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<p>1 Monday, 27 May 2019 2 (10.04 am) 3 MR PENNICOTT: Good morning, sir. 4 CHAIRMAN: Good morning. 5 MR PENNICOTT: And good morning, Prof Hansford. 6 COMMISSIONER HANSFORD: Good morning. 7 MR PENNICOTT: Welcome back to Hong Kong. 8 COMMISSIONER HANSFORD: Thank you very much. 9 MR PENNICOTT: Can I first of all introduce everybody. 10 There has been, as you know, a change of personnel for 11 various parties. 12 Sir, as you know, I appear on behalf of the 13 Commission, together with my learned friends Mr Calvin 14 Cheuk and Mr Solomon Lam, although Mr Lam will not be 15 here this week due to another, prior engagement. 16 Wing & Kwong are represented by my learned friends 17 Mr Benson Tsoi and Ms Alice Lau; they are here 18 (indicating). Leighton are represented by my learned 19 friends Mr Paul Shieh SC and Mr Jonathan Chang; they are 20 right behind me. The government are represented by my 21 learned friends Mr Richard Khaw SC, Mr Anthony Chow, 22 Mr Martin Ho and Ms Ellen Pang. 23 So far as the MTRC are concerned, a slight change of 24 personnel for them, but they are represented still by 25 my learned friend Mr Boulding QC, Mr Jonathan Wong,</p>	<p>1 25 February this year, on 19 February the Chief 2 Executive expanded the original terms of reference of 3 this Commission, by adding paragraph A.2 to the terms of 4 reference. That can be found at bundle AA1/1. 5 In practical terms, what has happened is that the 6 geographical areas with which this Commission is 7 concerned have grown; they have expanded, they have been 8 extended. 9 As we say in paragraph 4 of our opening address, it 10 may be helpful if some basic geography is taken on board 11 first. Sir, it so happens that in the interim report, 12 at page 16, there is diagram 3, and that assists in this 13 regard, and I'm told the interim report, should anybody 14 wish to refer to it, is available to us on the screen. 15 So, sir, as you are aware, in the Original Inquiry, 16 we were dealing specifically with the existing Hung Hom 17 Station. We are now dealing with, in addition, the 18 North Approach Tunnels, NAT, the South Approach Tunnels, 19 SAT, and the Hung Hom Sidings. We are also dealing, so 20 far as the North Approach Tunnels are concerned -- and 21 we will pick this up shortly -- with the shunt neck 22 area, which is also part of the NAT. 23 Sir, I am aware that last Friday you went on a site 24 visit, and I imagine, therefore, you have a reasonably 25 good grasp of the geography of the situation, but there</p>
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<p>1 Mr Kaiser Leung and Mr Jonathan Chan. Finally, Pypun 2 are now represented by my learned friend Mr Peter 3 Clayton SC, and as you know that's because Mr Russell 4 Coleman SC is now a judge of the Court of First Instance 5 in Hong Kong. 6 Sir, before I move on to the opening address proper, 7 I think you were aware that there may have been 8 a procedural issue to have been dealt with this morning 9 in relation to a witness summons that was served upon 10 somebody last week. Sir, I'm happy to report that that 11 has been satisfactorily dealt with so far as the 12 Commission's legal team is concerned. We are grateful 13 for the assistance of MTRC's solicitors, Mayer Brown, in 14 that regard, and so hopefully all will run smoothly in 15 relation to that particular topic from here on in. 16 Sir, as you are aware, I hope, all involved parties 17 have submitted to the Commission written openings, 18 variously called written opening addresses, submissions 19 and statements, but it doesn't really matter what they 20 are called, and the Commission is very grateful for the 21 efforts of counsel and solicitors for the production of 22 those written openings. 23 Opening address by MR PENNICOTT 24 Sir, as you are aware as well, shortly before the 25 Commission submitted its interim report (indicating) on</p>	<p>1 it is in that diagram, which is very helpful. 2 Could we, however, look in a little more detail at 3 one or two points regarding the geography. Sir, so far 4 as the NAT is concerned, amongst the numerous layout 5 plans and drawings available in the hearing bundle, we 6 have made reference to an appendix to the witness 7 statement of Mr Fu, one of the MTR's witnesses. He's 8 a construction manager-SCL civil for the project. 9 I wonder if we could look, please, at bundle BB1/85. 10 This is appendix A to Mr Fu's witness statement. It 11 shows the NSL Tunnel in green, coming from the direction 12 of Ho Man Tin Station. It shows the EWL Tunnel in pink, 13 and -- a point I mentioned just a moment ago -- it shows 14 the shunt neck area in blue, leading down to the HHS, 15 the sidings. 16 Importantly, however, on this diagram, on the 17 left-hand side, if the appendix could be moved to the 18 left, please, and blown up -- thank you very much -- is 19 that black dotted line. The black dotted line 20 delineates the contract 1112 works with which the 21 Commission is concerned, and the contract 1111 works 22 with which the Commission is not directly concerned. 23 Work to the right of the black dotted line was 24 carried out by the Gammon-Kaden SCL1111 joint venture -- 25 "GKJV" from now on -- and the work to the left of the</p>

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<p>1 black dotted line was carried out by Leighton. 2 Of course, MTRC was the project manager under both of 3 those contracts. 4 Sir, as the Commission is well aware, issue 1 of 5 this Extended Inquiry is concerned with three stitch 6 joints in the NAT, which I collectively refer to as "the 7 stitch joints"; and issue 2 is concerned with 8 a construction joint, originally designed as a stitch 9 joint, in the shunt neck. 10 If we could go to page 89 of BB1, just a few pages 11 on, you will see in this diagram two of the stitch 12 joints. The first stitch joint to the right is at the 13 interface of contract 1112 and contract 1111, and we 14 have called it "the 1111/1112 NSL stitch joint". Others 15 have tried to shorten that by calling it "the NSL SJ"; 16 others have shortened it by saying "joint 1". There are 17 various terms used for it, but I'll try to be 18 consistent, if I can. So that's the first one. 19 The second one, the second stitch joint, is internal 20 to contract 1112, and we've called it "the 1112/1112 NSL 21 stitch joint", but perhaps also known as "the internal 22 stitch joint" is perhaps the easiest way of describing 23 it and indeed remembering it. 24 If we could then go to page 90, the next page, 25 please.</p>	<p>1 concerned, it was at the interface of bay 3, which was 2 constructed by Leighton, and the contract 1111 works on 3 the other side of it. 4 Sir, what are stitch joints and why are stitch 5 joints required? In broad terms, the stitch joints are, 6 in practical terms, a means of joining two adjacent but 7 separate structures, in this case concrete structures, 8 together. 9 Why are they required? Well, because these two 10 structures may be built on different foundations, or the 11 two structures -- an example of that is the internal 12 joint, the 1112/1112 NSL stitch joint -- or the two 13 structures are constructed at materially different 14 times. An example of that is the joint 1 and joint 3 15 stitch joints. More about that in a moment. 16 Sir, it is not in dispute that pursuant to 17 appendix Z2, which are the interfacing requirements 18 specification with civil contracts, contained within 19 contract 1112 between the MTR and Leighton, all of the 20 stitch joints and the construction joint that we 21 referred to were required to be constructed by Leighton 22 under contract 1112. 23 If we could just look at BB1/420, please. If we 24 could go on, please. Go to page 422, please. You will 25 see at Z1.6, where it says:</p>
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<p>1 COMMISSIONER HANSFORD: Sorry, Mr Pennicott -- 2 MR PENNICOTT: Back to 89, please. 3 COMMISSIONER HANSFORD: You referred to the first one. You 4 said some people have called it "joint 1". 5 MR PENNICOTT: Yes. 6 COMMISSIONER HANSFORD: Have some people called this one 7 "joint 2"? 8 MR PENNICOTT: Yes, they have. 9 COMMISSIONER HANSFORD: All right. That's fine. 10 MR PENNICOTT: If we could go to page 90, you will see there 11 the third stitch joint with which we are concerned. 12 This now of course is in the EWL, not the NSL, so we are 13 upper level, as it were, to the EWL track level. Again, 14 it's at the interface of the contract 1112 and the 15 contract 1111, and again we've called this "the 16 1111/1112 EWL stitch joint". Some have shortened it to 17 "SJ" and, surprise, surprise, some call it "joint 3". 18 Sir, you will also see, on this helpful diagram, on 19 the extreme right-hand side, an arrow going up, where it 20 is described as "the 1111/1112 shunt neck joint". So 21 that is, as it were, the fourth joint with which we are 22 concerned, but it's not a stitch joint; it's 23 a construction joint, but this diagram shows the other 24 two joints that we are concerned with. 25 And you can see, so far as that shunt neck joint is</p>	<p>1 "This document has been developed on the basis of 2 the following construction sequence". 3 Then the second bullet point: 4 "Completion of the tunnel connections will be by 5 contract 1112." 6 Then if you go over two pages to page 424, please, 7 and scroll down to 1.4 -- if we can see the top; thank 8 you -- under the column, "By 1111 contractor" -- we 9 really must call them the GKJV -- you can see at 1.4: 10 "To complete the tunnel structure to enable [the] 11 1112 contractor to complete the stitching joint." 12 Then, under the "1112 contractor" column: 13 "To complete the stitching joint, including Omega 14 seal, rebar and infill concrete, after tunnel 15 backfilling and stabilisation of tunnel settlement." 16 And the purpose of the interface is described as: 17 "To ensure no additional loading induced in the 18 tunnel structure due to differential settlement of 19 tunnel." 20 So, sir, that is, as it were, the underlying basis 21 upon which Leighton were to construct the stitch joints 22 with which we are concerned. 23 COMMISSIONER HANSFORD: And the bundle reference for this 24 schedule, please? 25 MR PENNICOTT: It's BB1/420 through to 432. It's referred</p>

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<p>1 to in paragraph 7 of our opening address.</p> <p>2 COMMISSIONER HANSFORD: Thank you very much.</p> <p>3 MR PENNICOTT: Turning to paragraph 7, just picking up the</p> <p>4 next point, it is also common ground that the stitch</p> <p>5 joints were to be constructed as late as possible in the</p> <p>6 construction sequence. One gets that from BB1/463,</p> <p>7 which I have in fact set out in the opening at</p> <p>8 paragraph 7 but let's just look at it in its original</p> <p>9 form. It should be a drawing.</p> <p>10 What one needs to -- this is, as you can see,</p> <p>11 drawing -- it may be obscured by the number but it's</p> <p>12 drawing 101A, and where one needs to look is the note in</p> <p>13 the top right-hand corner -- if that can be blown up as</p> <p>14 quickly as possible -- and it's note 2 which says:</p> <p>15 "The stitch joint shall be cast as late as possible</p> <p>16 in the construction sequence, and" -- an interesting</p> <p>17 spelling of "preferably" -- "after groundwater recharge,</p> <p>18 to minimise the amount of differential movement after</p> <p>19 casting. Casting of the stitch joint shall not be</p> <p>20 carried out until after completion of backfilling."</p> <p>21 So the takeaway point there is that the stitch</p> <p>22 joints are to be completed as late as possible in the</p> <p>23 construction sequence.</p> <p>24 In paragraph 7 of our opening address we make this</p> <p>25 observation, and it is this, that it remains unclear to</p>	<p>1 COMMISSIONER HANSFORD: Yes.</p> <p>2 MR PENNICOTT: We simply are not clear about it.</p> <p>3 COMMISSIONER HANSFORD: Okay.</p> <p>4 MR PENNICOTT: There must be a relatively simple</p> <p>5 explanation, I daresay, for it, but we haven't spotted</p> <p>6 it yet.</p> <p>7 Sir, so far as the question how are the stitch</p> <p>8 joints constructed, it appears to us from the rebar</p> <p>9 fixing and concrete pour dates information that has been</p> <p>10 provided by both MTRC and Leighton that the sequence of</p> <p>11 construction of the stitch joint is the base slab of the</p> <p>12 joint is done first, followed by the two walls on either</p> <p>13 side, and then the roof, although obviously it's</p> <p>14 acknowledged that the 1111/1112 EWL stitch joint doesn't</p> <p>15 have a roof, so it would just then be the base slab and</p> <p>16 then the walls.</p> <p>17 Sir, a point that I will be touching on in a bit</p> <p>18 more detail later: we are bound to say that the</p> <p>19 Commission's legal team is somewhat unclear as to how</p> <p>20 many hold points are or are supposed to be involved in</p> <p>21 the construction sequence of the stitch joints, but I'll</p> <p>22 expand upon that point a little bit later on.</p> <p>23 Sir, we are now at page 5 of our opening address,</p> <p>24 where we have a heading, "Factual background to the</p> <p>25 Extended Inquiry", and I was going to go through this</p>
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<p>1 us -- whether this is relevant or not, I'm not sure --</p> <p>2 but it remains unclear to us, the Commission's legal</p> <p>3 team, as to by whom and upon what precise basis or</p> <p>4 criteria a decision is taken that the ground conditions</p> <p>5 are such that the stitch joints can go ahead and be</p> <p>6 constructed.</p> <p>7 We make the assumption, but it is only</p> <p>8 an assumption, that both of the structures constructed</p> <p>9 by Leighton on the one side and the GKJV on the other</p> <p>10 are monitored in some way, and as a result of that</p> <p>11 monitoring, at some point in time, a decision can be</p> <p>12 made by somebody that the stitch joints can go ahead.</p> <p>13 It might be helpful to the Commission if the MTRC or</p> <p>14 Leighton are perhaps able to give us a little bit of</p> <p>15 explanation as to how that actually works in practice.</p> <p>16 COMMISSIONER HANSFORD: Going back to your previous point</p> <p>17 Mr Pennicott, about the conditions for casting the</p> <p>18 stitch joint, there seems to be two things: one, that</p> <p>19 the groundwater recharge is completed, and the other,</p> <p>20 that differential movement or differential settlement is</p> <p>21 finished.</p> <p>22 MR PENNICOTT: Yes, that's right, and it's a question --</p> <p>23 what we're a little bit unclear about at the moment is</p> <p>24 how one arrives at the conclusion that that position has</p> <p>25 been reached.</p>	<p>1 and point you in the direction of a number of the</p> <p>2 documents that we refer to and rely upon. It would be</p> <p>3 helpful if we could get on the screen, please, for the</p> <p>4 purposes of the first few points that we make, BB9/6363.</p> <p>5 At least a reference that's relatively easy to remember.</p> <p>6 Sir, this is an MTRC document which you can see has</p> <p>7 the pour dates -- it's got a lot of other information on</p> <p>8 it as well but amongst other things it has the pour</p> <p>9 dates -- of the concrete in relation to the NAT. The</p> <p>10 equivalent Leighton document is at CC1/280, but there's</p> <p>11 no need to bring that up, and it seems that there is</p> <p>12 a significant degree of agreement between the two</p> <p>13 schedules, but for present purposes we have relied upon</p> <p>14 the MTRC document which is on the screen at the moment.</p> <p>15 Taking things in chronological order, the shunt neck</p> <p>16 bay 3, at the interface between contract 1111 and 1112,</p> <p>17 was constructed between 4 January and 22 March 2017. If</p> <p>18 you could scroll down, looking at the numbers on the</p> <p>19 left-hand side, please, to number 45. It's right down</p> <p>20 towards the bottom of the page, I think. You will see</p> <p>21 on the left-hand side, there's the heading, "NAT shunt</p> <p>22 neck".</p> <p>23 The way this works is, in terms of the start date</p> <p>24 and finish date, we have taken the commencement of the</p> <p>25 rebar date, which is at item 45, as 4 January -- we can</p>

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<p>1 probably see that there; thank you very much -- and then 2 we have taken the completion date as the concrete pour 3 date, which is at item 48 on the extreme right-hand 4 side, that's 22 March. Sir, that is because it's bay 3. 5 One recognises that there are later dates for the other 6 bays, but we are concerned with bay 3, which is the 7 connection with the 1111 works. So that's where those 8 dates come from. 9 As I go through this, picking up other dates, this 10 is the way it works: we take the start of the rebar 11 fixing as the start date, and we take the concrete pour 12 date as effectively the last date. 13 Now, going to paragraph 10 of the opening, there is 14 a little bit of a glitch here. The original -- sorry, 15 if we could keep that concrete pour; that's fine, thank 16 you very much -- the original 1111/1112 EWL stitch joint 17 commenced construction on 22 January 2017. We can see 18 that from item 58a on the schedule, 22 January; that's 19 the one. That's the start of the rebar. And the 20 concrete pour of the base slab took place on 24 January. 21 You get that on the right-hand side, the concrete pour. 22 That is at the base slab. 23 The commencement and completion of the walls is 24 currently unclear. There are some dates on the schedule 25 that we can see and pick up, but in Mr Fu's -- who</p>	<p>1 time that some of these stitch joints took. But you are 2 absolutely right, they differ widely, yes. 3 Paragraph 12 of the opening address, and this is 4 fairly important: the original 1111/1112 NSL stitch 5 joint, so this is the interface on the NSL, was 6 constructed between 5 July 2017 -- we pick that up from 7 number 51, so 5 July -- and was completed, or the 8 concrete pour was, on 2 August, so just under a month to 9 complete that stitch joint. You pick up the 2 August 10 date on the right-hand side. So that's where one picks 11 up the original construction dates of the stitch joints. 12 Now, moving on to paragraph 13 of the opening 13 address -- and, sir, a lot of what now follows is 14 taken -- and we don't need to go to it just yet -- a lot 15 of what is coming is taken from the MTRC report that was 16 prepared and submitted to the government on 26 March 17 2018. 18 The first thing to pick up from the MTR's report is 19 mentioned at paragraph 13 of the opening address, where 20 we say that the MTR observed water seepage at the newly 21 completed 1111/1112 NSL joint during a routine 22 inspection in August 2017. 23 Now, if one looks at paragraph 12, we know that that 24 stitch joint finished on 2 August, and they had spotted 25 water seepage in August 2017. So it was something that</p>
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<p>1 I have referred to already -- witness statement, he says 2 that the subject matter of the exact dates when the 3 walls were built is subject to further verification and 4 that his team will provide further information when it's 5 available. So it's as a consequence of that evidence 6 that I'm not clear whether the dates on this schedule 7 are accurate or not, but anyway, it probably doesn't 8 matter a huge amount. We know, broadly speaking, that 9 this stitch joint, the EWL stitch joint, started on 10 22 January and probably finished sometime in March. 11 Sir, paragraph 11: the original internal stitch 12 joint, the NSL internal stitch joint, was constructed 13 between 29 May 2017 -- you pick that up from number 54, 14 wherever that is; yes, there it is, at 54 -- 29 May, we 15 can see that. Then the last date for the pour is at 57: 16 that's 9 September 2017. 17 Then finally -- 18 COMMISSIONER HANSFORD: It's interesting that some of these 19 are a matter of days. 20 MR PENNICOTT: Yes. 21 COMMISSIONER HANSFORD: And this one is four or five months 22 MR PENNICOTT: Yes. It may be -- whether it's relevant or 23 not -- but I suspect we may need to ask, some of 24 particularly the Leighton witnesses, to explain why 25 there would be a significant difference in the period of</p>	<p>1 was picked up pretty quickly, on any view, in the same 2 month that it had completed, water seepage, because that 3 was the first stitch joint where water was observed. 4 We've obviously looked at the location of that 5 stitch joint, and we say that there are some photos, but 6 I'm not going to them, of the location of the water 7 seepage, and you can see the water seepage from the 8 photographs. 9 As a consequence of that water seepage, in October 10 2017, Leighton was required to carry out grouting work 11 to seal up the water seepage. The process was repeated, 12 it appears a number of times, but the outcome was not 13 effective. A photo again showing the grouting work can 14 be found at the reference given: BB1/185. 15 On 22 December 2017, MTR issued to Leighton NCR -- 16 that is, as you will recall from the Original Inquiry, 17 non-conformance report -- 66 in respect of the water 18 leakage and cracks, and the reference is given. 19 Following on from that, minor separation gaps were 20 observed at the water seepage location, and on 9 January 21 2018, MTR instructed Leighton to install settlement 22 markers and tell-tales to monitor the movement of the 23 tunnel structure and the gap width respectively. That 24 was at the beginning of January. 25 Sir, the government, that is the Highways Department</p>

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<p>1 and the Railway Development Office, was first alerted to 2 the water seepage problem at the 1111/1112 NSL stitch 3 joint by MTR, by way of an SCL project report for the 4 period 1 to 28 January and submitted on 31 January. 5 Could we please look at that: that's at DD1/38.112. 6 Somebody has helpfully highlighted the relevant passage 7 for us. As I say, you can see the dates, the period 8 that this report covers at the top. I understand it was 9 submitted to the government on 31 January. This is, as 10 we understand it, the first time the government was made 11 aware of the problem. 12 "Water leakage with 3 millimetre to 5 millimetre 13 cracks were recorded at P-way plain concrete track bed 14 and C&C tunnel sidewall along the stitch joint with 15 Omega seal at contract 1111/1112 interface. [Leighton] 16 is urged to propose and carry out mitigation measures to 17 control water leakage. In the meantime, six settlement 18 points and five tell-tales were installed to monitor the 19 C&C tunnel movement and crack opening. There is no 20 significant settlement recorded so far but the crack 21 width is increasing due to the high water pressure 22 building up below track bed and sidewall." 23 So that is the way that the MTR were expressing the 24 problem to the government at the end of January 2018. 25 Going to paragraph 18 of the opening address: on</p>	<p>1 gap width observation. The inspection result revealed 2 that the several exposed rebars were not coupling to the 3 couplers reserved by SCL1111 contractor within the 4 adjacent tunnel structures." 5 So the phrase that is used is that the rebars "were 6 not coupling to the couplers". Quite what that means, 7 one is not entirely sure, but it's an interesting way of 8 putting it, "not coupling to the couplers". 9 Anyway: 10 "Based on this inspection result, it was considered 11 that the tunnel structures at both sides of the 12 interfacing location had not been properly connected by 13 the stitch joint in accordance with the design." 14 Quite how that conclusion was reached, I'm not sure; 15 that is that both sides of the interfacing location had 16 not been properly connected, perhaps suggests that both 17 had been opened up and the same result had been 18 observed, but I'm not entirely sure. 19 That was a bit of a watershed moment, when those 20 investigations were carried out, because clearly it was 21 at this point that a serious problem, apparently serious 22 problem, had been observed. 23 On 9 February -- according to MTR, the day after 24 these investigations were carried out -- MTR issued to 25 Leighton non-conformance report 95, in respect of,</p>
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<p>1 5 February, by reference to the tell-tale installed, 2 obvious separation of a few millimetres' gap was 3 observed, again, at the 1111/1112 NSL stitch joint. 4 An investigation was carried out between 6 and 5 8 February 2018 or -- I say this because there's 6 a slight difference in the evidence that seems to have 7 been tendered -- between 7 and 14 February -- the 8 reference there to CC1/75, paragraph 21, is to a witness 9 statement of William Holden, one of the Leighton 10 witnesses. It perhaps doesn't matter the precise dates 11 but one can see there is a slight difference -- by 12 chipping off three locations of concrete surface at the 13 tunnel wall and roof, exposing the rebar at the stitch 14 joint. It revealed that a significant number of rebar 15 were not properly connected, or were not connected at 16 all, into the couplers. 17 Now could we have a look at the MTR report upon 18 which some of this narrative is based. That's BB1/168, 19 at paragraph 2.4, please. 20 What the MTR have said -- I won't read the first 21 couple of sentences but they refer to the separation, 22 the chipping off, exposure of the rebars, and then say: 23 "This investigation was carried out on 24 6-8 February" -- that's where I've taken the dates from 25 in the opening -- "immediately after the 3 millimetre</p>	<p>1 again, the 1111/1112 NSL stitch joint, and also the 2 1111/1112 EWL stitch joint. 3 Why did they do that? That is because between 9 and 4 14 February, with the consent of MTR, Leighton broke 5 holes in the concrete and exposed rebar at the 1112/1112 6 NSL stitch joint -- that's the internal one -- and the 7 EWL stitch joint, to carry out an investigation into the 8 other stitch joints. Apparently, it was observed again 9 that a significant number of rebar were not properly 10 connected, or were not connected at all, into the 11 couplers at both stitch joints. 12 For that purpose, can we go back to the report that 13 we were looking at earlier, BB1/168, at paragraph 2.5. 14 So here it is: 15 "Subsequent to this inspection, MTR instructed the 16 contractor to carry out [the] same investigation to the 17 other two stitch joints with similar construction 18 details, ie the stitch joints at EWL Tunnel at [the] 19 interfacing location and [the internal joint]. 20 Investigation was carried out on 9-12 February 2018. 21 The same condition that the several exposed rebars were 22 not coupling to the reserved couplers was also 23 observed." 24 So, at this point, middle of February 2018, it had 25 been discovered that all three stitch joints suffered</p>

