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<p>1 Tuesday, 18 December 2018 2 (10.04 am) 3 MR SHIEH: Good morning, Chairman. Good morning, Professor. 4 The first witness to be called this morning is 5 Mr Kevin Harman from Leighton. I can do this before or 6 after Mr Harman is in the box, but the way Leighton has 7 been doing is to do it before the witness actually takes 8 the affirmation. 9 So in terms of the organisation chart, can I ask for 10 C7/5535 to be shown. Mr Harman can be found in that box 11 next to the middle blue box, because there's a gigantic 12 blue box in the middle -- next to it, on the right, 13 there's a narrow strip. Yes, the finger is now pointing 14 at Mr Harman, "Quality & environmental manager", and 15 that is the organisation chart as of May 2015. 16 For C7/5536, that is the organisation chart as of 17 December 2015, 28 December 2015. Again, Mr Harman can 18 be found in that narrow strip to the right of that big 19 blue box in the middle, "Quality & environmental 20 manager", Mr Kevin Harman. So that is where we place 21 Mr Harman in the organisation chart, and physically 22 Mr Harman is now in the witness box. 23 Mr Harman, good morning. 24 WITNESS: Good morning. 25</p>	<p>1 clarification or if they have their own queries. And 2 after all this, I may have follow-up questions to ask 3 you, arising out of questions asked of you by various 4 parties or persons. Do you follow that? 5 A. Yes. 6 MR SHIEH: Okay. Please remain seated while Mr Pennicott 7 now asks you questions. 8 Examination by MR PENNICOTT 9 MR PENNICOTT: Good morning, Mr Harman. 10 A. Good morning. 11 Q. As Mr Shieh has indicated, I'm one of the counsel to the 12 Commission and I'm going to ask you some questions 13 first. First of all, thank you very much for coming 14 along this morning to give evidence to the Commission. 15 I understand you're retired now. 16 A. Yes. 17 Q. Good. So, before your retirement, you were the quality 18 and environmental manager for Leighton, as we have seen 19 from the organisation charts, from, as I understand it, 20 about October 2012 up until the time you retired in 21 January this year? 22 A. That's correct. 23 Q. However, you tell us, I think, in your witness statement 24 that from 1 July 2017 onwards, you were working on 25 another Leighton project and you shared your time from</p>
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<p>1 MR KEVIN WAYNE HARMAN (affirmed) 2 Examination-in-chief by MR SHIEH 3 MR SHIEH: First of all, you have heard what I've said just 4 now by reference to the organisation charts at two 5 points in time in 2015? 6 A. Yes. 7 Q. First of all, you confirm that that accurately places 8 you in the organisation structure as of that time? 9 A. Yes. 10 Q. Thank you. Can I ask you to look at bundle C35, 11 page 26712. That is your first witness statement; do 12 you see that? 13 A. Yes. 14 Q. Can you turn to page 26717. 15 A. Okay. 16 Q. Is that your signature on that page? 17 A. Yes, it is. 18 Q. Are you prepared to put forward the content of this 19 witness statement as your evidence in these proceedings? 20 A. Yes. 21 Q. Now, the way we go about in this Inquiry is that 22 Mr Pennicott, for the Commission, would now ask you some 23 questions, followed by lawyers for other parties, if 24 they have questions for you. The Chairman and 25 Prof Hansford may ask you questions at any time for</p>	<p>1 that date about equally between the two projects? 2 A. Yes. 3 Q. So, up until 1 July, or 30 June, 2017, it was 4 100 per cent on the SCL project, was it, Mr Harman? 5 A. It was. 6 Q. Now, Andy Ip, a sub-agent and subsequently a site agent 7 of Leighton, indicated in his evidence to the 8 Commission -- Day 20, page 23 on the transcript; no need 9 to get it up -- that he thought that you were full-time 10 in the site office and you rarely went to the site. Is 11 that correct? 12 A. Yes. 13 Q. Did you have a team? We've seen you on the organisation 14 chart. Did you have colleagues working as a team in the 15 quality and environmental area? 16 A. Yes, I did. 17 Q. How many members of that team were there? 18 A. Off the top of my head, about 10. 19 Q. Were they all devoted to the SCL project or were they 20 engaged on other projects at the same time? 21 A. I think mostly yes. 22 Q. Mostly engaged on SCL? 23 A. Yes. 24 Q. Right. Were they also largely office-based? 25 A. The QC members that were doing the testing for the</p>

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<p>1 concrete and the rebar were on site sometimes.</p> <p>2 Q. Right. Yes, okay. So the people on the ground were</p> <p>3 those doing the testing on concrete and perhaps other</p> <p>4 materials as well from time to time?</p> <p>5 A. For the sampling and testing.</p> <p>6 Q. Understood. All right. But they would make specific</p> <p>7 site visits for the specific purpose of carrying out</p> <p>8 those types of tests?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. Okay. Now, you tell us that you were aware of but not</p> <p>11 involved in the preparation and implementation of the</p> <p>12 site supervision plans; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. You also tell us that you were aware of but not involved</p> <p>15 in the preparation or implementation of the quality</p> <p>16 supervision plan in relation to the installation of</p> <p>17 couplers?</p> <p>18 A. Yes, that's right.</p> <p>19 Q. So let me just understand this. You lead the quality</p> <p>20 team?</p> <p>21 A. Yes.</p> <p>22 Q. And am I right in thinking that neither you nor anybody</p> <p>23 else in the quality team regarded it as appropriate to</p> <p>24 monitor whether the QSP was being properly implemented</p> <p>25 by Leighton? Is that right?</p>	<p>1 A. Checking the compliance of implementation of the QSP for</p> <p>2 the couplers.</p> <p>3 Q. Right. Would that have involved checking the records</p> <p>4 that were being kept by those involved in the works?</p> <p>5 A. Yes.</p> <p>6 Q. Right. Do you recall whether or not those audits</p> <p>7 produced a satisfactory result?</p> <p>8 A. I recall.</p> <p>9 Q. That they did?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So far as you can recall, were any similar audits</p> <p>12 implemented in relation to the installation of the rebar</p> <p>13 on either the EWL or the NSL slabs?</p> <p>14 A. I can't remember.</p> <p>15 Q. Right. If they had been carried out, an audit had been</p> <p>16 carried out in relation to those matters, presumably you</p> <p>17 would recall it, Mr Harman?</p> <p>18 A. I'm sorry, could you repeat the question?</p> <p>19 Q. Yes. If any audit had been carried out in relation to</p> <p>20 the QSP, the quality supervision plan, as it applied to</p> <p>21 the rebar for the slabs, you would have recalled such</p> <p>22 an audit?</p> <p>23 A. Yes.</p> <p>24 Q. And you have no recollection of such an audit?</p> <p>25 A. Correct.</p>
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<p>1 A. Could you repeat the question, please?</p> <p>2 Q. Yes. Am I right in suggesting to you that neither you</p> <p>3 nor anybody else in the quality assurance team regarded</p> <p>4 it as appropriate to monitor whether Leighton was</p> <p>5 properly implementing the quality supervision plan?</p> <p>6 A. I think we had some monitoring.</p> <p>7 Q. In what sense and in what form?</p> <p>8 A. I recall we did a couple of audits at the early stage,</p> <p>9 in early 2014.</p> <p>10 Q. Right. I'm aware of -- if it was 2014, that would have</p> <p>11 been in connection with the diaphragm walls, would it,</p> <p>12 Mr Harman?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Would that have been -- we're aware of an audit</p> <p>15 that was done by the BO team and the Pypun team, the</p> <p>16 monitoring and verification consultants engaged by the</p> <p>17 government, certainly in January 2014. I don't know</p> <p>18 whether you were aware of that.</p> <p>19 A. I don't know.</p> <p>20 Q. So are you aware of any documents having been created,</p> <p>21 as a consequence of the audits that you've just referred</p> <p>22 to?</p> <p>23 A. We had two internal audit reports.</p> <p>24 Q. Right. Can you recall what the audit was directed at</p> <p>25 specifically, if anything?</p>	<p>1 Q. You I think were aware that the QSP, or the purpose of</p> <p>2 the QSP, was to enhance the level or the degree of</p> <p>3 supervision insofar as the coupler installations was</p> <p>4 concerned?</p> <p>5 A. Yes.</p> <p>6 Q. And, as we've just touched on, it required the keeping</p> <p>7 of certain records?</p> <p>8 A. Yes.</p> <p>9 Q. You were aware, I think, that BOSA, the coupler supplier</p> <p>10 and the supplier of threaded rebar, had given specific</p> <p>11 training sessions to personnel likely to be involved in</p> <p>12 the installation and supervision of the coupler works?</p> <p>13 A. Yes, that's right.</p> <p>14 Q. Could I just ask you to please look at, first of all,</p> <p>15 H25/44827. This is part of a witness statement of</p> <p>16 a Mr Paulino Lim. You might know him as Paul Lam --</p> <p>17 A. Yes.</p> <p>18 Q. -- of BOSA. He gave evidence to the Commission</p> <p>19 yesterday, and as part of his witness statement he says:</p> <p>20 "I liaised with ..."</p> <p>21 That is obviously a typographical error in your</p> <p>22 first name, Mr Harman.</p> <p>23 "I liaised with [Kevin] Harman, the quality manager</p> <p>24 of Leighton ... about how to improve the coupler</p> <p>25 checking forms."</p>

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<p>1 Do you have any recollection of that liaison, 2 Mr Harman? 3 A. Yes. 4 Q. What happened; can you tell us? 5 A. After we did the internal audit, we found opportunities 6 to improve the records, to help communication on the 7 site, and we also wanted to consolidate the records with 8 a coupler-specific inspection and testing plan, so 9 everyone could access them easily. 10 Q. Did that seek to improve upon the appendix B in the 11 quality supervision plan? 12 A. I don't think so. We couldn't change any of those 13 documents. 14 Q. So was it in addition to the appendix? 15 A. Yes. 16 Q. Right. Can you now recollect what form that additional 17 document took? 18 A. I recall a thread-check record, some testing status 19 labels, some suggested internal communication forms for 20 use by BOSA, just for their internal process, but 21 I don't think they formed part of the ITP. 22 Q. Okay. I see. So the picture we're getting is that 23 there were various improvements that could be made in 24 relation to a number of different aspects of the 25 coupling work and the threaded rebar being installed</p>	<p>1 A. It came from BOSA. 2 Q. It came from BOSA. Okay. But you obviously thought 3 this was a good thing, in principle? 4 A. Yes. 5 Q. And when you say you think you could get some benefit 6 from this, in this note, what did you mean exactly? 7 A. We need to keep the records of the training. 8 Q. Okay. So that was it? 9 A. Yes. 10 Q. All right. 11 In your witness statement, you refer to -- sorry, 12 you can put that file away, thanks -- the quality 13 assurance plan, Leighton's quality assurance plan, and 14 prepared by you, as I understand, for contract 1112; is 15 that right? 16 A. It's prepared by me for contract 1112. 17 Q. And you tell us it's to satisfy the requirements of 18 MTRC? 19 A. Yes. 20 Q. And that quality assurance plan itself provides for the 21 implementing of audits geared towards ensuring quality 22 of the works? 23 A. Yes. 24 Q. How did you go about, Mr Harman, determining the 25 frequency and the subject matter of the audits that were</p>
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<p>1 into the coupler work -- the couplers? 2 A. Yes. 3 Q. I see. Okay. 4 Could I also ask you to just look at H26/45192. The 5 Commission has been supplied with various -- a small 6 number of documents relating to attendance training 7 records. 8 A. Mm-hmm. 9 Q. That's the training given by Mr Lim or Mr Lam from BOSA. 10 A. Yes. 11 Q. I see that on the bottom of this page, at 45192, 12 Mr Harman, you've written a note there which appears to 13 say: 14 "I think we can get some benefit from recording this 15 27 August 2013 training event. Please confirm 'who' 16 attended by handwriting the names on this record and 17 return to me." 18 So clearly, you were aware of these training 19 sessions, as we discussed earlier? 20 A. Yes. 21 Q. And we know that a number of training sessions took 22 place. I think we honed it down to about three or four. 23 Were you instrumental in asking for these training 24 sessions to take place, or did the initiative come from 25 BOSA? Can you recall how it came about?</p>	<p>1 carried out? 2 A. I liaised with our head office quality manager and 3 arranged for us to have a schedule, and every year we 4 would have an updated schedule. The frequency was two 5 times per year. 6 Q. Right. Did you have any input into the subject matter? 7 A. No. 8 Q. When you say "head office", "the head office quality 9 manager", where is he or she based? 10 A. In Wan Chai, Sun Hung Kai Centre. 11 Q. Right. I'm just struggling to understand. You've got 12 the SCL project, on which we know there are many, many 13 different contracts, but we're focusing on 14 contract 1112. 15 A. Mm-hmm. 16 Q. And I assume that the audits that you carried out are 17 geared to particular aspects of contract 1112, and what 18 I'm trying to understand is how you select those 19 aspects. Is it on some risk-based analysis, some other 20 basis; how do you work out what is a good thing to audit 21 on contract 1112? 22 A. We had a system audit that was checking the system 23 implementation effectiveness, and that's what I was 24 referring to. 25 Q. Yes. What do you mean, "a system audit"? What does</p>

Page 13	1 that mean? 2 A. To go through all the system procedures, looking for 3 objective evidence of compliance with the procedures. 4 Q. That means records, does it? 5 A. Yes. 6 Q. So it could have included, on that basis, the QSP from 7 time to time, or having done the audits in early 2014, 8 as you have told us, that was it; you wouldn't return to 9 do another audit on the QSP at a later date? 10 A. I don't remember. 11 Q. All right. I'm just trying to understand how the system 12 works, Mr Harman. Let's suppose you did an audit on the 13 QSP, when the diaphragm walls were being carried out. 14 Having done that, would the process be that, "We've done 15 an audit on the QSP, we don't need to do any future 16 audits on the QSP, we've ticked that box and can look at 17 other matters"; is that the right way of looking at it? 18 A. The QSP was audited because it was requested to be 19 audited by MTR. 20 Q. Okay. So that didn't come from the head office, that 21 came from MTR? 22 A. A special request. 23 Q. A special request, understood. And that was the only 24 request so far as the QSP was concerned, made in, 25 I think you said, early 2014?	Page 15	1 carried out, precisely by whom they were carried out, 2 and whether they were TCP-compliant. 3 Fourthly, there were formal inspections of the top 4 mat of rebar, where one perhaps can infer a date upon 5 which those inspections were conducted and probably by 6 whom they were conducted. 7 Now, as I understand it, we've also been told that 8 so far as the RISC forms are concerned, an advance copy 9 may have been submitted by Leighton to MTR in respect of 10 the inspection of the bottom mat of rebar in particular, 11 and then the final version of the RISC form would be 12 submitted in respect of the top mat of rebar, although, 13 as we have seen, quite often those RISC forms were 14 regarded as a late submission and sometimes they came 15 after the inspections had been done. 16 As I understand your position from your witness 17 statement, you refer to the cast in situ pre-pour 18 checklist, upon which there are two boxes in particular 19 that we're concerned with, one in relation to the 20 reinforcement and the other in relation to the couplers, 21 and as I understand it, you say that the ticks in the 22 two boxes is sufficient to show compliance with the QSP; 23 would that be right? 24 A. I don't know about that. 25 Q. What do you say the two ticks on the cast in situ
Page 14	1 A. I think there were two QSP audit requests for that same 2 document. 3 Q. Okay. Both in 2014? 4 A. Sorry, I can't remember the dates. 5 Q. Okay. Now, in paragraphs 9 and 10 of your witness 6 statement, you deal with the topic of the inspection of 7 reinforcement, and this is relating, as I understand it, 8 to both the reinforcement -- sorry, specifically 9 relating to reinforcement of the rebar in the slabs? 10 A. Yes. 11 Q. We know, from the evidence that has been brought before 12 the Commission to date, the following. There were 13 informal routine inspections of the rebar by Leighton, 14 but there are no records of those informal routine 15 inspections. 16 Secondly, there were, it appears, informal, routine 17 but specific inspections by Leighton on a layer-by-layer 18 basis of the rebar. Do you now understand what I mean, 19 Mr Harman? 20 A. I understand what you are saying. 21 Q. And there are no records of those inspections either. 22 We know that there were probably properly described 23 as formal inspections of the bottom mat of rebar, let's 24 say in the EWL slab, but there are no specific records 25 demonstrating the date when those inspections were	Page 16	1 pre-pour checklist signified? 2 A. That we -- for the area defined on that RISC form, we 3 comply with the drawings that we were building to. 4 Q. The drawings? Do you say that those ticks are 5 indicating or sufficient to show that the appropriate 6 and proper inspections of the rebar and the connections 7 of the rebar to the diaphragm wall have been carried out 8 by Leighton? 9 A. Could you repeat the question, please? 10 Q. Yes. Do you say that the ticks indicating -- ticks on 11 those forms are sufficient to show that the appropriate 12 and proper inspections of the rebar and the connections 13 of the rebar to the diaphragm walls have been carried 14 out by Leighton? 15 A. Yes. 16 Q. And that remains your position, does it, Mr Harman? 17 A. Yes. 18 Q. Okay. 19 Could I ask you -- perhaps a slightly different 20 topic -- there is a non-conformance report procedure, 21 which I'm sure you're familiar with, Mr Harman. 22 A. Yes. 23 Q. We've been shown a guideline issued by Leighton -- 24 I don't know whether you've seen that guideline -- 25 perhaps we ought to have a look at it. It's at

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1 C35/26663.
 2 It's a document -- somewhere on the bottom, I think,
 3 it tells us its number. Go right down to the bottom,
 4 please. Keep going. Thank you.
 5 Yes, do you see the reference on the right-hand
 6 side, just under the number?
 7 A. Yes.
 8 Q. I think we know it as "GDL-121". I think that's the
 9 annotation that we've been using.
 10 A. Yes.
 11 Q. Is it a document you're familiar with, Mr Harman?
 12 A. Yes.
 13 Q. If we go back to the top, please, of the document, it's
 14 a document that's headed, "Non-conformance report
 15 classification", and its purpose is:
 16 "To describe the method of classifying defective
 17 work non-conformances."
 18 And classification methods are set out. What it
 19 does, as I understand it, is it helps the person filling
 20 out the NCR form to know how the form is to be filled
 21 out?
 22 A. Yes, that's right.
 23 Q. And there's no specific guidance in this document as to
 24 the criteria by which or the circumstances in which
 25 an NCR should or should not be issued; is that right?

