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<p>1 Monday, 6 May 2019 2 (10.04 am) 3 PRELIMINARY HEARING FOR THE EXTENDED INQUIRY 4 CHAIRMAN: Yes. 5 MR PENNICOTT: Sir, good morning. There's a real sense in 6 which I feel I've been here before. 7 Sir, before I introduce everybody, can I just remind 8 everybody that we were last here on 29 January this 9 year, when myself and others were making closing 10 submissions in relation to the first part or the 11 Original Inquiry as we are going to call it. 12 On 30 January, the very following day, the 13 government held a press conference, announcing that 14 there were problems of, amongst other things, missing 15 RISC forms, unauthorised design changes and incomplete 16 testing records of materials under contract 1112. 17 In relation to construction works at the North 18 Approach Tunnels, which no doubt everybody will call 19 "NAT", the South Approach Tunnels, "SAT", and the 20 Hung Hom Stabling Sidings. 21 On the following day, 31 January 2019, the 22 government announced that the Chief Executive-in-Council 23 would consider expanding the scope of the Commission's 24 investigation to cover the various construction issues 25 at the NAT, SAT and HHS, and indeed, on 19 February</p>	<p>1 Mr Jonathan Wong, and I think also Mr Kaiser Leung. We 2 also have still Leighton, who are represented by my 3 learned friends Mr Paul Shieh, senior counsel, and 4 Mr Jonathan Chang. We also have Pypun, who are 5 represented by new counsel because Mr Russell Coleman, 6 senior counsel, as he then was, has been elevated to 7 a new position, that is as a High Court judge of the 8 Court of First Instance in Hong Kong, and Pypun are now 9 represented by my learned friend Mr Peter Clayton, 10 senior counsel, and we welcome him to the Inquiry. 11 Sir, there is an additional party who was not 12 an involved party at the Original Inquiry. That is 13 a company called Wing &amp; Kwong Steel Engineering Co Ltd. 14 More about them a little later. They are represented by 15 my learned friend Mr Benson Tsoi and we also welcome him 16 to the Inquiry. I hope I have not missed anybody else 17 out. 18 I will be mentioning in a moment the position of 19 Fang Sheung, but they are, as we sit here today at 20 least, a slightly special case, and I will mention that 21 further in a moment. 22 Sir, I have, together with Mr Cheuk and Mr Lam, 23 prepared a relatively short opening address for the 24 purposes of this morning which has attached to it two 25 annexes. One, the first annex, simply being the</p>
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<p>1 2019, the Chief Executive-in-Council, pursuant to powers 2 conferred by section 3 of the Commissions of Inquiry 3 Ordinance, cap 86, did indeed expand the terms of 4 reference of this Commission of Inquiry by adding 5 paragraph (a)(ii) to the terms of reference. 6 Sir, we are here today to hold a preliminary 7 meeting, preliminary hearing, in relation to the factual 8 aspects of the extended part of the Inquiry. 9 Sir, the involved parties that participated in the 10 Original Inquiry are not exactly the same as those who 11 are going to be participating in the Extended Inquiry. 12 Sir, so far as the Commission is concerned, as you know, 13 I appear for the Commission, together with my learned 14 friends Mr Calvin Cheuk and Mr Solomon Lam. 15 Sir, we have "lost" three -- I use that word in 16 inverted commas, "lost" -- involved parties, namely 17 Atkins China Ltd, Intrafor Hong Kong Ltd and China 18 Technology Corporation Ltd. They are not, at the moment 19 at least, regarded by the Commission's legal team as 20 necessary involved parties in the Extended Inquiry. 21 However, we still have as involved parties the 22 government, who are represented by my learned friends 23 Mr Richard Khaw, senior counsel, Mr Anthony Chow and 24 Ms Ellen Pang. We still have the MTRCL, who are 25 represented by my learned friends Mr Philip Boulding and</p>	<p>1 expanded terms of reference, and secondly, the Rules of 2 Procedure and Practice for the Extended Inquiry, which 3 I anticipate you will be endorsing today with any 4 modifications that anybody might wish to suggest and 5 persuade you of. 6 Sir, I have already given a brief background as to 7 how we come to be here at this Extended Inquiry, but 8 of course I remind everybody that at the moment, sir, 9 you are sitting on your own. Commissioner Prof Hansford 10 is not here and is unable to be here. But, nonetheless, 11 the terms of reference, expanded terms of reference, 12 allow you to sit for procedural hearings and to make 13 procedural directions in the absence of Prof Hansford. 14 Sir, we are here today so that the substantive 15 hearing of the first part of the Extended Inquiry at 16 least can start at the earliest date possible. That is, 17 as has been notified to everybody, 27 May 2019. 18 Sir, so far as the issues under the expanded terms 19 of reference are concerned, as I say, they are to be 20 found in the broadest of terms in the new 21 paragraph (a)(ii) of the expanded terms of reference. 22 But, sir, what the legal team for the Commission has 23 sought to do, on the basis of documentation provided to 24 it over the last few weeks, is to identify the primary 25 matters or the primary issues that are relevant to the</p>

