

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.

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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
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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
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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
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1 concrete and the rebar were on site sometimes.

2 Q. Right. Yes, okay. So the people on the ground were
3 those doing the testing on concrete and perhaps other
4 materials as well from time to time?

5 A. For the sampling and testing.

6 Q. Understood. All right. But they would make specific
7 site visits for the specific purpose of carrying out
8 those types of tests?

9 A. Mm-hmm.

10 Q. Okay. Now, you tell us that you were aware of but not
11 involved in the preparation and implementation of the
12 site supervision plans; is that right?

13 A. Yes.

14 Q. You also tell us that you were aware of but not involved
15 in the preparation or implementation of the quality
16 supervision plan in relation to the installation of
17 couplers?

18 A. Yes, that's right.

19 Q. So let me just understand this. You lead the quality
20 team?

21 A. Yes.

22 Q. And am I right in thinking that neither you nor anybody
23 else in the quality team regarded it as appropriate to
24 monitor whether the QSP was being properly implemented
25 by Leighton? Is that right?

26

1 A. Could you repeat the question, please?

2 Q. Yes. Am I right in suggesting to you that neither you
3 nor anybody else in the quality assurance team regarded
4 it as appropriate to monitor whether Leighton was
5 properly implementing the quality supervision plan?

6 A. I think we had some monitoring.

7 Q. In what sense and in what form?

8 A. I recall we did a couple of audits at the early stage,
9 in early 2014.

10 Q. Right. I'm aware of -- if it was 2014, that would have
11 been in connection with the diaphragm walls, would it,
12 Mr Harman?

13 A. Yes.

14 Q. Okay. Would that have been -- we're aware of an audit
15 that was done by the BO team and the Pypun team, the
16 monitoring and verification consultants engaged by the
17 government, certainly in January 2014. I don't know
18 whether you were aware of that.

19 A. I don't know.

20 Q. So are you aware of any documents having been created,
21 as a consequence of the audits that you've just referred
22 to?

23 A. We had two internal audit reports.

24 Q. Right. Can you recall what the audit was directed at
25 specifically, if anything?

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1 A. Checking the compliance of implementation of the QSP for
2 the couplers.

3 Q. Right. Would that have involved checking the records
4 that were being kept by those involved in the works?

5 A. Yes.

6 Q. Right. Do you recall whether or not those audits
7 produced a satisfactory result?

8 A. I recall.

9 Q. That they did?

10 A. Yes.

11 Q. Okay. So far as you can recall, were any similar audits
12 implemented in relation to the installation of the rebar
13 on either the EWL or the NSL slabs?

14 A. I can't remember.

15 Q. Right. If they had been carried out, an audit had been
16 carried out in relation to those matters, presumably you
17 would recall it, Mr Harman?

18 A. I'm sorry, could you repeat the question?

19 Q. Yes. If any audit had been carried out in relation to
20 the QSP, the quality supervision plan, as it applied to
21 the rebar for the slabs, you would have recalled such
22 an audit?

23 A. Yes.

24 Q. And you have no recollection of such an audit?

25 A. Correct.

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1 Q. You I think were aware that the QSP, or the purpose of
2 the QSP, was to enhance the level or the degree of
3 supervision insofar as the coupler installations was
4 concerned?

5 A. Yes.

6 Q. And, as we've just touched on, it required the keeping
7 of certain records?

8 A. Yes.

9 Q. You were aware, I think, that BOSA, the coupler supplier
10 and the supplier of threaded rebar, had given specific
11 training sessions to personnel likely to be involved in
12 the installation and supervision of the coupler works?

13 A. Yes, that's right.

14 Q. Could I just ask you to please look at, first of all,
15 H25/44827. This is part of a witness statement of
16 a Mr Paulino Lim. You might know him as Paul Lam --

17 A. Yes.

18 Q. -- of BOSA. He gave evidence to the Commission
19 yesterday, and as part of his witness statement he says:

20 "I liaised with ..."

21 That is obviously a typographical error in your
22 first name, Mr Harman.

23 "I liaised with [Kevin] Harman, the quality manager
24 of Leighton ... about how to improve the coupler
25 checking forms."

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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

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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?

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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
26

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
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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?

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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

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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
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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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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
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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

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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
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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.

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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.

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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".

26

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?

26

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.

26

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
26

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
26

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
26

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.

26

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,

26

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
26

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?

26

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?

26

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
26

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
26

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.

26

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
26

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

26

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

26

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

26

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
26

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.

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.

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?

19 A. The primary purpose.

20 COMMISSIONER HANSFORD: And the secondary purpose?

21 A. To detect repeated occurrences.

22 COMMISSIONER HANSFORD: Right. Repeated occurrences that
23 have previously been identified through an NCR?

24 A. It allows us to evaluate if we have repeating defects
25 through the non-conformance process.

26

1 COMMISSIONER HANSFORD: Yes.

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.

5 COMMISSIONER HANSFORD: Ah.

6 A. It has programming interest, because the closing out of
7 the NCRs can cause prolongation to the programme.

8 COMMISSIONER HANSFORD: Yes. Okay. Thank you.

9 I understand.

10 CHAIRMAN: Just a couple of questions also on the one
11 subject.

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?

19 A. New engineers coming into our site would have a few
20 training courses that they would receive.

21 CHAIRMAN: Yes.

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.

26

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.

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.

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?

21 A. Yes.

22 CHAIRMAN: And they can find their way to that?

23 A. Yes.

24 CHAIRMAN: So they would be able to find their way to the
25 requirements under the QSP, if they had a specific job

26

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?

4 A. That's correct.

5 CHAIRMAN: Good. Thank you very much.

6 Mr Shieh, anything arising?

7 MR SHIEH: I was just tracking the wording of one question.

8 Perhaps I should for safety reasons clarify an answer.

9 Re-examination by MR SHIEH

10 Q. Mr Harman, just a brief line of questioning by way of
11 re-examination.

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?

21 A. Yes.

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?",
26

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.

26

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: 正確。

8 MR KHAW: You are also known as Humphrey Ho.

9 WITNESS: 正確。

10 MR HO HON KIT, HUMPHREY (affirmed in Punti)

11 Examination-in-chief by MR KHAW

12 MR KHAW: Mr Ho, would you like to give your evidence in
13 Cantonese or in English?

14 A. Cantonese.

15 Q. For the purpose of this Commission of Inquiry, we
16 understand that you have given three witness statements.

17 If we can take a look at those witness statements
18 one by one. The first witness statement of yours
19 appears at H7/2167. Can you find that?

20 A. 係, 有。

21 Q. Thank you. It consists of a number of pages, about
22 20 pages. If we can take a look at 2186.

23 A. 係。

24 Q. It's a statement dated 13 September this year; do you
25 see that?

1 A. 正確。

2 Q. You confirm that that is your signature put at the end
3 of this witness statement?

4 A. 係我嘅簽名。

5 Q. You confirm that the contents of this witness statement
6 are true to the best of your knowledge, understanding
7 and belief?

8 A. 係，正確。

9 Q. Then we can have a look at your second witness
10 statement, which appears at H20, page 40054.

11 A. 係，見到。

12 Q. This is your second witness statement. It is slightly
13 shorter than the last one. It has 11 pages and goes all
14 the way to 40064.

15 A. 係，見到。

16 Q. This second witness statement is dated 16 October this
17 year; do you see that?

18 A. 見到，見到。

19 Q. Thank you. You also see your signature at the end of
20 this statement?

21 A. 係，見到，正確嘅。

22 Q. You confirm that the contents of this second witness
23 statement are true to the best of your knowledge,
24 understanding and belief?

25 A. 係，正確。

1 Q. Then you made your third witness statement which appears
2 at H21, page 40567.

3 A. 見到。

4 Q. This witness statement has also about 11 pages. It ends
5 at 40577; do you see that?

6 A. 見到。

7 Q. You also see the date which is 27 November this year?

8 A. 係，見到。

9 Q. Do you confirm that your signature is put at the end of
10 this witness statement?

11 A. 係，冇錯。

12 Q. However, we understand that in relation to this witness
13 statement, you intend to rely on only certain
14 paragraphs, and we have actually prepared an extract in
15 relation to this third witness statement, as we
16 discussed earlier.

17 The extract can be found at page 40579.

18 A. 見到。

19 Q. You confirm that the contents of this extract, which is
20 in fact part of your third witness statement, are true
21 to the best of your knowledge, understanding and belief?

22 A. 係，確定。

23 Q. You also intend to rely on the contents of the three
24 documents that we have just looked at for the purpose of
25 this Inquiry?

1 A. 係，正確。

2 Q. There are only a few questions that I wish to go through
3 with you.

4 If I may take you to have a look at your second
5 witness statement.

6 Before I do that, actually, I will see whether I can
7 meet Mr Pennicott's requirements this time, by trying
8 once again to look at the organisation chart. It's at
9 H7/2657.

10 On the right-hand side of this page, you can see
11 there's a simplified structure of the Buildings
12 Department, and we can see that there are two "Assistant
13 Director/New Buildings 1 (AD/NB1)", and then there's
14 an "Assistant Director/New Buildings 2"; do you see
15 that?

16 A. 見到。

17 Q. I take it that your present position is Assistant
18 Director/New Buildings 2; am I correct?

19 A. 正確嘅。

20 Q. If we take a look at your first witness statement, at
21 page H7/2167. We understand that you took up your
22 present position in December 2017; is that correct?

23 A. 正確。

24 Q. Can you tell us your position before that?

25 A. 我係負責九龍及鐵路組嘅總結構工程師。

1 Q. Right. How long did you stay in that position?

2 A. 由2015年嘅9月直至到轉呢個位係17年嘅12月。

3 Q. Can you tell us your position before September 2015 as
4 well?

5 A. 我係另外一個組別，係新界組嘅總結構工程師。

6 Q. If we can now take a look at your second witness
7 statement, which starts from H20/40054.

8 Can I ask you to turn to paragraph 23, at 40062.
9 There you mentioned two sets of submissions, and we
10 understand that they actually are submissions in
11 relation to the temporary excavation works --

12 A. 正確。

13 Q. -- for Hung Hom Station area C.

14 The first submission that you referred to in
15 paragraph 23 is a submission dated 29 July 2015. If we
16 can just perhaps take a look at that particular
17 document. B12. It starts at 8888. Can you find that?

18 A. 係，見到。

19 Q. We can see from the heading of this letter of
20 submission, it says:

21 "SCL instrumentation of exemption submission to
22 Buildings Department", et cetera, "Design report for
23 Hung Hom Station excavation and lateral support for
24 area C1 and C2 -- excavation below minus 0.5mPD
25 (amendment submission)" -- do you see that?

1 A. 見到。

2 Q. Then if we can take a look at certain certificates
3 prepared for the purpose of this submission. You will
4 be able to see at 8891. Can you see the certificate
5 prepared by the CP --

6 A. 係，正確，係，見到。

7 Q. -- of MTR, and the submission title is the strutting for
8 area C, in particular C1 and C2; do you see that?

9 A. 見到。

10 Q. So that is what has been taken to be the temporary
11 excavation works submissions for C1 and C2 area.

12 A. 係。

13 Q. Thank you. Then we can just have a very quick look at
14 the other submission. It appears at C26/19996. Do you
15 see that?

16 A. 係，見到，見到。

17 Q. I take it that it is a similar temporary excavation
18 works submission, albeit in relation to another area,
19 C3; is that correct?

20 A. 係，見到。

21 Q. If we then just move on to look at the following
22 paragraph of your witness statement or your second
23 witness statement: H20/40062. I just try to put things
24 in context for the time being.

25 A. 明白。

1 Q. "At the outset, I would like to point out that the two
2 consultation submissions were made by MTRCL for design
3 of temporary works for excavation at area C, including
4 the design checking on permanent slab during the
5 temporary excavation stage. They do not constitute
6 consultation submissions for the change of construction
7 and [reinforcement] details at the connection between
8 the platform slab and the east diaphragm wall.
9 Accordingly, BD cannot be regarded as having accepted
10 such proposed changes in the connection."

11 Then you went on to talk about section 6.2 of
12 a design report which was actually attached to the
13 temporary excavation works submissions, and I believe we
14 have seen that many times, but just for the record,
15 since you are here, I would ask you to have a look at
16 B12 --

17 MR PENNICOTT: Sir, I've been patient so far, but presumably
18 Mr Khaw is going to invite Mr Ho to tell us when he
19 first saw these submissions. Given the first questions
20 in examination-in-chief as to his positions up until one
21 year ago, I would be interested to know when Mr Ho first
22 saw these submissions.

23 MR KHAW: Thank you, Mr Pennicott.

24 Mr Ho, can you tell us when you first saw the
25 submissions for the temporary excavation works?

26 A. 我預備今次委員會之前大概幾個月前開始見到呢份嘢。

1 Q. Thank you. Then if we can now have a look at section --
2 B12/9034.

3 Do you see that?

4 A. 見到。

5 Q. 6.2, under the heading of "Construction sequence", and
6 then we have the three famous paragraphs highlighted in
7 yellow; do you see that?