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1 A. That's right.
 2 Q. So does Leighton have any document which assists in
 3 defining the circumstances as to when an NCR should be
 4 issued?
 5 A. Yes.
 6 Q. Where will we find that?
 7 A. It's a Leighton head office procedure called
 8 "non-conformance reports".
 9 Q. Right. We know from what we've seen from the MTR that
 10 as part of their PIMS documentation, there's
 11 an appendix, and the criteria that is stipulated by the
 12 MTR is that a non-conformance report should be issued
 13 when something significant occurs. So that's -- I know
 14 it's subjective but that's the word that's used in the
 15 MTR documentation.
 16 Can you recall what the criteria are in the Leighton
 17 material?
 18 A. Any deviation from criteria, like a drawing requirement
 19 or a material testing requirement, given tolerances, if
 20 you exceed or deviate the tolerances, or locationality
 21 of where something is constructed, any deviation on the
 22 allowable tolerances. It's focusing on product
 23 compliance.
 24 Q. Okay. So is this document or documents something that
 25 the personnel of Leighton working on the site, the

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1 sub-agent, the site agents, the construction managers --
 2 would they know about this document?
 3 A. They should.
 4 Q. We know in this particular matter, contract 1112, that
 5 a particular NCR was issued, that is no. 157. As
 6 I understand it, Mr Harman, you were involved in the
 7 decision to issue that NCR?
 8 A. Yes.
 9 Q. As I understand it, Andy Ip and yourself agreed that
 10 that NCR should be issued?
 11 A. Yes.
 12 Q. That was against the backdrop of having, as I understand
 13 it, seen a series of photographs and a description of
 14 what had been discovered?
 15 A. Yes.
 16 Q. Would you, as the quality assurance manager, Mr Harman,
 17 always be consulted when it was contemplated or thought
 18 that an NCR ought to be issued?
 19 A. I don't know.
 20 Q. Right. There was no protocol that said, "The quality
 21 manager must be consulted if we are going to issue
 22 an NCR"?
 23 A. Procedurally, they came through our team.
 24 Q. Right. So it may come to you or one of your team?
 25 A. We would know.

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1 Q. You would know. All right. And you kept a register of
 2 the non-conformance reports?
 3 A. Yes.
 4 Q. Okay. And it was your -- it was the quality team's
 5 obligation, was it, or responsibility to keep that
 6 register?
 7 A. The register was self-updating, and the monitoring of it
 8 and the communication of the status was the quality
 9 team's responsibility.
 10 Q. Right. When you decided, with Mr Ip, to issue NCR157,
 11 did you endeavour to find out, from those others
 12 involved, such as Edward Mok, about any history of this
 13 type of incident having happened before?
 14 A. No.
 15 Q. Because, as I understand it, on Leighton's evidence, it
 16 was Edward Mok who actually discovered this particular
 17 incident of the five defective bars that then were the
 18 subject matter of 157.
 19 Were you aware of that at the time that you decided
 20 to issue NCR157?
 21 A. No.
 22 Q. You were not? Okay. So does it follow that you doesn't
 23 speak to Mr Mok, Edward Mok, at the time that this was
 24 issued?
 25 A. I don't remember speaking to Edward.

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<p>1 Q. Okay. Was it drawn to your attention at the time, by 2 anybody -- obviously not Mr Mok -- that a couple of 3 previous incidents of a similar nature, albeit perhaps 4 on a lesser scale, had been observed? 5 A. No. 6 Q. So, on that basis, your decision to issue the NCR was 7 not based upon any sort of history of this type of 8 incident happening; it was based upon simply the events 9 of this one incident? 10 A. That's right. 11 CHAIRMAN: Could I ask you, briefly -- this one incident 12 contained a number of bars that hadn't been connected 13 correctly. The earlier incidents -- I think there had 14 been two isolated incidents of one failure and then one 15 failure -- if one of those earlier ones had come to your 16 notice, would you have considered it appropriate to 17 issue an NCR? 18 A. It sounds like yes. I'd maybe need more information. 19 CHAIRMAN: Yes. I tell you why I ask is because, perhaps 20 wrongly, I have gained the impression that the issue of 21 an NCR was at the time considered to be, as I think 22 somebody said, a yellow card, almost. It had to be 23 either a piece of malpractice of some seriousness or it 24 had to be an accumulation of some substandard practice. 25 A. My thinking is and my view is that when we offered</p>	<p>1 engineer; indeed, senior engineer. What he's dealing 2 with in this paragraph is three non-conformity items -- 3 we don't really need to worry too much about the 4 detail -- and a point arose in relation to the first 5 one. 6 What Mr Leung says is there was a capping 7 beam/portal frame incident, and "MTR stated that a BD 8 submission schedule was established on site to monitor 9 the progress of all BD submissions, which would be 10 reviewed jointly by MTR and Leighton on a weekly basis; 11 Leighton would appoint a senior engineer with BD 12 experience to keep track all BD submission; and all the 13 missing submissions would be addressed by the end of 14 June 2015." 15 Just pausing there and asking you to look at one 16 other document. Could I ask you, please, to look at 17 G11/8599. 18 This is a series of PowerPoint slides which were 19 prepared by MTR and related, amongst other things, to 20 the incident, the capping beam/portal frame point that 21 we have just looked at, and they were presented at 22 a meeting on 27 May 2015. 23 If we could look at page 8599, please, and as you 24 can see on this slide, it's really putting a bit more 25 flesh on the bones of what Mr Leung says in his</p>
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<p>1 something up for a formal inspection, if it didn't 2 comply with the requirements, then it was going to be 3 an NCR. 4 CHAIRMAN: Good. 5 MR PENNICOTT: Okay. Mr Harman, we know that also you were 6 involved in the ultimate closing out of NCR157, and 7 that, as I think you explain in your witness statement, 8 happened in January 2017 and was probably, you recall, 9 a result of Mr Lumb's investigation that we've heard 10 about. 11 A. Mm-hmm. 12 Q. Is that right? 13 A. Yes. 14 Q. And you've described how you have written on the form, 15 and I don't think we need to go and look at that. We 16 all understand, I think, what's happened. 17 A. (Nodded head). 18 Q. Good. 19 Then finally from me, Mr Harman, could I just ask 20 you to look at one point that cropped up yesterday, 21 which you may or may not be able to help us with. Can 22 I ask you, please, to be shown Jonathan Leung's 23 statement at paragraph 33, please. It is in G3/2084. 24 This is part of Jonathan Leung's statement, 25 Mr Harman. He's from the government, a government</p>	<p>1 statement. Picking it up at (2): 2 "MTR construction management/design management teams 3 and Leighton will review all BD submissions jointly on 4 a weekly basis; 5 (3) Leighton will appoint a senior engineer with 6 relevant BD experience to keep track [of] all BD 7 submissions". 8 And the question after all of that, Mr Harman, is: 9 do you know, do you have any recollection, of a Leighton 10 senior engineer being appointed for this purpose? 11 A. I don't know. 12 Q. You do not know? 13 A. (Shook head). 14 Q. This wasn't something that was referred to the quality 15 management team of Leighton at the time? 16 A. No. 17 MR PENNICOTT: All right. I rather thought that was going 18 to be the answer, but nonetheless ... 19 Mr Harman, thank you very much. 20 Sir, I have no further questions. I don't know 21 whether anybody else has any? 22 CHAIRMAN: Thank you. 23 MR SO: No questions from China Technology. 24 MS CHENG: Mr Chairman and Professor, there are some 25 questions from the government.</p>

Page 25	1 CHAIRMAN: Yes. 2 Cross-examination by MS CHENG 3 MS CHENG: Good morning, Mr Harman. 4 A. Good morning. 5 Q. My name is Bonnie Cheng; I am one of the counsel 6 representing the government. 7 Mr Harman, in paragraph 3 of your witness statement, 8 which we can find on page 26712 of bundle C35 -- 9 A. Yes. 10 Q. -- you mention that over the course of your career you 11 have worked on a number of MTR projects. 12 Can I ask you, is this contract, 1112, the first 13 project in which you encountered such an extensive use 14 of couplers for the diaphragm wall and the track slabs? 15 A. Yes. 16 Q. At paragraph 5 of your statement, Mr Harman, you 17 describe your main areas of responsibilities in relation 18 to the project, including "implementing Leighton's 19 quality and environmental management system, leading the 20 quality team, leading the environmental team", 21 et cetera. 22 Whilst we are on this subject about your areas of 23 responsibility, Mr Harman, can I refer you to Leighton's 24 quality assurance plan, which we can find in 25 bundle B6/3967.	Page 27	1 A. Mm-hmm. 2 Q. And lastly: 3 "-- carrying out follow-up activities to make sure 4 that a non-conformance has been closed-out and that 5 corrective action has been taken and is effective where 6 appropriate." 7 A. Mm-hmm. 8 Q. Surely, Mr Harman, you would accept that these are your 9 responsibilities at quality and environmental manager? 10 A. Yes. 11 Q. On that note, can we turn briefly to NCR157, which is in 12 B6/4121. 13 I understand that this was the first time in the 14 project when you became aware that the threaded ends of 15 a number of rebars had been cut off, when this 16 particular incident was discovered; is that correct? 17 A. Yes. 18 Q. Mr Harman, was that also the first time in your career 19 when you came across a defect in this particular form, 20 ie the threaded ends of rebars being cut? 21 A. Yes. 22 Q. At the time when this incident was brought to your 23 attention, did you know or were you told why some 24 workers would have chosen to cut the threaded ends of 25 rebars?
Page 26	1 Mr Harman, according to you, you were involved in 2 the preparation of this document. 3 A. Yes. 4 Q. If we turn to page 3983, at paragraph 3.2.3.3 we see the 5 responsibilities of you, Mr Harman, as quality and 6 environmental manager, and here it says the primary 7 responsibilities of you, Mr Harman -- 8 A. Yes. 9 Q. -- with respect to quality management include the 10 following. 11 I would like to draw particular attention to 12 a number of them. If we look down the list, we actually 13 see an item which says: 14 "-- providing advice following the detection of 15 non-conformities relating to sub-contractors' 16 activities". 17 It's at the bottom of the page. Do you see that? 18 A. Yes. 19 Q. If we turn over to the next page, the second item says: 20 "-- determining potential non-conformities and their 21 causes, evaluating the need for actions to prevent 22 occurrence of non-conformities and determining and 23 implementing preventive actions needed". 24 And we also have an item which says: 25 "-- assisting in proposing corrective action".	Page 28	1 A. No. 2 Q. Now, according to your witness statement, Mr Harman, you 3 assisted Mr Andy Ip, Leighton's sub-agent, to prepare 4 this particular NCR, so you obviously agreed that this 5 incident was sufficiently serious to warrant an NCR? 6 A. Yes. 7 Q. I would suggest to you that the cutting of the threaded 8 ends of rebars was obviously a deliberate as opposed to 9 an inadvertent act by the workers. Would you agree with 10 me on that? 11 A. I didn't know. 12 Q. Did that question occur to you at the time, as to how 13 the cutting would have come about? 14 A. I don't remember. 15 Q. I see. Now, Mr Harman, if we take a look at this page, 16 there is a box which contains an instruction, and there 17 it says: 18 "Please review ... and investigate the root cause of 19 the problem then propose your corrective actions with 20 a timetable implementation." 21 Do you see that, Mr Harman? 22 A. Yes. 23 Q. Presumably, this would be an instruction to Fang Sheung 24 to which this NCR was directed? 25 A. Yes.

Page 29	1 Q. Were you the person who put down this particular 2 instruction in this NCR? 3 A. Yes. It was a standard message on all our outgoing 4 transmittals. 5 Q. But it would appear to us, from the evidence so far, 6 Mr Harman, that despite this express instruction, no one 7 at the time had actually investigated into the root 8 cause of the problem. Do you accept that? 9 A. Yes. 10 Q. And no one at the time had proposed any corrective 11 action? 12 A. Yes. 13 Q. Did you at the time look into why no one had taken any 14 of these steps? 15 A. This was a first event and there was no -- I was not 16 aware of any previous event. So, therefore, I did not 17 propose corrective action on our NCR form. 18 Q. I appreciate that this was, as you said, the first event 19 in which a non-conformity of this nature took place, but 20 does that not make it even more important for Leighton's 21 quality team to look into the cause of the problem as 22 well as possible corrective actions? 23 A. Can you repeat the question, please? 24 Q. Given that this is the first time a non-conformity of 25 this sort happened, does that not make it even more	Page 31	1 understanding, from paragraph 18, which we can find on 2 page 26716 -- yes, there it is -- it says: 3 "In early January 2017, it came to my attention that 4 [this NCR] had not been formally closed out. I cannot 5 specifically recall but I believe it could have been the 6 investigation carried out by Stephen Lumb and Guntung 7 ... that prompted me to take steps to have [it] closed 8 out." 9 So I assume that was how the NCR came to be closed 10 out by you at the time? 11 A. It's true, but I also followed up all the outstanding 12 NCRs on a regular basis, and I think the investigation 13 report just gave an opportunity to put extra pressure to 14 close out the records. 15 Q. I see. Mr Harman, is it normal for an NCR to be closed 16 out more than a year after the incident happened? 17 A. Yes. 18 Q. It's a normal occurrence? 19 A. Yes. 20 Q. And is there any particular reason why an NCR of this 21 nature, which had been rectified on the same day, as we 22 understand it, had to remain outstanding until more than 23 a year later? 24 A. I believe it was poor communication. 25 Q. And by "poor communication" you're referring to
Page 30	1 important for the Leighton quality team to understand 2 the cause of the problem and to propose any corrective 3 action if necessary? 4 A. Yes. 5 Q. I say that because, Mr Harman, at the time this incident 6 happened, in the middle of December 2015, rebar fixing 7 works were still being carried out in the contract. 8 Does that accord with your recollection? 9 A. Yes. 10 Q. Did it occur to you at the time that it was important to 11 prevent recurrence of such a non-conformity, because 12 once the rebar fixing works were done and concrete was 13 poured it would be virtually impossible for such problem 14 to be detected or rectified? 15 A. Yes. 16 Q. Now, so the NCR, as we all know now, was only formally 17 closed out in January 2017? 18 A. Yes. 19 Q. And we understand from your witness statement that it 20 was upon the prompting of the investigation conducted by 21 Mr Stephen Lumb that you took steps to close out the 22 NCR? 23 A. No. 24 Q. Can I refer you to paragraph 18 of your statement, and 25 perhaps you could clarify this for me, because my	Page 32	1 communications between what parties? 2 A. My construction team and our quality team. 3 Q. Mr Harman, was there any system within Leighton for the 4 quality team to keep track of NCRs that had yet to be 5 closed out? 6 A. Yes. 7 Q. But it would appear that in this instance, the system 8 did not quite work out as we expected; is it fair to say 9 that? 10 A. Yes. Maybe the result. I don't know about the system. 11 The system I think is okay. 12 Q. Well, it causes some concern to me just now, because you 13 said it was quite normal for an NCR to be closed out 14 more than a year later, and you said the cause of it was 15 poor communication. So was poor communication a rather 16 normal phenomenon in the team? 17 A. No. 18 Q. Very well. If we can just go very briefly back to the 19 NCR, at B6/4127. We now know, Mr Harman, that the 20 handwritten "Details of required recollection" work were 21 put in by you? 22 A. Yes. 23 Q. And you filled this box in in January 2017, when you 24 closed out the NCR? 25 A. Yes.

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1 Q. I see, however, that the required rectification works
 2 were all couched in the future tense, even though such
 3 works, as we understand it, had been completed on
 4 15 December 2015.
 5 A. Mmm.
 6 Q. Now, would you agree that the information in this box
 7 and the date below could perhaps give rise to a wrong
 8 impression that they were actually filled in back on
 9 15 December 2015 rather than January 2017?
 10 A. It's possible.
 11 Q. Now, if we look a little bit further down this page, we
 12 see the signature of Mr Ian Rawsthorne, signifying his
 13 approval as project manager, and we understand from your
 14 witness statement at paragraph 19 that you were the one
 15 who wrote down the date again, 15 December, next to the
 16 signature of Mr Rawsthorne.
 17 A. Mm-hmm.
 18 Q. Again, would you agree that this could perhaps lead
 19 readers of this document into thinking that
 20 Mr Rawsthorne actually signed it back in December 2015?
 21 A. I don't know.
 22 CHAIRMAN: Could I just ask you -- I appreciate your answer
 23 in respect of impression, because of course impressions
 24 are subjective issues by third parties, but why was it
 25 that you would have put a date of 15 December 2015,

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1 which was retrospective?
 2 A. I think we had the valid RISC record that had
 3 15 December as the actual date, so I think it was based
 4 on a valid record.
 5 CHAIRMAN: All right. But this was a separate record.
 6 A. And it was referenced to the RISC record.
 7 CHAIRMAN: All right. Where is it referenced to the RISC?
 8 A. We reference it at the bottom. In handwriting it says
 9 "RISC/civil/11266".
 10 CHAIRMAN: I tell you why I ask -- because as a layperson,
 11 on the basis of the evidence that's been put before the
 12 Commission so far, my impression, perhaps wrongly, is
 13 that there was quite a lot of backdating or movements of
 14 dates for signing in the records that were kept.
 15 MR SHIEH: Sorry, before we go any further, if we are now
 16 talking about the handwritten date of 15 December next
 17 to the name and signature of Mr Rawsthorne, then it may
 18 or may not be the case that that is a reference to
 19 Mr Ian Rawsthorne's signature referred to earlier on
 20 this page at paragraph 17 of his witness statement,
 21 which would have been contemporaneous as of December
 22 2015, because at paragraph 17 this witness has actually
 23 talking about events involving asking Mr Rawsthorne to
 24 sign something in December.
 25 CHAIRMAN: I appreciate that. I was actually just looking

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1 at the first one that stands on its own, 15 December
 2 2015, above it.
 3 MR SHIEH: I see. Okay. That is a target --
 4 CHAIRMAN: It's just a question.
 5 A. I think on the RISC form --
 6 CHAIRMAN: It's not a criticism, it's just a question. I'm
 7 just saying, a lot of the time, people seem to say, "It
 8 was Monday, 12 December but in fact I made it April of
 9 that year because of ..."
 10 A. We can extrapolate from this case I'm only referring to
 11 this record. The dates were coming off of the RISC
 12 record and I don't think it was a normal situation.
 13 CHAIRMAN: All right. Okay. Thank you.
 14 MS CHENG: Mr Harman, perhaps just to clarify a minor point
 15 with you -- the reason why I asked you about the dating
 16 next to Mr Rawsthorne's signature is because I see in
 17 your witness statement at paragraph 19, in the middle of
 18 that paragraph you explain that you had to complete the
 19 "Details of required rectification" in another version
 20 of this NCR and you refer to the page we just looked at,
 21 at 4127. Then you go on to mention that you handed this
 22 document, after you wrote in the information by hand,
 23 "to Andy Ip and Ian Rawsthorne for their signature".
 24 So am I correct to understand that Mr Rawsthorne
 25 actually signed on this particular page in January 2017?