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<p>1 expanded terms of reference, and at paragraph 8 of the 2 written opening address I summarise what those matters 3 are namely: (i) three defective stitch joints at the 4 NAT; (ii) non-compliance issues at the NAT shunt neck; 5 and then (iii) lack of inspection and supervisory 6 records, including RISC forms, unauthorised design 7 changes and incomplete testing records of materials at 8 the NAT, SAT and HHS.</p> <p>9 And, sir, you will be aware, I believe, that the 10 parties have been invited to produce witness statements 11 and documentation by reference to those identified 12 issues.</p> <p>13 Sir, we will of course be keeping the issues under 14 constant review but those are the ones that we have 15 defined to date.</p> <p>16 Sir, at paragraphs 9 to 11, we have set out some 17 background to the Commission and its powers, and they 18 largely repeat the matters that we rehearsed in the 19 original preliminary hearing on 24 September last year 20 in connection with the Original Inquiry.</p> <p>21 Sir, we mention, and I'll come to this in a bit more 22 detail later, in paragraph 11 the fact that if there are 23 any other parties, any other persons or individuals or 24 entities, who wish to participate in the substantive 25 hearing starting on 27 May, then they may make</p>	<p>1 Sir, at the moment, the view is taken that they do not 2 need to be made an involved party and are probably not 3 going to be the subject matter of criticism and hence no 4 Salmon letter. However, again, that is being kept under 5 review.</p> <p>6 Having said that, as we know, Fang Sheung was 7 Leighton's sub-contractor, responsible for carrying out 8 the bar cutting, bending and fixing works for the 9 platform slabs, as we know from the Original Inquiry, 10 but they were also responsible for those matters in 11 relation to the SAT.</p> <p>12 Sir, Fang Sheung have, however, indicated to the 13 Commission's legal team, to those instructing me, that 14 for financial reasons they are unable to engage legal 15 representation. The consequence of that, just so that 16 everybody is aware and to make sense of something that's 17 coming a bit later, is that those instructing me, that 18 is the Commission's solicitors, are currently engaged in 19 taking a witness statement or witness statements from 20 certain individuals at Fang Sheung. That is a process 21 that's ongoing. It may well be that if Fang Sheung are 22 able to give material witnesses, I, on behalf of the 23 Commission, will have to call those witnesses, given 24 that they do not, as they have indicated to us, have 25 their own legal representation.</p>
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<p>1 an application to the Commission to so participate, and 2 they are required to do that by 14 May. To date, we 3 have not received any such applications.</p> <p>4 Sir, so far as the involved parties are concerned, 5 the position is set out in paragraphs 12 through to 18 6 of the written address, and we identify in those 7 paragraphs the parties essentially who I have already 8 made reference to, namely the government and the four 9 bureaux or departments involved: Pypun, who were the 10 monitoring and verification consultants; MTR, engaged by 11 the government under the entrustment agreement; 12 Leightons, of course, the main contractor under contract 13 1112.</p> <p>14 Then, sir, at paragraph 17 of the written address, 15 we identify Wing &amp; Kwong Steel Engineering Company, who 16 was Leighton's sub-contractor responsible for carrying 17 out the reinforcement bar cutting, bending and fixing 18 works for NAT and the HHS. Sir, as I have already 19 mentioned, Wing &amp; Kwong obviously was not involved in 20 the Original Inquiry.</p> <p>21 Sir, at paragraph 18, as I mentioned earlier, we 22 make reference to Fang Sheung. Sir, the position at the 23 moment with regard to Fang Sheung is that the Commission 24 has issued letters requesting documentation and witness 25 statements from Fang Sheung but not a Salmon letter.</p>	<p>1 We will keep the involved parties informed as to the 2 progress that is being made with any Fang Sheung witness 3 statements and of course we will make those statements 4 available as soon as we are able to do so.</p> <p>5 Sir, could I also just add, before I go on, the 6 following. On the basis of information provided by 7 MTRCL and Leighton, we are aware that China Technology 8 carried out the concreting works at the SAT, and we also 9 are aware that a company called Hills Construction Ltd 10 carried out the concreting works at the NAT. We also 11 know that three further sub-contractors were engaged by 12 Leighton to carry out the concreting works at the HHS. 13 They were Tung Yat Construction Co Ltd, Bik Hoi Civil 14 Engineering Co Ltd and Richwell Civil Engineering Ltd.</p> <p>15 However, sir, the Commission's legal team has taken 16 the view that none of those five concreting 17 sub-contractors warrant being involved parties at the 18 Extended Inquiry, but of course -- and I'm afraid this 19 is a matter or a point that I'm going to repeat quite 20 often this morning -- that position is also being kept 21 under constant review as the information comes in from 22 the involved parties.</p> <p>23 Could I also add, on a similar note, that Atkins 24 China Ltd, a previously involved party at the Original 25 Inquiry of course, were MTRC's consultant for the NAT</p>

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<p>1 and SAT, and they were also Leighton's consultants for 2 the NAT and SAT, a familiar story you will recall. It 3 is also the case that a company called AECOM Asia Co Ltd 4 were MTRC's consultant for the HHS and a company called 5 SMEC Asia Ltd were Leighton's consultant for the HHS. 6 Sir, similarly with regard to the concreting 7 sub-contractors, the Commission's legal team has taken 8 the view, on the basis of information currently to hand, 9 that none of those three consultants -- that's Atkins, 10 AECOM and SMEC -- warrant, as presently advised, being 11 made involved parties to the Extended Inquiry. Again, 12 that is subject to constant monitoring and review by the 13 Commission's legal team. 14 Sir, so far as -- going back to the written 15 address -- witness statements and documents are 16 concerned, to date the Commission has received four 17 witness statements from MTR and four statements from 18 Leighton, primarily in relation to issues 1 and 2 that 19 I mentioned earlier. The remaining witness statements 20 from MTR and Leighton and the witness statements from 21 the other involved parties are due to be provided to the 22 Commission on various dates over the next fortnight or 23 so. But, sir, by reference to provisional lists of 24 witnesses that have been helpfully provided by the 25 involved parties, many further witness statements are</p>	<p>1 adopted before, the usual course is that those documents 2 will not be made available to the involved parties 3 unless and until they have served their own witness 4 statements and documents. 5 Sir, just to assist, the numbering system for the 6 documents that we received to date are listed at the 7 bottom of paragraph 21 of the written address. 8 Sir, just a small point mentioned at paragraphs 22 9 and 23. That is the site visit. Sir, you and the 10 Commission's legal team made a site visit to the NAT, 11 SAT and HHS on 2 April 2019, and I understand that 12 arrangements have been made for you, together with 13 Prof Hansford, to visit the relevant work sites on 14 24 May 2019, just before the Extended Inquiry hearing 15 starts on the 27th. 16 Sir, so far as expert evidence is concerned, the 17 Commission's experts have not yet been formally 18 instructed for the purposes of assisting the Commission 19 in the Extended Inquiry. As we know, the hearing 20 between 27 May and 19 June will deal with factual 21 evidence only. However, it is anticipated that the 22 Commission will require independent expert opinion on 23 project management issues and/or structural safety 24 issues in due course. Again, the position is being kept 25 under constant review and of course the involved parties</p>
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<p>1 expected to be received and the final number of factual 2 witnesses is currently anticipated, by reference to 3 those provisional lists, to be between about 30 and 35. 4 Sir, unless notified otherwise, the deponents of all 5 witness statements will be required to give evidence at 6 the substantive hearing. 7 Sir, I should add on that point that as the 8 information comes in to the Commission's legal team and 9 the witness statements are received, we of course, one 10 of our obligations to the Commission is to identify 11 other individuals who might be useful to the Commission, 12 through evidence they may be able to give, and of course 13 we are keeping a watchful eye out for any individuals 14 who may appear in the documentation or in references in 15 other witness statements, as to whether or not we feel 16 they should also be called as witnesses. Of course, if 17 that view is reached, then the involved party concerned 18 will be notified. 19 Sir, so far as the documents are concerned, in the 20 usual way the hearing bundles are under constant 21 preparation, and the Rules of Procedure and Practice for 22 the Extended Inquiry set out the process by which the 23 involved parties may obtain copies, soft copies, of the 24 hearing bundles. 25 Sir, again, adopting the approach that has been</p>	<p>1 will be kept informed should the Commission formally 2 instruct one or both of its experts, or indeed another 3 expert, in due course. 4 Sir, I should say also that the Rules of Procedure 5 and Practice make provision for the involved parties to 6 adduce independent expert evidence in due course, should 7 they wish to do so, and the rules are pretty much the 8 same as they were on the Original Inquiry, but the thing 9 that is up in the air at the moment is the timing of any 10 such independent expert evidence. Hopefully, as things 11 evolve, that timing may crystallise, but at the moment 12 I'm afraid the position is that no specific directions 13 in terms of timing can be given in relation to any 14 further independent expert evidence. 15 Sir, so far as the Commission's directions for the 16 Extended Inquiry are concerned, as I said earlier, they 17 are attached at annex 2 to the written address. There 18 is a good deal of repetition and overlap with the 19 original Rules of Procedure and Practice which were 20 issued on 24 September 2018, although an attempt has 21 been made in those revised rules to direct them 22 specifically at the extended aspects of the Inquiry. 23 Sir, I don't propose to go through those rules in 24 detail, but I draw attention to the fact that rules 6 25 and 7 are those rules that deal with access to</p>

