits shall provide</p> <p>20 reasonable assurance that the works of the MTR comply</p> <p>21 with the required project scope,</p> <p>22 standards/specifications ..."</p> <p>23 Then, Mr Mak, if we could go to appendix G, which is</p> <p>24 at page 7690, that's a list of contract numbers all</p> <p>25 encompassed within the SCL project; do you see that,</p>
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<p>1 statements, they would have a look first. If they find</p> <p>2 out that there's money involved or public safety, they</p> <p>3 would liaise with the monitoring and verification team</p> <p>4 on a weekly basis. We had a core team meeting during</p> <p>5 which we would exchange information, and then on that</p> <p>6 occasion we would proactively look at the method</p> <p>7 statements to see if there is any proposal related to</p> <p>8 cost, programme or public safety, and we would take</p> <p>9 follow-up action together.</p> <p>10 Q. Understood. I think what would help me to understand,</p> <p>11 Mr Mak -- and do take your time -- apart from (h) in</p> <p>12 this section or clause, is the position that everything</p> <p>13 else primarily fell under the umbrella of the monitoring</p> <p>14 team? Apart from (h); would that be right?</p> <p>15 A. Sorry, your question again, sir.</p> <p>16 Q. Certainly. We are agreed that subparagraph (h) --</p> <p>17 A. (h), yes.</p> <p>18 Q. -- is the responsibility of the BSRC team?</p> <p>19 A. Yes, I agree.</p> <p>20 Q. The question is, are all the others, all the other</p> <p>21 subparagraphs, the duties and responsibilities, from (a)</p> <p>22 to (g), and (i) and (j), do they fall under the duties</p> <p>23 of the monitoring team?</p> <p>24 A. Yes, agree.</p> <p>25 Q. Okay. If I have understood your previous answer</p>	<p>1 Mr Mak?</p> <p>2 A. Yes, I see.</p> <p>3 Q. And you will see, eight or nine items down on page 7690,</p> <p>4 a reference to contract 1112; do you see that?</p> <p>5 A. Yes, I see.</p> <p>6 Q. The required frequency of audit is, so far as public</p> <p>7 safety is concerned, if I'm reading this correctly, once</p> <p>8 every 12 months; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And, so far as financial process and programme</p> <p>11 compliance is concerned, once every six months?</p> <p>12 A. Yes.</p> <p>13 Q. As I understand it, if we go to G10/7754 -- G10, that's</p> <p>14 the next file, page 7754, right at the beginning of that</p> <p>15 file, I think -- the government have helpfully supplied</p> <p>16 us with a list, first of all, on page 7754, of the five</p> <p>17 annual public safety audit reports that Pypun carried</p> <p>18 out; do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Then, over the page -- sorry, at the bottom of the page</p> <p>21 you will see a heading, "Financial audit reports", and</p> <p>22 you will see that that runs on over the page, 7755.</p> <p>23 A. Mm-hmm.</p> <p>24 Q. So those are the six-monthly audit reports?</p> <p>25 A. Yes.</p>

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<p>1 Q. Then the next page, 7756, we get the programme audit 2 reports? 3 A. Yes. 4 Q. All of those, as I understand it, Mr Mak, would have 5 been done by the monitoring team; is that right? 6 A. Yes. 7 Q. And all that would have been done by the monitoring 8 team? 9 A. Yes. 10 Q. Then if I can ask you to go back to the contract and 11 look at clause 6.6.1 on page 7764. We see here that 12 this is the clause that essentially sets up the BSRC 13 team. It says: 14 "The Consultants shall provide settlement agreements 15 on the building submissions submitted by the MTR and/or 16 its consultants/agents, and provide input on compliance 17 with the building safety standards in respect of the 18 Project to the Director's Representative. In view of 19 the intensity and urgency of these submissions and 20 compliance check, the Consultants shall set up 21 a dedicated Building Submission Review & Compliance ... 22 team comprising the minimum manpower requirement as 23 shown in Appendix H." 24 Appendix H is at 7694; do you see that, Mr Mak? 25 A. Yes.</p>	<p>1 Q. The first one I would like just to look at is the 2 inception report which is at K1/37. It's in K1, 3 attached to your witness statement. 4 Let's just look at the front sheet so we know where 5 we are. At page 37 we see the front sheet of the 6 inception report, and also at 38, and then I think the 7 page you are on, by the looks of things, K40, the 8 content. 9 A. Yes. 10 Q. Then if you could go, please, to K43, we see a heading, 11 "Objectives of the assignment". 12 A. Yes. 13 Q. This is essentially a breakdown or an expansion of the 14 clause that we saw in the contract. 15 A. Agree. 16 Q. It says "The key objectives", broken down in the 17 inception report, and the first one is: 18 "Monitor MTR's performance in meeting their 19 obligations as stated in the advance works and 20 construction phase Entrustment Agreements." 21 Do you see that? 22 A. I see that, yes. 23 Q. Do you agree, Mr Mak, that there is no limitation placed 24 on that objective with regard to cost, programme and 25 public safety; it is a general obligation to monitor the</p>
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<p>1 Q. Do you confirm that Pypun has complied with this minimum 2 requirement so far as the BSRC team is concerned? 3 A. Yes, fully satisfy this requirement. 4 Q. In a sense, would this be right, Mr Mak, that insofar as 5 the BSRC team is concerned, it might be said they are 6 not really monitoring and verifying, as the monitoring 7 team is doing, because they are essentially, as 8 I understand it, assisting the Buildings Department in 9 looking at the contractor's submissions as they come in 10 from time to time? 11 A. Exactly. 12 Q. Then finally on the contract, if we go to 6.7.2, that's 13 on page 7666, clause 6.7.2, heading "Monitoring Plan": 14 "The Consultants shall describe clearly the 15 methodology and resources to be deployed for the 16 monitoring activities and the programme to be followed. 17 The Consultants shall show clearly in the Plan how the 18 objectives of the Assignment in respect of monitoring 19 could be achieved." 20 We will look at the monitoring plan shortly. 21 A. Yes. 22 Q. As we have seen already and as you mention in your 23 witness statement, a number of deliverables had to be 24 provided by Pypun. 25 A. Yes.</p>	<p>1 MTR's performance and obligations under the entrustment 2 agreements, as a general requirement of Pypun? 3 A. Your question again, sorry? 4 Q. Yes. There is no reference, in that first bullet point, 5 to cost, programme, or public safety. 6 A. No. 7 Q. Do you agree that that is a general obligation that 8 Pypun has to monitor MTR's performance in meeting their 9 obligations under the construction phase entrustment 10 agreement? 11 A. Purely on ... 12 (Via interpreter) If we look at this statement 13 alone, it seems like it, but if you look at the bullet 14 points that follow, we do mention that our focus is on 15 cost, programme and public safety. Theoretically, we 16 should not venture beyond those. Well, this is 17 a general description but our focus would still be 18 limited to cost, programme and public safety. This is 19 our understanding. 20 Q. Right. So, from your perspective, to your 21 understanding -- 22 A. Yes. 23 Q. -- even the first bullet point is qualified by cost, 24 programme and public safety? Am I correct in my 25 understanding?</p>

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<p>1 A. (Via interpreter) If we should be repeating, I don't 2 think -- it is because contract-wise, we should not 3 venture beyond the core requirements of the agreement. 4 Q. Would you agree -- let me ask you this specific 5 question -- that one of the obligations that MTRC has 6 under the construction entrustment agreement is to 7 deliver as-built drawings? 8 A. Yes. 9 Q. Would you see it as part of Pypun's duty to monitor the 10 MTR's performance in that specific respect? 11 A. The produce of the as-built drawings, you mean? 12 Q. Yes. 13 A. Yeah, I believe it belongs to the BSRC team's role. 14 Q. Right. So does that have any cost -- where does that 15 fall under the cost, programme or public safety 16 headings? 17 A. I think it's difficult to tell at this stage, yeah, 18 because actually, in fact, we monitor ... 19 (Via interpreter) We have been monitoring cost, 20 programme and public safety. If we look at the 21 obligations under the agreement, then at the 22 construction, testing and commissioning stage -- well, 23 after commissioning, after handover, our obligations 24 should have been concluded. As for as-built drawings, 25 those would record what had been done by BD or other</p>	<p>1 Q. All right. And did Pypun ever undertake any monitoring 2 or audit of the MTR's PIMS management system? I mean, 3 did you ever get into auditing any aspect of the PIMS 4 over the number of years that you were involved in this 5 project? 6 A. (Via interpreter) As I said, PIMS is a huge document for 7 process control. We definitely touched part of that 8 document, and we read the content, because we had to 9 check project compliance and technical compliance. 10 Especially for the BSRC team, it had a deep 11 understanding of PIMS. 12 Q. Yes. What I'm asking you is whether there was any 13 specific audit -- monitoring and then audit, of the MTR 14 management system, that is PIMS. 15 A. No, I don't think so. 16 Q. Okay. 17 Now, back to the inception report, can I ask you, 18 please, to go to clause 5.6 at K1/65. Paragraph 5.6 of 19 the inception report, Mr Mak -- 20 A. Yes. 21 Q. -- deals with the approach and methodology for building 22 submission assessment activities. So this part of the 23 inception report is directed at the BSRC team. 24 A. Yes. 25 Q. Okay. We don't need to look at all this, but if you go</p>
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<p>1 authority. Yeah. 2 That's why I don't think we should go back at that 3 stage to look at cost, programme and public safety. 4 Q. Yes. What I'm trying to understand, Mr Mak, is that in 5 relation to the point about defects and remedial works 6 that I put to you earlier -- 7 A. Mm-hmm. 8 Q. -- one can see, perhaps, how that might fall under the 9 heading of cost. 10 A. Yes. 11 Q. I'm now putting a different example to you by reference 12 to this clause, which is as-built drawings, which 13 doesn't seem to me to fall neatly under any cost, public 14 safety, possibly programme -- one can see that if one 15 stretched the failure to comply with the obligation, it 16 might have some time effect, perhaps -- but I'm just 17 trying to understand how wide one should interpret this 18 first bullet point, and suggesting to you that it may 19 not be constrained by cost, programme and public safety 20 and it goes wider than that. 21 A. Personally, I still hold the opinion that even though 22 it's not mentioned that cost, programme and public 23 safety, I still maintain my view that we should not go 24 away from that main theme. It's my personal opinion on 25 that.</p>	<p>1 to the bottom of K66, under the table, it says: 2 "The BSRC Team will focus on two main streams of 3 work, (1) assessing building submissions and (2) 4 checking compliance with building safety standards." 5 Do you see that? 6 A. Yes. 7 Q. Then, at 5.6.5 on K68 there's a heading, "Compliance 8 with the building safety standards". Then over the page 9 at 69, it says this: 10 "The site and audit inspections will focus on 11 unsatisfactory aspects that may impact on or interface 12 with public safety and building safety standards. The 13 areas of concern include: 14 -- Divergence or deviation in a material way from 15 approved plans. 16 -- Use of defective materials." 17 Skipping the next one, then the next one: 18 "-- Lack of supervision by the responsible persons." 19 So, Mr Mak, my understanding is that these are all 20 obligations -- 21 A. Yes. 22 Q. -- referable to the BSRC team -- 23 A. Yes, exactly. 24 Q. -- and ought to be, therefore, by reference to the risk 25 assessment approach --</p>