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1 A. That's correct.
 2 Q. Now can I move on to a slightly different topic. At
 3 paragraph 20 of your statement, you said:
 4 "On 6 January 2017, Anthony Zervaas showed me a copy
 5 of the email that he received from Jason Poon on
 6 6 January 2017 ..."
 7 Now, you refer us in that paragraph to one version
 8 of this email which we can find in C12/7923. I do not
 9 propose to go through this email in detail, as I believe
 10 everyone in this room has seen this multiple times.
 11 I only wish to refer to one paragraph, in the middle of
 12 the page, just below paragraph number 3, where Mr Poon
 13 said he was attaching to the email two photos taken on
 14 22 September 2015, which according to him showed "two
 15 Leighton labour cut away the threading section of the
 16 threaded lapping bars and installed them onto the west
 17 shear face on the diaphragm wall".
 18 Now, this particular version of the email does is
 19 not followed by the photos mentioned in this paragraph
 20 of the email, but I'm just wondering, Mr Harman, when
 21 you read this email back in January 2017, did you
 22 actually see the attached photos?
 23 A. I don't remember.
 24 Q. Do you in fact remember this particular paragraph to
 25 which I drew your attention?

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1 A. Yes.
 2 Q. Did you remember if --
 3 A. Actually, I'm sorry, I'm not sure.
 4 Q. You're not sure? Perhaps I can show you the photos to
 5 see if we can jog your memory. They can be found in
 6 B10, in which we have another version of this email in
 7 7524. This was the same email which we saw just now,
 8 and the attached photos are at 7526 and 7527.
 9 Do these photos happen to jog your memory,
 10 Mr Harman?
 11 A. Yes.
 12 Q. By that you mean you have actually seen them at the time
 13 when you were shown the email?
 14 A. I think I saw them this year.
 15 Q. This year?
 16 A. Yes.
 17 Q. So you don't remember if you saw them back in January
 18 2017?
 19 A. I don't recall seeing them.
 20 Q. I understand that you have said, in paragraph 20 of your
 21 statement:
 22 "When I read Mr Poon's email, my first thought was
 23 that the allegation could not be credible."
 24 You said in your statement:
 25 "I did not believe Mr Poon's allegation that there

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1 was a large number of cut rebar installed in the slabs
 2 because I was only aware of a single incident", and that
 3 is the NCR157 we just looked at, "when five defective
 4 rebars were identified and rectified."
 5 Mr Harman, leaving aside the alleged extent or scale
 6 of the problem, can I ask you this. If you have not
 7 actually seen the photos at the time or you don't
 8 remember seeing the photos at the time, how could you
 9 then have concluded that Mr Poon's allegations would be
 10 incredible?
 11 A. Because there are so many supervisors and construction
 12 engineers implementing the ITPs and the RISC forms and
 13 the checklists, I just can't see how it could get
 14 through the system.
 15 Q. So you are saying that because of Leighton's supervision
 16 and inspection system, any single incident like this
 17 would have been detected?
 18 A. It should be.
 19 Q. I see.
 20 Now, if we move on to a related topic, which is the
 21 QSP. There is just one point I wish to clarify with you
 22 first, Mr Harman, because in paragraph 7 of your witness
 23 statement, you said that you were aware of a particular
 24 QSP titled "Quality supervision plan for installation of
 25 couplers in diaphragm wall and barrettes", and you

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1 provided a reference to this particular QSP.
 2 A. Yes.
 3 Q. Were you also, at the time of this project, aware of
 4 another QSP for ductility coupler for diaphragm wall
 5 reinforcement cage and slab construction?
 6 A. Could you please the title, please?
 7 Q. Certainly. Perhaps it would be best if I can show you
 8 the document. It's H9/4262.
 9 This is a letter from MTRC to the Buildings
 10 Department, and the title of the document I just
 11 referred to is set out in the first paragraph of this
 12 letter; do you see that?
 13 A. Yes, I see it.
 14 Q. And the document we can find at 4265.
 15 Now, as this document wasn't specifically referred
 16 to in your witness statement, I would only like to check
 17 with you whether you were also, at the time of this
 18 project, aware of this QSP.
 19 A. No.
 20 Q. Mr Harman, was it your understanding that, leaving aside
 21 whether you have seen or were aware of this document, do
 22 you accept that the requirements in the QSP for the
 23 supervision of coupling works apply also to the EWL
 24 slab?
 25 A. I don't know.

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1 Q. You don't know? So you mean at the time when you were
 2 quality manager of Leighton you did not have any
 3 knowledge as to whether there is a QSP with supervision
 4 and inspection requirements applicable to the coupling
 5 works at the EWL slab?
 6 A. I don't remember any.
 7 CHAIRMAN: Perhaps if Mr Harman is made aware of what the
 8 actual requirements were.
 9 MS CHENG: Certainly, yes.
 10 Mr Harman, may I perhaps take you to the more
 11 important parts of this QSP, which we can find in 4269.
 12 We see here, at paragraph (5)1 which says,
 13 "Supervision and inspection by RC on site --
 14 installation works", and here it says:
 15 "Quality control supervisors (RC)", which we know
 16 would be Leighton in this project, "will [be]
 17 responsible to carry out full-time and continuous
 18 supervision of the splicing assemblies on site."
 19 A. I understand what it's saying, but I'm not familiar with
 20 this document.
 21 Q. You're not familiar with this document?
 22 A. Because of the title.
 23 Q. Now, for the document which you have specifically
 24 referred to at paragraph 7, which concerned the
 25 diaphragm wall and the barrettes, in fact contain

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1 an identical requirement for full-time and continuous
 2 supervision of splicing assemblies on site. Do you
 3 recall that?
 4 A. It sounds familiar.
 5 Q. But it remains to be your evidence that you did not at
 6 the time know whether the QSP requirements, including
 7 the one I've just shown you, apply to the coupling works
 8 in the EWL slab; that remains to be your evidence?
 9 A. Yes.
 10 Q. Very well.
 11 In that case, Mr Harman, I have no further questions
 12 for you.
 13 A. Thank you.
 14 CHAIRMAN: Thank you. MTR?
 15 MR BOULDING: No questions from me, sir.
 16 CHAIRMAN: Thank you.
 17 MR CONNOR: None from me, sir. Thank you.
 18 MR SHIEH: No re-examination, but subject to any questions
 19 by the Commission may have.
 20 Questioning by THE COMMISSIONERS
 21 COMMISSIONER HANSFORD: I just have a couple of questions
 22 Mr Harman. I'm still struggling a little bit with this
 23 Leighton quality assurance plan which you produced or
 24 you were involved in the preparation of. You mention it
 25 in paragraph 8, and you have already told us it was

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1 prepared to satisfy MTRCL's requirements, and it was
 2 based on standard Leighton documents.
 3 My understanding is that that was the document that
 4 the construction team would use to implement quality
 5 assurance on site. Is that right?
 6 A. Yes.
 7 COMMISSIONER HANSFORD: This is a bit of a hypothetical
 8 question, I suppose, but had you been aware of the QSP
 9 requirements for the slabs, is that the sort of thing
 10 that would have been in the quality assurance plan?
 11 A. It's connected to the plan through section 6, and we
 12 talk about the other supporting system documents, like
 13 inspection and testing plans, and we also have general
 14 plans. So QSPs, site supervision plans, to me are
 15 plans.
 16 COMMISSIONER HANSFORD: Yes.
 17 A. And then we had a groupware database called Incite, and
 18 one of the modules in the database was controlled
 19 technical documents. So all of the plans, inspection
 20 testing plans, method statements, which are associated
 21 and supporting documents to the quality plan, are
 22 available to the project team through the database.
 23 It's a groupware.
 24 COMMISSIONER HANSFORD: So that's the means by which the
 25 construction team should have been aware of the QSP

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1 requirements?
 2 A. The construction team prepared the QSPs, and then they
 3 would need to be internally reviewed and approved, and
 4 then they would be uploaded to the Incite controlled
 5 documents module.
 6 COMMISSIONER HANSFORD: All right. Thank you for that.
 7 My other question is a little bit of clarification
 8 on an answer you gave earlier, because you were asked
 9 about whether -- in what circumstances an NCR would be
 10 raised by Leighton, and I think your answer was
 11 around -- an NCR would be raised if any works are
 12 offered up for inspection and they contain
 13 non-conforming works. Is it that --
 14 A. It's the -- if you have the objective evidence of
 15 deviation from an approved requirement.
 16 COMMISSIONER HANSFORD: So, therefore, if I've understood
 17 that correctly, the deviation that you refer to would be
 18 identified not by Leighton but by MTR; is that correct?
 19 A. No. It could be identified by us, it could be
 20 identified by MTR, it could be jointly identified. In
 21 some cases, like material testing, even the QA team
 22 might get the test report.
 23 COMMISSIONER HANSFORD: Right.
 24 A. And then we would identify, perhaps, that a concrete
 25 hadn't achieved the required strength, and then

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1 a non-conformance report could be raised.
 2 COMMISSIONER HANSFORD: Okay. So when you say "offered up
 3 for inspection", it could be offered up for inspection
 4 by a supplier or by a sub-contractor; is that --
 5 A. I mean the formal offering up through the RISC form. We
 6 have done our internal inspection using the checklist,
 7 and then that checklist would be attached to the RISC
 8 form to give confidence to MTR that Leighton had carried
 9 out the inspection first, and then they came and would
 10 inspect jointly and then put the result on the RISC
 11 form.
 12 COMMISSIONER HANSFORD: So, therefore, the deviation would
 13 have been after Leighton had already inspected and --
 14 A. Often that was the case.
 15 COMMISSIONER HANSFORD: So, therefore, it would be
 16 identified by MTR?
 17 A. You could have a combination of different situations.
 18 So, in the case of 157, we had a proactive case where
 19 photos came into my possession.
 20 COMMISSIONER HANSFORD: Right.
 21 A. And then the duty was to immediately investigate, to
 22 find if this was going to be a non-conformance, to make
 23 sure that the photos were captured into the system, so
 24 it wasn't overlooked. That's one situation.
 25 Another situation is formal inspection with MTR and

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<p>1 the result didn't meet the requirement. There could 2 even be a re-inspection; it still didn't work out, maybe 3 it couldn't be fixed or reworked, so it had to be 4 a non-conformance, to track the solution in the closing 5 out.</p> <p>6 Another possibility is the survey case, joint survey 7 is done by MTR and Leighton. Sometimes MTR produces the 8 final survey record on a RISC form, and then it would 9 show an out of tolerance for an as-built element, and 10 then we have to raise a non-conformance report. In some 11 of those cases, the result is coming through the quality 12 team first and then we would detect it through the 13 failed RISC inspection database, and then we would 14 liaise with the construction engineering team to arrange 15 the NCR.</p> <p>16 COMMISSIONER HANSFORD: I see. So really the NCR is to 17 track that the identified remedial work is actually 18 carried out; that's its purpose?</p> <p>19 A. The primary purpose.</p> <p>20 COMMISSIONER HANSFORD: And the secondary purpose?</p> <p>21 A. To detect repeated occurrences.</p> <p>22 COMMISSIONER HANSFORD: Right. Repeated occurrences that 23 have previously been identified through an NCR?</p> <p>24 A. It allows us to evaluate if we have repeating defects 25 through the non-conformance process.</p>	<p>1 Then there was another awareness training called 2 Incite training which was the introduction to the 3 groupware, which was how we implemented the requirements 4 for the quality plan, through the groupware database 5 systems. A lot of it required direct data entry into 6 the system, in order to generate reports, so we could 7 track the status of processes.</p> <p>8 Then also those trainings would have covered the 9 inspection requirements and once they learned about the 10 training for the Incite they would know where to find 11 inspection and testing plans and method statements, 12 which are process-specific. Then, if they had further 13 questions about how to, usually their site agents would 14 help to provide coaching.</p> <p>15 CHAIRMAN: All right. So your quality assurance plan, which 16 through one of its clauses or one of its chapters 17 actually opens a window to other plans, they would know 18 their way around, hopefully, the quality assurance plan, 19 which would include knowledge of the fact that there are 20 other plans which are part of sort of the group system?</p> <p>21 A. Yes.</p> <p>22 CHAIRMAN: And they can find their way to that?</p> <p>23 A. Yes.</p> <p>24 CHAIRMAN: So they would be able to find their way to the 25 requirements under the QSP, if they had a specific job</p>
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<p>1 COMMISSIONER HANSFORD: Yes.</p> <p>2 A. It also has commercial use as well. The commercial team 3 is interested in how much is being spent on remedial 4 works.</p> <p>5 COMMISSIONER HANSFORD: Ah.</p> <p>6 A. It has programming interest, because the closing out of 7 the NCRs can cause prolongation to the programme.</p> <p>8 COMMISSIONER HANSFORD: Yes. Okay. Thank you. 9 I understand.</p> <p>10 CHAIRMAN: Just a couple of questions also on the one 11 subject.</p> <p>12 We know that the QSP laid down certain requirements 13 for inspection of the coupling works, with the couplers 14 and the rebars. If I'm a new engineer on site, and I am 15 being given responsibilities for inspection, what do 16 I do to find out what my responsibilities are in respect 17 of inspecting the junctions between the slab and, say, 18 the diaphragm walls?</p> <p>19 A. New engineers coming into our site would have a few 20 training courses that they would receive.</p> <p>21 CHAIRMAN: Yes.</p> <p>22 A. The first one was called the project management plan, 23 which contains the contents of the quality plan, 24 awareness training, and everybody received that training 25 when they joined the project.</p>	<p>1 of inspecting the junction between diaphragm walls and 2 slab and as to the use of couplers and how they should 3 be inspected?</p> <p>4 A. That's correct.</p> <p>5 CHAIRMAN: Good. Thank you very much.</p> <p>6 Mr Shieh, anything arising?</p> <p>7 MR SHIEH: I was just tracking the wording of one question. 8 Perhaps I should for safety reasons clarify an answer.</p> <p>9 Re-examination by MR SHIEH</p> <p>10 Q. Mr Harman, just a brief line of questioning by way of 11 re-examination.</p> <p>12 Remember when Prof Hansford asked you specific 13 questions about the circumstances when an NCR would be 14 raised by Leighton, and you mentioned that it would be 15 issued if -- I'm just looking at the wording -- when 16 things are offered for inspection. Then Prof Hansford 17 clarified with you the meaning of "offering up for 18 inspection", and you said "formal offering up through 19 the RISC form". Do you remember that line of 20 questioning?</p> <p>21 A. Yes.</p> <p>22 Q. Then Prof Hansford asked you: "the deviation would have 23 been after Leighton had already inspected?", and you 24 said, "Often that was the case", and Prof Hansford 25 asked, "So, therefore, it would be identified by MTR?",</p>

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<p>1 and then your answer was, "You could have a combination 2 of different situations. So, in the case of 157, we had 3 a proactive case where photos came into my possession." 4 Now, my question is this. To your understanding of 5 the way in which the NCR system had worked for 6 contract 1112, was there any limitation or restriction 7 as to the time at which any non-conformity is 8 discovered? And by that I mean is there any limitation 9 or restriction that NCRs are limited to non-conformities 10 discovered as a result of routine patrolling or formal 11 inspection raised by a RISC form or pre-pour checks; is 12 there any? 13 A. Generally not by routine patrolling but more on the 14 formal end-of-process inspection. 15 MR SHIEH: Thank you very much. I have no further 16 questions. 17 CHAIRMAN: Good. Thank you. 18 Mr Harman, thank you very much indeed. You have 19 been very helpful. Your evidence is now completed. 20 WITNESS: You're welcome. 21 CHAIRMAN: Thank you. 22 (The witness was released) 23 It looks like quite appropriate timing. 24 MR PENNICOTT: 15 minutes, sir, then back to the government 25 CHAIRMAN: Certainly. 15 minutes. Thank you.</p>	<p>1 Q. It's a statement dated 13 September this year; do you 2 see that? 3 A. Correct. 4 Q. You confirm that that is your signature put at the end 5 of this witness statement? 6 A. Yes, it's my signature. 7 Q. You confirm that the contents of this witness statement 8 are true to the best of your knowledge, understanding 9 and belief? 10 A. Correct. 11 Q. Then we can have a look at your second witness 12 statement, which appears at H20, page 40054. 13 A. I see that. 14 Q. This is your second witness statement. It is slightly 15 shorter than the last one. It has 11 pages and goes all 16 the way to 40064. 17 A. I see that. 18 Q. This second witness statement is dated 16 October this 19 year; do you see that? 20 A. I see that. 21 Q. Thank you. You also see your signature at the end of 22 this statement? 23 A. I see that, yes, correct. 24 Q. You confirm that the contents of this second witness 25 statement are true to the best of your knowledge,</p>
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<p>1 (11.32 am) 2 (A short adjournment) 3 (11.51 am) 4 MR KHAW: Mr Chairman, the government calls Mr Ho Hon Kit. 5 Mr Ho, good morning. Your full name is Ho Hon Kit; 6 is that right. 7 WITNESS: (Via interpreter) Correct. 8 MR KHAW: You are also known as Humphrey Ho. 9 WITNESS: (Via interpreter) Correct. 10 MR HO HON KIT, HUMPHREY (affirmed in Punti) 11 (All answers given via simultaneous interpreter 12 except where otherwise specified) 13 Examination-in-chief by MR KHAW 14 MR KHAW: Mr Ho, would you like to give your evidence in 15 Cantonese or in English? 16 A. (In English) Cantonese. 17 Q. For the purpose of this Commission of Inquiry, we 18 understand that you have given three witness statements. 19 If we can take a look at those witness statements 20 one by one. The first witness statement of yours 21 appears at H7/2167. Can you find that? 22 A. Yes. 23 Q. Thank you. It consists of a number of pages, about 24 20 pages. If we can take a look at 2186. 25 A. Yes.</p>	<p>1 understanding and belief? 2 A. Yes, correct. 3 Q. Then you made your third witness statement which appears 4 at H21, page 40567. 5 A. I see that. 6 Q. This witness statement has also about 11 pages. It ends 7 at 40577; do you see that? 8 A. Yes, I see that. 9 Q. You also see the date which is 27 November this year? 10 A. I see that. 11 Q. Do you confirm that your signature is put at the end of 12 this witness statement? 13 A. Correct. 14 Q. However, we understand that in relation to this witness 15 statement, you intend to rely on only certain 16 paragraphs, and we have actually prepared an extract in 17 relation to this third witness statement, as we 18 discussed earlier. 19 The extract can be found at page 40579. 20 A. I see that. 21 Q. You confirm that the contents of this extract, which is 22 in fact part of your third witness statement, are true 23 to the best of your knowledge, understanding and belief? 24 A. Yes, I confirm that. 25 Q. You also intend to rely on the contents of the three</p>

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1 documents that we have just looked at for the purpose of
 2 this Inquiry?
 3 A. Correct.
 4 Q. There are only a few questions that I wish to go through
 5 with you.
 6 If I may take you to have a look at your second
 7 witness statement.
 8 Before I do that, actually, I will see whether I can
 9 meet Mr Pennicott's requirements this time, by trying
 10 once again to look at the organisation chart. It's at
 11 H7/2657.
 12 On the right-hand side of this page, you can see
 13 there's a simplified structure of the Buildings
 14 Department, and we can see that there are two "Assistant
 15 Director/New Buildings 1 (AD/NB1)", and then there's
 16 an "Assistant Director/New Buildings 2"; do you see
 17 that?
 18 A. I see that.
 19 Q. I take it that your present position is Assistant
 20 Director/New Buildings 2; am I correct?
 21 A. Correct.
 22 Q. If we take a look at your first witness statement, at
 23 page H7/2167. We understand that you took up your
 24 present position in December 2017; is that correct?
 25 A. Correct.