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<p>1 documents. I further draw attention to rules 8 and 9. 2 Sir, they deal with the use to which materials provided 3 to the Commission may be put. 4 Sir, as you will be aware and as the involved 5 parties in the Original Inquiry will also be aware, it 6 has been a constant problem to this Commission that 7 a number of instances of wrongful disclosure of 8 documentation have been made. A number of warnings in 9 that regard have been issued by or on behalf of the 10 Commission, and I repeat those warnings and repeat what 11 is said in paragraph 9, namely that breach and 12 unauthorised disclosure of materials and information is 13 or could amount to a contempt of court. 14 Sir, the question or issue or topic of written 15 witness statements and expert reports is dealt with in 16 paragraphs 10 through to 12 of the Rules of Procedure 17 and Practice. Could I just mention one particular 18 point, which is responsive witness statements. That is 19 dealt with at paragraph 11. What is said there is: 20 "No further responsive statement(s) shall be filed 21 by any involved party unless leave is given by the 22 Commission. The Commission will not consider any 23 application for leave to adduce a further responsive 24 statement unless such written application is made in 25 good time and accompanied by the proposed responsive</p>	<p>1 mentioned the fact that other entities who are not 2 currently involved parties can apply to become involved 3 by 14 May. The rules go on to explain how those 4 applications will be dealt with. 5 Sir, so far as the hearing procedure is concerned, 6 that is for the substantive hearing starting on 27 May, 7 it is our intention, that is the Commission's legal 8 team's intention, to make a written and oral opening 9 address on the first day. Counsel for the involved 10 parties may also make their own opening addresses, 11 provided an application to do so has been made by 12 Wednesday, 22 May 2019. So that's just a few days 13 before we are due to start. 14 Sir, we have limited the length of those written 15 opening addresses to 25 pages, with other requirements. 16 Sir, the position will be, as last time, I will go 17 first, and, sir, you will then indicate in which order 18 the involved parties should make their opening oral 19 addresses. 20 Sir, again, without going through it in any detail, 21 paragraphs 16, 17 and 18 of the Rules of Procedure and 22 Practice deal with evidence and the examination of 23 witnesses and the procedure that will be adopted, and 24 I think that simply replicates the procedure that was 25 adopted and used last time.</p>
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<p>1 written statement(s). Any written statement(s) which 2 are not responsive in nature will not be allowed." 3 Sir, so far as the timing is concerned, I rather 4 accept responsibility for the slightly woolly wording, 5 as it might be said, that is a written application is 6 made in good time. The difficulty we have at the 7 moment, sir, as you will be aware, is that you are 8 receiving witness statements on an intermittent basis 9 from the involved parties at different dates and on 10 different issues, and at the moment it is very difficult 11 for us to come up with a formulation which involves 12 a particular date for the production of any responsive 13 witness statements. Sir, it may be that we will invite 14 you to perhaps look again at paragraph 11 in due course 15 to see whether we can firm up and make more clear and 16 certain the date by which any further responsive witness 17 statements should be served. 18 CHAIRMAN: Yes. 19 MR PENNICOTT: But we thought it appropriate to put in that 20 paragraph to at least allow in principle the service of 21 responsive witness statements if the involved parties 22 believe them to be appropriate. 23 Sir, we then go on to deal with, in the Rules of 24 Procedure and Practice, the participation and legal 25 representation of other parties. I have already</p>	<p>1 Sir, so far as paragraph 19 of the Rules of 2 Procedure and Practice are concerned, that deals with 3 closing addresses. Now, what is going to happen when we 4 finish on 19 June, that is the hearing of, hopefully at 5 least, the completion, the factual evidence in relation 6 to the extended part of the Inquiry, obviously we are 7 not entirely sure. It is possible that you will invite 8 the parties and indeed myself to produce some sort of 9 written submissions just dealing with that factual 10 evidence at that time. You may wish to defer the 11 request for written submissions until a later date. All 12 things are possible at the moment so far as that is 13 concerned. 14 But the way that this paragraph has been altered 15 from the previous rules is that so far as oral closing 16 addresses are concerned, it should not be thought that 17 there is going to be an entitlement this time to oral 18 closing addresses. Oral closing addresses will only 19 take place if the Commission so directs this time. 20 Sir, so far as the detail of the substantive hearing 21 is concerned, that is -- and I'm not going to read it 22 all out -- set out in paragraph 20 through to 28 of the 23 Rules of Procedure and Practice. As I say, I'm not 24 going to read all that out. Again, it's pretty much 25 a repetition, other than, obviously, the dates, of what</p>