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<p>1 A. Agree. 2 Q. -- potentially the subject of site and audit 3 inspections, potentially? 4 A. Yes. 5 Q. And going back to a point I mentioned earlier, would the 6 BSRC team itself be proactive in instigating these sorts 7 of site and audit inspections in relation to these 8 potential matters of concern? 9 A. (Via interpreter) Well, proactively, I think we should 10 act according to the contract requirements, and that is 11 we should help the BD team. No matter how proactive we 12 were, unless we understood that there were matters that 13 would pose danger, we would have to know them first; if 14 we had not discovered them, then usually it would be up 15 to the BD team to give directives for us to perform our 16 duties. Unless we had information and saw something 17 peculiar. 18 Q. I'm not quite sure how that fits with being proactive, 19 Mr Mak. It seems to me that what you're telling us is 20 that you wouldn't do -- let's take an example of 21 a potential situation where there was a lack of 22 supervision by responsible persons. Let's take that as 23 an example, maybe an example that's fairly close to 24 home. 25 You would not carry out that -- or the BSRC team</p>	<p>1 followed, or to make sure that there was correct 2 supervision of work? 3 A. Mr Chairman, your question again, sorry? 4 CHAIRMAN: Sorry, do I understand it that you did not see it 5 as part of the contract, in respect of safety issues, to 6 conduct occasional inspections to make sure, in respect 7 of those safety issues, that necessary supervision was 8 taking place, that necessary work sequences were being 9 followed so that they were safe and secure and the like? 10 A. Sorry, I still cannot catch the meaning of the question. 11 I'm sorry, Mr Chairman. 12 CHAIRMAN: Let me put it this way then. It seems to me that 13 it's all very well to look through documents, and it's 14 all very well to be satisfied that plans and aspects of 15 PIMS are correctly drawn up, but that on its own doesn't 16 really go to the final degree, does it? You've actually 17 got to see what's happening, otherwise it's a bit like 18 buying a house on the basis of the brochure: we've 19 checked that very thoroughly and it's a great brochure 20 and we've checked the building plan and that looks 21 great, but we've never gone and actually had a look at 22 the house. 23 A. (Via interpreter) We also carried out site inspection. 24 It's a question of whether it's in detail. I think our 25 Mr Yueng would be able to provide more detail,</p>
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<p>1 would not carry out that type of audit unless instructed 2 to do by the RDO; is that right? 3 A. I believe we cannot carry -- we should not carry out 4 duty outside the BD team's consent, at least, if not 5 instruction. So, and ... 6 (Via interpreter) For our team, in terms of manpower 7 and workload -- well, it was already a tremendous 8 workload that we had to handle, and time-wise it was 9 very tight. There are many projects ongoing to tie in 10 with the progress. We had to deploy, fully deploy the 11 manpower, as required by government, to satisfy the 12 basic requirement. So unless BD, the BD team, made some 13 special request, otherwise we didn't have the surplus 14 manpower to look into these issues, however proactive we 15 might be. Of course we didn't have to make the 16 judgment. It's up to the BD team. I personally believe 17 it's either the BD team or the director's representative 18 would need to provide feedback. I would say that my 19 colleagues have been very proactive in doing what they 20 are required to do. 21 MR PENNICOTT: Sir, I see it's 1 o'clock. 22 CHAIRMAN: Sorry, do I understand that it was not seen to be 23 part of your contract in respect of safety issues, for 24 example, to conduct any form of occasional inspections 25 to make sure that necessary work sequences were being</p>	<p>1 I believe, to the satisfaction of Chairman. I'm sorry 2 about that. 3 CHAIRMAN: No, that's perfectly okay. I'm just trying to 4 understand, on a conceptual basis, that is on a broader 5 basis, whether this check -- the checker role that you 6 had was one of just checking documents, and I appreciate 7 their importance in terms of cost and things like that, 8 but it would seem that unless you actually get out on 9 the ground and have a look, the documents can say all 10 sorts of good things, but whether those good things are 11 being done -- 12 A. Yes, agree. 13 CHAIRMAN: -- is another matter. 14 A. Yes, but whether or not they are constructed to the 15 requirement as shown on the working drawings, I think 16 it's not belong to our duty, it belong to the site team 17 of MTR because it's a day-to-day full-time and 18 continuous supervision. I don't think this belong 19 within our scope of work. 20 CHAIRMAN: Yes, I'm not talking about whether or not things 21 are actually constructed according to the plans. I'm 22 talking about general checking, for example, that safety 23 procedures are in fact being followed. 24 A. You mean the site safety, Mr Chairman? 25 CHAIRMAN: Yes, for example.</p>

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<p>1 A. Site safety, yes, the temporary works, I do believe our 2 BSRC team will look into the temporary works, right. 3 And in fact, there is a complicated system for the 4 contractor to produce the temporary work together with 5 their ICE, and then counterchecked by MTR and get the 6 approval from the competent person, and so forth, yes. 7 I think our role is -- we just check compliance of the 8 process and technical approach, not the day-to-day 9 performance of the work done on site. That is my 10 understanding, sir. 11 CHAIRMAN: All right. That helps me a lot. So the way you 12 read the contract and carried out the contract -- and 13 I'm not saying you did so wrongly, by the way; it's not 14 a criticism. 15 A. Thank you, sir. 16 CHAIRMAN: It's just trying to understand the scope of the 17 work that you were given in terms of the contract. 18 A. Thank you. 19 CHAIRMAN: And, as I understand it, your essential role, as 20 you read it, was to check compliance of the process -- 21 A. Yes. 22 CHAIRMAN: -- and to check that there are measures in place 23 in writing that are up to scratch in respect of safety 24 issues and the like -- 25 A. Yes.</p>	<p>1 limited by the requirements of the government, so the 2 government is determining your manpower; is that 3 correct? 4 A. Because it was agreed at the beginning of the contract, 5 we outlined what we are going to do, and then we expect 6 the -- because in between, if the government believes 7 they need us to perform more, they will instruct us to 8 add on more power. That is my understanding on the 9 contract. 10 COMMISSIONER HANSFORD: I understand that. Then, as 11 Mr Pennicott has pointed out and you have agreed with, 12 you have a requirement to be proactive. So, if you are 13 being proactive but you have insufficient manpower, how 14 do you reconcile that? 15 A. Your question again, sir? 16 COMMISSIONER HANSFORD: On the one hand, you've got 17 a limited manpower. On the other hand, you're required 18 to be proactive. 19 A. Yes. 20 COMMISSIONER HANSFORD: How do you reconcile those two? 21 A. We may convey the message to the BO team, right, for 22 discussion. If they insist what we can have, then 23 I don't think we can do much on that. Yeah. 24 And also, of course, personally, I believe it all 25 depends on the situation, because we have -- we've got</p>
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<p>1 CHAIRMAN: -- without necessarily getting out on the ground 2 and seeing whether they are being complied with in fact? 3 A. Only if we were invited or we were directed by the BO 4 team to do so. As I said before, our ... 5 (Via interpreter) Well, we are limited by our 6 manpower. We had fulfilled all that was required of us. 7 I believe I satisfied everything. 8 CHAIRMAN: Yes, again, it's not a criticism; I'm just trying 9 to understand what was the scope of the contract as you 10 and your team of people understood it, and what in fact 11 was done in the light of that understanding. That's 12 all. It's not a criticism. 13 A. Thank you, sir. 14 CHAIRMAN: We all of us, if we are doing work under 15 a contract, we have to interpret it, and then we do what 16 the contract requires of us. 17 A. Yes. 18 CHAIRMAN: And we don't do any more because then we are 19 exceeding our authority. 20 A. Yes. 21 CHAIRMAN: Good. Thank you, that has helped me. Thank you 22 very much. 23 A. Thank you, sir. 24 COMMISSIONER HANSFORD: Mr Mak, if I may take that a little 25 bit further -- so you are telling us your manpower is</p>	<p>1 a large contract, over billions of contracts, and that 2 so many number of contracts taking concurrently in 3 the -- at the same time. 4 So, as I said, it's not an easy job, and we have 5 worked very hard, we have very worked very proactively, 6 sir. 7 COMMISSIONER HANSFORD: Thank you. 8 CHAIRMAN: Thank you very much. 2.30, shall we make it? 9 MR PENNICOTT: That will be helpful to me, sir. 10 CHAIRMAN: No, I appreciate that. Yes. 11 (1.11 pm) 12 (The luncheon adjournment) 13 (2.31 pm) 14 MR PENNICOTT: Mr Mak, good afternoon. 15 A. Good afternoon, sir. 16 Q. We were looking at part of the inception report before 17 lunch. Could I please ask you to go back to where we 18 were, at page K1/66. This is something we saw, albeit 19 briefly, in the contract earlier, but just to pick it up 20 from here -- we see the table here for the BSRC. 21 A. Yes. 22 Q. It's described as a "minimum staffing requirement"; do 23 you see that? 24 A. Yes, I see. 25 Q. Just keep that in mind and then go back to the contract,</p>

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<p>1 if you would. It's in G9/7746. This is the schedule of 2 fees, which is one of the five contract documents; do 3 you remember that, Mr Mak? 4 A. Yes. Yes. 5 Q. One can see, if one goes over the page to 7747, that the 6 basis of fee that Pypun is to receive is said to be 7 this: 8 "The remuneration of the Consultants for the 9 performance of the Services shall be a Lump Sum of 10 Hong Kong Dollars ..." 11 And then the sum has been redacted because the sum 12 itself is not of direct relevance. 13 "... subject to the limitations, reservations and 14 adjustments in Schedule of Fees Clauses 4, 5, 6 15 and 7 ..." 16 And one can see, in the rest of this schedule of 17 fees document, that provision is made for the payment of 18 expenses at clause 4, and additional services, and 19 payments for delays at 7, and fees on a time-charge 20 basis. 21 Now, given that fees set-up, Mr Mak, and going back 22 to some of the questions I was asking you and the 23 professor was asking you before lunch, if you are, as it 24 were, to be proactive and you are to carry out some of 25 these site inspections and site audits and so forth --</p>	<p>1 opinion; right? On the other hand, I'm the middleman 2 between the company and I have the budget to control; 3 I cannot spend whatever I want, I cannot ask my men to 4 do something outside the scope, is my difficulty, sir. 5 So unless -- of course, under certain circumstances, 6 I have to talk to RDO/BO team to say that we have 7 a difficulty here, and it must be done, even though it's 8 outside the scope, can I do it? In fact, after the 9 incident of the coupler, we were award of a few small 10 packages. We are willing to help, and just two days ago 11 we submit a report for -- which you mentioned before the 12 meeting, sir, yes, so -- 13 Q. Yes, indeed, and that's one of the examples I -- 14 A. I'm sorry that -- my mother tongue is not English, and 15 it may be difficult to express. 16 Q. You don't need to apologise, Mr Mak, I can assure you. 17 Your English is better than my Cantonese. 18 A. I'm sorry. 19 Q. Mr Mak, as the Chairman was indicating before lunch, I'm 20 not in any sense trying to criticise you or -- part of 21 the exercise that we're involved in here is to test -- 22 A. I understand, sir. 23 Q. -- the practices and the procedures to see whether they 24 were in order, see whether they can be improved in any 25 way.</p>
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<p>1 I mean, how did it work in terms of remuneration? You 2 were getting a lump sum fee, but if you thought that 3 something specific needed to be done, would you go to 4 the RDO and ask them? Was it a question of negotiation 5 additional payment? I mean, how did it work? 6 A. As I said in the morning, due to the tight manpower 7 schedule, most of our men are really exhausted, may 8 I use this word. And also, according to the contract, 9 we should play a supportive role; right? Therefore, we 10 have to listen to BO team or the director's 11 representative directive. 12 Firstly, we have no spare effort to dig out extra 13 work for ourselves, and also it's embarrassing to 14 request our client to give me more funds or job outside 15 our scope. But of course, as I said, if we find 16 something really, really special and very dangerous, we 17 will remind them, of course, but ultimately it's the 18 director's representative, the PGE of Highways or the BO 19 team leader will instruct us or direct us to do. 20 Q. We saw, before I took you to the fees, the minimum 21 requirement -- is it your understanding that the 22 government, without paying you more money, could ask you 23 to, as it were, provide more than the minimum. 24 A. What I would express here is that we have done our best, 25 and we provide our supportive role good enough, in my</p>	<p>1 A. Fully understand. 2 Q. And that's one of the reasons I am asking you these 3 questions, you'll understand. 4 A. I appreciate that. 5 CHAIRMAN: Would it be correct, perhaps, Mr Mak -- and I'm 6 using a term which, like on several other occasions, 7 I have borrowed from Prof Hansford -- that you really 8 fulfilled the role of an auditor? 9 A. Sorry, your question, sir? 10 CHAIRMAN: Would you agree with a definition that really you 11 were fulfilling the role of an auditor in terms of this 12 contract? 13 A. Yes, we were, affirmatively. 14 CHAIRMAN: Thank you. 15 MR PENNICOTT: All right. Could we then just look at 16 a slightly different topic, although it's perhaps 17 a continuation of what we've been looking at. Could we 18 look at the monitoring plan -- 19 A. Yes. 20 Q. -- that you drew up as one of the deliverables. We will 21 find that at K1/146. 22 We can see, at -- it actual starts at 147, and then 23 one sees -- that's the front sheet -- and 148, and then 24 if you go to 151, that will give you, again, the list of 25 abbreviations -- give you the contents; do you see that?</p>

