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| <p>1 Monday, 3 June 2019 2 (10.01 am) 3 MR TSOI: May it please you, Chairman. May it please you, 4 Professor. May I now call Mr Cheung Yick Ming for Wing 5 & Kwong? 6 CHAIRMAN: Certainly. 7 MR CHEUNG YICK MING, BEN (affirmed in Cantonese) 8 (All answers given via simultaneous interpreter 9 except where otherwise specified) 10 Examination-in-chief by MR TSOI 11 MR TSOI: Mr Cheung, can you tell us your role in Wing 12 & Kwong? 13 A. You mean my role in the company? I am responsible for 14 things relating to contract and measurement. I also 15 manage work areas relating to contracts or otherwise. 16 Q. Over the weekend, on 1 June, were you served with the 17 latest witness statement from a Mr Jon Kitching from 18 Leighton? 19 A. Yes, I have read it. 20 Q. Have you had a chance to read that? 21 A. Yes, I have read it. 22 Q. In light of reading that, can I now take you to your 23 witness statement, which we can find at page EE59. From 24 page EE61 onwards, I think you set out the various 25 contracts that you recall signing at the time?</p> | <p>1 Now, if the Commission tells me now that this is not 2 really an issue that needs to be resolved and there is 3 no need for evidence to be called for it, then I'm very 4 happy for Mr Cheung to explain it. But since the issue 5 has been raised -- I am really in your hands, Chairman. 6 CHAIRMAN: All right. Just remind the two of us, what is 7 the issue that you believe has been raised? 8 MR TSOI: Essentially, there are two versions of the 9 sub-contract, at least, because what happened was 10 Mr Cheung signed a version, provided it to Leighton, and 11 then that variation was lost, and then there was another 12 version that was again signed -- sorry, not by Mr Cheung 13 but signed by Wing & Kwong -- and now we have the final 14 version which has been produced by MTR. 15 But in terms of the toing and froing as to when who 16 signed the contract, that's not an issue for us, we now 17 have no issue with that and we don't see a problem with 18 it, because we accept that we did the rebar fixing work 19 anyway for the NAT. So I'm not sure if now any issue 20 arises as to who signed the contract when, and who had 21 a copy when. 22 CHAIRMAN: Perhaps, Mr Pennicott -- 23 MR PENNICOTT: Yes. 24 COMMISSIONER HANSFORD: I agree. I was going to suggest the 25 same.</p> |
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| <p>1 A. Correct. 2 Q. In light of reading Mr Jon Kitching's statement, have 3 you got anything to say about what you said in your 4 witness statement? 5 A. Yes. Can I please submit some documents here? Because, 6 after reading Jon Kitching's statement, we can now 7 sequence the various contracts. Can I please show some 8 documents? 9 MR TSOI: If it pleases the Commission? 10 CHAIRMAN: Yes, certainly. 11 A. Now I will produce the documents. 12 CHAIRMAN: What are the -- 13 MR TSOI: If I can explain this way, Mr Chairman. As 14 Mr Pennicott raised in the opening, we hope this is not 15 an issue, because we do have two or three versions of 16 the Wing & Kwong and Leighton sub-contract. Mr Cheung 17 has of course provided information and his evidence in 18 the witness statement. The latest witness statement 19 from Jon Kitching last week was in relation to this 20 issue. 21 From my point of view, this is not an issue which 22 really concerns the Commission, but because we received 23 the witness statement from Mr Jon Kitching last week, it 24 may be that Mr Cheung has more explanation about this 25 issue.</p> | <p>1 MR PENNICOTT: Sir, my understanding of the position, or 2 really the issue that may have been of some concern to 3 the Commission is that there was a suggestion in 4 Mr Cheung's witness statement that he had signed 5 a particular version of the sub-contract, sent it back 6 to Leighton, had not received a signed version back; at 7 a later point in time, chased Leighton for the contract; 8 at that point in time, the contract was sent back to 9 Wing & Kwong; it was signed and sent back to Leighton. 10 However, as I understood the evidence in Mr Cheung's 11 statement, it wasn't until requests were made for 12 witness statements in this Inquiry, and that second 13 contract was looked at in more detail, and at that point 14 it was realised that the two contracts were different in 15 terms of the amount of work and areas of work that the 16 contracts covered. 17 I think the inference that I think we were being 18 asked to draw was that somehow Leighton had sort of 19 slipped in the additional items of work. I don't know 20 whether that was the inference we were being asked to 21 draw, but that's the way I read it, that it was being 22 inferred -- one doesn't want to put it too highly -- but 23 somehow Leighton had slipped in this additional work in 24 the second version of the contract, without telling 25 Mr Cheung or Wing & Kwong; because, as I understood it,</p> |

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| <p>1 Wing & Kwong accepted that so far as the NAT rebar 2 fixing was concerned, they did that work, but under 3 essentially a series of variations to the original 4 contract, not that that work was in the contract from 5 the outset. 6 Now, that seems to me to be where it lies, or did 7 lie, sorry, until we had Mr Kitching's witness statement 8 late last week. Mr Kitching now says, as I understand 9 it -- well, he doesn't accept that version of events. 10 What Mr Kitching said happened was that during the 11 tender process, a document known as tender addendum 12 no. 2 was issued on 20 October 2014, and we've got that 13 tender addendum no. 2. The following day, on 14 21 October, Wing & Kwong submitted a revised tender 15 against that tender addendum no. 2, and that tender 16 addendum no. 2 included all of the work, the HHS and the 17 NAT. 18 So there was no question of any variation at a later 19 date, and indeed the second version that Leighton sent 20 back, upon request, accurately reflected all the work 21 that was in tender addendum no. 2. 22 We don't have, as I understand it, the quotation of 23 21 October 2014. The inference is that we know it 24 exists because it's referred to in the letter of intent 25 that Leighton sent to Wing & Kwong on 28 November 2014.</p> | <p>1 Mr Cheung, in his witness statement, raised the question 2 described by Mr Pennicott as to "different versions" of 3 the sub-contract between Leighton on the one hand and 4 Wing & Kwong on the other. 5 Leighton's version of the Wing & Kwong contract 6 contained 23 items, which included the NAT works. 7 CHAIRMAN: Yes. 8 MR SHIEH: Wing & Kwong, through Mr Cheung, produced 9 a version of the contract signed earlier on in 2015 10 which, according to Wing & Kwong, did not cover the NAT 11 works, and which covered actually a lesser number of 12 works, I think 13 items. And there were, as 13 Mr Pennicott suggested -- the language suggested or 14 insinuated that somehow Leighton had slipped in -- it 15 didn't say so explicitly but it may be implicitly -- 16 that it was somehow wrong for Leighton to somehow sneak 17 in additional items of work subsequently. 18 Leighton, through Mr Kitching, produced documents 19 which, as Mr Pennicott said, showed Leighton's version 20 of events. Significantly, what Mr Pennicott has not 21 mentioned is that in Leighton's computer system, there 22 is actually a scanned version of a contract signed by 23 Wing & Kwong which contains the 23 items of work, which 24 included NAT, which on Leighton's case showed that there 25 is nothing illicit about it. The contract between Wing</p> |
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| <p>1 So it starts off by saying, "This relates to your tender 2 dated 21 October 2014", but we don't have that tender, 3 as I understand it, unless Mr Cheung is about to produce 4 it. As I understand it, that's possibly the only 5 missing document, on my analysis, that we don't yet 6 have. I may be wrong. 7 But that's really where we are. At the end of the 8 day, it probably doesn't matter to the Commission as to 9 precisely what happened in terms of the toing and froing 10 of the tenders originally and then the contract 11 subsequently. Certainly, I suppose, just for peace of 12 mind, it would be nice to actually nail it and get it 13 agreed between Wing & Kwong and Leighton, so that there 14 is no disagreement between Mr Cheung on the one hand and 15 Mr Kitching on the other. Just for general peace of 16 mind perhaps, we could get it sorted out. But I don't 17 think it ultimately matters as to precisely what 18 happened. 19 CHAIRMAN: Can I ask Leighton's counsel -- sorry, 20 Mr Shieh -- do you intend to make an issue or debate the 21 issue of the terms of the sub-contracts? Do you 22 consider that to be relevant to what you wish to dealt 23 with in this tribunal? 24 MR SHIEH: It rather depends on what Wing & Kwong wishes to 25 make of it, because the issue first arose because</p> | <p>1 & Kwong and Leighton had always contained 23 items, 2 which included the NAT works, and the version Mr Cheung 3 produced, we could only think, is only an earlier draft 4 of a contract which did not materialise into a signed 5 contract. 6 Now, all that would be by the by if Wing & Kwong 7 doesn't actually raise any issue or insinuation that 8 somehow we have illicitly slipped anything in, because, 9 as Mr Tsoi accepted, as a matter of fact Wing & Kwong 10 did perform the NAT works, albeit they say not according 11 to the contract but by way of separate instructions -- 12 which is actually a very long way of saying it all 13 depends on what Mr Tsoi wishes to make of this point 14 concerning "two different versions" of contract, because 15 if it is suggested or if it is intended to invite the 16 Commission to make any comments or findings concerning 17 Leighton's conduct, then it would be something that 18 Leighton would wish to set the record straight. 19 CHAIRMAN: Mr Tsoi, what documents are going to be put 20 forward? Because Mr Pennicott has said and my 21 co-Commissioner indicates that often caution is the 22 better side of matters; we can sew it up. 23 MR TSOI: Perhaps I can make clear Wing & Kwong's situation 24 We do not make any insinuation that there has been any 25 trickery of a sort, or slipping in a contract, because</p> |

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| <p>1 what happens is -- if the Commission wants to heard 2 evidence from Mr Cheung, that's fine. His recollection 3 at the time he wrote the statement -- because he never 4 signed the contract, you see -- so his recollection was 5 that he saw two versions and he didn't know the first 6 version was not the same as the other one. 7 But having read Mr Jon Kitching's latest witness 8 statement, I think he realises that his recollection may 9 actually be mistaken. That's all. So there's no 10 insinuation whatsoever that -- 11 CHAIRMAN: Mr Pennicott -- sorry to interrupt -- what was 12 the document that you said would be of benefit? 13 MR PENNICOTT: Sir, whether it's of benefit or not, I'm not 14 sure. 15 CHAIRMAN: Well, it would tie things up and help you. 16 MR PENNICOTT: It's the Wing & Kwong tender of 21 October 17 2014. That's the document that Leighton have not been 18 able to produce. 19 CHAIRMAN: Do we have that? 20 MR TSOI: I'm not too sure we have that. 21 CHAIRMAN: Perhaps the witness could be asked if he has 22 that. 23 A. I think we have it, at least in the witness statement. 24 CHAIRMAN: All right. Among the papers you have with you, 25 do you have your tender of 21 October 2014?</p> | <p>1 CC11/6747, which are the new documents attached to 2 Mr Kitching's witness statement, or some of the 3 documents, this is the letter of intent that Leighton 4 wrote on 28 November 2014. 5 You can see in the first line: 6 "We refer to your quotation ref [given] addendum 7 no. 2 dated 21 October 2014 ..." 8 And Mr Kitching says in his latest witness statement 9 he has been unable to find that quotation. And that's a 10 small point, as I understand it. 11 So my understanding at the moment -- I'll be correct 12 me if I am wrong -- but the document that Mr Cheung has 13 referred us to at EE180 is the earlier quotation, not 14 the one of 21 October. 15 CHAIRMAN: All right. As interesting as this may be -- 16 MR PENNICOTT: Yes, quite. 17 CHAIRMAN: -- Mr Tsoi indicates that as far as matters 18 before this tribunal are concerned, he doesn't intend to 19 seek to use any of the contractual documents for any 20 material purpose. Mr Shieh has already put the position 21 of Leighton. And, Mr Pennicott, you don't suggest that 22 it's critical that this matter be resolved first; in 23 short, that it's collateral to the issues that are 24 before this tribunal? 25 MR PENNICOTT: It is very much collateral, yes, sir.</p> |
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| <p>1 A. Yes, it's in this witness statement. 2 MR TSOI: In the witness statement? 3 A. (In English) In the witness statement. 4 Q. Can you take us to it? 5 A. I found it in the witness statement. It's EE180, 6 starting from EE181. 7 CHAIRMAN: Mr Pennicott, an initial reconnaissance suggests 8 what to you? 9 MR PENNICOTT: That it doesn't have a date on it. 10 A. There is a cover sheet in EE230. 11 MR PENNICOTT: No. That is the point. We know there was 12 a tender of 26 September 2014. What I understand 13 Leighton to be saying -- and you will see, if you look 14 at EE230, that is a quotation or a tender in relation to 15 addendum no. 1. One picks that up from the title, the 16 caption. Do you see the "Addendum no. 1"? 17 CHAIRMAN: Yes. 18 MR PENNICOTT: I am bound to say, I had assumed that the 19 document at EE180 went with this letter, and that's the 20 tender of 26 September 2014. 21 My understanding of Mr Kitching's position is that 22 three or four weeks later, on 20 October 2014, Leighton 23 issued tender addendum no. 2, 20 October, and as 24 a consequence of which Wing & Kwong submitted a new or 25 fresh quotation or tender; because if you look at</p> | <p>1 CHAIRMAN: Good. If anything arises then we will deal with 2 it. 3 MR TSOI: Of course. 4 CHAIRMAN: And obviously anything -- the fact that we are 5 omitting it here by way of materiality doesn't mean that 6 it's not material in other tribunals at other times. 7 Good. Thank you. 8 MR TSOI: Of course. With that in mind, with the caveat 9 that paragraphs 9 to 30 of your witness statement talk 10 about the contracts, excluding that part, excluding that 11 part, do you wish to adopt the witness statement as your 12 witness statement before the Commission today? 13 A. Right. 14 Q. Have you ever testified in a court before? 15 A. No. No. 16 Q. Other counsel will now ask you questions, so just try 17 your best to answer them; all right? 18 A. Yes. 19 Examination by MR PENNICOTT 20 MR PENNICOTT: Mr Cheung, good morning. 21 A. (In English) Good morning. 22 Q. My name is Ian Pennicott, I'm one of the counsel to the 23 Commission. I'm going to ask you a few questions first, 24 and then some of the other counsel behind me may take 25 the opportunity of asking you some questions as well,</p> |