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<p>1 from the same problem.</p> <p>2 What then happened was -- and one observes, perhaps,</p> <p>3 that this happened very quickly -- enabling works for</p> <p>4 the 1111/1112 NSL stitch joint and the internal stitch</p> <p>5 joint commenced on 9 February, and demolition works were</p> <p>6 done between 15 February and 6 March. There was no</p> <p>7 hanging about. These stitch joints, the original stitch</p> <p>8 joints, were taken out, demolished and moved pretty</p> <p>9 swiftly.</p> <p>10 So far as the EWL stitch joint is concerned,</p> <p>11 enabling works commenced on 27 February 2018, and</p> <p>12 demolition works were done within five days, between</p> <p>13 5 March and 10 March. The references I have there given</p> <p>14 are again from Mr Holden's witness statement.</p> <p>15 Meanwhile, on 15 February, Leighton presented</p> <p>16 a proposal to MTR to demolish and reconstruct the NSL</p> <p>17 stitch joints, and on 5 March Leighton presented</p> <p>18 a proposal to the MTR for demolishing and reconstructing</p> <p>19 the EWL stitch joint.</p> <p>20 Sir, I'm now at page 8 of the opening address. We</p> <p>21 are now at the middle of March, 14 March 2018. The MTR</p> <p>22 issued to Leighton non-conformance report 96 in respect</p> <p>23 of the defects at the internal stitch joint. Then, on</p> <p>24 16 March, MTR submitted to the government and Pypun</p> <p>25 a draft stitch joint report, and the references are</p>	<p>1 Then, sir, what happened was a period when the new</p> <p>2 stitch joints were constructed. So, at paragraph 30:</p> <p>3 the actual reconstruction works in respect of the EWL</p> <p>4 stitch joint took place between about mid-March and</p> <p>5 10 April 2018. So, again, one can pick up these dates</p> <p>6 from the pour summary at BB9/6363, because not only are</p> <p>7 the original stitch joint details on there, so are the</p> <p>8 new stitch joint details, and so one can pick up those</p> <p>9 dates from that pour summary as well, but I don't think</p> <p>10 we need this time to look at it.</p> <p>11 On 4 April, Leighton submitted to MTR a document</p> <p>12 called "Task method statement for NSL stitch joints</p> <p>13 reconstruction". This document actually had a couple of</p> <p>14 predecessors but appears to be the last version, and is</p> <p>15 obviously concerned with the reconstruction of all the</p> <p>16 stitch joints, the NSL stitch joints.</p> <p>17 The actual reconstruction works, that is the rebar</p> <p>18 fixing and concreting, in respect of the interface NSL</p> <p>19 stitch joint, was carried out between 12 April and</p> <p>20 19 May.</p> <p>21 COMMISSIONER HANSFORD: Sorry, in paragraph 31, you refer to</p> <p>22 the task method statement for the stitch joints</p> <p>23 reconstruction.</p> <p>24 MR PENNICOTT: Yes.</p> <p>25 COMMISSIONER HANSFORD: Have you unearthed a task method</p>
<p>Page 22</p> <p>1 there given. Then, on 20 March 2018, MTR issued a press</p> <p>2 release on the stitch joints incident. Then, on</p> <p>3 22 March, MTR submitted to the Highways Department,</p> <p>4 firstly, an updated SSP, that's site supervision plan,</p> <p>5 as you will recall, for the NSL and EWL Tunnels at the</p> <p>6 NAT, and, secondly, the design submission for the</p> <p>7 revised details of the EWL stitch joint which Leighton</p> <p>8 had submitted to MTR on 21 March 2018.</p> <p>9 Sir, of some, perhaps, relevance and importance for</p> <p>10 later issues: on 26 March 2018, MTR submitted to the</p> <p>11 Highways Department, firstly, what is described as the</p> <p>12 updated QSP for couplers at NAT, both for BOSA and</p> <p>13 Lenton couplers. I'm not going to look at the document</p> <p>14 now, but we may need to look at it a bit later, but</p> <p>15 of course you will recall that "QSP" is quality</p> <p>16 supervision plan, in respect of which you have written</p> <p>17 a number of paragraphs in the interim report and which</p> <p>18 we may need to look at again, but of course in the</p> <p>19 context of the new geographical areas with which we are</p> <p>20 concerned.</p> <p>21 Also on 26 March, MTR submitted a design amendment</p> <p>22 for the revised details of the EWL stitch joint.</p> <p>23 Thereafter, on 27 March, MTR submitted to the</p> <p>24 government the formal report dated 26 March which we</p> <p>25 have been looking at.</p>	<p>Page 24</p> <p>1 statement for the original stitch joint construction?</p> <p>2 MR PENNICOTT: No, sir. I'm not saying one doesn't exist,</p> <p>3 but I certainly haven't seen such a document, no.</p> <p>4 COMMISSIONER HANSFORD: I'm just wondering, if there were</p> <p>5 such a document, whether there were changes from the</p> <p>6 original document to the document relating to</p> <p>7 reconstruction.</p> <p>8 MR PENNICOTT: Yes. Thank you for raising that point. We</p> <p>9 can obviously look at that, and others have heard the</p> <p>10 question. Certainly, sir, there are, so far as the</p> <p>11 original stitch joints are concerned, a number of</p> <p>12 detailed drawings which show the construction and the</p> <p>13 methodology of construction of the original stitch</p> <p>14 joints. But in terms of the task method statement, ie</p> <p>15 a written narrative document such as this, I've not seen</p> <p>16 one in relation to the original stitch joints.</p> <p>17 COMMISSIONER HANSFORD: Okay. Thank you.</p> <p>18 MR PENNICOTT: Sir, paragraph 32: the actual reconstruction</p> <p>19 works, that is the rebar fixing and concreting, in</p> <p>20 respect of the NSL interface stitch joint, was carried</p> <p>21 out between 12 April and 19 May.</p> <p>22 Now introducing a slightly new but important topic,</p> <p>23 paragraph 33: on 16 April, MTR issued to Leighton</p> <p>24 NCRs 97 to 196 in respect of missing R-I-S-C forms;</p> <p>25 "RISC forms", as we know them.</p>

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<p>1 The point here is that investigations have been 2 going on by MTR, and of course the government after it 3 was informed in January, about what happened in relation 4 to the construction of the original stitch joints, and 5 of course one of the things that was called for was, 6 from Leighton and indeed from MTR: where are the RISC 7 forms in relation to the stitch joints, the original 8 stitch joints? Because it would have been known that 9 there should be at least some hold points in the 10 construction of the original stitch joints, and they 11 would normally, under normal circumstances, have RISC 12 forms associated with those hold points. And of course 13 the point was there were not, and there are still not, 14 any RISC forms, relevant RISC forms, in relation to the 15 construction of the original stitch joints. There are 16 plenty of RISC forms in relation to the construction of 17 the new stitch joints, but in relation to the original 18 ones, there are no RISC forms, hence the non-conformance 19 report by MTR to Leighton in relation to those missing 20 forms. 21 Then, moving on: the actual reconstruction works, 22 that is the rebar fixing and the concreting, of the 23 internal stitch joint, was carried out between 8 May and 24 18 July. That in effect brought an end to the 25 reconstruction of the three stitch joints with which we</p>	<p>1 and reconstructed, NCRs 66 and 96 were closed out on 2 5 September. 3 Paragraphs 41 and 42 deal with the shunt neck so 4 I will skip over those. 5 Sir, on 20 December 2018, MTR wrote to Highways, 6 informing them -- this is, again, quite an important 7 moment, an important letter -- that in addition to RISC 8 forms, the missing or insufficient construction records 9 for NAT included specific information about a change of 10 design of some connections during construction from 11 lapping of rebars to coupler connections. There were 12 doubts as to the extent of the change, and there were 13 also concerns about materials testing records. 14 So what one has in this letter is an expansion of 15 problems from missing RISC forms to other information 16 about changes of design, the extent of the changes and 17 material testing records, so an expansion of potential 18 problems. 19 In that letter, MTR indicated that it would propose 20 a holistic study to RDO and BD for proving the NAT 21 as-constructed conditions and workmanship quality. 22 However, and importantly -- you will have appreciated, 23 at the moment, everything that has been referred to is 24 just NAT-related -- is in this letter on 20 December 25 2018, where MTRC also expressed the view or the</p>
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<p>1 are concerned. 2 Trying to cut this a little bit shorter, so far as 3 the shunt neck joint is concerned, that was 4 investigated. Apparently, similar problems were 5 discovered. But, as you may recall -- I'm not sure 6 whether you would have been told this on the site visit 7 or not -- in fact, despite a number of remedial 8 proposals having been passed from Leighton to MTR and 9 MTR to the government, in fact, as we stand here today, 10 no remedial works have in fact been carried out, as 11 I understand it, to the shunt neck joint. 12 CHAIRMAN: That's as we understood it on our visit, yes. 13 MR PENNICOTT: Right. Yes. So that remains outstanding and 14 I'm not entirely sure what's going to happen next, but 15 we may or may not find out in the course of the next 16 couple of weeks. 17 So, sir, I will miss out all the references I have 18 made to the toing and froing of the proposals in 19 relation to the shunt neck, leaving it, as it were, as 20 I've just described it. 21 Picking up at paragraph 39: on 27 July 2018, MTR 22 submitted to the Highways Department a quality assurance 23 scheme in respect of the couplers, both BOSA and Lenton 24 types, on which more later. 25 As a consequence of the stitch joints being remedied</p>	<p>1 expectation that there were similar, but lesser, issues 2 at SAT, although, on 20 December, no mention was made of 3 the HHS. 4 So, on 20 December 2018, the potential problems at 5 the SAT, not in relation to stitch joints and the 6 suchlike, but in terms of documentation, missing RISC 7 forms and the like, is widened from the NAT to the SAT. 8 On paragraph 44 -- here comes the introduction of 9 the HHS, because apparently, on 23 January 2019 -- we 10 are moving on to this year -- a meeting was held between 11 the BD, the RDO and MTR to discuss the preparation for 12 the application for the certificate of completion of 13 building works at the NAT. But, at this meeting, it 14 appears that MTR (a) repeated various matters that they 15 had mentioned in their letter of 20 December, and (b) -- 16 CHAIRMAN: That's about the lapping, the coupling and the 17 lapping. 18 MR PENNICOTT: Yes, about the change of design, that's 19 right. So it mentioned that, and advised, for the first 20 time, that similar issues might arise at the HHS. One 21 gets that from the government's letter, the Highways 22 Department's letter, of 24 January 2019, which I then 23 discuss below. 24 Sir, that meeting of 23 January, attended by 25 representatives of BD and RDO and MTR -- we have asked</p>

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<p>1 both government and MTR whether there are any minutes of 2 that meeting, and we have been told by both that there 3 are no minutes and the only information in writing that 4 we have, apart from what's in a couple of witness 5 statements from the government, is what's in the letter 6 of 24 January. 7 So, on that topic, by the letter of 24 January 2019 8 to MTR, Highways Department expressed its disappointment 9 about the problems reported in the letter of 10 20 December, and required MTR to carry out a number of 11 things, which we have set out at (i) to (v) in 12 paragraph 45 and which I will not read out. But if you 13 just scan the words, as it were, of those subparagraphs, 14 you will see what is now known as the verification 15 report or listed report has its roots in what was being 16 asked for by the government at this stage. 17 Sir, on 30 January, the government held a press 18 conference, announcing that there were problems of 19 missing RISC forms, unauthorised design changes and 20 incomplete testing records of materials under 21 contract 1112 in relation to construction works at the 22 NAT, SAT and the HHS. 23 Then, sir, going back to the genesis of why we are 24 here today, on 31 January the government announced that 25 the Chief Executive would consider expanding the scope</p>	<p>1 were, new involved party, that is Wing & Kwong Steel 2 Engineering Co Ltd. I only want to deal with this 3 briefly. 4 As we say at paragraph 62: pursuant to 5 a sub-contract dated May 2013, Wing & Kwong, as I will 6 call them, was engaged by Leighton as a sub-contractor 7 responsible for carrying out the reinforcement bar 8 cutting, bending and fixing works for the HHS, and, it 9 appears, by way of a variation or amendment to the 10 contract, the NAT, which is obviously perhaps more 11 important in some ways than the HHS. As you know, Wing 12 & Kwong was not an involved party at the Original 13 Inquiry. 14 Sir, I don't believe anything turns on this so far 15 as the Commission is concerned, but there appear to be 16 at least, to our analysis, three versions of the Wing 17 & Kwong sub-contract with Leighton in the bundles. 18 An explanation for the difference between two of them is 19 given in the Wing & Kwong witness statements. That is, 20 that they signed a contract, sent it back to Leighton, 21 didn't hear back from Leighton, chased Leighton in 22 a later stage for a copy of the sub-contract. Leighton 23 sent the sub-contract back, Wing & Kwong signed it, 24 perhaps didn't look at it as carefully as they should 25 have done. When contacted for the purposes of giving</p>
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<p>1 of this Commission's investigation to cover the various 2 construction issues of the NAT, SAT and HHS. 3 From paragraph 49, a point I mentioned earlier: on 4 19 February, the terms of reference were duly expanded. 5 Sir, of course things have not stood still since 6 that expansion. There are, almost on a daily basis, 7 events happening that have relevance to this part of the 8 Inquiry. Some of those are set out from paragraphs 50 9 to 56 of our opening address. They primarily concern 10 the verification proposal which, as you know, has now 11 been agreed as between the MTR and the government, and 12 the Commission has been informed about that quite 13 recently, and as you know form the subject matter of, we 14 hope, adhered-to milestone dates, and in particular the 15 milestone date of 30 June 2019, where the verification 16 report, based on the verification proposal, will be 17 produced by the MTR and the government. 18 I won't go through all of that, but the history of 19 how we get to where we are today is set out there. 20 I then, at section D of the opening address, have 21 a heading, "The involved parties and Fang Sheung". Sir, 22 you are both very well aware of the background to the 23 involvement of the government, Pypun, MTR and Leighton, 24 but perhaps I could just pause at paragraph 62 of our 25 opening address just to say a few words about the, as it</p>	<p>1 witness statements for this Commission, they discovered 2 that the original contract that they had signed was 3 different from the one that Leighton had sent back to 4 them, indeed materially different if one compares the 5 two. As I say, whether anything turns on that, I am 6 doubtful, but I just mention it because they are two 7 different sub-contracts. 8 So then, lo and behold, a third version turns up 9 when Leighton give us discovery in the context of the 10 discovery process for the Commission. 11 CHAIRMAN: Signed? 12 MR PENNICOTT: Well, signed, but slightly curiously signed 13 by Mr Speed, who we know didn't join Leighton until 14 April 2017, and the contract is dated 15 May 2015. But 15 anyway -- so that's neither here nor there, I hope, but 16 just to inform you that there are in the bundles 17 a number, or at least three, different versions of this 18 sub-contract. 19 COMMISSIONER HANSFORD: I have also read of a situation 20 where Wing & Kwong were at one point expected to be 21 doing work on SAT but then it was swapped to NAT. 22 MR PENNICOTT: Yes, I think that's right. 23 COMMISSIONER HANSFORD: I'm sure that will come up later in 24 this. 25 MR PENNICOTT: It may, yes. There's no --</p>

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<p>1 COMMISSIONER HANSFORD: Again, I don't know if anything 2 turns on that. 3 MR PENNICOTT: I don't think so. I think the position is 4 this, that so far as the rebar fixing is concerned, Wing 5 & Kwong's work is confined to the HHS and NAT. 6 COMMISSIONER HANSFORD: Yes. 7 MR PENNICOTT: Fang Sheung, as you will recall from the 8 Original Inquiry, were responsible for the rebar fixing 9 in the SAT. 10 COMMISSIONER HANSFORD: Yes. 11 MR PENNICOTT: As well as, obviously, we know, the station 12 platform and so forth. But as far as we are concerned, 13 the new areas, Fang Sheung was responsible for rebar 14 fixing in the SAT, not Wing & Kwong. 15 COMMISSIONER HANSFORD: Yes. 16 MR PENNICOTT: I just mention in passing, in paragraph 63, 17 that Fang Sheung have not been sent a Salmon letter and 18 are not an involved party in this extended part of the 19 Inquiry. However, as I have just mentioned, they were 20 the sub-contractor for the rebar fixing in the SAT. 21 They have given us one witness statement, from Mr Pun 22 who we heard from last time, you will recall, and it is 23 proposed that he will in fact be the first witness, 24 simply because it's convenient to take him first. 25 Of course, so far as the SAT is concerned, what we</p>	<p>1 have indicated, I don't think that is going to be 2 a problem to the Commission, if they wish to do so, 3 within reason. 4 Sir, so far as documentation is concerned, the 5 Commission's solicitors, those instructing me, 6 Messrs Lo & Lo, have, in my respectful view sensibly, 7 decided that there should be an entirely new, fresh 8 bundle for this Extended Inquiry, in respect of which 9 there is a consolidated index of documents which is 10 being updated, as usual, on a day-by-day basis. 11 The current position I've set out at paragraph 66 in 12 terms of the bundles that we have. There is only one 13 change to make, and that is at page 18, where we have 14 a reference to bundles GG, and that's the Pypun bundles. 15 We now have GG3. The reason for that -- and I'll 16 mention this again in a moment -- is that on Friday 17 afternoon, Pypun served a report that they have been 18 putting together for the government. It is in excess of 19 850 pages long and has been given its own dedicated 20 file, GG3. 21 Sir, also, just to emphasise this point for any of 22 those behind me who may be thinking of referring to 23 documents in the Original Inquiry -- I think, pursuant 24 to a suggestion made by my learned friend Mr Boulding at 25 the preliminary hearing, all parties were asked to</p>
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<p>1 are concerned with, as you have already seen, is missing 2 RISC forms, change of design, this sort of thing, and we 3 could not see any basis upon which Fang Sheung could be 4 in any way responsible for any of that as 5 a sub-contractor. But, nonetheless, Mr Pun may have 6 some relevant evidence to give us, and we've got a short 7 witness statement from him and I anticipate we will call 8 him tomorrow at some point. 9 Sir, in paragraphs 64 and 65, there are a couple of 10 paragraphs about the oral addresses. Sir, there may be 11 a necessity for a slight change of order, depending on 12 how I get on this morning. The proposal was that Wing 13 & Kwong go next, and I'm pretty sure that will happen, 14 and then Leighton, followed by the government, MTR and 15 Pypun. Depending on how I get on, it may be necessary 16 to switch the government and Leighton around the other 17 way, because my learned friend Mr Khaw will not be here 18 tomorrow, but we'll take a view on that a little bit 19 later. 20 Both Mr Khaw and Mr Shieh, I have had a word with 21 them about that possibility. 22 Each party has, as you know, given a time estimate 23 for their opening addresses. All I would say is I don't 24 think time today and tomorrow is necessarily critical, 25 so if anybody wants to take a bit more time than they</p>	<p>1 indicate, on an Excel spreadsheet, those documents from 2 the original bundle that they may wish to make reference 3 to during the course of this hearing. That was done. 4 A consolidated list has been created by Lo & Lo. That 5 consolidated list, I hope, has been also given to my 6 learned friends for Wing & Kwong, who of course were not 7 at the Original Inquiry, so they know, at least 8 potentially, to which documents from the Original 9 Inquiry reference may be made. 10 All of that information, as I understand it, is 11 available in electronic form and capable of being called 12 up as and when necessary. 13 Sir, so far as witnesses are concerned, as well as 14 there being a separate bundle of witness statements 15 which have been taken out of the main run of bundles, we 16 intend to call the witnesses in a slightly different 17 order than was mentioned at the preliminary hearing. 18 That is because, having reviewed everybody's witness 19 statements, the Commission's legal team has taken the 20 view that a more logical order is as set out here, in 21 paragraph 69. That is, Fang Sheung first, Wing & Kwong, 22 Leighton, MTR, government and Pypun. 23 Now, so far as Wing & Kwong's witnesses are 24 concerned, they will not start until Wednesday morning, 25 and so the business of today and tomorrow is the opening</p>