<p style="text-align: right;">Page 17</p> <p>1 was in the previous order. 2 Sir, can I, however, mention this point. In 3 paragraph 28 of the written opening address, that is not 4 in the Rules of Procedure and Practice but in the 5 written opening address, at paragraph 28, page 10, we 6 say this, and this is quite an important point for 7 everybody just to understand: 8 "With ... regard to paragraph 18(1) [of the Rules of 9 Procedure and Practice], the Commission's current 10 intention is to call the factual evidence of the 11 involved parties in the order [which we have] set out 12 below. [We emphasise] ... that the process is flexible 13 and, if the Commission concludes that it wishes to hear 14 from a particular witness (or witnesses) at a particular 15 stage, it will issue appropriate directions." 16 Now, the order which we currently have in mind is, 17 as I say, set out here, and it goes as follows. That is 18 Fang Sheung -- and I've mentioned them already -- if we 19 obtain one or more witness statements from Fang Sheung, 20 it will be my intention to call those witnesses first 21 and deal with them. Then, sir, we would be proposing, 22 at the moment, to call the government witnesses; then 23 Pypun; then Wing &amp; Kwong, then Leighton, and then MTRCL 24 That's a very different order than the one which we 25 adopted last time, for the Original Inquiry.</p>	<p style="text-align: right;">Page 19</p> <p>1 issues with a particular witness. If they have to be 2 cross-examined on all three issues, so be it. We will 3 not bring about a situation where they have to be 4 recalled unless it is absolutely necessary. 5 Sir, finally before I sit down, obviously there 6 are -- and I've identified the three of them already -- 7 three parties who were involved parties in the Original 8 Inquiry who are not here today. The Rules of Procedure 9 and Practice for the Extended Inquiry make reference to 10 the fact that and recognise that further directions may 11 need to be given in relation to the outstanding matters 12 concerning the Original Inquiry, and of course those 13 three parties that I've mentioned will be notified if 14 any such directions are made. 15 Sir, can I then go to paragraph 34 of the written 16 address, which contains some very important relevant 17 information to, in particular, the Original Inquiry, 18 which perhaps ought to be put in the public domain 19 because I don't think it has been yet, and it is this: 20 that in relation to the subject matter of the Original 21 Inquiry, and to a more limited extent the Extended 22 Inquiry, MTR is in the process of implementing 23 a holistic proposal and a verification proposal 24 respectively. So holistic proposal, Original Inquiry; 25 verification proposal, Extended Inquiry.</p>
<p style="text-align: right;">Page 18</p> <p>1 Can I just emphasise, so there is no doubt about 2 this, that this order is very much provisional. It 3 could be changed. At the moment, as I have indicated, 4 all that we have to work with, apart from documentation 5 that has been provided to us by government, is four 6 witness statements and documentation from MTR and four 7 witness statements and documents from Leighton. There 8 is still an awful lot that we do not have and have not 9 been able yet to consider. 10 It may well be that when we have had the opportunity 11 of considering the further material, which no doubt will 12 be fairly extensive, we may have to review the order in 13 which these witnesses or the parties' witnesses are 14 called. We will of course inform the involved parties 15 as soon as there is any change, if any, to this proposed 16 order. 17 Sir, we go on to indicate how we would like to try 18 to approach the giving of the factual evidence: that is, 19 by, if we can, dealing with issues -- this is within 20 each party, of course -- with issues 1 and 2 first and 21 then 3. It may not be possible because some witnesses, 22 I'm afraid, deal with all three issues. We will 23 certainly avoid or seek to avoid the situation where 24 witnesses have to be recalled. If they deal with all 25 three issues, then so be it; we will deal with all three</p>	<p style="text-align: right;">Page 20</p> <p>1 The Commission has recently been informed by MTR and 2 the government that the milestone date for the 3 completion and submission of the final reports to the 4 Commission in respect of the holistic and verification 5 proposals is 30 June 2019. That is 11 days after we are 6 due to complete, that is on 19 June, the factual 7 evidence in relation to the extended part of the 8 Inquiry. 9 I mention this because the achievement of that 10 milestone date of 30 June is likely to be critical to, 11 firstly, the further directions to be issued by the 12 Commission in relation to both the Original Inquiry and 13 the Extended Inquiry, and secondly the Commission's 14 objective of submitting its final report to the Chief 15 Executive by 30 August 2019, as required by the expanded 16 terms of reference. 17 So, as I say, I mention the fact that the milestone 18 date that is being proposed and we hope achieved is 19 30 June 2019 for the respective reports. 20 Sir, unless there is anything else that I can assist 21 you with at this moment, that's all I wish to say. All 22 the involved parties are now I think allowed, in 23 whichever order you wish to take them, to say -- if they 24 wish to say anything, may do so. 25 My only observation -- and I'm sure it's</p>

<p style="text-align: right;">Page 21</p> <p>1 an observation you made last time, sir -- is that we are 2 here to deal with procedural issues, not substantive 3 issues. 4 CHAIRMAN: Yes. Thank you. Just before you take your seat, 5 as far as the period of time that has been set for the 6 hearing of further evidence on the extended terms of 7 reference, as matters stand at the moment, having 8 an indication of the amount of evidence and its nature 9 that is likely to come before the Commission, are you 10 optimistic that we can complete the factual evidence -- 11 and I emphasise factual, not expert evidence 12 necessarily -- within that time frame? 13 MR PENNICOTT: Sir, I am optimistic. Looking at the eight 14 witness statements that we have received to date, 15 looking at the documentation we have received to date, 16 and looking at the three issues that we've identified, 17 I am, yes, optimistic that we can complete within that 18 period. 19 There are, of course, a couple of Saturdays during 20 the period which, if it becomes critical, the Rules of 21 Procedure and Practice make allowance for the 22 possibility of using those days. I don't think we need 23 to determine that in any sense today, but obviously we 24 can keep that in mind. 25 But, sir, I think, if I may say so, it should be</p>	<p style="text-align: right;">Page 23</p> <p>1 Then (c): 2 "in the light of (b) above, to make recommendations 3 on suitable measures with a view to promoting public 4 safety and assurance on quality of works." 5 Both (b) and (c) apply to the new paragraph (a)(ii) 6 just as much as they applied to original 7 paragraph (a)(i). So the prospect of requiring expert 8 evidence, it seems to me, is quite high, but the problem 9 at the moment is that it is probably the case that we've 10 got to have the factual witness statements in, we've 11 probably got to hear the cross-examination of the 12 witnesses, and the difficulty we have is that certainly 13 the project management expert is going to have to 14 consider all that material before producing a report. 15 So whilst I see the prospect of requiring project 16 management expertise on the Extended Inquiry as being 17 quite high, putting some sort of date on that at the 18 moment is virtually impossible. As you will recall last 19 time, in the Original Inquiry, there were two project 20 management experts, one called by the Commission and one 21 called by the MTRC. I don't know what the MTRC's 22 current intent, if any, is with regard to project 23 management expertise in the Extended Inquiry. 24 Obviously, that's a matter for them. 25 But certainly, as I say, all I can say at the moment</p>
<p style="text-align: right;">Page 22</p> <p>1 everybody's objective, all the involved parties' 2 objective, to complete that factual evidence in the 3 period that we have. If it also requires you, sir, in 4 conjunction obviously with Prof Hansford when he's here, 5 to, as it were, put some, might I say, confinement on 6 cross-examination, so be it. Again, you are allowed to 7 do that. 8 But at the moment I don't see any necessity for 9 that. I am reasonably confident -- sorry, I am 10 reasonably optimistic, and reasonably confident, that we 11 will complete in that period of time. 12 CHAIRMAN: Thank you very much. 13 Sorry, there is another question. As far as expert 14 evidence is concerned, have you considered the 15 possibility of calling any expert evidence in any 16 respect concerning the extended terms of reference? 17 MR PENNICOTT: Not at the moment, sir. It is a matter that 18 is under constant review, but it is right to say and to 19 point out that, as you are aware, what's been added to 20 the terms of reference is paragraph (a)(ii). Now, 21 subparagraphs (b) and (c) of the terms of reference make 22 reference to reviewing various aspects of the MTR's 23 project management and supervision system, and so forth; 24 and, secondly, the extent and adequacy of the monitoring 25 and control mechanisms of the government. That's (b).</p>	<p style="text-align: right;">Page 24</p> <p>1 is I think it is highly likely that the Commission will 2 need more project management experts or expert evidence 3 on the extended aspects of the Inquiry, but I'm not in 4 a position to, say, give a date as to when the report be 5 prepared. 6 CHAIRMAN: Yes, thank you. 7 MR PENNICOTT: As to safety, I'm not at all sure whether 8 expert safety evidence will be required on the Extended 9 Inquiry. Again, being kept under review, more difficult 10 to see that expert evidence on structural matters is 11 going to be required on the extended aspects of the 12 Inquiry. It may be but it doesn't seem to me terribly 13 likely at the moment. 14 CHAIRMAN: It's more uncertain. 15 MR PENNICOTT: It's more uncertain, yes. 16 CHAIRMAN: Certainly both myself and Prof Hansford 17 provisionally obviously have contemplated the need for 18 an expert for the Commission in respect of project 19 management matters, and in all probability the same 20 expert, if that expert is available. 21 MR PENNICOTT: Yes. 22 CHAIRMAN: The question that arises is if that expert must 23 of course consider all the evidence given, it would 24 perhaps, especially bearing in mind that our timing is 25 not impeccable, we are going to finish off at the end of</p>