8 A. 見到。

9 Q. First of all:

10 "The top of diaphragm wall panel will be trimmed to
11 the lowest level of top rebar for the EWL slab (minimum
12 420mm below the top level of EWL slab).

13 The top rebar of EWL slab at the D-wall panel will
14 then fix to the top rebar of OTE slab to achieve full
15 tension laps.

16 The EWL slab and OTE slab will be casted
17 concurrently with temporary openings [above] the
18 existing columns and pile caps."

19 Do you see that?

20 A. 見到。

21 Q. Thank you. Then if you go back to your witness
22 statement, paragraph 25, you say:

23 "In section 6.2 of the design report, which was
24 attached to MTRCL's letter dated 29 July 2015, Atkins
25 stated that the top of diaphragm wall panel will be
26 trimmed down. However, the drawings submitted

1 (including the excavation sequence ...) did not provide
2 the relevant demolition sequence or revised details of
3 diaphragm walls. In particular, the drawings in
4 appendix H to the design report still showed that
5 couplers were to be used at the connection between the
6 diaphragm wall and slab. In the premises, section 6.2
7 cannot be regarded as any proper consultation submission
8 to BD for acceptance of the alteration to the completed
9 diaphragm wall or revision of the reinforcing details at
10 the connection between the platform slab and the
11 diaphragm wall."

12 Do you see that?

13 A. 見到。

14 Q. Now, throughout this Inquiry we have heard evidence and
15 we have heard also some suggestion that in view of the
16 contents of the three paragraphs highlighted in yellow
17 in section 6.2 of the design report that we have just
18 seen, BD should be taken to have no objection to the
19 design change in relation to the trimming down of the
20 diaphragm wall.

21 What is your view on this suggestion?

22 A. 呢個唔同意，因為呢度--其實呢幾段係顯示到一個改動完成咗個連續牆嘅一
23 個意向，其實有好多嘅details其實都有嘅，譬如係話其實喺邊度會打、實
24 實際係打幾深、個連續牆裏面嘅鋼筋其實有冇改動、打咗之後佢要落番一啲
25 新嘅石屎啲啲資料，呢啲一切一切都有。其實我哋係需要佢係提供番呢啲資

1 料，就入番一份submission畀BD，就我哋--將所有呢啲詳情放喺個圖嗰度，
2 等我哋審批。

3 Q. Thank you. If we can now take a look at the drawings
4 that you referred us to. If we can have a look at
5 B13/10434.

6 If we look at this particular drawing, can you tell
7 us whether the details as shown in this drawing are in
8 support of what you just told us?

9 A. 冇呀，trim過連續牆個頂嗰度冇show出嚟，而仍然都係頂部嗰度都係用一
10 個--有一啲coupler喺度準備接駁個EWL slab個鋼筋或者係OTE slab嘅
11 鋼筋，冇任何頭先嗰幾段相關嘅資料喺度。

12 Q. If we can maybe have a look at the next page. Perhaps
13 we can just blow up the middle part a little bit. What
14 about the details in relation to this particular
15 drawing?

16 A. 都有同頭先嗰幾段相關嘅資料。

17 Q. Maybe we can have a look at some further details at
18 page 10557. If we can blow up a bit the diagram on the
19 right. Yes, thank you.

20 Looking at this particular diagram, do the
21 particulars shown in this diagram further support what
22 you just told us?

23 A. 都有任何頭先嗰幾段相關嘅資料喺呢度顯示出嚟。

24 Q. If we can take a look at your third witness statement.
25 Just focus on the extract, page 40580.

1 In paragraph 28, you say:

2 "After the ELS plan submissions, MTRCL submitted 10
3 permanent works amendment submissions for Hung Hom
4 Station primary structure for area C", which is what you
5 call the "permanent works amendment submissions".

6 A. 係，正確。

7 Q. And they were made after the temporary works
8 submissions.

9 A. 係。

10 Q. Then you refer to a list of permanent works amendment
11 submissions. Then, however, you say:

12 "... the structural details for the change in
13 question were not shown in the drawings attached to the
14 said submissions."

15 Do you see that?

16 A. 見到。

17 Q. If we can just take a look at some of those submissions.
18 First of all, if I can take you to B10, page 7322. It's
19 a letter dated 30 July 2015; do you see that?

20 A. 見到。

21 Q. That is one of the permanent works amendment submissions
22 that you referred us to; is that correct?

23 A. 係，正確。

24 Q. Now, if we go to the design report relevant to this
25 particular submission, at C17/12144, there's

1 a section 8.2 in relation to construction sequence; do
2 you see that?

3 A. 見到。

4 Q. I think we can put this page on the screen for the time
5 being, and if we can put also B12, page 9034 side by
6 side.

7 Can you tell us whether the contents of the three
8 highlighted paragraphs, which appeared originally in
9 section 6.2 of the design report for the temporary
10 excavation works, still appeared in the "Construction
11 sequence" section in the permanent works submissions?

12 A. 冇再出現。

13 Q. Maybe we can take one more example. That is in relation
14 to the 4 November 2015 submission. We can have a look
15 at B16/13758. Yes.

16 Here also, under section 8.2, under the heading of
17 "Construction sequence", can you tell us whether the
18 three highlighted paragraphs in the original design
19 report, ie in the original 6.2, still appear in this
20 permanent works submissions?

21 A. 同樣都有再出現。

22 Q. Thank you. Now, in your witness statement, you told us
23 that the amendment submissions for the intended change,
24 ie the trimming down of the diaphragm wall and also the
25 use of through-bars instead of couplers, et cetera --
26 the amendment submissions should have been made before

1 the relevant works were commenced; do you remember that?

2 A. 係。

3 Q. Can you tell us why this would be necessary?

4 A. 因為喺建築事務監督發出畀呢個紅磡站嘅呢個豁免文件裏面，就港鐵要入一
5 個project management plan，嗰度裏面就都指出咗逢係所有嘅工程開
6 始之前，無論係新嘅或者係改動嘅submission，都要入畀屋宇署審批。再
7 加上頭先睇過呢個改動其實都係牽涉一啲完成咗嘅連續牆嘅改動。我頭先都
8 解釋過佢需要提供好多嘅資料，要入一份submission，將所有呢啲資料擺
9 喺個圖則嗰度，所以呢個嘅改動必須係要有一份submission畀咗屋宇署審
10 批咗之後先至可以開始。

11 Q. Thank you.

12 Finally, I would like you to just have a look at
13 certain parts of the transcript, in relation to Mr Jason
14 Wong's evidence. It's Day 31, page 161, line 21. This
15 is Mr Jason Wong's evidence:

16 "And when Buildings Department accepted my
17 appointment as CP, I think they know that I'm not
18 daily -- I'm not responsible on a daily execution of the
19 contract under 1112.

20 Question: On what basis -- what gave you that
21 understanding?

22 Answer: Because the area of responsibility has been
23 made known to the RDO and Buildings Department for some
24 time, when I was -- when Aidan and myself were appointed
25 as general managers respectively for different areas of

1 the works. So I think the Buildings Department and RDO
2 know full well which contract that I am responsible for
3 managing on a daily basis. So if they accepted my
4 appointment as competent person but they know I'm not
5 responsible for the day-to-day execution of the works,
6 I think they should have [understood] that sort of
7 different responsibility under myself. That's my
8 interpretation, again."

9 Do you have any comment on Mr Jason Wong's evidence
10 in this respect?

11 A. 呢個講法唔同意，因為喺個IoE個安排個CP佢係做咗AP同RSE嘅職責，佢
12 負責去報畀BD，佢係嗰個contract個CP，佢就要負責晒所有嘢。就而且
13 我哋所有譬如出嘅--佢入嚟嘅submission，我哋出嘅信，啲acceptance
14 letter全部都係畀番個CP嘅，所以所有嘅條件佢都要--佢有個責任去履行
15 佢CP個職責同埋我哋如果有出信畀佢，所有嘅條件佢都要去執行。

16 Q. Thank you. In relation to Mr Jason Wong's evidence,
17 another part that he's covered appears at page 148 of
18 the same transcript. It starts from line 8. The
19 question was:

20 "Regarding devising checklists, are you familiar
21 with the requirement under the Code of Practice, in
22 particular table 5.1, as to the items that you have to
23 include in the checklist?"

24 Then Mr Wong said:

25 "Yes.

1 Question: Do I need to take you to that table?

2 Answer: I think I'm reasonably familiar with that.

3 Question: Good. Thank you.

4 The last item under the AP stream requires the
5 checklist to take into consideration the specific
6 requirements set out by the Building Authority under the
7 approval letters --

8 Answer: Yes.

9 Question: -- and in this particular case it means
10 the acceptance letters?

11 Answer: Well, I would disagree, because that says,
12 in the Code of Practice, 'approval of plans' which is
13 exempted [from] the Buildings Ordinance, under the
14 IoE/IoC. So those are relating to approval plans and
15 consent requirement, which is exempted. So that's why
16 I would not include those acceptance conditions which is
17 under the consultation submission submit under the IoE
18 into the checklist. Different things."

19 Then he went on to say:

20 "Sorry, I don't want to confuse my people of their
21 statutory and non-statutory responsibilities, put it
22 this way.

23 Question: So your understanding at that time is,
24 notwithstanding the requirement under table 5.1 of the
25 Code of Practice, you consider that because we have
26 a different procedure under the IoE, there was no

1 approval letter --

2 Answer: That's correct.

3 Question: -- so although a condition or specific
4 requirement was set out in the acceptance letter, you
5 don't need to take those into [account] in devising the
6 checklist?

7 Answer: That's my understanding, because the SSP
8 forms are statutory. The acceptance condition under the
9 IoE consultation submission are non-statutory. So
10 that's why I don't want to mix them up."

11 Do you see that?

12 A. 見到。

13 Q. Do you have any comments on Mr Wong's evidence?

14 A. 基本上，IoE只係豁免咗係嗰個批則嗰個程序，根據Buildings Ordinance
15 Section 14個批則嘅程序，但係consultation submission出嘅
16 acceptance letter裏面所列出嘅有好多嘅要求同條件其實都係去滿足
17 《建築物條例》下個safety同埋health standard嘅嘢，所以我哋喺
18 BD出嘅acceptance letter其實就等同一封approval letter，
19 只不過個程序係豁免咗咁解嘅啫。

20 而我哋其實出嘅信亦都係直接係出番畀CP嘅，所以裏面有任何嘅附加
21 嘅條件，個CP亦都有個責任佢去制定呢個checklist嘅時候應該要照顧埋
22 信裏面所有嘅要求，同埋根據我哋個code of practice for site
23 supervision裏面要做嘅嘢，佢都要喺呢個checklist嗰度加埋落去。

24 Q. Perhaps we can take a look at the acceptance letter or

1 perhaps one of the attachments to the acceptance letter,
2 at H9/3901.

3 There we see certain conditions on mechanical
4 couplers for steel reinforcing bars for ductility
5 requirement; do you see that?

6 A. 見到。

7 Q. And paragraph (b) sets out what the CP actually should
8 do; do you see that?

9 A. 係。

10 Q. Is that in support of what you just told us regarding
11 your comments on Mr Wong's evidence?

12 A. 係，喺呢一度呢個appendix裏面，就喺(b)呢一段嗰度都講清楚個CP
13 佢其中就係要去設計嗰個inspection checklist畀佢下低負責做
14 supervision嘅quality control supervisor。

15 MR KHAW: Sorry, I'm just checking whether there should be
16 one clarification in relation to the transcript or the
17 translation which appears at [draft] page 60, line 21,
18 because Mr Ho actually referred to acceptance by the BD
19 in relation to the submissions, but it's just that the
20 word "acceptance" does not appear in the transcript, so
21 just for the record.

22 CHAIRMAN: Yes. Thank you.

23 MR KHAW: I have no further questions for Mr Ho.

24 Mr Ho, counsel for the Commission, Mr Pennicott,
25 will first ask you some questions. Lawyers acting for

1 other parties may ask you some questions, and in the
2 meantime, Chairman and the Commissioner may want to
3 discuss various matters with you. So please remain
4 seated.

5 WITNESS: 明白。

6 Examination by MR PENNICOTT

7 MR PENNICOTT: Mr Ho, good afternoon.

8 A. Good afternoon.

9 Q. As Mr Khaw has just indicated, my name is Ian Pennicott,
10 I am one of the counsel to the Commission, and I have
11 a few questions for you. Thank you very much for coming
12 along to give evidence to the Commission today.

13 Mr Ho, can we first of all try to establish what it
14 is you actually know about contract 1112 and as
15 distinguished from the views you express in your witness
16 statement and orally this morning in your
17 evidence-in-chief.