<p style="text-align: right;">Page 37</p> <p>1 addresses by all parties, and Mr Pun from Fang Sheung, 2 and then, wherever we get to with Mr Pun, that will be 3 the close, obviously at some point tomorrow, I daresay, 4 and then we will start afresh on Wednesday morning with 5 the Wing & Kwong witnesses. 6 Sir, there is a list of witnesses at annex 1 to our 7 opening address. That was amended yesterday to take 8 into account some further witness statements that came 9 in on Friday. Sir, can I just ask you, if you've got 10 that to hand, to look at that, so I can make a couple of 11 observations so nobody is misled. 12 Sir, you will see, at items 10 and 10.1 on that 13 list, reference to -- it says "PS of Audrey Fung", and 14 "PS of Audrey Fung (English translation)". Ms Fung is 15 an MTR employee. She has given a police statement, and 16 it deals exclusively with how the RISC form register 17 that MTRC kept was compiled, produced and updated. 18 That's the extent of her witness statement. It is not 19 proposed, as currently advised, to call Ms Fung. The 20 MTR have indicated to us that they have no problems with 21 the description that Ms Fung gives as to the way in 22 which the register was compiled. So the MTR are happy 23 about that, we are happy about that, so, unless anybody 24 else has a point, we were not proposing to trouble 25 Ms Fung.</p>	<p style="text-align: right;">Page 39</p> <p>1 when you feel would be most appropriate. 2 MR PENNICOTT: I think I would -- I've reached a convenient 3 moment and I would quite like a break and I'm sure the 4 transcript writers would. 5 CHAIRMAN: How long? 6 MR PENNICOTT: 15 minutes. 7 CHAIRMAN: 15 minutes. Thank you. 8 (11.23 am) 9 (A short adjournment) 10 (11.44 am) 11 MR PENNICOTT: Sir, thank you. 12 CHAIRMAN: There is a brisk amount of air-conditioning, or 13 is it just me? 14 MR PENNICOTT: It's just right for those standing on their 15 feet. 16 CHAIRMAN: We will see what can be done at the lunch hour. 17 MR PENNICOTT: Sir, I said before the break that I had 18 reached a convenient moment and I sort of had, but there 19 is perhaps one point I should make about the witnesses. 20 We have had some notifications about availability 21 problems or issues which we are seeking to deal with. 22 They relate to Henry Lai from Leighton and Jeff Lii -- 23 that's L-I-I -- from Leighton, and we will be, as it 24 were, reordering the witnesses to try to take into 25 account the issues that they have. I'm also aware that</p>
<p style="text-align: right;">Page 38</p> <p>1 Sir, also, if I can draw your attention to item 21 2 and item 21.1 -- again, two police statements have been 3 provided to us of a Mr Wong Ho Lam, Ian Wong, a Leighton 4 employee, who also describes from Leighton's perspective 5 the process of RISC form preparation. As with Ms Fung, 6 we were not proposing to trouble Mr Wong. 7 Then, at items 22 and 23, you will see reference to 8 the police statements of Mr So, that's Gabriel So -- you 9 may recall Mr So from the Original Inquiry -- and, 10 secondly, Mr Gary Chow, likewise. They have also 11 provided police statements, but the only thing that 12 those police statements do is confirm the truth and 13 accuracy of the statements that they gave to the 14 Commission for the purposes of the Original Inquiry. 15 Those have been properly given to us, but again we see 16 no reason to trouble either Mr So or Mr Chow to give 17 evidence to this Inquiry. 18 As presently advised, there is only one other 19 witness that I'm aware of who will need to be put onto 20 this list and that is an additional MTRC witness, that 21 is a Ms Kappa Kang, from whom we do not yet have 22 a witness statement but we are expecting to receive one 23 relatively soon. 24 Sir, I see it's nearly 11.25. 25 CHAIRMAN: It's your address, Mr Pennicott. You tell us</p>	<p style="text-align: right;">Page 40</p> <p>1 Mr Sebastian Kong from the MTR also has availability 2 issues which we will also address to make sure that 3 everybody is not inconvenienced, and if it means we have 4 to give certain witnesses a fixed time to give their 5 evidence and thereby interrupt others, well, so be it, 6 that's what we will do. 7 Sir, could I then turn to the primary topics of the 8 Inquiry, so at page 19 of the opening address. Sir, as 9 I have already gone through, issue 1 is the three 10 defective stitch joints at the NAT, and I'm bound to 11 say, whilst I think the full description in writing that 12 I've given to each of those stitch joints looks better 13 in writing, it's not so good orally, I have to say, and 14 I'm beginning to think that "joint 1", "joint 2" and 15 "joint 3" will be a lot easier for those who have to 16 keep on repeating them. So I do wonder whether we 17 should call the NSL interface joint "joint 1"; the 18 internal joint "joint 2"; and the EWL interface joint 19 "joint 3". But let's see how we go. 20 The second issue obviously relates to the 21 non-compliance issues at the NAT shunt neck. Then 22 issue 3 is in relation to the lack of inspection and 23 supervisory records, including RISC forms, unauthorised 24 design changes and incomplete testing records of 25 materials at the NAT, SAT and HHS areas.</p>

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<p>1 CHAIRMAN: Just for clarification, the HHS areas, which is 2 really the stabling yards -- 3 MR PENNICOTT: Yes. 4 CHAIRMAN: -- we don't have any issues there about stitch 5 joints; the issues there are about lack of RISC forms? 6 MR PENNICOTT: Lack of RISC forms, and also unauthorised -- 7 CHAIRMAN: Design changes. 8 MR PENNICOTT: -- design changes, yes. 9 CHAIRMAN: Absolutely. Good, thank you. Those two issues. 10 COMMISSIONER HANSFORD: And on a similar point -- and I can 11 check this outside of this room -- but are there no 12 stitch joints related to the SAT? 13 MR PENNICOTT: No. 14 COMMISSIONER HANSFORD: None at all? 15 MR PENNICOTT: No. 16 COMMISSIONER HANSFORD: Thank you. 17 MR PENNICOTT: I asked that question and I was given the 18 answer no but I can't now remember why. But there 19 aren't any. 20 COMMISSIONER HANSFORD: That's fine. 21 CHAIRMAN: And as far as the HHS is concerned, the issues 22 were couplers there again, but I think there was 23 a change because of safety and egress and access. 24 MR PENNICOTT: That's right, sir, and I'm coming to deal 25 with that very shortly. That is correct.</p>	<p>1 then have caused the water seepage to appear. There is 2 no detailed analysis, it seems to us, in any independent 3 or indeed internal report, either from the MTR or 4 Leighton. 5 CHAIRMAN: But there are records -- or, let me rephrase 6 that -- are there records, though, of the photographs of 7 the couplers and the failure to connect or the failure 8 to put in correctly? 9 MR PENNICOTT: There are a limited number. There are not 10 many. There are certainly a very limited number of 11 photographs that we have seen about what is now 12 described as the defect or the failure to couple 13 properly, the non-coupling; very, very few photographs 14 of that instance. But certainly, as I say, no detailed 15 analytical, investigatory report. 16 CHAIRMAN: Yes. 17 MR PENNICOTT: Sir, so far as issue 2 is concerned, again we 18 have touched on this already, the shunt neck joint 19 manifested itself in cracks in the concrete, although 20 we're not sure about whether any water seepage was 21 observed and, if so, to what extent. The cause of these 22 problems appear to have been similar to the stitch 23 joints, namely a failure to connect the threaded rebar 24 to the couplers. 25 So far as the Commission's legal team is concerned,</p>
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<p>1 Page 20 of the opening address, paragraph 73. We 2 make a few observations about issues 1 and 2, and we 3 pose the question, "What were the 4 defects/non-compliances?" 5 So far as issue 1 is concerned, that is the stitch 6 joints, as we have explained, the defects at the stitch 7 joints manifested themselves in cracks in the concrete 8 and water seepage. The cause of these problems is 9 inferred to have been the failure to connect the 10 longitudinal threaded rebar to the cast-in couplers on 11 either side of the bay either properly or at all. But 12 we are bound to say, from the Commission's legal team's 13 perspective, that there does not appear to us to have 14 been any technical investigation, either by MTR or 15 Leighton, which reaches that conclusion. This really 16 harks back to a point that I touched on earlier, which 17 is that there appears to have been a very quick decision 18 to investigate all these three stitch joints, demolish 19 them, replace them as rapidly as possible, on the basis 20 that obvious non-compliances had been identified. 21 But it is, it seems to us, a little bit strange that 22 one doesn't find some technical report that looks at the 23 failure to connect or the failure to connect properly, 24 look at issues of causation, as to how that would have 25 caused the cracks in the concrete, as to how that would</p>	<p>1 we have a limited perception from the evidence reviewed 2 to date whether, firstly, all or just some of the rebar 3 was not properly connected, and if the latter what 4 proportion was involved; and we also have difficulty in 5 fully understanding be the prevalence, predominance, of 6 the reasons for the non-coupling or the non-connection, 7 amongst the various reasons that are put forward, and 8 I'm coming to those very shortly. 9 Sir, we know that on the GKJV side of the interface 10 stitch joints, and given the non-ordering of tapered 11 rebar by Leighton -- as I will explain in a moment -- it 12 appears to follow that incompatibility or mismatch 13 between the Leighton-supplied rebar and the Lenton 14 couplers on the GKJV side must have occurred, it seems 15 to us, without exception. If there was no threaded 16 rebar ordered, and we know the Lenton couplers are 17 threaded couplers, then it seems to us that on the 18 GKJV's side the parallel threaded rebar was never going 19 to work, properly or at all. 20 CHAIRMAN: For any of them? 21 MR PENNICOTT: For any of them, it seems to us, but it may 22 be we have slightly missed the point; I'm not sure. But 23 if you accept the proposition that the Lenton couplers 24 are tapered, you need tapered rebar to connect properly 25 into them. If no tapered threaded rebar was ordered by</p>

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<p>1 Leighton, only parallel threaded rebar, not tapered, it 2 was never going to work on the GKJV side, it seems to 3 us. 4 Having said that, on the Leighton side of the stitch 5 joint, where we know the BOSA couplers were used, and 6 certainly in relation to the internal stitch joint, 7 joint 2, or the 1112/1112 joint, we don't understand how 8 in theory that happened, because they had the right 9 rebar, they had the parallel rebar, for the BOSA 10 couplers. 11 So there seems to us to be quite a lot to be 12 explained as to how all this happened and was allowed to 13 occur. 14 Now, sir, in the Wing & Kwong witness statements in 15 particular, there appear to be at least four reasons or 16 explanations as to why the rebar was not properly 17 connected or not connected at all. We make reference to 18 the two witness statements primarily concerned with 19 this. 20 The first is the incompatibility point which I've 21 already mentioned. As I've indicated already, we know 22 that under the GKJV contract, Lenton couplers were used, 23 whereas under the Leighton contract BOSA couplers were 24 used. Lenton couplers are tapered and require tapered 25 threaded rebar to form a proper connection. BOSA</p>	<p>1 sufficiently exposed, then the lack of a proper 2 connection was an inevitable consequence. 3 So could I just mention this point at this stage, 4 and I'm bound to say it is a point that has really only 5 been brought to my attention in the last couple of days. 6 Not only do we not entirely follow the process that was 7 used to chip away and expose the couplers; we are not 8 actually 100 per cent sure who did that work. Now, 9 whether it was Leighton directly employed labour or 10 whether it was another sub-contractor is a matter again 11 which, at the moment, to our way of thinking at least, 12 lacks clarity. 13 CHAIRMAN: Remind me just a second. I've got a mental block 14 on it. With the Original Inquiry and the cleaning away 15 of the concrete, it was done by ...? 16 MR PENNICOTT: You mean the method? 17 CHAIRMAN: Yes, the methodology. 18 MR PENNICOTT: They used high-pressure water jets and stuff 19 like that, they used. 20 CHAIRMAN: Who did that? That wasn't Fang Sheung that did 21 it? 22 MR PENNICOTT: No. I think it was Leighton directly 23 employed labour, from recollection. I may be wrong 24 about that. Someone will correct me if I'm wrong about 25 that.</p>
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<p>1 couplers, as the Commission is already aware, are not 2 tapered and require parallel threaded rebar to form 3 a connection. Leighton accepts that its records show 4 that BOSA parallel threaded rebar was ordered for the 5 original NAT stitch joints and the original shunt neck 6 joint. That's a reference to Mr Speed's witness 7 statement there. 8 As I've just indicated, it would seem to follow that 9 on the GKJV side of the stitch joint or the construction 10 joint, the rebar was never going to be connected, 11 properly or at all. But, as I've said, incompatibility 12 cannot be a reason, of itself, why proper connections 13 could not be formed on Leighton's side of the stitch 14 joints or the internal stitch joint, where BOSA couplers 15 were used and parallel threaded rebar was ordered. 16 Sir, the second reason that is put forward in the 17 Wing & Kwong statements as to why there was no or no 18 proper connection, at the top of page 22 of the opening, 19 was a failure to chip away and properly expose the 20 cast-in couplers. What we have said here is that it is 21 not entirely clear to us precisely what process Leighton 22 used to expose the couplers, and why, according to Wing 23 & Kwong, there was a failure to properly or fully expose 24 them. Again, it would seem to follow that if the 25 cast-in couplers, either Lenton or BOSA, were not</p>	<p>1 But what has really brought this to my attention is 2 a closer reading of Mr Karl Speed's witness statement, 3 where he describes the process by which the NAT stitch 4 joints were constructed, and he refers to what he 5 describes as the scabbling of the concrete. 6 I'm not entirely sure what that means and I'm not 7 sure whether it's equivalent to chipping away the 8 concrete to expose the couplers or whether that is 9 something different. 10 COMMISSIONER HANSFORD: I think you'll find it's the same. 11 MR PENNICOTT: If it's the same, then Mr Speed says it was 12 done by another sub-contractor called Hills, who we know 13 were the concreting sub-contractor for NAT. 14 COMMISSIONER HANSFORD: Yes. 15 MR PENNICOTT: So if it's the case that this was not done by 16 Leighton direct employees but was done by employees of 17 Hills, the concrete sub-contractor, then I am concerned, 18 and I've already notified those instructing me, that it 19 is possible that we may have to locate somebody, or some 20 people, from Hills to come to give evidence to the 21 Commission. 22 That is very much work in progress at the moment. 23 Whether Leightons are able to shed any further light on 24 the topic, I don't know, but it could be quite helpful 25 if they could, and certainly to clarify what it is</p>

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<p>1 precisely that Mr Speed says in his witness statement, 2 whether the scabbling is indeed equivalent to the 3 chipping away of the concrete to expose the couplers. 4 I mention that in passing and to set that particular 5 hare running. 6 Sir, the third reason that Wing & Kwong put forward 7 is that there may have been damaged couplers. 8 Presumably, this must also be related, we say, to the 9 process used to expose the couplers, unless they were 10 already damaged in situ. How, why, by whom, to what 11 extent the damage was caused and the nature of the 12 damage is certainly unclear to us at the moment. 13 Fourthly, it is suggested that GKJV did not install 14 the couplers at the locations where the couplers should 15 have been installed, and again we say, with respect, the 16 details in relation to this explanation are currently 17 singularly lacking. We simply do not understand. 18 As I said earlier, in relation to those four reasons 19 that I've just tried to summarise, leaving aside the 20 point about the mismatch and the incompatibility on the 21 GKJV side, our perception of, as I say, the importance, 22 the prevalence, the predominance of these reasons, at 23 the moment we simply don't have any feel for it at all. 24 Sir, we will see during the course of the evidence 25 that the backdrop to the incompatibility reason that</p>	<p>1 should be, minutes of the 8th meeting -- you will see 2 that in the top right-hand corner -- dated 5 December 3 2014. Sir, the people present, from whom we hope to be 4 hearing from in the evidence that's coming up, is 5 Mr Chris Chan, you will see there, from MTR; Mr Johnny 6 Leung, the site agent from Leighton, and I'll pick up 7 a few more names in a moment. 8 Sir, the relevant note is at paragraph 8.4.2 on the 9 next page, 757, where it says: 10 "GKJV tabled three proposed material submissions 11 which would be used in the structure at the interfaced 12 location for 1112 reference during meeting no. 7." 13 Then it's the second bullet point that's relevant: 14 "Mechanical splicing system of rebar", and 15 a reference is given, "resubmission." 16 Then, in relation to all of those items, it's noted: 17 "LCAL [Leighton] stated that they have no comment on 18 those submissions and will check with their supplier 19 regarding compatibility in later stage. 20 Cover page of those submissions are enclosed for 21 reference." 22 Then, if one goes to page CC763, just a few pages 23 on, you will see the heading, "Contractor's materials 24 related submission form" towards the top, under the 1111 25 contract, and Gammon appear to be sending the -- GKJV</p>
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<p>1 I've just tried to describe is a series of meetings 2 called interface meetings which were attended by 3 representatives of MTRC, Leighton and GKJV. As their 4 name suggests, "interface meetings", the purpose of 5 those meetings appears to have been to address issues at 6 the interface between the two contracts, and in 7 particular one sees reference to the fact that GKJV were 8 using Lenton couplers on their side of the stitch 9 joints. 10 Could I just show you a sample of those meeting 11 minutes. We will look at them with a number of 12 witnesses in due course. But can we look, first of 13 all -- sorry, I should say that they are -- let me just 14 remind myself. The first meeting we have is actually 15 meeting no. 2, which was on 7 February 2014, and we have 16 the minutes of meetings. If you put the ones disclosed 17 to us by Leighton and the MTR together, we have the 18 minutes up to the 22nd meeting on 6 January 2017. So 19 they stretch from 7 February 2014 to 6 January 2017. 20 We have asked Leighton and MTR to confirm whether 21 there were any further meetings after 6 January 2017, 22 but I don't think we've yet had a response to that, but 23 I think, to be fair, we only asked the question 24 yesterday. 25 So could we go, please, to CC2/756. This is, or</p>	<p>1 seem to be sending this to the MTR, that is to Mr Fu, 2 but obviously it's attached to the minutes of the 3 meeting that we've just looked at. 4 Then you will see, "Required information", 5 "Supplier's name: Erico Ltd", then, more importantly, 6 "Name of product or service: Lenton type A2 standard 7 coupler for non-ductility coupler requirement", and so 8 forth, then references are given to the M&W 9 Specification, and so forth. 10 So that's that meeting at that stage. 11 Then if we go to the next meeting, meeting no. 9 12 which is at 772 -- so this is now 9 January 2015. We 13 will be hearing from, looking at the list of people 14 present, Mr Chan, Chris Chan, again. Also Kappa Kang 15 was there, as was Jacky Lee, and I think all those three 16 people are MTR witnesses in the Inquiry. Also, you will 17 see the names -- the first two names under Leighton, 18 Jim Wong and Regina Wong, and we have received recently, 19 at our request, witness statements from Mr Wong and 20 Ms Wong respectively, as you can see there. 21 If you go over to page 774, at paragraph 9.4.1, you 22 will see the previous minutes essentially repeated, and 23 indeed, in particular: 24 "[Leighton] will check with their supplier regarding 25 compatibility in later stage."</p>

<p style="text-align: right;">Page 53</p> <p>1 Could I just lastly, on this topic, take you to the 2 minutes of the 19th meeting, which happened sometime 3 later. That's CC2/847. 4 So we are now at 6 January 2016, and again you will 5 see Mr Chan and Ms Kappa Kang were at the meeting, 6 together with Mr Wong and Ms Wong. In fact, this time, 7 albeit it all seems to have been done in tracked 8 changes, the minutes have been altered, and I can tell 9 you from minute no. 9, up to this, they have just 10 repeated them as we've seen them. But at paragraph -- 11 go to page 849 and we will see if we can work out what 12 paragraph number it is -- 19.3.3, I think, if one 13 ignores the tracked changes -- it now says: 14 "The following material submissions ... would be 15 used ..." 16 Then: 17 "Mechanical splicing system of rebar [reference 18 given] -- T40 coupler is BOSA; others are Lenton -- 19 approved." 20 Again: 21 "LCAL will check with their supplier regarding 22 compatibility in later stage." 23 That minute was again repeated in the two or three 24 subsequent meetings that took place. 25 So, sir, it seems to us, although obviously one will</p>	<p style="text-align: right;">Page 55</p> <p>1 Wong were there on behalf of Leighton and presumably 2 they will be able to assist. 3 It does, without putting the matter too highly, 4 appear to follow -- and this to some extent seems to be 5 accepted by Mr Speed from Leighton -- that there must 6 have been a breakdown in communication somewhere along 7 the line, if all that Leighton ordered was parallel 8 threaded rebar and no tapered threaded rebar, because if 9 the compatibility had been checked, one would have 10 assumed that the conclusion reached was that they needed 11 some tapered threaded rebar. 12 CHAIRMAN: Is there any evidence, or will there be any 13 evidence, as to how easy it would be to convert 14 a tapered into an ordinary threaded rebar, if I can use 15 that term, and vice versa? 16 MR PENNICOTT: I don't think there's any evidence or will be 17 any evidence -- 18 CHAIRMAN: You would have to chop it off, wouldn't you, 19 presumably, the threads? 20 MR PENNICOTT: I think you'd have to start again, I would 21 have thought. 22 CHAIRMAN: And you couldn't have some lapping, for example 23 being -- 24 MR PENNICOTT: No. 25 CHAIRMAN: So you would need new bars.</p>
<p style="text-align: right;">Page 54</p> <p>1 need to listen carefully to the evidence of the 2 witnesses who were present at these meetings, that 3 Leighton personnel were aware that the GKJV were using 4 Lenton couplers; and, secondly, on the face of it, its 5 representatives at the meeting at least appreciated that 6 there was a compatibility issue which needed to be 7 checked. 8 COMMISSIONER HANSFORD: But this last minute that you've 9 just shown us -- sorry, it's just left the screen; that 10 one -- tells us the T40s would be BOSA. 11 MR PENNICOTT: Yes. 12 COMMISSIONER HANSFORD: So we are hearing that most of them 13 are Lenton but some are BOSA? 14 MR PENNICOTT: Yes. 15 COMMISSIONER HANSFORD: Is that what we're being told? 16 MR PENNICOTT: I'm not sure, sir, and I don't want to -- 17 I've taken you to that because I recognise that it's 18 different from all the minutes up until that point in 19 time. So we are going to need somebody to explain what 20 that actually means, it seems to me. 21 COMMISSIONER HANSFORD: We are. Okay. 22 MR PENNICOTT: But I have taken you to it because it 23 changed -- it seems to be a material change, from the 24 previous minutes. 25 But again, as we've seen, both Jim Wong and Regina</p>	<p style="text-align: right;">Page 56</p> <p>1 MR PENNICOTT: Again, sir, how it precisely works, I'm 2 looking forward to hearing the Wing & Kwong evidence. 3 The MTR, in their opening statement, suggesting that 4 what happened was you've got Lenton couplers on the one 5 side, you've got the BOSA couplers on the other side. 6 What should have happened is there should have been 7 starter bars going into each side, obviously with 8 a tapered thread going one way and a parallel thread 9 going the other, and then presumably lapped. 10 CHAIRMAN: The lapping in the middle. 11 MR PENNICOTT: With lapping in the middle. I think that's 12 what's suggested. I have no reason to suppose that's 13 wrong but -- 14 COMMISSIONER HANSFORD: My only query is on this T40 point 15 that we've just seen, because I haven't yet understood 16 what diameters of rebar we're looking at within the 17 stitch joints, and that's one of the areas we need to 18 examine. 19 MR PENNICOTT: It is an area we need to examine, sir, and 20 I'm a little unsure, but my understanding is we are 21 talking about 40 millimetres with regard to the BOSA 22 couplers. 23 COMMISSIONER HANSFORD: Correct. 24 MR PENNICOTT: And I think the Lenton threaded couplers are 25 32 millimetres. That's my understanding.</p>