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1 Q. Can you tell us your position before that?
 2 A. I was the Chief Structural Engineer of the Kowloon
 3 District.
 4 Q. Right. How long did you stay in that position?
 5 A. From September 2015 to December 2017.
 6 Q. Can you tell us your position before September 2015 as
 7 well?
 8 A. I was in another section. I was the Chief Structural
 9 Engineer of the New Territories.
 10 Q. If we can now take a look at your second witness
 11 statement, which starts from H20/40054.
 12 Can I ask you to turn to paragraph 23, at 40062.
 13 There you mentioned two sets of submissions, and we
 14 understand that they actually are submissions in
 15 relation to the temporary excavation works --
 16 A. Correct.
 17 Q. -- for Hung Hom Station area C.
 18 The first submission that you referred to in
 19 paragraph 23 is a submission dated 29 July 2015. If we
 20 can just perhaps take a look at that particular
 21 document. B12. It starts at 8888. Can you find that?
 22 A. Yes.
 23 Q. We can see from the heading of this letter of
 24 submission, it says:
 25 "SCL instrumentation of exemption submission to

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1 Buildings Department", et cetera, "Design report for
 2 Hung Hom Station excavation and lateral support for
 3 area C1 and C2 -- excavation below minus 0.5mPD
 4 (amendment submission)" -- do you see that?
 5 A. Yes.
 6 Q. Then if we can take a look at certain certificates
 7 prepared for the purpose of this submission. You will
 8 be able to see at 8891. Can you see the certificate
 9 prepared by the CP --
 10 A. Yes.
 11 Q. -- of MTR, and the submission title is the strutting for
 12 area C, in particular C1 and C2; do you see that?
 13 A. Yes.
 14 Q. So that is what has been taken to be the temporary
 15 excavation works submissions for C1 and C2 area.
 16 A. Yes.
 17 Q. Thank you. Then we can just have a very quick look at
 18 the other submission. It appears at C26/19996. Do you
 19 see that?
 20 A. I see it.
 21 Q. I take it that it is a similar temporary excavation
 22 works submission, albeit in relation to another area,
 23 C3; is that correct?
 24 A. I can see it.
 25 Q. If we then just move on to look at the following

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1 paragraph of your witness statement or your second
 2 witness statement: H20/40062. I just try to put things
 3 in context for the time being.
 4 A. I understand that.
 5 Q. "At the outset, I would like to point out that the two
 6 consultation submissions were made by MTRCL for design
 7 of temporary works for excavation at area C, including
 8 the design checking on permanent slab during the
 9 temporary excavation stage. They do not constitute
 10 consultation submissions for the change of construction
 11 and [reinforcement] details at the connection between
 12 the platform slab and the east diaphragm wall.
 13 Accordingly, BD cannot be regarded as having accepted
 14 such proposed changes in the connection."
 15 Then you went on to talk about section 6.2 of
 16 a design report which was actually attached to the
 17 temporary excavation works submissions, and I believe we
 18 have seen that many times, but just for the record,
 19 since you are here, I would ask you to have a look at
 20 B12 --
 21 MR PENNICOTT: Sir, I've been patient so far, but presumably
 22 Mr Khaw is going to invite Mr Ho to tell us when he
 23 first saw these submissions. Given the first questions
 24 in examination-in-chief as to his positions up until one
 25 year ago, I would be interested to know when Mr Ho first

<p style="text-align: right;">Page 57</p> <p>1 saw these submissions.</p> <p>2 MR KHAW: Thank you, Mr Pennicott.</p> <p>3 Mr Ho, can you tell us when you first saw the</p> <p>4 submissions for the temporary excavation works?</p> <p>5 A. A few months before this Commission started its work.</p> <p>6 I saw these at that time.</p> <p>7 Q. Thank you. Then if we can now have a look at section --</p> <p>8 B12/9034.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. 6.2, under the heading of "Construction sequence", and</p> <p>12 then we have the three famous paragraphs highlighted in</p> <p>13 yellow; do you see that?</p> <p>14 A. Yes, I can see them.</p> <p>15 Q. First of all:</p> <p>16 "The top of diaphragm wall panel will be trimmed to</p> <p>17 the lowest level of top rebar for the EWL slab (minimum</p> <p>18 420mm below the top level of EWL slab).</p> <p>19 The top rebar of EWL slab at the D-wall panel will</p> <p>20 then fix to the top rebar of OTE slab to achieve full</p> <p>21 tension laps.</p> <p>22 The EWL slab and OTE slab will be casted</p> <p>23 concurrently with temporary openings [above] the</p> <p>24 existing columns and pile caps."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 59</p> <p>1 design change in relation to the trimming down of the</p> <p>2 diaphragm wall.</p> <p>3 What is your view on this suggestion?</p> <p>4 A. I don't agree. These paragraphs show an intention to</p> <p>5 change the design for the diaphragm wall. A lot of</p> <p>6 details are not found here. For example, where will the</p> <p>7 demolition take place and the depth and extent of the</p> <p>8 trimming and what would happen to the rebars in the</p> <p>9 diaphragm wall, and then there would be another round of</p> <p>10 concreting. All these information cannot be found in</p> <p>11 the document. We need such information. They should</p> <p>12 have made another submission to BD, setting out all the</p> <p>13 details in the form of drawings for our approval.</p> <p>14 Q. Thank you. If we can now take a look at the drawings</p> <p>15 that you referred us to. If we can have a look at</p> <p>16 B13/10434.</p> <p>17 If we look at this particular drawing, can you tell</p> <p>18 us whether the details as shown in this drawing are in</p> <p>19 support of what you just told us?</p> <p>20 A. No. The trimming of the top of the diaphragm wall is</p> <p>21 not shown here. At the top, you can still see couplers</p> <p>22 for fixing with the EWL slab or OTE slab. No</p> <p>23 information of the previous paragraphs are shown here.</p> <p>24 Q. If we can maybe have a look at the next page. Perhaps</p> <p>25 we can just blow up the middle part a little bit. What</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Yes.</p> <p>2 Q. Thank you. Then if you go back to your witness</p> <p>3 statement, paragraph 25, you say:</p> <p>4 "In section 6.2 of the design report, which was</p> <p>5 attached to MTRCL's letter dated 29 July 2015, Atkins</p> <p>6 stated that the top of diaphragm wall panel will be</p> <p>7 trimmed down. However, the drawings submitted</p> <p>8 (including the excavation sequence ...) did not provide</p> <p>9 the relevant demolition sequence or revised details of</p> <p>10 diaphragm walls. In particular, the drawings in</p> <p>11 appendix H to the design report still showed that</p> <p>12 couplers were to be used at the connection between the</p> <p>13 diaphragm wall and slab. In the premises, section 6.2</p> <p>14 cannot be regarded as any proper consultation submission</p> <p>15 to BD for acceptance of the alteration to the completed</p> <p>16 diaphragm wall or revision of the reinforcing details at</p> <p>17 the connection between the platform slab and the</p> <p>18 diaphragm wall."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Now, throughout this Inquiry we have heard evidence and</p> <p>22 we have heard also some suggestion that in view of the</p> <p>23 contents of the three paragraphs highlighted in yellow</p> <p>24 in section 6.2 of the design report that we have just</p> <p>25 seen, BD should be taken to have no objection to the</p>	<p style="text-align: right;">Page 60</p> <p>1 about the details in relation to this particular</p> <p>2 drawing?</p> <p>3 A. Again, nothing related to the aforementioned paragraphs</p> <p>4 is shown here.</p> <p>5 Q. Maybe we can have a look at some further details at</p> <p>6 page 10557. If we can blow up a bit the diagram on the</p> <p>7 right. Yes, thank you.</p> <p>8 Looking at this particular diagram, do the</p> <p>9 particulars shown in this diagram further support what</p> <p>10 you just told us?</p> <p>11 A. No information related to the aforementioned paragraph</p> <p>12 is shown here either.</p> <p>13 Q. If we can take a look at your third witness statement.</p> <p>14 Just focus on the extract, page 40580.</p> <p>15 In paragraph 28, you say:</p> <p>16 "After the ELS plan submissions, MTRCL submitted 10</p> <p>17 permanent works amendment submissions for Hung Hom</p> <p>18 Station primary structure for area C", which is what you</p> <p>19 call the "permanent works amendment submissions".</p> <p>20 A. Yes.</p> <p>21 Q. And they were made after the temporary works</p> <p>22 submissions.</p> <p>23 A. Yes.</p> <p>24 Q. Then you refer to a list of permanent works amendment</p> <p>25 submissions. Then, however, you say:</p>

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1 "... the structural details for the change in
 2 question were not shown in the drawings attached to the
 3 said submissions."
 4 Do you see that?
 5 A. Yes.
 6 Q. If we can just take a look at some of those submissions.
 7 First of all, if I can take you to B10, page 7322. It's
 8 a letter dated 30 July 2015; do you see that?
 9 A. Yes, I see that.
 10 Q. That is one of the permanent works amendment submissions
 11 that you referred us to; is that correct?
 12 A. Correct.
 13 Q. Now, if we go to the design report relevant to this
 14 particular submission, at C17/12144, there's
 15 a section 8.2 in relation to construction sequence; do
 16 you see that?
 17 A. I see that.
 18 Q. I think we can put this page on the screen for the time
 19 being, and if we can put also B12, page 9034 side by
 20 side.
 21 Can you tell us whether the contents of the three
 22 highlighted paragraphs, which appeared originally in
 23 section 6.2 of the design report for the temporary
 24 excavation works, still appeared in the "Construction
 25 sequence" section in the permanent works submissions?

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1 A. They no longer appeared.
 2 Q. Maybe we can take one more example. That is in relation
 3 to the 4 November 2015 submission. We can have a look
 4 at B16/13758. Yes.
 5 Here also, under section 8.2, under the heading of
 6 "Construction sequence", can you tell us whether the
 7 three highlighted paragraphs in the original design
 8 report, ie in the original 6.2, still appear in this
 9 permanent works submissions?
 10 A. Again, they no longer appeared.
 11 Q. Thank you. Now, in your witness statement, you told us
 12 that the amendment submissions for the intended change,
 13 ie the trimming down of the diaphragm wall and also the
 14 use of through-bars instead of couplers, et cetera --
 15 the amendment submissions should have been made before
 16 the relevant works were commenced; do you remember that?
 17 A. Yes.
 18 Q. Can you tell us why this would be necessary?
 19 A. According to the instrument of exemption issued by the
 20 Building Authority on HUH Station, the MTRC had to
 21 submit a management plan. Before the commencement of
 22 any works, including new submissions or modifications,
 23 they must be submitted to the Buildings Department for
 24 approval. This modification involved completed
 25 diaphragm walls and, as I explained, they need to

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1 provide various information through submissions and such
 2 information must be included on the drawing plans.
 3 So, for modifications, submissions must be sent to
 4 the Buildings Department before the modifications could
 5 commence.
 6 Q. Thank you.
 7 Finally, I would like you to just have a look at
 8 certain parts of the transcript, in relation to Mr Jason
 9 Wong's evidence. It's Day 31, page 161, line 21. This
 10 is Mr Jason Wong's evidence:
 11 "And when Buildings Department accepted my
 12 appointment as CP, I think they know that I'm not
 13 daily -- I'm not responsible on a daily execution of the
 14 contract under 1112.
 15 Question: On what basis -- what gave you that
 16 understanding?
 17 Answer: Because the area of responsibility has been
 18 made known to the RDO and Buildings Department for some
 19 time, when I was -- when Aidan and myself were appointed
 20 as general managers respectively for different areas of
 21 the works. So I think the Buildings Department and RDO
 22 know full well which contract that I am responsible for
 23 managing on a daily basis. So if they accepted my
 24 appointment as competent person but they know I'm not
 25 responsible for the day-to-day execution of the works,

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1 I think they should have [understood] that sort of
 2 different responsibility under myself. That's my
 3 interpretation, again."
 4 Do you have any comment on Mr Jason Wong's evidence
 5 in this respect?
 6 A. I do not agree with his view. Under the IoE
 7 arrangement, the CP would carry out the work of the AP
 8 and RSE. As the contract CP, he must be responsible for
 9 everything relevant. For all the incoming submissions
 10 and the acceptance letters issued, they are all
 11 addressed to the CP. So he was obliged to fulfil all
 12 the responsibilities as CP and all the conditions in the
 13 letter must be complied with.
 14 Q. Thank you. In relation to Mr Jason Wong's evidence,
 15 another part that he's covered appears at page 148 of
 16 the same transcript. It starts from line 8. The
 17 question was:
 18 "Regarding devising checklists, are you familiar
 19 with the requirement under the Code of Practice, in
 20 particular table 5.1, as to the items that you have to
 21 include in the checklist?"
 22 Then Mr Wong said:
 23 "Yes.
 24 Question: Do I need to take you to that table?
 25 Answer: I think I'm reasonably familiar with that.

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<p>1 Question: Good. Thank you.</p> <p>2 The last item under the AP stream requires the</p> <p>3 checklist to take into consideration the specific</p> <p>4 requirements set out by the Building Authority under the</p> <p>5 approval letters --</p> <p>6 Answer: Yes.</p> <p>7 Question: -- and in this particular case it means</p> <p>8 the acceptance letters?</p> <p>9 Answer: Well, I would disagree, because that says,</p> <p>10 in the Code of Practice, 'approval of plans' which is</p> <p>11 exempted [from] the Buildings Ordinance, under the</p> <p>12 IoE/IoC. So those are relating to approval plans and</p> <p>13 consent requirement, which is exempted. So that's why</p> <p>14 I would not include those acceptance conditions which is</p> <p>15 under the consultation submission submit under the IoE</p> <p>16 into the checklist. Different things."</p> <p>17 Then he went on to say:</p> <p>18 "Sorry, I don't want to confuse my people of their</p> <p>19 statutory and non-statutory responsibilities, put it</p> <p>20 this way.</p> <p>21 Question: So your understanding at that time is,</p> <p>22 notwithstanding the requirement under table 5.1 of the</p> <p>23 Code of Practice, you consider that because we have</p> <p>24 a different procedure under the IoE, there was no</p> <p>25 approval letter --</p>	<p>1 according to our Code of Practice for Site Supervision,</p> <p>2 the requirements must be added to the checklist.</p> <p>3 Q. Perhaps we can take a look at the acceptance letter or</p> <p>4 perhaps one of the attachments to the acceptance letter,</p> <p>5 at H9/3901.</p> <p>6 There we see certain conditions on mechanical</p> <p>7 couplers for steel reinforcing bars for ductility</p> <p>8 requirement; do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And paragraph (b) sets out what the CP actually should</p> <p>11 do; do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that in support of what you just told us regarding</p> <p>14 your comments on Mr Wong's evidence?</p> <p>15 A. In this appendix, under subparagraph (b), the CP should</p> <p>16 design the inspection checklist for those who work under</p> <p>17 them doing the job as supervisors.</p> <p>18 MR KHAW: Sorry, I'm just checking whether there should be</p> <p>19 one clarification in relation to the transcript or the</p> <p>20 translation which appears at [draft] page 60, line 21,</p> <p>21 because Mr Ho actually referred to acceptance by the BD</p> <p>22 in relation to the submissions, but it's just that the</p> <p>23 word "acceptance" does not appear in the transcript, so</p> <p>24 just for the record.</p> <p>25 CHAIRMAN: Yes. Thank you.</p>
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<p>1 Answer: That's correct.</p> <p>2 Question: -- so although a condition or specific</p> <p>3 requirement was set out in the acceptance letter, you</p> <p>4 don't need to take those into [account] in devising the</p> <p>5 checklist?</p> <p>6 Answer: That's my understanding, because the SSP</p> <p>7 forms are statutory. The acceptance condition under the</p> <p>8 IoE consultation submission are non-statutory. So</p> <p>9 that's why I don't want to mix them up."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any comments on Mr Wong's evidence?</p> <p>13 A. Basically, the IoE only exempts the drawing plan</p> <p>14 approval procedure, according to the Buildings</p> <p>15 Ordinance. For the acceptance letters issued under the</p> <p>16 consultation submission, there are a number of</p> <p>17 requirements and conditions, and they are to satisfy</p> <p>18 safety and health standards under the Buildings</p> <p>19 Ordinance.</p> <p>20 So, for acceptance letters issued by the BD, they</p> <p>21 are akin to approval letters. The only exception is</p> <p>22 that there are exemptions. The letters we issue are</p> <p>23 addressed directly to the CP, so for any additional</p> <p>24 conditions, when the CP draws up the checklist, he has</p> <p>25 to fulfil all the conditions laid out in the letter, and</p>	<p>1 MR KHAW: I have no further questions for Mr Ho.</p> <p>2 Mr Ho, counsel for the Commission, Mr Pennicott,</p> <p>3 will first ask you some questions. Lawyers acting for</p> <p>4 other parties may ask you some questions, and in the</p> <p>5 meantime, Chairman and the Commissioner may want to</p> <p>6 discuss various matters with you. So please remain</p> <p>7 seated.</p> <p>8 WITNESS: I understand that.</p> <p>9 Examination by MR PENNICOTT</p> <p>10 MR PENNICOTT: Mr Ho, good afternoon.</p> <p>11 A. (In English) Good afternoon.</p> <p>12 Q. As Mr Khaw has just indicated, my name is Ian Pennicott,</p> <p>13 I am one of the counsel to the Commission, and I have</p> <p>14 a few questions for you. Thank you very much for coming</p> <p>15 along to give evidence to the Commission today.</p> <p>16 Mr Ho, can we first of all try to establish what it</p> <p>17 is you actually know about contract 1112 and as</p> <p>18 distinguished from the views you express in your witness</p> <p>19 statement and orally this morning in your</p> <p>20 evidence-in-chief.</p> <p>21 Firstly, Mr Ho, you told us earlier that up to</p> <p>22 September 2015, you were the Chief Structural</p> <p>23 Engineer/New Territories?</p> <p>24 A. No. Kowloon and Rail, I was ...</p> <p>25 Q. No. You told us that you were the Chief Structural</p>