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<p>1 A. Yes, I see it.</p> <p>2 Q. Then if you go to 154, you get the objective, and again</p> <p>3 we don't need to go through all of that.</p> <p>4 Then at 2.2.1 is -- well, 2.2 is the approach, and</p> <p>5 then the heading "General" at 155, and if you go to 156,</p> <p>6 it says towards the top of page 156:</p> <p>7 "There are some readily [identifiable] key risks,</p> <p>8 for example:</p> <p>9 -- SCL cost and programme.</p> <p>10 -- Contract interfaces, both internal and external,</p> <p>11 to the SCL project.</p> <p>12 -- Interface with the existing operating railway and</p> <p>13 system migration.</p> <p>14 -- Systems integration, testing and commissioning.</p> <p>15 There are many other risks and the monitor</p> <p>16 monitoring and verification tasks could become complex</p> <p>17 and inefficient if we do not focus on the key risks."</p> <p>18 A. Yes.</p> <p>19 Q. "Therefore, we will rely on a very structured approach</p> <p>20 to the works to enable us to focus on the key risk and</p> <p>21 let them drive our monitoring and verification ...</p> <p>22 programme."</p> <p>23 A. Exactly.</p> <p>24 Q. Then over the page, at 2.2.2, at 157, we get several</p> <p>25 paragraphs describing the risk-based approach.</p>	<p>1 sorry -- and we evaluated the risk, and if we find</p> <p>2 something in the opinion from ourselves where some risks</p> <p>3 are really more heavier, then we will discuss with -- we</p> <p>4 will suggest to RDO.</p> <p>5 In fact, we create, but we should get a consensus or</p> <p>6 opinion or agreement from RDO on the risk register.</p> <p>7 Q. Yes. It's just that the wording here that I've just</p> <p>8 read out to you at the bottom of 157 says "update our</p> <p>9 risk register", which suggests to me, Mr Mak, that you,</p> <p>10 Pypun --</p> <p>11 A. Yes.</p> <p>12 Q. -- had or should have had your own risk register. I was</p> <p>13 just asking whether you did.</p> <p>14 A. Yes, to a certain -- in some cases, yes, we create our</p> <p>15 risk register.</p> <p>16 Q. You see, and if you did have a risk register, I was</p> <p>17 going to ask you how you went about compiling it and</p> <p>18 keeping it up to date.</p> <p>19 A. We will, of course, search through the documents,</p> <p>20 including the BCG(?) papers, the reports, and also we</p> <p>21 would carry out certain verification on site, while</p> <p>22 doing the site walk and so forth, yes. We must have our</p> <p>23 own basis, yes. We have our own judgment, yes, on that,</p> <p>24 yes.</p> <p>25 Q. I'm sorry to press you, Mr Mak, but we see, in the</p>
<p>Page 102</p> <p>1 A. Yes, sir.</p> <p>2 Q. We can see that there's a heading, "Risk</p> <p>3 identification", and then a list of items are set out,</p> <p>4 and then it says underneath that:</p> <p>5 "[The] strategic risks have been derived by</p> <p>6 considering all the likely events to risks and grouping</p> <p>7 them together."</p> <p>8 Then further down:</p> <p>9 "Analysis of risk -- We will assess the Probability</p> <p>10 of Occurrence and the Consequence under the three risk</p> <p>11 categories. The consequences will be combined and</p> <p>12 factored by occurrence severity ..."</p> <p>13 Then towards the bottom of the page:</p> <p>14 "The actual management of the SCL project risks will</p> <p>15 be undertaken by MTR. To enhance our risk management</p> <p>16 process we will review MTR's risk register and</p> <p>17 Contractor's construction risk register to create and</p> <p>18 update our risk register."</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is it correct, Mr Mak, that Pypun itself created its own</p> <p>21 risk register?</p> <p>22 A. I better put that we do not create our own risk. We</p> <p>23 will, through the ePMS of MTR, search these risks, and</p> <p>24 we carry out the process, as has been done in the</p> <p>25 previous page figure 6 of 22 -- no, the figure 1,</p>	<p>Page 104</p> <p>1 sentence I read out to you -- and it is indeed the case</p> <p>2 because we are going to look at a risk register in</p> <p>3 a moment -- the MTR had a risk register.</p> <p>4 A. Yes.</p> <p>5 Q. My understanding is that -- and obviously this is not</p> <p>6 project-specific; I understand the monitoring project is</p> <p>7 not --</p> <p>8 A. Okay.</p> <p>9 Q. -- sorry, not contract-specific -- one would expect, on</p> <p>10 a contract such as contract 1112, that the contractor,</p> <p>11 Leighton in this case, might also have a risk register.</p> <p>12 A. Yes.</p> <p>13 Q. And what this seems to be suggesting, this paragraph</p> <p>14 here or this sentence here, is that you should be</p> <p>15 creating your own risk register, but having in mind</p> <p>16 what's contained in the risk register of the MTR and any</p> <p>17 given contractor.</p> <p>18 Now, did you or did you not have your own risk</p> <p>19 register? When you turned up in January 2016 to take</p> <p>20 over from Mr Lloyd, was there a Pypun risk register or</p> <p>21 not?</p> <p>22 A. If the MTR's register itself, there's nothing wrong</p> <p>23 there, we have no comment on it, then we will not create</p> <p>24 any new register. But in some cases we found that we</p> <p>25 have difference in opinion, then we may suggest to the</p>

<p style="text-align: right;">Page 105</p> <p>1 RDO to have a new register on that so that we can follow 2 up with -- for monitoring the risk, to carry on our 3 work. That is our directive, yes. 4 Q. Yes. It sounds to me, Mr Mak, that you were very much 5 reliant upon the contents of MTR's risk register. 6 A. Most the work is done by them. As I said this morning, 7 we are going to check compliance of the procedures 8 and -- compliance with procedures and technical. 9 I don't think we should derail from the normal check of 10 the -- we should not create anything if -- because it's 11 not -- they should create their -- and we just comment 12 on their risk -- may I correct that we should not create 13 our own. We just comment on and ask RDO to agree upon 14 our risk register. Sorry. 15 Q. All right. So you did not create your own risk 16 register? 17 A. No. 18 Q. All right. Could we, however, look briefly at a risk 19 register, if I can remember where it is. 20 If you could please be shown G10 -- sorry, 21 page 7883. You might want to look at this in hard copy, 22 Mr Mak. 23 A. Thank you. 24 Q. Mr Mak, first of all, just cast your eye over that. Is 25 this a document that you've seen before?</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Your question again, sir? 2 Q. Yes. If you are sitting down and you are reviewing this 3 risk register, and you spot something that strikes you 4 as perhaps important to, let's say, public safety -- 5 A. Okay. 6 Q. -- would you, in those circumstances, suggest perhaps to 7 RDO that an audit or some form of investigation should 8 be carried out into that particular -- 9 A. In that sense, yes. 10 Q. Did that ever happen -- 11 A. According to our opinion, yes. 12 Q. Did that ever happen? 13 A. For this site, you mean? 14 Q. Let's start with this site. 15 A. I'm sorry, sir, as I mentioned to you, we have a number 16 of sites going on all the time. Personally, I cannot 17 remember so much. I'm sorry about that. 18 Q. That's all right. 19 A. Unless the programme team leader or the public safety 20 team leader did come to me and ask for opinion, and 21 of course something really serious like the incident of 22 the cutting of the threaded bars, then I would 23 personally go down and have a look. Otherwise, I would 24 not go into too detail. I'm sorry about that. 25 Q. All right.</p>
<p style="text-align: right;">Page 106</p> <p>1 A. Yes. 2 Q. You can see that it's a risk register that pertains to 3 the contract that we are concerned with? 4 A. Yes. 5 Q. As we understand it, but I will be corrected by others 6 if I'm wrong, it's something that is essentially 7 generated or set up by MTR. 8 A. Yes. 9 Q. You have access to it? 10 A. Yes. 11 Q. How do you utilise this risk register in order to go 12 about assessing the risks that you may need to audit? 13 How do you use this document, if at all? 14 A. Yes, we go through all the items, and we check the 15 importance or the degree of difficulties and dangers and 16 so forth of that risk, and then we evaluate whether 17 touch upon our expertise in civil engineering, 18 signalling, and so forth, to comment on, to see whether 19 their remark here is compliant with -- or in line with 20 our opinion, something like that, yes. 21 Q. Could reviewing a risk register like this -- 22 A. Yes. 23 Q. -- trigger a suggestion by you to RDO that perhaps 24 an audit should be done on a particular aspect of the 25 works? Could that happen?</p>	<p style="text-align: right;">Page 108</p> <p>1 COMMISSIONER HANSFORD: But on that point -- 2 A. Yes, sorry. 3 COMMISSIONER HANSFORD: -- I assume the cutting of the 4 threaded bar never appeared in this risk register? 5 A. No. No. Just an example, sir. 6 COMMISSIONER HANSFORD: Okay. 7 A. I'm sorry -- 8 COMMISSIONER HANSFORD: No, no, no. 9 A. -- distracting your view. 10 COMMISSIONER HANSFORD: No, that's helpful. Just checking. 11 MR PENNICOTT: And presented with this risk register from 12 MTR, which I assume was updated from time to time, no 13 doubt matters were closed out and other matters were 14 added -- 15 A. Exactly. 16 Q. -- presumably there was no way that you could check 17 whether this risk register was comprehensive, and 18 included all the risks. You just took it at face value; 19 is that right? 20 A. Sorry, again, your question, sir? 21 Q. Yes. You've got a risk register. It's a pretty long, 22 thick document. There are a lot of items on it. It 23 goes for a number of pages, not that one can see that on 24 the screen, but if you've got the hard copy it goes on 25 for quite a long while.</p>