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<p>1 COMMISSIONER HANSFORD: Right.</p> <p>2 MR PENNICOTT: So not only would they need to be tapered</p> <p>3 threaded, they would also need to be 32 millimetres and</p> <p>4 not 40, if that's right.</p> <p>5 Sir, the thrust of the witness statements and other</p> <p>6 documents from Wing & Kwong appear to suggest that</p> <p>7 whatever the nature of the problem that was encountered</p> <p>8 with the cast-in couplers, Wing & Kwong were simply</p> <p>9 instructed by Leighton to get on with it, to put it</p> <p>10 colloquially, by reason, they say, of time pressures on</p> <p>11 the project.</p> <p>12 As you may have seen, some colourful language is</p> <p>13 used in the Wing & Kwong statements.</p> <p>14 So far as Leighton is concerned, they don't appear</p> <p>15 to agree with Wing & Kwong's evidence. Recent evidence</p> <p>16 from the project director, Mr Kitching, appears to</p> <p>17 dispute Wing & Kwong's evidence. But the real key</p> <p>18 witness on this point, so far as Leighton is concerned,</p> <p>19 appears to be Mr Henry Lai, who also does not agree with</p> <p>20 the Wing & Kwong evidence, and we've got three</p> <p>21 statements from Mr Lai now, the last of which deals with</p> <p>22 the Wing & Kwong evidence. So we will need to hear from</p> <p>23 not only the Wing & Kwong witnesses, obviously, but</p> <p>24 Mr Lai and other relevant Leighton witnesses.</p> <p>25 Sir, of course, the other aspect to all of this,</p>	<p>1 there were not proper connections or things like that.</p> <p>2 MR PENNICOTT: Indeed, sir. Again I may be able to sort of</p> <p>3 expand on that point in a moment, but yes, that's</p> <p>4 entirely right.</p> <p>5 Sir, we have a subheading at page 23 of the opening</p> <p>6 address which says, "Whether steps for rectification</p> <p>7 have been taken for such defects/non-compliances?"</p> <p>8 Of course the answer to that is yes, they have. The</p> <p>9 stitch joints in the NAT were completed on around about</p> <p>10 18 July 2018, and we say there is extensive</p> <p>11 documentation disclosed in relation to the rectification</p> <p>12 works, some of which we have referenced already. There</p> <p>13 is, in particular, a series of RISC forms referable to</p> <p>14 those rectification works, and I've identified the</p> <p>15 references in the disclosed documents of MTR and</p> <p>16 Leighton. If you want to get them all, you need to put</p> <p>17 them together, I've discovered.</p> <p>18 And, as we've mentioned earlier, the shunt neck</p> <p>19 joint has not yet been remedied.</p> <p>20 Can I just pick up the footnote. I have looked at</p> <p>21 the RISC forms that have been disclosed by MTR and</p> <p>22 Leighton in respect of the rectified, the new, stitch</p> <p>23 joints, and I've tried to make some sense of them, but</p> <p>24 I am still unable to locate a full set, in the sense</p> <p>25 that, for example -- and I've put an example at the</p>
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<p>1 that is the lack of any or any proper connections, is</p> <p>2 the competence and diligence of both MTR's and</p> <p>3 Leighton's inspectors and engineers, both in respect of</p> <p>4 routine inspections and formal or hold-point</p> <p>5 inspections. We say that if there was a complete</p> <p>6 mismatch, if there was a failure to expose the embedded</p> <p>7 couplers, if the couplers were either damaged or in the</p> <p>8 wrong place such that the rebar was not screwed into the</p> <p>9 couplers properly or at all, how was all this missed by</p> <p>10 the inspectors and the engineers? It is Wing & Kwong's</p> <p>11 evidence that any lack of connection would have been</p> <p>12 obvious on a visual inspection.</p> <p>13 CHAIRMAN: As I understand it, using layman's terms, the</p> <p>14 stitch joints were put together after work was done on</p> <p>15 either side. So you had the work on either side and</p> <p>16 then where the two meet is where you have the stitch</p> <p>17 joints, and you leave that for a time.</p> <p>18 MR PENNICOTT: Yes.</p> <p>19 CHAIRMAN: The point I'm making, or coming to, is that it is</p> <p>20 not as if the stitch joints are huge or are connected</p> <p>21 with everything else. So, when the inspection comes</p> <p>22 along, you are looking at a relatively confined area.</p> <p>23 MR PENNICOTT: You are, yes, sir, 3 to 4 metres wide,</p> <p>24 something of that order.</p> <p>25 CHAIRMAN: Yes, so it would be odd not to be able to see if</p>	<p>1 bottom here -- we can't yet locate a RISC form in</p> <p>2 respect of the inspection of the rebar to the top or the</p> <p>3 roof of the 1111/1112 NSL stitch joint. Now, I'm not</p> <p>4 saying that it doesn't exist, but we've not yet found</p> <p>5 that one. No doubt, if it's there, somebody will tell</p> <p>6 us where it is.</p> <p>7 Sir, so far as issue 3 is concerned, as you know, it</p> <p>8 breaks down into lack of inspection and supervisory</p> <p>9 records, including RISC forms, and in particular the</p> <p>10 lack of RISC forms so far as the original stitch joints</p> <p>11 are concerned; unauthorised design changes; incomplete</p> <p>12 testing records of material.</p> <p>13 Sir, in terms of lack of inspection and supervisory</p> <p>14 records, including the RISC forms, it appears that</p> <p>15 pursuant to the ITP -- I think we had a reference to</p> <p>16 that in the Original Inquiry -- submitted by Leighton to</p> <p>17 MTR, for each pour of concrete for the construction</p> <p>18 works at the NAT, SAT and HHS areas, there were, for</p> <p>19 present purposes and in general terms, two relevant hold</p> <p>20 points. That is, after the fixing of the rebar, and</p> <p>21 after the erection of formwork and falsework, but before</p> <p>22 the concrete was poured, known as the pre-pour</p> <p>23 inspection. So after rebar and pre-pour inspection.</p> <p>24 As we understand it, each hold point would require</p> <p>25 a formal inspection by MTR and Leighton, and would or</p>

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<p>1 ought to have generated a RISC form.</p> <p>2 One problem that we've had -- and I touched on this</p> <p>3 earlier; just to add a little bit to it now -- is that</p> <p>4 we remain unclear how the general requirement that I've</p> <p>5 mentioned here, that's after fixing of rebar and then</p> <p>6 the pre-pour inspection, actually applies or is</p> <p>7 transposed to the construction of the stitch joint;</p> <p>8 therefore, as to precisely how many hold points and</p> <p>9 therefore RISC forms there were, or ought to have been,</p> <p>10 when the original stitch joints were constructed.</p> <p>11 COMMISSIONER HANSFORD: Why do you say "when the original</p> <p>12 were constructed"? Why would it be different when they</p> <p>13 were reconstructed?</p> <p>14 MR PENNICOTT: That is the point we make next. That is, the</p> <p>15 number of RISC forms generated when the remedial works</p> <p>16 to the stitch joints were done may shed some light on</p> <p>17 how many there ought to have been when the original</p> <p>18 works were done.</p> <p>19 But, sir, just to flesh that out a bit, I'm sure</p> <p>20 that you can visualise the construction of these stitch</p> <p>21 joints. They have a base, they have two walls, they</p> <p>22 have a roof, although the EWL one doesn't. And so you</p> <p>23 ask yourself: let's just take the base slab of the</p> <p>24 stitch joint. As we understand it, it has bottom rebar</p> <p>25 and it has top rebar, as is explained in some of the</p>	<p>1 yes, we all accept that that's what should have been</p> <p>2 done for the original, and therefore there should have</p> <p>3 been four RISC forms, six RISC forms, whatever the</p> <p>4 calculation may be, in relation to the original</p> <p>5 construction.</p> <p>6 Sir, we respectfully submit that all of this needs</p> <p>7 to be explained.</p> <p>8 Sir, so far as the RISC forms are concerned, could</p> <p>9 I ask you, please, to look at paragraph 85 of the</p> <p>10 opening address. As we mentioned earlier, I think --</p> <p>11 yes, in paragraph 82 -- the MTR gave a briefing to the</p> <p>12 government on 30 January at which they indicated the</p> <p>13 number of rebar RISC forms that existed, and then</p> <p>14 expressed as a percentage, essentially, the missing RISC</p> <p>15 forms.</p> <p>16 Sir, the figures that I've got at paragraph 85, (i),</p> <p>17 (ii) and (iii), reflect what government was told on</p> <p>18 30 January. I have discovered over the weekend that in</p> <p>19 fact those numbers and percentages have been updated.</p> <p>20 At a recent briefing of government by MTR on 16 May, so</p> <p>21 just a couple of weeks ago, and the results of that</p> <p>22 briefing or the slides of that briefing, rather, are at</p> <p>23 DD9/12034, but there's no need to get it up on the</p> <p>24 screen. I think, without going into the detail, the</p> <p>25 figures have moved but only very slightly. There's not</p>
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<p>1 witness statements. Is that one hold point? Is it two</p> <p>2 hold points? Does it generate one RISC form or two RISC</p> <p>3 forms? We are not sure.</p> <p>4 In terms of inspection -- forget about RISC forms</p> <p>5 and hold points -- was there an inspection of the bottom</p> <p>6 rebar and then another inspection of the top rebar?</p> <p>7 Just for the base slab, forget about the walls and the</p> <p>8 roof, just for the base slab -- what's actually involved</p> <p>9 in terms of hold points and RISC forms in relation to</p> <p>10 the base?</p> <p>11 What about the walls? The rebar is put on the</p> <p>12 walls. Is it a hold point for each wall, the West Wall</p> <p>13 and the East Wall? What about the dividing wall? How</p> <p>14 was it supposed to work? We can piece it, again,</p> <p>15 together by reference to some of the RISC forms and the</p> <p>16 remedial works, but query what was actually</p> <p>17 contemplated: would there be a hold point when the</p> <p>18 West Wall rebar was done, or was it just one hold point</p> <p>19 for both walls? Was there a separate, so far as the</p> <p>20 roof is concerned -- again, one hold point or more than</p> <p>21 one hold point? We are not sure. This all needs to be</p> <p>22 explained.</p> <p>23 It may be that the simple proposition may be put</p> <p>24 forward that, well, look at what was done in terms of</p> <p>25 the remedial works, the reconstruction of stitch joints;</p>	<p>1 a significant movement in those figures.</p> <p>2 COMMISSIONER HANSFORD: Presumably because more forms have</p> <p>3 been located?</p> <p>4 MR PENNICOTT: In some cases, more forms, but in one case,</p> <p>5 less. That's why I didn't want to go into the detail.</p> <p>6 It is rather complicated.</p> <p>7 The position is we may need to try to explore the</p> <p>8 exact extent of the problem, although we've got some</p> <p>9 broad figures and some broad percentages. Indeed, sir,</p> <p>10 what has happened, which you may have picked up if you</p> <p>11 had managed to read any of the MTR witness statements,</p> <p>12 and in particular the witness statement of Dr Peter</p> <p>13 Ewen, is that the MTR have engaged a company called WSP,</p> <p>14 consultants in Hong Kong, to carry out some audits in</p> <p>15 relation to, if you like, the consequences of the</p> <p>16 missing RISC forms, with a view to putting together</p> <p>17 evidence which tries to plug the gaps where there are</p> <p>18 missing RISC forms, by looking at photographs and site</p> <p>19 diaries and other material, to try to say, well, there</p> <p>20 may not be a RISC form, but it's quite obvious that this</p> <p>21 particular aspect of work was indeed and in fact</p> <p>22 inspected.</p> <p>23 WSP's audits in respect of the SAT and the NAT are</p> <p>24 in the bundles for consideration, but there is no</p> <p>25 equivalent to the HHS as yet. However, and I touched on</p>

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<p>1 this earlier, Pypun have been doing a not dissimilar 2 exercise on behalf of the government, and they 3 submitted, as I mentioned earlier, their report on 4 Friday, which has gone into bundle GG3, an extensive 5 report, although there is not a huge amount of 6 narrative, there's a lot of supporting material, and it 7 looks to me, on a quick read -- although, as I've put in 8 the footnote, we've not had an opportunity to fully 9 analyse the report, it only having been served on 10 Friday -- it looks to me as though the percentages Pypun 11 have come up with are pretty similar to those that were 12 put forward by the MTR to the government in the recent 13 presentation. So there seems to be some correlation 14 between the Pypun investigation and the MTR's own 15 figures.</p> <p>16 Sir, Leighton's evidence in relation to the missing 17 RISC forms, as I've just hinted at, is that the relevant 18 site staff did carry out the necessary hold-point 19 inspections, but it appears were too busy, too 20 stretched, and therefore did not submit all the RISC 21 forms that should have been submitted. So I infer that 22 what is being said is that the non-submission of the 23 RISC forms is a matter of form rather than substance. 24 And there is, it seems to us, to some extent at least, 25 a similar approach by the MTR. Although it was</p>	<p>1 couplers were in fact used in the HHS -- a point that 2 I think the Chairman touched upon earlier -- because 3 they were introduced for construction convenience, to 4 allow easier vehicular access and the like. Our 5 understanding is that this change from lapped bars to 6 couplers was not advised to the government at the time 7 the change was made. It's not clear to us precisely 8 when that change was made, and it's not clear to us what 9 the government's position is, now it knows that the 10 couplers were used in the HHS.</p> <p>11 It might say, I suppose -- obviously it's a matter 12 for the government ultimately -- that if these couplers 13 were non-ductile, which I suspect they were, then the 14 government might say, "Had we known that these couplers 15 were going to be used in the first place, whilst we may 16 not have required a QSP, we might have required what is 17 known as the sort of lower requirements", and we will 18 come to those in a moment, "as were required on the 19 NAT", but obviously that's a matter for the government 20 to advise us in due course.</p> <p>21 Sir, so far as the NAT is concerned -- and I'm going 22 to go away from what we've written there to say this -- 23 the approved or accepted drawings, so far as the NAT is 24 concerned, did not specify any ductility requirement for 25 couplers. That appears to be common ground. Although</p>
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<p>1 dissatisfied with Leighton's late or non-submission of 2 the RISC forms, nonetheless it is viewed more as 3 a matter of form rather than substance. Of course, one 4 would need to investigate that to see whether it is 5 sustainable.</p> <p>6 Sir, could I then turn to a separate topic, which 7 I touched on earlier, which is this. It seems to us, 8 the Commission's legal team, that there is potentially 9 an issue of compliance with the procedure of the QSP, 10 the quality supervision plan, in relation to the three 11 new areas with which we are concerned.</p> <p>12 Sir, the government, MTR and Leighton were asked to 13 deal with the applicability or otherwise of the QSP to 14 the NAT, SAT and HHS in their written opening addresses. 15 Each has duly done so, although the MTR says that it's 16 in the process of clarifying the position.</p> <p>17 Sir, taking each area briefly in turn, it appears to 18 be common ground that the relevant acceptance letters 19 from the government in respect of the HHS did not 20 contain any specific requirements in relation to 21 couplers, largely, or perhaps exclusively, because the 22 original approved drawings in relation to the HHS did 23 not show any couplers, and consequently there was no 24 requirement for a QSP.</p> <p>25 However, we now know that a significant quantity of</p>	<p>1 we note that there is a drawing, 07A, at BB1/460 -- 2 there's no need to get it up on the screen -- but 3 there's a note, R12, which requires the couplers in the 4 NAT, it appears, to be tested to type 2 under AC133, and 5 we know that type 2 are in fact ductility couplers, if 6 they are BOSA couplers, which they were.</p> <p>7 So, with that slight caveat, it appears to us it's 8 right to say that there was no ductility requirement for 9 the couplers in the NAT.</p> <p>10 However, the acceptance letter -- and could we 11 please get the acceptance letter up. It's at DD7/10327. 12 If we could go to appendix V -- that's it, thanks -- 13 this is appendix V to the government's acceptance letter 14 in relation to NAT, and you will see there's a heading, 15 "Mechanical couplers for steel reinforcing bars without 16 ductility requirement", and I think it's common ground 17 that under this appendix or under this requirement, 18 there was no necessity for a quality supervision plan, 19 no QSP.</p> <p>20 But if one reads through this, if you can scroll 21 down, please, one sees at letter (c), the registered -- 22 that's Leighton, "should assign a quality control 23 coordinator to provide full-time on-site supervision of 24 the works and devise inspection checklists." The 25 minimum qualifications are given, so it's grade T1, and</p>

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<p>1 more importantly at (d): 2 "The names and qualifications of the supervisory 3 personnel representing the competent person and 4 [Leighton] respectively should be recorded in 5 an inspection log book. The date, time, items inspected 6 and inspection results should be clearly recorded in the 7 log book. The log book should be kept at the site 8 office and, when required, produced to the Director of 9 Highways for inspection." 10 So whilst there is no necessity in this appendix for 11 a QSP, nonetheless there are specific requirements to be 12 complied with, namely the keeping of the log book and 13 all this information that's required there to be 14 recorded in it, and we have seen no sign of any of that 15 produced to date. 16 The way I look at it is that, as we saw in the 17 Original Inquiry, one gets, if you like, the enhanced 18 supervision required by a QSP, if it's required in 19 relation to ductile couplers, and you get something 20 slightly different and, if you like, a lower 21 requirement -- I'll call it the lower requirement -- but 22 still, nonetheless, one can see what is expected of MTRC 23 and Leighton from this appendix. 24 Just one final point on the NAT, on this point about 25 the QSP. You will recall, and I mentioned this earlier,</p>	<p>1 is that the drawings don't show any ductility zones and 2 therefore a requirement to use ductility couplers, even 3 though ductility couplers were in fact used; and 4 therefore, they say, QSP not required. 5 The government don't agree with that and say -- 6 indeed, the government say the accepted drawings show 7 that ductility couplers were used in the diaphragm walls 8 and slabs. You will appreciate my reference to 9 diaphragm walls is that the SAT contains a number of 10 diaphragm walls, built by Intrafor, and the government 11 says that those were ductility couplers. Or -- and this 12 is a point we may have to discuss further -- we know 13 that the QSP was submitted in relation to the station, 14 the platform slabs that we looked at last time and to 15 which the interim report makes a number of references. 16 It seems to me that that very same QSP is likely to be 17 applicable to these diaphragm walls in the SAT, because 18 if it was applicable to the diaphragm walls, it was 19 applicable to the diaphragm walls on all of them, not 20 just those that happened to be in the station extension. 21 But, sir, we may be able to flesh that out in more 22 detail as we go along. 23 Very quickly, we deal with the unauthorised design 24 changes at paragraph 91, touched on already, that is the 25 change from lapped bars to couplers in certain</p>
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<p>1 that on 26 March 2018, MTR did in fact submit to 2 government what it described as an updated QSP for the 3 couplers in the NAT, both for the Lenton and BOSA 4 couplers, when they came to do the remedial works. 5 So there was, it appears, a QSP in place, and the 6 references we've given, when those remedial works were 7 carried out. Now, quite how that came about, I'm not 8 entirely sure, but just reading the material that I've 9 had access to, it appears that when this problem arose 10 on the stitch joints and they had to be rebuilt and 11 reconstructed, obviously Leighton and MTRC had to make 12 a proposal to government, which government had to be 13 satisfied with, and I suspect, but I don't know, that as 14 part of that proposal, it was thought it might be a good 15 idea to say to government, "And, by the way, we will 16 have a QSP in place in relation to these remedial 17 works." 18 I don't know whether that's the case but I'm just 19 surmising from various things that I've looked at, but 20 in any event, for the remedial works, it appears that 21 a QSP was or should have been in place. 22 So far as the SAT is concerned, what Leightons say 23 is that the QSP did not apply to SAT and, as 24 I understand it, they use a similar argument to one they 25 used before the Commission in the Original Inquiry: that</p>	<p>1 construction joints; the use of standard drill-in bars 2 to replace damaged or misaligned couplers at the 3 diaphragm walls of the NSL at the SAT area; and no 4 coupler was used for certain stand-alone rooms at the 5 HHS area. 6 The extent of all of this still seems to be somewhat 7 unclear, and we'll need to investigate it further 8 throughout the course of the evidence. But I do note 9 the point that this unauthorised design change issue is 10 supposed to be part and parcel of the verification 11 proposal or verification report to be submitted to the 12 Commission in due course. 13 Sir, at paragraph 93, I just summarise a point we 14 have touched on already, that is the reasons for those 15 changes, as put forward by MTR and Leighton. 16 Sir, so far as incomplete testing records of 17 material is concerned, this is a bit of a moving target, 18 and I confess I am not entirely sure where we had 19 reached. So far as the government is concerned -- let's 20 start with them; that's at paragraph 97 -- the 21 Commission invited the government to indicate to us 22 which material reports and test reports it had not seen 23 and had not received, and what it had unearthed in this 24 context. The answer that we got was that it had 25 received all the necessary test reports and materials</p>

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<p>1 originally used at the stitch joints and the shunt neck, 2 but it had not seen the test reports and so forth for 3 the remedial works. So we thought, okay, that's 4 a fairly self-contained body of reports, that is those 5 in respect of the remedial works. 6 We have asked MTR and Leighton to provide details of 7 those works, and Leighton have kindly done so. At 8 bundle CC10/6495 -- perhaps we can just have a quick 9 look at that. That's it, thank you. Can you just 10 scroll up slightly? That's fine. 11 So what Leighton have told us recently, on Friday, 12 is that: 13 "We are instructed that all test reports for 14 materials (rebars, couplers and concrete) used in the 15 remedial works at the three NAT stitch joints have been 16 disclosed to the Commission." 17 Then they give us the bundle references: rebar test 18 results, coupler test results, RISC forms for coupler 19 and rebar tests and the concrete test results. I should 20 say that both I and those instructing me have checked 21 those references, and they seem to be correct to us. 22 I don't know whether government have yet had 23 an opportunity to check them, but if that is the 24 material which has not been submitted to government, 25 even though it has been submitted to the Commission, no</p>	<p>1 Sir, that really concludes what I wanted to say, 2 subject to this point, that both MTR and Leighton, 3 albeit to a more limited extent, have, during the course 4 of their opening submissions or opening statements, made 5 reference to the reservation of a right to call expert 6 evidence in relation to certain issues. As I understand 7 it, so far as the MTRC are concerned, that reservation 8 of right relates to the cause of the water seepage and 9 questions of structural integrity of the stitch joints, 10 that's paragraph 39 of the opening; the structural 11 integrity of the shunt neck construction joint, that's 12 paragraph 43; and then paragraph 48 of the opening 13 reiterates both of those points. So that's water 14 seepage, structural integrity of the stitch joints and 15 the shunt neck. That's one topic. 16 Secondly, project management issues, arising out of 17 the evidence we are going to hear; that's at 18 paragraph 58 of the opening. Also the applicability and 19 scope of the Code of Practice for Structural Use of 20 Concrete, 2004, second edition, in the context of the 21 change of lapped rebar to couplers in the NAT, SAT and 22 HHS. 23 So there are really three topics upon which the MTR 24 have reserved its position to call expert evidence, if 25 presumably it's deemed appropriate, and presumably if</p>
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<p>1 doubt government will tell us whether they are satisfied 2 that those are, first of all, what's been missing, and 3 secondly whether they are content with those records. 4 So that's the government. 5 So far as Leighton are concerned, according to 6 Leighton, and in particular Mr Speed, he says that 7 approximately 7 per cent of the rebar delivered to the 8 site -- and I think he means everything, not just the 9 NAT, SAT and the HHS but everything, I think -- about 10 7 per cent were not tested by the HOKLAS certified 11 laboratory system, as is required under the contract. 12 Yes, there are mill certificates and testing 13 certificates from manufacturers, but the on-site testing 14 effectively wasn't done for 7 per cent of the rebar 15 delivered to the site. 16 However, according to Mr Lai, Henry Lai, in relation 17 to the rebar that he ordered specifically for the NAT -- 18 so we're not talking about everything now, we are just 19 talking about the NAT -- 56 batches of rebar out of 20 a total of 159 batches were not HOKLAS tested. Sir, 21 I say it is not clear to us how Mr Speed has arrived at 22 his percentage yet, nor are Mr Lai's numbers clear, as 23 to how he has calculated them, and/or whether there is 24 any correlation between the 56 batches and the 25 7 per cent.</p>	<p>1 the Commission allows it. 2 Sir, Leighton -- I have dealt with this specifically 3 at paragraph 96 of the opening -- has indicated that it 4 intends to adduce expert evidence to demonstrate that 5 the extent of the tests performed by the manufacturers 6 and the HOKLAS certified laboratory in the present case 7 is nevertheless sufficient and there is no safety 8 concern regarding the rebar used at the NAT, SAT and HHS 9 areas. 10 Sir, I just mention that, that at least two of the 11 parties have obviously turned their minds to the 12 possibility that expert evidence may be required in 13 relation to certain issues, and obviously, if that is 14 right, then we need to make sure we explore the factual 15 aspects of those issues to ensure that that expert 16 evidence is properly formulated. 17 Sir, the last two pages of our opening are largely 18 matters of formality, trying to identify the key 19 questions involved, paragraph 98, and then obviously 20 making the point, as everybody is well aware of, that we 21 are about to embark on hearing the evidence, the factual 22 evidence anyway, in relation to the extended aspects of 23 the Inquiry, and that all expert evidence will be left 24 over till a later date. 25 Sir, it's three or four minutes to 1.00. That's all</p>