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<p>1 Engineer of Kowloon between September 2015 and December 2 2017. 3 A. Right. 4 Q. You told us that up to September 2015, you were the 5 Chief Structural Engineer/New Territories. When did you 6 take up that particular role? 7 A. It's November 2014, from November 2014 to September 8 2015. 9 Q. All right. So I think that's okay for our purposes. 10 Now, in your role as Chief Structural Engineer/New 11 Territories between November 2014 and September 2015, 12 did you have any involvement at all with the SCL 13 project? 14 A. No. 15 Q. In your role as Chief Structural Engineer of the Kowloon 16 District between September 2015 and December 2017, did 17 you have any involvement with the SCL project? 18 A. Yes. 19 Q. What was your involvement with the SCL project during 20 that period? 21 A. As shown by the organisation chart that we have just 22 seen, I was seconded to the Highways Department 23 [disputed interpretation], and when BD vetted the 24 submissions, if there's a need to involve, to seek the 25 agreement of the Chief Structural Engineer, then anyone</p>	<p>1 lend support, is that right -- 2 A. Right. 3 Q. -- to the Highways Department and in particular the RDO? 4 A. Maybe I should explain more clearly my position. They 5 were involved in vetting submissions related to SCL. If 6 it's the submission related to the first design, they 7 would have to issue a letter either offering comment or 8 signifying their acceptance. The design itself would 9 have to be vetted by this Chief Structural 10 Engineer/Kowloon & rail for agreement, and that's me at 11 that time. That's before they issued the letter that 12 I have just talked about. That's in the case of 13 Hung Hom Station. 14 MR KHAW: Sorry to interrupt, Mr Pennicott. Perhaps it's 15 probably a matter of translation which gave rise to some 16 confusion, because if we look at [draft] page 71, 17 line 8, it says, "As shown by the organisation chart 18 that we have just seen, I was seconded to the Highways 19 Department". 20 I believe Mr Ho was saying that he was the head to 21 the one who was seconded to the Highways Department, not 22 that he was seconded to the Highways Department. 23 MR PENNICOTT: Understood. 24 Is that right, Mr Ho? 25 A. Yes.</p>
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<p>1 holding my post would have to be consulted and the 2 consent of that post-holder would have to be sought. 3 Q. Right. So if we go back, please, to the organisation 4 chart at H7/2657. We know that on 27 December 2017, you 5 became the Assistant Director/New Buildings 2, and we've 6 seen that box. 7 A. Yes, correct. 8 Q. Now, the box underneath, where it says "Chief Structural 9 Engineer/Kowloon & Rail", that was you also -- 10 A. Correct. 11 Q. -- between September 2015 and December 2017; is that 12 right? 13 A. Correct. 14 Q. So you were seconded to that position for that full 15 period? 16 A. I was holding a post in the Buildings Department, so in 17 that sense I was not seconded. The Chief Structural 18 Engineer here would provide technical support to the 19 left -- to the BO team on the left. 20 Q. Sorry, Mr Ho, I just want to get this absolutely clear. 21 Where it says on this chart -- and let's just take 22 ourselves back to September 2015 -- were you the Chief 23 Structural Engineer/Kowloon & rail as shown here? 24 A. Yes. 25 Q. And in relation to the SCL project, your role was to</p>	<p>1 Q. Thank you very much. That's a bit clearer now. Thank 2 you. 3 COMMISSIONER HANSFORD: Sorry, just so that I can 4 understand, Mr Ho -- are we saying that the senior 5 structural engineer and the structural engineer were 6 actually seconded, but they had a dotted line, ie 7 a professional line, to you in your role of Chief 8 Structural Engineer within the Buildings Department? 9 A. I was a chief structural engineer working in the 10 Buildings Department. My post was for Kowloon & rail. 11 So I was responsible, in part, for vetting drawings 12 related to Kowloon area. If this team which was 13 seconded to RDO, if there's something, some drawings 14 related to Hung Hom Station, submitted for approval -- 15 because the agreement of a more senior post-holder, as 16 Chief Structural Engineer, was required, then it would 17 be me doing this job. The BO submissions, if there's 18 a need to seek views, then I, as Chief Structural 19 Engineer in the Buildings Department, will offer my 20 advice to the seconded team working in the RDO. 21 COMMISSIONER HANSFORD: Thank you. That's clear to me. 22 I think that was a very long "yes" to my question. 23 Okay, thank you. 24 MR PENNICOTT: Indeed. 25 Just so that I've understood it -- your</p>

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1 responsibilities were not simply limited to the SCL
2 project; your responsibilities were, as it were,
3 Kowloon-wide?
4 A. Correct.
5 Q. And, as I understand it, the two senior structural
6 engineers that were seconded -- that's the senior, not
7 the structural engineer but the senior structural
8 engineers -- were two gentlemen, Wong Wing Keung, who
9 was in post up to January 2016.
10 A. Correct.
11 Q. And he was replaced by Mr Lok Pui Fai from January 2016,
12 from whom we will be hearing later.
13 A. Correct.
14 Q. Okay. One of the reasons I stood up earlier, when
15 Mr Khaw was asking you some questions, was -- he was
16 showing you, to start with, some -- let's take it in
17 stages.
18 First of all, he showed you a temporary works
19 submission, TWD submission, that was submitted to the
20 Buildings Department by the MTR on 29 July 2015.
21 A. Yes.
22 Q. My understanding of a question that Mr Khaw asked you,
23 and your answer, is that you first saw that particular
24 submission earlier this year. Is that correct?
25 A. Correct.

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1 Q. He then showed you another temporary works submission,
2 dated 23 March 2016, and again is it correct that the
3 first time you saw that submission was earlier this
4 year?
5 A. Correct.
6 Q. Later on, Mr Khaw showed you two out of a list of ten
7 permanent works submissions, and the two he showed
8 you -- let's take it in stages -- were dated 30 July
9 2015 and then 4 November 2015.
10 Is it also the case that the first time you saw
11 those submissions was earlier this year?
12 A. Yes.
13 Q. So it is the case that all of those submissions were not
14 documents that found their way to you, as the Chief
15 Structural Engineer/Kowloon, back in 2015 and 2016?
16 A. Correct.
17 Q. Okay. But can I ask you this, Mr Ho. If those
18 submissions had been considered by Mr Wong or Mr Lok, so
19 depending on the date, if they had had any difficulties
20 or issues with those type of submissions, could they
21 have come to you and spoken to you about them?
22 A. If, in vetting the submissions, they have problems, they
23 would have to consult a chief structural engineer. If
24 I was holding that post, I would have given them my
25 views.

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1 Q. Okay.
2 COMMISSIONER HANSFORD: Sorry, Mr Ho, do we know who was
3 holding the post during that period in 2015, before you
4 took the post up in September 2015?
5 A. Another colleague who was since retired. The name is
6 Lee Yun Choi.
7 COMMISSIONER HANSFORD: Thank you.
8 MR PENNICOTT: So, Mr Ho, just picking up where I left off
9 a little earlier -- your evidence regarding the various
10 submissions that you refer to in your report are really
11 views -- you had no contemporary knowledge of these
12 documents, you weren't considering them back in 2015 and
13 2016, so you are expressing your views and opinions on
14 those documents, having reviewed them more recently?
15 A. Based on the interpretation of the inspection results,
16 I would make my judgment.
17 Q. Yes. I'm just -- Mr Khaw was getting you to look at the
18 submissions and look at paragraphs in the submissions
19 and compare one submission with another submission, and
20 so forth, and the views that you have expressed in your
21 witness statement about these matters are all views that
22 you have formed in the last few months, effectively?
23 A. Correct.
24 Q. So you are giving your evidence, as I understand it, on
25 the basis of your general and indeed long-term

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1 experience with the Buildings Department?
2 A. It was based on my years of experience approving
3 drawings and plans and what I would do under different
4 scenarios.
5 Q. Understood.
6 You deal quite extensively in your witness
7 statement, Mr Ho, with the instrument of exemption.
8 A. Yes.
9 Q. Under which, amongst other things, the MTR is required
10 to implement a consultation process in relation to the
11 design of the works.
12 A. Yes.
13 Q. As you I think rightly point out in your witness
14 statement, when the project management plan and various
15 documents make reference to "accepted" or "agreed by the
16 Buildings Department", what is meant in reality is that
17 plans and proposals should be submitted for consultation
18 under the IoE scheme?
19 A. Correct.
20 Q. One of the significant differences between the IoE
21 scheme and, if I can put it this way, the normal
22 situation is that the turnaround time in terms of
23 consultation and "approval" is quicker?
24 A. Yes.
25 Q. And the consultation process under the IoE should be

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<p>1 28 days or, if something is urgent or high priority, 2 14 days -- 3 A. Correct. 4 Q. -- compared with 60 days and 30 days under the normal 5 situation? 6 A. Correct. 7 Q. So one advantage to MTR and Leighton in this particular 8 contract is that they could expect matters to be dealt 9 with more expeditiously? 10 A. Correct. 11 Q. No doubt that was a reason why people needed to be 12 seconded into the Highways Department and the RDO team 13 and why also Pypun were involved? 14 A. Yes. 15 Q. Mr Ho, can I just ask you this. In your role as the 16 Chief Structural Engineer in the period September 2015 17 onwards, did you have any personal dealings with Pypun? 18 A. Basically, no. 19 Q. Presumably, you were generally aware of their engagement 20 and their existence and what they were doing on the job, 21 but you had no reason to relate with them? 22 A. I would deal with the seconded staff, who are the senior 23 structural engineers or structural engineers. In my 24 term, they might have made one or two presentations to 25 explain their designs. So there were some people or</p>	<p>1 Q. "Under the IoE", you say, "MTR was required to submit 2 the formal project management plan to BD." 3 And we know that they did, that is the MTR did, from 4 time to time submit certain project management plans. 5 A. Correct. 6 Q. Could we please just look at B4/2075. 7 Sorry, I perhaps ought to just orient ourselves. If 8 we could go back, please, to B4/1952. This, as you can 9 see, Mr Ho, is the MTR project management plan dated 10 26 July 2013; do you see that? 11 A. I see that. 12 Q. It was submitted, we can see from the previous page, by 13 Dr Philco Wong on 2 August 2013. 14 Then if we could go, please, to 2074. This is 15 appendix 9 to the project management plan. Then if you 16 could go, please, to 2075, which is where we started, 17 there is a flow chart and it is headed, we can see at 18 the top, "Administrative procedure for consultation 19 submissions under IoE/IOc". 20 A. I see that. 21 Q. Is this something you have looked at and considered, 22 Mr Ho? 23 A. Yes. 24 Q. You will see under the box towards the bottom 25 a description, "Completion of works"; do you see that?</p>
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<p>1 indeed there were people from Pypun but I wasn't sure, 2 but basically I had no dealings with them. 3 Q. Okay. 4 Mr Ho, did you have any knowledge, in your role from 5 September 2015 onwards, of the quality supervision plan 6 in relation to installation of couplers? 7 A. I knew about it because it was in the appendix of one of 8 our letters. 9 Q. One of the acceptance letters? 10 A. Yes. 11 Q. Right. And the acceptance letters required a QSP to be 12 prepared and submitted? 13 A. For the appendix about mechanical couplers and ductility 14 couplers, QSP was required. 15 Q. But you had no reason, I imagine, to consider that QSP 16 in any detail; would that be right? 17 A. Correct. 18 Q. Can I ask you, please, to go to paragraph 8 of your 19 first witness statement. It's at H2170. You say there: 20 "The IoE was issued by the Building Authority having 21 regard to the draft project management plan of MTR dated 22 22 November 2012." 23 Again, I imagine that's a document that you've 24 looked at more recently rather than historically? 25 A. Correct.</p>	<p>1 A. I see that. 2 Q. What is required under the project management plan, 3 among other things, is that, as I understand as I read 4 this, is an as-built record plan to be submitted on 5 completion of works. 6 A. Correct. 7 Q. If I've understood the position correctly, what that 8 actually means, if one reads that in conjunction with 9 the heading, "Administrative procedure for consultation 10 submissions", is that for each consultation submission 11 that is made, you would expect an as-built record plan? 12 A. Correct. 13 Q. So, for example, the diaphragm walls were the subject 14 matter of a separate consultation submission. 15 A. Yes. 16 Q. So once they were completed, even though, obviously, the 17 works as a whole were not completed, the fact that they 18 were the subject matter of a separate consultation 19 submission, you expected as-built drawings and records 20 to be submitted for the diaphragm walls? 21 A. Correct. 22 Q. Just help me with this, Mr Ho, if you can. We know -- 23 and if there's anything you don't know in this, please 24 tell me, but I've got a feeling you know -- looking at 25 it chronologically, what happened was the diaphragm</p>

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1 walls were essentially completed in the middle of 2015,
 2 a few months before you took up your post in September;
 3 all right?
 4 But prior to that date, as-built submissions were
 5 made and they were made in a series, ultimately, of six
 6 batches; do you remember that?
 7 A. Yes.
 8 Q. And some preceded the actual completion of diaphragm
 9 walls and some came after?
 10 A. Yes.
 11 Q. However, final approval of the entirety of the diaphragm
 12 walls did not come -- I say "approval" -- acceptance of
 13 the design by BD of the revised design, which we know
 14 about, didn't come until some time later?
 15 A. Yes.
 16 Q. Possibly not until, ultimately, 2017?
 17 A. Yes.
 18 Q. But nonetheless, obviously the works, and in particular
 19 to the slabs, the EWL slab and the NSL slab, continued,
 20 even though the diaphragm walls had not been, as it
 21 were, ultimately signed off by the Buildings Department?
 22 A. Correct.
 23 Q. So is that a normal situation? How do you rationalise,
 24 if you like, the situation where the slabs are permitted
 25 to continue to be built even though the diaphragm wall

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1 as-built situation has not been formalised and signed
 2 off by the Buildings Department?
 3 A. It would depend on the characteristics of individual
 4 sites. In this site, the diaphragm wall is big and
 5 long. It's 400 metres going east and west. The CP
 6 submitted six batches of documents. We would look at
 7 each and every batch individually, and there was an NC
 8 incident and they had to justify, provide the
 9 justification, and provide also -- they would have to
 10 provide supplementary information as well. That's why
 11 it was only accepted for completion in 2017.
 12 Q. I appreciate that, Mr Ho, because we know that in about
 13 April 2015 into May 2015, the Buildings Department
 14 picked up the point that the as-built details for the
 15 diaphragm walls were different from the accepted plans,
 16 because, apart from other things, there were some
 17 missing U-bars. But nonetheless, despite that, the
 18 works continued apace, the slabs went in, both the EWL
 19 slab, the NSL slab, and all the other works connected
 20 and related to the diaphragm walls. Is that a usual
 21 situation? In other words, there's no, essentially,
 22 hold point, if you like, on getting the plans approved
 23 for the diaphragm walls before the next operation?
 24 A. Actually, after reporting for completion, for those
 25 batches, we have to carry out the so-called proof test.

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1 And after the proof test was passed -- they would have
 2 to wait until the proof test was passed before they can
 3 continue with the slabs. It's not that they can do this
 4 without fulfilling the conditions. They would have to
 5 wait until the approval was given, and that's why it was
 6 done in batches, and for every batch they will have to
 7 satisfy the same conditions before they can proceed with
 8 the slabs.
 9 That's the requirement of the Buildings Department.
 10 CHAIRMAN: You have to then carry out a proof test?
 11 A. Yes.
 12 CHAIRMAN: And a proof test ...?
 13 A. The diaphragm wall was actually a foundation. In our
 14 acceptance letter, in the appendix of that letter, we
 15 asked for some tests after completion to be carried out.
 16 For diaphragm walls, they have to bore a hole from the
 17 top to the rock layer. They have to prove that the
 18 diaphragm wall and the rock satisfy the original
 19 requirements. Our colleagues would go down to the site
 20 to see this so-called coring test, and then they should
 21 wait until the green light was given by us before they
 22 proceed to the slab works.
 23 MR PENNICOTT: Yes. So the point that -- we got there
 24 eventually. What is critical for the next operations to
 25 continue, in this particular case, let's say the

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1 construction of the EWL slab, is that various forms of
 2 proof testing are done to the various panels of the
 3 diaphragm wall, and those proof tests are done as the
 4 works progressed. They are not all done at the end.
 5 A. Correct.
 6 Q. So provided those are all in order, it's okay for the
 7 MTR and the contractor to continue --
 8 A. Yes.
 9 Q. -- and the as-built drawings are -- I hesitate to use
 10 the word -- more of a formality at the end of the day
 11 but not something that's going to hold up the works?
 12 A. Correct. As long as they satisfied or passed all those
 13 tests.
 14 Q. Right. So it's the tests that are critical at the end
 15 of the day?
 16 A. Yes.
 17 MR PENNICOTT: Sir, I see it's five past one. I may not
 18 have any more but can I just reserve my position just in
 19 case I'm told I do?
 20 CHAIRMAN: Yes, certainly.
 21 MR PENNICOTT: Thank you very much.
 22 CHAIRMAN: We are going to be the luncheon adjournment now,
 23 back at 2.20.
 24 MR PENNICOTT: Thank you, sir.
 25 CHAIRMAN: You are giving your evidence at the moment, and

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1 as you probably know, while you are in the middle of
2 giving your evidence you are not entitled to discuss it
3 with anybody at all. You can do so when your evidence
4 is completed, hopefully a little later today.
5 WITNESS: Understood.
6 CHAIRMAN: Thank you very much.
7 (1.09 pm)
8 (The luncheon adjournment)
9 (2.23 pm)
10 MR PENNICOTT: Sir, somewhat unusually, when one has
11 a break, one normally comes up with some more questions,
12 but as I say, unusually, I don't.
13 CHAIRMAN: Yes.
14 MR SO: No questions from China Technology.
15 CHAIRMAN: Thank you.
16 MR BOULDING: No questions from MTR, sir.
17 MR SHIEH: I have a few questions.
18 CHAIRMAN: Yes.
19 Cross-examination by MR SHIEH
20 MR SHIEH: Mr Ho, can I ask you to look at bundle H7,
21 page 2180, paragraph 40.
22 In this paragraph, you talk about "specific
23 requirements on the submission of quality assurance and
24 quality control documents and provision of qualified
25 site supervision for ductility couplers."

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1 Do you see that, Mr Ho?
2 A. I see that.
3 Q. Turn over the page to 2181, please. At
4 paragraph 40(2) -- can we look at the top of that?
5 Sorry, in paragraph 41, you talk about full-time
6 continuous supervision and what you understand to be the
7 substance of this obligation for full-time continuous
8 supervision; right?
9 A. I see it.
10 Q. Now, Mr Chairman and Professor, I don't intend to here
11 engage in a discussion as to the technical
12 interpretation of the phrase "full-time continuous
13 supervision". All I wish to do is to ask this witness
14 for his position, so that we have an understanding as to
15 what the government, or this witness's position is. I'm
16 not going to engage in an argument with him.
17 Mr Ho, at the fourth line of this paragraph, you
18 say:
19 "It is therefore incumbent upon the RC to exercise
20 good judgment and determine the actual degree of
21 supervision during the course of works for the purpose
22 of ensuring the building works are carried out in
23 accordance with the accepted plans."
24 Do you see that sentence in your paragraph?
25 A. I can see that.