18 Firstly, Mr Ho, you told us earlier that up to
19 September 2015, you were the Chief Structural
20 Engineer/New Territories?

21 A. 唔係，係Kowloon and Rail。

22 Q. No. You told us that you were the Chief Structural
23 Engineer of Kowloon between September 2015 and December
24 2017.

25 A. 正確。

26 Q. You told us that up to September 2015, you were the

1 Chief Structural Engineer/New Territories. When did you
2 take up that particular role?

3 A. 應該係14年嘅11月一直到15年嘅9月。

4 Q. All right. So I think that's okay for our purposes.

5 Now, in your role as Chief Structural Engineer/New
6 Territories between November 2014 and September 2015,
7 did you have any involvement at all with the SCL
8 project?

9 A. 冇。

10 Q. In your role as Chief Structural Engineer of the Kowloon
11 District between September 2015 and December 2017, did
12 you have any involvement with the SCL project?

13 A. 冇。

14 Q. What was your involvement with the SCL project during
15 that period?

16 A. 都係頭先嗰個organisation chart嗰度睇到係second啱--借調咗去路
17 政署嘅BD嘅同事去審批啲submission嘅時候，如果係有需要係經過Chief
18 Structural Engineer係要去同意一啲嘅批准嘅時候，就會經到我呢個
19 post，就去攞咗一個同意。

20 Q. Right. So if we go back, please, to the organisation
21 chart at H7/2657. We know that on 27 December 2017, you
22 became the Assistant Director/New Buildings 2, and we've
23 seen that box.

24 A. 係，正確。

25 Q. Now, the box underneath, where it says "Chief Structural

1 Engineer/Kowloon & Rail", that was you also --

2 A. 係。

3 Q. -- between September 2015 and December 2017; is that
4 right?

5 A. 正確。

6 Q. So you were seconded to that position for that full
7 period?

8 A. 我唔係借調，我本身係喺屋宇署嘅，呢個職位，只不過就呢個職位，呢個
9 總結構工程師係提供一個technical support畀番左面見到嘅嗰一隊BO
10 team。

11 Q. Sorry, Mr Ho, I just want to get this absolutely clear.
12 Where it says on this chart -- and let's just take
13 ourselves back to September 2015 -- were you the Chief
14 Structural Engineer/Kowloon & rail as shown here?

15 A. 係，係。

16 Q. And in relation to the SCL project, your role was to
17 lend support, is that right --

18 A. 對。

19 Q. -- to the Highways Department and in particular the RDO?

20 A. 或者我解釋清楚嗰個情況，係因為佢哋做一啲同SCL相關嘅submission，審
21 批嘅時候，如果係第一份嘅--第一個設計嘅submission，到佢哋要出一封
22 信，無論係畀comment或者去accept，嗰封信--嗰個設計佢曾經呢個位嘅
23 Chief Structural Engineer/Kowloon & rail，就當時係我，所以
24 佢哋嗰啲設計就會經過我一個同意先至會封信會出去，紅磡站係咁樣嘅。

1 MR KHAW: Sorry to interrupt, Mr Pennicott. Perhaps it's
2 probably a matter of translation which gave rise to some
3 confusion, because if we look at [draft] page 71,
4 line 8, it says, "As shown by the organisation chart
5 that we have just seen, I was seconded to the Highways
6 Department".

7 I believe Mr Ho was saying that he was the head to
8 the one who was seconded to the Highways Department, not
9 that he was seconded to the Highways Department.

10 MR PENNICOTT: Understood.

11 Is that right, Mr Ho?

12 A. 係。

13 Q. Thank you very much. That's a bit clearer now. Thank
14 you.

15 COMMISSIONER HANSFORD: Sorry, just so that I can
16 understand, Mr Ho -- are we saying that the senior
17 structural engineer and the structural engineer were
18 actually seconded, but they had a dotted line, ie
19 a professional line, to you in your role of Chief
20 Structural Engineer within the Buildings Department?

21 A. 係，因為我本身其實我係屋宇署裏面嘅總結構工程師，呢個職位佢其實睇到
22 係Kowloon & rail，其實我仲要有部分嘅工作係做九龍區嘅審批圖則嘅工
23 作，不過我嘅職責就如果呢隊second咗去RDO嘅同事佢有一啲譬如好似呢個
24 紅磡站咁，佢有一啲相關嘅圖則，佢要審批嘅時候，佢因為佢要經一個再高
25 一級別嘅總結構工程師去同意，先至去出嗰封信嘅，我就係提供呢一個職責。

1 同埋如果佢哋有啲技術上去執行《建築物條例》上有一啲需要徵詢意見嘅，
2 我就係其中喺屋宇署嘅總結構工程師提供一個意見畀second咗去RDO嘅呢啲
3 同事，嗰個我哋個接觸就係咁樣。

4 COMMISSIONER HANSFORD: Thank you. That's clear to me.

5 I think that was a very long "yes" to my question.

6 Okay, thank you.

7 MR PENNICOTT: Indeed.

8 Just so that I've understood it -- your
9 responsibilities were not simply limited to the SCL
10 project; your responsibilities were, as it were,
11 Kowloon-wide?

12 A. 係。

13 Q. And, as I understand it, the two senior structural
14 engineers that were seconded -- that's the senior, not
15 the structural engineer but the senior structural
16 engineers -- were two gentlemen, Wong Wing Keung, who
17 was in post up to January 2016.

18 A. 正確。

19 Q. And he was replaced by Mr Lok Pui Fai from January 2016,
20 from whom we will be hearing later.

21 A. 正確。

22 Q. Okay. One of the reasons I stood up earlier, when
23 Mr Khaw was asking you some questions, was -- he was
24 showing you, to start with, some -- let's take it in
25 stages.

1 First of all, he showed you a temporary works
2 submission, TWD submission, that was submitted to the
3 Buildings Department by the MTR on 29 July 2015.

4 A. 係。

5 Q. My understanding of a question that Mr Khaw asked you,
6 and your answer, is that you first saw that particular
7 submission earlier this year. Is that correct?

8 A. 喺。

9 Q. He then showed you another temporary works submission,
10 dated 23 March 2016, and again is it correct that the
11 first time you saw that submission was earlier this
12 year?

13 A. 正確嘅。

14 Q. Later on, Mr Khaw showed you two out of a list of ten
15 permanent works submissions, and the two he showed
16 you -- let's take it in stages -- were dated 30 July
17 2015 and then 4 November 2015.

18 Is it also the case that the first time you saw
19 those submissions was earlier this year?

20 A. 正確。

21 Q. So it is the case that all of those submissions were not
22 documents that found their way to you, as the Chief
23 Structural Engineer/Kowloon, back in 2015 and 2016?

24 A. 正確。

25 Q. Okay. But can I ask you this, Mr Ho. If those

1 submissions had been considered by Mr Wong or Mr Lok, so
2 depending on the date, if they had had any difficulties
3 or issues with those type of submissions, could they
4 have come to you and spoken to you about them?

5 A. 佢哋如果係喺呢個審批個圖則係遇著呢啲咁嘅問題，佢需要向一個總結構工
6 程師請示，佢就係會去請示，去問呢個總結構工程師。如果我當時係做緊呢
7 個，佢哋請示，就我會畀個意見佢。

8 Q. Okay.

9 COMMISSIONER HANSFORD: Sorry, Mr Ho, do we know who was
10 holding the post during that period in 2015, before you
11 took the post up in September 2015?

12 A. 另外一位同事已經退咗休㗎喇，叫做李潤才（譯音）。

13 COMMISSIONER HANSFORD: Thank you.

14 MR PENNICOTT: So, Mr Ho, just picking up where I left off
15 a little earlier -- your evidence regarding the various
16 submissions that you refer to in your report are really
17 views -- you had no contemporary knowledge of these
18 documents, you weren't considering them back in 2015 and
19 2016, so you are expressing your views and opinions on
20 those documents, having reviewed them more recently?

21 A. 係基於我哋如果係審批嘅時候會點樣睇佢顯示出嚟嘅資料，我畀個判斷。

22 Q. Yes. I'm just -- Mr Khaw was getting you to look at the
23 submissions and look at paragraphs in the submissions
24 and compare one submission with another submission, and
25 so forth, and the views that you have expressed in your

1 witness statement about these matters are all views that
2 you have formed in the last few months, effectively?

3 A. 正確。

4 Q. So you are giving your evidence, as I understand it, on
5 the basis of your general and indeed long-term
6 experience with the Buildings Department?

7 A. 根據我咁多年做審批圖則嘅經驗，如果遇到有同樣嘅咁嘅情形喺我面前出現
8 嘅時候，咁我就呢個我--就係我嘅意見。

9 Q. Understood.

10 You deal quite extensively in your witness
11 statement, Mr Ho, with the instrument of exemption.

12 A. 係。

13 Q. Under which, amongst other things, the MTR is required
14 to implement a consultation process in relation to the
15 design of the works.

16 A. 係，正確。

17 Q. As you I think rightly point out in your witness
18 statement, when the project management plan and various
19 documents make reference to "accepted" or "agreed by the
20 Buildings Department", what is meant in reality is that
21 plans and proposals should be submitted for consultation
22 under the IoE scheme?

23 A. 係。

24 Q. One of the significant differences between the IoE
25 scheme and, if I can put it this way, the normal

1 situation is that the turnaround time in terms of
2 consultation and "approval" is quicker?

3 A. 係。

4 Q. And the consultation process under the IoE should be
5 28 days or, if something is urgent or high priority,
6 14 days --

7 A. 正確。

8 Q. -- compared with 60 days and 30 days under the normal
9 situation?

10 A. 係。

11 Q. So one advantage to MTR and Leighton in this particular
12 contract is that they could expect matters to be dealt
13 with more expeditiously?

14 A. 係，正確。

15 Q. No doubt that was a reason why people needed to be
16 seconded into the Highways Department and the RDO team
17 and why also Pypun were involved?

18 A. 係。

19 Q. Mr Ho, can I just ask you this. In your role as the
20 Chief Structural Engineer in the period September 2015
21 onwards, did you have any personal dealings with Pypun?

22 A. 冇，基本上冇。

23 Q. Presumably, you were generally aware of their engagement
24 and their existence and what they were doing on the job,
25 but you had no reason to relate with them?

1 A. 因為我接觸都係second咗去RDO嘅同事，嗰啲senior structural
2 engineer或者structural engineer，或者喺我嘅任內，可能會--或者
3 會有一次、兩次佢哋要有一啲上嚟做一啲presentation解釋嗰個設計，可
4 能當中有一啲人或者係Pypun嘅人，我其實唔清楚，但係基本上係冇接觸。

5 Q. Okay.

6 Mr Ho, did you have any knowledge, in your role from
7 September 2015 onwards, of the quality supervision plan
8 in relation to installation of couplers?

9 A. 呢個知嘅，因為喺我哋嘅信嘅其中一個appendix裏面。

10 Q. One of the acceptance letters?

11 A. 係。

12 Q. Right. And the acceptance letters required a QSP to be
13 prepared and submitted?

14 A. 呢封acceptance letter裏面有關mechanical coupler、ductility
15 coupler嘅appendix裏面，就會要求呢個QSP。

16 Q. But you had no reason, I imagine, to consider that QSP
17 in any detail; would that be right?

18 A. 我唔需要嘅，係。

19 Q. Can I ask you, please, to go to paragraph 8 of your
20 first witness statement. It's at H2170. You say there:

21 "The IoE was issued by the Building Authority having
22 regard to the draft project management plan of MTR dated
23 22 November 2012."

24 Again, I imagine that's a document that you've
25 looked at more recently rather than historically?

1 A. 正確。

2 Q. "Under the IoE", you say, "MTR was required to submit
3 the formal project management plan to BD."

4 And we know that they did, that is the MTR did, from
5 time to time submit certain project management plans.

6 A. 係，正確。

7 Q. Could we please just look at B4/2075.

8 Sorry, I perhaps ought to just orient ourselves. If
9 we could go back, please, to B4/1952. This, as you can
10 see, Mr Ho, is the MTR project management plan dated
11 26 July 2013; do you see that?

12 A. 見到。

13 Q. It was submitted, we can see from the previous page, by
14 Dr Philco Wong on 2 August 2013.

15 Then if we could go, please, to 2074. This is
16 appendix 9 to the project management plan. Then if you
17 could go, please, to 2075, which is where we started,
18 there is a flow chart and it is headed, we can see at
19 the top, "Administrative procedure for consultation
20 submissions under IoE/IoC".

21 A. 見到。

22 Q. Is this something you have looked at and considered,
23 Mr Ho?

24 A. Yes，有。

25 Q. You will see under the box towards the bottom

1 a description, "Completion of works"; do you see that?

2 A. 見到。

3 Q. What is required under the project management plan,
4 among other things, is that, as I understand as I read
5 this, is an as-built record plan to be submitted on
6 completion of works.