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| <p>1 and then when that's finished Mr Tsoi will also have the 2 opportunity to ask you any further questions he wishes 3 to do so. 4 At any time during the process, the Chairman or the 5 Commissioner may also ask you some questions. 6 A. (In English) Okay. 7 Q. Unfortunately, in a moment, Mr Cheung, but for 8 a slightly different purpose, we will need to look at at 9 least some of the chronology of your quotations and your 10 tenders, but for a different purpose, but at least it 11 might help to clarify what actually happened. 12 First of all, however, Mr Cheung, can I ask you 13 this: are you actually -- you describe yourself as 14 a "quantity surveyor manager of Wing & Kwong". Are you 15 a qualified quantity surveyor? 16 A. No. 17 Q. Do you have any professional qualifications? 18 A. No. 19 COMMISSIONER HANSFORD: Mr Cheung, you might find it more 20 comfortable if you put the headphones on properly, but 21 that's entirely up to you. 22 WITNESS: (In English) Okay. 23 MR PENNICOTT: As I understand it, Mr Cheung, during the 24 course of the project that we are concerned with, you 25 were office-based and you were not involved in the site</p> | <p>1 Q. And that was your primary reason for visiting the site? 2 Presumably that was visiting, what, Leighton's site 3 office? 4 A. Right. 5 Q. And when you were there, did you go out on site and look 6 at the works going on, or did you just go to the site 7 office? 8 A. Sometimes, before I went there for a meeting, I would 9 just go and do a round. 10 Q. Right. 11 As I understand it, you relied very much upon Mr Ng, 12 or Ah Chun, the foreman, the supervisor who we've heard 13 from already, in relation to the works that were being 14 carried out by Wing & Kwong; is that right? 15 A. Right. 16 Q. I think you had done a small number of previous -- I say 17 "you" -- Wing & Kwong had done a small number of 18 previous sub-contracts for Leighton; is that right? 19 A. Yes, we have done some contracts for Leighton before. 20 Q. Because you helpfully give us -- we can look at EE1/94 21 to 96 a list of projects with which Wing & Kwong was 22 involved, and if you look at EE95, the second punch hole 23 down, approximately, we can see "Leighton Contractors 24 (Asia) Ltd" appearing there, and then towards the bottom 25 of that page, "Leighton Contractors (Asia) Ltd" there as</p> |
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| <p>1 work; is that right? 2 A. Right, not involved in the works, apart from matters 3 like labour. 4 Q. When you say not involved in site works, apart from 5 matters such as labour, what do you mean by that? 6 A. By that I mean sometimes there was a shortage of labour. 7 I would be informed to increase or to reduce the amount 8 of labour. 9 Q. Right. Did you have occasion to visit the site at all 10 during the course of the works, Wing & Kwong works? 11 A. Yes, yes, of course. 12 Q. How often would you do that? 13 A. About a month or so. 14 Q. Sorry, once every month? 15 A. Yes. 16 Q. Okay. Was that for any particular purpose? 17 A. Yes. Well, it's something to do with submission of pay 18 slips, interim payment. 19 Q. Right. What, delivering interim payment applications to 20 Leighton? 21 A. Usually, someone would have done it earlier and I would 22 go there to talk to them about the monetary amount of 23 each term. 24 Q. Yes, I see. So you were interested in payment? 25 A. (In English) Yes.</p> | <p>1 well. Then over the page, at E96, there's one more 2 "Leighton Contractors" just over halfway down, and also 3 a Leighton-John Holland Joint Venture. 4 So about four projects you'd had previous 5 involvement with with Leighton? 6 A. Correct. 7 Q. As I understand it, the owner of Wing & Kwong is 8 a gentleman called Joe Leung; is that correct? 9 A. Yes, correct. 10 Q. Do you know Mr Leung very well? 11 A. Yes. 12 Q. What happened was that a company called Loyal Ease was 13 set up -- we'll look at that in a moment -- and Loyal 14 Ease is, as we understand it, owned by a gentleman 15 called Chan Siu Wing. Are you aware of that? 16 A. Yes, I do. 17 Q. Do you know Mr Chan? 18 A. No, I don't know him. 19 Q. Right. You've never met him? 20 A. Never. 21 Q. Okay. Do you know whether he's an acquaintance/friend 22 of Joe Leung? 23 A. He knows him. Of course he knows him. I don't know 24 whether he knows him well. 25 Q. All right.</p> |

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| <p>1 As a matter of chronology, Mr Cheung -- and frankly, 2 because we've just looked at some of the documents, 3 I might be able to do this a bit more quickly -- we know 4 you put in a quotation for the works on 26 September 5 2014. Do you recall? 6 A. Yes, I do. 7 Q. Just for the transcript, that's EE1/230. 8 Then, Mr Cheung, I think you now accept that on 9 20 October, Leighton issued tender addendum no. 2, and 10 that you provided another quote on the following day, 11 21 October 2014, against tender addendum no. 2. I think 12 you accept that now. Is that right? 13 A. Addendum 2? Can you please repeat? 14 Q. Yes. On 20 October 2014, Mr Kitching has told us and 15 has produced a document called tender addendum no. 2 16 that Leighton issued on that date, and on the following 17 day, 21 October 2014, you provided a fresh quote or 18 tender against tender addendum no. 2 and, as 19 I understand it, you now agree that? 20 A. I agree. 21 Q. Right. Now, on 10 November 2014, so just a few weeks 22 later, a couple of weeks later, Loyal Ease was 23 incorporated. Were you aware of that? 24 A. I didn't know about it. 25 Q. Okay. What subsequently happened was that Wing & Kwong</p> | <p>1 Q. Right. Can I ask you to look at the part that's headed, 2 "Payment method"; do you see that? If you look at the 3 Chinese -- 4 A. Yes, I can see it. 5 Q. -- version; I'll be looking at the English version. It 6 says: 7 "Payment request is made once a month, payable 8 within 7 days thereafter. To ensure that the 9 sub-contractor [which would be Loyal Ease] pays its 10 employees' MPF, sub-contractor needs to report the 11 number of workers to the contractor daily." 12 And so forth. Now, Ah Chun told us that he reported 13 those details to you. Is that correct? 14 A. That's correct. 15 Q. Okay. And he would do that, I think, by sending you 16 a photograph of the signatures on a particular page, 17 recording the workers that were on the site on any given 18 day. Is that your recollection of broadly how it 19 happened? 20 A. Yes, that's how it happened. 21 Q. Okay. 22 I think it follows from what you've just told us, 23 Mr Cheung -- you don't know whether that sub-contract 24 was intended to, as it were, operate from 1 September 25 2015 onwards, or whether it was intended to have any</p> |
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| <p>1 sub-contracted, as I understand it, with Wing & Kwong? 2 COMMISSIONER HANSFORD: Sorry -- 3 MR PENNICOTT: Sorry, with Loyal Ease; yes? 4 A. Yes, on the documents, yes. 5 Q. However, that sub-contract is dated 1 September 2015. 6 Have you seen this sub-contract, Mr -- 7 A. I have seen that. 8 Q. Were you involved in any way with the negotiation of 9 that sub-contract between Wing & Kwong and Loyal Ease? 10 A. No. This is not part of my work. 11 Q. Could I ask you, please, to look at the Chinese version 12 of that sub-contract. It's at page EE401. If you've 13 got tabs numbers, it's 15. 14 Do you know who the signatories are of this 15 sub-contract, Mr Cheung? 16 A. I do not know. 17 Q. So were you wholly unaware of the existence of this 18 sub-contract? 19 A. No. I knew about it. 20 Q. When did you get to know about it? 21 A. In 2016. 22 Q. Right. So it was entered to, we can see, on 1 September 23 2015, but you didn't know about it at that time? It was 24 later in time, was it, that you came to know about it? 25 A. That's correct. I first saw this contract in 2016.</p> | <p>1 retrospective effect? Presumably you just don't know? 2 A. Sorry, I don't quite get your question. 3 Q. Well, the sub-contract is entered into -- we've seen the 4 tender of Wing & Kwong was accepted in November 2014. 5 A. Yes. 6 Q. We know, from documents that we've been looking at so 7 far in the Inquiry, that in the HHS Sidings area, the 8 works started at the end of 2014/the beginning of 2015; 9 yes? 10 A. Yes. 11 Q. So, by the time this sub-contract, sub-sub-contract, 12 that we've been looking at has been entered into, the 13 works have been going on, the Wing & Kwong works have 14 been going on, for some nine months or so; do you 15 follow? 16 A. Yes, that's right. 17 Q. My question is whether you had any knowledge as to 18 whether this sub-sub-contract was intended just to take 19 effect from 1 September going forward or whether there 20 was any intention for that sub-contract to have 21 retrospective effect for the work that had already been 22 done. 23 A. No. No. That was not the case. 24 Q. Right. So it was intended to start on 1 September going 25 forward?</p> |

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| <p>1 A. That's correct.</p> <p>2 Q. Right. I now just want to ask you a few questions,</p> <p>3 Mr Cheung, about what happened when certain problems</p> <p>4 were discovered with the stitch joints because, as</p> <p>5 I understand it, you have no direct knowledge of the</p> <p>6 details of how the original stitch joints were</p> <p>7 constructed by Wing & Kwong/Loyal Ease in January 2015</p> <p>8 and July -- sorry, January 2017 and July 2017.</p> <p>9 That's right, isn't it? You simply were not there</p> <p>10 at the time, and all the knowledge that you have about</p> <p>11 the construction of those original stitch joints came</p> <p>12 from Mr Ng or Ah Chun?</p> <p>13 A. That's correct.</p> <p>14 Q. However, as I understand it, Mr Cheung, on 7 February</p> <p>15 2018, you received a WhatsApp message from somebody</p> <p>16 called Ah Wai -- that's W-A-I -- of Leighton, attaching</p> <p>17 a photograph; is that right?</p> <p>18 A. (In English) Yes, correct.</p> <p>19 Q. If we look at EE1/269, as I understand it, this is the</p> <p>20 message. We can see at the top it says, "7 February</p> <p>21 2018", and this is the photograph that you were sent on</p> <p>22 that --</p> <p>23 A. (In English) I received.</p> <p>24 Q. That you received?</p> <p>25 A. (In English) Yes, I received.</p> | <p>1 you at that meeting, Mr Cheung? What's your</p> <p>2 recollection of what they told you?</p> <p>3 A. They told me that there was water leakage. In relation</p> <p>4 to the cause -- well, they have chipped off a small area</p> <p>5 and they showed me some diagrams and photographs and</p> <p>6 they found that some couplers were not connected.</p> <p>7 That's what they told me.</p> <p>8 Q. Right. If we just pick this up in your witness</p> <p>9 statement -- this is paragraph 54 at EE77 -- you say</p> <p>10 Leighton, which is at this meeting:</p> <p>11 "... Leighton showed me some site drawings and</p> <p>12 photos and told me that because of the water leakages at</p> <p>13 the stitch joints at NAT, they chipped off some of the</p> <p>14 concrete at the NAT and found that some of the threaded</p> <p>15 rebars were not connected to the couplers. They then</p> <p>16 told me that rectification works would likely have to be</p> <p>17 carried out and that they would try to chip away the</p> <p>18 concrete at the joints over the Lunar New Year to</p> <p>19 further ascertain the situation before deciding how</p> <p>20 rectification works should be done."</p> <p>21 Do you recall how many photographs they had at this</p> <p>22 stage that they showed you?</p> <p>23 A. I cannot recall.</p> <p>24 Q. Do you recall whether the photographs just showed</p> <p>25 incidence of seepage, or were there more photographs of</p> |
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| <p>1 Q. Received it. On that date?</p> <p>2 A. Mm-hmm.</p> <p>3 Q. You say that you don't know the full name of Ah Wai. Is</p> <p>4 that still the case?</p> <p>5 A. (In English) Yes, I don't know his full name.</p> <p>6 Q. Okay. What that photograph appears to show is, do you</p> <p>7 agree, a threaded rebar not connected into a coupler?</p> <p>8 A. Yes, from this photograph, yes.</p> <p>9 Q. But, as I understand it, you say you were not given any</p> <p>10 information as to when -- sorry, where precisely this</p> <p>11 photograph was taken?</p> <p>12 A. That's right.</p> <p>13 Q. In any event, you were asked to attend a meeting with</p> <p>14 Leighton on the following day, 8 February; is that</p> <p>15 right?</p> <p>16 A. Right.</p> <p>17 Q. You went to that meeting. It was at about 11 o'clock,</p> <p>18 you tell us, and Ah Wai was there, with a female</p> <p>19 engineer; is that right?</p> <p>20 A. (In English) Yes, correct.</p> <p>21 Q. And you don't know the name of the female engineer?</p> <p>22 A. (In English) I don't know.</p> <p>23 Q. Could it have been Regina Wong?</p> <p>24 A. (In English) I really forget. I don't know. Sorry.</p> <p>25 Q. You don't know, okay. Right. And what did they tell</p> | <p>1 not connected or unconnected rebar?</p> <p>2 A. I cannot recall. I cannot recall what the photographs</p> <p>3 were about, but these photos were included.</p> <p>4 Q. All right.</p> <p>5 Now, you tell us immediately after that meeting you</p> <p>6 phoned Ah Chun; is that right?</p> <p>7 A. (In English) Yes.</p> <p>8 Q. You tell us what he told you, and you set it out in</p> <p>9 paragraph 58 of your witness statement; is that right?</p> <p>10 A. (In English) Yes.</p> <p>11 Q. And, as I understand it, you didn't do anything about</p> <p>12 that, in terms of writing to Leighton, because the next</p> <p>13 thing that happened, four days later, was that you</p> <p>14 received Leighton's letter of 12 February 2018, which we</p> <p>15 can see at page 274. Is that right? I'm so sorry, 271.</p> <p>16 My fault.</p> <p>17 A. (In English) Yes.</p> <p>18 Q. And that letter came with some photographs. Were</p> <p>19 these -- there's four photographs -- are these the same</p> <p>20 photographs that you were shown at the meeting on the</p> <p>21 8th, or just a selection of them?</p> <p>22 A. (In English) I cannot remember. I cannot remember is it</p> <p>23 shown on the meeting or not.</p> <p>24 Q. Okay. I asked that because we can see that the</p> <p>25 photographs, at least two of them, appear to have been</p> |

