

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.

26

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
26

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

26

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.

26

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 --

26

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.

26

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.

26

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.

26

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?

26

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?

26

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.

26

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?

26

1 Q. No, I don't see your name on the list.

2 A. Yeah, so --

3 Q. One --

4 A. -- perhaps I didn't have -- perhaps I didn't see it,
5 because it's not addressed to me.

6 Q. Yes. But if we go to F34/23946, we can see the design
7 report attached to the email, and what we can see
8 here -- first of all, it says, "Prepared by SR". Who is
9 "SR"; do you know?

10 A. (Shook head).

11 Q. You don't, okay.

12 And "Checked by ST"; do you know who is "ST"? You
13 don't. But if there is a logo of Atkins, they should
14 belong to -- they should work for Atkins?

15 A. It doesn't ring a bell.

16 Q. Okay. We see it's dated 25 February 2015; right? Do
17 you see the date?

18 A. Yes.

19 Q. If we go down to the next page, and another page --
20 yes -- if we go to this page, it explains this report is
21 a summary.

22 If we go down to the middle -- yes -- it says:

23 "However as the slab reinforcement has been made
24 continuous over the D-wall support without proper
25 anchorage into the D-wall for panel EH107, it is

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1 proposed to demolish the top portion of D-wall and add
2 the required number and diameter of rebar as per design
3 drawings and achieve the full anchorage length with the
4 D-wall vertical reinforcement. For details refer to
5 attached sketch."

6 Would you agree with me what this proposal suggested
7 here was in response to the problem arising from the
8 lack of anchorage and missing U-bar?

9 A. I'm not sure because I've never seen this report.

10 Q. I see, you've never seen this report before?

11 A. So I can't comment on it, sorry.

12 Q. It's okay. But we see there's a mention of a proposal
13 to demolish the top part of the D-wall here. We do see
14 that. But you were not aware of that?

15 A. No.

16 Q. Now if we can move on to J1/92, now we come to May 2015.
17 This is a design report prepared by Atkins called
18 TWD-004B2.

19 You can take it from me that it's prepared by
20 team B.

21 A. (Nodded head).

22 Q. Did you read the report at the time?

23 A. I don't even know what's in there, actually. Can you
24 look into -- just look at the front page, I just --

25 Q. Yes, we can go to page 94, we see, first of all, it's
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1 reviewed by David Wilson, and can we go up a little bit,
2 it is approved by Mr McCrae. We know that David Wilson
3 belongs to team B.

4 A. Yes.

5 Q. If we go to 106, for example, we see there's a paragraph
6 which mentions -- provides:

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

9 Does it ring any bell to you? Have you seen this
10 report?

11 A. No.

12 Q. I see.

13 A. I can't remember.

14 Q. I see.

15 A. It does ring a bell, but I just can't remember the exact
16 content in that report.

17 Q. Okay. If we go to the next page, 107, we see there's
18 a figure 1.4, which refers to the rebar arrangement at
19 the top of the diaphragm wall; okay?

20 A. Mmm.

21 Q. We see there's a hatched area, and the annotation of the
22 hatched says "OTE and EWL slab to be concreted
23 concurrently". We see the hatched area covers, from the
24 left-hand side, the OTE slab, the top part of the
25 diaphragm wall, and also, on the right-hand side, the

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1 EWL slab.

2 Would you agree, what it suggests to me is that,
3 reading from this figure, the top part of the diaphragm
4 wall would need to be concreted together with the EWL
5 slab and the OTE slab in one piece?

6 A. That's what the figures show, but not my original design
7 intention.

8 Q. So far as you can tell, you did not see it before?

9 A. I haven't seen it before, yeah.

10 COMMISSIONER HANSFORD: Sorry, what was that answer, "what
11 the figures show, but not my" -- something "design"?

12 A. Oh, my original design is not like that. The D-wall was
13 already constructed.

14 COMMISSIONER HANSFORD: You said "not my original design
15 intention", did you?

16 A. No, this is not my design, sorry, sorry. I don't know
17 who did this.

18 COMMISSIONER HANSFORD: That's fine. I'm trying to
19 understand what's on the [draft] transcript. It says
20 "not my ...", and then there's a gap, "... design
21 intention".

22 MR CHEUK: I think he said "not my design intention".

23 COMMISSIONER HANSFORD: "Not my original design intention"?

24 MR CHEUK: "Not my original design intention".

25 COMMISSIONER HANSFORD: Thank you.

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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.

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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."

26

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
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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
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1 relevant to the design for the project?

2 A. At the time, yes, yes, especially when we talk about
3 anchorage length rather than cantilevered structure,
4 which -- that's referred to.

5 Q. Yes, but I'm trying to -- I'm not trying to argue with
6 you whether that's right or not. I'm trying to --
7 because the previous email referred to this PNAP and the
8 word "monolithic". What I'm trying to ascertain is how
9 people understood the word "monolithic", in that
10 context.

11 A. Um ...

12 Q. So -- I will put the question to you later, but I'm
13 going to take you to the context of the question first;
14 okay?

15 A. Okay.

16 Q. If we can go to page 10773, this is a diagram in the
17 PNAP illustrating the monolithic concreting; correct?

18 A. (Nodded head).

19 Q. So it appears to me that the word "monolithic" as used
20 in this PNAP really means "in one piece"; would you
21 accept that, at least so far as this PNAP is concerned?
22 Would you understand the concept in that way?

23 A. Yes.

24 Q. Now we are going back to the previous email, B10/7255.

25 Mr Derek Ma was asked questions on this email by my
26

1 learned friend Mr Connor. His evidence we can find is
2 at Day 7 -- can we go to the transcript -- Day 27,
3 page 133, line 3, starting from line 3. Mr Ma says as
4 follows:

5 "Just from looking at this email" -- that is the
6 email we have just discussed -- "I could see clearly
7 that Rob was saying -- well, as you can see in the first
8 sentence, the EWL slab and OTE must be cast
9 monolithically. But underneath he put in some
10 exemption -- well, this is my interpretation -- that is,
11 from EM72 to EH74, because of certain reasons, maybe
12 on site this could not be done, that is, they would not
13 be able to comply with the requirement of cast
14 monolithically. That is why they reviewed waterproofing
15 details or related hydrophilic strips. He thought that
16 this could be accepted by BD. So, in the circumstance,
17 they gave exemption to the CM team at that time, that at
18 the points mentioned by him, there could be cast in
19 advance, and that is with a clear understanding of the
20 OTE, meaning that they would not be able to comply with
21 the requirement of monolithic casting."

22 If we can carry on, next:

23 "This is my understanding of the email.

24 Question: Thank you very much.

25 Answer: Sorry, plus he particularly said that the
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1 PNAP APP-68, actually it clearly stated that there was
2 a definition for 'monolithically'. So, if
3 I cross-reference PNAP APP-68, it is clear that at that
4 time and even now I can say that 'cast monolithically'
5 means in one go, that there would be no joints in
6 between."

7 This is how Mr Derek Ma understood or still
8 understands that email to mean. Essentially, he says
9 casting monolithically, he takes it to mean 1, 2 and 3
10 in one piece, subject to some exemptions mentioned in
11 that email.

12 Now, if we can go back to that email and let you
13 have a look at it again -- B10/7255 -- I know you did
14 not read that email at the time, but now having the
15 chance of reading the email now, would you agree that
16 Mr Derek Ma's interpretation was a fair interpretation?

17 A. If you look at PNAP APP-68, that refers to structures
18 exposed to weather. Our structure is under cover, so
19 may not directly apply to this case. So if does not
20 apply in that case, "monolithically" may have different
21 meaning, in this sense. But in my design, my intention
22 is very clear: the EWL slab 3 metres cast together with
23 the OTE.

24 Now, how other people interpret it I don't know, but
25 my intention is that.

26

1 Q. I understand.

2 COMMISSIONER HANSFORD: Sorry, Mr Lee, you say "how other
3 people interpret it". Isn't it rather important that
4 the design intent is clearly understood by those that
5 are going to build things?

6 A. Yes, sir, I understand that, but if I want that -- at
7 that time, I was told the D-wall was cast and we don't
8 want to do any abortive work. That's the instruction
9 I was asked to consider, when you consider how to
10 resolve that missing U-bar issue and get the full
11 tension lap.

12 Now, if I want a D-wall to be demolished, it will be
13 shown on my drawings. The other thing I think of, if we
14 want it to be monolithically, the OTE slab is 1 metre
15 thick, not 420.

16 COMMISSIONER HANSFORD: Yes, I know.

17 A. If it's more than 420, my assumption is you take it down
18 all the way to the bottom, 1 metre, so you get that
19 shape (demonstrating), rather than going like that
20 (demonstrating), isn't it? That's what I think.

21 Another thing, if my instruction is not very clear,
22 I'm pretty sure there are so many channels to ask, such
23 as TQ. Now, if that is the case, why did they issue
24 TQ33? If they are going to demolish that, then there's
25 no problem with have 20 bolts into that short space. Is

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1 that logical to look at it that way?

2 MR CHEUK: But, Mr Lee, if we read the email here, would it
3 be fair to say, rightly or wrongly, the people within
4 the loop of this email probably did not understand the
5 word "monolithic" as you understand?

6 A. Yes.

7 Q. Yes, right?

8 A. Yes, but as I said --

9 Q. I'm not saying you are wrong.

10 A. -- they can always ask questions -- no, I'm not saying
11 anybody is right or wrong, but what I'm saying is, if
12 you are not clear what people say, you ask. If I don't
13 understand what you said, I will ask you to repeat
14 again. This is logical.

15 COMMISSIONER HANSFORD: Yes, that may be your thinking, and
16 I understand that, but actually, if somebody has a clear
17 idea or they think they have a clear idea of what's been
18 said, but actually it's a different interpretation of
19 what's been said than was your intent, then why would
20 they ask a question? They've got clear understanding.

21 A. Yes, true. But then, if you look at TQ33 which we keep
22 referring to, that question is asked: how are we going
23 to bolt that bar, 33 diameter bar, in a short space?
24 You just can't do it, with a 90-degree bend, short
25 space. Now, if that's the interpretation, saying that

26

1 my interpretation of "monolithic" means I've got to trim
2 that off, then that question doesn't exist, and they
3 still ask that question.

4 COMMISSIONER HANSFORD: All right. I'm sure Mr Cheuk is
5 going to take us to TQ33 before too long, so I will
6 leave it at this point.

7 MR CHEUK: I'm following the chronology, so we are now at
8 25 July 2015.

9 Now if we can go to B10/7256, we now come to 9 July,
10 a few days later, 2015. This is a submission by MTRC to
11 the BD of -- if we can -- at the cover page, this is
12 a submission of the TWD report to the BD.

13 Again, were you involved in the preparation of the
14 TWD report? Probably no, I presume.

15 A. I can't remember, sorry.

16 Q. Let me go to the next page.

17 If we go to the first page, 7262, you see this is
18 the cover page of the temporary design report. It's the
19 same report that we've seen before, which was TWD-004B2.
20 And this report is an updated version. That's why it's
21 called TWD-004B3.

22 Your previous answer to 004B2 was that you don't
23 recall you've seen that document. That's why now I'm
24 asking you this question again: do you have any
25 recollection you've seen this document before?

26

1 A. Can you show me a bit more of this report? I just have
2 the front page, sorry.

3 Q. Let's go to the executive summary page, 7271, this is
4 the executive summary page.

5 In front of you there will be a hard copy. You can
6 flip through it if necessary.

7 A. Okay.

8 Q. Have you seen this document before?

9 A. No, no, I haven't.

10 Q. Again, if we go to 7277, this is paragraph 1.3.5 that
11 I took you to in the last version.

12 A. Yes.

13 Q. But this has been amended and shortened. I presume you
14 do not know the reason of this amendment.

15 A. I don't remember, sorry.

16 Q. If we go to 7312, this is section 6.2. The previous
17 version I have already taken you to, the same wording
18 was retained here. It talks about the trimming of the
19 top of the D-wall and casting concurrently the three
20 elements together, in one piece.

21 You have not seen this document before?

22 A. No.

23 Q. I wonder -- this report was prepared by B team. Was it
24 ever given to team A for approval before submission; no?

25 A. No. I haven't seen this report.

26

1 Q. But looking at the documents I have taken you to from
2 February 2015 to now July 2015, would you agree that
3 from those documents it appears that Atkins, as a group
4 of designers, was using the word "monolithically" or
5 "concurrently" interchangeably, to mean essentially the
6 same thing, casting in one piece? Would you agree with
7 that statement?

8 A. In my design, as I said before, "monolithic" in that
9 sense is just two: 1 and 3.

10 Q. I agree with your design, because -- now you have had
11 the chance of reading this document, I'm just wondering,
12 would you accept that -- from the face of the documents
13 that I've taken you to, what they really suggest is --

14 A. Sorry, I can't interpret other people's thinking, but
15 looking at that, that's what it meant.

16 Q. Now I come to 30 July 2015, B10/7322. This is the
17 submission by MTRC to the BD of the PWD report prepared
18 by team A. You were involved in the preparation of the
19 PWD report; correct?

20 If you need some reminder, I can take you to B7324
21 first. This is the front page of the PWD report, and
22 then 7326 we see your signature, from the first issue in
23 June to the final issue submitted to the BD in July.

24 A. Yes.

25 Q. So you were the reviewer of this report?

26

1 A. Yes.

2 Q. Am I right in understanding that the main purpose of
3 this report was to justify the change constructed by
4 Intrafor, ie the lack of anchorage, the missing U-bar
5 change?

6 A. Yes, I think this primarily addresses the missing U-bar.

7 Q. Addresses the missing U-bar issue?

8 A. Yes.

9 Q. So that MTRC could obtain the certificate of completion
10 in their BA14 submission?

11 Do you recall the context? This is the time when
12 MTRC making an application for certificate of
13 completion. This is in July 2015.

14 A. I don't remember, sorry, no.

15 Q. Thank you. If we go to B10/7333, we can find
16 a paragraph here concerning the modification of rebar
17 connection slab/D-wall, and it states:

18 "To provide the full tension anchorage for the slab
19 rebar, the rebar are extended into the OTE slab/wall
20 with full tension anchorage lap length, end of the bar
21 with a standard bend-up hook as recommended in the
22 Concrete Code 2013. To comply with this principle, the
23 OTE slab/wall must be concrete
24 monolithically/concurrently (ie at the same time) with
25 the 3 metre EWL slab and provide adequate lap length

26

1 details for future OTE wall construction, detail refer
2 to Appendix F of this report."

3 The next page, 7334, again there's another reference
4 of "monolithic". At the bottom, the second-last
5 paragraph:

6 "To comply with the full tension anchorage lap
7 length ... from the slab rebar principle, the OTE wall
8 must be concrete monolithically ... with EWL ... slab
9 and the wall rebar to extend with full lap length ...
10 provision from the OTE wall construction joint ... for
11 future rebar connection."

12 As I understand your evidence, your understanding of
13 the word "monolithically" or "concurrently" used in this
14 report, which you were involved in, refers to only
15 casting of 1 and 3 at the same time?

16 A. Yes.

17 Q. But not 1, 2, 3 on one piece?

18 A. Correct, yes.

19 CHAIRMAN: Sorry, do 1 and 3 connect with each other at any
20 point?

21 MR CHEUK: No. It has a wedge, so-called. The D-wall is
22 a wedge.

23 CHAIRMAN: That's right. So 2 is in between them, so to
24 speak?

25 MR CHEUK: Yes.

26

1 CHAIRMAN: As a matter of interest, how does that assist, if
2 you've got it poured at the same time but not actually
3 connecting with each other, but having something in
4 between which has already been poured and has already
5 dried and settled? How do you get that tension benefit?

6 A. But the purpose is -- the rebars on the top of the EWL
7 slab is in tension, and to provide the full anchorage,
8 original design was anchored back to the D-wall, but
9 somehow that was missed. So it provides -- the only way
10 now remained, without any abortive work, to get the full
11 tension anchorage is to cast the anchorage bar into the
12 OTE wall. So that wall must be -- the OTE wall should
13 be cast at the same time as that, not before -- you
14 could cast before but not after. It must be either the
15 OTE wall first, or together.

16 CHAIRMAN: All right. I don't really understand that, but
17 I understand it sufficiently to get an intellectual
18 understanding of what's the requirement. Thank you.

19 COMMISSIONER HANSFORD: Mr Lee, I think it probably is quite
20 important that the Chairman does understand this. Are
21 you saying that the way that's achieved is via the
22 couplers, so you've got the reinforcement from area 1 --

23 A. Yes.

24 COMMISSIONER HANSFORD: -- and you've got the reinforcement
25 in area 3, and the connection between 1 and 3 is made

26

1 through --

2 A. The existing couplers.

3 COMMISSIONER HANSFORD: -- the existing couplers?

4 A. Yes.

5 COMMISSIONER HANSFORD: That's your point, isn't it?

6 A. Yes.

7 CHAIRMAN: Ah.

8 COMMISSIONER HANSFORD: So they are connected --

9 A. They are connected.

10 COMMISSIONER HANSFORD: -- through the reinforcement?

11 A. Through the reinforcement, the couplers.

12 COMMISSIONER HANSFORD: That is the point you are making?

13 A. Yes.

14 CHAIRMAN: Ah, so they are connected. So the concrete may
15 not be connected when it's poured concurrently, but the
16 reinforcement is.