<p style="text-align: right;">Page 25</p> <p>1 June, we are going to ask an expert witness then to 2 prepare a report over July and August, which is a time 3 when that expert may well wish to be travelling with 4 family members and the like on a summer holiday. So 5 taking into account the fact that time is required for 6 an expert report, and that the timing is perhaps not 7 exactly perfect, we could be looking at a delay in 8 receiving a fully considered and prepared expert report. 9 MR PENNICOTT: Yes. 10 CHAIRMAN: And then there may be people who wish to speak to 11 that report by way of questioning the expert and 12 obtaining evidence. 13 MR PENNICOTT: Yes, sir. It seems to me that there are 14 likely to be a number of matters running in parallel 15 when we complete the factual evidence -- let's hope we 16 do -- on 19 June because, as I've indicated, so far as 17 the Original Inquiry is concerned, we are going to have 18 the holistic report coming on 30 June. So far as the 19 Extended Inquiry, we are going to have the verification 20 report coming in on 30 June. It may well be that the 21 project management expert might want to consider the 22 verification report insofar as it relates to the 23 Extended Inquiry as well. 24 Running in parallel with that, of course, is the 25 potential for the necessity for expert evidence on</p>	<p style="text-align: right;">Page 27</p> <p>1 CHAIRMAN: Of course. 2 MR PENNICOTT: It can't be avoided. But of course there are 3 a number of other parties we have identified who are not 4 in that position, and, sir, you are absolutely right 5 about that. We should do our best to minimise, as it 6 were, wasted costs and expenditure of people being here 7 when they don't need to be. 8 CHAIRMAN: Yes. 9 Good. Thank you very much indeed. Perhaps we will 10 work our way through. 11 Mr Khaw? 12 MR KHAW: Perhaps at our reunion today I only wish to 13 mention three points very briefly arising from the 14 opening address by the Commission's legal team. 15 The first point is in relation to paragraph 26 of my 16 learned friend's opening address, dealing with the 17 question of expert witness. I heard the exchange 18 between Mr Chairman and Mr Pennicott regarding what will 19 be proposed in relation to expert evidence. 20 In view of the experience at the last hearing, our 21 present observation is that we may not find it necessary 22 to adduce expert evidence on every issue, but we will 23 have to make a decision in due course. We note the 24 proposed directions made by the Commission's legal team 25 and we will certainly give everyone sufficient notice</p>
<p style="text-align: right;">Page 26</p> <p>1 structural and safety matters arising out of the 2 holistic proposal which deals primarily of course with 3 the various tests and so forth that we all know about 4 that arose on the Original Inquiry. 5 So there is going to be a period beyond 19 June and 6 potentially beyond 30 June which frankly, at the moment, 7 is very, very difficult to predict how things are going 8 to work out, all on the assumption of course that that 9 milestone date is achieved. 10 CHAIRMAN: In addition to which, as far as trying to assist 11 counsel is concerned, certain counsel will be required 12 only to participate in respect of the original terms, 13 and certain counsel only to participate in terms of the 14 extended terms. 15 MR PENNICOTT: Yes. 16 CHAIRMAN: And one doesn't want to end up asking interested 17 parties to be paying for their counsel simply so that 18 that counsel, without any criticism intended, is warming 19 a seat, shall we say, for a week or ten days, while we 20 are dealing with part 1 of the Inquiry, if I can put it 21 that way, of which they have no connection at all. 22 MR PENNICOTT: Sir, that's entirely right. Of course there 23 are some of us -- namely the Commission, government, 24 MTRC and Leighton, and probably Pypun -- who are going 25 to be here for everything, as it were.</p>	<p style="text-align: right;">Page 28</p> <p>1 when we make our decision to adduce expert evidence. 2 The second point is in relation to paragraph 28 of 3 my learned friend's opening address. I note 4 Mr Pennicott's point that the sequence of witnesses will 5 certainly be kept under constant review. The only 6 preliminary observation I wish to make at this stage is 7 that the government's knowledge of the relevant matters 8 in relation to the Extended Inquiry is derived from the 9 information provided by other parties and we do not, 10 I have to say, have direct knowledge as to what exactly 11 happened at the material time, during the installation 12 of the works. 13 Hence, our observation is that we would wonder 14 whether it would be helpful for the government's 15 witnesses to give evidence at an early stage of the 16 hearing, but of course I agree with Mr Pennicott that 17 this point can be further reviewed and revisited once we 18 get hold of other parties' or all parties' witness 19 statements. I only wish to make that preliminary 20 observation at this stage. 21 CHAIRMAN: Yes. 22 MR KHAW: Finally, regarding paragraph 34 of the opening 23 address, perhaps Chairman may note that the government 24 and MTR have submitted joint milestone dates for the 25 Commission's reference, and the government has worked</p>