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| <p>1 taken on 7 February. All right.</p> <p>2 Then what Mr Kitching in that letter is saying is --</p> <p>3 he's drawing your attention to the fact that water leaks</p> <p>4 and structural cracking have been discovered; that</p> <p>5 investigations are currently underway, and he says:</p> <p>6 "Please be advised that should the cause of the</p> <p>7 water leaks and cracks be due to defective work</p> <p>8 undertaken or the materials supplied by your company, we</p> <p>9 will seek to recover all costs incurred in accordance</p> <p>10 with the terms of the sub-contract."</p> <p>11 Do you see that, Mr Cheung? Do you see that?</p> <p>12 A. (In English) See that, yes.</p> <p>13 Q. Your response to that letter is at EE277. I'm not going</p> <p>14 through all this correspondence; just a couple of</p> <p>15 letters, that's all, Mr Cheung. Others may wish to take</p> <p>16 you to more.</p> <p>17 First of all, one notes that this letter is actually</p> <p>18 signed by and appears to have been put together by</p> <p>19 somebody called Tommy Chan?</p> <p>20 A. Yes.</p> <p>21 Q. He's described as a senior quantity surveyor?</p> <p>22 A. Mmm.</p> <p>23 COMMISSIONER HANSFORD: Sorry, is this 26 February?</p> <p>24 MR PENNICOTT: 23 February, EE277.</p> <p>25 COMMISSIONER HANSFORD: Yes.</p> | <p>1 "To avoid the possibility of any instability, our</p> <p>2 site supervisor, Mr Ng Man Chun, had deliberated the</p> <p>3 particulars of the relevant location with your engineer,</p> <p>4 Mr Henry Lai, five months before the start of the work."</p> <p>5 Can you explain your reference to deliberation five</p> <p>6 months before the start of the work?</p> <p>7 A. Why would I write five months before? It's because</p> <p>8 I recall that the date of the ordering of the couplers</p> <p>9 was five months before that. That's why Henry Lai had</p> <p>10 communicated with Ah Chun about this location, because</p> <p>11 they would first order the couplers.</p> <p>12 Q. Right. But --</p> <p>13 COMMISSIONER HANSFORD: Sorry, do you mean the couplers or</p> <p>14 the threaded bars?</p> <p>15 A. Threaded bars.</p> <p>16 COMMISSIONER HANSFORD: Okay. That makes sense.</p> <p>17 MR PENNICOTT: And one has to remember the context of this</p> <p>18 correspondence is that the location, as I understand it,</p> <p>19 where the discovery of seepage and cracks has been made</p> <p>20 is at what we are calling joint 1; that is, the</p> <p>21 1111/1112 NSL stitch joint.</p> <p>22 A. (In English) At the time?</p> <p>23 Q. At the time.</p> <p>24 A. (In English) No.</p> <p>25 Q. This is what this correspondence is about, is it not?</p> |
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| <p>1 MR PENNICOTT: Why did -- you instructed Mr Chan to write</p> <p>2 this letter?</p> <p>3 A. (In English) Yes.</p> <p>4 Q. Why did it come from him and not from you?</p> <p>5 A. Because, well, in our daily correspondence, I would</p> <p>6 draft it for him, for his perusal, because we could</p> <p>7 cross-check for typos or mistakes. So usually I would</p> <p>8 draft it for him to type it out, and then he would sign</p> <p>9 it and he would peruse it.</p> <p>10 Q. Right. But you are more senior to Mr Chan; is that</p> <p>11 right?</p> <p>12 A. Right.</p> <p>13 Q. And you would have the conversations with or</p> <p>14 a conversation in a meeting with Leighton.</p> <p>15 A. Mmm.</p> <p>16 Q. I'm just a bit puzzled as to why you didn't write it</p> <p>17 personally. I mean, Mr Chan could have checked it for</p> <p>18 you, and the same process could have taken place. The</p> <p>19 letter could have come from you. I'm just puzzled why</p> <p>20 you didn't think it appropriate to send it yourself.</p> <p>21 A. Because it did not occur to me at that time.</p> <p>22 Q. All right. Anyway, you say in this letter -- you refer</p> <p>23 to Mr Kitching's letter of 12 February. You believe</p> <p>24 that Wing & Kwong is not the party that has caused the</p> <p>25 defective work. Then you say this:</p> | <p>1 A. (In English) Sorry?</p> <p>2 Q. At this time -- sorry, let's wind the clock back. Back</p> <p>3 at the 7 and 8 February, the time you got your WhatsApp</p> <p>4 and the time you had the meeting, the discovery had been</p> <p>5 made at the 1111/1112 stitch joint. That was the first</p> <p>6 problem that was identified. Is that right?</p> <p>7 A. At that time, it wasn't made clear as to the actual</p> <p>8 location. It was only about the stitch joint. But the</p> <p>9 exact location was not mentioned.</p> <p>10 Q. Right. We'll clarify that in a moment.</p> <p>11 A. Mmm.</p> <p>12 Q. By the time of this letter, of the 23rd, were you aware</p> <p>13 of there being more than one location where a problem</p> <p>14 had been discovered?</p> <p>15 A. No, I wasn't aware.</p> <p>16 Q. Right. When this correspondence kicked off and when you</p> <p>17 wrote this letter, was it your understanding that it was</p> <p>18 just one location, a number of locations, or did you not</p> <p>19 know?</p> <p>20 A. We did not know about the exact location or the number</p> <p>21 of locations involved.</p> <p>22 Q. All right. It is right to say that it does refer to the</p> <p>23 NSL and EWL stitch joints, both joints, but let's just</p> <p>24 see how this pans out.</p> <p>25 Can we just go back to the answer you gave to</p> |

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| <p>1 Prof Hansford a moment ago. You say that Ah Chun had 2 told you he had had a conversation with Henry Lai 3 regarding the ordering of threaded rebar five months 4 before when? 5 CHAIRMAN: I have a sudden silence. 6 MR PENNICOTT: So do I, but I think the witness is just 7 thinking. 8 A. (In English) Five months before start the work. 9 Q. Start of what work? 10 A. (In English) Stitching joint. 11 Q. This is one of the problems, Mr Cheung. We now know 12 that -- let's forget about the shunt neck; let's park 13 that on one side for the moment. It's a complication. 14 We know that the EWL stitch joint was constructed in 15 January/February 2017; okay? 16 A. (Nodded head). Well, it was put that way because I was 17 referring to the coupler records and I found something 18 related to locations at NAT. 19 Q. We also know -- this is the reason why I'm trying to get 20 some clarification -- that the joints 1 and 3, that is 21 the NSL 1111/1112 interface stitch joint and the 22 internal stitch joint on the 1112 contract, were 23 constructed in July, essentially, 2017? 24 MR SHIEH: Joints 1 and 2, not 1 and 3. 25 MR PENNICOTT: Sorry, 1 and 3.</p> | <p>1 A. Is this the EE78? 2 Q. You set out there, in a number of subparagraphs, some 3 quite extensive detail of your recollection of the 4 conversation that you had with Mr Chun -- 5 MR SHIEH: Ah Chun. 6 MR PENNICOTT: -- Mr Ng, Ah Chun, after the meeting you had 7 with Leighton, and I cannot see -- whilst there's a lot 8 of detail here, I cannot see any reference to 9 a conversation having taken place five months before. 10 All this is related to conversations alleged to have 11 taken place during the course of the works when problems 12 were, according to Mr Ng, discovered. There's no 13 reference to a conversation five months before. Do you 14 follow? 15 A. I understand. 16 Q. So why is that? Where does the five months reference 17 come from? 18 A. Please allow me to read the statement. 19 I can't recall how the five months reference came 20 about, but the five months was about the leaving of the 21 site by the threading company. That is why there was 22 the five months reference. It is because, before 23 leaving the site, they had to thread all the bars first. 24 Q. But the only threaded bar that Wing & Kwong would have 25 been interested in is the carrying out of their own</p> |
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| <p>1 MR SHIEH: Internal is not 3. 2 MR PENNICOTT: No, it's 2. I was right in the first place. 3 So there's a six- or seven-month gap between the 4 construction of the EWL stitch joint and the other two 5 NSL stitch joints; all right? And I'm just trying to 6 understand what your reference is to five months before. 7 A. This is because the coupler company had to leave the 8 site, so they had to cut all the threads before they 9 left the site. Therefore, I believe it was five months 10 before. 11 Q. I don't understand that answer, Mr Cheung. Five months 12 before when? 13 A. I wrote five months before. So five months before 14 July -- so it was February. 15 Q. Right. So you are referring, I think, therefore, to 16 a conversation which you say took place -- you must have 17 been informed about this by Mr Ng -- in February 2017? 18 A. Can you please repeat? 19 Q. So you are referring to a conversation between Mr Ng and 20 Mr Lai in February 2017; is that right? 21 A. Yes, correct. 22 Q. Mr Cheung, one of the problems that I have, and perhaps 23 others have as well, is that if you look at paragraph 58 24 of your witness statement, where you set out quite 25 extensively -- that's at EE78, I'm sorry.</p> | <p>1 rebar work for Leighton, in the stitch joint or their 2 general rebar work. I'm afraid I just can't understand 3 the time point, I'm afraid, Mr Cheung, but there we are. 4 Maybe others will take it up. 5 All right. Can we just go back to the 6 correspondence, just a couple of other letters. If we 7 go, please, to EE285. 8 A. (In English) Okay. 9 Q. You had an email on the same date of your letter, 10 23 February 2018; do you see that? 11 A. Mmm. 12 Q. And it is attaching what we see at page 286, 13 a sub-contractor backcharge notice; do you see that? 14 A. (In English) Yes. 15 Q. If you look at "Part A" at the top, where it says 16 "Sub-contract works" -- this is the point I was on just 17 a moment ago -- it says, "Remedial works for NAT NSL 18 stitch joint further to [NCR95]". I have shortened 19 that. Do you see that? 20 A. Mmm. 21 Q. My understanding is that backcharge came with, was sent 22 with, NCR95; is that right? 23 A. (In English) Yes, correct. 24 Q. We find that at page 82. Now, this is the NCR that MTR 25 had sent to Leighton and Leighton were now sending to</p> |