17 A. The concrete, they should have trimmed the side to make
18 a good construction joint, so they are actually
19 connected, in a sense, yes.

20 CHAIRMAN: All right.

21 COMMISSIONER HANSFORD: You see, I have a little bit of
22 difficulty, because for me "concurrent" is a very clear
23 word which means -- it's a time-based word, it's
24 a temporal word, it means "at the same time". Whereas
25 for me, "monolithic" is a spatial word, a physical term,

26

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.

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.

11 COMMISSIONER HANSFORD: "Cast together at the same time"?

12 A. Yes.

13 MR CHEUK: It doesn't help that much, does it? "In one
14 piece" of course includes "at the same time".

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 --

19 A. Yes.

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.

23 A. Yes. I probably agree, yes. We try to eliminate that,
24 that's why we put "at the same time".

25 COMMISSIONER HANSFORD: Well, you may have helped.

26

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.

5 COMMISSIONER HANSFORD: Exactly.

6 CHAIRMAN: I think that's -- yes.

7 A. Okay.

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?

14 A. Yes.

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?

19 A. Yes.

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:

26

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."

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?

14 A. Yes, that was my intention.

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?

20 A. Probably, yes.

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?

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

26

1 together with the sketch. The sketch clearly is showing
2 the bars there with the couplers on.

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.

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.

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.

26

1 So, looking at that, I mean, that to me is clear.

2 Q. Let's look at the outsiders from two groups; okay?

3 A. Okay.

4 Q. One group of people obviously is within either Leighton
5 or MTRC site people, within the site. The problem of
6 your suggestion is, as the professor pointed out, they
7 thought they had a perfectly clear understanding of what
8 Atkins means --

9 A. Yes.

10 Q. -- at the time; okay?

11 A. Okay.

12 Q. Now, the use of the word "monolithic" was consistent
13 with everything -- 1, 2 and 3 -- in one piece all along,
14 so why would they have raised any query?

15 A. You mean here?

16 Q. Yes, to seek further clarification, because they thought
17 the meaning was perfectly clear.

18 A. Well, this is not to clarify whether to trim off the
19 bars or not. This is to clarify they can't bolt the bar
20 in. In other words, they actually understand what the
21 design intention is. If they don't understand it, then
22 they should ask. I mean, the same people, Brett, raised
23 that. He's the engineering manager; he issued this.

24 COMMISSIONER HANSFORD: Sorry, I'm not quite understanding
25 what you're saying, Mr Lee. Are you saying if they had

26

1 not properly understood the design intent, they would
2 not have issued this TQ; is that what you're saying?

3 A. No. I'm saying if they fully understand the design
4 intent, in their understanding "monolithic" means trim
5 the top of that 400 off the D-wall -- now, if they fully
6 understand the wording, then there's no point to issue
7 this TQ. What's the point to issue a TQ if they are
8 going to trim that off? This doesn't exist.

9 MR CHEUK: Yes. But is it fair to say your reply, by using
10 the word "monolithic", without --

11 A. In brackets. That's in brackets.

12 Q. -- that does not really clarify the issue in the most
13 satisfactory way?

14 A. I don't think so. I mean, we tell him the design
15 intent, and the drawing reflects our design intent.
16 It's just that word in brackets, okay, may be not the
17 best use of that word in this instance, but the message
18 is very clear, and they understood that by raising these
19 questions.

20 Q. The second group of outside people I would mention is
21 the BD. The BD would receive the TWD report and the PWD
22 report from MTRC, which we have seen. Would you accept
23 that fair-minded people from BD would not have noticed,
24 from reading those two reports, what Atkins intended to
25 do actually with the top of the D-wall?

26

1 A. No. We presented this solution to BD before we made
2 that submission, and there was a condition: we had to
3 cast these two slabs and wall together, that was the
4 condition, before we actually proceed with this
5 solution. That was presented to BD.

6 Q. When you say you presented to the BD, when was that?

7 A. I can't remember the exact date, but it was members from
8 Atkins and myself and Mr David Wilson, and
9 representatives of BD, representatives of MTRC, we
10 presented that in Hung Hom Station, the office above
11 Hung Hom Station, that's where the presentation took
12 place.

13 I can't remember the exact date. Maybe it's in
14 early June, maybe late May; I can't remember the date.

15 Q. 2015?

16 A. Yes.

17 Q. The message that BD got from the presentation was there
18 would be no trimming of D-wall?

19 A. Correct.

20 Q. Apart from you, you mention -- who was there
21 representing Leighton? Anybody?

22 A. From memory, nobody from Leightons.

23 Q. Who was there representing MTRC?

24 A. I think Kevin Yip and Andy Leung, if I don't remember
25 wrong.

26

1 Q. Who was there representing the BD?

2 A. Ron and -- Alex Wong, the senior structural engineer.

3 Q. Ron, R-O-N?

4 A. Yes.

5 Q. And Alex Wong?

6 A. Yes.

7 Q. What's the surname of Ron?

8 A. Sorry, I know him as Ron. Pypun.

9 Q. Alex Wong is from Pypun?

10 A. Yes.

11 Q. Ron is from Pypun, I'm told.

12 A. Yes, correct. Alex Wong is from BD.

13 Q. Ron from Pypun and Alex Wong from BD?

14 A. Yes.

15 MR CHEUK: Thank you. I have no further questions -- sorry,

16 I just ask whether it should be Alex Hung from BD or

17 Alex Wong?

18 A. I know him -- I recognise his face, but name-wise,

19 I know -- sorry, I can't.

20 COMMISSIONER HANSFORD: You don't have photographs?

21 A. I know he's a senior structural engineer. He's now

22 retired.

23 MR CHEUK: Okay, thank you. I have no further questions.

24 MR CHANG: No questions from Leighton.

25 CHAIRMAN: Thank you.

26

1 Mr Boulding, any questions?

2 MR BOULDING: No, we've got no questions, sir.

3 CHAIRMAN: Thank you.

4 MR TO: No questions from China Technology.

5 MR CHOW: Mr Chairman, there are some questions from the
6 government.

7 CHAIRMAN: Thank you.

8 Cross-examination by MR CHOW

9 MR CHOW: Good morning, Mr Lee.

10 A. Good morning.

11 Q. My name is Anthony Chow and I represent the government,
12 and we have some questions for you.

13 A. Okay.

14 Q. Before I move on to the main subject that you talk about
15 in your witness statement, can I just clarify one thing
16 with you.

17 In paragraph 1 of your witness statement, you said
18 that you used to work for Atkins from October 2013 to
19 the end of September 2015.

20 A. Yes.

21 Q. Were you still employed by Atkins in October 2015?

22 A. No.

23 Q. Because just now, in-chief, you were shown
24 an organisation chart produced by, I believe,
25 Mr Blackwood, dated October 2015, indicating that you
26

1 were working as part of team -- or part of Leighton's
2 team.

3 If I can refer you to bundle J1, page 91. So that
4 is an organisation chart from the bottom -- from the
5 title block it seems to be prepared jointly by Leighton
6 and Atkins, and the date was October 2015, and in the
7 box in the bottom-left corner of the organisation chart,
8 it shows that someone with the same name as you, Mr Lee.

9 So do you have any comment? Do you know this guy,
10 or perhaps it's just a mistake on the part of the person
11 preparing this organisation chart?

12 A. When I looked at it, when I looked at the date,
13 I thought it was me.

14 Q. Sorry?

15 A. When I first looked at this chart, when I saw the date,
16 I thought that was me. Because I left Atkins.
17 I started work on 1 October with Sam Woo Bore Pile
18 Foundation.

19 COMMISSIONER HANSFORD: Sorry, is there another Wan Cheung
20 Lee in Atkins?

21 A. Not I know of.

22 COMMISSIONER HANSFORD: Right.

23 MR CHOW: All right. Now I will move on to the main subject
24 area.

25 In paragraphs 19 to 28, you talk about the design
26

1 report, and Mr Cheuk has taken us to the report, to
2 certain details, this morning. I am asking questions
3 from the point of view of the government, the Buildings
4 Department. As far as the Buildings Department is
5 concerned, they have only received, for the present
6 purpose, two reports. This is one of the reports, the
7 report PWD-059A3, on 30 July 2015.

8 Now, this report, if we may go to take a look at the
9 report -- because as far as the government is concerned,
10 this report and your design intent is not as confusing
11 as people suggested earlier this morning. May I get
12 some confirmation from you.

13 First of all, let's go to the report in bundle B10,
14 starting from page 7322. This is the report submitted
15 to the Buildings Department on 30 July.

16 Now, I prefer to use this because this copy is the
17 one received by the Buildings Department. If we may
18 then go to the details, page 7324 shows the covering of
19 the report, PWD-059A3. If we can now go to page 7329,
20 the opening paragraph, "Background", you put at the very
21 beginning:

22 "This report has been prepared to evaluate the
23 as-constructed reinforcement detail at the joint between
24 the diaphragm wall and the East West Line slab between
25 gridlines 15 and 49/50."
26

1 So the primary purpose of this report is to justify
2 what had been built at that time. Can you confirm that
3 what has been built at that time is a diaphragm wall
4 with horizontal reinforcement at the top, and with
5 couplers on each end of the diaphragm wall?

6 A. No, because I was responsible for design only. We're
7 not -- I'm not for the supervision works, so I don't
8 know exactly what's been built.

9 Q. Right.

10 A. I'm only given the information, and based on the
11 information we carry out some sort of remedial work,
12 remedial design, if you like.

13 COMMISSIONER HANSFORD: Sorry, if I can just understand that
14 answer -- so all you are saying is, all that's being
15 shown here is what was intended to be built; you don't
16 know what was built?

17 A. No. What I'm saying is I don't know the construction
18 stage, because I don't have access to site, because
19 I only responsible for the design side of the works.

20 COMMISSIONER HANSFORD: Yes.

21 A. So at that time, when we look at this, we are just told
22 they are missing a U-bars.

23 COMMISSIONER HANSFORD: Right.

24 MR CHOW: Perhaps I will re-frame my question. In preparing
25 this report you make certain assumptions, and although
26

1 you haven't gone to site to verify what was built, but
2 you assume that it was built in accordance with the
3 original design, with the exception that there were no
4 U-bar and there were no downturn to provide the
5 anchorage?

6 A. Correct, this -- the report is not prepared by me
7 although my signature appears on that, I really -- the
8 key issue here, I just review the report.

9 Q. Right.

10 A. My contribution is to review the technical side of this
11 report, whether that is feasible or not.

12 Q. So are you saying that although you put -- or the
13 drafter of the report put down in the opening paragraph
14 saying that the purpose of the report is to evaluate the
15 as-built reinforcement detail, but in actual fact when
16 you reviewed it you did not know what was the as-built
17 or as-constructed reinforcement details?

18 A. Yeah, I just say -- if they say as-constructed
19 reinforcement, I assume it's as-constructed information.

20 Q. Okay. Let's move on then.

21 If we can now go to page 7333, to the same paragraph
22 Mr Cheuk has taken you to. Here, you use the word
23 "monolithically" and "concurrently" at the same time,
24 but at the same time you also put "ie at the same time".
25 This part is a bit confusing, I fully accept. Shall we
26

1 move on to the "Conclusion" section over the page,
2 73334.

3 A. The whole purpose, putting in brackets "at the same
4 time", we try to minimise confusion --

5 Q. To make it clear.

6 A. -- but I think -- I didn't realise that caused extra
7 problem.

8 Q. All right. Now, in the "Conclusions" section, you see
9 the paragraph starting with, "With the above
10 enhancement"; do you see that?

11 A. Yes.

12 Q. You put:

13 "With the above enhancement and full tension
14 anchorage of all the primary tension reinforcement, it
15 is considered the as-built reinforcement connection is
16 in principle still able to fulfil the design fixity
17 requirement at the diaphragm wall/slab connection."

18 So do you agree, for Buildings Department, having
19 read what you put, the Buildings Department would expect
20 that this report was to justify what has been built
21 rather than making alteration to the existing diaphragm
22 wall?

23 A. Yes.

24 Q. Then you go on to say:

25 "To comply with the full tension anchorage lap
26

1 length ... from the slab rebar principle, the OTE wall
2 must be concrete[d] monolithically (ie at the same time)
3 with EWL ... slab and the wall rebar to extend with full
4 lap length ... provision from the OTE wall construction
5 joint ... for future wall rebar connection."

6 Then you refer to appendix F. So if we can now go
7 to appendix F at page 7357, if we can blow up the two
8 diagrams at the bottom of the page.

9 Now, when BD received this design submission,
10 reading the report as a whole together with these two
11 diagrams, do you agree with me that a reasonable person
12 would understand perfectly your design intent, and that
13 is to keep the diaphragm wall intact?

14 If we can further blow up the details of one of the
15 two diagrams -- perhaps the one on the left, so we see
16 that there are two straight lines showing the two sides
17 of the diaphragm wall. We see the couplers embedded
18 inside the diaphragm wall, and we see the reinforcement
19 from the EWL slab being screwed into the left side of
20 the diaphragm wall couplers, and the new OTE slab
21 reinforcement being connected to the couplers embedded
22 on the right side of the diaphragm wall. Do you see
23 that?

24 A. Yes.

25 Q. And we see similar details on the other diagram to the
26

1 right, if we can now scroll right.

2 So do you agree with me that as far as BD is
3 concerned, your design intent is pretty clear, which
4 means no trimming down of the diaphragm wall, and the
5 two -- the EWL slab and the OTE slab, as you have put
6 down in your descriptives before, they were meant to be
7 cast together at the same time --

8 A. Yes.

9 Q. -- with a construction joint on both sides of the
10 diaphragm wall?

11 A. Correct.

12 Q. The other design reports that the Buildings Department
13 have received is the one regarding the temporary work
14 submission, that excavation and lateral support
15 submission, to which a copy of the design report 4B3 was
16 attached.

17 Now, the 4B3 report has been referred to by Mr Cheuk
18 earlier. This report was submitted just one day before
19 the one that we have just looked at, 59A3. So these are
20 the two reports that the Buildings Department has
21 received.

22 The lateral support submission, in this Inquiry, is
23 heavily relied upon by Leighton in support of their
24 assertion that the intended changes made to the top of
25 the diaphragm wall had been notified to BD and even

26

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

26

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.

26

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.

26

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.

26

1 Re-examination by MR CONNOR

2 MR CONNOR: Thank you, sir.

3 Mr Lee, just a couple of short questions for you,
4 please.

5 A. Yes.

6 Q. I'll start with a very easy one, if I may.

7 If you in front of you your statement, please, which
8 is in bundle J6 at page J4523. This is the statement
9 you looked at earlier. Mr Chow asked you a moment ago,
10 at the beginning of his questions, about the dates of
11 your involvement in the project, and he drew your
12 attention to paragraph 1 where you talk about working
13 with Atkins to the end of September 2015.

14 A. Yes.

15 Q. Do you recall that? Thank you.

16 You recall also that I asked you earlier to identify
17 your CV. It is at page J4531. Do you have that before
18 you? Thank you very much. That's the page.

19 If you scroll down that page, you get to the bottom
20 paragraph, and there is a note there, "Experience with
21 Atkins China Ltd", and there's a reference to "2013 to
22 October 2015"; do you see that?

23 A. Yes.

24 Q. This might be really quite straightforward: did you
25 leave at the end of September or start in your new job

26

1 at the beginning of October or was there a slightly
2 overlap in the dates?

3 A. No, I left end of September, and 1 October being
4 a public holiday, that's why I started on 3 October.

5 Q. Okay. So that, you are clear on, at the very least?

6 A. Yes, thank you.

7 Q. You will be glad to hear I won't ask you too much about
8 the design intent because you have already helped the
9 Commissioners on that topic and you have also had a very
10 full exchange with Mr Cheuk, and the professor and the
11 Chairman, and indeed latterly with Mr Chow on the
12 question of "monolithic", "built concurrently" and "at
13 the same time". Your evidence is there for the
14 Commissioners to consider, but you have expressed your
15 view in relation to that.

16 One thing you did mention, in the course of the
17 questions, I think particularly from Mr Chow, was your
18 engagement with BD.

19 If I could ask you to turn to your statement, which
20 is in bundle J6, starting, as you know, at page J4523.
21 For the assistance of the Commissioners but also picking
22 up a little bit on that question of design intent,
23 paragraph 21, if you have that before you -- pardon me,
24 even if I go back one paragraph to paragraph 20, you
25 say:

26

1 "I was involved in the development of the connection
2 detail with original couplers as shown in enclosure
3 1 ..."

4 Do you see that? Then you refer to a letter from
5 Lo & Lo. Then in paragraph 21 you go on to say:

6 "On or around May/June 2015, I attended
7 a presentation to BD with Mr David Wilson on the
8 alternative design assumption for the moment connection
9 details between the EWL slab and the tension anchorage
10 into the OTE wall."

11 Do you see that?

12 A. Yes.

13 Q. Thank you. I think you mentioned to Mr Chow a moment
14 ago a presentation or a meeting with BD. Is that the
15 one you're referring to?

16 A. That's right. That's correct. That's the meeting
17 I refer to, yes.

18 Q. Thank you.

19 Then you go on to refer to the first version of
20 a report known as PWD-059A3; do you see that?

21 A. Yes.

22 Q. Thank you. You go on to discuss your signing off on
23 that, and then at the end of the paragraph you say:

24 "I understand that on 30 July 2015, PWD-509A3 was
25 submitted to BD by MTR ..."