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<p>1 closely with MTR and will continue to do so, in view of 2 what needs to be achieved on each milestone date in the 3 hope that the final report will be ready by 30 June. 4 These are the only three points I wish to make 5 today. 6 CHAIRMAN: Yes. So, to avoid ambiguity, as far as these 7 reports are concerned -- and they are important, quite 8 clearly, because, as I understand it, the holistic 9 report, as it has now become known, will deal with 10 part 1 of the Inquiry. 11 MR KHAW: Yes. 12 CHAIRMAN: And my understanding is that this is a report 13 which is being prepared by the government and MTRCL 14 together. 15 MR KHAW: It's prepared by MTRC, but the government will 16 make comment on the report. 17 CHAIRMAN: All right. So it's a MTRCL report, but the 18 government will have a role in commenting upon and 19 expanding upon and discussing with, so that what we 20 receive, that is what the Commission eventually 21 receives, will be a joint report. 22 MR KHAW: It will be the final product. 23 CHAIRMAN: Fine. Thank you. Will it be one which 24 government itself has accepted and will be acting upon? 25 MR KHAW: It will be, because when we tried to set the</p>	<p>1 certain parties who may say, "We don't want to end up in 2 a massive court case following on, being asked to pay 3 tens of millions of dollars to do this because we think 4 it's unnecessary", so they would probably want some 5 early ability to test what might be included there. 6 MR KHAW: Yes. We appreciate that. 7 CHAIRMAN: So that itself will take a little time. So the 8 report comes out 30 June, so shall we say the first week 9 in July, by the time everybody's got their heads 10 together on it, and then your experts will probably 11 need -- or the experts will probably need a period of 12 time to come back, including the Commission's expert. 13 Now, the Commission's expert is a professor of 14 engineering, and although I went to university about 15 300 years ago, my understanding is that the halcyon days 16 of summer are when most students are actually writing 17 exams, and it may well be that most exams are over by 18 June but it could also be that certain examination 19 results still have to be marked and projects and PhD 20 programmes and all the rest of it have to be looked at 21 at or about this early part of summer. So that may 22 further delay matters to some degree. 23 I'm just putting these points because I'm trying to 24 get an idea of timings, I suppose, so that we all accept 25 there is going to be a need for certain things to be</p>
Page 30	Page 32
<p>1 milestone date, we actually have factored in the time 2 that the government would require for the purpose of 3 liaising with the MTRCL for the purpose of finalising 4 the report. 5 CHAIRMAN: All right. I appreciate we are talking in 6 general terms at the moment. 7 MR KHAW: Yes. 8 CHAIRMAN: That's obviously of benefit so that the 9 Commission knows which way this is moving. 10 What obviously is left, of course, is the fact that 11 whatever the nature of the report, however wise the 12 decisions, however prudent the actions to be taken to 13 deal with matters or decisions made not to deal with 14 matters is concerned, there are other parties who have 15 been involved in this Inquiry who will no doubt want 16 their own experts who they have already called to look 17 at what's put there, and you would agree that they 18 should have an opportunity to do that? 19 MR KHAW: Of course. 20 CHAIRMAN: Because if, for example, you know, you were to 21 say in the report -- and this is an example; it's 22 hypotheses only and it doesn't intend to have any basis 23 in fact -- but if it was to say, "Right, the entire 24 diaphragm wall of X and Y should be removed and rebuilt 25 because of X, Y and Z", then no doubt there will be</p>	<p>1 done, and that being the case, it will affect timing. 2 MR KHAW: Yes. 3 CHAIRMAN: Thank you, Mr Khaw. 4 Yes, Mr Tsoi. Welcome to the Inquiry. 5 MR TSOI: Thank you, sir. I was about to thank counsel to 6 the Commission for introducing us. We are of course the 7 new kid on the block, so to speak. 8 Procedurally, may I just inform the Commission this, 9 that in relation to paragraph 26 of counsel for the 10 Commission's address, it is unlikely, at this stage, 11 I can inform you, that we, Wing &amp; Kwong, will be calling 12 any expert evidence. So perhaps that would assist the 13 Commission in its timetabling. 14 CHAIRMAN: Good. 15 MR TSOI: If we can then move on to paragraph 28 of the 16 opening address, we can see a preliminary order of 17 factual evidence there. 18 At the moment, we are actually quite content with 19 that order, but I emphasise the point that, Chairman, 20 you have made, that resources for certain parties in 21 this case are quite restrictive, and there may be times 22 that my client, Wing &amp; Kwong, may not be able to afford 23 legal representative to attend certain parts of the 24 Inquiry. That's why perhaps timetabling as to when 25 factual evidence may be called may be quite important to</p>