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| <p>1 you; do you see that?</p> <p>2 A. Yes, I see that.</p> <p>3 Q. It relates to the interface stitch joints at the EW and</p> <p>4 NSL; do you see that?</p> <p>5 A. (In English) Yes.</p> <p>6 Q. And it's dated 9 February; do you see that?</p> <p>7 A. (In English) Yes.</p> <p>8 Q. So the day after you had had your meetings with</p> <p>9 Leighton, and it says:</p> <p>10 "Details of non-conformance:</p> <p>11 Water leakage and cracks were found at EWL and NSL</p> <p>12 stitch joints ... interface. No coupling of rebar was</p> <p>13 identified at the connection. (See attached photos and</p> <p>14 plans)."</p> <p>15 We don't need to worry about the rest.</p> <p>16 As I understand it, Mr Cheung, you were not sent the</p> <p>17 photographs and plans at the time?</p> <p>18 A. (In English) No.</p> <p>19 Q. We pick that up at page -- your response to that, on</p> <p>20 26 February, at 290, EE290, where you say:</p> <p>21 "Firstly, we are strongly not agreed ..."</p> <p>22 Have you got 290 there?</p> <p>23 A. (In English) Yes, reading.</p> <p>24 Q. "... your backcharge notice ..."</p> <p>25 Then you give details.</p> | <p>1 I thought that it was in December 2016 that they had</p> <p>2 deliberated the matter.</p> <p>3 Q. All right.</p> <p>4 Just to finish this, Mr Cheung, with regard to the</p> <p>5 correspondence we've looked at and the other</p> <p>6 correspondence that continues, you were, I think -- and</p> <p>7 you agree with this, I believe -- writing to Leighton on</p> <p>8 the basis of information that Mr Ng, Ah Chun, had given</p> <p>9 to you?</p> <p>10 A. (In English) Yes.</p> <p>11 Q. All right. Without going to the detail of the letters,</p> <p>12 you requested on a number of occasions, I think, to have</p> <p>13 a joint inspection?</p> <p>14 A. Yes.</p> <p>15 Q. And, as I understand it, that did not happen?</p> <p>16 A. It did not happen.</p> <p>17 MR PENNICOTT: Okay. All right. Thank you very much,</p> <p>18 Mr Cheung.</p> <p>19 Sir, I have no further questions.</p> <p>20 Cross-examination by MR SHIEH</p> <p>21 MR SHIEH: I think I'm next.</p> <p>22 Good morning, Mr Cheung.</p> <p>23 A. Good morning.</p> <p>24 Q. I represent Leighton and I have a few questions for you.</p> <p>25 A. Okay.</p> |
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| <p>1 "... also, your backcharge notice is missing the ...</p> <p>2 attached photos and plans so please resend all the</p> <p>3 record with photos within 2 days from this letter date."</p> <p>4 Did Leighton do that?</p> <p>5 A. (In English) No.</p> <p>6 Q. Then, further down, you say:</p> <p>7 "The first schedule of construction of stitch joint</p> <p>8 was end of December 2016 but due to some reason it was</p> <p>9 rescheduled to start on early of 2017 but finally it was</p> <p>10 started in July 2017. Finally, our staff was informed</p> <p>11 to complete the base slab, wall and top slab of the</p> <p>12 tunnel in three weeks in July 2017."</p> <p>13 Then you say this:</p> <p>14 "To avoid the possibility of any instability, our</p> <p>15 site supervisor, Mr Ng, had deliberated the</p> <p>16 particulars" -- we've heard these words before -- "of</p> <p>17 the relevant location with your engineer, Mr Henry Lai,</p> <p>18 seven months before the start of the work."</p> <p>19 So the position has now shifted from five months to</p> <p>20 seven months. Can you explain that?</p> <p>21 A. Well, I don't remember -- I can't recall why it is five</p> <p>22 months or seven months. I really can't remember why</p> <p>23 I wrote it that way at that time. But seven months,</p> <p>24 that's because originally it should have started in</p> <p>25 December 2016, but in the end it is July 2017. So</p> | <p>1 Q. First of all, you heard about the sub-contract between</p> <p>2 Wing & Kwong and Loyal Ease in this case. You've looked</p> <p>3 at it this morning, the Chinese version; do you remember</p> <p>4 that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. To the best of your recollection and knowledge, is this</p> <p>7 the first contract entered into between Wing & Kwong, on</p> <p>8 the one hand, and Loyal Ease on the other?</p> <p>9 A. You mean the first contract relating to this site?</p> <p>10 Q. Ever, not just for this construction site, not just for</p> <p>11 this site.</p> <p>12 A. No. There were other contracts between Wing & Kwong and</p> <p>13 Loyal Ease.</p> <p>14 Q. Can you look at AA1, page 180. This is the certificate</p> <p>15 of incorporation of Loyal Ease, and if you scroll down,</p> <p>16 it is dated 10 November 2014. Do you see that?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Can you look at CC11, page 6747. This is a letter from</p> <p>19 Leighton, dated 28 November 2014, and it referred to --</p> <p>20 it's a letter addressed to you, do you see, "Attention</p> <p>21 Ben Cheung"?</p> <p>22 A. Mm-hmm.</p> <p>23 Q. "We refer to your quotation ... addendum no. 2 dated</p> <p>24 21 October 2014 for the reinforcement bar cutting ...</p> <p>25 and are pleased to confirm our intention to enter into</p> |

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| <p>1 a formal sub-contract with yourselves ..."</p> <p>2 Do you see that?</p> <p>3 A. (In English) Yes.</p> <p>4 Q. It's not a memory test but does this letter trigger your</p> <p>5 memory that you did actually receive this letter?</p> <p>6 A. (In English) Yes.</p> <p>7 Q. And it shows that Leighton basically awarded the</p> <p>8 sub-contract to Wing & Kwong on 28 November; correct?</p> <p>9 A. Well, for this letter, sometimes it would be issued</p> <p>10 halfway. I can't say that it's sent on the date when</p> <p>11 the contract was awarded. It might be before or after</p> <p>12 that. Work might have already started. I am not clear</p> <p>13 about that.</p> <p>14 Q. So sometimes -- are you suggesting that sometimes Wing</p> <p>15 & Kwong would actually know that it had already won</p> <p>16 a sub-contract before a letter like this was sent by</p> <p>17 Leighton?</p> <p>18 A. Mmm.</p> <p>19 Q. The transcript came out "mmm". I think you need to</p> <p>20 actually speak out and actually answer whether you agree</p> <p>21 or "yes", because we've had experience previously where</p> <p>22 "mmm" caused all kinds of trouble?</p> <p>23 A. (In English) Sorry.</p> <p>24 Q. So you have to say "yes", you agree.</p> <p>25 A. Could you please repeat your question.</p> | <p>1 return in the Companies Registry of Wing & Kwong; do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. Move down to the bottom. The presentor, on the</p> <p>5 left-hand side, is a corporate advisory services limited</p> <p>6 called PA Corporate Advisory Services Ltd; do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. With a certain address, and the file reference, I think,</p> <p>10 for the presentor, is WKS-006; do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Can I ask you then to turn to AA1, page 172. This is</p> <p>13 the annual return of Loyal Ease at the Companies</p> <p>14 Registry, and if you scroll down to the bottom of the</p> <p>15 page, you see the presentor --</p> <p>16 A. Yes.</p> <p>17 Q. Also PA Corporate Advisory Services Ltd, and the file</p> <p>18 reference is WKS-003; do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware of any common management or common control</p> <p>21 between Loyal Ease and Wing & Kwong?</p> <p>22 A. Yes. Yes.</p> <p>23 Q. So you say there was actually common control or</p> <p>24 management between these two companies?</p> <p>25 A. Right.</p> |
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| <p>1 Q. Are you suggesting that sometimes Wing & Kwong would</p> <p>2 actually know that it won a sub-contract before a formal</p> <p>3 letter like this was sent by Leighton?</p> <p>4 A. (In English) Before, yes, maybe.</p> <p>5 Q. Thank you. So bearing in mind the proximity of the date</p> <p>6 of this letter and the incorporation of Loyal Ease that</p> <p>7 we have seen, is it possible that Loyal Ease was</p> <p>8 incorporated for the purpose specifically of performing</p> <p>9 this contract?</p> <p>10 A. No.</p> <p>11 Q. But why are you able to say no so definitively?</p> <p>12 A. Because when we started at the site, as we were talking</p> <p>13 about something that happened between November 2014 to</p> <p>14 September 2015, it wasn't Loyal Ease. It wasn't Loyal</p> <p>15 Ease, it was a different company, Hung Kee. So the</p> <p>16 company was not incepted for that purpose.</p> <p>17 Q. When you say between November 2014 and September 2015 it</p> <p>18 wasn't Loyal Ease, it was a different company, did you</p> <p>19 actually name that other company?</p> <p>20 A. It was Hung Kee at that time.</p> <p>21 Q. You mean Wing & Kwong sub-contracted to Hung Kee for the</p> <p>22 period November 2014 to September 2015, and then from</p> <p>23 September 2015 onwards it became Loyal Ease?</p> <p>24 A. Right.</p> <p>25 Q. Can you look at AA1, page 163. This is the annual</p> | <p>1 Q. What was that common control or management?</p> <p>2 A. Perhaps I will explain what kind of company Loyal Ease</p> <p>3 is. It may be clearer if I do it this way. May I?</p> <p>4 Q. Yes. Mr Cheung, sometimes you see a dead silence on my</p> <p>5 part. It's not because I couldn't hear you, but I want</p> <p>6 to make sure that the transcript actually has completed</p> <p>7 typing out your answers in translated English.</p> <p>8 So, yes, please go ahead to give your explanation.</p> <p>9 A. Well, actually, Loyal Ease is a company responsible --</p> <p>10 it was set up to be in charge of labourer -- say, for</p> <p>11 example, labourers would take a day off after two days,</p> <p>12 and sometimes they would not turn up or there was no</p> <p>13 work to do. Under such circumstance, we would be chased</p> <p>14 for payment in lieu or severance pay. In order to avoid</p> <p>15 something like that, we set up Loyal Ease to assist Wing</p> <p>16 & Kwong to take charge of handling such matters.</p> <p>17 Q. I understand. So, basically, it is an entity -- I'm not</p> <p>18 suggesting anything illegitimate or unlawful or</p> <p>19 sinister, but basically it is a vehicle used to insulate</p> <p>20 Wing & Kwong from any trouble caused by employment</p> <p>21 disputes with the workers?</p> <p>22 A. Right.</p> <p>23 Q. I understand now. Thank you. In fact, when we heard</p> <p>24 evidence from Ah Chun, Ah Chun said he had actually</p> <p>25 worked for Wing & Kwong for a number of years, and then</p> |

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| <p>1 he was asked by you to switch employment from Wing 2 & Kwong to Loyal Ease. Does that accord with your 3 recollection? 4 A. (In English) He asked me? 5 Q. You asked him. 6 A. (In English) I didn't ask him. 7 Q. Oh. Perhaps I will just ask one more question before we 8 leave this topic, because I don't want to spend too much 9 time on it. I've got the big picture. 10 Do you accept that Ah Chun used to work as 11 an employee of Wing & Kwong? 12 A. Ah Chun represented Wing & Kwong. 13 MR PENNICOTT: That wasn't the question. 14 MR SHIEH: No, I mean was Ah Chun employed by Wing & Kwong 15 in the past, at some stage? 16 A. You mean in the past sometime? Yes. 17 Q. How did he change from being an employee of Wing & Kwong 18 to being an employee of Loyal Ease? 19 A. Well, actually, when there was a change of construction 20 site, that would happen. That is, after they finished 21 from one construction site and they start on a new site, 22 that would happen. 23 Q. I understand. So it is not as if the workers would say, 24 "I quit this company, let me go and find a job; oh, 25 there's this company called Loyal Ease, let me join it"?</p> | <p>1 moving on -- 2 CHAIRMAN: If you are happy with that. 3 MR SHIEH: Certainly. 4 CHAIRMAN: Good. 5 How are we progressing? 6 MR SHIEH: Very well. I think I will be another 7 15-20 minutes. 8 CHAIRMAN: All right. Quarter of an hour. 9 Sorry, you are in the middle of giving your 10 evidence. 11 WITNESS: (In English) Yes. 12 CHAIRMAN: And when you are still giving your evidence, you 13 are not allowed to discuss it with any other person. 14 You understand? 15 WITNESS: (In English) Okay. 16 CHAIRMAN: So you can't go outside and meet a friend and say 17 "How am I doing", and, "What should I do?" 18 WITNESS: I need to stay here or I can go? 19 CHAIRMAN: No, you can go, you can talk about other matters, 20 you can talk about the sadness that happened to 21 Tottenham Hotspur in losing the football match -- 22 WITNESS: (In English) I am a Manchester United! 23 CHAIRMAN: -- but you may not talk about this. Thank you. 24 (11.28 am) 25 (A short adjournment)</p> |
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| <p>1 It is not like that? 2 A. (Shook head). 3 Q. I think you have to speak up; you just shook your head. 4 A. (In English) No, no. 5 Q. So changing employer is really a matter of paperwork 6 behind the scenes, like asking them to sign a contract 7 with, say, a different employer? 8 A. (Nodded head). 9 Q. I think you have to actually speak up; you can't just 10 nod your head. 11 You agree with that? It's just a paper -- 12 A. Please repeat your question. 13 Q. So changing an employer, in the situation you have just 14 described, is really a matter of paperwork behind the 15 scenes; right? You change to a new construction site, 16 workers were given a new contract with a new employer, 17 and they just signed it and it would mean from then 18 onwards they are employed by a new employer? It's 19 really just like that; right? 20 A. Right. 21 Q. Thank you. I think I can now move on quickly to the 22 position about -- 23 MR PENNICOTT: Coffee? 24 MR SHIEH: Yes. Since it is a new topic, can I just see 25 whether or not it will be an appropriate moment? I am</p> | <p>1 (11.49 am) 2 MR SHIEH: Mr Cheung, can I trouble you to look at 3 bundle CC2, page 876. 4 This is part of the sub-contract between Leighton 5 and Wing & Kwong. 6 Look at clause 2.6: 7 "The Sub-Contractor [this is Wing & Kwong] shall not 8 assign the whole or any part of the benefit of this 9 Sub-Contract nor shall the Sub-Contractor sub-contract 10 the whole or any part of the Sub-Contract Works without 11 the prior written content of the Contractor." 12 I want to ask you: Wing & Kwong never informed 13 Leighton about its sub-contract with Loyal Ease; 14 correct? 15 A. Inform -- in what form do you mean? 16 Q. Wing & Kwong never obtained Leighton's written consent 17 for its sub-contract to Loyal Ease? 18 A. No, that's correct. 19 Q. Wing & Kwong never obtained Leighton's written consent 20 for its sub-contract to Hung Kee? 21 A. No, that's right. 22 Q. Look at clause 9.3 at page 881. Clause 9.3: 23 "The Contractor shall have the power to direct in 24 writing the Sub-Contractor to alter or change the 25 method, manner and sequence of performance of the</p> |