26

1 And there was a reference to a page number. Do you
2 see that?

3 A. Yes.

4 Q. And it was accepted in September; you see that also,
5 yes?

6 A. Yes.

7 Q. Just for a short point of detail, because you have
8 helped the Commissioners on this already, but if you can
9 have before you a page from that report, a drawing in
10 particular, and that is one which appears at page B7428.
11 This is a drawing which you will see -- it would be
12 familiar to you, I'm sure; is that right?

13 A. (Witness nodded).

14 Q. This one is dated 25 August 2015, and it's checked by
15 "WC". Is that you or is that someone else?

16 A. I think it's me.

17 Q. Thank you. So this, as we will see, is the position as
18 at 25 August, at least as far as this drawing is
19 concerned, and do you see, in the top left-hand corner
20 of the drawing, a detail which will be familiar to you
21 of the EWL slab, the diaphragm wall and the OTE slab;
22 yes?

23 A. Yes.

24 Q. Again, at this time, at the end of August by this stage,
25 when there had been submissions to the BD in relation to

26

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
26

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

26

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.

26

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.

26

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
26

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 --

26

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
26

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 Examination-in-chief by MR COLEMAN

20 MR COLEMAN: I wonder if you could be shown K11. Is that
21 your full name at the top, Mak Yu Man?

22 A. Yes.

23 Q. Does it show your professional address?

24 A. Yes.

25 Q. Can you be taken, please, to K31. Is that your
26 signature on that page?

1 A. Yes, it is.

2 Q. Are the contents of this witness statement true and
3 correct, to the best of your knowledge and belief?

4 A. Yes, absolutely.

5 Q. Do you ask for the content of the witness statement to
6 be part of the evidence that you give to this
7 Commission?

8 A. Yes.

9 Q. Subject, of course, to a corrigendum which you have
10 produced, which is I think to be found at page K32.1,
11 which simply makes the small correction to the title of
12 a committee in your paragraph 53.4, to change it to
13 "project supervision committee".

14 A. Yes, because it was a typing error. Sorry about that.

15 Q. As is typical in these proceedings for someone who says
16 they are going to be giving evidence in Cantonese, so
17 far it's been in English. If you wish to give evidence
18 in Cantonese, please do so. If you break into English
19 at any point, I'm sure the members of the Commission
20 won't mind. Obviously if you are dealing with technical
21 terms it is likely that you will be using the English
22 language.

23 A. 明白。

24 MR COLEMAN: In a moment, Mr Pennicott will have some
25 questions for you. It may be that some other counsel
26 have questions, it may be that I will have some

1 questions at the end, and of course the Chairman and the
2 professor can ask questions at any time.

3 Yes, please just wait there.

4 Examination by MR PENNICOTT

5 MR PENNICOTT: Thank you. Good afternoon, Mr Mak.

6 A. Good afternoon, sir.

7 Q. As Mr Coleman has indicated, my name is Ian Pennicott
8 and I'm one of the counsel to the Commission. I have
9 one or two questions for you.

10 First of all, thank you very much for coming along
11 to give evidence to the Commission today.

12 A. It's my pleasure, sir.

13 Q. Mr Mak, my understanding is your personal involvement in
14 the SCL project, so far as Pypun is concerned, was in
15 about January 2016; is that right?

16 A. Yes, it is correct.

17 Q. The background to Pypun's involvement is that they
18 entered into a consultancy agreement back in
19 August 2012?

20 A. That's right.

21 Q. And Pypun was engaged as a monitoring and verification
22 consultant, to monitor and verify certain aspects of the
23 work on the SCL project?

24 A. 正確。

25 Q. And in particular they were to monitor and verify the
26 works of the MTR?

1 A. Yes.

2 Q. Would this be a fair description, Mr Mak -- and we can
3 look at a little bit more detail in a moment -- that,
4 broadly speaking, the Pypun personnel involved were
5 split into two teams, one of which one might describe as
6 the monitoring and verification team, the MT team?

7 A. Yes.

8 Q. And secondly the building submission review and
9 compliance team, also known as the BSRC team?

10 A. 正確。

11 Q. Mr Mak, am I right in saying that you were really
12 overseeing, in your role, both teams; would that be
13 a fair description?

14 A. 我除咗直接管理嗰個M&V team之外，另外嗰個BSRC team都係report畀我
15 嘅，但係喺工作上嚟講，BSRC team嘅team leader楊先生佢因為係喺工
16 作上嘅需要，就直接係聽同support呢個BO team嘅，所以除非佢有困難或
17 者有其他人事上嘅安排、其他方面嘅唔關BO team嗰個decision嘅嘢，佢就
18 搵我商量去配合嘅。所以道理上，我係負責晒全個project個agreement嘅
19 works。

20 Q. Yes. Okay. That's a helpful way of describing it.
21 Thank you very much.

22 Could I ask you, please -- sorry, let me just put
23 this to you. You took over from Mr Robert Lloyd; is
24 that right, Mr Mak?

25 A. Yes.

1 Q. Was Mr Lloyd, as it were, in your position, right from
2 the outset of the consultancy agreement in 2012, to your
3 knowledge?

4 A. Sorry, can you repeat?

5 Q. Yes. From 2012, when the consultancy agreement was
6 entered into, up to the time you took over, was it
7 Mr Lloyd that was in your position?

8 A. 以我所知，係嘅。

9 Q. All right. I don't know if you know this, but Mr Lloyd
10 had worked for the government for about 30 years before
11 he took up his job with Pypun; were you aware of that?

12 A. 我都知道，係。

13 Q. As well as being a former England rugby international,
14 back in the 1960s.

15 Now, could we look at the contract, just a few
16 points on the consultancy contract. G9, please, 7638.
17 We've got a hard copy for you, Mr Mak. You can use the
18 hard copy or the screen, whichever you prefer.

19 A. Thank you.

20 Q. We can see here, on 7638, that the consultancy agreement
21 is really contained in five separate documents; do you
22 see that on 7638? It's the front page. The green page,
23 as it were.

24 A. Ah, okay. Yes.

25 Q. So it's the memorandum, the brief, general conditions,
26 special conditions, and schedule of fees.

1 Could I ask you, please, first of all, to go to the
2 brief, and could we pick it up, please, at 7653 and
3 clause 3.1 at the bottom, where the objectives of the
4 assignment are set out.

5 A. Yes.

6 Q. We can see that:

7 "The overall objective of the assignment is to
8 provide monitoring and verification services in relation
9 to the work undertaken by the MTRC (including
10 submissions by its consultants, contractors or agent to
11 MTRC) during the construction, testing and commissioning
12 phase of the project so as to provide assurance that the
13 MTR's obligations stated in the Entrustment Agreements
14 for the SCL advance works and construction phases have
15 been properly fulfilled."

16 Then I think a sentence that you emphasise somewhat
17 in your witness statement:

18 "The monitoring and verification shall focus on
19 cost, programme and public safety of the project."

20 A. Correct.

21 Q. Mr Mak, it says "focus on cost, programme and public
22 safety". Would you agree that that is not
23 all-inclusive, that responsibilities may go outside the
24 questions of cost, programme and public safety?

25 A. Excuse me. The question again, please.

26 Q. Of course. Whilst the objective is to focus on cost,

1 programme and public safety, would you accept that that
2 is not all-inclusive, and that Pypun had to look at
3 other matters beyond cost, programme and public safety?

4 A. I don't think so.

5 Q. You don't think so? You disagree?

6 A. Disagree.

7 Q. Okay. Let me test that with an example. Let's suppose
8 there were some defects in a particular contract.

9 A. Mm-hmm.

10 Q. And those defects required remedial works. Would you
11 accept that that general topic would fall into the
12 question or under the umbrella of cost?

13 A. 呢個睇嗰個defect實際嘅情況、影響嘅程度，第一，我哋當然睇下對個
14 programme有冇影響；第二，嗰個defect個cost係點樣嚟嘅。了解咗，
15 能夠定咗個方向之後，我哋先至可以了解到到底呢個defect係咪關政府嘅
16 事定話係個contractor嘅責任。

17 Q. All right. So do you accept that the word "cost" is
18 capable of being given quite a wide definition, ie it is
19 anything that might arise that might impact on cost or
20 indeed on programme?

21 A. 應該可以咁講。

22 Q. Okay. Could we then look at clause 4.1:

23 "The assignment shall include but not be limited to
24 the following", and then there's a list, "a review of
25 the documents relating to the following", and there

1 a list is given, and there's a general sweep-up clause
2 at the end, that is (vi), "other key documents relating
3 to the SCL works"; do you see that, Mr Mak?

4 A. Yes.

5 Q. Then (b):

6 "Carrying out monitoring on MTRCL's works through
7 a review of the concerned project documents and
8 necessary site inspection and identification of and
9 providing advice on key issues, which bear significant
10 implications in respect of cost, programme and public
11 safety to the Project".

12 Then at 4.2:

13 "Notwithstanding Clause 4.1 ... the Consultants
14 shall not be required to carry out site supervision or
15 any checking of detailed design of the works."

16 But I think we will see shortly, although there's no
17 site supervision involved, there is provision for
18 certain site inspections?

19 A. No site inspections, sorry.

20 Q. Well, certain -- to go to site to inspect certain things
21 that are happening, like testing and the like, might be
22 required.

23 A. If we were instructed by RDO, yes.

24 Q. Okay. If you then go to 5 on page 7655, there's
25 a heading "Deliverables", and there's a schedule. These
26 are a number of deliverables, that is documents that

1 have to be produced by Pypun towards the beginning of
2 the consultancy.

3 A. Mm-hmm, yes.

4 Q. And then provided to government.

5 A. Yes.

6 Q. The two I'm going to be looking at with you in a moment
7 are number 2, the inception report; do you see that?

8 A. Yes.

9 Q. Just for the transcript, that's K1/37, but we will be
10 going there shortly. And then the monitoring plan at
11 number 5, that's K1/146. Do you see those two?

12 A. Yes.

13 Q. Thank you.

14 Then if you could please go to number 6, clause 6,
15 at 6.1.7 at the bottom of page 7658, it says:

16 "The main roles of the Consultants is to appraise,
17 monitor and audit the activities/processes of MTR, and
18 verify that these activities/processes are carried out
19 in accordance with the MTR's management and control
20 procedures and in compliance with the 3 Entrustment
21 Agreements for the SCL design and site investigation,
22 advance works or construction phases ... Hence, the
23 consultants shall be proactive, working closely with the
24 Director's Representative and the MTRCL and timely
25 adjust its work plan to suit the progress and programme
26 of the SCL works."

1 Now, you mentioned a moment ago in answer to
2 a question that you would make site visits if requested
3 to do so by RDO?

4 A. Yes, the director's representative.

5 Q. Yes. This clause suggests that Pypun should be
6 proactive in their duties and responsibilities. As
7 a general proposition, Mr Mak, is that something you
8 accept?

9 A. Yes, I agree. We should have -- be proactive to assist
10 our client, yes.

11 Q. Yes, so the mindset, not necessarily going to see
12 specific tests that RDO may want you to witness, but as
13 a general proposition you would accept that you should
14 be proactive?

15 A. Yes, definitely should have.

16 Q. Then at 6.2 there's a heading "Review reports", at the
17 bottom of 7659, where it says:

18 "The Consultants shall carry out the following --

19 (a) acquaint themselves with MTRC's project
20 management system and procedures (including the MTRC's
21 internal audit systems); and

22 (b) acquaint themselves with the contract documents
23 for all construction and procurement activities."

24 Pausing there, "acquaint themselves with the MTR's
25 project management system", that includes, I think, the
26 PIMS. Is that something that you became familiar with,

1 Mr Mak, yourself?

2 A. Yes, I agree.

3 Q. Okay. Indeed, when you took up your post in
4 January 2016, what did you do to acquaint yourself and
5 appraise yourself of what had happened while Mr Lloyd
6 was in charge?

7 A. Of course I have to -- sorry.

8 當然我要睇晒所有文件，包括呢個contract agreement、呢個
9 brief、我哋所有嘅--因為之前所有嘅plan，inception plan、
10 inception report嗰個monitoring plan同埋嗰個verification
11 plan，我要了解晒所有文件，當然包括係呢個PIMS，就更加要同我嗰個團
12 隊我嗰個team member大家一齊去睇佢哋之前係點去做呢個工作，尤其是
13 好似你正話講點樣proactively去perform我哋嘅duty。

14 至於呢個PIMS，以我嘅理解，係非常之龐大嘅document呢個project
15 management control嘅，喺我嚟講，我本人就唔係陌生，因為好多香港大
16 型嘅project，甚至到我喺海外幫其他公司做呢個鐵路嘅時間，我都有參考
17 到PIMS呢樣嘢，亦都有應用部分嘅材料。所以PIMS對我嚟講係唔陌生嘅。

18 Q. All right.

19 COMMISSIONER HANSFORD: Sorry, Mr Mak, when you are
20 referring to PIMS, are you referring to MTR's PIMS?

21 A. Yes, we are talking about MTR PIMS. Sorry, Professor.

22 COMMISSIONER HANSFORD: No, that's fine. Thank you.

23 MR PENNICOTT: Then just to pick up a couple of points that
24 I mentioned earlier, which I think you agreed with -- at
25 6.3.1 under the heading "Monitoring", it says:

1 "The Consultants shall develop a comprehensive
2 Monitoring Plan" -- as I say, we will look at a couple
3 of parts of that in a moment -- "for the monitoring work
4 covering the various aspects of the works throughout the
5 advance works, construction, testing and commissioning
6 phases of the Project. The Monitoring Plan shall
7 include document review, site inspection together with
8 other necessary processes or means to ensure that the
9 objectives of the assignment would be satisfactorily
10 met."

11 Do you see that, Mr Mak?

12 A. Yes.

13 Q. Then in 6.3.2, and this is where we get the monitoring
14 team from, it says:

15 "In view of the intensity and tight programme of the
16 construction works, the Consultants shall set up and
17 maintain a Monitoring Team ... led by a professional
18 staff ..."

19 Then details are given as to that team, minimum
20 requirements.

21 A. Yes.

22 Q. Can you confirm that those minimum requirements were
23 met?

24 A. Yes.

25 Q. And are still being met?

26 A. Well above, yes.

1 Q. Then in 6.3.3 it says:

2 "The Monitoring Team and the Building Submission
3 Review & Compliance team ..."

4 We'll see more about them in a moment.

5 A. Yes.

6 Q. "... as stipulated in Clause 6.6 shall maintain close
7 liaison in carrying out their respective duties. The MT
8 shall supplement the BSRC's duties such that there is no
9 gap between their respective duties."

10 A. Yes.

11 Q. Then it goes on to say this, and this may be of some
12 importance. It says:

13 "The Consultants shall, on risk basis with focus on
14 cost, programme and public safety aspects, carry out,
15 but without limitation to, the following".

16 Then there are a series of items (a) to (j) listed.

17 Mr Mak, can you help us with this. Just looking at
18 (a) through to (j), if you look at (h) first, "assess
19 building submissions and the compliance with the
20 building safety standards of the Project", my
21 understanding is that that obligation would be fulfilled
22 by the BSRC team?

23 A. BSRC team.

24 Q. Yes. And would I be right in thinking that (f) would
25 also be within the BSRC team?

26 A. I would say ...

1 開始係由佢--當然喇，method statement就proposal多數都係佢
2 睇睇先嘅，如果佢哋發現到有關於錢同埋呢個programme同埋public
3 safety嗰陣時，就會同我哋嘅monitoring and verification team
4 嘅同事係聯絡嘅。因為我哋每個星期我哋都有一個core team meeting，
5 within the core team meeting，我哋會交流大家嘅information，
6 喺嗰度，我哋會proactively大家去睇到底有冇啲method statement、
7 有冇啲proposal係關於錢、programme同埋public safety嘅issue，
8 我哋大家一齊跟進嘅。

9 Q. Understood. I think what would help me to understand,
10 Mr Mak -- and do take your time -- apart from (h) in
11 this section or clause, is the position that everything
12 else primarily fell under the umbrella of the monitoring
13 team? Apart from (h); would that be right?

14 A. Sorry, your question again, sir.

15 Q. Certainly. We are agreed that subparagraph (h) --

16 A. (h), yes.

17 Q. -- is the responsibility of the BSRC team?

18 A. Yes, I agree.

19 Q. The question is, are all the others, all the other
20 subparagraphs, the duties and responsibilities, from (a)
21 to (g), and (i) and (j), do they fall under the duties
22 of the monitoring team?

23 A. Yes, agree.

24 Q. Okay. If I have understood your previous answer
25 correctly, to ensure that as clause 6.3.3 puts it, to

1 ensure that nothing falls through the gaps, you have
2 these meetings between the two teams -- or
3 representatives of the two teams --

4 A. Yes.

5 Q. -- to ensure that nothing does fall down the gaps?

6 A. That is my job.

7 Q. That's your job. Okay. Just to look at a couple of
8 specific items, if you go to 6.4.4 -- and we are under
9 the heading "Verification now", we see that at the top
10 of the page -- it says:

11 "The Consultants shall carry out audits in sessions
12 for each of the construction contracts at a minimum
13 frequency as listed in Appendix G, with the first to be
14 carried out no later than 6 months after the
15 commencement of the Assignment. For the advance works
16 commenced ..."

17 We don't need to worry about that.

18 "The extent and scope of the audits shall provide
19 reasonable assurance that the works of the MTR comply
20 with the required project scope,
21 standards/specifications ..."