<p style="text-align: right;">Page 33</p> <p>1 us. As you know, we are not as resourceful as other 2 companies in this case. 3 CHAIRMAN: We accept that entirely, and certainly the 4 Commission's counsel, Mr Pennicott especially, is aware 5 of that. You will be kept fully informed not only of 6 the timetable as anticipated but of the timetable as it 7 changes from time to time, so that you can order your 8 lives accordingly. 9 MR TSOI: I am much obliged for that, Chairman. I would say 10 that counsel warming up the seat may very well be myself 11 so that's why I raise this point. 12 CHAIRMAN: Good. 13 MR TSOI: The last point relates to paragraph 30 of the 14 three issues. We can see that in the opening address. 15 May I inform the Commission and counsel for the 16 Commission at once that it is highly unlikely that Wing 17 &amp; Kwong will be able to assist in relation to issue 3. 18 So perhaps that could assist in timetabling matters as 19 well. 20 CHAIRMAN: Good. 21 MR TSOI: Unless it would assist the Chairman any further, 22 these are the only points I wish to make. 23 CHAIRMAN: Good. Thank you. Thank you very much, Mr Tsoi 24 Mr Boulding? 25 MR BOULDING: Yes. Good morning, sir.</p>	<p style="text-align: right;">Page 35</p> <p>1 obviously need to make arrangements, if possible, for 2 things like summer holidays. 3 So really the question is are they confined to 4 barracks in July and August, or is it likely, as would 5 appear to be the case from the debate this morning, that 6 any expert evidence is actually going perhaps even to be 7 pushed into September? 8 CHAIRMAN: This is one of the reasons for testing where we 9 stand, because without any -- I don't wish to tread upon 10 any confidentiality but I don't think I am -- I think it 11 was always intended, when there was a discussion between 12 representatives of the Chief Executive's Office and the 13 Commission initially, that a date would be given not 14 because that date was considered to be entirely 15 obtainable but because we needed a date and rather have 16 an earlier date rather than a later one, because if we 17 could get it done earlier, so much the better, but 18 I don't think it was entirely outside of the purview of 19 the people with whom the Commission discussed matters 20 that in fact the report would, in all probability, or 21 may well have to be put in somewhat later than the end 22 of August. 23 There were issues, for example, of the reports to be 24 prepared by the MTR, the holistic report and the 25 verification report.</p>
<p style="text-align: right;">Page 34</p> <p>1 CHAIRMAN: Good morning. 2 MR BOULDING: May it please you. Nice to see you again. 3 First of all, I'd like to thank Mr Pennicott and his 4 team for their industry and hard work. A very useful 5 document has been prepared and indeed many of my 6 questions have fallen by the wayside, but I still have 7 one or two and the first one arises out of the 8 likelihood of calling expert evidence. 9 As with last time, and very properly I think, the 10 experts have been directed to take account of all of the 11 factual evidence, which obviously contemplates the 12 situation where they cannot really do very much before 13 the end of the next hearing, which is 19 June. 14 It occurs to me that you are currently supposed to 15 prepare your next report by the end of August, but as 16 a result of the debate which has been going on, I am 17 rather getting the impression that because of the way 18 the directions for expert evidence work, that to use 19 your very colourful term from last time, we are probably 20 not confined to barracks in the sense of being required 21 here during July and August. I ask that question 22 because it doesn't really matter to me so much because 23 my children are now young adults in their early 20s but 24 there are quite a lot of people in this room who I know, 25 as a matter of fact, have school-aged children and</p>	<p style="text-align: right;">Page 36</p> <p>1 MR BOULDING: Yes. Incidentally, on those matters, sir, as 2 far as MTR are concerned, we are on schedule, so far as 3 we are concerned. So those milestone dates, so far as 4 we are concerned, will be hit. 5 CHAIRMAN: Good. 6 MR BOULDING: I realise how important they are. 7 But I can see the way the wind is blowing on that 8 one, sir, and it may well be that we can't take that any 9 further. 10 I have been asked by my instructing solicitors to 11 query -- and perhaps we don't need to answer the 12 question today but I nevertheless raise it -- we are 13 assuming that we do not need the Commission of Inquiry 14 part 1 bundles. If, contrary to that, Lo &amp; Lo and 15 Mr Pennicott think we do, perhaps at some stage they 16 could give us an indication of which bundles remain in 17 play. For example, EA3, the contractual documents, and 18 so on and so forth. I just raise that as a query. 19 CHAIRMAN: I see, yes. Of course. There's bound to be some 20 overlap, of course. 21 MR BOULDING: I would think so, but the sooner we know, the 22 better, because we want to be properly organised to 23 assist you as much as possible. 24 We also raise a question in relation to paragraph 23 25 on page 9 of the Rules of Procedure. This is where it</p>

<p style="text-align: right;">Page 37</p> <p>1 is stated: 2 "The Commission will also make further directions as 3 necessary in relation to matters pertaining to the 4 Original Inquiry, and the original involved parties 5 shall be notified in writing accordingly in due course." 6 Obviously that contemplates more directions on 7 matters relating to the part 1 hearing of the Commission 8 of Inquiry, and of course the original parties. We just 9 point out that, once again, that could involve expert 10 issues. Given that our experts are based overseas, the 11 sooner we know whether any directions are going to be 12 made and what they are, so much the better. 13 CHAIRMAN: Yes, of course. I appreciate that. 14 MR BOULDING: I think that's all I need to raise with you 15 today, sir, unless you've got any questions for me? 16 CHAIRMAN: No, not at the moment, Mr Boulding. Thank you 17 very much indeed. 18 MR BOULDING: Thank you, sir. 19 CHAIRMAN: Mr Shieh? 20 MR SHIEH: Chairman, first of all, for reasons that those 21 instructing me have informed Messrs Lo &amp; Lo and the 22 Commission, I wonder whether I would be permitted to 23 address the Commission sitting down. 24 CHAIRMAN: Yes. I believe you have indulging in hazardous 25 activity, have you, or did you simply fall off</p>	<p style="text-align: right;">Page 39</p> <p>1 what's been said already. 2 CHAIRMAN: Good. Thank you. 3 MR PENNICOTT: Sir, can I just come back on a couple of the 4 points that have been raised? 5 CHAIRMAN: Yes. 6 MR PENNICOTT: It seems to me pretty obvious that both the 7 parties and indeed the Commission itself, the 8 Commission's legal team at least, are pretty much in the 9 same boat as far as expert evidence is concerned. It's 10 very much a "wait and see" operation at the moment. 11 Sir, so far as Mr Khaw's submissions regarding the 12 government's knowledge, we understand that point, and 13 that is one of the reasons why I emphasised earlier that 14 the whole question of the order of witnesses is going to 15 be kept under constant review. I don't think I need to 16 say more about that. 17 With regard to Mr Tsoi's submissions, as he will get 18 to know, both myself and my colleagues are very 19 approachable, and if he wishes to come and have a quiet 20 word about when would be convenient for his witnesses to 21 be called, then of course we will do our utmost to 22 accommodate any reasonable requests that may be made on 23 behalf of Wing &amp; Kwong. He may be rest assured over 24 that. 25 Sir, so far as Mr Boulding's observations about</p>
<p style="text-align: right;">Page 38</p> <p>1 a pavement? 2 MR SHIEH: It's just walking. 3 Mr Chairman, Leighton does not have anything to add 4 to what's been said earlier, save to say that the 5 question of possible expert evidence in relation to the 6 extended part of the terms of reference is under 7 consideration by Leighton, both in respect of 8 engineering matters and project management matters, but 9 no firm view has been taken as yet as to whether or not 10 we are going to apply for leave to adduce any expert 11 evidence. 12 But since Mr Chairman has indicated that you are 13 concerned with timing and having heard what Mr Boulding 14 has said, I feel it right that I should flag the 15 possibility, and only a possibility, that applications 16 may be made for leave to adduce expert evidence. 17 But as I say, no firm view has been taken as yet. 18 CHAIRMAN: Yes. Is there any further? 19 MR SHIEH: There's nothing else that we wish to say at this 20 point. 21 CHAIRMAN: Thank you very much. 22 Mr Clayton, can I welcome you to the Inquiry. 23 MR CLAYTON: Thank you very much. I'm most obliged. 24 I personally am a new kid on the block and there is 25 nothing specifically I need to raise in the light of</p>	<p style="text-align: right;">Page 40</p> <p>1 confined to barracks and the months of July and August, 2 it is very difficult, it seems to me, for the Commission 3 to commit itself at this stage, but it does, if I may 4 respectfully say so, seem to be pretty clear that 5 certainly so far as July is concerned, it's very 6 difficult to see how any meaningful hearings could take 7 place during July. If the holistic report and the 8 verification report are served on time, clearly they are 9 going to need to be considered, not just by the lawyers 10 but by, undoubtedly, the experts. The experts will no 11 doubt need to produce reports. Those will then need 12 consideration. 13 So the prospect of, it seems to me, with respect, 14 anything happening substantively in July appears to be 15 remote. Beyond that I'm not sure I would want to go. 16 The other point Mr Boulding quite rightly raised is 17 the documentation from part 1, from the Original 18 Inquiry, which may be required for the Extended Inquiry, 19 that is a matter which I know I've got on my agenda and 20 we will, through Lo &amp; Lo, write to the involved parties 21 as soon as we possibly can to identify those documents 22 that were used in the original part of the Inquiry that 23 may be required for the Extended Inquiry. I think 24 contract documents was one category and that seems 25 a pretty obvious category. There may be others, which</p>