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| <p>1 Sub-Contract Works." 2 Do you see that? 3 A. Mmm. 4 Q. Also look at clause 10.1(c): 5 "The Sub-Contractor shall make such variations of 6 the Sub-Contract Works, whether by way of addition, 7 modification or omission, as may be", then (c): 8 "ordered in writing by the Contractor." 9 Do you see that? 10 A. Mmm. 11 Q. Now, it is your evidence that in February 2018, Ah Chun 12 told you that he was instructed by Henry Lai to screw in 13 as best as he could the mismatched rebars? 14 A. (In English) Yes. 15 Q. Did it occur to you to ask Ah Chun why no written order 16 or instructions from Leighton is okay? 17 A. At that time, I did not ask that question. 18 Q. In your understanding of contract management, 19 an instruction of the nature said to have been given by 20 Henry Lai is something that should have been contained 21 by way of a written order; correct? 22 A. I do not agree with that. 23 Q. I'm not going to debate with you. 24 Let me move on to your witness statement at EE1, 25 page 78.</p> | <p>1 taper-cut, the other one is parallel, and the other one 2 is that the concrete was not hacked off? These two 3 problems? 4 Q. Correct. 5 A. Right. 6 Q. Look at EE1, page 79, it's actually your statement, 7 paragraph 58(5). You said -- this was describing your 8 conversation with Ah Chun: 9 "Chun was also told by Leighton (I assume also by 10 Henry Lai) that because of differences in the design of 11 the two contracts (1111 and 1112), Leighton believed 12 there is no need to tighten the rebars in all the 13 couplers left by contract no. 1111, therefore Leighton 14 did not hack off all of the concrete which covered the 15 couplers." 16 Do you see that? 17 A. I can see it. 18 Q. Would it surprise you if I tell you that when Ah Chun 19 gave evidence, he said Henry Lai had not told him this? 20 A. It would not surprise me because that's how I recalled 21 it. 22 Q. Let me go to the letter that was written on your 23 instructions to Leighton by Wing & Kwong. Look at EE1, 24 page 291. In fact, it starts at 290. 25 Mr Pennicott had looked at this letter with you this</p> |
| Page 46 | Page 48 |
| <p>1 In paragraph 58, you said: 2 "Chun told me there was no way that the said water 3 leakages was the fault of Wing & Kwong. He ... 4 explained to me what had happened when the Wing & Kwong 5 rebar fixers were working and conducting rebar fixing 6 works. He told me the following ..." 7 Then at subparagraph (1), summarising it, he talked 8 about a mismatch in shape, taper-cut threads -- the 9 couplers were couplers with taper-cut threads, but the 10 bars were with parallel threads; right? This was the 11 problem described in subparagraph (1), as you can see; 12 correct? 13 A. Right. 14 Q. Then at the bottom of subparagraph (1), you said: 15 "... there was also situation where the concrete 16 covering ... was not hacked off fully ..." 17 Do you see that? Do you see that? 18 A. Yes. 19 Q. Can you confirm that these were the only two problems 20 mentioned to you by Ah Chun? 21 A. You mean in this paragraph or what? 22 Q. During your conversation with Ah Chun, these were the 23 only two problems about fixing the rebars that he 24 mentioned to you? 25 A. The two problems, you mean the two couplers, one is</p> | <p>1 morning; remember? 2 A. (In English) Yes. 3 Q. Now, you remember we had some difficulty trying to work 4 out, when we talk about seven months, seven months from 5 what; remember? 6 A. I recall that. 7 Q. Look at the bottom of this page, at 290. You said: 8 "The captioned location of the tunnel is connected 9 to another contract of MTR ... As the sub-contractor of 10 contract no. 1112, we could only communicate with the 11 main contractor of contract no. 1111 through your 12 company or there was not any way to get the details of 13 contract no. 1111. To make sure the connection is 14 either coupler with parallel threads or with taper-cut 15 threads so as to prepare the relevant materials to carry 16 out the work at all time, our Chun has enquired your 17 Henry in February 2017. We received a reply from Henry 18 that he did not know the details of contract no. 1111. 19 He then instructed us to prepare materials of parallel 20 threads, according to his experience and final confirmed 21 order material by Leighton. The materials of the 22 coupler was supplied by Leighton, Wing & Kwong no right 23 to choose any brands, any type of couplers can be used 24 for this project. We are providing labour only and your 25 engineers were fully instructing and monitoring this</p> |

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| <p>1 section of work." 2 Do you see that? 3 A. (In English) Yes. 4 Q. Can you confirm this was based on what Ah Chun told you 5 and what you then passed on for him to draft? 6 A. Yes, that's correct. 7 Q. Take it from me -- and I think Mr Pennicott also raised 8 this -- in terms of the stitch joint works in the NAT, 9 you know there are three stitch joints in the NAT; 10 correct? 11 A. Yes. 12 Q. In this Inquiry, we have given shorthand terms for these 13 joints, but in order not to confuse you, I would 14 describe them in longhand rather than shorthand. In 15 terms of the stitch joint works in the NAT, the earliest 16 one when work was done was the EWL stitch joint 17 1111/1112. Are you aware of that? 18 A. Yes. 19 Q. We in this Inquiry have called that "joint 3"; all 20 right? 21 A. (Nodded head). 22 Q. Take it from me, that was done in late January, or work 23 started in late January; all right? 24 A. (Nodded head). 25 MR PENNICOTT: 2017.</p> | <p>1 A. I know that. 2 Q. Did Ah Chun say that to you in February 2018, when you 3 asked him about the problems? 4 A. Yes. 5 Q. In which case, can you help me: if he did tell you in 6 February about the problems that he saw in January 2017, 7 it doesn't make sense for this letter to say that 8 Ah Chun enquired with Henry in February about the 9 couplers and the threads to be used or ordered. Do you 10 accept that? 11 A. I only wrote according to what I asked him at that time. 12 Q. Right. What I'm suggesting to you is this. Ah Chun, 13 according to Ah Chun, he already saw these problems in 14 early January 2017, therefore he could not have enquired 15 with Henry in February 2017 about what threads or what 16 kind of threading materials or what kind of couplers to 17 order, as described in this letter. 18 A. Well, if you say this now, that is the case. But then 19 I only wrote what he told me at that time. 20 Q. Can you look in the middle of page 291: 21 "The captioned work was launched in July 2017." 22 I take it that when the letter says "The captioned 23 work", it is referring to the stitch joint at the NSL 24 between 1111 and 1112; correct? 25 A. Correct.</p> |
| Page 50 | Page 52 |
| <p>1 MR SHIEH: 2017. 2 And you know that there is actually a joint called 3 the shunt neck joint in the NAT; correct? 4 A. Yes, I know. 5 Q. That was on the EWL; you know that? 6 A. Yes, I know that. 7 Q. That also involved screwing rebars into couplers on the 8 contract 1111 side; do you know that? 9 A. I know that. 10 Q. Work on the shunt neck joint started in early January 11 2017; you know that? 12 A. I knew that. 13 Q. Ah Chun has told us in this Inquiry that way back in 14 early January, when work started on the shunt neck joint 15 on the East West Link, EWL, he already saw problems 16 about mismatch in shape between couplers and threads, as 17 well as not hacking all the concrete, in early January. 18 Are you aware of that? 19 A. You ask me when I knew about it? 20 Q. Do you know it is Ah Chun's evidence in this Inquiry 21 that in early January, when work started on the shunt 22 neck joint, he, Ah Chun, already saw problems about 23 mismatch in shape as well as failure to hack off all the 24 concrete? Do you know Ah Chun said this to this 25 Inquiry?</p> | <p>1 Q. And maybe the internal joint within 1111/1112; correct? 2 A. Well, it should be only 1111 and 1112. 3 Q. Thank you. So it's NSL 1111/1112, when you talk about 4 July 2017? 5 A. Yes. 6 Q. Thank you. So that's what we call "joint 1" in this 7 case. 8 The letter goes on to say: 9 "After the concrete surface had been hacked off 10 (Actually some of the couplers still not yet disposal 11 after Leighton say hacked works completed), the 12 connection was found to be coupler with taper-cut 13 threads. Our Chun stated right away that the rebar we 14 prepared according to Leighton's information which could 15 not tighten into the coupler completely. However, 16 according to the verbal instruction given by Leighton, 17 there was not enough time to rethread the rebar and your 18 company urged our side to try our best to tighten ... 19 Moreover, because of the differences in the design of 20 the two contracts, your company believe there is no need 21 to tighten rebar in all the coupler left by contract 22 no. 1111." 23 Do you see that paragraph? 24 A. Yes. 25 Q. What I want to ask you is this. This letter made it --</p> |

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| <p>1 this letter looked as though the problem about 2 a mismatch was first found in July 2017, when in fact, 3 according to Ah Chun, if what Ah Chun said is correct, 4 the problem had been discovered half a year ago, in 5 January 2017. Do you accept that? 6 A. No, I don't accept that. 7 Q. When Ah Chun described what he regarded to be problems 8 to you, did he tell you that he already saw these 9 problems in January 2017, when he worked on the shunt 10 neck joint? 11 A. He did not mention the month when he told me about it. 12 Q. If he did not mention the month, then why were you able 13 to say in this letter "July 2017"? 14 A. We had work records. 15 Q. The work records would tell you when work was done at 16 different joints, but the work records wouldn't tell you 17 at what time Ah Chun saw any problems; correct? 18 A. Correct. 19 Q. So, for when Ah Chun first saw any problems, you had to 20 rely on what Ah Chun had told you; correct? 21 A. That's correct. 22 Q. I put to you again, in this letter, there is no 23 indication that problems had already been discovered by 24 Ah Chun in January 2017; correct? 25 A. Yes.</p> | <p>1 MR SHIEH: Well, if Mr Tsoi wants -- because I had thought 2 that the question of charging method is no longer in 3 issue. 4 MR TSOI: If that's the case and if it's not going to be 5 suggested that there is a motive there, then of course, 6 as I say, I'm not going to say any more about this. But 7 it has been suggested to Mr Ng that there is a motive 8 for Loyal Ease to do the work as quickly as possible. 9 Now, if that's no longer the suggestion, then of course 10 that is no longer an issue. 11 MR SHIEH: Mr Cheung sits in the back room. It's not 12 suggested that at the time when the relevant 13 conversations took place, Mr Cheung was consulted. So 14 it is not something that I needed to put to Mr Cheung. 15 Perhaps I can actually spare the hassle by asking 16 a few more questions, if that would put Mr Tsoi's mind 17 at ease. 18 Mr Cheung, some final questions. Can you confirm 19 that the first time that you ever heard about any 20 problems encountered on site by Ah Chun concerning 21 difficulty or impossibility of screwing in, and what 22 Henry Lai is said to have instructed Ah Chun, was in 23 February 2018? 24 A. Right. 25 Q. And so it would be obvious but I'm suggesting to you, at</p> |
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| <p>1 Q. And if what Ah Chun said is true, that -- sorry, let me 2 start again. 3 And if problems had already been encountered in 4 January for the shunt neck joint, there is no way in 5 which Ah Chun could still enquire with Henry in February 6 what kind of materials to prepare, and for Henry to 7 instruct Ah Chun to prepare materials of parallel 8 threads; do you accept that? 9 A. Yes. 10 MR SHIEH: I have no further questions. 11 MR TSOI: I'm sorry, I hesitate to interrupt, but I raise 12 this now because Mr Shieh did put to Ah Chun in Day 3 of 13 his cross-examination with Ah Chun in relation to the 14 unit weight charging method of the sub-contract, and 15 thereby suggesting a motive as to why there may be 16 a case where it was Loyal Ease who would decide to rush 17 the work. 18 Now, I wonder if Mr Shieh still maintains that 19 position, because if he does then it is only fair that 20 he puts it to this witness, who knows something about 21 the sub-contract. Of course, if he does not, then 22 I would not say anything more about that. But it's only 23 fair because this is the witness that the case should be 24 put to, and if the witness has an answer then let the 25 witness answer it.</p> | <p>1 the time when the relevant works took place, whether in 2 January 2017 or in July 2017, Ah Chun did not contact 3 you to ask you for any decision or instructions as to 4 how he should proceed? 5 A. He did not. 6 Q. So whatever act or whatever ways of doing things on site 7 in January or July 2017 in relation to the stitch joints 8 and the shunt neck joints were not done as a result of 9 any decision or instructions given by you; correct? 10 A. That is correct, no. 11 MR SHIEH: I have no further questions. On that basis, 12 there is nothing I need to put to him about any thinking 13 behind anything which could have motivated Ah Chun to do 14 things. 15 MR TSOI: I'm grateful. 16 CHAIRMAN: Yes. 17 Mr Boulding? 18 MR BOULDING: Sir, we have no questions for this witness. 19 Thank you. 20 Cross-examination by MR HO 21 MR HO: Mr Cheung, good morning. I appear for the 22 government. I have some questions for you. 23 Can you please pick up your witness statement and 24 turn to paragraph 36. 25 A. 36.</p> |