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<p>1 I have to say, and I will pass over to others. 2 Sir, the order for the following openings I think 3 will have to be this: that we will ask Mr Tsoi to go 4 next for Wing & Kwong, because he is unable to be here 5 tomorrow. It was then going to be Leighton, but 6 I understand from Mr Khaw that he will not be here 7 tomorrow, so it might be safer to take the government 8 before Leighton, and so have Mr Tsoi and then Mr Khaw, 9 and if there's time, obviously we can have Mr Shieh for 10 Leighton later this afternoon. If there's not, then 11 obviously we can spill over to tomorrow morning. 12 Sir, unless there's anything I can assist you with 13 further at this stage, that's all I wish to say. 14 CHAIRMAN: Thank you. If we adjourn now for lunch. 15 MR PENNICOTT: Yes, sir. 16 CHAIRMAN: Was there a mention made of finishing a little 17 early this afternoon? 18 MR PENNICOTT: Yes. That's been raised with everybody, 19 apart from I didn't mention it to Mr Clayton. I have 20 managed to see everybody else. I understand -- 21 CHAIRMAN: No complaints or -- 22 MR PENNICOTT: No, sir. If we can finish between 4.30 and 23 4.45, I think everybody is content. I apologise to 24 Mr Clayton. 25 MR CLAYTON: I am content with that as well.</p>	<p>1 the NAT at the three stitch joints and the shunt neck 2 joint, I will take the Commission, as I say, through 3 three main topics. 4 The first is this, and it relates to the relative 5 roles and positions of the parties, and this is MTRCL, 6 Leighton and Wing & Kwong. 7 For this purpose, I will refer the Commission to the 8 sub-contract between Leighton and Wing & Kwong. 9 Topic 2 is the defects, and two types of defects in 10 particular. The first is where Leighton instructed Wing 11 & Kwong to try to squeeze or fit a square peg into 12 a round hole, and by that of course I mean trying to 13 screw in a parallel threaded rebar into a tapered 14 threaded coupler, which we know is not possible. 15 The second defect which I will take the Commission 16 to is perhaps even worse because this time not even the 17 holes are provided by Leighton for the pegs, and by that 18 I mean the couplers were still in fact embedded in the 19 concrete and it's not exposed for the rebars to be 20 connected to the coupler. 21 But what is important for present purposes is that 22 these defects would have been visually obvious, and 23 I will take you to the evidence of that. 24 But perhaps most importantly, given that the defects 25 were visually obvious, what happened to inspection?</p>
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<p>1 CHAIRMAN: Thank you. So what we will do is return at 2.15 2 this afternoon, so we will start a quarter of an hour 3 earlier, but subject -- it's my fault, I'm afraid -- 4 it's a prior commitment that I can't change -- and I do 5 need to get back into town by 5.15. So we will adjourn 6 at 4.45 or a little before, depending on where we are. 7 MR PENNICOTT: Yes, sir. 8 CHAIRMAN: Thank you very much. 9 (12.59 pm) 10 (The luncheon adjournment) 11 (2.17 pm) 12 Opening submissions by MR TSOI 13 MR TSOI: May it please you, Chairman and Commissioner. 14 Much has been said by my learned senior, who went before 15 me, counsel for the Commission. I am very grateful for 16 his detailed opening. 17 Therefore, for Wing & Kwong, I wish to only raise 18 three topics and they all relate to the NAT because, as 19 we've heard, Wing & Kwong is not involved in the SAT, 20 and for HHS, as the evidence will become clear, the 21 evidence is consistent with MTRCL and Leighton that the 22 deviations at HHS was in fact instructed by Leighton and 23 approved by MTR. 24 Therefore, for Wing & Kwong, the sub-contractor, who 25 itself engaged Loyal Ease for the rebar fixing work for</p>	<p>1 That is my last topic. These so-called hold-point 2 inspections where there were two checks, apparently, one 3 is called the rebar fixing check and the other called 4 the pre-pour check. I will take you to various 5 individuals, to what they say, but perhaps importantly, 6 it's not what they say happened, it's what they do not 7 say in their witness statements, and we must at this 8 point treat with caution anyone who claims they had done 9 the inspection properly but did not see these obvious 10 defects. 11 If I may first take you to the first item, which is 12 the relative roles and the position of the parties. 13 Perhaps a good starting point is the Wing & Kwong 14 sub-contract, and we can see that at page EE99. Perhaps 15 we should pull that up. 16 The first clause that I will take the Commission to 17 is at page EE104, which is a general clause in relation 18 to the provision of skilled workers by Wing & Kwong, and 19 that's clause 2.5. It reads this: 20 "... the Sub-Contractor shall provide all skilled, 21 semi-skilled and unskilled labour ... for the 22 execution ... of the Sub-Contract Works." 23 That would be obvious. 24 But what is important is that we turn to page EE108, 25 at clause 7.4. Here it reads:</p>

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<p>1 "The Sub-Contractor shall not directly communicate 2 with the Employer, the Employer's Representative, the 3 Engineer or Architect without the prior written consent 4 of the Contractor." 5 The "Employer" is of course MTRCL, and that's 6 defined in the first schedule, at page EE134; I won't 7 ask you to pull that up. But effectively the 8 sub-contractor, Wing & Kwong, cannot talk to MTRCL 9 without the consent of Leighton. 10 The next clause I would like to take you to is at 11 page EE110, which is clause 10.3. It reads: 12 "It is expressly agreed that the Contractor shall 13 have the right to omit work from the Sub-Contract Works 14 and carry out such work itself or employ other 15 contractors to carry out such omitted work. The 16 Sub-Contractor shall not be entitled to make any claim 17 for any losses or expenses incurred or loss of 18 profit ..." 19 So what is important to note here is that 20 effectively Leighton can tell Wing & Kwong not to work, 21 omit part of the work from the contract, and Wing 22 & Kwong would have no recourse, they could be replaced 23 for any part of the sub-contract work at any time and 24 Wing & Kwong would have no recourse to be compensated 25 for the loss of the profit.</p>	<p>1 "[Rebars] will be provided by the Contractor free of 2 charge ..." 3 Of course. 4 Point 2: 5 "Couplers will be provided by the Contractor free of 6 charge ..." 7 So we see here that the rebars and the couplers were 8 to be provided by Leighton. 9 Two points on: 10 "Testing of materials by the Contractor includes 11 [rebars] and couplers only." 12 That's obvious. 13 A few points on, and this is important: 14 "The Sub-Contractor shall complete reinforcement 15 fixing works using an approved method and follow the 16 instructions of the Contractors site team in respect of 17 speed, extent, timing, sequencing and staging." 18 In due course, we will submit that this is the 19 clause that obligates Wing & Kwong to comply with the 20 instructions of Leighton. 21 Part 3, "Fixing". Point 2 thereunder, "Receive [the 22 rebars] from supplier", that's been repeated. 23 And 4, "Conditions", the third point there: 24 "The Sub-Contractor must coordinate with the 25 Contractor for the deliveries of [the rebars] and</p>
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<p>1 Indeed, if you read on the clause, it says: 2 "Omitted works shall be valued in accordance with 3 Clause 11 and the Sub-Contract Price shall be reduced 4 accordingly." 5 So not only can Wing & Kwong be replaced but for 6 parts of the works that had been omitted, the contract 7 price that Wing & Kwong agreed would be reduced 8 accordingly. 9 Then we come to the all-important scope of the 10 sub-contract works. This can be found at page EE139, if 11 I can ask you to pull that up. So that's part of the 12 scope of sub-contract works, and I will take you to the 13 first two points. One of the sub-contract works is 14 this: 15 "[To] Receive [rebars] and couplers from suppliers, 16 store on site within designed area, and arrange samples 17 for testing. 18 (ii) Cut, bend and fix in position [the rebars] in 19 accordance with the [specifications] and the ... working 20 drawings." 21 So that's parts of the scope of the sub-contract 22 works. 23 If we then turn on to page EE140, this is "General 24 notes" and it's quite important to look at this. The 25 first point is this:</p>	<p>1 provide reasonable time to the Contractor for additional 2 orders of [rebars] (if required)." 3 So this implicitly tells us that if you order the 4 rebars, it takes time because the rebars need to be 5 threaded. 6 If we move on to the fourth schedule of the 7 contract, which starts at page EE141, and in particular 8 item 12(g) at page EE145 -- again, the obligation to 9 provide and the cost is provided for the supply of the 10 couplers and rebars, and that is the obligation of the 11 contractor, Leighton. 12 So, to summarise the position in relation to the 13 sub-contract, Wing & Kwong has to follow the 14 instructions of Leighton. Materials, including the 15 rebars, the couplers, are to be provided by Leighton and 16 Wing & Kwong has to work with whatever they are 17 provided. Wing & Kwong has no right to choose. 18 Leighton has a right to omit the works from the 19 sub-contract, and the sub-contractor will have no 20 recourse for any omitted works. 21 So in terms of the rights and the hierarchy, one can 22 obviously see that Leighton is way above Wing & Kwong. 23 So if we bear in mind now that the materials are to 24 be provided by Leighton to Wing & Kwong -- let's look at 25 the defects, and the first type is of course the square</p>

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<p>1 peg and round hole; the parallel threaded rebars, and 2 trying to fit that into a tapered threaded coupler, 3 which is impossible. This occurred, as we know, at the 4 interface between contract 1111 and 1112. For the 5 purposes of the interface -- and this is important -- it 6 is not in dispute that Wing & Kwong, being the mere 7 sub-contractor, did not attend any of these so-called 8 interface meetings where apparently the Lenton couplers 9 or their use on the 1111 side of the interface was using 10 the Lenton coupler.</p> <p>11 In fact, according to the evidence of Chris Chan, 12 the construction engineer of MTR, at these interface 13 meetings, we know that there are at least 22 of them, at 14 least in 14 of them Lenton couplers or the use of them 15 on the 1111 side of the interface was made clear.</p> <p>16 So the square peg and round hole. As we know, it's 17 caused by a mismatch of the materials. The 1111 Lenton 18 couplers and the 1112 parallel threaded rebars. This 19 should not have happened, because Leighton should have 20 known what couplers were used on the 1111 side of the 21 interface, and as the construction engineer of MTR, 22 Chris Chan says -- and we can turn that up, at BB109, 23 paragraph 11, and I will just read that out: 24 "In this statement, I wish to explain what rebars 25 and couplers should have been used in the construction</p>	<p>1 which has been provided by Leighton, which is at 2 page CC526, we can see that under the name of Joe Tam, 3 just slightly on the right, yes -- he is the project 4 manager of Leighton. The site agent is an individual 5 called Chan Hon Sun. Then we see Henry Lai's name. 6 Henry Lai is the engineer.</p> <p>7 Joe Tam knew that Lenton couplers were used. That 8 is contained in his statement at page CC84, I won't ask 9 you to turn that up, but apparently the matter was 10 reported to him, though he did not know whether this 11 information was passed on to other members of the 12 construction team of Leighton. Then he says this: 13 "I did not receive the minutes of this meeting by 14 email at the time, or find the finalised minutes in the 15 ePMS system."</p> <p>16 We are not sure what is on the ePMS system. Could 17 there be drafts? We don't know. But he says it was 18 reported to him anyway.</p> <p>19 The individual who is right above Henry Lai, 20 an individual called Chan Hon Sun, he knew about the 21 Lenton couplers, because he attended two of the 22 interface meetings. One is the 12th meeting, on 23 17 April 2015. You can find that at BB1710. I won't 24 ask you to turn that up. He also attended the 22nd 25 interface meeting, on 6 January 2017, and the minutes of</p>
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<p>1 of the 3 stitch joints and the shunt neck joint under 2 contract 1112. In this context, I point out that 3 Leighton should procure rebars and couplers from the 4 manufacturers/suppliers of rebars/couplers based on the 5 specifications ... in the working drawings. These 6 specifications include: (1) the size of the rebars that 7 should be used; and (2) the locations where rebars and 8 couplers should be installed. In addition, [for the] 9 NSL stitch joint, the ... EWL stitch joint and the ... 10 shunt neck joint were located at the ... interface, the 11 materials that had to be used required coordination 12 between the contractor under contract 1111 (GKJV) and 13 the contractor under contract 1112 (Leighton). The 14 materials that had to be used at the ... interface had 15 been discussed during a number of [the] interface 16 meetings, which were regularly held and were attended by 17 representatives of Leighton, GKJV and MTRCL for the 18 purpose of coordinating the works at [the interface]."</p> <p>19 It's not in dispute in this case that Leighton did 20 not get the correct rebars. That's not in dispute. And 21 the person who was supposed to be ordering the rebars, 22 extraordinarily, did not know, or he claims he did not 23 know, that on the 1111 side of the interface, Lenton 24 couplers were used. That person is Henry Lai. 25 If we just look at the Leighton organisation chart</p>	<p>1 that one can be found at 1791. But the minutes of the 2 22nd interface meeting are not produced by Leighton, for 3 some reason, but I don't think any issue turns on that.</p> <p>4 If we turn to the left of the chart, of course we 5 know Jim Wong of Leighton also knew that Lenton couplers 6 would be used because he also attended numerous of these 7 interface meetings.</p> <p>8 So it is quite extraordinary that the two people, 9 the two names above Henry Lai, knew about the Lenton 10 couplers on the 1111 side of the interface, and Henry 11 Lai, who was the person who was meant to be inspecting 12 the connection of the rebars and the couplers, claims he 13 did not know that Lenton couplers would be used.</p> <p>14 But what is not in real dispute is this, that the 15 parallel threaded rebar cannot fit into a tapered 16 threaded coupler. As Chris Chan says in his statement 17 at BB113 -- I won't ask you to turn that up: 18 "Given their specific shapes and threading 19 requirements, a Lenton threaded rebar cannot be screwed 20 into a BOSA coupler, and a BOSA threaded rebar cannot be 21 screwed into a Lenton coupler."</p> <p>22 But one doesn't really need an expert to tell you 23 this, because if you just look at the picture of the 24 type of the rebar and the coupler -- and that, perhaps 25 we can just go to my written opening at page 3. You see</p>

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<p>1 at paragraph 9, we there sought to set out, on the left, 2 the parallel threaded rebar and coupler, and on the 3 right the tapered threaded rebar and coupler. Just 4 looking at the shape, one knows this is a "square peg 5 and round hole" situation. 6 What is worse, as the learned Commissioner has asked 7 counsel for the Commission, what were the sizes of the 8 rebars and the couplers? The answer was they were 9 trying to fit a parallel threaded rebar, which is 40mm, 10 into a 32mm tapered threaded coupler. It simply doesn't 11 work. 12 COMMISSIONER HANSFORD: Sorry, I don't think the answer was 13 that they were trying to put a 40 in. 14 MR TSOI: Or was it the other way around? 15 COMMISSIONER HANSFORD: No. I think what we heard was that 16 for 40, for T40, then it would be BOSA couplers. 17 MR TSOI: Yes. 18 COMMISSIONER HANSFORD: But we are not -- 19 MR TSOI: Sure. 20 COMMISSIONER HANSFORD: I think that's a different point to 21 the one you just made, Mr Tsoi. 22 MR TSOI: I understand, but I think in due course the 23 Commission will hear evidence that in fact the diameter 24 of the rebars don't really fit too. 25 COMMISSIONER HANSFORD: Okay.</p>	<p>1 happened to inspection? As we know, after Wing & Kwong 2 completes the rebar fixing works, it's not in dispute 3 that these hold-point inspections would take place 4 jointly by MTRCL and Leighton. Apparently, there are 5 two checks in these hold-point inspections. The first 6 is called a rebar fixing check and the other is called 7 a pre-pour check. As explained by Leighton's engineer 8 Sean Wong, although he worked at the SAT, the same 9 inspection applies. I am only quoting Sean Wong here 10 and not Henry Lai, because as you will see in Henry 11 Lai's statement, he doesn't even mention the steps of 12 inspection as detailed as Sean Wong. 13 But let's look at Sean Wong's statement, and we can 14 find that at CC3803. In paragraph 15, he says this: 15 "The practical aspects of the formal rebar fixing 16 inspection were [these]: 17 (a) There were in fact two formal joint inspections. 18 The first was undertaken after the rebar fixing 19 sub-contractor had installed the bottom layer of rebar 20 and, the second inspection was conducted after the 21 installation of the top layer of rebar; 22 (b) Each of the two inspections of rebar fixing 23 comprised checking the arrangement of rebar, the spacing 24 of the bars, lap length and the connections ... The 25 following steps would be taken:</p>
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<p>1 MR TSOI: But we will come to that perhaps in the evidence. 2 COMMISSIONER HANSFORD: Thank you. 3 MR TSOI: The second type of defect is this, the fact that 4 the holes aren't even provided for the pegs, and that 5 of course I mean the couplers were still embedded in the 6 concrete. 7 This perhaps is even more obvious because the rebars 8 simply are not connected to the coupler at all. 9 You will hear evidence from the foreman engaged by 10 Wing & Kwong in due course, a man called Ng Man Chun, who 11 will call him "Ah Chun", who was the foreman in charge 12 of Wing & Kwong rebar fixers, but he says the cause was 13 because Leighton were rushing through the works and 14 therefore Leighton asked Wing & Kwong to do the rebar 15 fixing when they have not in fact itself completed the 16 hacking off of the concrete. So in fact the couplers 17 were not completely exposed to allow the rebars to be 18 connected to them. 19 For present purposes, the point is clear though, 20 that again this was the type of defect which would have 21 been visually obvious for anyone who properly inspected 22 the works. 23 Which now brings us to the final topic. Given the 24 obvious fact that the couplers may not be connected to 25 a rebar or there was a mismatch of the materials, what</p>	<p>1 (i) physically measure the spacing and lap length of 2 rebar samples ... 3 (ii) with the reference to the measured samples, 4 conduct visual check across the area ..." 5 And (c) is important: 6 "As noted above, for the connections between rebar 7 and couplers, I would check that the threads of the 8 rebar were screwed into the couplers and not exposed (or 9 that only a few threads were exposed at most) ..." 10 So if the works were properly inspected, at most 11 only a few threads should be exposed. 12 In due course, you will hear evidence from Ah Chun, 13 Ng Man Chun, that in fact if you try to screw in 14 a parallel threaded rebar into a Lenton coupler, the 15 opposite occurs, because only two or three threads would 16 be able to be screwed into the coupler, and all the 17 other threads would be exposed. 18 But perhaps more importantly, as Sean Wong explains, 19 if we go now to CC3302, paragraph 14 -- he says this: 20 "The formalities associated with the formal joint 21 inspections were [these]: 22 (a) There were two key formal joint inspections of 23 the reinforcement." 24 We've looked at that. That's the rebar fixing check 25 and the pre-pour check.</p>

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<p>1 "(b) The sub-contractors knew that their work would 2 need to be inspected or rectified (if there were any 3 defects) before they could proceed to the next phase." 4 Now, all Leighton engineers say the same. So the 5 Leighton senior engineer Jeff Lii for HHS says the same; 6 he says that page CC3811. I won't ask you to turn it up 7 but it's there. The Leighton senior engineer Alan Yeung 8 says the same thing; that's at page CC3821. The 9 engineer Raymond Tsoi for SAT says the same thing; 10 that's at CC3793. The assistant engineer, Saky Chan, 11 says the same thing, 3841. The site agent, Ronald 12 Leung, says the same thing, 3830. So they all say the 13 same thing, all but one person, Henry Lai. He doesn't 14 say that. 15 So given that the sub-contractor knew that their 16 work would be inspected, in my submission no one in 17 their right mind would, on a frolic of their own, just 18 try to screw in two or three threads of a parallel 19 threaded rebar into a Lenton coupler, or choose not to 20 screw or connect the rebar to the coupler at all, and 21 hoping that those inspecting it would simply blindly 22 approve them and allow the concrete to be poured and let 23 them get away with it. 24 Unless the person responsible for inspecting the 25 works was the person who told them to do it that way,</p>	<p>1 At paragraph 42, and this is important: 2 "Around 1 day before the official commencement of 3 the first stage of construction works, I first went to 4 the site to inspect and observe the surrounding area in 5 accordance with usual practice. At the time, I saw 6 Leighton's workers chipping off the concrete of the wall 7 under contract 1111 to expose the couplers installed 8 pursuant to contract 1111, in preparation for the 9 assembly of Wing & Kwong's workers to commence rebar 10 fixing works for contract 1112. Although Leighton's 11 workers only chipped off part of the concrete wall, 12 I could clearly see that the couplers installed pursuant 13 to contract 1111 were different from those normally used 14 pursuant to contract 1112. Contract 1112 used 15 flat-headed couplers" -- and that's what we say are the 16 parallel threaded couplers -- "and the socket caps ..." 17 Apparently, there are some cover caps on the 18 coupler, and I think, from the interim report from 19 part 1 of the Inquiry, we saw that the caps were either 20 blue or red if they were parallel threaded couplers. 21 But this is important because: 22 "... usually red or blue in colour" -- that's for 23 the flat-headed couplers -- "but the socket caps I saw 24 that were exposed from the concrete at the time were 25 yellow."</p>
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<p>1 knowing about the defects, and we say that's what 2 happened, and that person was Henry Lai. 3 This then brings to us what Wing & Kwong say 4 happened. For that, you need to turn to Ah Chun's 5 evidence, and the English will be found at EE371.1, the 6 Chinese is at EE341. Ah Chun, of course, was the 7 foreman engaged by Wing & Kwong for the rebar fixing 8 work. He was formerly under the employ of Loyal Ease, 9 which itself was a sub-contractor engaged by Wing 10 & Kwong to do the rebar fixing works. 11 At this stage, perhaps one should remember the 12 relative roles and the positions of the parties, how, we 13 have seen from the sub-contract, Wing & Kwong had to 14 comply with the instructions of Leighton. 15 But in Ng's statement, in Ah Chun's statement, at 16 paragraph 40, he explains what happened with the 17 situation of the square peg and round hole. He says 18 this: 19 "Before the preparation to commence rebar fixing 20 works in respect of joint 3, I submitted to Leighton the 21 bending schedule to order the requisite rebars and 22 couplers upon [confirmation of the sample papers] ..." 23 In paragraph 41 he said: 24 "... shunt neck joint/joint 3 mainly involved 4 25 walls and the base slab."</p>	<p>1 The yellow caps signify that they were Lenton 2 couplers. 3 "At the time I already knew that something was 4 wrong, and suspected that those couplers were pointed, 5 not flat-headed, which did not match with the 6 flat-headed rebars required by the RC details under 7 contract 1112. I therefore immediately went forward to 8 remove the cover of the socket cap, which revealed that 9 the coupler was indeed pointed as I expected." 10 So this is the Lenton coupler. In the next part, he 11 shows what shapes they are, as we have seen in my 12 opening, and at paragraph 44 he says this: 13 "In the construction sites I have worked at, I have 14 never encountered this problem, namely a situation where 15 the RC details specified the use of flat-headed rebars, 16 but for some reason, pointed couplers were left behind 17 by the other side ..." 18 And that of course is the 1111 side of the 19 interface. 20 "I remember that at the time I immediately called 21 the engineer in charge of the zone, Henry Lai. As it 22 has been a long time, according to my recollection and 23 my usual attitude and tone [towards him] ..." 24 He then recalls the conversation. We can find the 25 conversation on the next page. I won't read out the</p>