22 Then, Mr Mak, if we could go to appendix G, which is
23 at page 7690, that's a list of contract numbers all
24 encompassed within the SCL project; do you see that,
25 Mr Mak?

26 A. Yes, I see.

1 Q. And you will see, eight or nine items down on page 7690,
2 a reference to contract 1112; do you see that?

3 A. Yes, I see.

4 Q. The required frequency of audit is, so far as public
5 safety is concerned, if I'm reading this correctly, once
6 every 12 months; is that right?

7 A. Yes.

8 Q. And, so far as financial process and programme
9 compliance is concerned, once every six months?

10 A. Yes.

11 Q. As I understand it, if we go to G10/7754 -- G10, that's
12 the next file, page 7754, right at the beginning of that
13 file, I think -- the government have helpfully supplied
14 us with a list, first of all, on page 7754, of the five
15 annual public safety audit reports that Pypun carried
16 out; do you see that?

17 A. Yes.

18 Q. Then, over the page -- sorry, at the bottom of the page
19 you will see a heading, "Financial audit reports", and
20 you will see that that runs on over the page, 7755.

21 A. Mm-hmm.

22 Q. So those are the six-monthly audit reports?

23 A. Yes.

24 Q. Then the next page, 7756, we get the programme audit
25 reports?

26 A. Yes.

1 Q. All of those, as I understand it, Mr Mak, would have
2 been done by the monitoring team; is that right?

3 A. Yes.

4 Q. And all that would have been done by the monitoring
5 team?

6 A. Yes.

7 Q. Then if I can ask you to go back to the contract and
8 look at clause 6.6.1 on page 7764. We see here that
9 this is the clause that essentially sets up the BSRC
10 team. It says:

11 "The Consultants shall provide settlement agreements
12 on the building submissions submitted by the MTR and/or
13 its consultants/agents, and provide input on compliance
14 with the building safety standards in respect of the
15 Project to the Director's Representative. In view of
16 the intensity and urgency of these submissions and
17 compliance check, the Consultants shall set up
18 a dedicated Building Submission Review & Compliance ...
19 team comprising the minimum manpower requirement as
20 shown in Appendix H."

21 Appendix H is at 7694; do you see that, Mr Mak?

22 A. Yes.

23 Q. Do you confirm that Pypun has complied with this minimum
24 requirement so far as the BSRC team is concerned?

25 A. Yes, fully satisfy this requirement.

26 Q. In a sense, would this be right, Mr Mak, that insofar as

1 the BSRC team is concerned, it might be said they are
2 not really monitoring and verifying, as the monitoring
3 team is doing, because they are essentially, as
4 I understand it, assisting the Buildings Department in
5 looking at the contractor's submissions as they come in
6 from time to time?

7 A. Exactly.

8 Q. Then finally on the contract, if we go to 6.7.2, that's
9 on page 7666, clause 6.7.2, heading "Monitoring Plan":

10 "The Consultants shall describe clearly the
11 methodology and resources to be deployed for the
12 monitoring activities and the programme to be followed.
13 The Consultants shall show clearly in the Plan how the
14 objectives of the Assignment in respect of monitoring
15 could be achieved."

16 We will look at the monitoring plan shortly.

17 A. Yes.

18 Q. As we have seen already and as you mention in your
19 witness statement, a number of deliverables had to be
20 provided by Pypun.

21 A. Yes.

22 Q. The first one I would like just to look at is the
23 inception report which is at K1/37. It's in K1,
24 attached to your witness statement.

25 Let's just look at the front sheet so we know where
26 we are. At page 37 we see the front sheet of the

1 inception report, and also at 38, and then I think the
2 page you are on, by the looks of things, K40, the
3 content.

4 A. Yes.

5 Q. Then if you could go, please, to K43, we see a heading,
6 "Objectives of the assignment".

7 A. Yes.

8 Q. This is essentially a breakdown or an expansion of the
9 clause that we saw in the contract.

10 A. Agree.

11 Q. It says "The key objectives", broken down in the
12 inception report, and the first one is:

13 "Monitor MTR's performance in meeting their
14 obligations as stated in the advance works and
15 construction phase Entrustment Agreements."

16 Do you see that?

17 A. I see that, yes.

18 Q. Do you agree, Mr Mak, that there is no limitation placed
19 on that objective with regard to cost, programme and
20 public safety; it is a general obligation to monitor the
21 MTR's performance and obligations under the entrustment
22 agreements, as a general requirement of Pypun?

23 A. Your question again, sorry?

24 Q. Yes. There is no reference, in that first bullet point,
25 to cost, programme, or public safety.

26 A. No.

1 Q. Do you agree that that is a general obligation that
2 Pypun has to monitor MTR's performance in meeting their
3 obligations under the construction phase entrustment
4 agreement?

5 A. Purely on ...

6 如果純粹呢個statement，就好似係，但係我哋第--以後嗰啲bullet
7 point，我哋有提到嗰個我哋嘅focus係喺cost、programme and public
8 safety嘅，我哋理論上應該就唔可以離開嗰個--雖然呢個係一個general
9 description，但係我哋嘅focus應該都係limit喺呢個cost、programme
10 and public safety，呢個係我嘅understanding。

11 Q. Right. So, from your perspective, to your
12 understanding --

13 A. Yes.

14 Q. -- even the first bullet point is qualified by cost,
15 programme and public safety? Am I correct in my
16 understanding?

17 A. 如果重複又重複，我諗唔係咁啲--因為喺合約上，我哋唔應該開始啱嗰個
18 agreement嘅core嗰個requirement。

19 Q. Would you agree -- let me ask you this specific
20 question -- that one of the obligations that MTRC has
21 under the construction entrustment agreement is to
22 deliver as-built drawings?

23 A. Yes.

24 Q. Would you see it as part of Pypun's duty to monitor the
25 MTR's performance in that specific respect?

1 A. The produce of the as-built drawings, you mean?

2 Q. Yes.

3 A. Yeah, I believe it belongs to the BSRC team's role.

4 Q. Right. So does that have any cost -- where does that
5 fall under the cost, programme or public safety
6 headings?

7 A. I think it's difficult to tell at this stage, yeah,
8 because actually, in fact, we monitor ...

9 我哋一路都係監察緊嗰個cost、programme同埋嗰個public
10 safety，如果到嗰個--我哋睇番個obligation，個agreement個
11 obligation，我哋係喺個construction、testing and
12 commissioning，如果到嗰個commission完咗嘅話，handover之後，
13 就我哋個obligation應該就係完咗喇喇。

14 至於嗰個as-built drawing，已經係record咗what had been
15 done and approved and agreed by BD or other authority。
16 所以就我唔認為喺嗰陣時我哋再返番轉頭睇嗰個cost、programme同埋
17 係public safety。

18 Q. Yes. What I'm trying to understand, Mr Mak, is that in
19 relation to the point about defects and remedial works
20 that I put to you earlier --

21 A. Mm-hmm.

22 Q. -- one can see, perhaps, how that might fall under the
23 heading of cost.

24 A. Yes.

25 Q. I'm now putting a different example to you by reference

1 to this clause, which is as-built drawings, which
2 doesn't seem to me to fall neatly under any cost, public
3 safety, possibly programme -- one can see that if one
4 stretched the failure to comply with the obligation, it
5 might have some time effect, perhaps -- but I'm just
6 trying to understand how wide one should interpret this
7 first bullet point, and suggesting to you that it may
8 not be constrained by cost, programme and public safety
9 and it goes wider than that.

10 A. Personally, I still hold the opinion that even though
11 it's not mentioned that cost, programme and public
12 safety, I still maintain my view that we should not go
13 away from that main theme. It's my personal opinion on
14 that.

15 Q. All right. And did Pypun ever undertake any monitoring
16 or audit of the MTR's PIMS management system? I mean,
17 did you ever get into auditing any aspect of the PIMS
18 over the number of years that you were involved in this
19 project?

20 A. PIMS係一個--好似我正話講,係一個好大量嘅一個文件嘅process control,
21 就我哋肯定有touch到部分嘅文件,亦都係有睇過入面個內容,因為我哋要
22 check個compliance,process compliance、technical compliance,
23 尤其是個BSRC team就更加對個PIMS嗰方面嗰個理解會深啲。

24 Q. Yes. What I'm asking you is whether there was any
25 specific audit -- monitoring and then audit, of the MTR

1 management system, that is PIMS.

2 A. No, I don't think so.

3 Q. Okay.

4 Now, back to the inception report, can I ask you,
5 please, to go to clause 5.6 at K1/65. Paragraph 5.6 of
6 the inception report, Mr Mak --

7 A. Yes.

8 Q. -- deals with the approach and methodology for building
9 submission assessment activities. So this part of the
10 inception report is directed at the BSRC team.

11 A. Yes.

12 Q. Okay. We don't need to look at all this, but if you go
13 to the bottom of K66, under the table, it says:

14 "The BSRC Team will focus on two main streams of
15 work, (1) assessing building submissions and (2)
16 checking compliance with building safety standards."

17 Do you see that?

18 A. Yes.

19 Q. Then, at 5.6.5 on K68 there's a heading, "Compliance
20 with the building safety standards". Then over the page
21 at 69, it says this:

22 "The site and audit inspections will focus on
23 unsatisfactory aspects that may impact on or interface
24 with public safety and building safety standards. The
25 areas of concern include:

26 -- Divergence or deviation in a material way from

1 approved plans.

2 -- Use of defective materials."

3 Skipping the next one, then the next one:

4 "-- Lack of supervision by the responsible persons."

5 So, Mr Mak, my understanding is that these are all
6 obligations --

7 A. Yes.

8 Q. -- referable to the BSRC team --

9 A. Yes, exactly.

10 Q. -- and ought to be, therefore, by reference to the risk
11 assessment approach --

12 A. Agree.

13 Q. -- potentially the subject of site and audit
14 inspections, potentially?

15 A. Yes.

16 Q. And going back to a point I mentioned earlier, would the
17 BSRC team itself be proactive in instigating these sorts
18 of site and audit inspections in relation to these
19 potential matters of concern?

20 A. Proactively, 我諗都要根據個contract requirement, 我哋係協助個
21 個BD team嘅, 無論我哋點樣proactive, 除非係我哋係了解到有啲嘢、有
22 啲情況係真係好危險, 要真係我哋知道先, 如果我哋根本唔發覺得到, 通常我
23 哋都係由呢個BD team畀directive我哋去perform我哋嘅duty, 除非我哋
24 喺其他嘅information我哋係睇到一啲特殊嘅情況。

25 Q. I'm not quite sure how that fits with being proactive,

1 Mr Mak. It seems to me that what you're telling us is
2 that you wouldn't do -- let's take an example of
3 a potential situation where there was a lack of
4 supervision by responsible persons. Let's take that as
5 an example, maybe an example that's fairly close to
6 home.

7 You would not carry out that -- or the BSRC team
8 would not carry out that type of audit unless instructed
9 to do by the RDO; is that right?

10 A. I believe we cannot carry -- we should not carry out
11 duty outside the BD team's consent, at least, if not
12 instruction. So, and ...

13 我哋嘅team應該可以咁講，就嗰個人手方面，嗰個工作量根本已經係
14 非常之大概，而我哋嗰個時間性亦都非常之逼，個工程--咁多個工程一路進
15 行緊，我哋要為咗配合工程嘅進度，我哋啲人手，即係政府定落嚟嘅人手已
16 經係fully deploy落去滿足嗰個基本嘅要求喇，所以除非係有啲--除非
17 係呢個BD team係有特別嘅要求之外，如果唔係，我哋真係冇乜嗰個其他嘅
18 surplus嘅manpower去了解前方嘅--去搞。

19 基本上無論點proactive--當然，個judgment唔係我哋自己嗰度，喺
20 BD team嗰度，我本人可以認為就我嘅感覺，喺BD team或者係呢個
21 director's representative個feedback，我哋嘅同事係已經係好
22 proactive同埋好盡力做好佢哋基本需要做嘅嘢。

23 MR PENNICOTT: Sir, I see it's 1 o'clock.

24 CHAIRMAN: Sorry, do I understand that it was not seen to be
25 part of your contract in respect of safety issues, for

1 example, to conduct any form of occasional inspections
2 to make sure that necessary work sequences were being
3 followed, or to make sure that there was correct
4 supervision of work?

5 A. Mr Chairman, your question again, sorry?

6 CHAIRMAN: Sorry, do I understand it that you did not see it
7 as part of the contract, in respect of safety issues, to
8 conduct occasional inspections to make sure, in respect
9 of those safety issues, that necessary supervision was
10 taking place, that necessary work sequences were being
11 followed so that they were safe and secure and the like?

12 A. Sorry, I still cannot catch the meaning of the question.
13 I'm sorry, Mr Chairman.

14 CHAIRMAN: Let me put it this way then. It seems to me that
15 it's all very well to look through documents, and it's
16 all very well to be satisfied that plans and aspects of
17 PIMS are correctly drawn up, but that on its own doesn't
18 really go to the final degree, does it? You've actually
19 got to see what's happening, otherwise it's a bit like
20 buying a house on the basis of the brochure: we've
21 checked that very thoroughly and it's a great brochure
22 and we've checked the building plan and that looks
23 great, but we've never gone and actually had a look at
24 the house.

25 A. 我哋都有呢個site inspection嘅事嘅，我諗就因為呢個in detail--
26 more in detail或者in-depth嘅問題，我諗我哋楊先生會應該比較係可

1 以詳細的係令主席你會滿意，I' m sorry about that。

2 CHAIRMAN: No, that's perfectly okay. I'm just trying to
3 understand, on a conceptual basis, that is on a broader
4 basis, whether this check -- the checker role that you
5 had was one of just checking documents, and I appreciate
6 their importance in terms of cost and things like that,
7 but it would seem that unless you actually get out on
8 the ground and have a look, the documents can say all
9 sorts of good things, but whether those good things are
10 being done --

11 A. Yes, agree.

12 CHAIRMAN: -- is another matter.

13 A. Yes, but whether or not they are constructed to the
14 requirement as shown on the working drawings, I think
15 it's not belong to our duty, it belong to the site team
16 of MTR because it's a day-to-day full-time and
17 continuous supervision. I don't think this belong
18 within our scope of work.

19 CHAIRMAN: Yes, I'm not talking about whether or not things
20 are actually constructed according to the plans. I'm
21 talking about general checking, for example, that safety
22 procedures are in fact being followed.

23 A. You mean the site safety, Mr Chairman?

24 CHAIRMAN: Yes, for example.

25 A. Site safety, yes, the temporary works, I do believe our
26 BSRC team will look into the temporary works, right.

1 And in fact, there is a complicated system for the
2 contractor to produce the temporary work together with
3 their ICE, and then counterchecked by MTR and get the
4 approval from the competent person, and so forth, yes.
5 I think our role is -- we just check compliance of the
6 process and technical approach, not the day-to-day
7 performance of the work done on site. That is my
8 understanding, sir.

9 CHAIRMAN: All right. That helps me a lot. So the way you
10 read the contract and carried out the contract -- and
11 I'm not saying you did so wrongly, by the way; it's not
12 a criticism.

13 A. Thank you, sir.

14 CHAIRMAN: It's just trying to understand the scope of the
15 work that you were given in terms of the contract.

16 A. Thank you.

17 CHAIRMAN: And, as I understand it, your essential role, as
18 you read it, was to check compliance of the process --

19 A. Yes.

20 CHAIRMAN: -- and to check that there are measures in place
21 in writing that are up to scratch in respect of safety
22 issues and the like --

23 A. Yes.

24 CHAIRMAN: -- without necessarily getting out on the ground
25 and seeing whether they are being complied with in fact?

26 A. Only if we were invited or we were directed by the BO

1 team to do so. As I said before, our ...

2 我哋嘅人手已經係好--因為有限制嘅，我哋已經做晒，fulfil晒我哋
3 所有嘅嘢，就喺呢方面，我諗係已經係滿足咗我哋呢邊...

4 CHAIRMAN: Yes, again, it's not a criticism; I'm just trying
5 to understand what was the scope of the contract as you
6 and your team of people understood it, and what in fact
7 was done in the light of that understanding. That's
8 all. It's not a criticism.

9 A. Thank you, sir.

10 CHAIRMAN: We all of us, if we are doing work under
11 a contract, we have to interpret it, and then we do what
12 the contract requires of us.

13 A. Yes.

14 CHAIRMAN: And we don't do any more because then we are
15 exceeding our authority.

16 A. Yes.

17 CHAIRMAN: Good. Thank you, that has helped me. Thank you
18 very much.

19 A. Thank you, sir.

20 COMMISSIONER HANSFORD: Mr Mak, if I may take that a little
21 bit further -- so you are telling us your manpower is
22 limited by the requirements of the government, so the
23 government is determining your manpower; is that
24 correct?

25 A. Because it was agreed at the beginning of the contract,
26 we outlined what we are going to do, and then we expect

1 the -- because in between, if the government believes
2 they need us to perform more, they will instruct us to
3 add on more power. That is my understanding on the
4 contract.

5 COMMISSIONER HANSFORD: I understand that. Then, as
6 Mr Pennicott has pointed out and you have agreed with,
7 you have a requirement to be proactive. So, if you are
8 being proactive but you have insufficient manpower, how
9 do you reconcile that?

10 A. Your question again, sir?

11 COMMISSIONER HANSFORD: On the one hand, you've got
12 a limited manpower. On the other hand, you're required
13 to be proactive.