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1 Q. I just wish to clarify and if so confirm with you that
2 it is your position that what amounts to full-time
3 continuous supervision is really a matter of judgment on
4 the part of the RC; is that what you are saying?
5 A. Here, the RC has to appoint a quality control
6 coordinator to carry out full-time continuous
7 supervision. The QC coordinator should fulfil the
8 requirements of such supervision.
9 With regard to 100 per cent of splicing assemblies,
10 in fact there are two parts to the process. In the
11 first part, there should be supervision on the process
12 of the rebar being connected into the coupler. The
13 other part is the testing process. In other words,
14 after the screwing in has been done, there should be
15 examination and testing. When the QC coordinator is
16 on site to do supervision on the process, and when the
17 process is over, he will test and examine the results,
18 then that would comply with the requirement of full-time
19 continuous supervision.
20 In my last sentence, I am saying that the RC should
21 arrange for the QA coordinator to do this.
22 Q. Yes, of course the person actually doing the supervision
23 would be the quality control coordinator?
24 A. That's correct.
25 Q. I just wish again to confirm with you that it is not

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1 your position that there needs to be a one-on-one,
2 man-to-man marking in respect of the affixing of rebar
3 into couplers, in the sense that if you have five
4 workers handling a row of couplers, you need five
5 persons standing behind them, one behind each worker?
6 A. Actually, we understand that in actual operation, if the
7 entire process has to be watched over, that every rebar
8 should be inserted into a coupler, then there would be
9 difficulties in actual operation. So the requirement is
10 for the QC coordinator to be on site. Say there are
11 a few steel fixing workers there and they may be
12 connecting rebar into the coupler, at the same time the
13 QA coordinator who is on site will know that this is
14 being done.
15 The process takes a short time, maybe one or two
16 minutes, so as long as they know that the workers are
17 doing this and once the work is done he will walk over
18 and do an inspection, then if it is found that this is
19 in compliance with the specifications of the
20 manufacturer, say for example only one thread should be
21 seen out of the coupler, then that would already comply
22 with the requirements of full-time continuous
23 supervision.
24 We are not saying that the entire process of each
25 coupler connection should be watched over by one man.

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<p>1 This is not the actual requirement.</p> <p>2 Q. Thank you very much for that clarification, Mr Ho. We</p> <p>3 can still argue or address the Commission on the precise</p> <p>4 meaning, but I'm grateful for your clarification as to</p> <p>5 your position as to whether man-to-man marking is</p> <p>6 needed.</p> <p>7 COMMISSIONER HANSFORD: Mr Shieh, before you go on, you say</p> <p>8 after the coupling had been made -- you said that the</p> <p>9 supervisor would need to do some testing. What testing</p> <p>10 are you referring to?</p> <p>11 A. No, it is not testing, but when the rebar has been</p> <p>12 screwed into the coupler, he should go over to inspect,</p> <p>13 to see whether the process has been completed.</p> <p>14 COMMISSIONER HANSFORD: Okay. That's what I understood.</p> <p>15 But I think you used the word "testing" but now</p> <p>16 I understand what you mean.</p> <p>17 MR KHAW: I believe in Mr Ho's earlier answer his word</p> <p>18 "inspection" was translated into "testing".</p> <p>19 COMMISSIONER HANSFORD: Ah. That explains it. Thank you.</p> <p>20 MR SHIEH: Yes. Thank you very much, Mr Ho.</p> <p>21 Mr Chairman, Professor, there is one caveat I wish</p> <p>22 to make before I say I have no further questions.</p> <p>23 Mr Ho, and to some extent some other witnesses, have in</p> <p>24 their witness statement made certain assertions which,</p> <p>25 strictly speaking, are within the province of expert</p>	<p>1 can see my learned friend is smiling quietly --</p> <p>2 discussion, not to reach a conclusion, because we will</p> <p>3 reach a conclusion when we've heard all arguments, but</p> <p>4 to be aware of that issue and we are well aware of it,</p> <p>5 so thank you.</p> <p>6 MR SHIEH: Thank you. In fact I can preface my caveat by</p> <p>7 saying insofar as some other witnesses say anything</p> <p>8 about whether or not trimming down the D-wall by</p> <p>9 460 millimetres has any structural safety impact;</p> <p>10 likewise I'm not going to engage in a debate with</p> <p>11 any factual witness. That really is a matter for the</p> <p>12 experts.</p> <p>13 CHAIRMAN: Yes.</p> <p>14 MR PENNICOTT: Sir, if I may just add, on behalf of the</p> <p>15 legal team to the Commission, we have tried to steer</p> <p>16 a course which doesn't involve getting into any detailed</p> <p>17 material discussion on those issues, and hopefully we</p> <p>18 will continue to do so and to take that same path.</p> <p>19 CHAIRMAN: Yes. It is difficult, when you've got people who</p> <p>20 are professionals and they are dealing in areas of</p> <p>21 professional practice, not sometimes to take a step</p> <p>22 across a line that may not be entirely permissible, but</p> <p>23 our view has been we are both professionals, we've both</p> <p>24 got the ability to obtain your submissions on the</p> <p>25 issues, and we are well aware of the issues, so rather</p>
<p>Page 90</p> <p>1 evidence. Specifically in the case of Mr Ho, for</p> <p>2 example, he said something about whether the diaphragm</p> <p>3 wall amounted to, say, a foundation.</p> <p>4 We take the view that it is not the appropriate</p> <p>5 occasion to discuss with what really is a factual</p> <p>6 witness from the government, in particular when this</p> <p>7 witness actually had no contemporaneous dealing with the</p> <p>8 matter, on technical questions which are best left to</p> <p>9 the experts. In fairness, there are factual witnesses</p> <p>10 from Leighton who have given similar comments and, fair</p> <p>11 enough, other people have not cross-examined our</p> <p>12 witnesses on their similar statements either.</p> <p>13 So, with that caveat, I'm not going to ask this</p> <p>14 factual witness. He believes what he says he believes,</p> <p>15 but in relation to whether that belief is well-founded</p> <p>16 as a matter of engineering expertise, I don't propose to</p> <p>17 ask this witness about it, but that is not to be taken</p> <p>18 as some kind of an acceptance that the D-wall is part of</p> <p>19 foundation. I just wish to lay down that marker.</p> <p>20 On that basis, subject to anything which the</p> <p>21 Commission may say, I don't have any further question</p> <p>22 for this witness.</p> <p>23 CHAIRMAN: Thank you, Mr Shieh. I can assure you and all</p> <p>24 the other counsel that that particular issue has not</p> <p>25 escaped us and in fact it has been the subject of -- you</p>	<p>Page 92</p> <p>1 let the witnesses be able to continue in a more relaxed</p> <p>2 and forthright way.</p> <p>3 MR PENNICOTT: Yes, sir.</p> <p>4 CHAIRMAN: Thank you.</p> <p>5 MR CONNOR: No questions from Atkins, sir. Thank you.</p> <p>6 Re-examination by MR KHAW</p> <p>7 MR KHAW: Perhaps just one matter for clarification.</p> <p>8 Mr Ho, Mr Shieh, acting for Leighton, just asked you</p> <p>9 about your position in relation to the meaning of</p> <p>10 full-time and continuous supervision. Do you remember</p> <p>11 that?</p> <p>12 A. I remember.</p> <p>13 Q. His question was about whether it was necessary to have</p> <p>14 a one man marking one man approach, ie one man looking</p> <p>15 at one man doing each coupling installation; do you</p> <p>16 remember that?</p> <p>17 A. I remember.</p> <p>18 Q. One of your answers came out like this. You said:</p> <p>19 "We are not saying that the entire process of each</p> <p>20 coupling connection should be watched over by one man."</p> <p>21 Do you remember that?</p> <p>22 A. Yes.</p> <p>23 Q. According to what you told us, how could we prevent the</p> <p>24 situation, I mean in terms of the supervision that you</p> <p>25 have in mind, how could we prevent the situation where</p>

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<p>1 the threaded rebars would be cut and then screwed into 2 the coupler during the installation process? 3 A. I believe that as long as the quality control 4 coordinator, during the process of bar fixing, including 5 screwing in of rebar with couplers, as long as the 6 supervision was done within his line of sight -- well, 7 perhaps it was at a time when some bars, they may be 8 ordinary bars or threaded rebars, that had been lifted 9 onto the site -- during the continuous supervision, the 10 coordinator could conduct visual inspection on the 11 length of the thread, to see if they were shorter. 12 At the site, no one could do anything like cutting 13 the threaded rebar. At the same time, the coordinator 14 could supervise on bar fixing and the installation of 15 coupler with rebar. The coordinator was fully aware of 16 the situation. 17 As I said, as soon as he knew that the screwing in 18 was completed, he would go over to conduct compliance 19 check to ensure that it was fully screwed in. In the 20 entire process, he has met the requirement of full-time 21 and continuous supervision. 22 MR KHAW: Thank you. I have no further questions. 23 CHAIRMAN: Good. Nothing further arising? 24 Thank you very much indeed. Your evidence is now 25 completed.</p>	<p>1 A. Yes. 2 Q. Your witness statement is dated 31 August 2018; do you 3 see that? 4 A. Yes. 5 Q. Do you confirm that you put your signature at the end of 6 this witness statement? 7 A. Yes. 8 Q. Can you confirm that the contents of this witness 9 statement are true to the best of your knowledge, 10 information and belief? 11 A. Right. 12 Q. And you would adopt the contents of this witness 13 statement as your evidence for the purposes of this 14 Inquiry? 15 A. Right. 16 Q. Now to the most difficult part of your witness 17 statement. If you can take a look at H6/1137. Under 18 the Secretary, we can see -- this is the organisation 19 chart of the Works Branch of the Development Bureau as 20 at August 2018, and we can see, under the Secretary, the 21 Permanent Secretary, and then, under the Permanent 22 Secretary, there are various Works Divisions; can you 23 see that? 24 A. Yes. 25 Q. We can see that you are under Works Division 3 as Deputy</p>
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<p>1 WITNESS: (In English) Thank you. 2 CHAIRMAN: Thank you for your assistance. It's been much 3 appreciated. 4 WITNESS: (In English) Thank you. 5 (The witness was released) 6 MR KHAW: Our next witness is Mr Chau Siu Hei of the 7 Development Bureau. 8 Mr Chau, I understand your full name is Chau 9 Siu Hei, and you are also known as Francis Chau; is that 10 correct? 11 WITNESS: (In English) Yes. 12 MR CHAU SIU HEI, FRANCIS (affirmed in Puntì) 13 (All answers given via simultaneous interpreter 14 except where otherwise specified) 15 Examination-in-chief by MR KHAW 16 MR KHAW: Mr Chow, would you prefer giving your evidence in 17 Cantonese or in English? 18 A. (In English) Cantonese. 19 Q. Thank you. For this Inquiry, you have made one witness 20 statement. If we can take a look at H1128. Can you see 21 that? 22 A. Yes. 23 Q. It's a witness statement of Chau Siu Hei and it has 24 altogether eight pages. You can have a quick look. It 25 ends at page 1135; do you see that?</p>	<p>1 Secretary? 2 A. Right. 3 Q. That's still your current position; is that correct? 4 A. Yes. 5 Q. I understand from your witness statement that you held 6 this position -- you started to hold this position from 7 April 2017; is that correct? 8 A. Right. 9 Q. May I just confirm with you your position prior to that 10 time, ie before April 2017? 11 A. I was the Principal Assistant Secretary (Works) 12 Division 2 of the Development Bureau. 13 Q. Thank you. How long did you hold that position? 14 A. In that position, it was from October 2014 to the 15 beginning of April 2017. 16 MR KHAW: Mr Chau, I have no further questions for you. As 17 you know, Mr Pennicott, acting for the Commission, will 18 first ask you some questions. Other parties may have 19 some questions for you, and at the same time the 20 Chairman and the Commissioner may have some questions 21 for you as well. So please be seated. 22 WITNESS: (In English) Okay. 23 MR KHAW: Thank you. 24 Examination by MR PENNICOTT 25 MR PENNICOTT: Good afternoon, Mr Chau.</p>

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1 A. Good afternoon.
 2 Q. As Mr Khaw has indicated, my name is Ian Pennicott, I'm
 3 one of the counsel to the Commission and I have a few
 4 questions for you, but not very many, I can assure you,
 5 and thanks very much for coming along to give evidence
 6 to the Commission.
 7 Can I just ask you, please, to go back to the
 8 organisation chart that Mr Khaw took us to at H1137. We
 9 can locate you again as the Deputy Secretary (Works) 3.
 10 I think your answer to Mr Khaw's question was that prior
 11 to taking up that position, you were the Principal
 12 Assistant Secretary (Works) 2?
 13 A. Right.
 14 Q. And on this chart, that's currently occupied by Victor
 15 Chan; is that right?
 16 A. Yes.
 17 Q. Right, so one draws an arrow down there. You will see
 18 by your name, on this chart, to the right of it, there's
 19 a little box that says "Chart 2"; do you see that?
 20 A. Yes.
 21 Q. If you go on two pages to H1139, this is a more detailed
 22 breakdown, as I understand it, Mr Chau, of Works
 23 Division 3?
 24 A. Right.
 25 Q. Where obviously we can see you at the top, and this is

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1 showing, as I say, the organisation chart for your
 2 particular division in respect of which you are the
 3 head?
 4 A. Right.
 5 Q. Thank you for that.
 6 In your witness statement, Mr Chau, you deal
 7 primarily with the regulatory provisions of the
 8 Contractor Management Handbook.
 9 A. Correct.
 10 Q. And in particular, Mr Chau, you deal with the
 11 circumstances in which Leighton came to be suspended
 12 from all the various government tender lists upon which
 13 they were previously registered?
 14 A. Right.
 15 Q. Having looked at both the provisions of the Contractor
 16 Management Handbook and looked at all the correspondence
 17 that took place between the Works Branch and Leighton,
 18 the way it works, as I understand it, is that you, if
 19 you suspect that there's been a breach, give a warning
 20 letter to the contractor with reasons -- is that right?
 21 A. Right.
 22 Q. And would I be right in thinking that Works Branch keeps
 23 a record of all the warnings that it gives to
 24 contractors?
 25 A. Right.

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1 Q. And you then give the contractors an opportunity to make
 2 representations to you?
 3 A. Right.
 4 Q. And after taking into account those representations, you
 5 make -- the government makes a decision?
 6 A. Right.
 7 Q. Who is actually responsible ultimately for making the
 8 decision to suspend or to enforce -- give some other --
 9 I hesitate to use the word "punishment" -- but to take
 10 some other course?
 11 A. In this case, just as what the organisational chart
 12 said, there are some staff members responsible for
 13 supporting. After a series of correspondence with
 14 Leighton, after we have confirmed our position, after we
 15 have formed our view of what happened, we made
 16 a recommendation to the Secretary for Development. With
 17 his consent, we formally informed Leighton that we would
 18 impose -- we would take disciplinary action --
 19 regulatory actions.
 20 Q. Okay. Without going into any detail at all, Mr Chau,
 21 can I just ask you, please, formally to look at
 22 H14/35179.
 23 A. (In English) Okay.
 24 Q. That's a letter dated 5 September 2018. If we could
 25 scroll down, please. This is essentially the warning

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1 letter to Leighton.
 2 A. Right.
 3 Q. If we can see the second page, please, right at the
 4 bottom, please -- and signed by you, Mr Chau? Sorry,
 5 signed by Francis Leung, who I think is the gentleman
 6 just below you in the chart.
 7 A. That's correct.
 8 Q. And attached to this letter, if we go to the next page,
 9 please, is an annex; do you see that?
 10 A. I can see that.
 11 Q. Right. What happened was, ultimately, Mr Chau -- we can
 12 look at it if we need to, but on 8 October -- I'll give
 13 the bundle reference for the purposes of the
 14 transcript -- H20/39713 -- the Development Bureau
 15 decided to suspend Leighton, for the reasons set out in
 16 this annex A.
 17 A. Correct.
 18 Q. And annex A contains essentially three heads or three
 19 basic reasons. The first one we can see on this sheet,
 20 which is the reinforced concrete works for Hung Hom
 21 North Approach Tunnel; yes?
 22 A. (In English) Yes, correct.
 23 Q. Then if we can scroll down, please, the next one, the
 24 next reason, was the supervision of the sub-contractor's
 25 coupler associated works for EWL slab construction of

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<p>1 the Hung Hom Station Extension, so the coupler 2 supervision. 3 A. Correct. 4 Q. Then thirdly, over the page, number (iii), the 5 inconsistency in the records relating to the number of 6 couplers -- 7 A. Correct. 8 Q. -- of which this Commission of Inquiry has heard a lot 9 about. 10 So those are the three basic reasons which you 11 determined that Leightons had not adequately explained, 12 satisfactorily explained to you, and hence the 13 suspension? 14 A. Correct. 15 MR PENNICOTT: I have no further questions. 16 CHAIRMAN: Can I just say one thing at this stage. 17 MR PENNICOTT: Yes, sir. 18 CHAIRMAN: It's not a decision in any way. 19 MR PENNICOTT: No. 20 CHAIRMAN: Although provisionally, I suppose, it may be. 21 But my understanding of a Commission of Inquiry, in 22 plain terms, is that there are two aspects to it. One 23 aspect, the primary one, is to provide a report to the 24 Chief Executive on the issues that the Commission is 25 bound to do, in terms of the terms of reference, in</p>	<p>1 regulatory action had not yet been taken, a question 2 arose at that stage as to whether or not regulatory 3 action was contemplated and if so what was the 4 background, and so forth. 5 So there was an issue raised at a very early stage 6 by the Commission, in the original information-seeking 7 letter that raised this particular point, and I imagine 8 that that's why Mr Chau has been asked to give this 9 witness statement dealing with this matter. 10 But I tend to agree that this is not -- I mean, one 11 is not having a trial within a trial, if you like, and 12 apart from just getting the few basic facts, which 13 I suppose we could get from the documents anyway, that 14 is really the only reason why I think Mr Chau is here. 15 As I say, I'm not in any way going into any of the 16 detail on this and I don't propose to do so. 17 CHAIRMAN: Thank you. It's not a criticism whatsoever of 18 the original letters that went out. 19 MR PENNICOTT: No. 20 CHAIRMAN: Things were much more general then. 21 MR PENNICOTT: Of course. 22 CHAIRMAN: Less specified. 23 MR PENNICOTT: Yes. 24 CHAIRMAN: I just didn't want a situation, in case anybody 25 felt they were obliged, that we were going to start</p>
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<p>1 addition to which too rigid and artificial an adherence 2 to those terms of reference may act to frustrate certain 3 aspects that are in the public interest in a public 4 inquiry. 5 In other words, some leeway has to be given because 6 there's public interest in the matter, public interest 7 to be served. But in respect of this particular matter, 8 while I accept that it is public knowledge that this has 9 happened, at this moment in time I think I would need 10 some convincing that it is something that the Commission 11 itself in any way needs to turn its attention to, other 12 than perhaps to record the fact that it has happened as 13 a historical fact. 14 MR PENNICOTT: Yes. 15 CHAIRMAN: I'm open to being educated here, because I may 16 have missed the point. 17 MR PENNICOTT: Sir, that is why, with respect, I have tried 18 to limit the questions to those that I have put. I tend 19 to agree that that is the position, and I think 20 Leightons agree also, having had a brief conversation 21 with my learned friend Mr Shieh. 22 However, can I just say this, that in defence of, if 23 you like, the government and indeed Mr Chau, that in the 24 information letter that preceded the Salmon letter to 25 the government, written at a time, I believe, when</p>	<p>1 debating the merits. 2 MR PENNICOTT: No. 3 CHAIRMAN: I think there's an old north country saying, for 4 those from England, about having a dog in a fight, and 5 I don't know that myself or Prof Hansford have a dog in 6 this particular fight, in the sense that I don't want to 7 be involved in looking at the merits of whether or not 8 the decisions that were made here were in fact correct 9 or not. 10 MR PENNICOTT: No. Sir, as I say, I know, because 11 I recollect, there is something in one of those original 12 information-seeking letters about regulatory actions, 13 because I remember being partly responsible for ensuring 14 it went in there right at the outset, just to ensure we 15 didn't miss anything. 16 COMMISSIONER HANSFORD: Can I just say I'm in full agreement 17 with the Chairman on this point. 18 MR PENNICOTT: Yes. The reference apparently is H1, 19 page 11, to the point I have just made. 20 CHAIRMAN: Good. Yes, thank you. 21 COMMISSIONER HANSFORD: Notwithstanding that I'm in full 22 agreement with the Chairman on this point, I do have one 23 question, relating to paragraph 25 in Mr Chau's witness 24 statement. It's on page H1134. In that statement, 25 Mr Chau, you say:</p>