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| <p>1 Q. Now, in subparagraph (1), you talk about clause 7.4 in 2 the sub-contract, which disallows Wing & Kwong from 3 contacting MTRC. Do you see that? 4 A. I see that. 5 Q. Can I just ask this: is this a common clause in the 6 industry? 7 A. Yes. 8 Q. Do you know what is the rationale behind this clause? 9 A. Maybe the instructions might not be correct, may not be 10 clear, and it doesn't represent the instructions from 11 the main contractors. The contract party is between us 12 and the main contractor, so we can't communicate with 13 other parties. 14 Q. Well, in the present case, have you or any of your 15 colleagues instructed the Wing & Kwong workers not to 16 communicate with MTRC directly? 17 A. No such instructions have been given. 18 Q. Because I just want to make it clear whether there is 19 any -- whether it is Wing & Kwong's stance that you 20 actually encountered any difficulties in reporting the 21 matter to MTRC because of the legal restriction in this 22 sub-contract. 23 A. In general, that is the case. Well, not really legal 24 restrictions, but that is the general channels of 25 communications at the site. It's very rare that we</p> | <p>1 Q. Correct. 2 A. Yes, I can see that. 3 Q. You presumably received information about this 4 conversation from Ah Chun; correct? 5 A. Right. 6 Q. This conversation does not appear in either Ah Chun's 7 witness statement or your witness statement, so my 8 question to you is: are you still sure that this 9 conversation took place? 10 A. Yes. 11 Q. And on what basis? 12 A. Well, this letter was written after the telephone 13 conversation with Ah Chun. It's based on that that the 14 letter was written. 15 Q. There just was one last topic I want to explore with 16 you. If you would be kind enough to look at bundle EE1, 17 page 306. 18 In this letter, you would see that Leighton had 19 threatened to recover the rectification costs from Wing 20 & Kwong. 21 So may I ask, after or subsequent to this letter, 22 was there any follow-up action from Leighton? 23 A. No. 24 Q. Are there any ongoing court proceedings or arbitration 25 proceedings between you and Leighton, or between Wing</p> |
| <p>Page 58</p> <p>1 would communicate with the contract owner or the MTR. 2 We usually communicate with the main contractor. 3 Q. I see. Perhaps we will move to another topic. 4 COMMISSIONER HANSFORD: Sorry, Mr Ho, we are still getting 5 the translation. 6 I think we have finished now. 7 MR HO: Perhaps we can move to another topic just touched on 8 by Mr Pennicott and Mr Shieh. Can you turn to 9 bundle EE1, page 290. 10 In the penultimate paragraph on this page, you talk 11 about deliberating -- Mr Ng Man Chun deliberating the 12 particulars of the relevant location with Mr Henry Lai. 13 Do you see that? 14 A. EE290? Yes. 15 Q. What do the particulars here involve? Does it involve 16 the type of couplers or the type of rebars to be 17 ordered? 18 A. Yes, the type of threaded bars to be ordered. 19 Q. Now, in the last paragraph on this page, you mention 20 a conversation between Ng Man Chun and Henry in February 21 2017, and in that conversation Ah Chun enquired with 22 Henry Lai about the type of rebars to be ordered. Do 23 you see that? 24 A. Penultimate paragraph of EE290, the one that starts 25 with, "To avoid the possibility of any instability"?</p> | <p>Page 60</p> <p>1 & Kwong and Leighton? 2 A. No. 3 MR HO: Thank you, Mr Cheung. I have no other questions for 4 you. 5 Re-examination by MR TSOI 6 MR TSOI: Mr Cheung, just going back to the letter which you 7 have been questioned extensively -- oh, Pypun, I am so 8 sorry. 9 MR LIU: I have no questions from Pypun. 10 MR TSOI: Sorry, I had not anticipated that. 11 Going back to the letter, Mr Cheung, that you have 12 been questioned extensively on -- we can find that at 13 E29E290. 14 A. (In English) Yes. 15 Q. Just on the question Mr Ho asked you, about the 16 suggestion at the end of that page that there was 17 conversation between Chun and Henry in February 2017 -- 18 can you see that? 19 A. Mmm. 20 Q. You said during cross-examination by Mr Shieh that 21 Ah Chun did not actually tell you the month; right? 22 A. Mmm. 23 Q. So I just want to clarify with you whether -- doing the 24 best you can, can you recall, the month you say there, 25 was that something Ah Chun told you, or was it something</p> |

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| <p>1 you read certain things and worked out yourself? Which 2 one is it? 3 A. I really cannot recall. 4 Q. Going back to, then, the contract, the 5 sub-contract -- you have been shown this clause, 6 clause 2.6. I think we can find that at page CC876. 7 Remember you were shown this clause, clause 2.6, by 8 Mr Shieh? 9 A. Mmm. 10 Q. And you confirmed that no written prior consent was 11 sought or obtained from Leighton for the sub-contract 12 with Loyal Ease; yes? 13 A. (Nodded head). 14 Q. I want to ask you this. Although we know no written 15 consent from Leighton was obtained, in your knowledge, 16 did Leighton know about Loyal Ease? 17 A. Certainly they know. 18 Q. Why do you say that? 19 A. Because when the interim payment was submitted, 20 sometimes they would ask us for payment records of 21 labourers. At the time the final account was settled, 22 we would need to give them proof that we have paid 23 labourers and we would submit all payment records from 24 Loyal Ease to their QS. Sometimes, in incidents where 25 labourers were injured, we had to submit information of</p> | <p>1 MR TSOI: I believe I may have the references. I think he 2 mentions this in his first statement at paragraph 21. 3 We can see that at page CC6491. Then he says it in 4 witness statement number 3. 5 MR PENNICOTT: Paragraph 11. 6 MR TSOI: Paragraph 11, at page CC6553. 7 MR SHIEH: I want to take a rather pragmatic approach, 8 because instead of opposing or objecting or whatever, 9 because this was filed some time ago, but if Mr Tsoi 10 actually has some documents to show, rather than to try 11 to appear to be cutting things out, I'm perfectly 12 content for the document to be shown and we can then 13 consider it and take instructions. 14 MR TSOI: I'm really in your hands, Chairman. 15 CHAIRMAN: Sorry, I was having a brief word with the 16 co-Commissioner and I took my headphones off, so 17 I missed that. 18 Mr Shieh, apologies -- could you repeat that? 19 MR SHIEH: I was just saying I would take a rather pragmatic 20 approach. Instead of trying to object or oppose, if 21 Mr Tsoi has some documents to show, I am content for 22 documents to be produced and then we can consider it. 23 Even though this point has actually in Mr Kitching's 24 statement for some time, I am content for him to produce 25 whatever documents he wants to produce now.</p> |
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| <p>1 payment, we would submit Loyal Ease payment record to 2 Leighton by mail and by hand. That's why they are aware 3 of the company Loyal Ease. 4 Q. Have you got proof of that? 5 A. I have got it with me. May I produce it? 6 MR TSOI: If it pleases the Commission -- because again, if 7 I may, the dilemma I'm in is that it has been suggested 8 by Mr Jonathan Kitching that Leighton was not aware of 9 Loyal Ease. Now, that is not exactly the suggestion put 10 by my learned friend, because my learned friend is very 11 restricted in that no written prior consent was 12 obtained. So, again, I wonder whether it is the 13 suggestion that Leighton did not know about Loyal Ease 14 at all, or is it just that no prior consent had been 15 obtained, according to clause 2.6? 16 MR SHIEH: Well, it's really a very small point. If my 17 learned friend has a document which, according to him, 18 shows any kind of knowledge on our part, then we are 19 content for those to be produced and we can consider 20 that. 21 MR TSOI: Well, sure. Would the witness then like to -- 22 MR SHIEH: Subject of course to Mr Pennicott's observation 23 as to how it fits into the overall scheme of things. 24 MR PENNICOTT: Sorry, I'm just looking at Mr Kitching's 25 witness statement.</p> | <p>1 CHAIRMAN: All right. 2 MR TSOI: Perhaps the easiest way may be for the witness to 3 produce them to the Commission and then the Commission 4 can circulate them to the parties, and if anything 5 arises then we can of course recall Mr Cheung, but 6 I doubt -- 7 CHAIRMAN: All right. Let's do it on that basis. 8 MR TSOI: There is one last issue I would like to clarify 9 with Mr Cheung. 10 Mr Cheung, in relation to the sub-contract with 11 Loyal Ease that we can see at, I think, EE401. That's 12 the Chinese version. I think the English version may be 13 EE402. 14 Prior to this Inquiry, has this sub-contract ever 15 been supplied to Leighton? 16 A. Yes. 17 Q. Why? What were the circumstances that it was supplied 18 to Leighton? 19 A. There was a worker who was injured. Leighton asked us 20 to prove the identity of the worker with some documents, 21 and we also gave Leighton this sub-contract. 22 Q. Can you now recall exactly to whom it was supplied to? 23 A. I have printed that email and I have it with me. 24 Q. Perhaps that would be one of the materials that you 25 supply to the Commission for them to circulate; all</p> |

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| <p>1 right? 2 A. Yes, I can do that. 3 MR TSOI: I have no further questions. 4 CHAIRMAN: Yes. I take it that the correspondence and other 5 documentation would be paginated and then circulated. 6 MR TSOI: Yes. 7 MR PENNICOTT: Sir, I wonder if I might, just at this 8 juncture, invite Mr Cheung to hand over those documents 9 now, if you've got them. 10 A. Yes, certainly. 11 A. (In English) Can I open my box? (Handed). 12 CHAIRMAN: Yes. 13 MR PENNICOTT: He worryingly has a suitcase! 14 COMMISSIONER HANSFORD: I saw that on the way in. 15 CHAIRMAN: Oh dear, yes. 16 WITNESS: (In English) This is the email we sent to 17 Leightons about the injured workers with the contract. 18 And this is the supporting document we submit to 19 Leighton, Colin, Mark Manning and Kenneth about the 20 Loyal Ease payment record. Actually we submit to them 21 every month but I cannot find the record but I found 22 some. Maybe not every month but sometimes. 23 MR PENNICOTT: Sir, can I just make some enquiries as to how 24 quickly we could get these paginated and copied? 25 CHAIRMAN: Certainly.</p> | <p>1 witness has finished his evidence, subject to possible 2 recall. 3 MR PENNICOTT: Yes, sir. 4 CHAIRMAN: All right. 5 Mr Cheung, your evidence is now finished. 6 WITNESS: (In English) Thank you. 7 CHAIRMAN: So you can go. There is a possibility, however, 8 because of the new documents which you have just taken 9 out of your bag, that once they have been studied, you 10 may have to come back, just to answer some questions in 11 respect of that documentation. Okay? 12 WITNESS: (In English) Got it. 13 CHAIRMAN: But you can work on the basis that you have now 14 finished your evidence and free to go. Okay? 15 WITNESS: (In English) So I can discuss this matter? 16 CHAIRMAN: Yes, you may. You have finished your evidence. 17 WITNESS: (In English) Thank you. 18 CHAIRMAN: Thank you. 19 WITNESS: (Chinese spoken). 20 (The witness was released) 21 MR PENNICOTT: Sir, subject to what we have just been 22 discussing with Mr Cheung, that concludes the three 23 witnesses from Wing & Kwong, so we are now going to -- 24 obviously we've had Mr Lai already from Leighton, so we 25 will now be returning to the Leighton witnesses and the</p> |
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| <p>1 (Discussion off the record) 2 MR PENNICOTT: Second thoughts are best. We can get these 3 paginated and copied relatively quickly. What was going 4 through my mind was trying to avoid the necessity of 5 having to recall Mr Cheung at some time in the future 6 and try to get this done as quickly as possible, even 7 this afternoon. On the other hand, I recognise it is 8 pretty unfair to Leighton to give them this amount of 9 documentation and invite them to put any further 10 questions to Mr Cheung this afternoon. 11 So I think actually probably second thoughts are 12 best and we should do this in a rather more orderly 13 fashion. 14 So I will obviously organise the pagination and 15 copying of these documents, and if, in the fullness of 16 time, Leighton or anybody else feel, or I feel, that we 17 need to invite Mr Cheung to come back, we will do that, 18 rather than hold him here for this afternoon, and we 19 will just proceed with the next witnesses as we had 20 planned to do so. 21 CHAIRMAN: That seems the best way forward. 22 MR PENNICOTT: That's probably the best way of doing it. 23 MR SHIEH: Yes. 24 MR PENNICOTT: I think Mr Shieh agrees with that. 25 CHAIRMAN: Good. Then we will do that. Then I think this</p> | <p>1 next Leighton witness is Mr Jonathan Kitching. 2 Sir, before we call -- Mr Shieh calls Mr Kitching, 3 can I just mention one matter, and it's this. We have 4 a witness statement from a Mr Daniel Teoh, a Leighton 5 witness. His witness statement is at CC10/6498 and is 6 dated 24 May 2019. 7 Sir, all parties and the Commission have agreed that 8 no questions need to be asked of Mr Teoh, so he will not 9 be called. His name will fall off the list, but his 10 witness statement will be uploaded onto the Commission's 11 website in the usual way. 12 Secondly and similarly, we have a witness statement 13 from a Mr Cheung Chi Wai that was dated 30 May, that is 14 on Thursday last week. Mr Cheung Chi Wai's name did not 15 get onto the timetable, and you may recall it's a very 16 short statement and he was the interpreter at 17 a conversation between Mr Kitching and Ah Chun -- 18 CHAIRMAN: Ah, yes. 19 MR PENNICOTT: -- at that meeting. Again, helpfully, 20 everybody has indicated there is no desire to ask Cheung 21 Chi Wai any questions, so he hasn't even got onto the 22 list, but anyway he won't be appearing on the list, but 23 similarly, his witness statement, which is at C10/6532, 24 will go onto the website. 25 CHAIRMAN: All right. Good.</p> |