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<p>1 we will give consideration to. Thank you, Mr Boulding, 2 for raising that. 3 Sir, other than that, I have no other responses. 4 CHAIRMAN: Yes. Thank you. All right. I don't think we 5 can really take matters much further. 6 For myself, I tend to agree with Mr Pennicott, 7 I think July is really highly unlikely. Well, firstly, 8 my co-Commissioner, Prof Hansford, is simply not 9 available in the first half of July. And if there is 10 going to be any expert evidence at all -- and I'm sure 11 there will be, if only on project management issues, and 12 even if it may be more confined, because a great many 13 project management issues have already been covered in 14 earlier reports, we still have to give some time for 15 that to be done. We still then have to enable the 16 parties to have time to come together again in order to 17 question the experts, or even if it's just a single 18 expert. 19 What worries me a little more as to timing is 20 actually going back to the first part of the Inquiry, 21 vis-a-vis the reports. That's not a criticism of the 22 reports to come, but I look, for example, at a simple 23 issue, such as the very helpful report that is in the 24 process of being completed -- or if it has been 25 completed, I don't know -- but by Prof Au. That report,</p>	<p>1 limited. On the other hand, bearing in mind that I have 2 very busy counsel who are going to be involved in all 3 aspects of part 1 and part 2, I sometimes wonder if it 4 may not be better -- and I'll let counsel discuss with 5 Mr Pennicott their views on this -- to at least set 6 a date certain and say, "All right, let's come back at 7 the beginning of October" or something like that. Then 8 that gives everybody time on all aspects to look at 9 everything, and we all come back beginning of October, 10 and we clear a month or something like that to deal with 11 it. We get all the remaining expert evidence in and we 12 get -- submissions can then be put in, they can be 13 partially written in advance, insofar as the evidence 14 that relates to part 2 is concerned, and everybody knows 15 where they stand. 16 Sometimes, a little delay results in a cleaner, 17 firmer finish, rather than it all being a little ragged, 18 if you see what I mean. But I make no decision on that. 19 Can I just toss that out to counsel and see what 20 they say? 21 MR PENNICOTT: Sir, that's extremely helpful, and of course 22 I make myself available constantly to talk to all and 23 any counsel who may have a view. Certainly my own view, 24 a personal one perhaps, is if some certainty can be 25 brought to bear on the situation, that can only be of</p>
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<p>1 originally it was hoped could be dealt with quite 2 quickly. The technicalities of it I think became more 3 apparent and it has taken longer. Now, depending on 4 what that report says, it may be that one of the parties 5 before this Commission may want to get its own expert, 6 so to speak, to look at what Prof Au has determined. So 7 we move into an area which is fraught with the 8 possibility of further delay in respect of the extended 9 part of the first part of the Inquiry. 10 I would be looking, I think, to myself, if I think 11 about the fact of the holistic report is going to have 12 Prof Au, it's going to have the testing of the couplers, 13 it's going to have the question of the not just the 14 cutting of rebars, which was the genesis of this 15 Commission, but perhaps more importantly now or more 16 extensively the issue of not inserting them in and 17 properly connecting them. So all of those issues have 18 within them, as far as I recall, areas of conflict, such 19 as how far in do they need to go, there's an elongation 20 test and things of that kind, and all of that may 21 require some recalling of expert witnesses. 22 I was hoping that maybe we could deal with part 2 of 23 this Inquiry first and have it all done, and maybe we 24 can. I don't know. We will have to see if we can do 25 that, because the expert evidence there is likely to be</p>	<p>1 benefit, as far as I'm concerned. Unfortunately, we are 2 in a situation at the moment which is very, very 3 uncertain, and if the solution to that is to say, 4 "Right, let's pick a date a little way away but we know 5 that we can be ready to deal with all outstanding 6 matters during" -- 7 CHAIRMAN: Or people, if necessary, can re-arrange their 8 diaries to bring it together. 9 MR PENNICOTT: Yes, to accommodate that, and we can deal 10 with all remaining issues in one hit, without having to 11 keep coming back and coming back again, just deal with 12 one, and then organise such a hearing in such a way that 13 we can ensure that those that are only involved in the 14 Extended Inquiry, perhaps we deal with that first, in 15 the first week or something like that, and then we move 16 on to the Original Inquiry. I'm sure that's not beyond 17 the wit of man to sort out, if it can be accomplished. 18 CHAIRMAN: I'll leave you to discuss that with counsel, but 19 certainly it affects Prof Hansford and even myself. 20 I have other commitments. I'm not trying to blow my own 21 trumpet, but the fact remains that there are these 22 things, various tribunals, and I am being asked can 23 I agree to hear a hearing at a particular date, and at 24 the moment I'm having to keep everything juggling up in 25 the air which is frustrating a number of lawyers and</p>

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1 others.

2 MR PENNICOTT: Yes. Sir, I am more than happy to have those  
3 conversations and discussions with counsel. Without  
4 wishing to tread on too many toes, however -- if there  
5 are dates with respect that neither yourself or  
6 Prof Hansford can do, then it would obviously be helpful  
7 to know what those dates are.

8 CHAIRMAN: I will find out from Prof Hansford today, if  
9 possible.

10 MR PENNICOTT: Yes, because obviously I don't want to be  
11 discussing the prospect of starting at some date in  
12 September or whatever it may be if it's simply the case  
13 that the Commission itself is not available.

14 CHAIRMAN: Yes. I'm just tossing it out, without -- this is  
15 no more than a possibility -- but if one were to say  
16 let's start 20 September or something, that sort of  
17 time, give ourselves however long everybody agrees is  
18 necessary, three weeks or a month, we finish then by  
19 mid-October and the Commission already will have had  
20 some time available to it to work on its report.

21 MR PENNICOTT: Yes.

22 CHAIRMAN: We could then have the report in in November or  
23 something like that.

24 MR PENNICOTT: Yes.

25 CHAIRMAN: Good. Is there anything further that arises

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1 there at all?

2 MR PENNICOTT: Nothing from me, sir.

3 CHAIRMAN: Good. Thank you.

4 (11.26 am)

5 (The hearing adjourned until 10.00 am  
6 on Monday, 27 May 2019)

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