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<p>1 "Development Bureau is still in the process of 2 considering whether any regulating action(s) against 3 Leighton and/or Intrafor will be required." 4 Of course, this was written on 31 August and events 5 have taken place since then. 6 MR PENNICOTT: Yes. 7 CHAIRMAN: But can I ask the question with respect to 8 Intrafor and whether, since 31 August, any regulating 9 action has been taken? 10 A. At this stage, we still do not think we need to take any 11 regulatory action. Actually, we had some correspondence 12 with Intrafor, and initially there is not enough 13 justification for us to take any regulatory action, but 14 we reserve the right, say if, as the COI continues with 15 its hearings and when we have further information, we do 16 not rule out that possibility. 17 COMMISSIONER HANSFORD: Okay. Thank you. That's clear. 18 MR SHIEH: Mr Chairman, given that what Leighton had 19 intended to say has been uttered both by Mr Pennicott 20 and by Chairman and Professor, I have no questions for 21 this witness. 22 CHAIRMAN: Good. Thank you. 23 MR SHIEH: Save to say, of course, that Leighton doesn't 24 think the enforcement actions are justified, but that is 25 not an appropriate subject matter for this Commission of</p>	<p>1 Q. Do you see your witness statement? It consists of 2 several pages, nine pages altogether, all the way to 3 page 2115; can you see that? 4 A. I can see that. 5 Q. This is a statement dated 12 September 2018? 6 A. Correct. 7 Q. You confirm that you put your signature at the end of 8 this witness statement? 9 A. I can confirm that. 10 Q. Do you confirm the contents of this witness statement 11 are true to the best of your knowledge, information and 12 belief? 13 A. I confirm that. 14 Q. Do you adopt the contents of your witness statement as 15 your evidence-in-chief? 16 A. I do. 17 Q. I was struggling whether we would need to rely on the 18 organisation chart for Mr Cheung. (Laughter). 19 Perhaps just for the purpose of clarification -- 20 Mr Cheung, if I can take you to have a look at the first 21 page of your witness statement. 22 CHAIRMAN: Mr Cheung, let me jump in and say that's not 23 a joke at your expense at all. It's a matter that arose 24 earlier in these proceedings and caused some amusement 25 then and so it's what I might call an internal joke; all</p>
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<p>1 Inquiry. 2 CHAIRMAN: Thank you. 3 Anything from anybody else? 4 MR BOULDING: No, thank you. 5 MR HALLWORTH: No, thank you. 6 CHAIRMAN: Thank you. Your evidence has been completed. 7 WITNESS: (In English) Thank you. 8 CHAIRMAN: And thank you for your assistance today. 9 (The witness was released) 10 MR KHAW: The next witness is Director of Buildings, 11 Mr Cheung Tin Cheung. 12 Mr Cheung, just to confirm that your name is Cheung 13 Tin Cheung? 14 WITNESS: (Via interpreter) Correct. 15 DR CHEUNG TIN CHEUNG (sworn in Punti) 16 (All answers given via simultaneous interpreter 17 except where otherwise specified) 18 Examination-in-chief by MR KHAW 19 MR KHAW: I understand that you would like to give your 20 evidence in Cantonese; is that correct? 21 A. Correct. 22 Q. Mr Cheung, you have made one witness statement for the 23 purpose of this Inquiry. Maybe we can have a look at 24 your witness statement. H2107. 25 A. I can see that.</p>	<p>1 right? 2 WITNESS: I understand. 3 CHAIRMAN: So please don't feel in any way disparaged. 4 Thank you. 5 MR KHAW: Thank you, Mr Chairman. 6 Paragraph 1 of your witness statement, you have told 7 us that you have taken up the office of Director of 8 Buildings since 23 January 2017. Do you see that? 9 A. Yes, I see that. 10 Q. May I just ask what your position was before that time? 11 A. Before 23 January 2017, I was the Deputy Director of 12 Buildings. 13 Q. How long did you hold that position? 14 A. For about three years. 15 Q. So you started to become the Deputy Director of 16 Buildings from about 2014? 17 A. That's correct. 18 MR KHAW: Thank you. I have no further questions for you. 19 Mr Pennicott, acting for the Commission, would probably 20 ask you some questions, and other parties may also have 21 some questions for you, so please remain seated. 22 WITNESS: I understand. 23 Examination by MR PENNICOTT 24 MR PENNICOTT: I have also been defeated on the organisation 25 charts.</p>

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1 Dr Cheung, I believe it is --

2 A. That's correct.

3 Q. -- first of all, thank you very much for coming along to

4 give evidence to the Commission. As you have just been

5 told, my name is Ian Pennicott. I just have a very few

6 questions for you, Dr Cheung. It won't take very long,

7 I anticipate.

8 You are and have been the Director of Buildings, as

9 we have just heard, since 23 January 2017?

10 A. Right.

11 Q. You are therefore head of the Buildings Department?

12 A. Right.

13 Q. The Buildings Department is, to all intents and

14 purposes, also the Building Authority?

15 A. Right.

16 Q. Which is given various statutory functions under the

17 Buildings Ordinance?

18 A. Correct.

19 Q. You have just told us you were the Deputy Director for

20 three years before January 2017?

21 A. Right.

22 Q. In that capacity, the Deputy Director, did you have any

23 involvement with and knowledge of the SCL project?

24 A. When I was Deputy Director, there wasn't very much

25 chance for me to come into contact with the SCL project.

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1 Q. Right. I imagine that apart from perhaps the events

2 since May of this year, prior to May of this year, that

3 would also apply when you were the Director of Buildings

4 also?

5 A. You can put it that way.

6 Q. Can I just ask you, please, to look at paragraph 18 of

7 your witness statement. I just wanted to see that I had

8 understood part of this paragraph, Dr Cheung. You say:

9 "Consultation submissions from MTR are processed by

10 the BO team in the RDO office of Highways."

11 And we have heard about that. You say:

12 "The BO team, comprising professional staff seconded

13 from the BD, handles matters relating to the IoE and IoC

14 for the SCL project and the Hong Kong section of

15 Guangzhou-Shenzhen-Hong Kong Express Railway Link. The

16 BO team advises on the building safety standards,

17 practices and procedures of the BD."

18 Then it's the next sentence I wanted to ask you

19 about:

20 "Apart from carrying out witness site tests on

21 structural matters, the BO team conducts completion

22 inspection to random check whether the works are

23 generally completed in accordance with the agreed

24 building layout plans ..."

25 Can you just explain what you mean by the words "BO

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1 team conducts completion inspection to random check"?

2 A. Usually, when a project is completed, there would be

3 a notification to the BO team that the project has been

4 completed. The team would go to the site and conduct

5 random checks, because it is difficult to conduct checks

6 on every location in detail. As a result, they were

7 done on a random basis, to see if they comply with the

8 plans and drawings.

9 Q. And your evidence there, as I understand it, is very

10 much focused on what happens at completion --

11 A. Yes.

12 Q. -- rather than what happens during the course of

13 carrying out of the works?

14 A. It's after completion. It's more like inspection for

15 taking over.

16 Q. Understood.

17 In paragraph 13 of your witness statement,

18 Dr Cheung, you talk about the instrument of exemption

19 dated 5 December 2012; do you see that? That's in

20 paragraph 13(1).

21 A. Yes.

22 Q. That continues for a number of paragraphs. Could I just

23 ask you this, Dr Cheung. I anticipate you know this,

24 but one of the issues that the Commission is enquiring

25 into is the changes that took place to the reinforcement

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1 detail at the top of the east diaphragm wall. I daresay

2 you're aware of that?

3 A. Yes, I understand what you are saying.

4 Q. And an issue has emerged as to whether the change, that

5 change, is minor and whether the change required prior

6 consultation with and agreement by the Buildings

7 Department.

8 I'm not going to get into a debate with you about

9 that.

10 A sub-issue that has arisen is whether the

11 instrument of exemption contains any exception to the

12 consultation process in respect of minor changes, and,

13 in that context, whether a document called PNAP ADM-19

14 is applicable, either directly or by analogy.

15 Having given that run-up, what I wanted to ask you

16 about is this. Is the Buildings Department taking any

17 steps to seek to clarify and make clearer the position

18 with regard to these issues? Because on one view, at

19 the very least, there appears to be uncertainty and

20 perhaps ambiguity in the situation. Is the Buildings

21 Department looking into this?

22 A. If you are referring to the practice notes -- well, it's

23 been in use by the trade for many years. It is very

24 clear. So I think the issue was, under the

25 circumstances of an IoE, whether the practice notes was

<p style="text-align: right;">Page 113</p> <p>1 applicable or not. In my opinion, it is not applicable, 2 because it is in relation to agreed work and approval 3 process. So the practice notes was of no use. 4 What's more important is that an IoE was issued in 5 relation to the SCL project. The IoE clearly specified 6 that there was a PMP, project management plan, which 7 clearly stated that all submissions of changes, 8 amendments and new works would have to be done under 9 consultation. There is also a schedule under the PMP 10 setting out what kind of works would require 11 consultation submission. It has been stated very 12 clearly. So I don't think there is any ambiguity. 13 Q. Right. So your position is, as Director of Buildings, 14 that you are satisfied that the position is clear and, 15 therefore, there is no necessity to revisit the 16 applicability or otherwise of PNAP ADM-19 in the context 17 of an IoE situation; is that right? 18 A. They are two separate things. First is the IoE, where 19 if the COI has looked into the whole matter and is of 20 the view that there are any unclear areas, the BD would 21 be happy to clarify, so that all relevant parties would 22 understand what the requirements are. 23 Now I turn to the practice notes, that is ADM. It 24 has been made clear that in relation to structural 25 matters, it doesn't apply to foundation work. It only</p>	<p style="text-align: right;">Page 115</p> <p>1 course. 2 CHAIRMAN: Thank you very much. I agree with that, by the 3 way. 4 MR SHIEH: No questions from Leighton. 5 MR HALLWORTH: No question for Atkins. 6 COMMISSIONER HANSFORD: I just have one question, Dr Cheung, 7 and this really follows on from Mr Pennicott's question 8 to you about the completion inspection that you refer to 9 in paragraph 18 of your witness statement. 10 My understanding is you explained that inspection 11 and you said it's like an inspection before taking over. 12 But, in a case like this, you're not actually taking 13 over, are you? So is it still applicable? Please can 14 you explain that to me. Because my understanding is 15 it's MTR that's going to be taking over. 16 A. I understand. I think, when it comes to completion 17 notification, it's that under the Buildings Ordinance 18 there is a reporting that is to be completed and we 19 would check to see if all the requirements under the BO 20 have been complied with. It's not the case that we 21 actually take over the project. 22 COMMISSIONER HANSFORD: Right. So the inspection is the 23 same? 24 A. My understanding is that if it is about taking over, it 25 is a different group of colleagues under RDO but not by</p>
<p style="text-align: right;">Page 114</p> <p>1 applies to superstructural work. And the requirements 2 are simple. That is, it won't affect the structural 3 integrity. So a registered structural engineer would 4 know when the structural integrity would be affected; 5 they would have the professional knowledge to know. 6 Of course, if there are unclear areas or if there 7 are requirements that are unclear to the trade, we are 8 happy to clarify. We have regular meetings with the 9 trade, including institutes and associations of 10 developers. We regularly need to talk about the 11 operation of the Buildings Ordinance and whether there 12 are areas that are unclear to the trade or whether there 13 are areas that pose a hindrance to the trade. We talk 14 to them. 15 So, if that happens, of course the BD will be happy 16 to address these issues. 17 MR PENNICOTT: Okay. Thank you very much, Dr Cheung. 18 Sir, I have no further questions. 19 MR SO: No questions from China Technology. 20 MR BOULDING: Sir, I have no questions for this witness, but 21 very much like my learned friend Mr Shieh made clear by 22 reference to the last witness, that's principally 23 because matters such as the applicability of the IoE and 24 PNAP 19 we contend are effectively matters of law and we 25 shall make our submissions on those legal matters in due</p>	<p style="text-align: right;">Page 116</p> <p>1 the BD. It's the BO team under the RDO for taking over. 2 For the BO team, they are mainly responsible for 3 taking over for us. We would check whether the 4 Buildings Ordinance has been followed and whether the 5 conditions we have imposed have been complied with. 6 COMMISSIONER HANSFORD: Okay. Thank you. 7 CHAIRMAN: Good. Thank you very much indeed. Your evidence 8 is completed. Thank you. 9 WITNESS: Thank you. 10 (The witness was released) 11 MR KHAW: It comes to our last witness, actually, before we 12 exchange Christmas presents and sing Christmas carols 13 together, because I understand that initially we were 14 supposed to have four more witnesses, the last three 15 being the inspectors, regarding the records, but 16 I understand from Mr Boulding that MTR will not probably 17 need them. 18 MR BOULDING: That's correct, sir. 19 MR KHAW: In that case, Mr Lok will be our last witness. 20 I wonder whether it's a convenient time to take a break 21 before Mr Lok. 22 H O U S E K E E P I N G 23 CHAIRMAN: Yes, it is. While we're here, if we have 24 a couple of minutes just to look to the way ahead. 25 That's your last witness and, Mr Pennicott, that doesn't</p>

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1 necessarily mean factually the last witness. Are there
 2 any other witnesses to follow?
 3 MR PENNICOTT: No, sir.
 4 CHAIRMAN: I didn't think so.
 5 MR PENNICOTT: As Mr Khaw has just explained and Mr Boulding
 6 has indicated -- and they both indicated it to me -- the
 7 three witnesses who deal with the inspection of the
 8 records back in June are no longer required by MTRC to
 9 be questioned, so their witness statements again will be
 10 uploaded onto the website in the usual way. So Mr Lok
 11 Pui Fai is, as I understand it, the last factual
 12 witness, unless anybody wants to give me a surprise.
 13 CHAIRMAN: I sincerely hope not. All right. Good. That
 14 being the case, there then arises the issue of -- that
 15 would complete the day-by-day hearings until after the
 16 New Year.
 17 MR PENNICOTT: Yes, sir.
 18 CHAIRMAN: Then we will commence again on the 9th.
 19 I appreciate I'm asking you to hazard an estimate
 20 here, but with the way things stand at the moment, what,
 21 at the outside, would you suggest would be the time to
 22 be taken up with the expert evidence that will commence
 23 in the New Year?
 24 MR PENNICOTT: Sir, that is an extraordinarily difficult
 25 question to answer at the moment.

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1 CHAIRMAN: Yes.
 2 MR PENNICOTT: What I can say, I think, is this, that the
 3 Commission hopes to be able to distribute its expert
 4 report on project management issues, if I can call them
 5 that, possibly by the end of this week. I can't make
 6 a promise about that but I know that there is --
 7 Mr Rowsell has prepared and is preparing a very final
 8 draft report, and I think just subject to dealing with
 9 certain references and some last-minute aspects of the
 10 evidence that's been coming in over the last few days,
 11 I'm hopeful but can't make any promises that the project
 12 management report will be out very soon. That, I hope,
 13 will enable those parties who perhaps were contemplating
 14 calling a project management expert -- and of course
 15 that primarily I think is perhaps the MTRC -- if they
 16 had the opportunity of looking at Mr Rowsell's report,
 17 they will then be able to take a view as to whether or
 18 not they need to call their own expert, I imagine only
 19 really needing to do so if they have some fundamental
 20 difficulties or problems or issues with Mr Rowsell's
 21 views.
 22 If they don't have any significant issues with
 23 Mr Rowsell's views on the project management side of the
 24 Inquiry, then that part of the expert evidence will
 25 necessarily be very quick indeed, and indeed may not

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1 even require Mr Rowsell to come to Hong Kong from the
 2 UK, but obviously we will have to monitor that
 3 situation.
 4 Sir, so far as the structural engineering experts
 5 are concerned, that's a much more difficult situation.
 6 As you know, the current position so far as opening up
 7 is concerned is fluid. Opening up has started.
 8 I understand that the experts jointly yesterday carried
 9 out an inspection of what there is to see at the moment.
 10 I also understand that the experts had a joint meeting
 11 this morning, but I don't know in any detail what the
 12 upshot of that meeting was.
 13 But again, as you know, the Commission's expert is
 14 here in Hong Kong at the moment. I'm hoping to meet him
 15 again soon to find out and be briefed about procedurally
 16 where we are and when we can expect to receive a report
 17 from the Commission's expert, structural engineering
 18 expert.
 19 I'm afraid I just have no idea at the moment when
 20 that might be. I think there is -- and I imagine this
 21 applies to all the experts -- I daresay that there's
 22 a good deal of preparation has gone into preparing
 23 reports, but because the situation is as fluid as it is
 24 at the moment, no doubt a continuous process of updating
 25 and reviewing and revising is necessary for those

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1 reports, so that the Commission, at the end of the day,
 2 can be brought right up to date with as much current
 3 information as possible.
 4 What I can't quite work out at the moment is whether
 5 it's going to be better for the Commission's structural
 6 engineering expert to serve his report first, as it
 7 were, rather similar to what we're expecting with the
 8 project management expert witness, or whether it would
 9 just be better for all of those parties who wish to call
 10 structural engineering evidence, or at least wish to do
 11 so in principle, to serve all the reports together, at
 12 one time, so that we can then look at them and with
 13 a view to deciding how much cross-examination there's
 14 going to be on those reports.
 15 So there's quite a lot of alternatives, and perhaps
 16 other parties have their own views, but I'm a bit
 17 reticent to go too far without having had the
 18 opportunity to speak to Prof McQuillan.
 19 CHAIRMAN: Yes. I also don't want Prof McQuillan or the
 20 others to start rebuilding their various reports from
 21 scratch, but Prof Hansford and I have discussed the
 22 matter, and Prof Hansford has raised the point that in
 23 one of the English tribunals, the experts are obliged to
 24 get together -- which of course in this jurisdiction too
 25 is highly encouraged -- and a joint report is submitted