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<p>1 The question was, Mr Mak: did you take the MTRC risk 2 register at face value and assume that it was 3 comprehensive, that it included all the risks that it 4 should include?</p> <p>5 A. In fact, we are following up all these risks all the 6 time, so the risks will not change one day to the other. 7 I'm sorry. So each month we will review all these 8 risks, and we have the eye on from day one and for every 9 month.</p> <p>10 We also by site visit, by other things, by 11 documents, we know the changes; we attend the meetings. 12 Also, every month we go to the MTR progress meeting, we 13 have meeting when the RDO and so forth. All this, the 14 important issues, we will address all those included in 15 the discussions.</p> <p>16 So what I would say is we are following really tight 17 along the contract period on all the risks. Yes.</p> <p>18 Q. Yes, but in your role, as I understand it, as the 19 checker of the checker --</p> <p>20 A. Yes.</p> <p>21 Q. -- you never carried out any audit of the risk register 22 itself to see whether it was full and comprehensive, on 23 any particular contract?</p> <p>24 A. We have monitoring all this. Sorry, we have audit on 25 cost, civil -- civil engineering, and programme civil</p>	<p>1 procedures", and then "Contract documents". Don't worry 2 about the first paragraph of that, but the second 3 paragraph:</p> <p>4 "From our design review stage, we have a thorough 5 understanding of the elements where many 6 technical/design solutions will be dependent on the 7 contractors' design, temporary works approach or 8 construction methodologies. Where the contractor has 9 offered alternative design solutions and alternatives to 10 the construction assumptions made by MTR in the design 11 stage, these will be reviewed in more detail. A key 12 aspect of this project is the interfaces between 13 contractors, both internal and external to the project, 14 and we will review this aspect carefully."</p> <p>15 Then over the page at 4.1.3 there's a "Review of 16 ongoing contract documentation"; do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. It says:</p> <p>19 "When we have completed our risk register" -- 20 I won't go over that again -- "we will request key 21 contract documentation to enable a more detailed review. 22 Whilst we will use MTR's ePMS system for document 23 tracking and follow up, for most of the documents we 24 will acquire them through the ePMS system and then send 25 the list of documents to RDO and MTR for record. These</p>
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<p>1 engineering, programme E&M, and safety audit. So all 2 along this, we will see all the risks through the 3 audits, by checking the documents, and -- for those 4 audits, not the site visit, the site walk I performed, 5 all this that we actually done on site, we go through 6 all the detailed documents, we see the drawings if 7 necessary. And sometimes we go to site and see the 8 problem area ourselves, and therefore that's why I said 9 we have followed through all these risks in our hand, 10 Pypun.</p> <p>11 Q. All right.</p> <p>12 Can I ask you to go on a little way in the 13 monitoring plan to K1/162, where at the top of the page 14 or towards the top of the page we have a heading, 15 "Monitoring by review of documents"; do you see that, 16 Mr Mak?</p> <p>17 A. Yes.</p> <p>18 Q. It says:</p> <p>19 "After the project risk analysis exercise as 20 mentioned in section 2 of this plan, the project risks 21 will be monitored by reviewing the contract documents as 22 stipulated in paragraph 6.3.4 of the project brief. The 23 monitoring flow chart is illustrated in figure 2 in 24 appendix A."</p> <p>25 Then a heading, "MTR's management and control</p>	<p>1 will include ..."</p> <p>2 And there is a list of items there --</p> <p>3 A. Yes.</p> <p>4 Q. -- including "Construction methodologies"; do you see 5 that?</p> <p>6 A. Yes.</p> <p>7 Q. Then at 4.1.4 there's "Categories of review", and it 8 says:</p> <p>9 "On receiving any requested documents from MTR, we 10 will make them available to the appropriate monitoring 11 team members for their review. These personnel will 12 first categorise them on a risk basis into three 13 categories:</p> <p>14 ... I -- No review required. 15 ... II -- Review required and observations to be 16 noted ... 17 ... III -- Review required with identification of 18 critical issues."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I see.</p> <p>21 Q. Then there's a more detailed explanation below. 22 Mr Mak, you'll be aware, I think, that Pypun did in 23 fact review the QSP, the quality supervision plan, in 24 respect of the couplers?</p> <p>25 A. Not the monitoring team, but I think certain QSP was</p>

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<p>1 inspected by the BSRC team. 2 Q. I agree with that. Because it formed part of 3 a submission, effectively -- 4 A. Thank you, sir. 5 Q. -- to Buildings Department, it would have presumably 6 been picked up -- 7 A. Yes. 8 Q. -- by the BSRC team? 9 A. Yes. 10 Q. But you recall that they did vet it? 11 A. Yes. 12 Q. Mr Yueng tells us he vetted it. 13 A. Yes. 14 Q. And presumably that was vetted not only because it was 15 part of a submission, but because it was a document that 16 had particular importance; is that right? Or would it 17 just be vetted automatically because it was part of 18 a submission? 19 I can ask Mr Yueng if you don't know the answer. 20 A. Your question again, sorry? I don't really catch the -- 21 Q. The QSP, I accept, was submitted to government, to 22 Buildings Department. 23 A. Yes. 24 Q. And it was given to Pypun. 25 A. Yes.</p>	<p>1 Q. No, no, if you can't answer the question, that's fine. 2 We'll take it up -- 3 A. I don't want to give my answer which is somewhat 4 different from his. That is my concern, sir. 5 Q. Okay, understood. Not a problem. 6 Mr Mak, make the assumption that, as I've just 7 indicated to you and I think you accept, the QSP was 8 vetted by -- 9 A. Yes. 10 Q. -- the BSRC team. Am I right in thinking that Pypun did 11 not take any follow-up action by way of audit or 12 something similar, to see whether the QSP was being 13 complied with? 14 A. I don't think so. According to the contract, if we have 15 to do it then we would perform. I don't think we would 16 get away from it. 17 Q. But if the QSP -- 18 A. Yes. 19 Q. -- was perceived as something that carried with it 20 a risk -- 21 A. Yes. 22 Q. -- the couplers having been singled out as a potential 23 risk area and hence the enhanced supervision 24 requirements of the QSP, is it something in general 25 terms that Pypun ought to have turned their minds to, to</p>
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<p>1 Q. Pypun vetted the quality supervision plan, the QSP, for 2 the couplers. 3 A. Yes. 4 Q. Did they do that automatically, because it was part of 5 a submission to BD, or did they do it because it was 6 a document of special importance? 7 A. Automatically, I do believe we automatically have to do 8 it. 9 Q. All right. And do you know whether it fell into any of 10 the three categories that I've just read out to you on 11 page K1/164? 12 A. Yes, I believe so. 13 Q. Do you know which category it fell into? 14 A. What do you mean, sir? 15 Q. Well, go back to page 164, K1/164. 16 A. Yes. 17 Q. All I'm trying to find out, Mr Mak, is whether -- 18 I know -- I'm asking you the question because Mr Yueng 19 uses the word "vet", and I'm not quite sure what that 20 really means in this context, "it was vetted". And I'm 21 wondering if you can help me, just in case he can't, as 22 to whether you would expect the QSP, given its contents, 23 to fall into category I, category II or category III. 24 A. I have certain difficulty. May I refer this back to 25 Mr Yueng later on for you, sir? I'm sorry about that.</p>	<p>1 think whether an audit ought to have been carried out of 2 that QSP? 3 A. Yes, if it happened to be the case, as I told you, we 4 have our weekly call team meeting, and I think Mr Yueng 5 will bring this up to the monitoring team, and we will 6 discuss and follow up, in case we believe it's really 7 the case, that important. 8 Of course, again, we have to discuss with RDO to get 9 their consent and agreement. 10 Q. All right. 11 Just trying to use the QSP as example, Mr Mak -- is 12 the auditing of the compliance with that document -- is 13 that a good example of where you would expect RDO to 14 raise it with you, rather than you be proactive and 15 raise it with them? 16 A. Of course, they would rely on our expertise in various 17 areas, so in case necessary and required, we will 18 proactively raise this to them for discussion during our 19 monthly meeting with RDO. Yes, we will discuss through. 20 Q. Right. 21 A. Again, focusing on the content or the more in-depth 22 understanding of the QSP, I believe our Mr Yueng will 23 have a more thorough discussion and explanation with 24 you. 25 Q. Just a final few points from me, Mr Mak. Can I ask you,</p>

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<p>1 please, to go to page K1/29 and paragraph 68 of your 2 witness statement. 3 A. Yes. 4 Q. Mr Mak, you have helpfully, I think, addressed your mind 5 to some recommendations -- 6 A. Yes. 7 Q. -- and you have done that because you were asked to do 8 so in a question posed by the solicitors for the 9 Commission, and your first point -- 10 A. Yes. 11 Q. -- at paragraph 68, is that: 12 "[You] would recommend adding an additional hold 13 point in the inspection & testing plan ... requesting 14 a joint inspection by MTR and its contractor of the 15 exposed couplers before connecting steel reinforcement 16 bars to them. The inspection record should note any 17 damaged, missing or misaligned couplers already 18 installed. Proper record of the inspection should be 19 prepared and kept on site for preparation of any 20 remedial work proposal. Proper record should also be 21 kept of the submission of such proposal to the entity 22 [providing] remedial work." 23 A. Yes. 24 Q. You think that that would strengthen the record-keeping 25 process and help to eliminate the sort of problems that</p>	<p>1 example for the TBM, we have to -- once we go through 2 certain length, we have to put on the ring. So there is 3 a chance that we read the monitoring results, then we 4 can -- from time to time, we know at realtime what is 5 the situation, whether it reach to the sensitive or the 6 risk level, then if it's really the case we have to stop 7 and find out the cause, and try to make remedy to it or 8 rectify it. 9 In this instance, I believe if we apply this 10 realtime monitoring to the utilities, the buildings 11 along the boundary of the site, then we will have a much 12 more useful or valuable information to stop the work or 13 to rectify the problem or to think out of rectification 14 ways to remedy the situation, so that to protect our 15 progress and the safety of the buildings and utilities 16 of roads nearby. 17 Q. Okay. 18 A. That is the second point. 19 Then the third point will be -- now I would suggest 20 is -- if the team, because the contractor and -- the MTR 21 would have a construction team there. If we, from the 22 team, choose -- again, this is from my experience the 23 past 40 years; right? -- if within the team we choose 24 a reliable person, no matter he's young or mature, if he 25 really understands the process and he's friendly to</p>
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<p>1 happened? 2 A. Yes. This is created from my long experience in the 3 past over 40 years on the construction works. I come 4 across coupler since eighties; right? So I believe that 5 if we have a hold point there, in other words we have to 6 introduce the RISC form system in that particular 7 instance, so that we can have a stop and check, 8 thoroughly the acceptance of the exposed coupler to be 9 free of foreign material, in the right alignment; we can 10 easily screw the male end in, and so forth. If we have 11 a thorough check, thorough report -- record, then it 12 would have the case. This is my point, sir. 13 Q. You also make further points at paragraphs 73, 74 and 14 75, which I'm not going to read out and go into in any 15 detail, but they are there, and thank you for them; no 16 doubt if anyone else has any questions, certainly you 17 will be asked. 18 A. I can elaborate them if you wish, sir, all in here, in 19 fact I have five points. 20 Q. Yes. 21 A. The second point is the realtime monitoring, because 22 I personally involved. When the TBM tunnel is going 23 through under the live track or some sensitive building 24 and so forth, I have to watch my mobile phone to see, 25 every time when we go through, then -- for instance, for</p>	<p>1 everybody, then he can be assigned by the construction 2 manager to do the auditing and do a friendship reminding 3 along the process, remind all the work supervisors or 4 inspectors/engineers along the line, so as to ensure 5 everything is done in compliance with the ITP and so 6 forth. That is my opinion, sir. That's the third 7 thing. 8 Q. Yes, and the next one is the implementation of 9 electronic platform for site inspection and supervision, 10 which I think we've heard one or two things about also. 11 A. I think this is not -- today, it should not be a new 12 thing, but it's still being developed. I myself, I have 13 even contact with university from Hong Kong and also 14 overseas in looking into this sort of e-platform, and 15 come back to our situation that we have the mobile 16 phone, now the camera, even the Handicameras, we have 17 the WiFi function, so that we can use it to send 18 immediately with narrative description to an e-platform 19 in the cloud or whatever, so that we have instant 20 record, realtime record, and we can keep it confidential 21 and unerasable, so that we can have no need to do any 22 search for records anymore. That is my opinion, sir. 23 Q. Understood. All right. 24 A. Then the last one is the IQCA. I think, again, if MTR 25 or -- better say MTR, we can -- he can employ</p>