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| <p>1 MR PENNICOTT: Just so that everybody knows where we are</p> <p>2 CHAIRMAN: Yes.</p> <p>3 MR SHIEH: Mr Chairman, Mr Kitching is here, so I now</p> <p>4 proceed to call Mr Jonathan Kitching.</p> <p>5 CHAIRMAN: Yes.</p> <p>6 MR JONATHAN CHARLES KITCHING (affirmed)</p> <p>7 Examination-in-chief by MR SHIEH</p> <p>8 MR SHIEH: Mr Kitching, thanks for coming to give evidence.</p> <p>9 You have made three witness statements for the</p> <p>10 purpose of this Commission of Inquiry. I will be taking</p> <p>11 you to those statements. But before I do so, can I ask</p> <p>12 you to look at bundle CC2, page 529.</p> <p>13 A. Okay, on the screen.</p> <p>14 Q. This is a corporate chart, an organisation chart, as of</p> <p>15 31 August 2017. I'm just trying to place you in this</p> <p>16 organisation chart. So if you look at the top, you see</p> <p>17 the blue box, "MTRC"; yes?</p> <p>18 A. Correct.</p> <p>19 Q. And we can see your photograph, in a more casual outfit,</p> <p>20 immediately below "MTRC"?</p> <p>21 A. Correct.</p> <p>22 Q. So that was the position you occupied at the material</p> <p>23 time in this case, 2017 and 2018?</p> <p>24 A. Correct.</p> <p>25 Q. As project director?</p> | <p>1 witness statements as your evidence in this Commission</p> <p>2 of Inquiry?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Thank you. Now, please remain seated because counsel</p> <p>5 for the Commission, Mr Pennicott in front of me, and</p> <p>6 counsel for the other parties may have questions for</p> <p>7 you, as may the Commission, and after all the</p> <p>8 questioning I would have a chance to ask you follow-up</p> <p>9 questions by way of re-examination if I want to. Do you</p> <p>10 understand?</p> <p>11 A. I understand, yes.</p> <p>12 MR SHIEH: Before examination of Mr Kitching begins, can</p> <p>13 I just lay down a marker? It relates to the documents</p> <p>14 just produced by Mr Tsoi concerning the alleged</p> <p>15 knowledge by Leighton of the sub-contract with Loyal</p> <p>16 Ease.</p> <p>17 As I said, I took a rather pragmatic approach and</p> <p>18 I didn't want to create any obstruction, but in case</p> <p>19 anyone wants to ask questions of Mr Kitching concerning</p> <p>20 those documents, could I ask that those questions not be</p> <p>21 asked immediately but wait until after the lunch break?</p> <p>22 And I would also ask that after we have had a chance of</p> <p>23 seeing the documents, we have limited permission to</p> <p>24 speak to Mr Kitching confined solely on the subject</p> <p>25 matter of those new documents? I didn't raise it at the</p> |
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| <p>1 A. Yes, correct.</p> <p>2 Q. Thank you.</p> <p>3 Can you then look at your witness statements. First</p> <p>4 of all, CC10, page 6487.</p> <p>5 A. Yes.</p> <p>6 Q. That is your first witness statement?</p> <p>7 A. Correct.</p> <p>8 Q. If you turn to page 6491, that is your signature on that</p> <p>9 page, is it?</p> <p>10 A. That is correct.</p> <p>11 Q. Then can you turn in the same bundle to page 6534.</p> <p>12 A. Yes.</p> <p>13 Q. That is your second witness statement?</p> <p>14 A. Yes, correct.</p> <p>15 Q. And at 6535, is that your signature?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Lastly, CC11, bundle CC11.</p> <p>18 A. Mm-hmm.</p> <p>19 Q. At page 6548.</p> <p>20 A. Yes.</p> <p>21 Q. That is your third witness statement?</p> <p>22 A. Correct.</p> <p>23 Q. And your signature at 6553?</p> <p>24 A. Correct.</p> <p>25 Q. So do you put forward the contents of these three</p> | <p>1 time because I don't want to take up time, but I hope</p> <p>2 this is not controversial. If documents are produced so</p> <p>3 recently, we should, in fairness, have a chance to</p> <p>4 confer with Mr Kitching solely on the point of those</p> <p>5 documents. I hope that is acceptable.</p> <p>6 CHAIRMAN: It sounds sensible.</p> <p>7 MR PENNICOTT: Sir, it is entirely acceptable, of course, to</p> <p>8 the Commission. As Mr Shieh has indicated, that must be</p> <p>9 entirely right. I certainly won't be asking any</p> <p>10 questions about those documents, not yet having seen</p> <p>11 them.</p> <p>12 CHAIRMAN: Good. Thank you, Mr Shieh. That's acceptable.</p> <p>13 MR PENNICOTT: Thank you very much, sir.</p> <p>14 Examination by MR PENNICOTT</p> <p>15 Q. Mr Kitching, Mr Shieh has already explained how it's</p> <p>16 going to work so I'm not going to repeat that, and good</p> <p>17 afternoon and thank you very much on behalf of the</p> <p>18 Commission for coming to give evidence.</p> <p>19 A. A pleasure.</p> <p>20 Q. We have seen from the organisation chart that Mr Shieh</p> <p>21 took you to that -- that was dated August 2017. As</p> <p>22 I understand it, it was at about that time that you took</p> <p>23 up your position as project director; is that right?</p> <p>24 A. It was very late August 2017, yes.</p> <p>25 Q. Okay. Had you any prior involvement with this</p> |

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| <p>1 particular project before taking up your position as 2 project director in August 2011? 3 A. No, absolutely nothing. 4 Q. And that means the whole of the SCL project, not just 5 this contract? 6 A. The whole of the SCL project, correct. 7 Q. I think we saw very fleetingly to the left of your 8 photograph was Mr Zervaas? 9 A. Correct. 10 Q. Was he your predecessor; have I got that right? 11 A. Yes, he was the -- my predecessor, correct, yes. 12 Q. I had to think back to the first part of the Inquiry for 13 that. All right. 14 So I think it must follow from that that Mr Zervaas 15 was the project director at the time of the construction 16 of the joints, the stitch joints and the construction 17 joint, with which we are concerned? 18 A. I believe this is fact, yes. 19 Q. Okay. Now, we saw that site organisation chart, and 20 perhaps just for the purposes of my next couple of 21 questions we could get it back up on the screen, please. 22 It's CC2/529. 23 I don't know if we could just take out the MTRC, as 24 it were, with the greatest of respect, to see the next 25 line.</p> | <p>1 getting anywhere, then he would be able to elevate it to 2 more senior levels. 3 Q. Is the sort of culture of the organisation that you 4 would encourage people to tell their senior managers, if 5 they felt in that way? 6 A. Obviously I can't talk for the people before me, but 7 certainly in my case I try and promote that; I have 8 an open-door policy. 9 Q. As the works proceed in any particular area, who is 10 responsible for monitoring the sufficiency of the number 11 of personnel that have been deployed? 12 A. Again, it's the section manager. 13 Q. So if, as we know, as unfortunately happened, there are 14 quite a number -- and let's just focus on the NAT for 15 the moment. 16 A. Sure. 17 Q. We are going to be discussing other areas with other 18 witnesses -- RISC forms are not being submitted, issued 19 and submitted, from Leighton to the MTR, is that 20 something the section manager ought to know about? 21 A. For sure. 22 Q. This is not something that -- let's say Henry Lai is 23 responsible, let's say he's responsible for issuing and 24 submitting the RISC forms -- this is not something that 25 would be unknown to the more senior personnel; would you</p> |
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| <p>1 A. Yes. 2 Q. Can I ask you this, as a general question arising out of 3 some evidence that Mr Henry Lai gave to the Commission. 4 Mr Kitching, who is ultimately responsible for 5 determining the number and the discipline of the 6 personnel that are deployed to any given area of the 7 contract? I mean, we are here concerned with primarily 8 the NAT, the SAT and the HHS, as you know. Who 9 determines, as I say, the discipline, the number of 10 personnel deployed to each area? 11 A. Typically it will be the person in charge of that area, 12 such as a section manager or a construction manager. 13 Obviously it gets elevated to the project director for 14 approval. 15 Q. So if one is focusing just on the NAT for the moment -- 16 and the reason I'm asking you this question, as you 17 perhaps may pick up, is that in answer to some questions 18 from the Chairman and the Commissioner, Mr Lai told us, 19 Henry Lai told us, that at times he felt overstretched, 20 overworked, and this was one of the reasons why the RISC 21 forms weren't submitted, issued and submitted. And so, 22 if he had that sort of problem, who would you expect him 23 to take that problem to? 24 A. Initially, it would be his immediate supervisor, his 25 immediate section manager, and if he felt he wasn't</p> | <p>1 accept that? 2 CHAIRMAN: Sorry, I don't quite -- 3 A. We -- 4 CHAIRMAN: I do apologise. I have perhaps not understood 5 that as well as I should have done. 6 MR PENNICOTT: No, no. Let me try it again. 7 Let's assume for the moment that Henry Lai himself 8 is responsible for issuing and submitting RISC forms to 9 the MTR for hold-point inspections, let's say, and let's 10 say there's an absence of those RISC forms, as we know 11 there is. Is that something you would expect Mr Lai's 12 senior, senior manager, whoever, to know about? It's 13 not something Mr Lai would hide from them? 14 A. I would expect the more senior people to understand it, 15 yes. 16 Q. To appreciate -- 17 A. To appreciate that they're not being done. 18 Q. And how high up the organisation would you expect that 19 appreciation to go? 20 A. To the top. I mean, if it's habitual and not being 21 done, it should be elevated up to the top until it's 22 sorted out. 23 Q. When you took up your position as project director, 24 Mr Kitching, did you familiarise yourself with 25 Leighton's contractual obligations with regard to the</p> |

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| <p>1 supervision that they should be providing when executing 2 the works? 3 A. Sorry, can you repeat that question? 4 Q. Sure. Let's put it in context. We've got a rebar 5 fixing sub-contractor. I accept that by the time you 6 arrived, it was probably more or less finished -- 7 A. Yes. 8 Q. -- because the civil works, I think, on the civil side, 9 were more or less complete at that time; is that right? 10 A. They were, yes. 11 Q. Did you make it your business to find out what level of 12 supervision should have been applied to that rebar 13 fixing sub-contractor by Leighton? 14 A. Well, as you rightly say, the works were complete when 15 I started, so I wasn't really looking at what should 16 have been done in the past. I was looking for what we 17 have, resources we have, to complete the rest of the 18 works. 19 Q. Okay. It's just that we know -- and I won't take you to 20 it but we've seen it a couple of times already -- there 21 was apparently on the NAT, for example, a requirement to 22 keep a log book and various details in that log book. 23 A. Mm-hmm. 24 Q. And that's not something that you were aware of, 25 presumably?</p> | <p>1 Q. Moving on, in paragraphs 5 to 8 of your first witness 2 statement -- that's at CC10/6488 -- you refer to your 3 request to Mr Holden, William Holden, to investigate the 4 cracking and the water seepage to the NSL 1111/1112 5 stitch joint. Do you see that? 6 A. Yes, I see that. 7 Q. You say in paragraph 6 that Mr Holden reported the crack 8 to you, recommended that more breaking up -- or breaking 9 open, rather -- should be done of the concrete along the 10 NSL stitch joint in order to identify the cause of the 11 cracking and water leakage. 12 Mr Kitching, in your view, was the cause of the 13 cracking and the water leakage definitively determined? 14 A. We had had an issue with water coming in for a while, 15 and then it got noticeably larger in early February 16 I think it was. When we opened up some of the areas and 17 found some of the couplers not connected, we assumed 18 that that was the cause. Whether it was definitive -- 19 I'm not a structural engineer so it's difficult for me 20 to say, but I would have thought it would have 21 exacerbated the problem. 22 Q. So there was this assumption made by Leighton, and 23 I assume assumption made by the MTRC as well, that 24 having discovered the unconnected rebar, that that was 25 likely to be the cause?</p> |
| Page 78 | Page 80 |
| <p>1 A. Not at the time, no. When I started, no. 2 Q. It's something you've subsequently -- 3 A. Subsequently learnt, yes. 4 MR PENNICOTT: All right. 5 Sir, I'm about to go on now to a completely separate 6 topic. I see it's three minutes to 1.00. 7 CHAIRMAN: Yes, certainly. 8 MR PENNICOTT: Perhaps we could come back at 2.15? 9 CHAIRMAN: 2.15. 10 We are going to adjourn now to 2.15, Mr Kitching. 11 WITNESS: Okay. 12 CHAIRMAN: One thing is said to all witnesses, when 13 I remember: when you are giving your evidence, when we 14 have these form of breaks, you are not entitled to 15 discuss your evidence with anybody else. You can 16 obviously speak about other things, but you are not 17 entitled to sit down and analyse or discuss or ask 18 questions about your evidence. 19 WITNESS: I understand. 20 CHAIRMAN: Okay. 2.15. 21 (12.58 pm) 22 (The luncheon adjournment) 23 (2.18 pm) 24 MR PENNICOTT: Mr Kitching, good afternoon. 25 A. Good afternoon.</p> | <p>1 A. Yes. 2 Q. Did you go yourself to the site and look at the 3 locations that have been opened up? 4 A. Yes, I did. 5 Q. Would you accept this, Mr Kitching -- 6 CHAIRMAN: Sorry to interrupt. I do apologise. You are 7 saying the failure to connect was the probable cause, in 8 your view, without in-depth examination, of the water 9 leakage and the concrete cracking, or just one or the 10 other? 11 Sorry. 12 MR PENNICOTT: No, no, no, that's a fair point. 13 A. Water leakage is quite a common occurrence in the 14 industry, especially in underground structures, where we 15 need to fix it. 16 CHAIRMAN: Yes. 17 A. That wasn't -- the water leak wasn't the concern at the 18 time. The concern was when the crack got noticeably 19 wider at, I forget, I think early February time. That 20 was more the concern. 21 CHAIRMAN: Thank you. 22 MR PENNICOTT: Would I be right in thinking that when the 23 water seepage and perhaps more importantly the cracking 24 occurred, this was regarded by you as a serious matter, 25 you personally as a serious matter?</p> |