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<p>1 full extent of the conversation, but one can say that 2 Ah Chun was not happy with the situation. But the 3 important point is this. He asked Henry Lai: 4 "Do you ... have to thread pointed-head rebars back 5 before the assembly of workers to commence works? If 6 not, I can't ... screw them in. Do you have to talk to 7 your boss first?" 8 Henry Lai says, "It's too late though. Ok, let me 9 handle this!" 10 At paragraph 46: 11 "When I preferred to 'thread pointed-head rebars 12 back before the assembly of workers to commence works' 13 at the time, what I meant was to ask Henry Lai whether 14 Leighton would take back the flat-headed rebars 15 delivered to the construction site and arrange to 16 provide pointed rebars to Wing & Kwong, allowing Wing 17 & Kwong to carry out rebar fixing works. As far as 18 I know, this process required approximately 1 to 2 19 weeks ... (or even longer)." 20 So that is the delay that would have caused. 21 "Based on my understanding, Leighton experienced 22 delays in construction works at the time, and was behind 23 in progress. Therefore, they wanted to catch up as soon 24 as possible [with the concrete pouring]. Standing from 25 Wing & Kwong and my perspective, Leighton's own delays</p>	<p>1 industry, this was the first time that I have 2 encountered [this] situation ..." 3 And I can explain what he says there: because this 4 is the first time he encountered this situation, he has 5 to make clear to Henry Lai, which he did, in the 6 conversation at the top of the page, that: if this does 7 not pass inspection and if Wing & Kwong had to redo the 8 work again, then Leighton must pay because we are not 9 going to be responsible for this because you are asking 10 me to screw in the flat-headed rebars into the 11 pointed-head couplers. 12 He explains the same thing at paragraph 51. 13 As I say, what Ah Chun said makes perfect sense, 14 because here is a situation where Wing & Kwong has to 15 comply with the instructions provided by Leighton, and 16 their instructions were, "Screw them in as much as you 17 can." But what if they don't pass inspection? They 18 have to redo the works; who's going to pay for this? So 19 Ah Chun had to make it very, very clear, "If we have to 20 redo it, Leighton must pay." 21 But what if the couplers were still covered by the 22 concrete so the rebars cannot connect to the couplers at 23 all? Ah Chun also explains this at paragraph 55, and 24 you can find that at page EE371.24. He says this: 25 "According to my recollection, I also called Henry</p>
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<p>1 would not cause any loss to Wing & Kwong." 2 That is important, as will be clear in Wing 3 & Kwong's Cheung Yick Ming's evidence, that there was 4 simply no incentive for them not to do their work 5 properly, because as Ah Chun says, when Wing & Kwong 6 could enter the site to commence works was completely 7 dependent on when Leighton handed the site over. 8 "Conversely", he says, "if we take matters into our 9 own hands and carry out rebar fixing works recklessly 10 without Leighton's instructions, and could not pass the 11 inspections and were required to redo the works, Wing 12 & Kwong would instead incur the costs of redoing the 13 works ..." 14 Of course; he was trying to protect his own side. 15 He then explains on at paragraph 47: 16 "After around 10 minutes, Henry Lai called [him 17 back]", and asked him, basically, "How far could you 18 screw in the parallel threaded rebar into the Lenton 19 couplers?", And Ah Chun said, "Only two or three heads." 20 The next page: 21 "Then you just screw them in, screw them in as much 22 as you could. It's not as if the wall would collapse?" 23 That's what Henry Lai said to Ah Chun. At 24 paragraph 49, Ah Chun again explains: 25 "... in the many years I have worked in this</p>	<p>1 Lai at the time, telling him which locations had pointed 2 couplers and the situation that the concrete has not 3 been sufficiently chipped off. However, he only told me 4 again to 'get as many as you can, and screw them in as 5 best as possible'. 6 57: 7 "Therefore, during the rebar fixing works for the 2 8 remaining walls in the second stage, I told my workers 9 that if there were pointed couplers within the ... wall 10 then 'screw them in as much as possible', pursuant to 11 the instructions of Leighton's Henry Lai. If the 12 couplers have not been chipped open by Leighton" -- 13 I think he means the concrete -- "then 'leave a bar 14 there to sustain it'. 15 At this point perhaps it's important to remind 16 ourselves from the sub-contract that Leighton was the 17 party that was responsible for providing the correct 18 materials. They were responsible for providing the 19 rebars and the couplers, and obviously they were 20 responsible for chipping off the concrete so that the 21 rebar fixers could in fact put the rebar into the 22 coupler. Wing & Kwong has no say in this. 23 At this juncture, perhaps we can look at 24 Michael Fu's evidence of MTR. Michael Fu is the 25 construction manager of MTR and we can see his evidence</p>

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<p>1 on page BB80. He says this in paragraph 30: 2 "Even if it were the case that Leighton and/or its 3 sub-contractor were unable to screw the rebars into the 4 couplers given that the wrong materials had been 5 ordered, one would have expected that Leighton and/or 6 its sub-contractors would immediately halt the stitch 7 joints/construction joint works, raise the 'mismatch' 8 problem with MTRCL, and seek to resolve it by placing 9 an order for the right kind of materials. Leighton and 10 its sub-contractor, however, did not adopt what surely 11 was the obvious course of action to resolve the 12 'mismatch' problem." 13 Yes, Leighton should have informed MTRCL, Leighton 14 should have then obtained the correct rebars for the 15 couplers, and then Leighton should have provided them 16 for Wing & Kwong to do the rebar fixing works. 17 But what is Wing & Kwong supposed to do in that 18 situation? You are faced with that situation where 19 there is an express order from Leighton, "Screw them in 20 as much as possible", knowing that Leighton could 21 replace them at any time, they can omit them from works 22 and you can't even have compensation. These workers, 23 these rebar fixers who earn 1,000 or 2,000 a day, what 24 are they supposed to do; are they supposed to protest 25 and refuse to work and go and complain to MTRCL? And</p>	<p>1 leaks and cracks be due to defective work undertaken or 2 the materials supplied by your company, we will seek to 3 recover all costs incurred in accordance with the terms 4 of the sub-contract." 5 Well, that's strange, because the materials are 6 meant to be supplied and provided by Leighton. 7 Wing & Kwong, in reply, and we can find that at 8 page EE277, says this: 9 "To avoid the possibility of any instability, our 10 site supervisor, Ng Man Chun, had deliberated the 11 particulars of the relevant location with your engineer, 12 Henry Lai, five months before the start of the work. 13 The material was ordered by Leighton and Wing 14 & Kwong had no right to choose which type of coupler can 15 be used for further connected with [the 1111 side of the 16 interface]. Also, all the works have been inspected by 17 Leighton and relevant parties before concreting to 18 ensure all parties ... comply with standard and 19 drawings ..." 20 Then lastly, Wing & Kwong asked for the \$1.1 million 21 outstanding contractual payment. This was effectively 22 ignored by Leighton, because we see at EE286, what 23 Leighton did next was to send a sub-contractor 24 backcharge notice to Wing & Kwong, and you see in the 25 tick of the box, it's for the repair of the works, and</p>
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<p>1 remember, they can't really communicate with MTRCL, as 2 we have seen from the sub-contract. They should stop 3 working because Leighton did not provide the right 4 materials? We have to be realistic as to the situation 5 Wing & Kwong faced. They basically had no choice. They 6 had to do what they were told to do. 7 But one can say: is what Ah Chun says true? That's 8 of course for the Commission in the end to assess. But 9 what he said is supported by the rebar fixer of Wing 10 & Kwong, Leung Chi Wah. 11 But what one cannot say is that Ah Chun made this up 12 because of this Inquiry, because ever since February 13 2018, when Wing & Kwong was first accused by Leighton of 14 defective workmanship, Wing & Kwong has maintained the 15 same version of events. 16 So let's go through now the exchanges between 17 Leighton and Wing & Kwong in 2018. The first one can be 18 found at page EE271. That is a letter from Leighton to 19 Wing & Kwong, and it says this: 20 "We write to advise that it has come to our 21 attention that there is significant water leaks and 22 structural cracking ... 23 Investigations are currently underway to ascertain 24 the exact cause ... 25 Please be advised that should the cause of the water</p>	<p>1 it claims in handwriting, if you scroll down a bit, "All 2 costs subject to final invoice", and lastly it noted 3 this was sent to the sub-contractor by email on 4 23 February 2018. 5 So, having received the backcharge notice, what does 6 Wing & Kwong do? We can find that at page EE290. 7 This letter is very important so I would ask the 8 Commission, if it has time, to read in detail what it 9 says, but it says this. Firstly, it strongly disagrees 10 with the backcharge notice. Then, two points on, it 11 says: 12 "The first schedule of construction of stitch joint 13 was [ended in] December 2016 but due to some reason" -- 14 CHAIRMAN: Sorry, bear with me just a second. 15 Yes, sorry, please carry on. I was just falling 16 behind on one paragraph. 17 MR TSOI: "The first schedule of construction of stitch 18 joint was [at the] end of December 2016 but due to some 19 reason it was rescheduled to start on early of 2017 but 20 finally it was started in July 2017. Finally, our staff 21 was informed to complete the base slab, wall and top 22 slab of the tunnel in three weeks in July 2017. 23 To avoid the possibility of any instability, our 24 site supervisor, Ng Man Chun, had deliberated the 25 particulars of the relevant location with your engineer,</p>

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<p>1 Henry Lai, seven months before the start of the work." 2 Of course, that is a minor inconsistency. The 3 letter before said five months, now it says seven 4 months, but I don't think anything turns on that. 5 Reading on, that's the important part: 6 "The captioned location of the tunnel is connected 7 to another contract of MTR, ie 1111. As the 8 sub-contractor of contract 1112, we could only 9 communicate with the main contractor of contract 10 1111 ..." 11 That is G -- 12 CHAIRMAN: Gammon. 13 MR TSOI: Yes, GKJV. 14 "... through your company or there was not any way 15 to get the details of contract no. 1111. To make sure 16 the connection is either coupler with parallel threads 17 or with taper-cut threads so as to prepare the relevant 18 materials to carry out the work at all time, our Chun 19 has inquired your Henry Lai in February 2017. We 20 received a reply from Henry Lai that he did not know the 21 details of contract 1111. He then instructed us to 22 prepare materials of parallel threads, according to his 23 experience and final confirmed order [of the] material 24 by Leighton. The materials of the coupler was supplied 25 by Leighton, Wing & Kwong [had] no right to choose [the]</p>	<p>1 of the two contracts, your company believe there is no 2 need to tighten rebar in all the coupler left by 3 contract 1111. Therefore, your company did not hack off 4 all of the concrete which covered the coupler for our 5 side." 6 CHAIRMAN: In other words, contract 1111 left in place more 7 couplers than were required to be fitted? 8 MR TSOI: Exactly, and Wing & Kwong obviously can't screw in 9 a rebar into a covered coupler. 10 CHAIRMAN: All right. Yes. 11 MR TSOI: "Furthermore, your company did the concrete 12 pouring work immediately after all the rebar fixing work 13 was completed according to the way of your instruction. 14 In general, you should instruct me to clarify any 15 defects of work if you found any defects during daily 16 monitoring before concreting. 17 So, we will submit our quotation for the repairing 18 works if you needed. Also" -- this is important -- "we 19 would like to request the joint inspection together with 20 your side after break out of existing stitch joint ..." 21 Because of course, if you are accusing Wing & Kwong 22 of defective workmanship, you must allow them to see 23 what's happening. This never happened. They declined 24 our request, they just ignored it, and we will come to 25 that.</p>
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<p>1 brands, [the] type of couplers [to] be used [on] this 2 project. We are providing labour only and your 3 engineers were fully instructing and monitoring [us on] 4 this section of work. 5 The captioned work was launched in July 2017. After 6 the concrete surface had been hacked off (Actually some 7 of the couplers still not yet [exposed]" -- I think that 8 word is meant to be "exposed" -- "after Leighton say 9 hacked works completed) ..." 10 Now, you must forgive the English, because this was 11 drafted by a layman at Wing & Kwong. As I said at the 12 preliminary hearing, we are not as resourceful as other 13 parties. But that's what he said. 14 "... the connection was found to be coupler with 15 taper-cut threads. Our Chun stated right away that the 16 rebar we prepared according to Leighton's information 17 which could not tighten into the coupler completely. 18 However, according to the verbal instruction given by 19 Leighton, there was not enough time to rethread the 20 rebar and your company urged our side to try our best to 21 tighten the rebar which are parallel threads into those 22 couplers." 23 And that is what happened. They asked Wing & Kwong 24 to try to fit a square peg into a round hole. 25 "Moreover, because of the differences in the design</p>	<p>1 What does Leighton do? The next page, page EE293: 2 all the things said by Wing & Kwong were ignored. The 3 latter part of the page reads this: 4 "It has been established that the sub-contractor has 5 failed to complete the sub-contract works in accordance 6 with the sub-contract by correctly affixing the rebar to 7 the couplers." 8 That's a plain lie. It has not been established, 9 because a square peg can't fit into a round hole. 10 The next page, EE294. Leighton spares no time -- 11 they say this: 12 "We remind you that under ... the sub-contract you 13 are required to 'make good every defect and 14 imperfection ..." 15 The next point -- 16 CHAIRMAN: Sorry, I do apologise. So it would be your 17 client's contention that it was required to provide 18 labour only? 19 MR TSOI: Yes. 20 CHAIRMAN: And the mere fact that there was a tapered 21 coupler, and a rebar that didn't fit in, had to mean it 22 was not the fault of your client -- 23 MR TSOI: Of course. 24 CHAIRMAN: -- but was the fault of the other third party. 25 MR TSOI: Absolutely.</p>

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<p>1 CHAIRMAN: Because your client's job was to merely take the 2 materials given to it and then fit those materials in. 3 MR TSOI: Absolutely. If we read on -- 4 CHAIRMAN: Sorry, and I take it, when everything was looked 5 at, they discovered that the couplers were these Lenton 6 couplers? 7 MR TSOI: We never looked at this, because we were declined 8 the joint inspection by Leighton, but Leighton -- well, 9 I think it's not in dispute that the 1111 side of the 10 interface had Lenton couplers, which simply could not 11 fit. 12 CHAIRMAN: Thank you. I'm sorry to have -- 13 MR TSOI: No, no, absolutely. 14 So the next point is: 15 "The sub-contractor was given the opportunity to 16 correct the defects and declined." 17 Well, we haven't. We wanted to have a joint 18 inspection to see what happened, because you are 19 accusing us of defective workmanship, but we say it was 20 the material; it was a mismatch of the materials. 21 "To rectify these defects [on the] stitch joints ... 22 [they were] required to be fully demolished and 23 rebuilt." 24 And it goes on. So we see there Leighton basically 25 ignoring Wing & Kwong's plea.</p>	<p>1 problem." Really? 2 Next, we have Wing & Kwong's protest at page EE301. 3 Essentially, Wing & Kwong is now repeating: 4 "We both agree the defect relates to the failure of 5 installation/connection of the rebar and couplers. 6 However, the major reason is Leighton threads the 7 parallel threads (type 1a) on our rebar which cannot be 8 installed completely in the taper-cut threads couplers 9 (type 2)" -- as we see in the picture -- "supplied by 10 contract 1111. 11 The captioned work was launched in July 2017. After 12 the concrete surface had been hacked off, the connection 13 was found to be coupler with taper-cut threads. Our 14 site supervisor, Ng Man Chun stated right away that the 15 rebar we prepared could not tighten into the coupler 16 completely. However, considering the tight schedule, 17 there was not enough time to rethread the rebar and your 18 company urged our side to try our best to tighten the 19 [rebars with the] parallel threads into those couplers." 20 As we have seen from the evidence of Ah Chun, to 21 rethread the rebars would have taken one to two weeks at 22 least, and one must remember the delay in the works 23 would not have affected Wing & Kwong. Who it would have 24 affected was Leighton. 25 The next page, they say the same thing --</p>
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<p>1 Wing & Kwong replied to this at page EE298: 2 "After reading your letter ... we wish to re-state 3 how passive we are during the material ordering 4 progress." 5 I think that means "the material ordering process". 6 "According to the sub-contract, the threads and 7 couplers are one of the materials which were provided by 8 Leighton. Our company needs to provide the information 9 about the diameter and quantity of the threads and 10 prepare the rebar well. We do not have any power to 11 decide which type of threads were being used. The type 12 of threads are wrongly ordering" -- so effectively the 13 wrong rebars are ordered -- "and it is obvious that our 14 company do not have any power to cause this." 15 So Wing & Kwong is repeatedly saying the same thing. 16 Let's see Leighton's reply at page EE300. Leighton says 17 this: 18 "The defective workmanship does not relate to the 19 materials. The defect relates to the failure of the 20 sub-contractor to install/connect the rebar and couplers 21 in accordance with the sub-contract requirements." 22 This bit is about the interface joint. They are 23 saying "It's nothing to do with material; you, Wing 24 & Kwong, should have been able to fit a square peg in 25 a round hole, and if you can't, it's a workmanship</p>	<p>1 CHAIRMAN: Sorry, could I ask -- earlier today, there was 2 mention of an alternative route to installation, which 3 was the installation at this end, installation at that 4 end -- 5 MR TSOI: And then a lap in the middle. 6 CHAIRMAN: -- and then a lap in the middle, yes. 7 MR TSOI: But for that, you still need to provide the 8 taper-cut or taper-threaded rebar, so that they could be 9 connected to the Lenton couplers, because you must have 10 then the parallel threaded coupler connected to 11 a parallel threaded rebar, lapping it, with 12 a taper-threaded rebar into a Lenton coupler. 13 CHAIRMAN: I have that. So obviously, if this is the 14 tapered end, you screw in the tapered end there with a 15 tapered rebar. This one you do the ordinary. 16 MR TSOI: Exactly. 17 CHAIRMAN: And then in the middle, you have a rebar of the 18 same diameter, which laps the two. 19 MR TSOI: Exactly, yes. But the prerequisite is still 20 Leighton has to provide this. 21 COMMISSIONER HANSFORD: I think that was always intended. 22 I've not heard anywhere of any suggestion of having 23 a bar that's threaded, tapered on one end and parallel 24 on the other. 25 MR TSOI: I'm sure it's possible.</p>

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<p>1 COMMISSIONER HANSFORD: In fact, I'm not even sure you could 2 fit that in. So there was always intended to have a lap 3 in the middle. 4 MR TSOI: I think so, but as I said, the prerequisite is 5 still you need those taper-cut rebars. 6 CHAIRMAN: All right. So it was either, as Prof Hansford 7 said, always intended, or there was an oversight and 8 there wasn't the realisation that the one was going to 9 be tapered. 10 MR TSOI: As I confess, I'm not really a construction 11 lawyer, but I could see from the plans that the learned 12 Commissioner is correct, that it was the intention, from 13 the plans, in any event, that there would be a lapping 14 in between two types of bars. But again I confess I am 15 not really an expert in this. 16 COMMISSIONER HANSFORD: That makes sense. 17 CHAIRMAN: Yes. 18 MR TSOI: So we move on to -- 19 CHAIRMAN: Sorry, just to interrupt for a second, because it 20 gives us, basically -- so, somewhere along the line, 21 somebody came to a rational decision that there would be 22 a lapping in the middle. 23 MR TSOI: Yes. 24 CHAIRMAN: But you are saying that the company which you 25 represent, the bar fixers, were not informed of that,</p>	<p>1 CHAIRMAN: No. Fine. Yes. And at the other end, of course 2 the BOSA one, you had that too. 3 MR TSOI: Yes. 4 CHAIRMAN: Thank you. 5 MR TSOI: So if we turn to EE303, that's a Leighton letter 6 to Wing & Kwong. They are effectively repeating 7 themselves: 8 "The defects relate to the failure of the 9 sub-contractor to install/connect the designed rebar and 10 couplers in accordance with the main contract and 11 sub-contract requirements. You have a contractual 12 obligation to construct the works in accordance with the 13 approved for construction drawings." 14 Then if we turn to page EE304, that's where Leighton 15 claims rectification costs of 40 million against Wing 16 & Kwong. At this stage, of course, Wing & Kwong has 17 been asking for a joint inspection, but that's just been 18 ignored. 19 If we go to page 305, that's Wing & Kwong's reply in 20 May. Paragraph 3 says this: 21 "For the rectification works refer to [in] your 22 letter ... Leighton has failed to provide the entire 23 further information, [arrange a] joint meeting or site 24 visit as [we] requested." 25 So Wing & Kwong has been asking, "Let us see what is</p>
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<p>1 nor given the material to enable them to do the lapping? 2 MR TSOI: Of course, because one would -- 3 COMMISSIONER HANSFORD: Sorry, I don't think that's what's 4 being said, because the steel fixers created the lap in 5 the middle. 6 MR TSOI: Yes. 7 COMMISSIONER HANSFORD: And that was always intended. 8 MR TSOI: Yes. But we were also required to connect what 9 should have been the Lenton threaded rebars into the 10 Lenton couplers, and then we will also do the lapping in 11 the middle. 12 CHAIRMAN: And you did the lapping in the middle? 13 MR TSOI: Without the Lenton threaded rebars, because we 14 have to use the BOSA rebars. 15 CHAIRMAN: All right. Thank you very much. So what we have 16 then is we have -- the issue that caused the problem was 17 the failure to have one rebar supplied which had 18 a tapered end, a threaded end, which could then be 19 fitted into those Lenton -- I think they are called, is 20 it? 21 COMMISSIONER HANSFORD: Yes. 22 CHAIRMAN: Lenton rebars. The reinforcing bar in the middle 23 for lapping, you had that, or it was supplied to you. 24 MR TSOI: That was no problem. I don't think an issue 25 arises there.</p>	<p>1 happening. Why do you say it's defective workmanship?" 2 That's been denied. 3 "The problems and defect costs in the project have 4 nothing to do with our company. Please release all the 5 overdue as soon as possible ..." 6 Leighton's reply at page EE306, they are just 7 completely ignoring Wing & Kwong: 8 "Our various correspondence on this subject has 9 clearly stated our position. You failed to undertake 10 the defect and damage repairs. As advised, works were 11 commenced as a result of your failure to undertake the 12 rectification." 13 Then Wing & Kwong reply in June -- 14 CHAIRMAN: Sorry, I may have missed something here. I may 15 have been concentrating otherwise. Have you cited any 16 letter that actually says, "Please start the 17 rectification works by Monday, 12 noon, or else"? 18 MR TSOI: No. 19 CHAIRMAN: Is there any letter saying, "Our people will be 20 at the site on Tuesday at 3 pm for a joint inspection, 21 please be there or else"? 22 MR TSOI: No. They are effectively trying to shut out Wing 23 & Kwong, and that's quite clear from the exchanges we 24 then see between Leighton and MTR, because MTR asked 25 Leighton, "What did you do with Wing & Kwong?", and that</p>