<p style="text-align: right;">Page 121</p> <p>1 on all those matters that are agreed, and only in 2 respect of matters that are not agreed are individual 3 reports submitted. That then clearly isolates, from 4 each expert, the points where they are in contention, as 5 opposed to leaving it to laypersons to trawl through all 6 the reports to see what in fact are the areas of 7 disagreement.</p> <p>8 MR PENNICOTT: Yes, sir. I understand that the meeting 9 between the experts this morning was fruitful and that 10 there may indeed be moves towards creating some form of 11 joint statement or joint memorandum. I've had a whisper 12 that that may have been achieved but I don't want to say 13 anything because I haven't got formal instructions on it 14 at the moment.</p> <p>15 Sir, can I also make this point, perhaps relevant to 16 the observation that you have just made, that of course 17 in more conventional situations, in court or in 18 arbitration, the expert engineers, in this case, might 19 have a list of issues that have been drawn up and their 20 expert reports would be specifically directed to those 21 issues. Of course that isn't the case here, so whilst 22 no doubt each of the experts -- sorry, there's probably 23 a high degree of common ground as to what the actual 24 issues are that should be addressed, there is 25 unfortunately no formal list of issues that are being</p>	<p style="text-align: right;">Page 123</p> <p>1 or at some point tomorrow; I don't know. Again, I'm in 2 the hands of others. I, frankly, am relaxed about the 3 position, but again I'm not sure whether everybody else 4 is in the same position as me, perhaps, that they need 5 to speak to their experts and find out what's been going 6 on, take instructions from those that they take 7 instructions from, until they make submissions to the 8 Commission.</p> <p>9 CHAIRMAN: On that aspect of it, I am aware of the fact that 10 one of the important issues on matters of procedure and 11 bringing this Inquiry to an end are going to be final 12 submissions.</p> <p>13 MR PENNICOTT: Yes.</p> <p>14 CHAIRMAN: And I was thinking of today, at the end of today, 15 giving what we think -- that is what Prof Hansford and 16 I think -- would be adequate time for oral submissions 17 to be made, and more important, in many respects, before 18 that, the number of pages that we think would be 19 reasonable for each party to be given to make their 20 written submissions, and then that means that as from 21 this evening you can start to work towards something.</p> <p>22 MR PENNICOTT: Yes. Sir, on that point, I'm sure all the 23 parties would find it extremely helpful to have that 24 indication as to the number of pages. I don't 25 personally think it would be possible to fix a date for</p>
<p style="text-align: right;">Page 122</p> <p>1 addressed, so there may be a degree of ships passing in 2 the night, when one expert is dealing with a particular 3 issue that another expert hasn't dealt with. But again 4 I'm not sure that is the case and I certainly wouldn't 5 like to suggest that it is the case, but as I say, until 6 I understand a bit more fully than I do at the moment 7 where the experts have got to in their joint meeting and 8 get an indication from the parties as to how they see, 9 perhaps, the date for service of their structural 10 engineering reports, I wouldn't want to start, as it 11 were, making suggestions until I had heard the views of 12 everybody else.</p> <p>13 CHAIRMAN: All right. Good. That gives us an idea of the 14 lie of the land, thank you. I think all of this will 15 come together, hopefully quite rapidly, in the next 16 three or four days.</p> <p>17 MR PENNICOTT: Yes. I imagine -- I don't know -- that those 18 behind me and those instructing them may say it would be 19 good and certainly save costs, no doubt, if we could 20 avoid having to come back tomorrow, Thursday or Friday, 21 to have the conversation about procedures.</p> <p>22 I don't know, whether it can all be done in writing 23 or whether we can deal with it this evening, after the 24 last witness, or indeed whether, if we have to come 25 back, then perhaps we should come back tomorrow morning</p>	<p style="text-align: right;">Page 124</p> <p>1 the service of those submissions.</p> <p>2 CHAIRMAN: No.</p> <p>3 MR PENNICOTT: Because until things have unfolded a bit 4 more -- but certainly giving an indication as to the 5 length and the number of pages, that -- I imagine 6 everybody is going to be aware that there could be 7 a very tight timetable come January for the service of 8 those written submissions, and any work that can be done 9 during the Christmas break is going to make life 10 a little bit easier come January, and having 11 an indication as to the length of those submissions will 12 no doubt be of considerable assistance to everybody, 13 because they know what they've got to play with, as it 14 were.</p> <p>15 CHAIRMAN: Yes.</p> <p>16 All right. Prof Hansford and I will give our 17 directions in that regard at the closure of proceedings 18 this evening.</p> <p>19 Then so far as any other communications are 20 concerned, prior to returning on the 9th, if you require 21 Prof Hansford and I, either tomorrow or on Thursday, to 22 sit again, then we will do so, but I think, frankly, I'm 23 dealing with senior and experienced counsel and you are 24 able to liaise among yourselves to see whether that's 25 necessary or not, and I don't think it will be necessary</p>

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<p>1 and I don't want to -- you know, with the greatest of 2 respect -- bring out a cohort of experienced and 3 expensive lawyers, because that's the way it happens to 4 be -- that's a generalisation, by the way, not 5 an absolute statement for each and every one of you -- 6 if we can avoid it, it's all part and parcel of just 7 trying to move things along -- 8 MR PENNICOTT: Yes, sir. 9 CHAIRMAN: -- in the most economically viable way that we 10 can. 11 MR PENNICOTT: Thank you, sir. 12 COMMISSIONER HANSFORD: Can I just ask, how long do we 13 expect we will be with Mr Lok? 14 MR PENNICOTT: Not very long, I suspect. 15 COMMISSIONER HANSFORD: All parties? 16 MR PENNICOTT: I think so. 17 MR BOULDING: Sir, I can see it's teatime and we are 18 probably desperate for a cup, but I wonder if either now 19 or after tea I can just make one or two observations 20 regarding any project management expert that MTR are 21 calling, in the light of what Mr Pennicott has very 22 helpfully said over the course of the last five minutes 23 or so. 24 CHAIRMAN: Absolutely, Mr Boulding. I wasn't in any way 25 wishing to guillotine anybody. Directions and the best</p>	<p>1 I merely record the fact that it is now before us and 2 both myself and Prof Hansford do need to have the 3 evening to look at it and to consider the consequences 4 of it, how it should be dealt with, along with other 5 matters. 6 In light of that, having said it would be good to 7 try and not to have to come back tomorrow, I think in 8 fact, looking at the time, there's some concern that we 9 may not be able to finish the last witness and it would 10 be better, I think, if we come back tomorrow, just to 11 deal with that one witness, but in addition to which 12 I had agreed to give directions as to the length of 13 written submissions and the like. I will now give those 14 directions. 15 They are given, however, subject to the following 16 proviso, that if any party feels strongly aggrieved, as 17 opposed to plain ordinary everyday aggrieved, by our 18 directions, then tomorrow morning, when you've had the 19 evening to mull over it, Prof Hansford and I will 20 obviously hear submissions in that regard. We hope they 21 won't be necessary. 22 D I R E C T I O N S 23 These are the directions. Firstly, there will be 24 written submissions. Apart from the written submission 25 from the Commission's counsel, all parties shall submit</p>
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<p>1 way forward, it's clearly a complementary exercise and 2 any assistance you can give to us will be greatly 3 appreciated. Thank you. 4 MR BOULDING: Shall we have a cup of tea first? 5 CHAIRMAN: A cup of tea first. Thank you. Can we make it 6 20 minutes because Prof Hansford and I will want to 7 probably discuss a couple of things. 8 MR PENNICOTT: Yes. Can I suggest we then go to the witness 9 next and then leave the submissions and anything else 10 until the end? 11 CHAIRMAN: Yes, I think so. Good. Thank you. 12 (3.35 pm) 13 (A short adjournment) 14 (4.10 pm) 15 CHAIRMAN: Yes. Myself and Prof Hansford have just had 16 a discussion with Mr Pennicott and the counsel with him 17 and also their instructing solicitors, to be advised as 18 we have been of a document which I think a number of you 19 have received, but I think there were a limited number 20 of documents. 21 It's a document that confirms a meeting of the 22 structural engineering experts. I don't wish to say 23 anything more about that document at this stage because 24 I haven't had an opportunity to digest it and it would 25 be wrong simply to speak of something out of ignorance.</p>	<p>1 a soft copy of their written submission to the 2 Commissioners' solicitors in January on a date to be 3 advised as soon as possible. Written submissions from 4 the Commission's counsel shall be submitted to the 5 Secretariat on a later date in January, again to be 6 advised as soon as possible. 7 All written submissions will be printed on A4-size 8 paper and Century Schoolbook or Times New Roman, font 9 size 14 points, with one and a half line spacing, with 10 a minimum margin of 1 inch all around, double-sided 11 printing, shall be adopted. 12 As far as the length of the written submissions are 13 concerned, they will be as follows: counsel for the 14 Commission, a maximum -- and I do emphasise "maximum", 15 that applies to all parties -- of 150 pages; the 16 government, a maximum of 100 pages; the MTRCL, a maximum 17 of 100 pages; Leightons, a maximum of 100 pages; and 18 Intrafor, a maximum of 50 pages; China Technology, 19 a maximum of 50 pages; Fang Sheung, a maximum of 20 50 pages; Atkins, a maximum of 50 pages; and Pypun, 21 a maximum of 50 pages. 22 The fact that certain of the parties are given 23 50 pages is not in any way an indication that they are 24 considered to be any less important or their submissions 25 any less relevant. The decision as to the amount of</p>

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1 space given is based entirely on the bulk of the
 2 material that will have to come before the Commission.
 3 As far as footnotes are concerned, they do not have
 4 to be one and a half line spacing, 14 points. They will
 5 follow ordinary footnotes. And they may be added but
 6 only where necessary and not as a device.
 7 As far as legal authorities are concerned, legal
 8 authorities, if any, should be listed at the end of the
 9 written submissions, with the relevant legal principles
 10 summarised in a matter of four or five sentences and no
 11 more. Legal authorities and any relevant legal
 12 principles may be in addition to the 100 pages or
 13 50 pages.
 14 As far as oral submissions are concerned in support
 15 of the written submissions, the government will be given
 16 one and a half hours; the MTRCL will be given one and
 17 a half hours; Leighton will be given one and a half
 18 hours; Intrafor will be given one hour; China Technology
 19 one hour; Fang Sheung will be given one hour; Atkins
 20 will be given one hour; Pypun will be given one hour.
 21 Counsel for the Commission, who will have to reply to
 22 all of those other matters, will be allowed a period of
 23 three hours.
 24 Those are the directions for you. As I have said
 25 already, the dates when the written submissions are to

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1 be filed obviously cannot be given at this juncture
 2 because there are a number of matters which remain
 3 uncertain.
 4 If any of you are really aggrieved, to repeat, then
 5 I will hear from you tomorrow morning, but it does seem
 6 to me that -- as far as the footnotes are concerned,
 7 Prof Hansford has just mentioned to me, I think what
 8 I haven't made clear, and he has reminded me, and thank
 9 you, is that the footnotes will be included in the
 10 100 pages; okay? They may not be included in the lines
 11 per page, if you see what I mean, because the footnotes
 12 come in that smaller font at the bottom of the page, but
 13 it doesn't mean you can have an extra 30 pages of
 14 footnotes; all right? Thank you. Good.
 15 I don't intend to say anything more, the Commission
 16 does not intend to say anything more, about the document
 17 received this evening. Insofar as certain parties may
 18 not have received this document, I think it's right and
 19 proper that they should be given a copy.
 20 MR PENNICOTT: Yes, sir.
 21 CHAIRMAN: Good. That's this evening, so they've got
 22 a chance to go over it.
 23 There is one final matter, and that is the
 24 application that is before me by one of the parties,
 25 China Technology. Prof Hansford and I have considered

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1 that application. We will hear the application, but in
 2 our view we are of the view that it should be heard in
 3 January, at a convenient time. So we will not hear it
 4 tomorrow morning, for example, or now; all right?
 5 MR SO: Thank you, sir.
 6 CHAIRMAN: Anything further?
 7 MR PENNICOTT: No, I don't think so, other than I think to
 8 apologise to Mr Lok, on the basis that, as you have
 9 indicated, and as I think was inevitable given the time
 10 we started, I'm afraid we weren't going to finish you
 11 tonight, Mr Lok, unless we sat rather late, so we
 12 apologise for that and we will see you tomorrow morning.
 13 CHAIRMAN: Yes.
 14 MR PENNICOTT: Sir, tomorrow morning also I will deal
 15 formally with the four other witnesses who are not being
 16 called but I'll deal with the details of those tomorrow
 17 morning.
 18 CHAIRMAN: Yes.
 19 Mr Lok, apologies from the Commission too. There
 20 are other matters that have come in, and I'm sure, as
 21 you can understand, it's not simply a question of us
 22 sitting, hearing evidence, although that has recently
 23 taken up most of our time; there are reports, document
 24 applications and we have to consider those, and in doing
 25 so, without any insult intended to you, I'm afraid that

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1 we are just not able to deal with your evidence fully
 2 and properly this evening, and we think it's better if
 3 we can hear from you tomorrow at 10 o'clock. Would that
 4 be satisfactory for you, or acceptable?
 5 MR LOK: It's okay.
 6 CHAIRMAN: Good. Having asked a silly question, I'm perhaps
 7 getting an appropriate answer. But thank you very much
 8 indeed. Thank you.
 9 Good, then 10 o'clock tomorrow morning. Sorry,
 10 no --
 11 MR BOULDING: Can I just make the observation --
 12 CHAIRMAN: As soon as I saw you, I realised I had forgotten.
 13 MR BOULDING: Thank you very much, sir, and professor.
 14 It seems a very long time ago now, but at the CMC on
 15 24 September, I informed the Commissioners that MTR were
 16 consulting with a project management expert with a view,
 17 if necessary, to serving a report. I don't know what
 18 the other parties' position is but that's still our
 19 position. We've had this expert on board since that
 20 date, and conscious of your diktat that he needed to
 21 take account of all the evidence, he has been preparing
 22 a report on an ongoing basis that is still in draft, but
 23 I'm sure you will understand that until perhaps the last
 24 day or so, relevant evidence to project management was
 25 still coming before you.

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1 CHAIRMAN: Yes.
 2 MR BOULDING: So you will not be surprised to hear that he
 3 is not in a position to sign it off yet.
 4 Now, whether or not we call our project management
 5 expert -- of course with your leave -- is very much
 6 dependent upon the Rowsell report. We were hopeful that
 7 we would see that in good time sometime this week so
 8 that our expert could take a view as to whether, for
 9 example, he agreed with it. We obviously have to
 10 discuss it with our client. We assume it may well
 11 contain recommendations which we would need to discuss
 12 with our client in terms of whether they are practical,
 13 whether they are cost-effective, and so on and so forth.
 14 And having read that report and consulted with all
 15 parties as necessary, to the extent that any report was
 16 required from our expert, we anticipated that it would
 17 be much, much, much shorter than the current draft.
 18 Now, we are a bit concerned that Mr Pennicott has
 19 informed you -- this is not a criticism -- we are a bit
 20 concerned that we are not going to get, apparently,
 21 Mr Rowsell's report until the end of the week. The
 22 problem with getting it at the end of the week is that,
 23 you'll not be surprised to hear, virtually the whole of
 24 our team, and I suspect many, many, many people in the
 25 room, are breaking off for Christmas. In fact many

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1 members of our team have not had a day off literally for
 2 eight to ten weeks, and I'm sure that I speak for many
 3 others in the room as well.
 4 CHAIRMAN: Yes.
 5 MR BOULDING: Now, that causes a practical problem, because
 6 in circumstances where the whole team is not going to be
 7 around, doing all of the important things that I've told
 8 you obviously need to be done is going to be delayed, in
 9 reality, I suspect, until the first week of January.
 10 In those circumstances, and bearing in mind that we
 11 would also welcome the opportunity, as appropriate, to
 12 have meetings between our expert and Mr Rowsell --
 13 either videocons, because our expert is based in
 14 America, or if necessary face-to-face -- bearing that in
 15 mind, we wonder whether Mr Pennicott would give
 16 consideration to allowing us to see his report on
 17 a without-prejudice basis earlier than the end of the
 18 week. We are not too fussed if it doesn't have
 19 transcript references in, if it's not paginated, if it
 20 doesn't have pretty pictures.
 21 We are sure at the moment that if it could be served
 22 in full at the end of the week, important matters such
 23 as recommendations, any criticism, those sorts of things
 24 are already in it. It would be on a without-prejudice
 25 basis, so we couldn't obviously refer to it, but it

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1 would be very, very helpful to aid those essential
 2 processes which I've just described to you.
 3 CHAIRMAN: Yes.
 4 Mr Pennicott?
 5 MR PENNICOTT: Yes, sir. It seems to me that what I will do
 6 immediately after we adjourn now is take instructions on
 7 what seems to me personally to be a very constructive
 8 suggestion from Mr Boulding, and if there is a way that
 9 we can allow the report of Mr Rowsell -- we may need to
 10 speak to him first --
 11 CHAIRMAN: Of course.
 12 MR PENNICOTT: -- in the UK, as Mr Boulding has indicated,
 13 release that report to the MTRC on a without-prejudice
 14 basis, then of course I will do that, and certainly from
 15 my own perspective I think we should try to do that, if
 16 we possibly can.
 17 CHAIRMAN: All right. Would any other party have any
 18 objection if that arrangement was made as between those
 19 two parties?
 20 MR KHAW: Mr Chairman, on behalf of the government, in fact
 21 we have also considered the need to call an expert on
 22 project management, but that really depends on the
 23 contents of the Commission's expert, because if there is
 24 nothing really controversial arising from that report,
 25 we may not see the need to do so.

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1 So perhaps if Mr Rowsell's report is available, then
 2 it will be helpful if we can also have sight of the
 3 same.
 4 MR PENNICOTT: Yes, sir. Again, if it's given to the
 5 government on a without-prejudice basis as well, then
 6 I will try to put that into operation.
 7 CHAIRMAN: All right.
 8 Mr Shieh, for Leightons?
 9 MR SHIEH: We don't see any difficulty or problem with that.
 10 CHAIRMAN: All right. Good. Thank you indeed. Any other
 11 party?
 12 MR CONNOR: Not Atkins.
 13 MR SO: There won't be expert evidence from China Technology
 14 in this regard.
 15 CHAIRMAN: Good. That looks like hopefully it can move
 16 ahead. That will certainly save time.
 17 MR BOULDING: I'm very grateful. Thank you, Mr Pennicott.
 18 CHAIRMAN: Any other matters of an administrative or
 19 procedural nature that any party would like to raise?
 20 Good. Thank you very much indeed. Then we can adjourn
 21 until tomorrow, 10 am, and then we can deal with Mr Lok.
 22 Mr Lok, thank you for your patience again. It's
 23 much appreciated.
 24 Then hopefully we can then wrap matters up before
 25 lunch tomorrow, until after the New Year. Thank you

1 very much.
2 (4.28 pm)
3 (The hearing adjourned until 10.00 am the following day)
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