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<p>1 independent quality control adviser to review the 2 organisation's existing quality assurance systems and 3 procedures, and stabilising for the specific project or 4 even specific task; two, recommend enhancement measures 5 to improve the quality of the systems and procedures; 6 and third, implement independent quality control tests. 7 That is my recommendation. If they cover these three 8 roles by the IQCA, I think it would not be a bad idea, 9 sir, Chairman and Professor. 10 CHAIRMAN: Thank you very much indeed. 11 MR PENNICOTT: Sir, I have no further questions. 12 Questions by THE COMMISSIONERS 13 COMMISSIONER HANSFORD: Perhaps I can just follow up on 14 that, Mr Mak. These recommendations you've made to us 15 I'm sure are helpful, thank you, and I'm sure the 16 Chairman and I will give consideration to them. 17 A. Thank you. 18 COMMISSIONER HANSFORD: But I just have one question, 19 regarding your first recommendation in particular, 20 paragraph 68. 21 A. Yes. 22 COMMISSIONER HANSFORD: You are recommending an additional 23 hold point for the inspection of exposed couplers. 24 A. Yes. 25 COMMISSIONER HANSFORD: When did you think of that? When</p>	<p>1 COMMISSIONER HANSFORD: I'm not criticising you, I'm just 2 asking the question! 3 A. -- I criticise myself here. It's my fault, in fact, 4 yes. But I think there's a problem, right, and a lot of 5 people seeing the problem, and even MTR, the engineer 6 from -- in particular Mr Fu, Michael Fu of MTR, he took 7 me down to the spot to see the stitch joint problems. 8 Yeah. 9 After that, I believe Mr Fu would do -- although 10 I do not suggest, I think they themselves would know how 11 to rectify the process there so as to make improvement. 12 But of course it may be too late because the stitch 13 joint is only a few months, only in March or something 14 like that, two months ahead of -- 15 COMMISSIONER HANSFORD: March of which year? 16 A. March this year. 17 COMMISSIONER HANSFORD: This year. 18 A. Not far away from the incident, the news on the media, 19 sorry. 20 COMMISSIONER HANSFORD: No, so the first time these very 21 helpful suggestions have been made has been in this 22 witness statement; is that right? 23 A. Yes. 24 COMMISSIONER HANSFORD: Okay. Thank you. 25 A. Thank you.</p>
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<p>1 did you first identify that as a change that should be 2 made? 3 A. In fact, before -- I might say before the incident -- 4 before the slab incident, right, I was instructed -- 5 I was -- better -- requested by RDO to go down to the 6 site, to see the stitch joint problem, stitch joint, 7 yeah, where they have the coupler problem. So in that 8 sense -- of course, for the switch joint, from the 9 bottom of my heart, they have done a perfect thing, they 10 removed the whole thing and made it good, perfectly, to 11 my -- I have no complaint on that. I have no concern on 12 that. From then on, I see if we have any problem from 13 now on with the couplers, I think we have to have this 14 hold point to ensure that the thing will be done 15 properly. That's -- yeah. 16 COMMISSIONER HANSFORD: So you identified it during the 17 works? 18 A. Yes. 19 COMMISSIONER HANSFORD: Did you raise it with RDO as 20 a suggestion for change? 21 A. No, sir. 22 COMMISSIONER HANSFORD: Why not, I wonder? 23 A. Maybe you criticise me not being proactive -- 24 COMMISSIONER HANSFORD: I'm not -- 25 A. Sorry, it's my complaint --</p>	<p>1 MR SHIEH: No questions from Leighton. 2 CHAIRMAN: Thank you. 3 MR TO: None from China Technology. 4 Cross-examination by MR BOULDING 5 MR BOULDING: I might have some questions for you. Good 6 afternoon, Mr Mak. 7 A. Good afternoon. 8 Q. In paragraph 5 of your statement, you tell us that you 9 were the leader of the project management team; correct? 10 A. Yes. 11 Q. You say that you worked as a project manager since 2016 12 and that you were responsible for the whole contract; 13 correct? 14 A. Yes, sir. 15 Q. You've also told the Commissioners, have you not, that 16 Mr Yueng was the BSRC team leader? 17 A. Yes. 18 Q. Now, I've looked at your CV, and there's a suggestion -- 19 this is K34. 20 A. Yes. 21 Q. If you look down as the "Experience record", indeed it 22 does look as if you've been involved in some significant 23 projects, but there you say that you were project 24 manager on this project from 2015 until the present. Is 25 that an error? Because your witness statement says from</p>

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<p>1 January 2016.</p> <p>2 A. I joined the company on September 2015.</p> <p>3 Q. September of 2015. And did you work as a project</p> <p>4 manager from --</p> <p>5 A. No, at that time Rob Lloyd was still the project</p> <p>6 manager.</p> <p>7 Q. Right.</p> <p>8 A. I was supposed to -- correct this -- I was the deputy</p> <p>9 project director, suggested by Mr Poon at that time;</p> <p>10 right? No, anyway, it was not in record, I'm sorry.</p> <p>11 I put it simple, I joined the company in September 2015,</p> <p>12 and I take up the responsibility of the project manager</p> <p>13 in January 2015.</p> <p>14 Q. Right. What, if anything, did you do on the project</p> <p>15 between September 2015 and taking up the role of project</p> <p>16 manager in January 2016?</p> <p>17 A. Yes.</p> <p>18 Q. What, if anything, did you do on the SCL project?</p> <p>19 A. Yes, this is a big project.</p> <p>20 Q. Yes.</p> <p>21 A. Of course, when I first stepped in, then I looked</p> <p>22 through all the documents, the agreements, inception</p> <p>23 report and so forth. I need to learn. A lot of</p> <p>24 documents, sir.</p> <p>25 Q. Sure.</p>	<p>1 Q. Thank you very much.</p> <p>2 Now, in your witness statement, at paragraph 16 --</p> <p>3 this is page K14.</p> <p>4 A. Right.</p> <p>5 Q. It starts at K13 -- you say:</p> <p>6 "The particular focus on cost as well as programme</p> <p>7 and public safety as to the scope of the M&V</p> <p>8 consultant's work is stressed repeatedly in the brief,</p> <p>9 including at paragraph 3.1, which sets out the</p> <p>10 objectives of the M&V consultant".</p> <p>11 Then over the page you actually quote 3.1, and we</p> <p>12 can see what you say there:</p> <p>13 "The overall objective of the Assignment is to</p> <p>14 provide monitoring and verification services in relation</p> <p>15 to the work undertaken by the MTRCL (including</p> <p>16 submissions by its consultants, contractors or agent to</p> <p>17 MTRCL) during the construction, testing and</p> <p>18 commissioning phase of the project so as to provide</p> <p>19 assurance that the MTRCL's obligations stated in the EAs</p> <p>20 for the SCL advance works and construction phases have</p> <p>21 been properly fulfilled. The monitoring and</p> <p>22 verification shall focus on cost, programme and public</p> <p>23 safety of the project."</p> <p>24 I can see that you've emphasised that by putting</p> <p>25 that in bold typeface; correct?</p>
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<p>1 A. Also I need to talk to -- I joined the site visits from</p> <p>2 then on, and familiar with my team because, as you know,</p> <p>3 the BSRC team, they have more than 15 members, and the</p> <p>4 other team have more than 30. Altogether, we have more</p> <p>5 than 50-something people working concurrently, and we</p> <p>6 have to work on the whole -- all the project site along</p> <p>7 the line. So it's really busy, in understanding and --</p> <p>8 the men, the procedures, the documents and everything.</p> <p>9 Even though it looks like four months is a long time,</p> <p>10 but I don't think it's easy to pick it up, sir, I'm</p> <p>11 sorry to tell you that.</p> <p>12 Q. I'm sure it was very difficult, Mr Mak.</p> <p>13 You've told us that you started on the project in</p> <p>14 September, and you obviously familiarised yourself with</p> <p>15 the documentation and the project, and so on and so</p> <p>16 forth, with a view to taking up the project manager's</p> <p>17 job in January 2016?</p> <p>18 A. Yes.</p> <p>19 Q. Thank you very much. I'm going to ask you one or two</p> <p>20 questions about 2015, and I hope you're the right</p> <p>21 person, but if you think it's a question that ought to</p> <p>22 go to Mr Yueng, as you've suggested to my learned friend</p> <p>23 Mr Pennicott once or twice already, please be kind</p> <p>24 enough to tell me.</p> <p>25 A. Sure, sure. Will do.</p>	<p>1 A. Yes.</p> <p>2 Q. You will recall discussing that with my learned friend</p> <p>3 Mr Pennicott during the course of the last hour or so?</p> <p>4 You will recall that?</p> <p>5 A. Sorry?</p> <p>6 Q. You will recall discussing that particular matter --</p> <p>7 A. Yes.</p> <p>8 Q. -- cost, programme and safety over the course of the</p> <p>9 last hour or so?</p> <p>10 A. Yes.</p> <p>11 Q. Thank you. Now, staying with the brief, if we could</p> <p>12 have a look, please, at G7638, and this is the first</p> <p>13 page of the contract, is it not, between the government</p> <p>14 of Hong Kong and Pypun?</p> <p>15 A. Yes.</p> <p>16 Q. Presumably this is one of the documents that you</p> <p>17 familiarised yourself with when you took up your role in</p> <p>18 September 2015?</p> <p>19 A. Yes, sure.</p> <p>20 Q. I thought you might.</p> <p>21 Then if we have a look at G7640, we see the</p> <p>22 memorandum of agreement; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Then over at G7642, we can see, can we not, the terms of</p> <p>25 the memorandum of agreement before we get into the</p>

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<p>1 detail of exactly what Pypun have undertaken to do; 2 correct? 3 A. Yes. 4 Q. Then if we turn on to 7664, and it's a clause that my 5 learned friend Mr Pennicott has been to but I think we 6 need to remind ourselves of its terms, you can see in 7 6.6.1, can you not -- 8 A. Yes. 9 Q. -- that: 10 "[Pypun] shall provide assessments on the building 11 submissions submitted by the MTRCL and/or its 12 consultants/agents, and provide input on compliance with 13 the building safety standards in respect of the project 14 to the director's representative." 15 A. Yes. 16 Q. Presumably that's something that you would expect the 17 Pypun representatives, the Pypun employees, to do to the 18 best of their ability? 19 A. Yes. 20 Q. Then if we go on to 6.6.3 which is at the bottom of the 21 page -- 22 A. Yes. 23 Q. -- we can see, can we not, that: 24 "The scope of the services on assessing the building 25 submissions shall include, but not be limited to, the</p>	<p>1 that? 2 A. Yes. 3 Q. Now, obviously, this letter came into existence and was 4 sent before you joined the project in September 2015, 5 wasn't it? 6 A. Yes. 7 Q. But nevertheless, would this have been one of the 8 documents that you would have looked at in 9 September 2015 in order to familiarise yourself with 10 what was going on? 11 A. I'm sorry to tell you that I don't think I have come 12 across this thing. Firstly, due to my limited time to 13 go through all those documents -- I believe this is 14 quite specific and in detail, and as I just suggest to 15 Mr Pennicott, that Mr Yueng joined the company since the 16 beginning of the project, so he may be a better person 17 to answer you all these questions. 18 Q. I thought you might say that, and that's why I was 19 trying to -- sorry. 20 A. Secondly, he didn't bring this up to me, then I -- 21 before this year, or before the newspaper, I didn't see 22 any special problems on 1112 myself. I know it's 23 difficult, but in my -- according to my limited 24 experience, it's not exceptionally difficult. It's 25 tricky, I would say, yes, because we have live -- we</p>
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<p>1 following". 2 Then firstly the services include -- look at (a): 3 "Examine building plans and proposals to a safety 4 standard not inferior to that required under the BO and 5 related regulations". 6 A. Mm-hmm. 7 Q. Then turning over, if we may, Pypun have also got to 8 "examine structural plans and proposals, method 9 statement in accordance with the standards not inferior 10 to that required under the BO and related Regulations, 11 and carry out any related actions such as recommending 12 the acceptance of the submissions and conditions to be 13 imposed, if any, for commencement of works, related site 14 inspections, witnessing related site testing, 15 et cetera". 16 Then finally: 17 "Identify the deficiencies, if any, from the 18 submissions by the MTRCL and/or its consultants/agents 19 and provide necessary advice." 20 A. Yes. 21 Q. So all rather onerous obligations, I suggest? 22 A. Yes. So your question is? 23 Q. I am coming to that. If we could look, please, at B12, 24 page B8888. Now, this is a letter from the MTR dated 25 29 July 2015 to the Buildings Department; do you see</p>	<p>1 have buildings at the top and the design is quite 2 tricky, I would put it that way. I'm sorry, sir. 3 Q. Right. So your answer is that I ought to save my 4 questions on this documentation to Mr Yueng? 5 A. Please. You will have a better answer, much better 6 answer. 7 Q. And he's not going to tell me that I ought to have put 8 these questions to you? 9 A. Sure. No problem at all, sir, even after the court. 10 I'm sorry, sir. 11 Q. Right. Let's see whether there's anything you can 12 answer, because that was going to be the first matter 13 I wanted to deal with with you. 14 Let's go back, if we can, to the brief. G7665. 15 We can see clause 6.6.4 starting there, can we not, 16 clause 6.6.4: 17 "The scope of the services on checking the 18 compliance with building safety standards include, but 19 are not limited to, the following". 20 A. Yes. 21 Q. Then if you look down at (f), one of the things that 22 Pypun's got to do, is it not, is to "conduct audit and 23 surprise checks to construction sites on aspects of the 24 structural safety and integrity of foundation, tunnel, 25 superstructure and et cetera for safety assurance and</p>