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<p>1 answer in the August reply from Leighton, I would 2 submit -- I'll take you to it -- is not an honest 3 answer. 4 COMMISSIONER HANSFORD: I'm sure you are going to take us to 5 it later, Mr Tsoi, but in fact Wing & Kwong didn't do 6 the remedial works, did they? 7 MR TSOI: But that's not an issue. 8 COMMISSIONER HANSFORD: That's not an issue? 9 MR TSOI: That's not an issue. 10 COMMISSIONER HANSFORD: Leighton instructed someone else to 11 do the remedial works. 12 MR TSOI: I'm not -- Fang Sheung. 13 MR PENNICOTT: Just to make the point -- it's very helpful 14 that Mr Tsoi is showing you these letters, but of course 15 by this time -- the letters are dated May and then we're 16 getting into June 208 -- the original stitch joints had 17 been long demolished. They were taken out in March. So 18 in fact requests for a site inspection, whilst it seems 19 to me right and proper, once the demolition had taken 20 place back in February and March 2018, it would have 21 been a rather pointless exercise to go to visit anyway. 22 MR TSOI: I think counsel for the Commission raises a very 23 good point, and that's the issue, because we didn't even 24 know this, because it was demolished without our 25 knowledge, and that's the point for asking for joint</p>	<p>1 So we have seen that before. 2 Point 4: 3 "We reminded you that our all site works were 4 inspected and approved by the site representatives of 5 Leighton before pouring concrete, then Wing & Kwong to 6 continue the rebar fixing works ..." 7 Again, they are trying to explain themselves. 8 Then we reach point 5: 9 "We [requested] the joint inspection ..." 10 So even at this point, they don't really know what's 11 happening. We are requesting a joint inspection and 12 nothing happened. 13 Point 6: 14 "... your allegation of rectification cost 15 \$40 million ... mentioned in the letter ... is a totally 16 unreasonable amount for Wing & Kwong, our final contract 17 sum [was] just \$62.5 million ... how can we bear the 18 \$40 million contra charge ...?" 19 The next point: 20 "... based on this defective workmanship, you are 21 holding us all payment in various projects ... please 22 note that we [are] just a rebar fixing sub-contractor, 23 \$3.5 million is a very large amount for us ..." 24 Then lastly they say: 25 "... now your action is all unreasonable and ... not</p>
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<p>1 inspection, to see what's happening. 2 If you shut off Wing & Kwong and demolish the thing, 3 we will never see what happened for ourselves, and 4 that's what Leighton did to Wing & Kwong. 5 CHAIRMAN: All right. Were you supplied with 6 photographic -- 7 MR TSOI: Very limited. 8 CHAIRMAN: So what you are saying is that at the time when 9 the defects were first noticed by way of leakage, 10 et cetera, and in the days that followed, you were not 11 given an opportunity together with the contractor to 12 conduct an inspection as it was opened up and to see the 13 results of the opening up? 14 MR TSOI: We were invited once, Ah Chun was invited on site 15 before the concrete was removed. So he was just there 16 to locate the areas where the concrete needs to be 17 removed so we could see what was happening inside. But 18 Wing & Kwong were never invited back, after the concrete 19 had been removed, to see what happened. 20 CHAIRMAN: All right. Thank you. 21 MR TSOI: We then look at Wing & Kwong's reply at 22 page EE308. Wing & Kwong essentially is repeating its 23 plea. At point 1, in the middle: 24 "Wing & Kwong has no authority to choose any 25 materials and construction methods ..."</p>	<p>1 fair for Wing & Kwong." 2 That was again ignored in the July reply which we 3 see at 312. It just mentions the backcharge notice. 4 So there has been all these exchanges between Wing 5 & Kwong and Leighton. MTR asked about this, and if 6 I take you to the letter; that's at BB5073. 7 This is a letter from MTR to Leighton, asking for 8 various information, but if you go to the latter part of 9 page 5073, one of the information is this: 10 "Details of actions taken against responsible 11 sub-contractor(s) in respect of the NAT issues". 12 So MTR is asking Leighton, "What did you do to the 13 sub-contractors?" 14 Let's look at Leighton's reply, at page BB5081. 15 That's the start of the reply. In relation to that 16 question, the answer can be found at page BB5083, at 4, 17 "Details of actions taken against responsible 18 sub-contractor(s)": 19 "Following [our] receipt of [the non-conformance 20 reports] ... related to the defective stitch joint 21 works, an internal non-conformance was raised ... on 22 19 March 2018. A meeting was also held with the senior 23 management of Wing & Kwong, the rebar fixing 24 sub-contractor responsible for the NAT works. After the 25 meeting it was decided that Wing & Kwong would not be</p>

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<p>1 carrying out any further work on the project, including 2 the remedial work required to rectify the defective 3 stitch joints." 4 That's not even the question asked. The question 5 asked was, "What action did you take against Wing 6 & Kwong?" 7 All the exchanges between Leighton and Wing & Kwong, 8 all the explanations from Wing & Kwong, all the actions 9 that Wing & Kwong wants to take, are all concealed from 10 MTR. This answer is completely dishonest. 11 So there has been all these exchanges, all these 12 letters to and fro between Leighton and Wing & Kwong, 13 Wing & Kwong saying expressly, "Hold on a second, it's 14 Henry Lai who instructed us to do this." 15 CHAIRMAN: Sorry, just to go back to this paragraph, 16 "A meeting was ... held with the senior management of 17 Wing & Kwong"? 18 MR TSOI: That is correct. 19 CHAIRMAN: And there was a meeting? 20 MR TSOI: There was a meeting, and that is evident in Cheung 21 Yick Ming's statement because immediately after the 22 water seepage, the quantity surveyor of Wing & Kwong was 23 invited to the site office to basically tell him, "By 24 the way, there's water seepage and you're not getting 25 paid", that is the long and the short of it, but he was</p>	<p>1 statement -- that was the first time Henry Lai tries to 2 respond to the allegations made against him. And that 3 Henry Lai statement was right after Leighton's project 4 director Jon Kitching's statement that was filed last 5 Thursday. What a coincidence, because what Jon Kitching 6 says in the statement is, likewise, for the very first 7 time, we are now told that in fact there was a meeting 8 between John Kitching and Henry Lai about these letters, 9 although nothing of the sort was mentioned in any reply 10 to Wing & Kwong or in any reply to MTR. 11 Needless to say, there's no meeting notes of this 12 asserted meeting. In fact, Leighton says nothing about 13 these letters until they were urged by the solicitors 14 for the Commission. That request was made at 15 page CC6486, in an email, if I can ask you to pull that 16 up. 17 So "Jon Kitching": 18 "There was a series of correspondence between Jon 19 Kitching on behalf of Leighton and Wing & Kwong ... This 20 correspondence has not been dealt with by Henry Lai in 21 his witness statement." 22 So Jon Kitching is therefore asked as the project 23 director of Leighton to explain these letters. This was 24 the first time it was asserted by Leighton that there 25 was a meeting between Jon Kitching and Henry Lai about</p>
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<p>1 never invited to inspect the actual site and the actual 2 stitch joint. So he was invited to the site office. 3 CHAIRMAN: And was it said at that meeting that Wing & Kwong 4 would not be carrying out further work? 5 MR TSOI: No, it was not, because at that time Wing & Kwong 6 did not want to escalate the matter, as you would 7 understand, because the last payment has been held up, 8 so they are trying to say to Leighton, "Well, what's 9 happening?" Leighton are saying, "There's water 10 seepage, it must be your fault, so you are not getting 11 paid." That would be the evidence of Cheung Yick Ming, 12 when we come to that on Wednesday. 13 But the meeting between the senior management of 14 Wing & Kwong and Leighton don't really turn on anything 15 in terms of inspection, because that was not 16 an inspection meeting. That was just a meeting at the 17 office. 18 CHAIRMAN: Yes. Thank you. 19 MR TSOI: So, as I say, there were all these exchanges, and 20 Wing & Kwong expressly telling Leighton that it was 21 Henry Lai who instructed them to continue the work. So 22 one would ask: what does Henry Lai say about them, about 23 these allegations and letters that happened in February 24 last year? He says nothing. Nothing. Not until last 25 Friday, not until last Friday, in his third witness</p>	<p>1 the allegations made against Henry Lai. 2 To sum up, since February 2018 Henry Lai says 3 nothing about the allegations. He doesn't even mention 4 the letters in his first two witness statements. He now 5 claims, in his third statement, filed last Friday, that 6 he does not recall having such conversation with Ah Chun 7 at the site. Of course, he denies providing the 8 instruction to Ah Chun to continue the work knowing 9 about the defects. 10 One may think that Henry Lai's conduct is 11 extraordinary, because these were matters, as he is 12 eager to point out in his third statement, that went to 13 his professional integrity. He never said anything 14 until last Friday. And how convenient for him not to 15 recall. 16 In my submission, he's simply not telling the truth. 17 But it doesn't stop there, because we can recall that 18 amazingly he was the person who was meant to inspect and 19 check that the rebars have been connected to a coupler. 20 But he was the only person that didn't know the 1111 21 side of the interface used Lenton couplers, when Joe Tam 22 knew, when Chan Hon Sun knew. 23 Conveniently, in none of his statements, even the 24 last one, even the one filed last Friday, does he go 25 into the details of the inspections he did, because the</p>

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<p>1 only time he tried to do that, he was directly 2 contradicted by Chris Chan of MTR. 3 If I could take you to that, and perhaps we can go 4 to my opening for this purpose. I promise you this is 5 the last time I will look at my opening in writing, but 6 that's at part 16: 7 "Leighton's Henry Lai claims in his witness 8 statement: 9 I was the Leighton engineer responsible for 10 conducting the rebar fixing check with the MTRCL's 11 construction engineer for the 3 stitch joints and the 12 shunt neck joint. I confirm that I conducted those 13 checks with MTRCL's construction engineer (Chris Chan) 14 and no issues [arose] ..." 15 What does Chris Chan say? 16 "I was never asked to inspect the 3 stitch joints or 17 the ... shunt neck joint." 18 "Never". Only one of them could be telling the 19 truth, or neither are telling the truth. We don't know. 20 But in due course I will submit to the Commission that 21 Henry Lai's claim that he checked the rebars is just 22 false. 23 Conspicuously, though, even in his own statements, 24 Henry Lai does not claim that he checked the rebar 25 fixing. He does not claim that he went down there to</p>	<p>1 send a letter to Henry Lai saying, "This is a problem, 2 you know, there's simply not a match"? 3 MR TSOI: Not after Henry Lai has expressly said, "Just 4 screw them in as much as you can. It's not as if the 5 wall would collapse", because the reality of the 6 situation was the workers were all there. All Ah Chun 7 can do is tell Henry Lai, "Hey, these are the pointed 8 couplers, and if you get the order, just screw them in 9 as much as you can", and you get the assurance that if 10 they have to redo the work, Leighton will repay. Then 11 one would think, "What's the problem?", because in the 12 end one must remember these works would be inspected. 13 It's not as if Wing & Kwong could get away with it. 14 CHAIRMAN: Thank you. 15 COMMISSIONER HANSFORD: Can I just ask a follow-up to that. 16 Ah Chun was a sub-contractor -- 17 MR TSOI: Of Loyal Ease, yes. 18 COMMISSIONER HANSFORD: -- to Wing & Kwong. 19 MR TSOI: Yes. 20 COMMISSIONER HANSFORD: Ah Chun, is it the case that Ah Chun 21 didn't notify his employer, Wing & Kwong, of the 22 instructions that had been given to him by Leighton? 23 MR TSOI: He did not. I suspect what happened was this. 24 Once he received the order from Henry Lai, he then did 25 as he was told, he screwed them in as much as they can,</p>
<p>Page 126</p> <p>1 check that the rebars were completely screwed into the 2 couplers, because he knows he can't say that, because he 3 knows it's impossible. Square peg, round hole, or no 4 hole. 5 To conclude, of course, ultimately the Commission 6 may think that whether Henry Lai owns up to instructing 7 Wing & Kwong to do this, in the end may not assume great 8 importance, because his claim that he inspected the 9 works and the rebars were screwed in cannot be true. 10 What is inescapable is a fact, and it's the fact that 11 who did the inspection, if they did it properly, would 12 have seen the defects. 13 So one is really compelled to one of two 14 conclusions: one, that those who were supposed to 15 inspect the works did not inspect it at all or did not 16 inspect it properly; or those who were inspecting it 17 knew of the problem but yet allowed the concrete to be 18 poured. 19 But, either way, Wing & Kwong cannot be Leighton's 20 scapegoat for complying with Leighton's instructions. 21 That's all I wish to say at this stage. 22 CHAIRMAN: Can I just ask one final thing. I'm not trying 23 to put a lawyer's hat onto a bar fixer, but when there 24 was a realisation that the rebars wouldn't fit into 25 these particular couplers as they should do, did anybody</p>	<p>Page 128</p> <p>1 and then once it passed the inspection and no one raised 2 any issue, then there was no need for him to raise it 3 with Wing & Kwong. 4 But it's true, he did not raise it with Wing & Kwong 5 at the time, because he didn't know there was going to 6 be a problem. 7 COMMISSIONER HANSFORD: Thank you. 8 MR TSOI: I'm obliged. 9 MR PENNICOTT: Sir, I think we are going to hear from 10 Mr Khaw next, and I know Mr Khaw can't be here tomorrow, 11 so I guess we really need to press on, but if you want 12 to just take five minutes now, a very short break, and 13 then come back, to give the transcript writers a rest, 14 just five minutes. 15 CHAIRMAN: All right. 16 MR PENNICOTT: I hope that will give Mr Khaw enough time to 17 finish by 4.30/4.35. 18 CHAIRMAN: Mr Khaw, what do you think? 19 MR KHAW: When Mr Shieh told me this morning that he was 20 prepared to sell some time to other parties, I thought 21 I didn't need it because, at the same time, Mr Tsoi told 22 me he would only be ten minutes. So I'm really stuck in 23 the middle, but I will try my best to finish within 24 an hour. 25 MR PENNICOTT: Thank you very much.</p>

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<p>1 CHAIRMAN: Thank you very much. Good. Five minutes to 2 stretch the legs. Thank you. 3 (3.32 pm) 4 (A short adjournment) 5 (3.40 pm) 6 Opening submissions by MR KHAW 7 CHAIRMAN: Yes. 8 MR KHAW: Mr Chairman and Professor, I have just been 9 reminded that I actually have a team of four members, so 10 in case I can't finish, I will exercise some power to 11 delegate to my team members. 12 First of all, if I may, I will try to follow my 13 written opening. There is nothing I need to say much 14 about the overview, because it basically just sets out 15 the three issues that Mr Pennicott has told us. The 16 only remaining point is probably just a beauty contest 17 between the long form adopted by Mr Pennicott for the 18 three stitch joints and the short form that we have 19 adopted. 20 Mr Chairman, you can see from paragraph 1 that in 21 fact our "joint 1" is Mr Pennicott's 1111/1112 NSL 22 stitch joint; our "joint 2" is his 1112/1112 NSL stitch 23 joint; and our "joint 3" is his 1111/1112 EWL stitch 24 joint. We hope that will avoid any confusion arising 25 from different expressions.</p>	<p>1 That is the same as the milestone date in respect of the 2 remaining holistic proposal for part 1 of the Inquiry. 3 I will let Mr Chow deal with the holistic proposal and 4 also the verification proposal in due course. 5 As always, the government will continue to do its 6 best to assist the Commission and also update the 7 Commission on any new developments and new materials. 8 The structure of our opening consists of four main 9 parts. I believe section A and section B contain 10 details which have been in fact discussed quite 11 extensively in part 1 of the Inquiry, because section A 12 is an overview of the government's monitoring and 13 control mechanism. Section B is basically a recap of 14 our control mechanism for the SCL project, and also we 15 will identify the quality assurance and control measures 16 in respect of coupler installation and record-keeping. 17 Section C is about certain key events regarding 18 discovery of three issues. Mr Chairman and Professor, 19 I believe that most of the details regarding section C, 20 in relation to discovery of the three events, have 21 already been dealt with in Mr Pennicott's detailed 22 submissions. 23 If I may then invite the Commission to look at 24 paragraph 6, which deals with the entrustment agreement 25 and also our "check the checker" approach. Basically,</p>
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<p>1 The second and third issues have also been set out 2 in Mr Pennicott's submissions. 3 Paragraph 2: the government is highly concerned 4 about these issues and will do its utmost to alleviate 5 any concern over the issues of public safety and quality 6 of the works. Since the issues came to light, the 7 government has been taking steps to investigate the 8 matters. 9 Mr Pennicott has referred Mr Chairman and Professor 10 to a report compiled by Pypun, it's a recent report, it 11 has come out already, and I can give the Commission the 12 reference: GG3/1011. It's still under review by the 13 government. We will issue a short reply in writing 14 regarding the comments that government has on that 15 report. 16 Apart from that, the government has also set up 17 a taskforce consisting of members of the EAT, BD, 18 Highways Department and MTR to facilitate the delivery 19 of a verification proposal for the purpose of verifying 20 the as-constructed conditions, including quality, 21 workmanship, et cetera, for NAT, SAT and HHS, trying to 22 ascertain the structural integrity and also ensuring the 23 quality assurance of such structures. That proposal was 24 submitted to the Commission, and we agree that the 25 milestone date for the final report would be 30 June.</p>	<p>1 what we have stated here is that under the entrustment 2 agreement, the government undertook the funding of the 3 project, and the MTR was entrusted to procure, 4 coordinate, administer, manage and supervise the design 5 and construction of all necessary works and to bring 6 about the timely completion of the project. In return, 7 MTR would be paid a total project management fee of 8 approximately HK\$8 billion. 9 Apart from that, pursuant to the entrustment 10 agreements, MTRC is also responsible for devising and 11 implementing its own project management and control 12 processes for the SCL project. On this point, we have 13 been referred to the PIMS, and more importantly we know 14 that the PIMS actually contain some express provisions 15 regarding the RISC forms and also various hold points. 16 I believe those are the important matters arising from 17 the PIMS that we need to know for the purpose of part 2 18 of the Inquiry. 19 We all know about our "check the checker" approach. 20 Basically, paragraph 8 summarises that there are two 21 aspects to our "check the checker" approach. (1) is 22 regular and frequent interactions with MTR, and (2) is 23 engagement of an external M&V consultant, Pypun, whose 24 role is to monitor the activities and processes of MTR 25 and verify that they are carried out in accordance with</p>

<p style="text-align: right;">Page 133</p> <p>1 MTR's management and control procedures and in 2 compliance with the entrustment agreements. 3 I don't wish to talk about different levels of 4 meetings that we have discussed in part 1. 5 Regarding Pypun's role, perhaps it may be helpful if 6 I just highlight a few provisions of the M&V agreement, 7 just for the purpose of refreshing everyone's memory 8 relating to the terms defining the scope of the duties, 9 if I may. 10 If I could ask Chairman and Professor to turn to G9. 11 Sorry, it's part 1's bundle, G9. Page 7638, that's the 12 M&V contract. If I could just refer everyone to the 13 relevant provisions, which start from clause 3, on 14 page 7653. I'm starting from clause 3.1. It talks 15 about the objectives of the assignment. It says: 16 "The overall objective of the assignment is to 17 provide monitoring and verification services in relation 18 to the work undertaken by MTR ... during the 19 construction, testing and commissioning phase of the 20 project so as to provide assurance that the MTR's 21 obligations stated in the entrustment agreements for the 22 SCL advance works and construction phases have been 23 properly fulfilled. The monitoring and verification 24 shall focus on cost, programme and public safety of the 25 project."</p>	<p style="text-align: right;">Page 135</p> <p>1 the assessment of building submissions for compliance 2 with the BO and other relevant ordinances, regulations 3 and standards". 4 Then if I may also take the Commission to 7658, 5 which spells out the details of services to be provided 6 by the consultant. If I can first focus on 6.1.7. It 7 says: 8 "The main roles of the consultants is to appraise, 9 monitor and audit the activities/processes of the MTR, 10 and verify that these activities ... are carried out in 11 accordance with the MTR's management and control 12 procedures and in compliance with the 3 EAs for the SCL 13 design and site investigation ..." 14 So when it comes to MTR's management and control 15 procedure, one of course has to look at the PIMS, the 16 relevant provisions under that particular document. 17 "... and site investigation, advance works or 18 construction phases, and that value for money is 19 achieved through procedures that are complied with and 20 to recommend improvement measures whenever appropriate. 21 Hence, the consultants shall be proactive working 22 closely with the director's representative and the MTR." 23 Then 6.1.8, I believe that has been referred to in 24 Pypun's opening: 25 "The SCL project team of the MTR will be residing in</p>
<p style="text-align: right;">Page 134</p> <p>1 Then if we could turn to clause 4, it provides 2 a description of the assignment, which says: 3 "The assignment shall include but not be limited to 4 the following: 5 (a) a review of the documents ..." 6 And those documents would include construction 7 programmes, method statements, proposals, project 8 finance, submissions to project control group, public 9 safety plans, other key documents relating to SCL works. 10 Then (b) and (c) actually provide us with the 11 definition including the monitoring work and the 12 verification work. (b) is about: 13 "carrying out monitoring on MTR's works through 14 a review of the concerned project documents and 15 necessary site inspection and identification of and 16 providing advice on key issues, which bear significant 17 implications in respect of cost, programme and public 18 safety ..." 19 (c) is about verification: 20 "carrying out verification by conducting audits 21 (including process and/or technical audits) to the 22 activities/processes undertaken by the MTR, reporting 23 and the necessary follow-up work." 24 And (d) is about the BSRC team's work. It says: 25 "provision of professional services in respect of</p>	<p style="text-align: right;">Page 136</p> <p>1 the MTR's Hung Hom Station and the Citylink Plaza ... 2 The consultants' right of access to the project areas 3 and construction sites shall be subjected to the giving 4 of reasonable ... notice ... The consultants shall not 5 unduly interfere with the works of the MTR ..." 6 Then 6.1.9: 7 "For the avoidance of doubt ... monitoring and 8 verification shall cover all the work carried out by the 9 MTR during the construction, testing and commissioning 10 phase, including the E&M systems ... monitoring and 11 verification should be undertaken in parallel with the 12 MTR's construction, testing and commissioning programme 13 and in a manner which will minimise any delay or 14 interruption to the project activities." 15 Then perhaps the final bit can be found at the next 16 page, 7660, 6.2.4: 17 "The consultants shall be proactive throughout the 18 course of the assignment. For example, the consultants 19 shall identify, where necessary, any additional 20 information/documents from the MTR or other related 21 parties through the director's representative to 22 facilitate their work in this assignment; shall liaise, 23 where necessary, with MTR direct[ly] to get the 24 necessary information for the review of submissions to 25 the PCG meetings to meet the schedule of PCG meetings,</p>