7 A. 正確。

8 Q. If I've understood the position correctly, what that
9 actually means, if one reads that in conjunction with
10 the heading, "Administrative procedure for consultation
11 submissions", is that for each consultation submission
12 that is made, you would expect an as-built record plan?

13 A. 係。

14 Q. So, for example, the diaphragm walls were the subject
15 matter of a separate consultation submission.

16 A. 係。

17 Q. So once they were completed, even though, obviously, the
18 works as a whole were not completed, the fact that they
19 were the subject matter of a separate consultation
20 submission, you expected as-built drawings and records
21 to be submitted for the diaphragm walls?

22 A. 正確。

23 Q. Just help me with this, Mr Ho, if you can. We know --
24 and if there's anything you don't know in this, please
25 tell me, but I've got a feeling you know -- looking at

1 it chronologically, what happened was the diaphragm
2 walls were essentially completed in the middle of 2015,
3 a few months before you took up your post in September;
4 all right?

5 But prior to that date, as-built submissions were
6 made and they were made in a series, ultimately, of six
7 batches; do you remember that?

8 A. 係，知道。

9 Q. And some preceded the actual completion of diaphragm
10 walls and some came after?

11 A. 係。

12 Q. However, final approval of the entirety of the diaphragm
13 walls did not come -- I say "approval" -- acceptance of
14 the design by BD of the revised design, which we know
15 about, didn't come until some time later?

16 A. 係。

17 Q. Possibly not until, ultimately, 2017?

18 A. 係。

19 Q. But nonetheless, obviously the works, and in particular
20 to the slabs, the EWL slab and the NSL slab, continued,
21 even though the diaphragm walls had not been, as it
22 were, ultimately signed off by the Buildings Department?

23 A. 係。

24 Q. So is that a normal situation? How do you rationalise,
25 if you like, the situation where the slabs are permitted

1 to continue to be built even though the diaphragm wall
2 as-built situation has not been formalised and signed
3 off by the Buildings Department?

4 A. 其實都係會視乎每個地盤嘅特色，因為喺呢個地盤裏面，佢個diaphragm
5 wall其實都好長嘅，個規模好大，即係每一行，東面、西面每一行都係四
6 百幾米，就佢個CP佢將佢分開咗六個batch入，我哋都係會逐個逐個batch
7 嚟睇，而因為其中有曾經試過有一個NC事件，就佢哋亦都要做番一個
8 justification，補充番啲資料，所以到最後就一次過喺17年嘅時候先至
9 接受呢啲嘅as-built record嘅報嘅完工喇所謂，個completion。

10 Q. I appreciate that, Mr Ho, because we know that in about
11 April 2015 into May 2015, the Buildings Department
12 picked up the point that the as-built details for the
13 diaphragm walls were different from the accepted plans,
14 because, apart from other things, there were some
15 missing U-bars. But nonetheless, despite that, the
16 works continued apace, the slabs went in, both the EWL
17 slab, the NSL slab, and all the other works connected
18 and related to the diaphragm walls. Is that a usual
19 situation? In other words, there's no, essentially,
20 hold point, if you like, on getting the plans approved
21 for the diaphragm walls before the next operation?

22 A. 其實有嘅，因為佢每一個batch嗰個diaphragm wall，佢報完完工，我
23 哋其實要去做一啲所謂proof test，直至到嗰啲proof test我哋做咗，
24 滿意咗之前，佢嗰個diaphragm wall相應嗰倉嘅slab先至可以做嘅，呢
25 個係喺我哋嘅acceptance letter嗰度已經落咗嘅條件嚟。所以就唔係話

1 完全冇控制咁佢鍾意做邊度，做邊度，其實佢要滿足咗嗰個條件，佢先至可
2 以做番相應嗰倉slab嘅，所以佢因為咁大規模嘅工程，所以佢將佢斬開做唔
3 同嘅batch，每個batch佢要滿足咗我哋嘅條件，佢先至可以做其他嘢嘢。
4 就個whole point就係喺呢度，即係喺屋宇署落嗰個要求嘅。

5 CHAIRMAN: You have to then carry out a proof test?

6 A. 對。

7 CHAIRMAN: And a proof test ...?

8 A. 因為呢個diaphragm wall佢係一個foundation嚟嘅，我哋喺個批准嗰個
9 信裏面嘅appendix嗰度其實就附加咗呢個做一啲--佢完成咗之後要做一啲
10 測試。嗰個測試如果喺diaphragm wall嚟講，就佢要做個鑽孔，就由頂一
11 路落到底，深入個石層，做一個咁嘅證明去睇下佢完成咗呢個diaphragm
12 wall個石屎同埋佢嗰個石層嗰個夾口同埋嗰啲佢嗰啲石嗰個質素係咪達到我
13 哋設計嘅要求。呢啲佢做咗，我哋同事會出去去睇呢一個佢做咗出嚟呢啲嘅
14 我哋叫做coring test，就滿足咗之後，我哋同意咗，先至佢可以做嗰啲
15 slab嘅construction。

16 MR PENNICOTT: Yes. So the point that -- we got there
17 eventually. What is critical for the next operations to
18 continue, in this particular case, let's say the
19 construction of the EWL slab, is that various forms of
20 proof testing are done to the various panels of the
21 diaphragm wall, and those proof tests are done as the
22 works progressed. They are not all done at the end.

23 A. 係。

24 Q. So provided those are all in order, it's okay for the

1 MTR and the contractor to continue --

2 A. 係。

3 Q. -- and the as-built drawings are -- I hesitate to use
4 the word -- more of a formality at the end of the day
5 but not something that's going to hold up the works?

6 A. 正確，只要佢滿足咗我頭先講做嗰啲測試。

7 Q. Right. So it's the tests that are critical at the end
8 of the day?

9 A. 係。

10 MR PENNICOTT: Sir, I see it's five past one. I may not
11 have any more but can I just reserve my position just in
12 case I'm told I do?

13 CHAIRMAN: Yes, certainly.

14 MR PENNICOTT: Thank you very much.

15 CHAIRMAN: We are going to be the luncheon adjournment now,
16 back at 2.20.

17 MR PENNICOTT: Thank you, sir.

18 CHAIRMAN: You are giving your evidence at the moment, and
19 as you probably know, while you are in the middle of
20 giving your evidence you are not entitled to discuss it
21 with anybody at all. You can do so when your evidence
22 is completed, hopefully a little later today.

23 WITNESS: 明白。

24 CHAIRMAN: Thank you very much.

25 (1.09 pm)

1 (The luncheon adjournment)

2 (2.23 pm)

3 MR PENNICOTT: Sir, somewhat unusually, when one has
4 a break, one normally comes up with some more questions,
5 but as I say, unusually, I don't.

6 CHAIRMAN: Yes.

7 MR SO: No questions from China Technology.

8 CHAIRMAN: Thank you.

9 MR BOULDING: No questions from MTR, sir.

10 MR SHIEH: I have a few questions.

11 CHAIRMAN: Yes.

12 Cross-examination by MR SHIEH

13 MR SHIEH: Mr Ho, can I ask you to look at bundle H7,
14 page 2180, paragraph 40.

15 In this paragraph, you talk about "specific
16 requirements on the submission of quality assurance and
17 quality control documents and provision of qualified
18 site supervision for ductility couplers."

19 Do you see that, Mr Ho?

20 A. 見到。

21 Q. Turn over the page to 2181, please. At
22 paragraph 40(2) -- can we look at the top of that?
23 Sorry, in paragraph 41, you talk about full-time
24 continuous supervision and what you understand to be the
25 substance of this obligation for full-time continuous
26 supervision; right?

1 A. 睇到。

2 Q. Now, Mr Chairman and Professor, I don't intend to here
3 engage in a discussion as to the technical
4 interpretation of the phrase "full-time continuous
5 supervision". All I wish to do is to ask this witness
6 for his position, so that we have an understanding as to
7 what the government, or this witness's position is. I'm
8 not going to engage in an argument with him.

9 Mr Ho, at the fourth line of this paragraph, you
10 say:

11 "It is therefore incumbent upon the RC to exercise
12 good judgment and determine the actual degree of
13 supervision during the course of works for the purpose
14 of ensuring the building works are carried out in
15 accordance with the accepted plans."

16 Do you see that sentence in your paragraph?

17 A. 見到。

18 Q. I just wish to clarify and if so confirm with you that
19 it is your position that what amounts to full-time
20 continuous supervision is really a matter of judgment on
21 the part of the RC; is that what you are saying?

22 A. 個RC佢--喺呢度，其實係需要佢委任一個quality control coordinator
23 去做呢個quality supervision嘅--畀一個full-time continuous
24 supervision，佢應該個quality control coordinator佢要要滿足到
25 做到呢個工作嘅要求。

1 基本上就住100%嘅splicing assemblies嚟講，其實當中個過程
2 就其實有兩個部分嘅，第一個部分就係佢要supervise嗰個鋼筋扭入去個
3 coupler嗰個過程，另外一個就係完成一個檢驗嘅過程，就當扭晒入去之後，
4 就做一個檢驗。只要個full-time呢個quality control coordinator
5 佢喺做緊呢啲工作嘅時候，佢喺現場去做呢個supervision去睇住呢個過程，
6 同埋當做完之後去做呢個驗收，咁樣就都滿足咗呢個full-time
7 continuous supervision嘅要求。

8 我最尾嗰句就係個RC佢就係要安排呢個quality control
9 coordinator做到呢個工作。

10 Q. Yes, of course the person actually doing the supervision
11 would be the quality control coordinator?

12 A. 對。

13 Q. I just wish again to confirm with you that it is not
14 your position that there needs to be a one-on-one,
15 man-to-man marking in respect of the affixing of rebar
16 into couplers, in the sense that if you have five
17 workers handling a row of couplers, you need five
18 persons standing behind them, one behind each worker?

19 A. 呢度其實我哋都明白如果係實際嘅操作，要每一個鋼筋嘅螺絲頭係全個過程
20 要睇住要扭晒入個coupler嗰度，就係實際個操作上會有困難嘅，所以其實
21 個要求就係只要你個quality control coordinator佢喺個現場，當做
22 緊，譬如可能有幾個紮鐵嘅工人佢同時可能扭緊一個咁嘅鋼筋入個coupler
23 嗰度，如果佢喺現場嘅時候，佢其實會知悉到佢哋做緊呢樣嘢，只要佢等--
24 因為做呢個過程係一個比較短嘅時間，可能一、兩分鐘，只要佢知道佢哋做

1 緊，佢又現場知道佢哋做緊，當佢一做完嘅時候，佢儘快行埋去，就睇嗰個
2 驗收嗰個inspection，而睇到佢係扭晒入去或者符合個生產商話嗰個
3 specification要求最多就可能凸一個牙出嚟，佢做咗呢個其實都滿足咗
4 呢度所要求嘅full-time continuous supervision，都並不係話要每
5 一個--每一粒做成個過程要企喺後面去睇足呢個過程，呢個我哋都唔係--實
6 際上個要求都唔係去到咁。

7 Q. Thank you very much for that clarification, Mr Ho. We
8 can still argue or address the Commission on the precise
9 meaning, but I'm grateful for your clarification as to
10 your position as to whether man-to-man marking is
11 needed.

12 COMMISSIONER HANSFORD: Mr Shieh, before you go on, you say
13 after the coupling had been made -- you said that the
14 supervisor would need to do some testing. What testing
15 are you referring to?

16 A. 唔係testing，係當佢扭晒入去之後，佢要埋去睇一睇--做一次嘅檢驗，就
17 睇下佢係咪全部扭晒入去。因為亦都根據個...

18 COMMISSIONER HANSFORD: Okay. That's what I understood.
19 But I think you used the word "testing" but now
20 I understand what you mean.

21 MR KHAW: I believe in Mr Ho's earlier answer his word
22 "inspection" was translated into "testing".

23 COMMISSIONER HANSFORD: Ah. That explains it. Thank you.

24 MR SHIEH: Yes. Thank you very much, Mr Ho.

25 Mr Chairman, Professor, there is one caveat I wish

1 to make before I say I have no further questions.

2 Mr Ho, and to some extent some other witnesses, have in
3 their witness statement made certain assertions which,
4 strictly speaking, are within the province of expert
5 evidence. Specifically in the case of Mr Ho, for
6 example, he said something about whether the diaphragm
7 wall amounted to, say, a foundation.

8 We take the view that it is not the appropriate
9 occasion to discuss with what really is a factual
10 witness from the government, in particular when this
11 witness actually had no contemporaneous dealing with the
12 matter, on technical questions which are best left to
13 the experts. In fairness, there are factual witnesses
14 from Leighton who have given similar comments and, fair
15 enough, other people have not cross-examined our
16 witnesses on their similar statements either.

17 So, with that caveat, I'm not going to ask this
18 factual witness. He believes what he says he believes,
19 but in relation to whether that belief is well-founded
20 as a matter of engineering expertise, I don't propose to
21 ask this witness about it, but that is not to be taken
22 as some kind of an acceptance that the D-wall is part of
23 foundation. I just wish to lay down that marker.