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<p>1 for compliance with the building safety standards, and 2 examine the remedial proposals submitted by MTRCL if 3 contravention is detected". 4 Do you see that, Mr Mak? 5 A. Yes, I see it. 6 Q. Just as a matter of interest, were you aware of any 7 surprise checks on the construction site that were made 8 by Pypun? 9 A. Surprise check is -- yes, it's a good system always, in 10 any industry, to witness the problems or to find out the 11 problems; right? 12 But the particular case here with MTR, due to the 13 operation and due to the construction, in particular, we 14 are not -- the security control this stage in the 15 construction site, and without notifying them I don't 16 think we can get in easily. 17 Q. Okay. So the answer is you didn't make any? 18 A. I don't believe there is a thing like surprise check, 19 sir. 20 Q. Okay. 21 A. It's from -- honestly speaking. 22 Q. Okay. I'm glad you are honest. Then (g): 23 "Carry out site inspections to identify 24 irregularities, contraventions or non-compliance with 25 the building safety standards".</p>	<p>1 building safety standards"? 2 A. Standards, yes. 3 Q. Then if we turn back one page, we've got K67, which is 4 part of clause 5.6.4, which starts on K66. Do you see 5 clause 5.6.4, "Building submission review and 6 compliance"? 7 A. Yes. 8 Q. Then over the page, K67 -- 9 A. Yes. 10 Q. -- we've got: 11 "The team ..." 12 And I think you told Mr Pennicott that that was the 13 building submission review and compliance team? 14 A. Yes. 15 Q. "... will focus on but not be limited to, the following 16 areas", and then the bottom point on the page: 17 "Carry out site inspection and/or monitoring work to 18 ensure compliance with the BO and allied regulations." 19 A. Yes. 20 Q. And that's something you would expect anyone from Pypun 21 who went on site to do? 22 A. Yes, if invited by BO team. 23 Q. Then we go to K69, we're in part of clause 5.6.5. 24 "The site and audit inspections will focus on 25 unsatisfactory aspects that may impact on or interface</p>
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<p>1 That's something else that Pypun's got to do; 2 correct? 3 A. Yes. 4 Q. Now, I want to have a look, like Mr Pennicott did, at 5 your Pypun inception report. That's at K67, but perhaps 6 we can start at -- K67, yes. It starts at K37, if we 7 can just get our bearings first. March 2013; do you see 8 that? 9 A. Yes. 10 Q. Splendid. This is something that I understand you did 11 manage to have a look at once you started work in 12 September 2015? 13 A. Yes, yes. 14 Q. Splendid. 15 Then if we go on to page K42, please, "Scope of 16 inception report". 17 A. Yes. 18 Q. "This inception report describes the activities to be 19 undertaken during the progress of the SCL -- monitoring 20 & verification for construction, testing and 21 commissioning phase -- investigation." 22 Then if we can have a look at clause 5.6.5, which 23 starts on K68 -- and this is something you went to with 24 Mr Pennicott but I just want to remind you of its terms, 25 if I may -- do you see there, "Compliance with the</p>	<p>1 with public safety and building safety standards. The 2 areas of concern include ..." 3 Then we can see that the first bullet point is: 4 "Divergence or deviation in a material way from the 5 approved plans." 6 That's correct, isn't it? 7 A. Yes. 8 Q. Then if you look down, skip two or three, and you can 9 see that it's also an area of concern where there's been 10 a departure from approved or agreed work sequence or 11 procedures; do you see that? 12 A. Yes. 13 Q. Then I think finally, for my present purposes, if we go 14 over the page to K70 -- 15 A. Yes. 16 Q. -- do you see the subheading which is two or three 17 paragraphs up, "Conduct site inspections, audits and 18 surprise checks on construction sites"; do you see that? 19 A. Yes. 20 Q. It's in italics. Then: 21 "Site inspections and audits during the construction 22 stage will be carried out to monitor aspects of 23 structural safety and integrity and to identify 24 irregularities. Contraventions or non-compliance with 25 the building safety standards will be identified and</p>

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<p>1 reported to RDO." 2 A. Yes. 3 Q. Now, you mention, in your witness statement, at 4 paragraph 45 -- that's K23: 5 "The scale of the project of 25 civil contracts and 6 sites as set out under paragraph 4.4.2 of the monitoring 7 plan." 8 A. Yes. 9 Q. "As stated in such paragraph, during the course of the 10 project ..." 11 That's the SCL project you're referring there to, 12 isn't it? 13 A. Yes. 14 Q. "... the M&V consultant visited each site about once 15 each quarter. The duration of each visit was 16 approximately three hours." 17 Now, so far as the SCL contract 1112 is concerned, 18 is that a visit you made or someone else from Pypun 19 made? 20 A. I couldn't remember whether exactly I do it or not, but 21 most likely I have done it several times, in 22 contract 1112, yes, every -- each quarter, yes. 23 Q. Each quarter? 24 A. Yes. 25 Q. All right. Obviously, when you or anyone else</p>	<p>1 A. Yes. 2 Q. So what is happening here, is it not, is that previously 3 a piece of work had been completed; correct? 4 A. Mm-hmm. 5 Q. And Leightons are taking it away? 6 A. Yes. 7 Q. Obviously, if you are taking away some completed work, 8 it follows, does it not, that that could affect the 9 programme for the whole of the works? 10 A. You could put it this way, yes. 11 Q. Thank you. And if, as you said, it affects the 12 programme for the works, it is one of those matters, is 13 it not, that Pypun would be particularly interested in 14 monitoring? 15 A. If our team, or our team on that day was invited to go 16 through this area. Otherwise, it's a big site, sir; 17 within three hours we cannot go through every corner. 18 And I myself have been there several times; we have to 19 climb down, going up, climb down, going up -- 20 Q. I've been there myself, Mr Mak. 21 A. -- through the scaffoldings, not proper staircase with 22 carpet, you know. Also, for each site walk, I do not 23 know -- we must go back to the point that we, as a M&V 24 even for the BSRC team, we support the supportive role. 25 We must be invited by the BO team or RDO. In -- if come</p>
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<p>1 exercising this site audit and inspection was concerned, 2 you would be no doubt concentrating on those matters 3 that you and I have discussed over the course of the 4 last two or three minutes, the matters referred to in 5 clause 5.6.5 of the contract of engagement? 6 A. Yes. 7 Q. Now, I wonder whether we can look at some photos 8 together. If you could go to B25598. It may well be 9 that you will be assisted by having a hard copy. 10 A. Yes. 11 Q. Now, here we've got a photograph dated 27 August 2015, 12 Mr Mak -- 13 A. Yes. 14 Q. -- and I realise immediately that this might have been 15 a week or two before you started on the project. 16 A. Yes. 17 Q. But we can see from the caption, can we not, that 18 "Area C1 -- Bay C1-3 -- Eastern Wall" -- do you see 19 that, at the top left-hand corner? 20 A. Yes, yes. Sorry. 21 Q. Splendid. As we can see from the caption, what's 22 happening here is that you've got a load of workers, 23 they appear to be Leighton workers, breaking out the top 24 of the D-wall, and top couplers were removed; do you see 25 that?</p>	<p>1 back to the normal, one time every three months, I think 2 it's difficult for us to go into that detail. I must 3 confess -- we will have difficulties. 4 CHAIRMAN: Sorry to interrupt a second, but when you say 5 detail, there's a lot of people knocking down the top of 6 a concrete wall there. With your great experience, 7 wouldn't that have -- I'm not saying you even saw it, 8 but if you had seen it, wouldn't that have -- 9 MR COLEMAN: Sir, I hesitate to interrupt, but what we have 10 is a photograph which is a snapshot, by definition, of 11 a moment in time. 12 CHAIRMAN: Yes. 13 MR COLEMAN: Unless one knows what was there last week or 14 the day before, one doesn't necessarily know this is 15 something being removed. We know that, and this witness 16 knows, that only from the line of questions which are 17 based on the annotations to the photograph. I think one 18 has to be a little bit careful about asking the 19 questions which presuppose as to what they show, with 20 a witness who clearly didn't see it, and couldn't have 21 done because he wasn't employed at the time. 22 CHAIRMAN: Yes. 23 MR BOULDING: This will not be the only photo I'm going to, 24 sir, but I don't know whether you want to finish your 25 question.</p>

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<p>1 CHAIRMAN: No, that's quite all right. I think Mr Coleman 2 makes quite a good point. 3 MR BOULDING: Right. 4 If we could go on to B25592, and this is 5 21 September 2015. We get that from the bottom 6 right-hand corner of the photograph; do you see that, 7 Mr Mak? 8 A. Yes. 9 Q. By this time you would have been on the project, 10 21 September? 11 A. Yes, but I may not have the opportunity to see this. 12 Q. I'm not suggesting necessarily that you were the only 13 Pypun person going to site. I think you told me 14 a couple of moments ago that you went to site but other 15 Pypun people went to site as well. That's what you've 16 said. That's correct, isn't it? 17 A. Yes, we have a team of people going down. 18 Q. Exactly. Again, we can see here, can we not, that some 19 of the completed work is being knocked away; correct? 20 A. Sorry, sir? 21 Q. If you look where -- "EH63"; do you see that? 22 A. EH63, yes. 23 Q. I'm just giving you a pointer. 24 A. Yes. 25 Q. What I suggest to you is that it's obvious there, is it</p>	<p>1 the rebar, taking the couplers away, putting them in 2 skips and carting them off site. That's not a normal 3 experience so far as a diaphragm wall is concerned, is 4 it? 5 A. Yes, again -- 6 Q. Do you agree with me? 7 A. I agree with you. 8 Q. Thank you. 9 A. Totally. 10 Q. What I suggest is that if the Pypun representative had 11 been complying with the terms of the contract of 12 engagement, this is just the thing that one would have 13 expected them to have picked up on, to have seen. 14 A. I disagree with that, sir. Again, if we have the 15 opportunity to be invited to the location to inspect it, 16 yes, we may pick it up. But as I said, we are 17 performing a supportive role, so if we are not directed 18 or requested by BD team or the RDO, I think we have 19 difficulty to get close to that area. 20 CHAIRMAN: Sorry, why do you -- I have missed this earlier 21 on. It's been puzzling me. Why do you have to be 22 invited by -- I think you mean the 23 Buildings Department -- 24 A. Yes. 25 CHAIRMAN: -- to make an inspection? Is it in terms of the</p>
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<p>1 not, as is clear from the caption, that part of the 2 completed work is being broken away? 3 A. Yes. 4 Q. Again, if your men were inspecting the site, and if they 5 were carrying out their obligations, I suspect that's 6 just the sort of thing they'd be interested in, is it 7 not, because, as you have agreed with me already, it's 8 likely that this could have an effect on programme? 9 A. Again, it's difficult to say whether they were invited 10 to walk nearby that area and have the opportunity to see 11 this element; right? I must tell you that based on my 12 personal experience on diaphragm wall -- I construct 13 diaphragm wall in the 1970s for the airport tunnel, and 14 the top of the diaphragm wall, because they use a tremie 15 concrete -- what I mean "tremie concrete" is we -- the 16 concrete is come up from the bottom. Therefore, we have 17 to see whether the ground condition or the groundwater 18 or whatever, we have to break out, in any case, the top 19 1 metre or half a metre; depends on the situation. 20 So if you ask me to answer, just if nobody pointed 21 out that it's a problem, then trim out the top of the 22 diaphragm wall is a normal process to me with diaphragm 23 wall experience, sir. 24 Q. What I suggest to you is that it's not a normal 25 experience to be breaking out a diaphragm wall, removing</p>	<p>1 contract? 2 A. Yes. Again, Mr Chairman, I think when Mr Yueng come on 3 board, then you may ask in more detail about the 4 procedures, the organise of site visit or even surprise 5 check, and so forth; right? I'm not trying to get away 6 from that, but he may give you a much clearer picture on 7 that. 8 CHAIRMAN: All right. 9 A. I'm sorry. I'm really sorry. 10 CHAIRMAN: No, that's perfectly all right. Thank you. 11 COMMISSIONER HANSFORD: Mr Mak -- I'm sure I will also ask 12 this question of Mr Yueng as well, but just to 13 understand a little bit -- 14 A. Yes. 15 COMMISSIONER HANSFORD: -- are these site visits arranged in 16 advance, and do MTR know that you're coming? 17 A. Yes. 18 COMMISSIONER HANSFORD: They know? 19 A. Yes. 20 COMMISSIONER HANSFORD: So these are not surprises? 21 A. No. Normally, we have to agree with RDO a day, and then 22 we check with MTR to see whether they are available, 23 because we are not allowed to disturb their work too 24 much. It's in the contract; right? So when we three 25 parties agree a date, then MTR would base upon their</p>