14 A. Yes.

15 COMMISSIONER HANSFORD: How do you reconcile those two?

16 A. We may convey the message to the BO team, right, for
17 discussion. If they insist what we can have, then
18 I don't think we can do much on that. Yeah.

19 And also, of course, personally, I believe it all
20 depends on the situation, because we have -- we've got
21 a large contract, over billions of contracts, and that
22 so many number of contracts taking concurrently in
23 the -- at the same time.

24 So, as I said, it's not an easy job, and we have
25 worked very hard, we have very worked very proactively,
26 sir.

1 COMMISSIONER HANSFORD: Thank you.

2 CHAIRMAN: Thank you very much. 2.30, shall we make it?

3 MR PENNICOTT: That will be helpful to me, sir.

4 CHAIRMAN: No, I appreciate that. Yes.

5 (1.11 pm)

6 (The luncheon adjournment)

7 (2.31 pm)

8 MR PENNICOTT: Mr Mak, good afternoon.

9 A. Good afternoon, sir.

10 Q. We were looking at part of the inception report before
11 lunch. Could I please ask you to go back to where we
12 were, at page K1/66. This is something we saw, albeit
13 briefly, in the contract earlier, but just to pick it up
14 from here -- we see the table here for the BSRC.

15 A. Yes.

16 Q. It's described as a "minimum staffing requirement"; do
17 you see that?

18 A. Yes, I see.

19 Q. Just keep that in mind and then go back to the contract,
20 if you would. It's in G9/7746. This is the schedule of
21 fees, which is one of the five contract documents; do
22 you remember that, Mr Mak?

23 A. Yes. Yes.

24 Q. One can see, if one goes over the page to 7747, that the
25 basis of fee that Pypun is to receive is said to be
26 this:

1 "The remuneration of the Consultants for the
2 performance of the Services shall be a Lump Sum of
3 Hong Kong Dollars ..."

4 And then the sum has been redacted because the sum
5 itself is not of direct relevance.

6 "... subject to the limitations, reservations and
7 adjustments in Schedule of Fees Clauses 4, 5, 6
8 and 7 ..."

9 And one can see, in the rest of this schedule of
10 fees document, that provision is made for the payment of
11 expenses at clause 4, and additional services, and
12 payments for delays at 7, and fees on a time-charge
13 basis.

14 Now, given that fees set-up, Mr Mak, and going back
15 to some of the questions I was asking you and the
16 professor was asking you before lunch, if you are, as it
17 were, to be proactive and you are to carry out some of
18 these site inspections and site audits and so forth --
19 I mean, how did it work in terms of remuneration? You
20 were getting a lump sum fee, but if you thought that
21 something specific needed to be done, would you go to
22 the RDO and ask them? Was it a question of negotiation
23 additional payment? I mean, how did it work?

24 A. As I said in the morning, due to the tight manpower
25 schedule, most of our men are really exhausted, may
26 I use this word. And also, according to the contract,

1 we should play a supportive role; right? Therefore, we
2 have to listen to BO team or the director's
3 representative directive.

4 Firstly, we have no spare effort to dig out extra
5 work for ourselves, and also it's embarrassing to
6 request our client to give me more funds or job outside
7 our scope. But of course, as I said, if we find
8 something really, really special and very dangerous, we
9 will remind them, of course, but ultimately it's the
10 director's representative, the PGE of Highways or the BO
11 team leader will instruct us or direct us to do.

12 Q. We saw, before I took you to the fees, the minimum
13 requirement -- is it your understanding that the
14 government, without paying you more money, could ask you
15 to, as it were, provide more than the minimum.

16 A. What I would express here is that we have done our best,
17 and we provide our supportive role good enough, in my
18 opinion; right? On the other hand, I'm the middleman
19 between the company and I have the budget to control;
20 I cannot spend whatever I want, I cannot ask my men to
21 do something outside the scope, is my difficulty, sir.

22 So unless -- of course, under certain circumstances,
23 I have to talk to RDO/BO team to say that we have
24 a difficulty here, and it must be done, even though it's
25 outside the scope, can I do it? In fact, after the
26 incident of the coupler, we were award of a few small

1 packages. We are willing to help, and just two days ago
2 we submit a report for -- which you mentioned before the
3 meeting, sir, yes, so --

4 Q. Yes, indeed, and that's one of the examples I --

5 A. I'm sorry that -- my mother tongue is not English, and
6 it may be difficult to express.

7 Q. You don't need to apologise, Mr Mak, I can assure you.
8 Your English is better than my Cantonese.

9 A. I'm sorry.

10 Q. Mr Mak, as the Chairman was indicating before lunch, I'm
11 not in any sense trying to criticise you or -- part of
12 the exercise that we're involved in here is to test --

13 A. I understand, sir.

14 Q. -- the practices and the procedures to see whether they
15 were in order, see whether they can be improved in any
16 way.

17 A. Fully understand.

18 Q. And that's one of the reasons I am asking you these
19 questions, you'll understand.

20 A. I appreciate that.

21 CHAIRMAN: Would it be correct, perhaps, Mr Mak -- and I'm
22 using a term which, like on several other occasions,
23 I have borrowed from Prof Hansford -- that you really
24 fulfilled the role of an auditor?

25 A. Sorry, your question, sir?

26 CHAIRMAN: Would you agree with a definition that really you

1 were fulfilling the role of an auditor in terms of this
2 contract?

3 A. Yes, we were, affirmatively.

4 CHAIRMAN: Thank you.

5 MR PENNICOTT: All right. Could we then just look at
6 a slightly different topic, although it's perhaps
7 a continuation of what we've been looking at. Could we
8 look at the monitoring plan --

9 A. Yes.

10 Q. -- that you drew up as one of the deliverables. We will
11 find that at K1/146.

12 We can see, at -- it actual starts at 147, and then
13 one sees -- that's the front sheet -- and 148, and then
14 if you go to 151, that will give you, again, the list of
15 abbreviations -- give you the contents; do you see that?

16 A. Yes, I see it.

17 Q. Then if you go to 154, you get the objective, and again
18 we don't need to go through all of that.

19 Then at 2.2.1 is -- well, 2.2 is the approach, and
20 then the heading "General" at 155, and if you go to 156,
21 it says towards the top of page 156:

22 "There are some readily [identifiable] key risks,
23 for example:

24 -- SCL cost and programme.

25 -- Contract interfaces, both internal and external,
26 to the SCL project.

1 -- Interface with the existing operating railway and
2 system migration.

3 -- Systems integration, testing and commissioning.

4 There are many other risks and the monitor
5 monitoring and verification tasks could become complex
6 and inefficient if we do not focus on the key risks."

7 A. Yes.

8 Q. "Therefore, we will rely on a very structured approach
9 to the works to enable us to focus on the key risk and
10 let them drive our monitoring and verification ...
11 programme."

12 A. Exactly.

13 Q. Then over the page, at 2.2.2, at 157, we get several
14 paragraphs describing the risk-based approach.

15 A. Yes, sir.

16 Q. We can see that there's a heading, "Risk
17 identification", and then a list of items are set out,
18 and then it says underneath that:

19 "[The] strategic risks have been derived by
20 considering all the likely events to risks and grouping
21 them together."

22 Then further down:

23 "Analysis of risk -- We will assess the Probability
24 of Occurrence and the Consequence under the three risk
25 categories. The consequences will be combined and
26 factored by occurrence severity ..."

1 Then towards the bottom of the page:

2 "The actual management of the SCL project risks will
3 be undertaken by MTR. To enhance our risk management
4 process we will review MTR's risk register and
5 Contractor's construction risk register to create and
6 update our risk register."

7 A. Yes, sir.

8 Q. Is it correct, Mr Mak, that Pypun itself created its own
9 risk register?

10 A. I better put that we do not create our own risk. We
11 will, through the ePMS of MTR, search these risks, and
12 we carry out the process, as has been done in the
13 previous page figure 6 of 22 -- no, the figure 1,
14 sorry -- and we evaluated the risk, and if we find
15 something in the opinion from ourselves where some risks
16 are really more heavier, then we will discuss with -- we
17 will suggest to RDO.

18 In fact, we create, but we should get a consensus or
19 opinion or agreement from RDO on the risk register.

20 Q. Yes. It's just that the wording here that I've just
21 read out to you at the bottom of 157 says "update our
22 risk register", which suggests to me, Mr Mak, that you,
23 Pypun --

24 A. Yes.

25 Q. -- had or should have had your own risk register. I was
26 just asking whether you did.

1 A. Yes, to a certain -- in some cases, yes, we create our
2 risk register.

3 Q. You see, and if you did have a risk register, I was
4 going to ask you how you went about compiling it and
5 keeping it up to date.

6 A. We will, of course, search through the documents,
7 including the BCG(?) papers, the reports, and also we
8 would carry out certain verification on site, while
9 doing the site walk and so forth, yes. We must have our
10 own basis, yes. We have our own judgment, yes, on that,
11 yes.

12 Q. I'm sorry to press you, Mr Mak, but we see, in the
13 sentence I read out to you -- and it is indeed the case
14 because we are going to look at a risk register in
15 a moment -- the MTR had a risk register.

16 A. Yes.

17 Q. My understanding is that -- and obviously this is not
18 project-specific; I understand the monitoring project is
19 not --

20 A. Okay.

21 Q. -- sorry, not contract-specific -- one would expect, on
22 a contract such as contract 1112, that the contractor,
23 Leighton in this case, might also have a risk register.

24 A. Yes.

25 Q. And what this seems to be suggesting, this paragraph
26 here or this sentence here, is that you should be

1 creating your own risk register, but having in mind
2 what's contained in the risk register of the MTR and any
3 given contractor.

4 Now, did you or did you not have your own risk
5 register? When you turned up in January 2016 to take
6 over from Mr Lloyd, was there a Pypun risk register or
7 not?

8 A. If the MTR's register itself, there's nothing wrong
9 there, we have no comment on it, then we will not create
10 any new register. But in some cases we found that we
11 have difference in opinion, then we may suggest to the
12 RDO to have a new register on that so that we can follow
13 up with -- for monitoring the risk, to carry on our
14 work. That is our directive, yes.

15 Q. Yes. It sounds to me, Mr Mak, that you were very much
16 reliant upon the contents of MTR's risk register.

17 A. Most the work is done by them. As I said this morning,
18 we are going to check compliance of the procedures
19 and -- compliance with procedures and technical.
20 I don't think we should derail from the normal check of
21 the -- we should not create anything if -- because it's
22 not -- they should create their -- and we just comment
23 on their risk -- may I correct that we should not create
24 our own. We just comment on and ask RDO to agree upon
25 our risk register. Sorry.

26 Q. All right. So you did not create your own risk

1 register?

2 A. No.

3 Q. All right. Could we, however, look briefly at a risk
4 register, if I can remember where it is.

5 If you could please be shown G10 -- sorry,
6 page 7883. You might want to look at this in hard copy,
7 Mr Mak.

8 A. Thank you.

9 Q. Mr Mak, first of all, just cast your eye over that. Is
10 this a document that you've seen before?

11 A. Yes.

12 Q. You can see that it's a risk register that pertains to
13 the contract that we are concerned with?

14 A. Yes.

15 Q. As we understand it, but I will be corrected by others
16 if I'm wrong, it's something that is essentially
17 generated or set up by MTR.

18 A. Yes.

19 Q. You have access to it?

20 A. Yes.

21 Q. How do you utilise this risk register in order to go
22 about assessing the risks that you may need to audit?
23 How do you use this document, if at all?

24 A. Yes, we go through all the items, and we check the
25 importance or the degree of difficulties and dangers and
26 so forth of that risk, and then we evaluate whether

1 touch upon our expertise in civil engineering,
2 signalling, and so forth, to comment on, to see whether
3 their remark here is compliant with -- or in line with
4 our opinion, something like that, yes.

5 Q. Could reviewing a risk register like this --

6 A. Yes.

7 Q. -- trigger a suggestion by you to RDO that perhaps
8 an audit should be done on a particular aspect of the
9 works? Could that happen?

10 A. Your question again, sir?

11 Q. Yes. If you are sitting down and you are reviewing this
12 risk register, and you spot something that strikes you
13 as perhaps important to, let's say, public safety --

14 A. Okay.

15 Q. -- would you, in those circumstances, suggest perhaps to
16 RDO that an audit or some form of investigation should
17 be carried out into that particular --

18 A. In that sense, yes.

19 Q. Did that ever happen --

20 A. According to our opinion, yes.

21 Q. Did that ever happen?

22 A. For this site, you mean?

23 Q. Let's start with this site.

24 A. I'm sorry, sir, as I mentioned to you, we have a number
25 of sites going on all the time. Personally, I cannot
26 remember so much. I'm sorry about that.

1 Q. That's all right.

2 A. Unless the programme team leader or the public safety
3 team leader did come to me and ask for opinion, and
4 of course something really serious like the incident of
5 the cutting of the threaded bars, then I would
6 personally go down and have a look. Otherwise, I would
7 not go into too detail. I'm sorry about that.

8 Q. All right.

9 COMMISSIONER HANSFORD: But on that point --

10 A. Yes, sorry.

11 COMMISSIONER HANSFORD: -- I assume the cutting of the
12 threaded bar never appeared in this risk register?

13 A. No. No. Just an example, sir.

14 COMMISSIONER HANSFORD: Okay.

15 A. I'm sorry --

16 COMMISSIONER HANSFORD: No, no, no.

17 A. -- distracting your view.

18 COMMISSIONER HANSFORD: No, that's helpful. Just checking.

19 MR PENNICOTT: And presented with this risk register from
20 MTR, which I assume was updated from time to time, no
21 doubt matters were closed out and other matters were
22 added --

23 A. Exactly.

24 Q. -- presumably there was no way that you could check
25 whether this risk register was comprehensive, and
26 included all the risks. You just took it at face value;

1 is that right?

2 A. Sorry, again, your question, sir?

3 Q. Yes. You've got a risk register. It's a pretty long,
4 thick document. There are a lot of items on it. It
5 goes for a number of pages, not that one can see that on
6 the screen, but if you've got the hard copy it goes on
7 for quite a long while.

8 The question was, Mr Mak: did you take the MTRC risk
9 register at face value and assume that it was
10 comprehensive, that it included all the risks that it
11 should include?

12 A. In fact, we are following up all these risks all the
13 time, so the risks will not change one day to the other.
14 I'm sorry. So each month we will review all these
15 risks, and we have the eye on from day one and for every
16 month.

17 We also by site visit, by other things, by
18 documents, we know the changes; we attend the meetings.
19 Also, every month we go to the MTR progress meeting, we
20 have meeting when the RDO and so forth. All this, the
21 important issues, we will address all those included in
22 the discussions.

23 So what I would say is we are following really tight
24 along the contract period on all the risks. Yes.

25 Q. Yes, but in your role, as I understand it, as the
26 checker of the checker --

1 A. Yes.

2 Q. -- you never carried out any audit of the risk register
3 itself to see whether it was full and comprehensive, on
4 any particular contract?

5 A. We have monitoring all this. Sorry, we have audit on
6 cost, civil -- civil engineering, and programme civil
7 engineering, programme E&M, and safety audit. So all
8 along this, we will see all the risks through the
9 audits, by checking the documents, and -- for those
10 audits, not the site visit, the site walk I performed,
11 all this that we actually done on site, we go through
12 all the detailed documents, we see the drawings if
13 necessary. And sometimes we go to site and see the
14 problem area ourselves, and therefore that's why I said
15 we have followed through all these risks in our hand,
16 Pypun.

17 Q. All right.

18 Can I ask you to go on a little way in the
19 monitoring plan to K1/162, where at the top of the page
20 or towards the top of the page we have a heading,
21 "Monitoring by review of documents"; do you see that,
22 Mr Mak?

23 A. Yes.

24 Q. It says:

25 "After the project risk analysis exercise as
26 mentioned in section 2 of this plan, the project risks

1 will be monitored by reviewing the contract documents as
2 stipulated in paragraph 6.3.4 of the project brief. The
3 monitoring flow chart is illustrated in figure 2 in
4 appendix A."

5 Then a heading, "MTR's management and control
6 procedures", and then "Contract documents". Don't worry
7 about the first paragraph of that, but the second
8 paragraph:

9 "From our design review stage, we have a thorough
10 understanding of the elements where many
11 technical/design solutions will be dependent on the
12 contractors' design, temporary works approach or
13 construction methodologies. Where the contractor has
14 offered alternative design solutions and alternatives to
15 the construction assumptions made by MTR in the design
16 stage, these will be reviewed in more detail. A key
17 aspect of this project is the interfaces between
18 contractors, both internal and external to the project,
19 and we will review this aspect carefully."

20 Then over the page at 4.1.3 there's a "Review of
21 ongoing contract documentation"; do you see that?

22 A. Yes.

23 Q. It says:

24 "When we have completed our risk register" --
25 I won't go over that again -- "we will request key
26 contract documentation to enable a more detailed review.

1 Whilst we will use MTR's ePMS system for document
2 tracking and follow up, for most of the documents we
3 will acquire them through the ePMS system and then send
4 the list of documents to RDO and MTR for record. These
5 will include ..."