24 On that basis, subject to anything which the
25 Commission may say, I don't have any further question
26 for this witness.

1 CHAIRMAN: Thank you, Mr Shieh. I can assure you and all
2 the other counsel that that particular issue has not
3 escaped us and in fact it has been the subject of -- you
4 can see my learned friend is smiling quietly --
5 discussion, not to reach a conclusion, because we will
6 reach a conclusion when we've heard all arguments, but
7 to be aware of that issue and we are well aware of it,
8 so thank you.

9 MR SHIEH: Thank you. In fact I can preface my caveat by
10 saying insofar as some other witnesses say anything
11 about whether or not trimming down the D-wall by
12 460 millimetres has any structural safety impact;
13 likewise I'm not going to engage in a debate with
14 any factual witness. That really is a matter for the
15 experts.

16 CHAIRMAN: Yes.

17 MR PENNICOTT: Sir, if I may just add, on behalf of the
18 legal team to the Commission, we have tried to steer
19 a course which doesn't involve getting into any detailed
20 material discussion on those issues, and hopefully we
21 will continue to do so and to take that same path.

22 CHAIRMAN: Yes. It is difficult, when you've got people who
23 are professionals and they are dealing in areas of
24 professional practice, not sometimes to take a step
25 across a line that may not be entirely permissible, but
26 our view has been we are both professionals, we've both

1 got the ability to obtain your submissions on the
2 issues, and we are well aware of the issues, so rather
3 let the witnesses be able to continue in a more relaxed
4 and forthright way.

5 MR PENNICOTT: Yes, sir.

6 CHAIRMAN: Thank you.

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

8 Re-examination by MR KHAW

9 MR KHAW: Perhaps just one matter for clarification.

10 Mr Ho, Mr Shieh, acting for Leighton, just asked you
11 about your position in relation to the meaning of
12 full-time and continuous supervision. Do you remember
13 that?

14 A. 記得。

15 Q. His question was about whether it was necessary to have
16 a one man marking one man approach, ie one man looking
17 at one man doing each coupling installation; do you
18 remember that?

19 A. 記得。

20 Q. One of your answers came out like this. You said:

21 "We are not saying that the entire process of each
22 coupling connection should be watched over by one man."

23 Do you remember that?

24 A. 記得。

25 Q. According to what you told us, how could we prevent the
26 situation, I mean in terms of the supervision that you

1 have in mind, how could we prevent the situation where
2 the threaded rebars would be cut and then screwed into
3 the coupler during the installation process?

4 A. 我相信只要嗰個quality control coordinator佢喺做緊呢個紮鐵工程，
5 包括如果有一啲鋼筋扭入去個coupler，佢喺嗰個工地嘅範圍，佢喺佢視線
6 範圍裏面，亦都全程佢做呢個監督，其實個程序可能就係會吊一啲鐵落去紮
7 鐵嗰個地方，呢啲鐵可能係普通嘅一般嘅鐵，或者係有呢啲螺絲紋嘅，準備
8 係扭入螺絲頭嘅鐵，其實喺佢喺呢個全程呢個監督嘅情況下，佢其實都可以
9 做一個visual inspection，可以睇到嗰啲坑紋嗰個長度有冇短咗，或者
10 只要佢喺個現場，就唔會有人可以做到呢個剪鋼筋頭嗰個動作，佢只要喺個
11 現場，亦都佢同時係可以監察係做緊紮鐵或者同時有啲人扭緊個鋼筋入去個
12 coupler嘅呢個工作，其實佢係fully aware呢個咁嘅情形。

13 好似我頭先講，當知道有工人已經扭完入去個coupler嘅時候，佢即
14 時埋去做一個所謂compliance check，做一個inspection，確保佢係
15 扭晒入去。其實喺呢個咁嘅整體呢個咁嘅過程，其實佢都係滿足咗呢個
16 full-time同continuous嘅supervision嘅工作嘅。

17 MR KHAW: Thank you. I have no further questions.

18 CHAIRMAN: Good. Nothing further arising?

19 Thank you very much indeed. Your evidence is now
20 completed.

21 WITNESS: Thank you.

22 CHAIRMAN: Thank you for your assistance. It's been much
23 appreciated.

24 WITNESS: Thank you.

1 (The witness was released)

2 MR KHAW: Our next witness is Mr Chau Siu Hei of the
3 Development Bureau.

4 Mr Chau, I understand your full name is Chau
5 Siu Hei, and you are also known as Francis Chau; is that
6 correct?

7 WITNESS: Yes.

8 MR CHAU SIU HEI, FRANCIS (affirmed in Puncti)

9 Examination-in-chief by MR KHAW

10 MR KHAW: Mr Chow, would you prefer giving your evidence in
11 Cantonese or in English?

12 A. Cantonese.

13 Q. Thank you. For this Inquiry, you have made one witness
14 statement. If we can take a look at H1128. Can you see
15 that?

16 A. 睇到。

17 Q. It's a witness statement of Chau Siu Hei and it has
18 altogether eight pages. You can have a quick look. It
19 ends at page 1135; do you see that?

20 A. 睇到。

21 Q. Your witness statement is dated 31 August 2018; do you
22 see that?

23 A. 係。

24 Q. Do you confirm that you put your signature at the end of
25 this witness statement?

1 A. 係，冇錯。

2 Q. Can you confirm that the contents of this witness
3 statement are true to the best of your knowledge,
4 information and belief?

5 A. 係。

6 Q. And you would adopt the contents of this witness
7 statement as your evidence for the purposes of this
8 Inquiry?

9 A. 係，正確。

10 Q. Now to the most difficult part of your witness
11 statement. If you can take a look at H6/1137. Under
12 the Secretary, we can see -- this is the organisation
13 chart of the Works Branch of the Development Bureau as
14 at August 2018, and we can see, under the Secretary, the
15 Permanent Secretary, and then, under the Permanent
16 Secretary, there are various Works Divisions; can you
17 see that?

18 A. 睇到。

19 Q. We can see that you are under Works Division 3 as Deputy
20 Secretary?

21 A. 正確。

22 Q. That's still your current position; is that correct?

23 A. 係。

24 Q. I understand from your witness statement that you held
25 this position -- you started to hold this position from

1 April 2017; is that correct?

2 A. 正確。

3 Q. May I just confirm with you your position prior to that
4 time, ie before April 2017?

5 A. 我係發展局嘅首席助理秘書長（工務）2嘅。

6 Q. Thank you. How long did you hold that position?

7 A. 嗰個位置就應該係由2014年嘅10月做到2017年嘅4月初。

8 MR KHAW: Mr Chau, I have no further questions for you. As
9 you know, Mr Pennicott, acting for the Commission, will
10 first ask you some questions. Other parties may have
11 some questions for you, and at the same time the
12 Chairman and the Commissioner may have some questions
13 for you as well. So please be seated.

14 WITNESS: Okay.

15 MR KHAW: Thank you.

16 Examination by MR PENNICOTT

17 MR PENNICOTT: Good afternoon, Mr Chau.

18 A. Good afternoon.

19 Q. As Mr Khaw has indicated, my name is Ian Pennicott, I'm
20 one of the counsel to the Commission and I have a few
21 questions for you, but not very many, I can assure you,
22 and thanks very much for coming along to give evidence
23 to the Commission.

24 Can I just ask you, please, to go back to the
25 organisation chart that Mr Khaw took us to at H1137. We
26 can locate you again as the Deputy Secretary (Works) 3.

1 I think your answer to Mr Khaw's question was that prior
2 to taking up that position, you were the Principal
3 Assistant Secretary (Works) 2?

4 A. 係。

5 Q. And on this chart, that's currently occupied by Victor
6 Chan; is that right?

7 A. 正確。

8 Q. Right, so one draws an arrow down there. You will see
9 by your name, on this chart, to the right of it, there's
10 a little box that says "Chart 2"; do you see that?

11 A. 見到。

12 Q. If you go on two pages to H1139, this is a more detailed
13 breakdown, as I understand it, Mr Chau, of Works
14 Division 3?

15 A. 正確。

16 Q. Where obviously we can see you at the top, and this is
17 showing, as I say, the organisation chart for your
18 particular division in respect of which you are the
19 head?

20 A. 正確。

21 Q. Thank you for that.

22 In your witness statement, Mr Chau, you deal
23 primarily with the regulatory provisions of the
24 Contractor Management Handbook.

25 A. 正確。

1 Q. And in particular, Mr Chau, you deal with the
2 circumstances in which Leighton came to be suspended
3 from all the various government tender lists upon which
4 they were previously registered?

5 A. 正確。

6 Q. Having looked at both the provisions of the Contractor
7 Management Handbook and looked at all the correspondence
8 that took place between the Works Branch and Leighton,
9 the way it works, as I understand it, is that you, if
10 you suspect that there's been a breach, give a warning
11 letter to the contractor with reasons -- is that right?

12 A. 正確。

13 Q. And would I be right in thinking that Works Branch keeps
14 a record of all the warnings that it gives to
15 contractors?

16 A. 係。

17 Q. And you then give the contractors an opportunity to make
18 representations to you?

19 A. 正確。

20 Q. And after taking into account those representations, you
21 make -- the government makes a decision?

22 A. 正確。

23 Q. Who is actually responsible ultimately for making the
24 decision to suspend or to enforce -- give some other --
25 I hesitate to use the word "punishment" -- but to take

1 some other course?

2 A. 喺呢個個案裏面，我哋其實就正如咗個架構圖咁樣，我哋係有一啲同事做
3 supporting，我哋喺同禮頓一連串嘅書信來往之後，當我哋確立咗我哋嘅
4 立場，我哋對個事件有我哋嘅睇法之後，我哋係做咗一個建議畀發展局局長，
5 係擺到佢嘅同意之後，我哋就正式通知禮頓，話我哋會採取我哋嘅規管行動
6 嘅。

7 Q. Okay. Without going into any detail at all, Mr Chau,
8 can I just ask you, please, formally to look at
9 H14/35179.

10 A. Okay.

11 Q. That's a letter dated 5 September 2018. If we could
12 scroll down, please. This is essentially the warning
13 letter to Leighton.

14 A. 正確。

15 Q. If we can see the second page, please, right at the
16 bottom, please -- and signed by you, Mr Chau? Sorry,
17 signed by Francis Leung, who I think is the gentleman
18 just below you in the chart.

19 A. 正確。

20 Q. And attached to this letter, if we go to the next page,
21 please, is an annex; do you see that?

22 A. 睇到。

23 Q. Right. What happened was, ultimately, Mr Chau -- we can
24 look at it if we need to, but on 8 October -- I'll give
25 the bundle reference for the purposes of the

1 transcript -- H20/39713 -- the Development Bureau
2 decided to suspend Leighton, for the reasons set out in
3 this annex A.

4 A. 正確。

5 Q. And annex A contains essentially three heads or three
6 basic reasons. The first one we can see on this sheet,
7 which is the reinforced concrete works for Hung Hom
8 North Approach Tunnel; yes?

9 A. Yes, correct.

10 Q. Then if we can scroll down, please, the next one, the
11 next reason, was the supervision of the sub-contractor's
12 coupler associated works for EWL slab construction of
13 the Hung Hom Station Extension, so the coupler
14 supervision.

15 A. 正確。

16 Q. Then thirdly, over the page, number (iii), the
17 inconsistency in the records relating to the number of
18 couplers --

19 A. 正確。

20 Q. -- of which this Commission of Inquiry has heard a lot
21 about.

22 So those are the three basic reasons which you
23 determined that Leightons had not adequately explained,
24 satisfactorily explained to you, and hence the
25 suspension?

1 A. 正確。

2 MR PENNICOTT: I have no further questions.

3 CHAIRMAN: Can I just say one thing at this stage.

4 MR PENNICOTT: Yes, sir.

5 CHAIRMAN: It's not a decision in any way.

6 MR PENNICOTT: No.

7 CHAIRMAN: Although provisionally, I suppose, it may be.

8 But my understanding of a Commission of Inquiry, in
9 plain terms, is that there are two aspects to it. One
10 aspect, the primary one, is to provide a report to the
11 Chief Executive on the issues that the Commission is
12 bound to do, in terms of the terms of reference, in
13 addition to which too rigid and artificial an adherence
14 to those terms of reference may act to frustrate certain
15 aspects that are in the public interest in a public
16 inquiry.

17 In other words, some leeway has to be given because
18 there's public interest in the matter, public interest
19 to be served. But in respect of this particular matter,
20 while I accept that it is public knowledge that this has
21 happened, at this moment in time I think I would need
22 some convincing that it is something that the Commission
23 itself in any way needs to turn its attention to, other
24 than perhaps to record the fact that it has happened as
25 a historical fact.