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<p>1 works progress to propose the route of site walk. And 2 based on that, we and RDO would comment on the route, 3 and also we will put in our comment, is -- because some 4 area we may like to see, because they may have 5 a heavy -- deep excavation or there may have a deep 6 dewatering and so forth. Then we may like to see the 7 problem area, and in particular the TTMS and so forth, 8 we have prime concern, because on the site walk it's too 9 brief a snapshot, and it's difficult -- you can't tell 10 too much detail on programme and cost, but public 11 safety, yes, I must confess that, yes, we should -- by 12 the site walk we can pick that up more easily and 13 obviously.</p> <p>14 COMMISSIONER HANSFORD: So you are telling us, are you, that 15 MTR could choose which bits they would like you to see?</p> <p>16 A. We can put it this way, but -- because according to -- 17 because some areas we cannot access, we cannot -- they 18 have -- or some activity is too dangerous to be -- to 19 have visitors along, then -- therefore it would be 20 proposed by them. But of course we -- RDO and 21 ourselves, we have our mind; right? We will discuss.</p> <p>22 COMMISSIONER HANSFORD: Okay.</p> <p>23 A. We always have friendly discuss, no hard time on that. 24 But of course, if they wish to hide something, I don't 25 think it's --</p>	<p>1 A. Again I still maintain my view that we may not have the 2 chance to discover. I'm sorry.</p> <p>3 Q. May I suggest that if you didn't have the chance to 4 discover that, that's because you were not doing your 5 job properly.</p> <p>6 A. I don't think so, sir. I don't think so. I must 7 disagree with that, yes.</p> <p>8 Q. B25685. Now we're in area C3, bay C3-6, eastern wall.</p> <p>9 A. Yes.</p> <p>10 Q. 13 October. Yet again a photograph of completed works 11 being demolished; that's correct, is it not, Mr Mak? 12 Look at all that rubble.</p> <p>13 A. Yeah, yeah, yeah.</p> <p>14 Yes.</p> <p>15 Q. Again, that's just the sort of thing Pypun ought to have 16 been monitoring, is it not, in circumstances where 17 you've told the Commissioners they were particularly 18 interested in things that would affect programme and 19 indeed cost?</p> <p>20 A. Again, I -- two types of visit. The visit by the 21 monitoring team, I don't think they have the chance -- 22 I don't believe they have the chance to see it. For the 23 BSRC team, it must be invited by the BO team, otherwise 24 we cannot -- yeah, we have strong disagreement on that. 25 I think Mr Yueng, he is the leader and he was there, he</p>
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<p>1 COMMISSIONER HANSFORD: I'm not suggesting that. 2 A. I'm sorry, sir. Okay, thank you.</p> <p>3 MR BOULDING: But you can take it from me, Mr Mak, that this 4 demolition work affected something like 30 bays on the 5 EWL, and the work lasted for something like six months. 6 You can take that from me.</p> <p>7 Now, can I suggest that skilled people from Pypun, 8 skilled engineers, looking for matters that were 9 affecting programme and cost, perhaps even safety, they 10 must have been going around site with their eyes closed 11 not to have spotted this, mustn't they?</p> <p>12 A. On behalf of Pypun, I must disagree with you, sir, 13 I'm sorry, because we have limited access problem and 14 all sorts of things, as I explained to you, although my 15 English is not perfect enough, I'm sorry that, but 16 I must disagree with that, sir.</p> <p>17 Q. Let's just have a look at one or two photos. 18 If we could go to B25647. We've moved on here to 19 5 October, and another photograph there, this time 20 area C2, bay C2-4, eastern wall.</p> <p>21 A. Yes.</p> <p>22 Q. Again, I suggest that's just the thing that Pypun ought 23 to have been looking out and indeed would have seen on 24 their site visits. 25 Would you like to comment on that proposition?</p>	<p>1 may give you a better picture on that.</p> <p>2 Q. You won't get a better picture than the one we're 3 looking at, I don't think. 4 B25637. Here we've got on to 10 November 2015.</p> <p>5 A. Yes.</p> <p>6 Q. So the first photo we looked at was the end of August, 7 then we've looked at photographs in September/October; 8 we are now halfway through November, and again we can 9 see, can we not, that parts of the completed works are 10 being demolished?</p> <p>11 A. As I explained to you, the top of the D-wall, normally 12 we need to break out 1 metre to half a metre, so --</p> <p>13 Q. You're not suggesting that's what's being shown in this 14 photograph, are you?</p> <p>15 A. No, no, no. It's the top of the D-wall, isn't it, sir?</p> <p>16 Q. Well ...</p> <p>17 A. It's difficult to tell.</p> <p>18 Q. But that's just the sort of thing, I suggest, that as 19 monitors, concentrating on cost and programme and even 20 safety, that's just the sort of thing, if you were 21 unclear as to what was happening, you would say, "Look, 22 what's happening here? You're knocking down works. 23 What are you doing that for?" That's just the sort of 24 thing --</p> <p>25 A. If we have the chance to look at it.</p>

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<p>1 CHAIRMAN: Sorry, I think the point being made, Mr Mak, is 2 that while it's appreciated that works that take a day 3 or two, and works that are perhaps in some corner of 4 a large site may not be seen, this in fact was a series 5 of connected works, of trimming the diaphragm wall, 6 which went on for several months and occupied a very 7 large part of the site, and one of the jobs that you 8 would have had is to deal with changes in plans, costs 9 and things like this; and this, it is suggested to you, 10 couldn't have been overlooked, not by a reasonably 11 proactive team of experts, and would it not have raised 12 a question. 13 A. I go back to the diaphragm wall construction. It's 14 a conventional way that we need -- you need to break out 15 the rubbish concrete on the top. Normally, so -- 16 CHAIRMAN: All right. I appreciate that. Thank you. I'm 17 not trying to interrupt, but I understand what you are 18 saying. You're saying this could be mistaken by your 19 engineers as tremie pipe concrete being cleared off the 20 top? 21 A. Yes. 22 CHAIRMAN: Okay. 23 MR BOULDING: Go back to B25685. 24 You are not suggesting for a moment, are you, 25 Mr Mak, that pile of rubble there could have been</p>	<p>1 right-hand, Mr Mak? 2 A. Yes. 3 Q. Again we can see, can we not -- 4 A. Yes. 5 Q. -- that the D-wall is being broken away, and the rebar 6 and the couplers removed together with the concrete; 7 correct? 8 A. Yes. 9 Q. Thank you. In those circumstances, I've got to suggest 10 to you that Pypun's representatives, if they were doing 11 their job properly, simply had to be aware of the 12 trimming of the diaphragm wall and the use of 13 through-bars, through its inspections. 14 A. I disagree with that, sir, I'm sorry. 15 Q. One thing we can agree on, I think, is that there was 16 never any objection made at the time, was there, by 17 Pypun, to what we have seen going on in those photos? 18 Pypun never raised any objection, did they? 19 A. Again, this is before my time -- 20 Q. No, it's not. These photographs are deliberately 21 selected to accord with your time on site. The first 22 one was dated 27 August and the last one we have seen 23 was 19 November. 24 A. No, this is still within 2015, sir. 25 Q. Yes, and you told me --</p>
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<p>1 mistaken for tremie concrete being chipped off the top 2 of a diaphragm wall? That's simply not correct, is it, 3 Mr Mak? 4 A. You mean the rubble on the -- 5 Q. Yes, the rubble. 6 MR COLEMAN: Which bit of the rubble? 7 CHAIRMAN: I think, Mr Mak, it's meant on the right-hand 8 side, roughly where you see the date and the time. 9 A. Yes, yes. It's 2015, August 14. 10 MR BOULDING: 25685; is that the one you're on? 11 A. 25605? 12 Q. No, 25685, that's what I said. That's why we are at 13 cross-purposes. 25685, is that what you're on? 14 MR COLEMAN: No, we're not. 15 MR BOULDING: I had in mind at least the pile of rubble that 16 one can see in the background against the yellow safety 17 helmet where, it would appear, the worker was shovelling 18 some up and putting it in a wheelbarrow. 19 Now, that's not excess tremie concrete, is it, that 20 you have to chip off the -- 21 A. No, I agree with you. 22 Q. Good. 23 Then I think finally one last photo, because you've 24 got my point. B25675. Again, here we've moved on, 25 19 November 2015 -- do you see the date in the bottom</p>	<p>1 A. I haven't take up the role of the project manager. No. 2 I joined the site visit and I tried to get familiar with 3 everything, and again, come back, if you try to allege 4 my people, I think Mr Yueng may have a better 5 explanation than me in that period. 6 Q. I don't think your explanation is very satisfactory at 7 all, Mr Mak. 8 MR COLEMAN: That's a comment, it's not a question. 9 A. There's certain difficulty for me to make judgment just 10 on the photos -- 11 Q. Okay. There we are. 12 A. -- I'm sorry, sir. 13 MR BOULDING: No further questions, Mr Mak. Thank you very 14 much. 15 WITNESS: Thank you. 16 MR KHAW: No questions from government. 17 MR CONNOR: None from Atkins. 18 MR COLEMAN: Just a few questions in re-examination, if 19 I may, and I am conscious that you want to rise at 4.30. 20 CHAIRMAN: Yes. 21 Re-examination by MR COLEMAN 22 MR COLEMAN: Mr Mak, near the beginning of the questions 23 that were posed to you by Mr Pennicott, you were talking 24 about either site supervision or site inspection. 25 May I ask you to look at your witness statement,</p>