6 And there is a list of items there --

7 A. Yes.

8 Q. -- including "Construction methodologies"; do you see
9 that?

10 A. Yes.

11 Q. Then at 4.1.4 there's "Categories of review", and it
12 says:

13 "On receiving any requested documents from MTR, we
14 will make them available to the appropriate monitoring
15 team members for their review. These personnel will
16 first categorise them on a risk basis into three
17 categories:

18 ... I -- No review required.

19 ... II -- Review required and observations to be
20 noted ...

21 ... III -- Review required with identification of
22 critical issues."

23 Do you see that?

24 A. Yes, I see.

25 Q. Then there's a more detailed explanation below.

26 Mr Mak, you'll be aware, I think, that Pypun did in

1 fact review the QSP, the quality supervision plan, in
2 respect of the couplers?

3 A. Not the monitoring team, but I think certain QSP was
4 inspected by the BSRC team.

5 Q. I agree with that. Because it formed part of
6 a submission, effectively --

7 A. Thank you, sir.

8 Q. -- to Buildings Department, it would have presumably
9 been picked up --

10 A. Yes.

11 Q. -- by the BSRC team?

12 A. Yes.

13 Q. But you recall that they did vet it?

14 A. Yes.

15 Q. Mr Yueng tells us he vetted it.

16 A. Yes.

17 Q. And presumably that was vetted not only because it was
18 part of a submission, but because it was a document that
19 had particular importance; is that right? Or would it
20 just be vetted automatically because it was part of
21 a submission?

22 I can ask Mr Yueng if you don't know the answer.

23 A. Your question again, sorry? I don't really catch the --

24 Q. The QSP, I accept, was submitted to government, to
25 Buildings Department.

26 A. Yes.

1 Q. And it was given to Pypun.

2 A. Yes.

3 Q. Pypun vetted the quality supervision plan, the QSP, for
4 the couplers.

5 A. Yes.

6 Q. Did they do that automatically, because it was part of
7 a submission to BD, or did they do it because it was
8 a document of special importance?

9 A. Automatically, I do believe we automatically have to do
10 it.

11 Q. All right. And do you know whether it fell into any of
12 the three categories that I've just read out to you on
13 page K1/164?

14 A. Yes, I believe so.

15 Q. Do you know which category it fell into?

16 A. What do you mean, sir?

17 Q. Well, go back to page 164, K1/164.

18 A. Yes.

19 Q. All I'm trying to find out, Mr Mak, is whether --

20 I know -- I'm asking you the question because Mr Yueng
21 uses the word "vet", and I'm not quite sure what that
22 really means in this context, "it was vetted". And I'm
23 wondering if you can help me, just in case he can't, as
24 to whether you would expect the QSP, given its contents,
25 to fall into category I, category II or category III.

26 A. I have certain difficulty. May I refer this back to

1 Mr Yueng later on for you, sir? I'm sorry about that.

2 Q. No, no, if you can't answer the question, that's fine.

3 We'll take it up --

4 A. I don't want to give my answer which is somewhat
5 different from his. That is my concern, sir.

6 Q. Okay, understood. Not a problem.

7 Mr Mak, make the assumption that, as I've just
8 indicated to you and I think you accept, the QSP was
9 vetted by --

10 A. Yes.

11 Q. -- the BSRC team. Am I right in thinking that Pypun did
12 not take any follow-up action by way of audit or
13 something similar, to see whether the QSP was being
14 complied with?

15 A. I don't think so. According to the contract, if we have
16 to do it then we would perform. I don't think we would
17 get away from it.

18 Q. But if the QSP --

19 A. Yes.

20 Q. -- was perceived as something that carried with it
21 a risk --

22 A. Yes.

23 Q. -- the couplers having been singled out as a potential
24 risk area and hence the enhanced supervision
25 requirements of the QSP, is it something in general
26 terms that Pypun ought to have turned their minds to, to

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,
26 please, to go to page K1/29 and paragraph 68 of your

1 witness statement.

2 A. Yes.

3 Q. Mr Mak, you have helpfully, I think, addressed your mind
4 to some recommendations --

5 A. Yes.

6 Q. -- and you have done that because you were asked to do
7 so in a question posed by the solicitors for the
8 Commission, and your first point --

9 A. Yes.

10 Q. -- at paragraph 68, is that:

11 "[You] would recommend adding an additional hold
12 point in the inspection & testing plan ... requesting
13 a joint inspection by MTR and its contractor of the
14 exposed couplers before connecting steel reinforcement
15 bars to them. The inspection record should note any
16 damaged, missing or misaligned couplers already
17 installed. Proper record of the inspection should be
18 prepared and kept on site for preparation of any
19 remedial work proposal. Proper record should also be
20 kept of the submission of such proposal to the entity
21 [providing] remedial work."

22 A. Yes.

23 Q. You think that that would strengthen the record-keeping
24 process and help to eliminate the sort of problems that
25 happened?

26 A. Yes. This is created from my long experience in the

1 past over 40 years on the construction works. I come
2 across coupler since eighties; right? So I believe that
3 if we have a hold point there, in other words we have to
4 introduce the RISC form system in that particular
5 instance, so that we can have a stop and check,
6 thoroughly the acceptance of the exposed coupler to be
7 free of foreign material, in the right alignment; we can
8 easily screw the male end in, and so forth. If we have
9 a thorough check, thorough report -- record, then it
10 would have the case. This is my point, sir.

11 Q. You also make further points at paragraphs 73, 74 and
12 75, which I'm not going to read out and go into in any
13 detail, but they are there, and thank you for them; no
14 doubt if anyone else has any questions, certainly you
15 will be asked.

16 A. I can elaborate them if you wish, sir, all in here, in
17 fact I have five points.

18 Q. Yes.

19 A. The second point is the realtime monitoring, because
20 I personally involved. When the TBM tunnel is going
21 through under the live track or some sensitive building
22 and so forth, I have to watch my mobile phone to see,
23 every time when we go through, then -- for instance, for
24 example for the TBM, we have to -- once we go through
25 certain length, we have to put on the ring. So there is
26 a chance that we read the monitoring results, then we

1 can -- from time to time, we know at realtime what is
2 the situation, whether it reach to the sensitive or the
3 risk level, then if it's really the case we have to stop
4 and find out the cause, and try to make remedy to it or
5 rectify it.

6 In this instance, I believe if we apply this
7 realtime monitoring to the utilities, the buildings
8 along the boundary of the site, then we will have a much
9 more useful or valuable information to stop the work or
10 to rectify the problem or to think out of rectification
11 ways to remedy the situation, so that to protect our
12 progress and the safety of the buildings and utilities
13 of roads nearby.

14 Q. Okay.

15 A. That is the second point.

16 Then the third point will be -- now I would suggest
17 is -- if the team, because the contractor and -- the MTR
18 would have a construction team there. If we, from the
19 team, choose -- again, this is from my experience the
20 past 40 years; right? -- if within the team we choose
21 a reliable person, no matter he's young or mature, if he
22 really understands the process and he's friendly to
23 everybody, then he can be assigned by the construction
24 manager to do the auditing and do a friendship reminding
25 along the process, remind all the work supervisors or
26 inspectors/engineers along the line, so as to ensure

1 everything is done in compliance with the ITP and so
2 forth. That is my opinion, sir. That's the third
3 thing.

4 Q. Yes, and the next one is the implementation of
5 electronic platform for site inspection and supervision,
6 which I think we've heard one or two things about also.

7 A. I think this is not -- today, it should not be a new
8 thing, but it's still being developed. I myself, I have
9 even contact with university from Hong Kong and also
10 overseas in looking into this sort of e-platform, and
11 come back to our situation that we have the mobile
12 phone, now the camera, even the Handicameras, we have
13 the WiFi function, so that we can use it to send
14 immediately with narrative description to an e-platform
15 in the cloud or whatever, so that we have instant
16 record, realtime record, and we can keep it confidential
17 and unerasable, so that we can have no need to do any
18 search for records anymore. That is my opinion, sir.

19 Q. Understood. All right.

20 A. Then the last one is the IQCA. I think, again, if MTR
21 or -- better say MTR, we can -- he can employ
22 independent quality control adviser to review the
23 organisation's existing quality assurance systems and
24 procedures, and stabilising for the specific project or
25 even specific task; two, recommend enhancement measures
26 to improve the quality of the systems and procedures;

1 and third, implement independent quality control tests.
2 That is my recommendation. If they cover these three
3 roles by the IQCA, I think it would not be a bad idea,
4 sir, Chairman and Professor.

5 CHAIRMAN: Thank you very much indeed.

6 MR PENNICOTT: Sir, I have no further questions.

7 Questions by THE COMMISSIONERS

8 COMMISSIONER HANSFORD: Perhaps I can just follow up on
9 that, Mr Mak. These recommendations you've made to us
10 I'm sure are helpful, thank you, and I'm sure the
11 Chairman and I will give consideration to them.

12 A. Thank you.

13 COMMISSIONER HANSFORD: But I just have one question,
14 regarding your first recommendation in particular,
15 paragraph 68.

16 A. Yes.

17 COMMISSIONER HANSFORD: You are recommending an additional
18 hold point for the inspection of exposed couplers.

19 A. Yes.

20 COMMISSIONER HANSFORD: When did you think of that? When
21 did you first identify that as a change that should be
22 made?

23 A. In fact, before -- I might say before the incident --
24 before the slab incident, right, I was instructed --
25 I was -- better -- requested by RDO to go down to the
26 site, to see the stitch joint problem, stitch joint,

1 yeah, where they have the coupler problem. So in that
2 sense -- of course, for the switch joint, from the
3 bottom of my heart, they have done a perfect thing, they
4 removed the whole thing and made it good, perfectly, to
5 my -- I have no complaint on that. I have no concern on
6 that. From then on, I see if we have any problem from
7 now on with the couplers, I think we have to have this
8 hold point to ensure that the thing will be done
9 properly. That's -- yeah.

10 COMMISSIONER HANSFORD: So you identified it during the
11 works?

12 A. Yes.

13 COMMISSIONER HANSFORD: Did you raise it with RDO as
14 a suggestion for change?

15 A. No, sir.

16 COMMISSIONER HANSFORD: Why not, I wonder?

17 A. Maybe you criticise me not being proactive --

18 COMMISSIONER HANSFORD: I'm not --

19 A. Sorry, it's my complaint --

20 COMMISSIONER HANSFORD: I'm not criticising you, I'm just
21 asking the question!

22 A. -- I criticise myself here. It's my fault, in fact,
23 yes. But I think there's a problem, right, and a lot of
24 people seeing the problem, and even MTR, the engineer
25 from -- in particular Mr Fu, Michael Fu of MTR, he took
26 me down to the spot to see the stitch joint problems.

1 Yeah.

2 After that, I believe Mr Fu would do -- although
3 I do not suggest, I think they themselves would know how
4 to rectify the process there so as to make improvement.
5 But of course it may be too late because the stitch
6 joint is only a few months, only in March or something
7 like that, two months ahead of --

8 COMMISSIONER HANSFORD: March of which year?

9 A. March this year.

10 COMMISSIONER HANSFORD: This year.

11 A. Not far away from the incident, the news on the media,
12 sorry.

13 COMMISSIONER HANSFORD: No, so the first time these very
14 helpful suggestions have been made has been in this
15 witness statement; is that right?

16 A. Yes.

17 COMMISSIONER HANSFORD: Okay. Thank you.

18 A. Thank you.

19 MR SHIEH: No questions from Leighton.

20 CHAIRMAN: Thank you.

21 MR TO: None from China Technology.

22 Cross-examination by MR BOULDING

23 MR BOULDING: I might have some questions for you. Good
24 afternoon, Mr Mak.

25 A. Good afternoon.

26 Q. In paragraph 5 of your statement, you tell us that you

1 were the leader of the project management team; correct?

2 A. Yes.

3 Q. You say that you worked as a project manager since 2016
4 and that you were responsible for the whole contract;
5 correct?

6 A. Yes, sir.

7 Q. You've also told the Commissioners, have you not, that
8 Mr Yueng was the BSRC team leader?

9 A. Yes.

10 Q. Now, I've looked at your CV, and there's a suggestion --
11 this is K34.

12 A. Yes.

13 Q. If you look down as the "Experience record", indeed it
14 does look as if you've been involved in some significant
15 projects, but there you say that you were project
16 manager on this project from 2015 until the present. Is
17 that an error? Because your witness statement says from
18 January 2016.

19 A. I joined the company on September 2015.

20 Q. September of 2015. And did you work as a project
21 manager from --

22 A. No, at that time Rob Lloyd was still the project
23 manager.

24 Q. Right.

25 A. I was supposed to -- correct this -- I was the deputy
26 project director, suggested by Mr Poon at that time;

1 right? No, anyway, it was not in record, I'm sorry.

2 I put it simple, I joined the company in September 2015,
3 and I take up the responsibility of the project manager
4 in January 2015.

5 Q. Right. What, if anything, did you do on the project
6 between September 2015 and taking up the role of project
7 manager in January 2016?

8 A. Yes.

9 Q. What, if anything, did you do on the SCL project?

10 A. Yes, this is a big project.

11 Q. Yes.

12 A. Of course, when I first stepped in, then I looked
13 through all the documents, the agreements, inception
14 report and so forth. I need to learn. A lot of
15 documents, sir.

16 Q. Sure.

17 A. Also I need to talk to -- I joined the site visits from
18 then on, and familiar with my team because, as you know,
19 the BSRC team, they have more than 15 members, and the
20 other team have more than 30. Altogether, we have more
21 than 50-something people working concurrently, and we
22 have to work on the whole -- all the project site along
23 the line. So it's really busy, in understanding and --
24 the men, the procedures, the documents and everything.
25 Even though it looks like four months is a long time,
26 but I don't think it's easy to pick it up, sir, I'm

1 sorry to tell you that.

2 Q. I'm sure it was very difficult, Mr Mak.

3 You've told us that you started on the project in
4 September, and you obviously familiarised yourself with
5 the documentation and the project, and so on and so
6 forth, with a view to taking up the project manager's
7 job in January 2016?

8 A. Yes.

9 Q. Thank you very much. I'm going to ask you one or two
10 questions about 2015, and I hope you're the right
11 person, but if you think it's a question that ought to
12 go to Mr Yueng, as you've suggested to my learned friend
13 Mr Pennicott once or twice already, please be kind
14 enough to tell me.

15 A. Sure, sure. Will do.

16 Q. Thank you very much.

17 Now, in your witness statement, at paragraph 16 --
18 this is page K14.

19 A. Right.

20 Q. It starts at K13 -- you say:

21 "The particular focus on cost as well as programme
22 and public safety as to the scope of the M&V
23 consultant's work is stressed repeatedly in the brief,
24 including at paragraph 3.1, which sets out the
25 objectives of the M&V consultant".

26 Then over the page you actually quote 3.1, and we

1 can see what you say there:

2 "The overall objective of the Assignment is to
3 provide monitoring and verification services in relation
4 to the work undertaken by the MTRCL (including
5 submissions by its consultants, contractors or agent to
6 MTRCL) during the construction, testing and
7 commissioning phase of the project so as to provide
8 assurance that the MTRCL's obligations stated in the EAs
9 for the SCL advance works and construction phases have
10 been properly fulfilled. The monitoring and
11 verification shall focus on cost, programme and public
12 safety of the project."

13 I can see that you've emphasised that by putting
14 that in bold typeface; correct?

15 A. Yes.

16 Q. You will recall discussing that with my learned friend
17 Mr Pennicott during the course of the last hour or so?
18 You will recall that?

19 A. Sorry?

20 Q. You will recall discussing that particular matter --

21 A. Yes.

22 Q. -- cost, programme and safety over the course of the
23 last hour or so?

24 A. Yes.

25 Q. Thank you. Now, staying with the brief, if we could
26 have a look, please, at G7638, and this is the first

1 page of the contract, is it not, between the government
2 of Hong Kong and Pypun?

3 A. Yes.

4 Q. Presumably this is one of the documents that you
5 familiarised yourself with when you took up your role in
6 September 2015?

7 A. Yes, sure.

8 Q. I thought you might.

9 Then if we have a look at G7640, we see the
10 memorandum of agreement; correct?

11 A. Yes.

12 Q. Then over at G7642, we can see, can we not, the terms of
13 the memorandum of agreement before we get into the
14 detail of exactly what Pypun have undertaken to do;
15 correct?

16 A. Yes.

17 Q. Then if we turn on to 7664, and it's a clause that my
18 learned friend Mr Pennicott has been to but I think we
19 need to remind ourselves of its terms, you can see in
20 6.6.1, can you not --

21 A. Yes.

22 Q. -- that:

23 "[Pypun] shall provide assessments on the building
24 submissions submitted by the MTRCL and/or its
25 consultants/agents, and provide input on compliance with
26 the building safety standards in respect of the project

1 to the director's representative."

2 A. Yes.

3 Q. Presumably that's something that you would expect the
4 Pypun representatives, the Pypun employees, to do to the
5 best of their ability?

6 A. Yes.

7 Q. Then if we go on to 6.6.3 which is at the bottom of the
8 page --

9 A. Yes.

10 Q. -- we can see, can we not, that:

11 "The scope of the services on assessing the building
12 submissions shall include, but not be limited to, the
13 following".

14 Then firstly the services include -- look at (a):

15 "Examine building plans and proposals to a safety
16 standard not inferior to that required under the BO and
17 related regulations".