26 MR PENNICOTT: Yes.

1 CHAIRMAN: I'm open to being educated here, because I may
2 have missed the point.

3 MR PENNICOTT: Sir, that is why, with respect, I have tried
4 to limit the questions to those that I have put. I tend
5 to agree that that is the position, and I think
6 Leightons agree also, having had a brief conversation
7 with my learned friend Mr Shieh.

8 However, can I just say this, that in defence of, if
9 you like, the government and indeed Mr Chau, that in the
10 information letter that preceded the Salmon letter to
11 the government, written at a time, I believe, when
12 regulatory action had not yet been taken, a question
13 arose at that stage as to whether or not regulatory
14 action was contemplated and if so what was the
15 background, and so forth.

16 So there was an issue raised at a very early stage
17 by the Commission, in the original information-seeking
18 letter that raised this particular point, and I imagine
19 that that's why Mr Chau has been asked to give this
20 witness statement dealing with this matter.

21 But I tend to agree that this is not -- I mean, one
22 is not having a trial within a trial, if you like, and
23 apart from just getting the few basic facts, which
24 I suppose we could get from the documents anyway, that
25 is really the only reason why I think Mr Chau is here.
26 As I say, I'm not in any way going into any of the

1 detail on this and I don't propose to do so.

2 CHAIRMAN: Thank you. It's not a criticism whatsoever of
3 the original letters that went out.

4 MR PENNICOTT: No.

5 CHAIRMAN: Things were much more general then.

6 MR PENNICOTT: Of course.

7 CHAIRMAN: Less specified.

8 MR PENNICOTT: Yes.

9 CHAIRMAN: I just didn't want a situation, in case anybody
10 felt they were obliged, that we were going to start
11 debating the merits.

12 MR PENNICOTT: No.

13 CHAIRMAN: I think there's an old north country saying, for
14 those from England, about having a dog in a fight, and
15 I don't know that myself or Prof Hansford have a dog in
16 this particular fight, in the sense that I don't want to
17 be involved in looking at the merits of whether or not
18 the decisions that were made here were in fact correct
19 or not.

20 MR PENNICOTT: No. Sir, as I say, I know, because
21 I recollect, there is something in one of those original
22 information-seeking letters about regulatory actions,
23 because I remember being partly responsible for ensuring
24 it went in there right at the outset, just to ensure we
25 didn't miss anything.

26 COMMISSIONER HANSFORD: Can I just say I'm in full agreement

1 with the Chairman on this point.

2 MR PENNICOTT: Yes. The reference apparently is H1,
3 page 11, to the point I have just made.

4 CHAIRMAN: Good. Yes, thank you.

5 COMMISSIONER HANSFORD: Notwithstanding that I'm in full
6 agreement with the Chairman on this point, I do have one
7 question, relating to paragraph 25 in Mr Chau's witness
8 statement. It's on page H1134. In that statement,
9 Mr Chau, you say:

10 "Development Bureau is still in the process of
11 considering whether any regulating action(s) against
12 Leighton and/or Intrafor will be required."

13 Of course, this was written on 31 August and events
14 have taken place since then.

15 MR PENNICOTT: Yes.

16 COMMISSIONER HANSFORD: But can I ask the question with respect to
17 Intrafor and whether, since 31 August, any regulating
18 action has been taken?

19 A. 現階段係仲未有regulation action我哋覺得係需要進行嘅，事實上我哋
20 同Intrafor係有啲書信來往嘅，初步睇，就有足夠嘅理據去支持我哋去取--
21 規管行動，但係我哋仲係保留一個權利，就係話譬如當COI繼續延訊，又或者
22 當我哋有進一步嘅資料嘅時候，我哋唔排除係會有呢個可能性。

23 COMMISSIONER HANSFORD: Okay. Thank you. That's clear.

24 MR SHIEH: Mr Chairman, given that what Leighton had
25 intended to say has been uttered both by Mr Pennicott

1 and by Chairman and Professor, I have no questions for
2 this witness.

3 CHAIRMAN: Good. Thank you.

4 MR SHIEH: Save to say, of course, that Leighton doesn't
5 think the enforcement actions are justified, but that is
6 not an appropriate subject matter for this Commission of
7 Inquiry.

8 CHAIRMAN: Thank you.

9 Anything from anybody else?

10 MR BOULDING: No, thank you.

11 MR HALLWORTH: No, thank you.

12 CHAIRMAN: Thank you. Your evidence has been completed.

13 WITNESS: Thank you.

14 CHAIRMAN: And thank you for your assistance today.

15 (The witness was released)

16 MR KHAW: The next witness is Director of Buildings,

17 Mr Cheung Tin Cheung.

18 Mr Cheung, just to confirm that your name is Cheung
19 Tin Cheung?

20 WITNESS: 正確。

21 DR CHEUNG TIN CHEUNG (sworn in Puntì)

22 Examination-in-chief by MR KHAW

23 MR KHAW: I understand that you would like to give your
24 evidence in Cantonese; is that correct?

25 A. 正確。

26 Q. Mr Cheung, you have made one witness statement for the

1 purpose of this Inquiry. Maybe we can have a look at
2 your witness statement. H2107.

3 A. 見到。

4 Q. Do you see your witness statement? It consists of
5 several pages, nine pages altogether, all the way to
6 page 2115; can you see that?

7 A. 見到。

8 Q. This is a statement dated 12 September 2018?

9 A. 係嘅。

10 Q. You confirm that you put your signature at the end of
11 this witness statement?

12 A. 我確認。

13 Q. Do you confirm the contents of this witness statement
14 are true to the best of your knowledge, information and
15 belief?

16 A. 我確認。

17 Q. Do you adopt the contents of your witness statement as
18 your evidence-in-chief?

19 A. 係，係嘅。

20 Q. I was struggling whether we would need to rely on the
21 organisation chart for Mr Cheung. (Laughter).

22 Perhaps just for the purpose of clarification --
23 Mr Cheung, if I can take you to have a look at the first
24 page of your witness statement.

25 CHAIRMAN: Mr Cheung, let me jump in and say that's not

1 a joke at your expense at all. It's a matter that arose
2 earlier in these proceedings and caused some amusement
3 then and so it's what I might call an internal joke; all
4 right?

5 WITNESS: 明白，明白。

6 CHAIRMAN: So please don't feel in any way disparaged.

7 Thank you.

8 MR KHAW: Thank you, Mr Chairman.

9 Paragraph 1 of your witness statement, you have told
10 us that you have taken up the office of Director of
11 Buildings since 23 January 2017. Do you see that?

12 A. 見到。

13 Q. May I just ask what your position was before that time?

14 A. 喺2017年1月23號之前，我係屋宇署嘅副署長。

15 Q. How long did you hold that position?

16 A. 大概三年。

17 Q. So you started to become the Deputy Director of
18 Buildings from about 2014?

19 A. 正確。

20 MR KHAW: Thank you. I have no further questions for you.

21 Mr Pennicott, acting for the Commission, would probably
22 ask you some questions, and other parties may also have
23 some questions for you, so please remain seated.

24 WITNESS: 明白。

25 Examination by MR PENNICOTT

1 MR PENNICOTT: I have also been defeated on the organisation
2 charts.

3 Dr Cheung, I believe it is --

4 A. 正確。

5 Q. -- first of all, thank you very much for coming along to
6 give evidence to the Commission. As you have just been
7 told, my name is Ian Pennicott. I just have a very few
8 questions for you, Dr Cheung. It won't take very long,
9 I anticipate.

10 You are and have been the Director of Buildings, as
11 we have just heard, since 23 January 2017?

12 A. 正確。

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

14 A. 係嘅。

15 Q. The Buildings Department is, to all intents and
16 purposes, also the Building Authority?

17 A. 係。

18 Q. Which is given various statutory functions under the
19 Buildings Ordinance?

20 A. 係嘅。

21 Q. You have just told us you were the Deputy Director for
22 three years before January 2017?

23 A. 係嘅。

24 Q. In that capacity, the Deputy Director, did you have any
25 involvement with and knowledge of the SCL project?

1 A. 喺我作為副署長嗰個期間，就有乜機會接觸到沙中線呢個項目嘅。

2 Q. Right. I imagine that apart from perhaps the events
3 since May of this year, prior to May of this year, that
4 would also apply when you were the Director of Buildings
5 also?

6 A. 可以係咁講。

7 Q. Can I just ask you, please, to look at paragraph 18 of
8 your witness statement. I just wanted to see that I had
9 understood part of this paragraph, Dr Cheung. You say:

10 "Consultation submissions from MTR are processed by
11 the BO team in the RDO office of Highways."

12 And we have heard about that. You say:

13 "The BO team, comprising professional staff seconded
14 from the BD, handles matters relating to the IoE and IoC
15 for the SCL project and the Hong Kong section of
16 Guangzhou-Shenzhen-Hong Kong Express Railway Link. The
17 BO team advises on the building safety standards,
18 practices and procedures of the BD."

19 Then it's the next sentence I wanted to ask you
20 about:

21 "Apart from carrying out witness site tests on
22 structural matters, the BO team conducts completion
23 inspection to random check whether the works are
24 generally completed in accordance with the agreed
25 building layout plans ..."

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

1 team conducts completion inspection to random check"?

2 A. 明白。通常當嗰個工程完咗之後，就會有一個通知，通知番BO team個工
3 程完成咗，BO team嘅同事就會去現場，所謂隨機去視察，就係因為個
4 project--好難係所有--喺個地盤所有個every--所有嘅位置--詳細位
5 置都可以睇到嘅，做一個random去抽樣去睇，睇下合唔合乎之前接嗰啲
6 圖則，係咪跟住嗰啲圖則去起。

7 Q. And your evidence there, as I understand it, is very
8 much focused on what happens at completion --

9 A. 係。

10 Q. -- rather than what happens during the course of
11 carrying out of the works?

12 A. 呢個為咗完工之後去驗收嘅情況。

13 Q. Understood.

14 In paragraph 13 of your witness statement,
15 Dr Cheung, you talk about the instrument of exemption
16 dated 5 December 2012; do you see that? That's in
17 paragraph 13(1).

18 A. 見到。

19 Q. That continues for a number of paragraphs. Could I just
20 ask you this, Dr Cheung. I anticipate you know this,
21 but one of the issues that the Commission is enquiring
22 into is the changes that took place to the reinforcement
23 detail at the top of the east diaphragm wall. I daresay
24 you're aware of that?

25 A. 明白。

1 Q. And an issue has emerged as to whether the change, that
2 change, is minor and whether the change required prior
3 consultation with and agreement by the Buildings
4 Department.

5 I'm not going to get into a debate with you about
6 that.

7 A sub-issue that has arisen is whether the
8 instrument of exemption contains any exception to the
9 consultation process in respect of minor changes, and,
10 in that context, whether a document called PNAP ADM-19
11 is applicable, either directly or by analogy.

12 Having given that run-up, what I wanted to ask you
13 about is this. Is the Buildings Department taking any
14 steps to seek to clarify and make clearer the position
15 with regard to these issues? Because on one view, at
16 the very least, there appears to be uncertainty and
17 perhaps ambiguity in the situation. Is the Buildings
18 Department looking into this?

19 A. 如果你正話提個practice notes作業備考，嗰個就業界用咗好多年嘅，
20 就清楚嘅，個問題只係話個作業備考嘅而家呢個IoE嘅情況之下係咪適用，
21 可以講係唔適用嘅，因為正話提過，我哋嘅IoE之下係豁免咗所有審批或者
22 係同意開工嘅程序，所以就變咗係正話提個作業備考係冇另外個用處嘅度。

23 最主要就係話我哋嘅呢個沙中線嘅項目，我哋出咗個IoE，IoE入面好
24 清晰地講明下低有個PMP，project management plan，而個PMP入面已
25 經講清楚係所有submission，所有新嘅工程或者改動amendment都需要人--

1 做consultation submission，而喺個IoE之下有個schedule嘅，講清
2 楚入面有邊幾類工程係要做consultation submission，係好清楚講咗喺
3 人面嘅，所以應該唔存在一啲唔清楚嘅地方。

4 Q. Right. So your position is, as Director of Buildings,
5 that you are satisfied that the position is clear and,
6 therefore, there is no necessity to revisit the
7 applicability or otherwise of PNAP ADM-19 in the context
8 of an IoE situation; is that right?