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<p>1 please, at page K16.</p> <p>2 A. Yes.</p> <p>3 Q. At the top of that page there is a heading, "Site</p> <p>4 inspection as distinct from site supervision"; do you</p> <p>5 see that?</p> <p>6 A. Yes.</p> <p>7 Q. So if we want to know what you say about that</p> <p>8 distinction, we can read the rest of that page for</p> <p>9 ourselves -- we don't have to read it now -- is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. At various points in your evidence you've talked about</p> <p>13 a number of contracts, and I wonder if a way to identify</p> <p>14 that would be to go to the M&V agreement and to appendix</p> <p>15 G of it, at G7690.</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me what the list of contract numbers down</p> <p>18 the left-hand side indicates?</p> <p>19 A. Yes. That is the contract number of the site.</p> <p>20 Q. And just help me: are all of these contracts contracts</p> <p>21 with which Pypun had some monitoring and BSRC role?</p> <p>22 A. Yes.</p> <p>23 Q. And where we see "Minimum frequency of audit" in months,</p> <p>24 take contract 1112, the relevant contract.</p> <p>25 A. Yes.</p>	<p>1 Q. Is that a reference to the PIMS system?</p> <p>2 A. Yes.</p> <p>3 Q. "That is to say, in general the MTRCL will carry out or</p> <p>4 procure to carry out the design and construction works</p> <p>5 using its own system. Under the provisions of the 3 EAs</p> <p>6 for the design and site investigation, advance works and</p> <p>7 construction phases, the SCL will be designed,</p> <p>8 constructed, procured and delivered to standards and/or</p> <p>9 specifications which are consistent with and not</p> <p>10 materially in excess of those applicable to relevant</p> <p>11 elements of comparable completed railway projects in</p> <p>12 Hong Kong. Main ... features of the EAs for the SCL</p> <p>13 design and site investigation, advance works and</p> <p>14 construction phases in relation to this assignment are</p> <p>15 shown in appendix C ..."</p> <p>16 Appendix C we can find at G7678, and the relevant</p> <p>17 page relating to construction starts at page 7681, you</p> <p>18 see there, "Main key features of SCL construction</p> <p>19 phrase", and over the page, halfway down the page, next</p> <p>20 to the box "Monitoring and verification" --</p> <p>21 A. Yes.</p> <p>22 Q. -- the last bullet point:</p> <p>23 "At any time the MTRCL" -- and I'm going to change</p> <p>24 the punctuation to make sense -- "is, or the government</p> <p>25 suspects reasonably that the MTRCL is in material or</p>
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<p>1 Q. It says a minimum frequency of 12 months for the public</p> <p>2 safety compliance audit, and we can see that there's the</p> <p>3 same monthly frequency for all the other contracts</p> <p>4 listed on that page?</p> <p>5 A. Yes.</p> <p>6 Q. But does that mean that for each contract, there is</p> <p>7 a requirement for an audit with a minimum frequency of</p> <p>8 12 months?</p> <p>9 A. Yes.</p> <p>10 Q. Now, you were asked about MTR's PIMS, the PIMS system,</p> <p>11 and you confirmed, I think, that Pypun did not perform</p> <p>12 an audit of the PIMS system itself.</p> <p>13 Can I ask you to look in the brief at</p> <p>14 paragraph 2.18, page G7652. In the middle of that page,</p> <p>15 2.18 --</p> <p>16 A. Yes.</p> <p>17 Q. -- it says:</p> <p>18 "One of the major considerations behind the</p> <p>19 entrustment of the design and construction of the</p> <p>20 project to the MTRCL is to fully utilise the expertise</p> <p>21 and experience of the MTRCL in managing large-scale</p> <p>22 railway projects. Thus, in principle the SCL will be</p> <p>23 implemented by using MTRCL's internal systems for</p> <p>24 project management and control."</p> <p>25 A. Correct.</p>	<p>1 persistent breach of any of their material obligations</p> <p>2 under the EA, government is entitled to verify the</p> <p>3 MTRCL's compliance with their obligations under the EA."</p> <p>4 Can I ask, if the government took the decision that</p> <p>5 it had a reasonable suspicion of a material or</p> <p>6 persistent breach, who might it have asked to assist in</p> <p>7 the verification of compliance?</p> <p>8 A. They will ask us, yes.</p> <p>9 Q. If we go to your witness statement, at K13, you refer at</p> <p>10 paragraph 12 --</p> <p>11 A. Yes.</p> <p>12 Q. -- to the procurement system, and you set out in the</p> <p>13 following paragraphs a couple of references. I want to</p> <p>14 go to those documents themselves. Can you first have</p> <p>15 bundle B1 at page 3, where in the first main paragraph</p> <p>16 break you can see that in the MTR's own report, it</p> <p>17 identified that:</p> <p>18 "In project managing the construction of the SCL</p> <p>19 project, MTRCL is obliged (under EA3) to follow ...</p> <p>20 ('PIMS')."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. If we look at G3/1776, and if you have --</p> <p>24 CHAIRMAN: Sorry, Mr Coleman, is there any concern with the</p> <p>25 fact that PIMS was followed?</p>

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<p>1 MR COLEMAN: No, it's just that Mr Mak was asked a number of 2 questions whether he had audited the PIMS system, 3 checking the PIMS system itself, rather than checking 4 compliance with the PIMS system. 5 COMMISSIONER HANSFORD: And he told us he didn't. 6 MR COLEMAN: He told us he didn't, yes, and I'm dealing with 7 that topic. 8 CHAIRMAN: Because from our perspective we've always 9 understood PIMS to be an integral working document for 10 this project, and that hasn't been challenged as such. 11 MR COLEMAN: Yes. Well, the last thing that I was going to 12 ask Mr Mak to look at was simply to make the point, as 13 is at 1.1.5 on this page, that the MTR processes are 14 regularly reviewed and audited by outside bodies. 15 COMMISSIONER HANSFORD: He says that in his witness 16 statement, paragraph 14. 17 MR COLEMAN: That's correct. That will take you to the 18 actual body. 19 COMMISSIONER HANSFORD: Yes. Sorry to interrupt you, 20 Mr Coleman. 21 MR COLEMAN: Not at all. You have interrupted me right at 22 the end of that section, so that fine. 23 Now, you were asked about the two roles or two teams 24 within Pypun under the contractual arrangements. Can 25 I just ask you to be shown, please, page K737, and to</p>	<p>1 "We propose to use a structured process to underpin 2 our work at a high level with the primary focus on the 3 significant areas of risks. The project risks of 4 concern to RDO" -- that's your employer, of course -- 5 "will be those that may impact on 'cost', 'programme' 6 and 'public safety'." 7 Just perhaps for the Commission's note, at page K145 8 in the bundle, the Highways Department and the RDO had 9 no further comment on the inception report, including 10 of course that paragraph. 145. 11 A. Yes. 12 Q. In the middle of the page: 13 "I refer to the inception report submitted via your 14 above letter ... Please be advised that we have no 15 further comment on the inception report." 16 A. Yes, sir. 17 Q. Then can we go back to the report. You were looking at 18 page K51. 5.1 is the "Technical approach" section. 19 A. Yes. 20 Q. Over on page K53 is reference to the "Approach, 21 methodology, outline of monitoring" -- so 5.4 is dealing 22 with monitoring, isn't it? 23 A. Yes. 24 Q. Over the pages through to K62, section 5.5 is dealing 25 with verification?</p>
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<p>1 paragraph 36 at the bottom of the page. I should tell 2 you this is taken from the witness statement of 3 Mr Yueng. He has summarised the roles of the two teams. 4 Just read it to yourself, tell me whether you agree with 5 that summary or not. 6 A. Yes, I agree. 7 Q. Then you were asked about the inception report. Both my 8 learned friends Mr Pennicott and Mr Boulding, sometimes 9 called Buckland -- or is it the other way around -- 10 asked about paragraph 5.6.5, which is on page K68. K69, 11 actually, was the part you were asked about, at least by 12 Mr Pennicott, which is talking about the site and audit 13 inspections and what the areas of concern might be. 14 But can I just ask you to help us navigate through 15 this document. Obviously 5.6.5 is within section 5, and 16 that begins at page K49, and the whole section is about 17 "Approach and methodology". 18 A. Yes. 19 Q. 5.1, "Deliverable submissions", and if one turns over to 20 K51, there's the "Technical approach"? 21 A. Yes. 22 Q. And "General"? 23 A. Yes. 24 Q. Just while we are here, the second paragraph of 25 "General":</p>	<p>1 A. Yes. 2 Q. So we've had monitoring, we've had verification, and 3 then 5.6 on page K65, is dealing with the "Approach and 4 methodology for building submission assessment 5 activities"? 6 A. Yes. 7 Q. Can I ask you: this is the approach and the methodology 8 that were to be adopted by which of the teams in Pypun? 9 Building submission and assessment activities? 10 A. Yes, the BSRC team. 11 Q. If we look then at the bottom of K68, the context within 12 which the passage that my learned friend Mr Pennicott 13 took you to is under the heading 5.6.5, "Compliance with 14 the building safety standards", within the "Building 15 submission assessment activities" section; is that 16 right? 17 A. Yes. 18 Q. Now, you were asked about risk register. 19 The monitoring plan has a risk assessment flow chart 20 at page K174. It's difficult to read but, as 21 I understand it, this is telling us that the way in 22 which risk is assessed; is that right? 23 A. Yes. 24 Q. Then you told my learned friend that Pypun doesn't have 25 its own risk register, but can I ask you to look firstly</p>

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<p>1 at K306. This is annex 8 to your witness statement, and 2 it's what you describe as a typical monthly report. 3 A. Yes. 4 Q. It's quite -- we can see that it goes from 306 down to 5 586, 280-odd pages. 6 We can see from the "Content" section on 310 -- 7 A. Yes. 8 Q. -- what's included in each monthly report: executive 9 summary, meetings, monitoring work, verification work, 10 assessment of building submissions, that is following 11 the inception programme that we identified -- 12 A. Yes. 13 Q. -- staff resources, so if we want to know who was 14 available and deployed, we can look at that document 15 every month. And over the page, K311, a number of 16 appendices, including appendix P, "Risk register", and 17 we find that, or the front sheet for it, at K582. The 18 register itself is on the following two pages, with 19 a key on 586. So K584, we can see it says "Risk 20 register for monitoring activities", and contract types 21 are all "Civil". And then risk impact categories are 22 either "Programme", "Public safety" or "Cost"; you see 23 all three on that page. 24 A. Yes. 25 Q. Then the pre-penultimate and the one above that, entries</p>	<p>1 "cost audits", at the bottom of page 329. 2 A. Yes. 3 Q. We can turn it up for ourselves or later the Commission 4 can, but there's a summary of cost audits, programme 5 audits and public safety audits in each monthly report? 6 A. Yes. 7 Q. Lastly, can I ask you -- it is not clear to me from your 8 earlier evidence -- when was the first time you went to 9 the site of contract 1112? Was it before you became 10 project manager in January 2016? 11 A. I cannot remember. I need to check. But definitely 12 after 2016, yes. 13 MR COLEMAN: I've run a little past 4.30, but unless you 14 have any further questions. 15 CHAIRMAN: No, that's fine. Thank you very much. 16 COMMISSIONER HANSFORD: No questions from me. 17 MR COLEMAN: Then perhaps Mr Mak might be released. 18 CHAIRMAN: Yes, Mr Mak. Thanks very much for coming to give 19 evidence today. Your evidence is now completed. 20 WITNESS: Thank you, Chairman. Thank you, Professor. I'm 21 sorry I cannot answer all the questions. 22 CHAIRMAN: That's all right, don't you worry. You have 23 helped us as best you can and that's all that is 24 required. Thank you. 25 WITNESS: Thank you.</p>
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<p>1 on the page relate to contract no. 1112. 2 A. Yes. 3 Q. So the third and the fourth from the bottom, in ordinary 4 language. 5 A. Yes. 6 Q. Those two matters are given a risk category or impact 7 category of "Public safety" -- we can look for ourselves 8 later what they are -- and over the page, six down, 9 I think, six or seven down, we can see 1112 again in the 10 third column, this time with an impact category of 11 "Cost"? 12 A. "Cost", yes. 13 Q. Now, what is this document? Who produces this risk 14 register? 15 A. We derived it from -- the risk register from MTRC. 16 Q. How do you decide what to derive and take into this 17 document and what not to take into this document? 18 A. We work through, as we show on the flow chart, the 19 assessment and do all that sort of thing, and we 20 believe -- and we also add on our comments like the risk 21 descriptions; right? We also have our remarks at -- you 22 see the "Remarks" column, yes. 23 Q. All right. Then if you can turn back to K329, please. 24 This is still within the typical monthly report. You 25 can see there's a reference to "Summary of audits", here</p>	<p>1 (The witness was released) 2 MR COLEMAN: Sir, tomorrow morning obviously now, I will 3 call Mr Ron Yueng. 4 CHAIRMAN: Good. Thank you very much. 10 o'clock tomorrow 5 morning. 6 (4.36 pm) 7 (The hearing adjourned until 10.00 am the following day) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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