18 A. Mm-hmm.

19 Q. Then turning over, if we may, Pypun have also got to
20 "examine structural plans and proposals, method
21 statement in accordance with the standards not inferior
22 to that required under the BO and related Regulations,
23 and carry out any related actions such as recommending
24 the acceptance of the submissions and conditions to be
25 imposed, if any, for commencement of works, related site
26 inspections, witnessing related site testing,

1 et cetera".

2 Then finally:

3 "Identify the deficiencies, if any, from the
4 submissions by the MTRCL and/or its consultants/agents
5 and provide necessary advice."

6 A. Yes.

7 Q. So all rather onerous obligations, I suggest?

8 A. Yes. So your question is?

9 Q. I am coming to that. If we could look, please, at B12,
10 page B8888. Now, this is a letter from the MTR dated
11 29 July 2015 to the Buildings Department; do you see
12 that?

13 A. Yes.

14 Q. Now, obviously, this letter came into existence and was
15 sent before you joined the project in September 2015,
16 wasn't it?

17 A. Yes.

18 Q. But nevertheless, would this have been one of the
19 documents that you would have looked at in
20 September 2015 in order to familiarise yourself with
21 what was going on?

22 A. I'm sorry to tell you that I don't think I have come
23 across this thing. Firstly, due to my limited time to
24 go through all those documents -- I believe this is
25 quite specific and in detail, and as I just suggest to
26 Mr Pennicott, that Mr Yueng joined the company since the

1 beginning of the project, so he may be a better person
2 to answer you all these questions.

3 Q. I thought you might say that, and that's why I was
4 trying to -- sorry.

5 A. Secondly, he didn't bring this up to me, then I --
6 before this year, or before the newspaper, I didn't see
7 any special problems on 1112 myself. I know it's
8 difficult, but in my -- according to my limited
9 experience, it's not exceptionally difficult. It's
10 tricky, I would say, yes, because we have live -- we
11 have buildings at the top and the design is quite
12 tricky, I would put it that way. I'm sorry, sir.

13 Q. Right. So your answer is that I ought to save my
14 questions on this documentation to Mr Yueng?

15 A. Please. You will have a better answer, much better
16 answer.

17 Q. And he's not going to tell me that I ought to have put
18 these questions to you?

19 A. Sure. No problem at all, sir, even after the court.

20 I'm sorry, sir.

21 Q. Right. Let's see whether there's anything you can
22 answer, because that was going to be the first matter
23 I wanted to deal with with you.

24 Let's go back, if we can, to the brief. G7665.

25 We can see clause 6.6.4 starting there, can we not,
26 clause 6.6.4:

1 "The scope of the services on checking the
2 compliance with building safety standards include, but
3 are not limited to, the following".

4 A. Yes.

5 Q. Then if you look down at (f), one of the things that
6 Pypun's got to do, is it not, is to "conduct audit and
7 surprise checks to construction sites on aspects of the
8 structural safety and integrity of foundation, tunnel,
9 superstructure and et cetera for safety assurance and
10 for compliance with the building safety standards, and
11 examine the remedial proposals submitted by MTRCL if
12 contravention is detected".

13 Do you see that, Mr Mak?

14 A. Yes, I see it.

15 Q. Just as a matter of interest, were you aware of any
16 surprise checks on the construction site that were made
17 by Pypun?

18 A. Surprise check is -- yes, it's a good system always, in
19 any industry, to witness the problems or to find out the
20 problems; right?

21 But the particular case here with MTR, due to the
22 operation and due to the construction, in particular, we
23 are not -- the security control this stage in the
24 construction site, and without notifying them I don't
25 think we can get in easily.

26 Q. Okay. So the answer is you didn't make any?

1 A. I don't believe there is a thing like surprise check,
2 sir.

3 Q. Okay.

4 A. It's from -- honestly speaking.

5 Q. Okay. I'm glad you are honest. Then (g):

6 "Carry out site inspections to identify
7 irregularities, contraventions or non-compliance with
8 the building safety standards".

9 That's something else that Pypun's got to do;
10 correct?

11 A. Yes.

12 Q. Now, I want to have a look, like Mr Pennicott did, at
13 your Pypun inception report. That's at K67, but perhaps
14 we can start at -- K67, yes. It starts at K37, if we
15 can just get our bearings first. March 2013; do you see
16 that?

17 A. Yes.

18 Q. Splendid. This is something that I understand you did
19 manage to have a look at once you started work in
20 September 2015?

21 A. Yes, yes.

22 Q. Splendid.

23 Then if we go on to page K42, please, "Scope of
24 inception report".

25 A. Yes.

26 Q. "This inception report describes the activities to be

1 undertaken during the progress of the SCL -- monitoring
2 & verification for construction, testing and
3 commissioning phase -- investigation."

4 Then if we can have a look at clause 5.6.5, which
5 starts on K68 -- and this is something you went to with
6 Mr Pennicott but I just want to remind you of its terms,
7 if I may -- do you see there, "Compliance with the
8 building safety standards"?

9 A. Standards, yes.

10 Q. Then if we turn back one page, we've got K67, which is
11 part of clause 5.6.4, which starts on K66. Do you see
12 clause 5.6.4, "Building submission review and
13 compliance"?

14 A. Yes.

15 Q. Then over the page, K67 --

16 A. Yes.

17 Q. -- we've got:

18 "The team ..."

19 And I think you told Mr Pennicott that that was the
20 building submission review and compliance team?

21 A. Yes.

22 Q. "... will focus on but not be limited to, the following
23 areas", and then the bottom point on the page:

24 "Carry out site inspection and/or monitoring work to
25 ensure compliance with the BO and allied regulations."

26 A. Yes.

1 Q. And that's something you would expect anyone from Pypun
2 who went on site to do?

3 A. Yes, if invited by BO team.

4 Q. Then we go to K69, we're in part of clause 5.6.5.

5 "The site and audit inspections will focus on
6 unsatisfactory aspects that may impact on or interface
7 with public safety and building safety standards. The
8 areas of concern include ..."

9 Then we can see that the first bullet point is:

10 "Divergence or deviation in a material way from the
11 approved plans."

12 That's correct, isn't it?

13 A. Yes.

14 Q. Then if you look down, skip two or three, and you can
15 see that it's also an area of concern where there's been
16 a departure from approved or agreed work sequence or
17 procedures; do you see that?

18 A. Yes.

19 Q. Then I think finally, for my present purposes, if we go
20 over the page to K70 --

21 A. Yes.

22 Q. -- do you see the subheading which is two or three
23 paragraphs up, "Conduct site inspections, audits and
24 surprise checks on construction sites"; do you see that?

25 A. Yes.

26 Q. It's in italics. Then:

1 "Site inspections and audits during the construction
2 stage will be carried out to monitor aspects of
3 structural safety and integrity and to identify
4 irregularities. Contraventions or non-compliance with
5 the building safety standards will be identified and
6 reported to RDO."

7 A. Yes.

8 Q. Now, you mention, in your witness statement, at
9 paragraph 45 -- that's K23:

10 "The scale of the project of 25 civil contracts and
11 sites as set out under paragraph 4.4.2 of the monitoring
12 plan."

13 A. Yes.

14 Q. "As stated in such paragraph, during the course of the
15 project ..."

16 That's the SCL project you're referring there to,
17 isn't it?

18 A. Yes.

19 Q. "... the M&V consultant visited each site about once
20 each quarter. The duration of each visit was
21 approximately three hours."

22 Now, so far as the SCL contract 1112 is concerned,
23 is that a visit you made or someone else from Pypun
24 made?

25 A. I couldn't remember whether exactly I do it or not, but
26 most likely I have done it several times, in

1 contract 1112, yes, every -- each quarter, yes.

2 Q. Each quarter?

3 A. Yes.

4 Q. All right. Obviously, when you or anyone else
5 exercising this site audit and inspection was concerned,
6 you would be no doubt concentrating on those matters
7 that you and I have discussed over the course of the
8 last two or three minutes, the matters referred to in
9 clause 5.6.5 of the contract of engagement?

10 A. Yes.

11 Q. Now, I wonder whether we can look at some photos
12 together. If you could go to B25598. It may well be
13 that you will be assisted by having a hard copy.

14 A. Yes.

15 Q. Now, here we've got a photograph dated 27 August 2015,
16 Mr Mak --

17 A. Yes.

18 Q. -- and I realise immediately that this might have been
19 a week or two before you started on the project.

20 A. Yes.

21 Q. But we can see from the caption, can we not, that
22 "Area C1 -- Bay C1-3 -- Eastern Wall" -- do you see
23 that, at the top left-hand corner?

24 A. Yes, yes. Sorry.

25 Q. Splendid. As we can see from the caption, what's
26 happening here is that you've got a load of workers,

1 they appear to be Leighton workers, breaking out the top
2 of the D-wall, and top couplers were removed; do you see
3 that?

4 A. Yes.

5 Q. So what is happening here, is it not, is that previously
6 a piece of work had been completed; correct?

7 A. Mm-hmm.

8 Q. And Leightons are taking it away?

9 A. Yes.

10 Q. Obviously, if you are taking away some completed work,
11 it follows, does it not, that that could affect the
12 programme for the whole of the works?

13 A. You could put it this way, yes.

14 Q. Thank you. And if, as you said, it affects the
15 programme for the works, it is one of those matters, is
16 it not, that Pypun would be particularly interested in
17 monitoring?

18 A. If our team, or our team on that day was invited to go
19 through this area. Otherwise, it's a big site, sir;
20 within three hours we cannot go through every corner.
21 And I myself have been there several times; we have to
22 climb down, going up, climb down, going up --

23 Q. I've been there myself, Mr Mak.

24 A. -- through the scaffoldings, not proper staircase with
25 carpet, you know. Also, for each site walk, I do not
26 know -- we must go back to the point that we, as a M&V

1 even for the BSRC team, we support the supportive role.
2 We must be invited by the BO team or RDO. In -- if come
3 back to the normal, one time every three months, I think
4 it's difficult for us to go into that detail. I must
5 confess -- we will have difficulties.

6 CHAIRMAN: Sorry to interrupt a second, but when you say
7 detail, there's a lot of people knocking down the top of
8 a concrete wall there. With your great experience,
9 wouldn't that have -- I'm not saying you even saw it,
10 but if you had seen it, wouldn't that have --

11 MR COLEMAN: Sir, I hesitate to interrupt, but what we have
12 is a photograph which is a snapshot, by definition, of
13 a moment in time.

14 CHAIRMAN: Yes.

15 MR COLEMAN: Unless one knows what was there last week or
16 the day before, one doesn't necessarily know this is
17 something being removed. We know that, and this witness
18 knows, that only from the line of questions which are
19 based on the annotations to the photograph. I think one
20 has to be a little bit careful about asking the
21 questions which presuppose as to what they show, with
22 a witness who clearly didn't see it, and couldn't have
23 done because he wasn't employed at the time.

24 CHAIRMAN: Yes.

25 MR BOULDING: This will not be the only photo I'm going to,
26 sir, but I don't know whether you want to finish your

1 question.

2 CHAIRMAN: No, that's quite all right. I think Mr Coleman
3 makes quite a good point.

4 MR BOULDING: Right.

5 If we could go on to B25592, and this is
6 21 September 2015. We get that from the bottom
7 right-hand corner of the photograph; do you see that,
8 Mr Mak?

9 A. Yes.

10 Q. By this time you would have been on the project,
11 21 September?

12 A. Yes, but I may not have the opportunity to see this.

13 Q. I'm not suggesting necessarily that you were the only
14 Pypun person going to site. I think you told me
15 a couple of moments ago that you went to site but other
16 Pypun people went to site as well. That's what you've
17 said. That's correct, isn't it?

18 A. Yes, we have a team of people going down.

19 Q. Exactly. Again, we can see here, can we not, that some
20 of the completed work is being knocked away; correct?

21 A. Sorry, sir?

22 Q. If you look where -- "EH63"; do you see that?

23 A. EH63, yes.

24 Q. I'm just giving you a pointer.

25 A. Yes.

26 Q. What I suggest to you is that it's obvious there, is it

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
26 the rebar, taking the couplers away, putting them in

1 skips and carting them off site. That's not a normal
2 experience so far as a diaphragm wall is concerned, is
3 it?

4 A. Yes, again --

5 Q. Do you agree with me?

6 A. I agree with you.

7 Q. Thank you.

8 A. Totally.

9 Q. What I suggest is that if the Pypun representative had
10 been complying with the terms of the contract of
11 engagement, this is just the thing that one would have
12 expected them to have picked up on, to have seen.

13 A. I disagree with that, sir. Again, if we have the
14 opportunity to be invited to the location to inspect it,
15 yes, we may pick it up. But as I said, we are
16 performing a supportive role, so if we are not directed
17 or requested by BD team or the RDO, I think we have
18 difficulty to get close to that area.

19 CHAIRMAN: Sorry, why do you -- I have missed this earlier
20 on. It's been puzzling me. Why do you have to be
21 invited by -- I think you mean the
22 Buildings Department --

23 A. Yes.

24 CHAIRMAN: -- to make an inspection? Is it in terms of the
25 contract?

26 A. Yes. Again, Mr Chairman, I think when Mr Yueng come on

1 board, then you may ask in more detail about the
2 procedures, the organise of site visit or even surprise
3 check, and so forth; right? I'm not trying to get away
4 from that, but he may give you a much clearer picture on
5 that.

6 CHAIRMAN: All right.

7 A. I'm sorry. I'm really sorry.

8 CHAIRMAN: No, that's perfectly all right. Thank you.

9 COMMISSIONER HANSFORD: Mr Mak -- I'm sure I will also ask
10 this question of Mr Yueng as well, but just to
11 understand a little bit --

12 A. Yes.

13 COMMISSIONER HANSFORD: -- are these site visits arranged in
14 advance, and do MTR know that you're coming?

15 A. Yes.

16 COMMISSIONER HANSFORD: They know?

17 A. Yes.

18 COMMISSIONER HANSFORD: So these are not surprises?

19 A. No. Normally, we have to agree with RDO a day, and then
20 we check with MTR to see whether they are available,
21 because we are not allowed to disturb their work too
22 much. It's in the contract; right? So when we three
23 parties agree a date, then MTR would base upon their
24 works progress to propose the route of site walk. And
25 based on that, we and RDO would comment on the route,
26 and also we will put in our comment, is -- because some

1 area we may like to see, because they may have
2 a heavy -- deep excavation or there may have a deep
3 dewatering and so forth. Then we may like to see the
4 problem area, and in particular the TTMS and so forth,
5 we have prime concern, because on the site walk it's too
6 brief a snapshot, and it's difficult -- you can't tell
7 too much detail on programme and cost, but public
8 safety, yes, I must confess that, yes, we should -- by
9 the site walk we can pick that up more easily and
10 obviously.

11 COMMISSIONER HANSFORD: So you are telling us, are you, that
12 MTR could choose which bits they would like you to see?

13 A. We can put it this way, but -- because according to --
14 because some areas we cannot access, we cannot -- they
15 have -- or some activity is too dangerous to be -- to
16 have visitors along, then -- therefore it would be
17 proposed by them. But of course we -- RDO and
18 ourselves, we have our mind; right? We will discuss.

19 COMMISSIONER HANSFORD: Okay.

20 A. We always have friendly discuss, no hard time on that.
21 But of course, if they wish to hide something, I don't
22 think it's --

23 COMMISSIONER HANSFORD: I'm not suggesting that.

24 A. I'm sorry, sir. Okay, thank you.

25 MR BOULDING: But you can take it from me, Mr Mak, that this
26 demolition work affected something like 30 bays on the

1 EWL, and the work lasted for something like six months.

2 You can take that from me.

3 Now, can I suggest that skilled people from Pypun,
4 skilled engineers, looking for matters that were
5 affecting programme and cost, perhaps even safety, they
6 must have been going around site with their eyes closed
7 not to have spotted this, mustn't they?

8 A. On behalf of Pypun, I must disagree with you, sir,
9 I'm sorry, because we have limited access problem and
10 all sorts of things, as I explained to you, although my
11 English is not perfect enough, I'm sorry that, but
12 I must disagree with that, sir.

13 Q. Let's just have a look at one or two photos.

14 If we could go to B25647. We've moved on here to
15 5 October, and another photograph there, this time
16 area C2, bay C2-4, eastern wall.

17 A. Yes.

18 Q. Again, I suggest that's just the thing that Pypun ought
19 to have been looking out and indeed would have seen on
20 their site visits.

21 Would you like to comment on that proposition?

22 A. Again I still maintain my view that we may not have the
23 chance to discover. I'm sorry.

24 Q. May I suggest that if you didn't have the chance to
25 discover that, that's because you were not doing your
26 job properly.

1 A. I don't think so, sir. I don't think so. I must
2 disagree with that, yes.

3 Q. B25685. Now we're in area C3, bay C3-6, eastern wall.

4 A. Yes.

5 Q. 13 October. Yet again a photograph of completed works
6 being demolished; that's correct, is it not, Mr Mak?
7 Look at all that rubble.

8 A. Yeah, yeah, yeah.

9 Yes.

10 Q. Again, that's just the sort of thing Pypun ought to have
11 been monitoring, is it not, in circumstances where
12 you've told the Commissioners they were particularly
13 interested in things that would affect programme and
14 indeed cost?

15 A. Again, I -- two types of visit. The visit by the
16 monitoring team, I don't think they have the chance --
17 I don't believe they have the chance to see it. For the
18 BSRC team, it must be invited by the BO team, otherwise
19 we cannot -- yeah, we have strong disagreement on that.
20 I think Mr Yueng, he is the leader and he was there, he
21 may give you a better picture on that.