9 A. 分開兩方面講，第一個就返番嚟呢個IoE嗰度，如果我哋經過調查委員會睇過
10 成件事，覺得有關人士覺得有邊方面係唔清楚嘅，屋宇署係絕對樂意去釐清楚
11 佢嘅，等所有相關嘅人士都明白究竟個要求係點樣樣。

12 另外返番轉頭，睇番個作業備考，就係嗰個ADM嗰個，就係最主要就係
13 話入面講得好清楚，如果關於structural嗰度，就唔apply去foundation
14 嘅，foundation work唔apply，即係佢superstructural work，上蓋
15 工程嘅。

16 而家將--跟住上蓋工程嘅要求就好簡單，就係佢嗰樣嘢就唔會影響到個
17 樓宇嗰個結構。所以係寫得好清楚，作為一個註冊嘅結構工程師知道咩嘢情形
18 下係會影響個結構，即係有個professional knowledge，佢知嘅。

19 當然又係話如果真係有啲唔係咁清晰嘅地方--個別唔明白嘅要求，我哋
20 絕對樂意去再澄清。而其實我哋喺同業界有恆常個溝通嘅會議嘅，包括一啲學
21 會，同埋啲承建商協會，就大家定期坐埋一齊傾關於喺《建築物條例》嘅運作、
22 操作之下有咩嘢地方--業界覺得有咩嘢地方係唔清楚--唔清晰嘅，或者佢覺得
23 有啲地方對佢哋嘅運作唔係咁暢順嘅，可唔可以利便到佢，好多呢啲事項都

1 拎出嚟傾嘅。所以如果真係有咁嘅情況出現，當然屋宇署係樂意去回應番業界
2 呢啲訴求。

3 MR PENNICOTT: Okay. Thank you very much, Dr Cheung.

4 Sir, I have no further questions.

5 MR SO: No questions from China Technology.

6 MR BOULDING: Sir, I have no questions for this witness, but
7 very much like my learned friend Mr Shieh made clear by
8 reference to the last witness, that's principally
9 because matters such as the applicability of the IoE and
10 PNAP 19 we contend are effectively matters of law and we
11 shall make our submissions on those legal matters in due
12 course.

13 CHAIRMAN: Thank you very much. I agree with that, by the
14 way.

15 MR SHIEH: No questions from Leighton.

16 MR HALLWORTH: No question for Atkins.

17 COMMISSIONER HANSFORD: I just have one question, Dr Cheung,
18 and this really follows on from Mr Pennicott's question
19 to you about the completion inspection that you refer to
20 in paragraph 18 of your witness statement.

21 My understanding is you explained that inspection
22 and you said it's like an inspection before taking over.
23 But, in a case like this, you're not actually taking
24 over, are you? So is it still applicable? Please can
25 you explain that to me. Because my understanding is
26 it's MTR that's going to be taking over.

1 A. 明白，最主要呢個completion，所謂完工嘅個通知係話喺《建築物條例》
2 之下去申報完工，我哋去睇下究竟係咪已建成嘅工程係咪完全符合《建築物
3 條例》之下嘅要求，就唔係去接收個項目嘅。

4 COMMISSIONER HANSFORD: Right. So the inspection is the
5 same?

6 A. 係另外一批同事去負責接收嘅，如果我理解，喺RD下，另外一批同事去接收，
7 就唔係由屋宇署，係由RDO，即係話個BO team去接收，for handover，
8 係BO team嘅同事最主要就係話因應番喺成個建造過程入面，所有啲嘅建築
9 喺根據《建築物條例》之下我哋接受咗啲圖則，佢係咪跟住啲圖則去做，我
10 哋施加啲嘅要求有冇遵從到。

11 COMMISSIONER HANSFORD: Okay. Thank you.

12 CHAIRMAN: Good. Thank you very much indeed. Your evidence
13 is completed. Thank you.

14 WITNESS: 多謝。

15 (The witness was released)

16 MR KHAW: It comes to our last witness, actually, before we
17 exchange Christmas presents and sing Christmas carols
18 together, because I understand that initially we were
19 supposed to have four more witnesses, the last three
20 being the inspectors, regarding the records, but
21 I understand from Mr Boulding that MTR will not probably
22 need them.

23 MR BOULDING: That's correct, sir.

24 MR KHAW: In that case, Mr Lok will be our last witness.

25 I wonder whether it's a convenient time to take a break

1 before Mr Lok.

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

3 CHAIRMAN: Yes, it is. While we're here, if we have

4 a couple of minutes just to look to the way ahead.

5 That's your last witness and, Mr Pennicott, that doesn't

6 necessarily mean factually the last witness. Are there

7 any other witnesses to follow?

8 MR PENNICOTT: No, sir.

9 CHAIRMAN: I didn't think so.

10 MR PENNICOTT: As Mr Khaw has just explained and Mr Boulding

11 has indicated -- and they both indicated it to me -- the

12 three witnesses who deal with the inspection of the

13 records back in June are no longer required by MTRC to

14 be questioned, so their witness statements again will be

15 uploaded onto the website in the usual way. So Mr Lok

16 Pui Fai is, as I understand it, the last factual

17 witness, unless anybody wants to give me a surprise.

18 CHAIRMAN: I sincerely hope not. All right. Good. That

19 being the case, there then arises the issue of -- that

20 would complete the day-by-day hearings until after the

21 New Year.

22 MR PENNICOTT: Yes, sir.

23 CHAIRMAN: Then we will commence again on the 9th.

24 I appreciate I'm asking you to hazard an estimate

25 here, but with the way things stand at the moment, what,

26 at the outside, would you suggest would be the time to

1 be taken up with the expert evidence that will commence
2 in the New Year?

3 MR PENNICOTT: Sir, that is an extraordinarily difficult
4 question to answer at the moment.

5 CHAIRMAN: Yes.

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

26 If they don't have any significant issues with

1 Mr Rowsell's views on the project management side of the
2 Inquiry, then that part of the expert evidence will
3 necessarily be very quick indeed, and indeed may not
4 even require Mr Rowsell to come to Hong Kong from the
5 UK, but obviously we will have to monitor that
6 situation.

7 Sir, so far as the structural engineering experts
8 are concerned, that's a much more difficult situation.
9 As you know, the current position so far as opening up
10 is concerned is fluid. Opening up has started.
11 I understand that the experts jointly yesterday carried
12 out an inspection of what there is to see at the moment.
13 I also understand that the experts had a joint meeting
14 this morning, but I don't know in any detail what the
15 upshot of that meeting was.

16 But again, as you know, the Commission's expert is
17 here in Hong Kong at the moment. I'm hoping to meet him
18 again soon to find out and be briefed about procedurally
19 where we are and when we can expect to receive a report
20 from the Commission's expert, structural engineering
21 expert.

22 I'm afraid I just have no idea at the moment when
23 that might be. I think there is -- and I imagine this
24 applies to all the experts -- I daresay that there's
25 a good deal of preparation has gone into preparing
26 reports, but because the situation is as fluid as it is

1 at the moment, no doubt a continuous process of updating
2 and reviewing and revising is necessary for those
3 reports, so that the Commission, at the end of the day,
4 can be brought right up to date with as much current
5 information as possible.

6 What I can't quite work out at the moment is whether
7 it's going to be better for the Commission's structural
8 engineering expert to serve his report first, as it
9 were, rather similar to what we're expecting with the
10 project management expert witness, or whether it would
11 just be better for all of those parties who wish to call
12 structural engineering evidence, or at least wish to do
13 so in principle, to serve all the reports together, at
14 one time, so that we can then look at them and with
15 a view to deciding how much cross-examination there's
16 going to be on those reports.

17 So there's quite a lot of alternatives, and perhaps
18 other parties have their own views, but I'm a bit
19 reticent to go too far without having had the
20 opportunity to speak to Prof McQuillan.

21 CHAIRMAN: Yes. I also don't want Prof McQuillan or the
22 others to start rebuilding their various reports from
23 scratch, but Prof Hansford and I have discussed the
24 matter, and Prof Hansford has raised the point that in
25 one of the English tribunals, the experts are obliged to
26 get together -- which of course in this jurisdiction too

1 is highly encouraged -- and a joint report is submitted
2 on all those matters that are agreed, and only in
3 respect of matters that are not agreed are individual
4 reports submitted. That then clearly isolates, from
5 each expert, the points where they are in contention, as
6 opposed to leaving it to laypersons to trawl through all
7 the reports to see what in fact are the areas of
8 disagreement.

9 MR PENNICOTT: Yes, sir. I understand that the meeting
10 between the experts this morning was fruitful and that
11 there may indeed be moves towards creating some form of
12 joint statement or joint memorandum. I've had a whisper
13 that that may have been achieved but I don't want to say
14 anything because I haven't got formal instructions on it
15 at the moment.

16 Sir, can I also make this point, perhaps relevant to
17 the observation that you have just made, that of course
18 in more conventional situations, in court or in
19 arbitration, the expert engineers, in this case, might
20 have a list of issues that have been drawn up and their
21 expert reports would be specifically directed to those
22 issues. Of course that isn't the case here, so whilst
23 no doubt each of the experts -- sorry, there's probably
24 a high degree of common ground as to what the actual
25 issues are that should be addressed, there is
26 unfortunately no formal list of issues that are being

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.

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.

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.

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
26 or at some point tomorrow; I don't know. Again, I'm in

1 the hands of others. I, frankly, am relaxed about the
2 position, but again I'm not sure whether everybody else
3 is in the same position as me, perhaps, that they need
4 to speak to their experts and find out what's been going
5 on, take instructions from those that they take
6 instructions from, until they make submissions to the
7 Commission.

8 CHAIRMAN: On that aspect of it, I am aware of the fact that
9 one of the important issues on matters of procedure and
10 bringing this Inquiry to an end are going to be final
11 submissions.

12 MR PENNICOTT: Yes.

13 CHAIRMAN: And I was thinking of today, at the end of today,
14 giving what we think -- that is what Prof Hansford and
15 I think -- would be adequate time for oral submissions
16 to be made, and more important, in many respects, before
17 that, the number of pages that we think would be
18 reasonable for each party to be given to make their
19 written submissions, and then that means that as from
20 this evening you can start to work towards something.

21 MR PENNICOTT: Yes. Sir, on that point, I'm sure all the
22 parties would find it extremely helpful to have that
23 indication as to the number of pages. I don't
24 personally think it would be possible to fix a date for
25 the service of those submissions.

26 CHAIRMAN: No.

1 MR PENNICOTT: Because until things have unfolded a bit
2 more -- but certainly giving an indication as to the
3 length and the number of pages, that -- I imagine
4 everybody is going to be aware that there could be
5 a very tight timetable come January for the service of
6 those written submissions, and any work that can be done
7 during the Christmas break is going to make life
8 a little bit easier come January, and having
9 an indication as to the length of those submissions will
10 no doubt be of considerable assistance to everybody,
11 because they know what they've got to play with, as it
12 were.

13 CHAIRMAN: Yes.

14 All right. Prof Hansford and I will give our
15 directions in that regard at the closure of proceedings
16 this evening.

17 Then so far as any other communications are
18 concerned, prior to returning on the 9th, if you require
19 Prof Hansford and I, either tomorrow or on Thursday, to
20 sit again, then we will do so, but I think, frankly, I'm
21 dealing with senior and experienced counsel and you are
22 able to liaise among yourselves to see whether that's
23 necessary or not, and I don't think it will be necessary
24 and I don't want to -- you know, with the greatest of
25 respect -- bring out a cohort of experienced and
26 expensive lawyers, because that's the way it happens to

1 be -- that's a generalisation, by the way, not
2 an absolute statement for each and every one of you --
3 if we can avoid it, it's all part and parcel of just
4 trying to move things along --

5 MR PENNICOTT: Yes, sir.

6 CHAIRMAN: -- in the most economically viable way that we
7 can.

8 MR PENNICOTT: Thank you, sir.

9 COMMISSIONER HANSFORD: Can I just ask, how long do we
10 expect we will be with Mr Lok?

11 MR PENNICOTT: Not very long, I suspect.

12 COMMISSIONER HANSFORD: All parties?

13 MR PENNICOTT: I think so.

14 MR BOULDING: Sir, I can see it's teatime and we are
15 probably desperate for a cup, but I wonder if either now
16 or after tea I can just make one or two observations
17 regarding any project management expert that MTR are
18 calling, in the light of what Mr Pennicott has very
19 helpfully said over the course of the last five minutes
20 or so.

21 CHAIRMAN: Absolutely, Mr Boulding. I wasn't in any way
22 wishing to guillotine anybody. Directions and the best
23 way forward, it's clearly a complementary exercise and
24 any assistance you can give to us will be greatly
25 appreciated. Thank you.

26 MR BOULDING: Shall we have a cup of tea first?

1 CHAIRMAN: A cup of tea first. Thank you. Can we make it
2 20 minutes because Prof Hansford and I will want to
3 probably discuss a couple of things.

4 MR PENNICOTT: Yes. Can I suggest we then go to the witness
5 next and then leave the submissions and anything else
6 until the end?

7 CHAIRMAN: Yes, I think so. Good. Thank you.

8 (3.35 pm)

9 (A short adjournment)

10 (4.10 pm)

11 CHAIRMAN: Yes. Myself and Prof Hansford have just had
12 a discussion with Mr Pennicott and the counsel with him
13 and also their instructing solicitors, to be advised as
14 we have been of a document which I think a number of you
15 have received, but I think there were a limited number
16 of documents.