<p style="text-align: right;">Page 137</p> <p>1 et cetera."</p> <p>2 Then we have 6.3 which deals with monitoring, and</p> <p>3 basically the monitoring plan shall be developed by the</p> <p>4 consultant, and that monitoring plan shall include the</p> <p>5 document review, site inspection, et cetera.</p> <p>6 Then 6.3.4 talks about a risk-based approach with</p> <p>7 focus on cost, programme and public safety, and shall</p> <p>8 carry out the following duties.</p> <p>9 Then if we can look at 7662. That deals with</p> <p>10 verification, and again the consultant, according to</p> <p>11 6.4.1, "may use risk-based approach to [verify]</p> <p>12 high-risk areas for forward planning of audits",</p> <p>13 et cetera.</p> <p>14 Then finally, if I may refer the Commission to 7665,</p> <p>15 clause 6.6.4 -- and I believe we have seen that a number</p> <p>16 of times; that is the scope of the BSRC team. It deals</p> <p>17 with compliance with building safety standards, and in</p> <p>18 particular (f) says:</p> <p>19 "conduct audit and surprise checks to construction</p> <p>20 sites on aspects of the structural safety and integrity</p> <p>21 of foundation, tunnel, superstructure ... for safety</p> <p>22 assurance and for compliance with the building safety</p> <p>23 standards, and examine the remedial proposals submitted</p> <p>24 by MTR if contravention is detected".</p> <p>25 So I do not wish to enter into any debate regarding</p>	<p style="text-align: right;">Page 139</p> <p>1 whether it covers leased land or unleased land.</p> <p>2 What is important is perhaps paragraph 16, which</p> <p>3 sets out certain requirements under both IoE and IoC.</p> <p>4 That is MTR is required to appoint a CP and also</p> <p>5 a registered geotechnical engineer, RC, et cetera.</p> <p>6 I think we have all gone through this in part 1.</p> <p>7 If I may then go to B3, "Quality assurance and</p> <p>8 control measures on site". This also has been covered</p> <p>9 in paragraph 83 of Mr Pennicott's team's opening. They</p> <p>10 have talked about the ITP, the inspection and test</p> <p>11 plans, agreed between MTR and also Leighton, which also</p> <p>12 sets out the requirements for the RISC forms, the hold</p> <p>13 points, et cetera. I don't wish to go into the details</p> <p>14 anymore.</p> <p>15 But in relation to paragraph 21, the two hold points</p> <p>16 which are particularly relevant to the present Inquiry</p> <p>17 will be subparagraphs (2) and (3), fixing of</p> <p>18 reinforcement and also the concrete pre-pour check.</p> <p>19 COMMISSIONER HANSFORD: Just on that, Mr Khaw, I note also</p> <p>20 subparagraph (4), "Post-pour check". Does anything turn</p> <p>21 on that?</p> <p>22 MR KHAW: For the time being, I cannot see anything which</p> <p>23 turns on this.</p> <p>24 COMMISSIONER HANSFORD: Okay.</p> <p>25 MR KHAW: Most of the issues relate to (2) and (3) only,</p>
<p style="text-align: right;">Page 138</p> <p>1 the scope of duties of Pypun today, but I hope that the</p> <p>2 relevant provisions will set the scene when a necessary</p> <p>3 discussion is required in due course.</p> <p>4 Then if I can turn to our paragraph 11. It talks</p> <p>5 about Pypun's risk register, which was created and</p> <p>6 updated by reference to be MTR's risk register,</p> <p>7 et cetera.</p> <p>8 Then B2, regarding building safety control</p> <p>9 mechanism. We all know that so far as this project is</p> <p>10 concerned, there are two kinds of instruments that</p> <p>11 govern the building works. One is an IoE, the other is</p> <p>12 an IoC. Chairman and Professor may recall that in</p> <p>13 part 1, where we introduced IoC and IoE, we talked about</p> <p>14 the fact that the project actually covers building works</p> <p>15 on both leased land and also government land, unleased</p> <p>16 land. So this is our paragraph 13(1).</p> <p>17 Insofar as the project covers building works on</p> <p>18 leased land, that is governed by the BO, whereas if the</p> <p>19 building works are on government/unleased land, then it</p> <p>20 will be exempted from section 41(1) of the Buildings</p> <p>21 Ordinance. But in any event, whether one applies the</p> <p>22 IoE or IoC doesn't really matter, because the building</p> <p>23 safety standards are essentially the same. That is our</p> <p>24 paragraph 14, so we don't need to get bogged down with</p> <p>25 the niceties about the two kinds of instrument, and also</p>	<p style="text-align: right;">Page 140</p> <p>1 yes.</p> <p>2 COMMISSIONER HANSFORD: Thank you.</p> <p>3 MR KHAW: 22 and 23 actually deal with the importance of the</p> <p>4 hold points and also the RISC forms. The RISC forms</p> <p>5 have to be submitted by Leighton in respect of each hold</p> <p>6 point and MTR is required to inspect and sign off the</p> <p>7 works carried out, et cetera.</p> <p>8 Then 23: had MTR and Leighton complied with the</p> <p>9 aforesaid requirements under PIMS and ITPs, records of</p> <p>10 RISC forms for all the works carried out at NAT, SAT and</p> <p>11 HHS should have been retained as part of the</p> <p>12 construction records.</p> <p>13 Now, 24 -- I wish to just perhaps deal with one</p> <p>14 point mentioned by Mr Pennicott earlier. 24 is this:</p> <p>15 according to the accepted drawings, ductility couplers</p> <p>16 were used at the diaphragm walls and slabs in the NSL</p> <p>17 area of SAT. The relevant quality assurance and control</p> <p>18 requirements for installation of ductility couplers are</p> <p>19 contained in the SSP, quality supervision plan and</p> <p>20 quality assurance scheme.</p> <p>21 So according to the BD's case, when ductility</p> <p>22 couplers were required, according to the accepted</p> <p>23 drawings, then obviously the QSP would apply, but if</p> <p>24 ductility couplers were not required in the accepted</p> <p>25 drawings, then there is another set of supervision</p>

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<p>1 requirements which are applicable. But, as Mr Pennicott 2 has pointed out, the level of supervision required under 3 that set of regulations in fact is lower than the one 4 required under the QSP. 5 We have talked about the QSP probably ad nauseam, 6 but we certainly will not forget full-time continuous 7 supervision and things like that. 8 Perhaps just one point I should pick up here, in 9 relation to paragraph 24. Regarding SAT, we understand 10 from Leighton that their position is that no ductility 11 zones in the original design or the working drawings at 12 the time of the construction of the SAT existed. In 13 fact, no couplers were used for the vertical 14 reinforcement connection within the D-walls at the SAT. 15 That is their position, and in fact that is stated at 16 paragraph 44 or their opening. In fact the same old 17 point they were trying to run for part 1 of the Inquiry, 18 that is no ductility requirements whatsoever. 19 Again, on this issue, if I can just refer 20 Mr Chairman and Professor to three accepted drawings 21 regarding the SAT, which may actually give us some 22 concrete information regarding ductility requirements. 23 If I can first ask the Secretariat to turn up part 1 24 bundle H2/440. Under the right part of this document -- 25 further down a bit -- under "Notes on diaphragm wall</p>	<p>1 contract 1112. 2 COMMISSIONER HANSFORD: Sorry, Mr Khaw. Can you remind me, 3 "QAS"? 4 MR KHAW: Quality assurance scheme. 5 COMMISSIONER HANSFORD: Thank you. Sorry, I interrupted. 6 MR KHAW: Then paragraph (2): the Lenton brand couplers 7 require tapered threaded rebars to connect, whereas the 8 BOSA brand couplers require parallel threaded rebars to 9 connect thereto. 10 We have heard this from both Mr Pennicott and 11 I think perhaps Mr Tsoi as well. 12 Leighton, being the RC for contract 1112, is 13 responsible for connecting threaded end of rebars to the 14 Lenton couplers cast in place under contract 1111. In 15 doing so Leighton should ensure that appropriately 16 threaded rebars are being used and the same being 17 installed under proper supervision in compliance with 18 the requirements set out in the acceptance letter. 19 Now, 28 actually deals with an allegation regarding 20 mismatch of materials. 21 CHAIRMAN: Sorry to interrupt. Number (3), "Leighton being 22 the RC [the registered contractor] for contract 1112 is 23 responsible" -- that you take from where? What is the 24 origin of that? Just so that ... 25 MR KHAW: I believe it's not in dispute that Leighton is the</p>
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<p>1 couplers", we can see "Ductility zones". In fact that 2 is one of the drawings for the SAT. 3 If we can scroll down a little bit, we can see 4 "Ductility couplers accepted by BD", et cetera. Then if 5 we can go further down, we can see that this is the 6 drawing for -- it's general notes for Hung Hom Station, 7 et cetera. 8 Perhaps another drawing appears at H4/840. The 9 title says, in the box at the bottom, "Coupler schedule 10 for NSL SAT area". If we go up a bit, we will see 11 "Typical ductility coupler zones for D-wall for SAT". 12 So that actually shows that according to the accepted 13 drawings, ductility coupler zones were specifically 14 provided in the drawings. 15 Perhaps I should then focus on paragraph 28. Sorry, 16 I should start with 27 first. In respect of the 17 interfacing works between contract 1111 and 18 contract 1112: 19 (1) CP is required to submit a QAS of the proposed 20 coupler's manufacturer to BO team prior to the 21 commencement of coupler works. Under contract 1111, the 22 CP has submitted to BO team a QAS for "Lenton type A2" 23 coupler assembly on 30 November which covered the 24 couplers to be used on the contract 1111 side of the 25 stitch joints and shunt neck joint at the interface with</p>	<p>1 registered contractor for contract 1112. 2 CHAIRMAN: Yes, and is therefore responsible for -- I'm with 3 you, yes. 4 MR KHAW: Yes. So, basically, it's about the connection 5 between -- 6 CHAIRMAN: Yes, I appreciate that. I just wanted to 7 understand the source. So it's -- yes, you are simply 8 saying, "You are responsible" ... 9 COMMISSIONER HANSFORD: I think what it's saying is anything 10 on the 1112 side of the interface boundary is Leighton's 11 work. 12 CHAIRMAN: Okay. 13 COMMISSIONER HANSFORD: And anything on the 1111 side is 14 Gammon's. 15 CHAIRMAN: Gammon's. I've got that. 16 Thank you very much. 17 MR KHAW: We try to further elaborate this point in 18 paragraph 28 by saying, first of all, according to the 19 accepted drawings for the works at the interface between 20 contract 1111 and contract 1112, the rebars to be 21 supplied and installed by Leighton under contract 1112 22 are to be connected to the couplers cast in place by the 23 contractor of contract 1111, ie Gammon. 24 Then, for the purpose of contract 1111, the 25 specifications and requirements for Lenton coupler</p>

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<p>1 assembly were provided in the QAS submitted by MTR and 2 accepted by BO team. Insofar as contract 1111 is 3 concerned only one type of coupler has been accepted by 4 BO team for the rebar connections at the interface. 5 Under normal circumstances, Gammon and Leighton 6 would have knowledge of the technical specification of 7 the coupler assembly prior to construction of joint 1 8 and joint 3. MTR would definitely have such knowledge 9 as the material submission for Lenton was made by MTR. 10 In other words, in order to achieve proper 11 connection to the Lenton couplers installed at the 12 interface by Leighton, all Leighton has to do is to 13 ensure that the appropriate threaded rebars are used 14 such that they can be fitted into the Lenton couplers. 15 So that's all that is required by Leighton. 16 COMMISSIONER HANSFORD: Sorry, Mr Khaw. Does that 17 contradict the point we saw in the interface meeting 18 minutes about T40 bars, where it said that the T40 bars 19 would be BOSA? So what this is saying is that all of 20 the 1111 couplers are Lenton. 21 MR KHAW: Yes. 22 COMMISSIONER HANSFORD: But I thought the interface minutes 23 told us that they would all be Lenton, except 24 40 millimetre ones. I'm still confused on that point. 25 MR KHAW: Yes. In fact, according to our understanding, for</p>	<p>1 stitch joints at NAT on 12 March 2018. That is 2 paragraph 32 of our written opening. 3 Then Mr Pennicott also has covered the report 4 submitted by MTR regarding the stitch joint, the water 5 seepage problem. 6 Perhaps I will just add a few letters issued by the 7 government. One can be found at -- it's the part 2 8 bundle, DD1, page 154. It's a letter from the RDO of 9 Highways Department, dated 28 March 2018. Basically RDO 10 wrote to MTR, expressing grave concern on the defective 11 works found at stitch joints, and we stated our position 12 that RDO was not informed of the defects and we were 13 only made known of the incident through a media enquiry 14 received on 12 March. 15 Then we continued to ask MTR to provide further 16 information and advise on remedial works which would 17 need to be done. 18 Another letter appears at DD180. Again, it's about 19 the stitch joints. Under (i) we asked MTR to clarify 20 how inspection, supervision and monitoring of the 21 construction of the defective stitch joints had been 22 carried out on site to fulfil the corporation's 23 procedures and requirements. 24 We also asked MTR to advise the review outcome of 25 the project management procedures, et cetera.</p>
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<p>1 the interface, no 40 millimetre diameter couplers were 2 used. 3 COMMISSIONER HANSFORD: In that case, I'm confused as to the 4 point of that minute in the interface meeting. It seems 5 to be irrelevant. 6 MR KHAW: I will have to double-check that point, but 7 according to our understanding, no 40 millimetre 8 diameter couplers were used for the interface. 9 COMMISSIONER HANSFORD: Okay. That will suffice. 10 MR PENNICOTT: On both sides. 11 COMMISSIONER HANSFORD: Sorry, Mr Pennicott says "on both 12 sides". Clearly on one side. You can't have one 13 diameter on one side of the interface and one on the 14 other in the design. 15 MR PENNICOTT: Quite. 16 MR KHAW: That takes me to the last point, point (5): on the 17 other hand, the BOSA couplers submitted by MTR and 18 accepted by BO team for the purpose of contract 1112 19 have nothing to do with the coupler installation at the 20 interface with contract 1111. 21 If I may then go to part C, which deals with the key 22 events regarding the discovery of the three issues. 23 I believe, in relation to issue 1, most of the details 24 have been covered by Mr Pennicott, and it suffices to 25 say that we first knew about the alleged defects at the</p>	<p>1 In relation to issue 2, issue 2 actually came to 2 light somewhat suddenly, when we were dealing with 3 issue 1, because according to paragraph 39 of our 4 opening, the MTR on 14 May submitted to the RDO 5 a remedial proposal for the shunt neck joint. But this 6 issue had not been canvassed earlier, so this was the 7 first time that this issue was brought to light, and 8 then there was a remedial proposal. 9 42: the government is still considering and 10 commenting on the latest remedial proposal submitted by 11 MTR, under cover letter dated 29 April. So we are still 12 in the course of commenting on the latest remedial 13 proposal. 14 That said, what remains unclear for both issue 1 and 15 issue 2 is the extent of such non-conformances, and the 16 reason why they have occurred despite the implementation 17 of the PIMS, et cetera. In particular, why was the 18 issue of improper connection between rebars and couplers 19 at the stitch joints and the shunt neck joint not 20 discovered and rectified during the hold-point 21 inspections conducted jointly by MTR and Leighton? 22 These are matters which will fall for further 23 discussion. 24 Regarding the lack of RISC forms, Mr Chairman and 25 Professor, according to the chronology, we were told</p>

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<p>1 about the missing RISC forms by way of a letter dated 2 20 December 2018, but at that time the letter was 3 confined to the lack of RISC forms relating to NAT, even 4 though MTR expected that there would be similar issues 5 for SAT, but there was no mention at that time regarding 6 HHS. 7 46: MTR told us in January that about 40 per cent of 8 the RISC forms for NAT were missing, but failed to 9 provide the data for SAT and HHS. Then we continued to 10 ask MTR to provide detailed accounts of the insufficient 11 records in all three areas. 12 47 is to address just one, perhaps, minor point. 13 That is, in one of the letters by MTR, that is a letter 14 dated 26 January, MTR actually referred to certain NCRs 15 which had previously been listed and issued to HyD. But 16 in fact, at that time, what the government was provided 17 was only a list of NCRs. And also, according to the 18 list, the issue of missing RISC forms were considered 19 low-risk and without any safety impact. 20 I don't wish to turn up the list but they can be 21 found at BB3/1168 onwards. That contains the list of 22 the NCRs which talked about the missing RISC forms. 23 But, as I said, they were all considered low-risk, 24 non-works related, and also with no safety impact at 25 that time.</p>	<p>1 CHAIRMAN: I am with you. So it's the remedial proposals 2 you are happy with? 3 MR KHAW: Yes. 4 CHAIRMAN: Good. And those remedial proposals have been 5 completed, or the works have been completed? 6 MR KHAW: Yes. 7 CHAIRMAN: So, all being well, that should be safe, but 8 there are -- you've got your verification procedure to 9 go through? 10 MR KHAW: Yes. For the time being, all we know is that the 11 remedial proposal which has been implemented has 12 actually caused the water seepage to stop. But 13 of course, when it comes to structural safety, then we 14 will still need investigation in the verification 15 proposal to further verify the structural integrity of 16 the stitch joints. 17 CHAIRMAN: Yes. 18 MR KHAW: Regarding issue 2, the government is still 19 considering and commenting on the latest remedial 20 proposal submitted by MTR, and it is observed that there 21 are some photographs showing non-complying coupler 22 assemblies at a few locations, the extent of which is 23 still unknown. 24 Regarding issue 3, since we were only informed of 25 the substance and extent of the issue of missing RISC</p>
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<p>1 49 is about a letter issued by the Highways 2 Department on 1 February, requesting MTR to provide 3 an incident report and also a holistic proposal. As 4 I said, the verification proposal is finally agreed 5 between the parties. 6 In relation to the present status of the three 7 issues, at paragraph 54: insofar as issue 1 is 8 concerned, remedial works proposed by MTR have been 9 approved by the Highways Department, and they have been 10 completed in July 2018. As for the recently observed 11 water seepage at the stitch joints, the Highways 12 Department noted that immediate action had been taken by 13 applying injection grout and would continue to closely 14 monitor the situation. But in relation to joint 2, we 15 say we still don't know how extensive and in what way 16 the coupler connections at the stitch joints were not in 17 compliance with -- 18 CHAIRMAN: Sorry, just so I understand paragraph 54(1) -- as 19 far as issue 1 is concerned, government at this stage is 20 reasonably satisfied as to the issue of safety? 21 MR KHAW: The issue of safety will have to be further 22 explored in the verification proposal. 23 CHAIRMAN: Yes, I appreciate that. 24 MR KHAW: Insofar as the remedial proposals are concerned, 25 so far we have accepted the remedial proposals.</p>	<p>1 forms and also the lack of material testing records in 2 about December 2018 and January 2019, we have been 3 asking for information repeatedly from MTR. Up to the 4 present moment, the extent of the problem is yet to be 5 ascertained. 6 We have some percentage, some figures showing the 7 percentage of the missing RISC forms that have been 8 provided by MTR. However, we still don't know how the 9 figures have been arrived at. 10 As to the deviations in design, again -- 11 CHAIRMAN: Sorry, the Pypun report/audit, does that go to -- 12 MR KHAW: That goes to the missing RISC forms. 13 CHAIRMAN: That's right. 14 MR KHAW: In fact, there are findings in Pypun's latest 15 report, but as I said earlier that is still under review 16 by the government and we will try to produce a short 17 reply consisting of our comments later. 18 CHAIRMAN: Thank you very much. 19 MR KHAW: Finally, (3)(b) is about deviations in design. 20 What the BD said is that technically the use of couplers 21 as an alternative splicing method to the lapping of 22 rebars is acceptable, provided that the coupler 23 assemblies were properly installed as per the 24 requirements specified by the BO team during 25 consultation submission and the requirements of the</p>

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<p>1 material supplier.</p> <p>2 Well, again, we are facing a situation where, since</p> <p>3 we were not consulted, we were not able to deal with the</p> <p>4 deviations earlier. However, one part of the</p> <p>5 verification proposal will aim at dealing with</p> <p>6 deviations.</p> <p>7 So, accordingly, the issues that have to be</p> <p>8 investigated include: (i) how this issue could have gone</p> <p>9 undetected at the time of construction; (ii) the reason</p> <p>10 for the lack of clear records for such deviated works;</p> <p>11 and (iii) whether the coupler assemblies have been</p> <p>12 properly installed.</p> <p>13 That takes me to perhaps a discussion on the</p> <p>14 progress of the holistic proposal which started in</p> <p>15 part 1 of our Inquiry and also the verification proposal</p> <p>16 for this part of the Inquiry. I will let Mr Chow deal</p> <p>17 with the final part of our opening.</p> <p>18 Perhaps, if we don't have enough time today, Mr Chow</p> <p>19 can deal with it tomorrow morning.</p> <p>20 CHAIRMAN: All right. Good. Thank you very much, Mr Khaw.</p> <p>21 We are at 4.30 now. I think you're likely to be</p> <p>22 a little bit more than quarter of an hour, Mr Chow.</p> <p>23 MR CHOW: Yes. For some reason, I always have the luck of</p> <p>24 having very little time left for my submission. You</p> <p>25 will recall that last time --</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>2</p> <p>3 Opening address by MR PENNICOTT2</p> <p>3</p> <p>4 Opening submissions by MR TSOI78</p> <p>4</p> <p>5 Opening submissions by MR KHAW129</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 CHAIRMAN: You can start tomorrow with a whole day ahead of</p> <p>2 you!</p> <p>3 MR CHOW: I'm happy to start tomorrow, sir.</p> <p>4 CHAIRMAN: All right. Good. Thank you very much indeed.</p> <p>5 So we will adjourn then until tomorrow morning at</p> <p>6 10 o'clock.</p> <p>7 MR PENNICOTT: Sir, can I just mention, before we finish --</p> <p>8 we have asked the MTRC to supply the Commission with</p> <p>9 some samples of the Lenton couplers, and they've kindly</p> <p>10 agreed to do that and we hope to have them with us</p> <p>11 tomorrow.</p> <p>12 CHAIRMAN: Good. Thank you very much.</p> <p>13 (4.29 pm)</p> <p>14 (The hearing adjourned until 10.00 am the following day)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	