22 Q. You won't get a better picture than the one we're
23 looking at, I don't think.

24 B25637. Here we've got on to 10 November 2015.

25 A. Yes.

26 Q. So the first photo we looked at was the end of August,

1 then we've looked at photographs in September/October;
2 we are now halfway through November, and again we can
3 see, can we not, that parts of the completed works are
4 being demolished?

5 A. As I explained to you, the top of the D-wall, normally
6 we need to break out 1 metre to half a metre, so --

7 Q. You're not suggesting that's what's being shown in this
8 photograph, are you?

9 A. No, no, no. It's the top of the D-wall, isn't it, sir?

10 Q. Well ...

11 A. It's difficult to tell.

12 Q. But that's just the sort of thing, I suggest, that as
13 monitors, concentrating on cost and programme and even
14 safety, that's just the sort of thing, if you were
15 unclear as to what was happening, you would say, "Look,
16 what's happening here? You're knocking down works.
17 What are you doing that for?" That's just the sort of
18 thing --

19 A. If we have the chance to look at it.

20 CHAIRMAN: Sorry, I think the point being made, Mr Mak, is
21 that while it's appreciated that works that take a day
22 or two, and works that are perhaps in some corner of
23 a large site may not be seen, this in fact was a series
24 of connected works, of trimming the diaphragm wall,
25 which went on for several months and occupied a very
26 large part of the site, and one of the jobs that you

1 would have had is to deal with changes in plans, costs
2 and things like this; and this, it is suggested to you,
3 couldn't have been overlooked, not by a reasonably
4 proactive team of experts, and would it not have raised
5 a question.

6 A. I go back to the diaphragm wall construction. It's
7 a conventional way that we need -- you need to break out
8 the rubbish concrete on the top. Normally, so --

9 CHAIRMAN: All right. I appreciate that. Thank you. I'm
10 not trying to interrupt, but I understand what you are
11 saying. You're saying this could been mistaken by your
12 engineers as tremie pipe concrete being cleared off the
13 top?

14 A. Yes.

15 CHAIRMAN: Okay.

16 MR BOULDING: Go back to B25685.

17 You are not suggesting for a moment, are you,
18 Mr Mak, that pile of rubble there could have been
19 mistaken for tremie concrete being chipped off the top
20 of a diaphragm wall? That's simply not correct, is it,
21 Mr Mak?

22 A. You mean the rubble on the --

23 Q. Yes, the rubble.

24 MR COLEMAN: Which bit of the rubble?

25 CHAIRMAN: I think, Mr Mak, it's meant on the right-hand
26 side, roughly where you see the date and the time.

1 A. Yes, yes. It's 2015, August 14.

2 MR BOULDING: 25685; is that the one you're on?

3 A. 25605?

4 Q. No, 25685, that's what I said. That's why we are at
5 cross-purposes. 25685, is that what you're on?

6 MR COLEMAN: No, we're not.

7 MR BOULDING: I had in mind at least the pile of rubble that
8 one can see in the background against the yellow safety
9 helmet where, it would appear, the worker was shovelling
10 some up and putting it in a wheelbarrow.

11 Now, that's not excess tremie concrete, is it, that
12 you have to chip off the --

13 A. No, I agree with you.

14 Q. Good.

15 Then I think finally one last photo, because you've
16 got my point. B25675. Again, here we've moved on,
17 19 November 2015 -- do you see the date in the bottom
18 right-hand, Mr Mak?

19 A. Yes.

20 Q. Again we can see, can we not --

21 A. Yes.

22 Q. -- that the D-wall is being broken away, and the rebar
23 and the couplers removed together with the concrete;
24 correct?

25 A. Yes.

26 Q. Thank you. In those circumstances, I've got to suggest

1 to you that Pypun's representatives, if they were doing
2 their job properly, simply had to be aware of the
3 trimming of the diaphragm wall and the use of
4 through-bars, through its inspections.

5 A. I disagree with that, sir, I'm sorry.

6 Q. One thing we can agree on, I think, is that there was
7 never any objection made at the time, was there, by
8 Pypun, to what we have seen going on in those photos?
9 Pypun never raised any objection, did they?

10 A. Again, this is before my time --

11 Q. No, it's not. These photographs are deliberately
12 selected to accord with your time on site. The first
13 one was dated 27 August and the last one we have seen
14 was 19 November.

15 A. No, this is still within 2015, sir.

16 Q. Yes, and you told me --

17 A. I haven't take up the role of the project manager. No.
18 I joined the site visit and I tried to get familiar with
19 everything, and again, come back, if you try to allege
20 my people, I think Mr Yueng may have a better
21 explanation than me in that period.

22 Q. I don't think your explanation is very satisfactory at
23 all, Mr Mak.

24 MR COLEMAN: That's a comment, it's not a question.

25 A. There's certain difficulty for me to make judgment just
26 on the photos --

1 Q. Okay. There we are.

2 A. -- I'm sorry, sir.

3 MR BOULDING: No further questions, Mr Mak. Thank you very
4 much.

5 WITNESS: Thank you.

6 MR KHAW: No questions from government.

7 MR CONNOR: None from Atkins.

8 MR COLEMAN: Just a few questions in re-examination, if
9 I may, and I am conscious that you want to rise at 4.30.

10 CHAIRMAN: Yes.

11 Re-examination by MR COLEMAN

12 MR COLEMAN: Mr Mak, near the beginning of the questions
13 that were posed to you by Mr Pennicott, you were talking
14 about either site supervision or site inspection.

15 May I ask you to look at your witness statement,
16 please, at page K16.

17 A. Yes.

18 Q. At the top of that page there is a heading, "Site
19 inspection as distinct from site supervision"; do you
20 see that?

21 A. Yes.

22 Q. So if we want to know what you say about that
23 distinction, we can read the rest of that page for
24 ourselves -- we don't have to read it now -- is that
25 right?

26 A. Yes.

1 Q. At various points in your evidence you've talked about
2 a number of contracts, and I wonder if a way to identify
3 that would be to go to the M&V agreement and to appendix
4 G of it, at G7690.

5 A. Yes.

6 Q. Can you tell me what the list of contract numbers down
7 the left-hand side indicates?

8 A. Yes. That is the contract number of the site.

9 Q. And just help me: are all of these contracts contracts
10 with which Pypun had some monitoring and BSRC role?

11 A. Yes.

12 Q. And where we see "Minimum frequency of audit" in months,
13 take contract 1112, the relevant contract.

14 A. Yes.

15 Q. It says a minimum frequency of 12 months for the public
16 safety compliance audit, and we can see that there's the
17 same monthly frequency for all the other contracts
18 listed on that page?

19 A. Yes.

20 Q. But does that mean that for each contract, there is
21 a requirement for an audit with a minimum frequency of
22 12 months?

23 A. Yes.

24 Q. Now, you were asked about MTR's PIMS, the PIMS system,
25 and you confirmed, I think, that Pypun did not perform
26 an audit of the PIMS system itself.

1 Can I ask you to look in the brief at
2 paragraph 2.18, page G7652. In the middle of that page,
3 2.18 --

4 A. Yes.

5 Q. -- it says:

6 "One of the major considerations behind the
7 entrustment of the design and construction of the
8 project to the MTRCL is to fully utilise the expertise
9 and experience of the MTRCL in managing large-scale
10 railway projects. Thus, in principle the SCL will be
11 implemented by using MTRCL's internal systems for
12 project management and control."

13 A. Correct.

14 Q. Is that a reference to the PIMS system?

15 A. Yes.

16 Q. "That is to say, in general the MTRCL will carry out or
17 procure to carry out the design and construction works
18 using its own system. Under the provisions of the 3 EAs
19 for the design and site investigation, advance works and
20 construction phases, the SCL will be designed,
21 constructed, procured and delivered to standards and/or
22 specifications which are consistent with and not
23 materially in excess of those applicable to relevant
24 elements of comparable completed railway projects in
25 Hong Kong. Main ... features of the EAs for the SCL
26 design and site investigation, advance works and

1 construction phases in relation to this assignment are
2 shown in appendix C ..."

3 Appendix C we can find at G7678, and the relevant
4 page relating to construction starts at page 7681, you
5 see there, "Main key features of SCL construction
6 phrase", and over the page, halfway down the page, next
7 to the box "Monitoring and verification" --

8 A. Yes.

9 Q. -- the last bullet point:

10 "At any time the MTRCL" -- and I'm going to change
11 the punctuation to make sense -- "is, or the government
12 suspects reasonably that the MTRCL is in material or
13 persistent breach of any of their material obligations
14 under the EA, government is entitled to verify the
15 MTRCL's compliance with their obligations under the EA."

16 Can I ask, if the government took the decision that
17 it had a reasonable suspicion of a material or
18 persistent breach, who might it have asked to assist in
19 the verification of compliance?

20 A. They will ask us, yes.

21 Q. If we go to your witness statement, at K13, you refer at
22 paragraph 12 --

23 A. Yes.

24 Q. -- to the procurement system, and you set out in the
25 following paragraphs a couple of references. I want to
26 go to those documents themselves. Can you first have

1 bundle B1 at page 3, where in the first main paragraph
2 break you can see that in the MTR's own report, it
3 identified that:

4 "In project managing the construction of the SCL
5 project, MTRCL is obliged (under EA3) to follow ...
6 ('PIMS')."

7 Do you see that?

8 A. Yes.

9 Q. If we look at G3/1776, and if you have --

10 CHAIRMAN: Sorry, Mr Coleman, is there any concern with the
11 fact that PIMS was followed?

12 MR COLEMAN: No, it's just that Mr Mak was asked a number of
13 questions whether he had audited the PIMS system,
14 checking the PIMS system itself, rather than checking
15 compliance with the PIMS system.

16 COMMISSIONER HANSFORD: And he told us he didn't.

17 MR COLEMAN: He told us he didn't, yes, and I'm dealing with
18 that topic.

19 CHAIRMAN: Because from our perspective we've always
20 understood PIMS to be an integral working document for
21 this project, and that hasn't been challenged as such.

22 MR COLEMAN: Yes. Well, the last thing that I was going to
23 ask Mr Mak to look at was simply to make the point, as
24 is at 1.1.5 on this page, that the MTR processes are
25 regularly reviewed and audited by outside bodies.

26 COMMISSIONER HANSFORD: He says that in his witness

1 statement, paragraph 14.

2 MR COLEMAN: That's correct. That will take you to the
3 actual body.

4 COMMISSIONER HANSFORD: Yes. Sorry to interrupt you,
5 Mr Coleman.

6 MR COLEMAN: Not at all. You have interrupted me right at
7 the end of that section, so that fine.

8 Now, you were asked about the two roles or two teams
9 within Pypun under the contractual arrangements. Can
10 I just ask you to be shown, please, page K737, and to
11 paragraph 36 at the bottom of the page. I should tell
12 you this is taken from the witness statement of
13 Mr Yueng. He has summarised the roles of the two teams.
14 Just read it to yourself, tell me whether you agree with
15 that summary or not.

16 A. Yes, I agree.

17 Q. Then you were asked about the inception report. Both my
18 learned friends Mr Pennicott and Mr Boulding, sometimes
19 called Buckland -- or is it the other way around --
20 asked about paragraph 5.6.5, which is on page K68. K69,
21 actually, was the part you were asked about, at least by
22 Mr Pennicott, which is talking about the site and audit
23 inspections and what the areas of concern might be.

24 But can I just ask you to help us navigate through
25 this document. Obviously 5.6.5 is within section 5, and
26 that begins at page K49, and the whole section is about

1 "Approach and methodology".

2 A. Yes.

3 Q. 5.1, "Deliverable submissions", and if one turns over to
4 K51, there's the "Technical approach"?

5 A. Yes.

6 Q. And "General"?

7 A. Yes.

8 Q. Just while we are here, the second paragraph of
9 "General":

10 "We propose to use a structured process to underpin
11 our work at a high level with the primary focus on the
12 significant areas of risks. The project risks of
13 concern to RDO" -- that's your employer, of course --
14 "will be those that may impact on 'cost', 'programme'
15 and 'public safety'."

16 Just perhaps for the Commission's note, at page K145
17 in the bundle, the Highways Department and the RDO had
18 no further comment on the inception report, including
19 of course that paragraph. 145.

20 A. Yes.

21 Q. In the middle of the page:

22 "I refer to the inception report submitted via your
23 above letter ... Please be advised that we have no
24 further comment on the inception report."

25 A. Yes, sir.

26 Q. Then can we go back to the report. You were looking at

1 page K51. 5.1 is the "Technical approach" section.

2 A. Yes.

3 Q. Over on page K53 is reference to the "Approach,
4 methodology, outline of monitoring" -- so 5.4 is dealing
5 with monitoring, isn't it?

6 A. Yes.

7 Q. Over the pages through to K62, section 5.5 is dealing
8 with verification?

9 A. Yes.

10 Q. So we've had monitoring, we've had verification, and
11 then 5.6 on page K65, is dealing with the "Approach and
12 methodology for building submission assessment
13 activities"?

14 A. Yes.

15 Q. Can I ask you: this is the approach and the methodology
16 that were to be adopted by which of the teams in Pypun?
17 Building submission and assessment activities?

18 A. Yes, the BSRC team.

19 Q. If we look then at the bottom of K68, the context within
20 which the passage that my learned friend Mr Pennicott
21 took you to is under the heading 5.6.5, "Compliance with
22 the building safety standards", within the "Building
23 submission assessment activities" section; is that
24 right?

25 A. Yes.

26 Q. Now, you were asked about risk register.

1 The monitoring plan has a risk assessment flow chart
2 at page K174. It's difficult to read but, as
3 I understand it, this is telling us that the way in
4 which risk is assessed; is that right?

5 A. Yes.

6 Q. Then you told my learned friend that Pypun doesn't have
7 its own risk register, but can I ask you to look firstly
8 at K306. This is annex 8 to your witness statement, and
9 it's what you describe as a typical monthly report.

10 A. Yes.

11 Q. It's quite -- we can see that it goes from 306 down to
12 586, 280-odd pages.

13 We can see from the "Content" section on 310 --

14 A. Yes.

15 Q. -- what's included in each monthly report: executive
16 summary, meetings, monitoring work, verification work,
17 assessment of building submissions, that is following
18 the inception programme that we identified --

19 A. Yes.

20 Q. -- staff resources, so if we want to know who was
21 available and deployed, we can look at that document
22 every month. And over the page, K311, a number of
23 appendices, including appendix P, "Risk register", and
24 we find that, or the front sheet for it, at K582. The
25 register itself is on the following two pages, with
26 a key on 586. So K584, we can see it says "Risk

1 register for monitoring activities", and contract types
2 are all "Civil". And then risk impact categories are
3 either "Programme", "Public safety" or "Cost"; you see
4 all three on that page.

5 A. Yes.

6 Q. Then the pre-penultimate and the one above that, entries
7 on the page relate to contract no. 1112.

8 A. Yes.

9 Q. So the third and the fourth from the bottom, in ordinary
10 language.

11 A. Yes.

12 Q. Those two matters are given a risk category or impact
13 category of "Public safety" -- we can look for ourselves
14 later what they are -- and over the page, six down,
15 I think, six or seven down, we can see 1112 again in the
16 third column, this time with an impact category of
17 "Cost"?

18 A. "Cost", yes.

19 Q. Now, what is this document? Who produces this risk
20 register?

21 A. We derived it from -- the risk register from MTRC.

22 Q. How do you decide what to derive and take into this
23 document and what not to take into this document?

24 A. We work through, as we show on the flow chart, the
25 assessment and do all that sort of thing, and we
26 believe -- and we also add on our comments like the risk

1 descriptions; right? We also have our remarks at -- you
2 see the "Remarks" column, yes.

3 Q. All right. Then if you can turn back to K329, please.
4 This is still within the typical monthly report. You
5 can see there's a reference to "Summary of audits", here
6 "cost audits", at the bottom of page 329.

7 A. Yes.

8 Q. We can turn it up for ourselves or later the Commission
9 can, but there's a summary of cost audits, programme
10 audits and public safety audits in each monthly report?

11 A. Yes.

12 Q. Lastly, can I ask you -- it is not clear to me from your
13 earlier evidence -- when was the first time you went to
14 the site of contract 1112? Was it before you became
15 project manager in January 2016?

16 A. I cannot remember. I need to check. But definitely
17 after 2016, yes.

18 MR COLEMAN: I've run a little past 4.30, but unless you
19 have any further questions.

20 CHAIRMAN: No, that's fine. Thank you very much.

21 COMMISSIONER HANSFORD: No questions from me.

22 MR COLEMAN: Then perhaps Mr Mak might be released.

23 CHAIRMAN: Yes, Mr Mak. Thanks very much for coming to give
24 evidence today. Your evidence is now completed.

25 WITNESS: Thank you, Chairman. Thank you, Professor. I'm
26 sorry I cannot answer all the questions.

1 CHAIRMAN: That's all right, don't you worry. You have
2 helped us as best you can and that's all that is
3 required. Thank you.

4 WITNESS: Thank you.

5 (The witness was released)

6 MR COLEMAN: Sir, tomorrow morning obviously now, I will
7 call Mr Ron Yueng.

8 CHAIRMAN: Good. Thank you very much. 10 o'clock tomorrow
9 morning.

10 (4.36 pm)

11 (The hearing adjourned until 10.00 am the following day)

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