17 It's a document that confirms a meeting of the
18 structural engineering experts. I don't wish to say
19 anything more about that document at this stage because
20 I haven't had an opportunity to digest it and it would
21 be wrong simply to speak of something out of ignorance.
22 I merely record the fact that it is now before us and
23 both myself and Prof Hansford do need to have the
24 evening to look at it and to consider the consequences
25 of it, how it should be dealt with, along with other
26 matters.

1 In light of that, having said it would be good to
2 try and not to have to come back tomorrow, I think in
3 fact, looking at the time, there's some concern that we
4 may not be able to finish the last witness and it would
5 be better, I think, if we come back tomorrow, just to
6 deal with that one witness, but in addition to which
7 I had agreed to give directions as to the length of
8 written submissions and the like. I will now give those
9 directions.

10 They are given, however, subject to the following
11 proviso, that if any party feels strongly aggrieved, as
12 opposed to plain ordinary everyday aggrieved, by our
13 directions, then tomorrow morning, when you've had the
14 evening to mull over it, Prof Hansford and I will
15 obviously hear submissions in that regard. We hope they
16 won't be necessary.

17 D I R E C T I O N S

18 These are the directions. Firstly, there will be
19 written submissions. Apart from the written submission
20 from the Commission's counsel, all parties shall submit
21 a soft copy of their written submission to the
22 Commissioners' solicitors in January on a date to be
23 advised as soon as possible. Written submissions from
24 the Commission's counsel shall be submitted to the
25 Secretariat on a later date in January, again to be
26 advised as soon as possible.

1 All written submissions will be printed on A4-size
2 paper and Century Schoolbook or Times New Roman, font
3 size 14 points, with one and a half line spacing, with
4 a minimum margin of 1 inch all around, double-sided
5 printing, shall be adopted.

6 As far as the length of the written submissions are
7 concerned, they will be as follows: counsel for the
8 Commission, a maximum -- and I do emphasise "maximum",
9 that applies to all parties -- of 150 pages; the
10 government, a maximum of 100 pages; the MTRCL, a maximum
11 of 100 pages; Leightons, a maximum of 100 pages; and
12 Intrafor, a maximum of 50 pages; China Technology,
13 a maximum of 50 pages; Fang Sheung, a maximum of
14 50 pages; Atkins, a maximum of 50 pages; and Pypun,
15 a maximum of 50 pages.

16 The fact that certain of the parties are given
17 50 pages is not in any way an indication that they are
18 considered to be any less important or their submissions
19 any less relevant. The decision as to the amount of
20 space given is based entirely on the bulk of the
21 material that will have to come before the Commission.

22 As far as footnotes are concerned, they do not have
23 to be one and a half line spacing, 14 points. They will
24 follow ordinary footnotes. And they may be added but
25 only where necessary and not as a device.

26 As far as legal authorities are concerned, legal

1 authorities, if any, should be listed at the end of the
2 written submissions, with the relevant legal principles
3 summarised in a matter of four or five sentences and no
4 more. Legal authorities and any relevant legal
5 principles may be in addition to the 100 pages or
6 50 pages.

7 As far as oral submissions are concerned in support
8 of the written submissions, the government will be given
9 one and a half hours; the MTRCL will be given one and
10 a half hours; Leighton will be given one and a half
11 hours; Intrafor will be given one hour; China Technology
12 one hour; Fang Sheung will be given one hour; Atkins
13 will be given one hour; Pypun will be given one hour.
14 Counsel for the Commission, who will have to reply to
15 all of those other matters, will be allowed a period of
16 three hours.

17 Those are the directions for you. As I have said
18 already, the dates when the written submissions are to
19 be filed obviously cannot be given at this juncture
20 because there are a number of matters which remain
21 uncertain.

22 If any of you are really aggrieved, to repeat, then
23 I will hear from you tomorrow morning, but it does seem
24 to me that -- as far as the footnotes are concerned,
25 Prof Hansford has just mentioned to me, I think what
26 I haven't made clear, and he has reminded me, and thank

1 you, is that the footnotes will be included in the
2 100 pages; okay? They may not be included in the lines
3 per page, if you see what I mean, because the footnotes
4 come in that smaller font at the bottom of the page, but
5 it doesn't mean you can have an extra 30 pages of
6 footnotes; all right? Thank you. Good.

7 I don't intend to say anything more, the Commission
8 does not intend to say anything more, about the document
9 received this evening. Insofar as certain parties may
10 not have received this document, I think it's right and
11 proper that they should be given a copy.

12 MR PENNICOTT: Yes, sir.

13 CHAIRMAN: Good. That's this evening, so they've got
14 a chance to go over it.

15 There is one final matter, and that is the
16 application that is before me by one of the parties,
17 China Technology. Prof Hansford and I have considered
18 that application. We will hear the application, but in
19 our view we are of the view that it should be heard in
20 January, at a convenient time. So we will not hear it
21 tomorrow morning, for example, or now; all right?

22 MR SO: Thank you, sir.

23 CHAIRMAN: Anything further?

24 MR PENNICOTT: No, I don't think so, other than I think to
25 apologise to Mr Lok, on the basis that, as you have
26 indicated, and as I think was inevitable given the time

1 we started, I'm afraid we weren't going to finish you
2 tonight, Mr Lok, unless we sat rather late, so we
3 apologise for that and we will see you tomorrow morning.

4 CHAIRMAN: Yes.

5 MR PENNICOTT: Sir, tomorrow morning also I will deal
6 formally with the four other witnesses who are not being
7 called but I'll deal with the details of those tomorrow
8 morning.

9 CHAIRMAN: Yes.

10 Mr Lok, apologies from the Commission too. There
11 are other matters that have come in, and I'm sure, as
12 you can understand, it's not simply a question of us
13 sitting, hearing evidence, although that has recently
14 taken up most of our time; there are reports, document
15 applications and we have to consider those, and in doing
16 so, without any insult intended to you, I'm afraid that
17 we are just not able to deal with your evidence fully
18 and properly this evening, and we think it's better if
19 we can hear from you tomorrow at 10 o'clock. Would that
20 be satisfactory for you, or acceptable?

21 MR LOK: It's okay.

22 CHAIRMAN: Good. Having asked a silly question, I'm perhaps
23 getting an appropriate answer. But thank you very much
24 indeed. Thank you.

25 Good, then 10 o'clock tomorrow morning. Sorry,
26 no --

1 MR BOULDING: Can I just make the observation --

2 CHAIRMAN: As soon as I saw you, I realised I had forgotten.

3 MR BOULDING: Thank you very much, sir, and professor.

4 It seems a very long time ago now, but at the CMC on
5 24 September, I informed the Commissioners that MTR were
6 consulting with a project management expert with a view,
7 if necessary, to serving a report. I don't know what
8 the other parties' position is but that's still our
9 position. We've had this expert on board since that
10 date, and conscious of your diktat that he needed to
11 take account of all the evidence, he has been preparing
12 a report on an ongoing basis that is still in draft, but
13 I'm sure you will understand that until perhaps the last
14 day or so, relevant evidence to project management was
15 still coming before you.

16 CHAIRMAN: Yes.

17 MR BOULDING: So you will not be surprised to hear that he
18 is not in a position to sign it off yet.

19 Now, whether or not we call our project management
20 expert -- of course with your leave -- is very much
21 dependent upon the Rowsell report. We were hopeful that
22 we would see that in good time sometime this week so
23 that our expert could take a view as to whether, for
24 example, he agreed with it. We obviously have to
25 discuss it with our client. We assume it may well
26 contain recommendations which we would need to discuss

1 with our client in terms of whether they are practical,
2 whether they are cost-effective, and so on and so forth.
3 And having read that report and consulted with all
4 parties as necessary, to the extent that any report was
5 required from our expert, we anticipated that it would
6 be much, much, much shorter than the current draft.

7 Now, we are a bit concerned that Mr Pennicott has
8 informed you -- this is not a criticism -- we are a bit
9 concerned that we are not going to get, apparently,
10 Mr Rowsell's report until the end of the week. The
11 problem with getting it at the end of the week is that,
12 you'll not be surprised to hear, virtually the whole of
13 our team, and I suspect many, many, many people in the
14 room, are breaking off for Christmas. In fact many
15 members of our team have not had a day off literally for
16 eight to ten weeks, and I'm sure that I speak for many
17 others in the room as well.

18 CHAIRMAN: Yes.

19 MR BOULDING: Now, that causes a practical problem, because
20 in circumstances where the whole team is not going to be
21 around, doing all of the important things that I've told
22 you obviously need to be done is going to be delayed, in
23 reality, I suspect, until the first week of January.

24 In those circumstances, and bearing in mind that we
25 would also welcome the opportunity, as appropriate, to
26 have meetings between our expert and Mr Rowsell --

1 either videocons, because our expert is based in
2 America, or if necessary face-to-face -- bearing that in
3 mind, we wonder whether Mr Pennicott would give
4 consideration to allowing us to see his report on
5 a without-prejudice basis earlier than the end of the
6 week. We are not too fussed if it doesn't have
7 transcript references in, if it's not paginated, if it
8 doesn't have pretty pictures.

9 We are sure at the moment that if it could be served
10 in full at the end of the week, important matters such
11 as recommendations, any criticism, those sorts of things
12 are already in it. It would be on a without-prejudice
13 basis, so we couldn't obviously refer to it, but it
14 would be very, very helpful to aid those essential
15 processes which I've just described to you.

16 CHAIRMAN: Yes.

17 Mr Pennicott?

18 MR PENNICOTT: Yes, sir. It seems to me that what I will do
19 immediately after we adjourn now is take instructions on
20 what seems to me personally to be a very constructive
21 suggestion from Mr Boulding, and if there is a way that
22 we can allow the report of Mr Rowsell -- we may need to
23 speak to him first --

24 CHAIRMAN: Of course.

25 MR PENNICOTT: -- in the UK, as Mr Boulding has indicated,
26 release that report to the MTRC on a without-prejudice

1 basis, then of course I will do that, and certainly from
2 my own perspective I think we should try to do that, if
3 we possibly can.

4 CHAIRMAN: All right. Would any other party have any
5 objection if that arrangement was made as between those
6 two parties?

7 MR KHAW: Mr Chairman, on behalf of the government, in fact
8 we have also considered the need to call an expert on
9 project management, but that really depends on the
10 contents of the Commission's expert, because if there is
11 nothing really controversial arising from that report,
12 we may not see the need to do so.

13 So perhaps if Mr Rowsell's report is available, then
14 it will be helpful if we can also have sight of the
15 same.

16 MR PENNICOTT: Yes, sir. Again, if it's given to the
17 government on a without-prejudice basis as well, then
18 I will try to put that into operation.

19 CHAIRMAN: All right.

20 Mr Shieh, for Leightons?

21 MR SHIEH: We don't see any difficulty or problem with that.

22 CHAIRMAN: All right. Good. Thank you indeed. Any other
23 party?

24 MR CONNOR: Not Atkins.

25 MR SO: There won't be expert evidence from China Technology
26 in this regard.

1 CHAIRMAN: Good. That looks like hopefully it can move
2 ahead. That will certainly save time.

3 MR BOULDING: I'm very grateful. Thank you, Mr Pennicott.

4 CHAIRMAN: Any other matters of an administrative or
5 procedural nature that any party would like to raise?
6 Good. Thank you very much indeed. Then we can adjourn
7 until tomorrow, 10 am, and then we can deal with Mr Lok.

8 Mr Lok, thank you for your patience again. It's
9 much appreciated.

10 Then hopefully we can then wrap matters up before
11 lunch tomorrow, until after the New Year. Thank you
12 very much.

13 (4.28 pm)

14 (The hearing adjourned until 10.00 am the following day)

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	INDEX	
		PAGE
1		
2		
3	MR KEVIN WAYNE HARMAN (affirmed)	2
4	Examination-in-chief by MR SHIEH	2
5	Examination by MR PENNICOTT	3
6	Cross-examination by MS CHENG	25
7	Questioning by THE COMMISSIONERS	41
8	Re-examination by MR SHIEH	48
9	(The witness was released)	49
10	MR HO HON KIT, HUMPHREY (affirmed in Punti)	50
11	Examination-in-chief by MR KHAW	50
12	Examination by MR PENNICOTT	67
13	Cross-examination by MR SHIEH	83
14	Re-examination by MR KHAW	89
15	(The witness was released)	91
16	MR CHAU SIU HEI, FRANCIS (affirmed in Punti)	91
17	Examination-in-chief by MR KHAW	91
18	Examination by MR PENNICOTT	93
19	(The witness was released)	102
20	DR CHEUNG TIN CHEUNG (sworn in Punti)	102
21	Examination-in-chief by MR KHAW	102
22	Examination by MR PENNICOTT	104
23	(The witness was released)	111
24	H O U S E K E E P I N G	112
25	D I R E C T I O N S	132