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| <p>1 A. Yes.</p> <p>2 Q. Did you think it warranted a thorough, rigorous</p> <p>3 inspection -- sorry, investigation?</p> <p>4 A. We conducted at the time an investigation into what we</p> <p>5 thought the cause is. Our focus or my focus at that</p> <p>6 time was to establish the extent of any problems and</p> <p>7 what remedial works we had to do. That was my focus at</p> <p>8 the time, to go into an in-depth inquiry, for want of</p> <p>9 a better word. To establish why it happened, we didn't</p> <p>10 go down that road at that time.</p> <p>11 Q. So you would accept, would you, Mr Kitching, that there</p> <p>12 is no available in-depth, detailed report, analysing</p> <p>13 joint by joint what had -- the causation, for want of</p> <p>14 a better word --</p> <p>15 A. There is not.</p> <p>16 Q. -- of what happened?</p> <p>17 A. There is not.</p> <p>18 Q. And you were not asked to do that by the MTRC, as</p> <p>19 I understand it?</p> <p>20 A. No, I don't recall being asked, no.</p> <p>21 Q. So would this be fair, Mr Kitching: having seen the</p> <p>22 water seepage, discovered the cracks, cracks increasing</p> <p>23 in size, having opened up a certain number of areas,</p> <p>24 discovered the unconnected rebar, that a relatively</p> <p>25 quick decision was made that the three stitch joints</p> | <p>1 rebar was not properly connected to the couplers at the</p> <p>2 NAT stitch joints and the SNJ and pressed him to explain</p> <p>3 what happened. I cannot recall the exact words of the</p> <p>4 conversation but the gist of Henry's response was that</p> <p>5 he had no idea why the defects had occurred and did not</p> <p>6 remember anything of note about the NAT stitch joints</p> <p>7 and the SNJ. I also recall that Henry was upset when he</p> <p>8 heard about the defects."</p> <p>9 Can you recall whether that conversation with Mr Lai</p> <p>10 occurred before or after the opening-up had been done?</p> <p>11 A. I can't recall the exact date but it would have been</p> <p>12 around the time that the crack opened up and we had</p> <p>13 opened up some of the areas to look at the couplers.</p> <p>14 Q. You received -- and we can look at it if necessary --</p> <p>15 NCR95 from the MTR --</p> <p>16 A. Mm-hmm.</p> <p>17 Q. -- on 9 February 2018, which as we know had some</p> <p>18 photographs attached to it which showed, at least some</p> <p>19 of them showed, the unconnected rebar.</p> <p>20 A. Yes.</p> <p>21 Q. Did your conversation with Mr Lai take place before or</p> <p>22 after receipt of that NCR; can you recall?</p> <p>23 A. I don't recall the exact date when I spoke to Henry.</p> <p>24 Q. Right.</p> <p>25 You also go on to talk about a conversation that you</p> |
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| <p>1 just had to be demolished as soon as possible, taken</p> <p>2 down and reconstructed?</p> <p>3 A. Correct. It wasn't much of a decision to make. It was</p> <p>4 made quickly.</p> <p>5 Q. It was a pretty quick, no-brainer?</p> <p>6 A. Yes, it was a no-brainer, a matter of a week or so</p> <p>7 maybe.</p> <p>8 Q. Can I just move on to something slightly different,</p> <p>9 albeit it is still to do with the problem with the</p> <p>10 stitch joints.</p> <p>11 In your paragraph 9 of your first witness statement</p> <p>12 at CC10/6488, you say:</p> <p>13 "When I learned of the defects at the NAT stitch</p> <p>14 joints and the joint at the SNJ, I personally sought out</p> <p>15 and spoke to Leighton's engineer who supervised for</p> <p>16 these works, Mr Henry Lai."</p> <p>17 Between August of 2017, when you took up your post</p> <p>18 as project director, and let's say early February 2018,</p> <p>19 had you met Mr Lai before?</p> <p>20 A. Yes, I had.</p> <p>21 Q. You had had occasion to have discussions with him about</p> <p>22 other things?</p> <p>23 A. Absolutely, yes.</p> <p>24 Q. And you said:</p> <p>25 "During that conversation, I asked Henry why the</p> | <p>1 had with Joe Tam --</p> <p>2 A. Yes.</p> <p>3 Q. -- who was the construction manager for the NAT at the</p> <p>4 time. You asked him the same sort of questions, but the</p> <p>5 gist of Mr Tam's response was that he was not personally</p> <p>6 involved in supervising the works and he knew nothing</p> <p>7 about what had happened?</p> <p>8 A. Correct.</p> <p>9 Q. And the conversation with Mr Tam, as you say, took place</p> <p>10 at around the same time as the conversation with Mr Lai?</p> <p>11 A. Correct.</p> <p>12 Q. You wrote your first letter to Wing & Kwong on</p> <p>13 12 February 2018. We will look at that in a moment.</p> <p>14 Did the conversation with Mr Lai -- forget about</p> <p>15 Mr Tam -- did the conversation with Mr Lai take place</p> <p>16 before you wrote that first letter?</p> <p>17 A. I can't recall.</p> <p>18 Q. That first letter is at EE -- sorry, before we go there,</p> <p>19 slightly out of order -- another conversation you had</p> <p>20 was with Mr Ng, or Ah Chun, from Wing & Kwong. Do you</p> <p>21 recall that?</p> <p>22 A. Vaguely.</p> <p>23 Q. You deal with that in your second witness statement at</p> <p>24 paragraph 6. That's at CC10/6534, where you say:</p> <p>25 "In around early February we needed to ascertain the</p> |

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| <p>1 extent of unconnected rebar to establish if a full 2 reconstruction was required or some lesser remedial 3 works. I recall having an informal discussion with the 4 Wing & Kwong supervisor ..."</p> <p>5 Who I think we can safely assume was Mr Ng or 6 Ah Chun?</p> <p>7 A. Correct.</p> <p>8 Q. "... via one of my engineers acting as interpreter. 9 Although I do not recall the exact conversation, I am 10 informed that he confirmed maybe as many as 30 per cent 11 or more of the couplers may not be connected."</p> <p>12 A. Correct.</p> <p>13 Q. I think he puts it around the other way, that 14 70 per cent were connected, but it probably perhaps 15 amounts to the same thing?</p> <p>16 A. It does.</p> <p>17 Q. Again, do you have any recollection as to whether that 18 conversation took place before you wrote your first 19 letter on 12 February?</p> <p>20 A. No, I don't recall the exact date of that conversation.</p> <p>21 Q. Ah Chun, in his witness statement, tells us that it took 22 place a couple of days after he'd had a conversation 23 with Mr Cheung, who we were hearing from earlier, and on 24 that basis the conversation, according to Mr Ng, 25 Ah Chun, must have taken place around 9 or 10 February.</p> | <p>1 screen, I hope. It's up to you whether you want hard 2 copy or the screen.</p> <p>3 A. I don't mind.</p> <p>4 Thanks.</p> <p>5 Q. So here we are, 12 February, and just looking at the 6 last paragraph -- I think you refer to this in your 7 witness statement, Mr Kitching, as a sort of fairly 8 standard type letters that would go out to 9 sub-contractors in this sort of situation?</p> <p>10 A. Correct, in any sort of situation where we have defects 11 from a sub-contractor, we would write a similar letter.</p> <p>12 Q. So who actually wrote this letter? I know you signed 13 it, but who wrote it?</p> <p>14 A. It looks like Will Holden drafted it. Maybe our 15 commercial manager checked it, by the look of it.</p> <p>16 Q. You get that from the initials at the bottom of the 17 page?</p> <p>18 A. Yes.</p> <p>19 Q. In the last paragraph you say: 20 "Please be advised that should the cause of the 21 water leaks and cracks be due to defective work 22 undertaken or the materials supplied by your company, we 23 will seek to recover all costs incurred in accordance 24 with the terms of the sub-contract." 25 The reality is, Mr Kitching, is it not, that this</p> |
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| <p>1 Would you dispute that?</p> <p>2 A. No.</p> <p>3 Q. On that basis, probably, then the conversation may have 4 taken place before you wrote the first letter?</p> <p>5 A. Could be.</p> <p>6 Q. Could be? All right.</p> <p>7 CHAIRMAN: Could I ask -- sorry, I do apologise.</p> <p>8 MR PENNICOTT: Of course.</p> <p>9 CHAIRMAN: When you said to Henry Lai, who said he had no 10 memory of anything in particular, were you aware of the 11 fact that it had been his area of responsibility to 12 generally oversee the construction and, more 13 particularly, to conduct hold-point inspections?</p> <p>14 A. I was aware that it was his area of responsibility, yes, 15 and the roles that come with that, he should have done.</p> <p>16 CHAIRMAN: By then, was it becoming apparent that there 17 were -- there was fairly extensive failure? I mean --</p> <p>18 A. In the early stage, no, because I think we only opened 19 up maybe half a dozen locations and exposed maybe four 20 or five couplers in each. So the extent of it was not 21 known at that stage.</p> <p>22 CHAIRMAN: All right. Yes, thank you.</p> <p>23 MR PENNICOTT: The first letter that you wrote, Mr Kitching, 24 to Wing & Kwong is in a couple of places but it's most 25 conveniently found at EE271. I'll put that up on the</p> | <p>1 particular sub-contractor, Wing & Kwong, didn't supply 2 any of the materials; do you agree with that?</p> <p>3 A. That's correct.</p> <p>4 Q. So those words were unnecessarily included in this 5 letter?</p> <p>6 A. Yes. It's a standard letter.</p> <p>7 Q. Were you aware, when you wrote this letter, of what has 8 now been described as the mismatch between the threaded 9 rebar supplied by Leighton and the tapered couplers 10 installed by the Gammon-Kaden Joint Venture?</p> <p>11 A. No, at this time I wasn't aware of the Lenton couplers.</p> <p>12 Q. That you became aware of later?</p> <p>13 A. Became aware of through investigation later.</p> <p>14 Q. Then if you would be good enough, please, to go to or be 15 shown EE277. This is a letter of 23 February 2018 from 16 Wing & Kwong to yourself; do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. There's a reference to a deliberation, a conversation 19 perhaps, between Mr Ng and Mr Henry Lai; do you see 20 that?</p> <p>21 A. Yes, I see it.</p> <p>22 Q. Passing over that to the next paragraph, it says: 23 "The material was ordered by Leighton ..." 24 And that's clearly right, is it not?</p> <p>25 A. On the request of Wing & Kwong, yes.</p> |

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| <p>1 Q. "... and Wing & Kwong [had] no right to choose which 2 type of coupler can be used for further connected with 3 1111 GCL." 4 That's right, isn't it? 5 A. Correct. 6 Q. "Also, all the works have been inspected by Leighton and 7 relevant parties before concreting ..." 8 That's right, isn't it? 9 A. I assume so. I wasn't there at the time but ... 10 Q. That's what you must have assumed? 11 A. Assumed, yes. 12 Q. "... to ensure all parties ... fully comply with 13 standard and drawings so we don't take any 14 responsibility after concreting." 15 The reference there to "type of coupler can be used 16 for further connected with 1111 GCL", leaving aside the 17 precise language used, Mr Kitching, did this put you on 18 to the mismatch point, or perhaps you had already 19 discovered the mismatch point by now, 23 February; do 20 you recall? 21 A. I think it was becoming evidence in around this time 22 that we had different couplers in the Gammon joint. 23 Q. I think you tell us in paragraphs 14 and 15 that you had 24 another conversation with Henry Lai. 25 A. Mm-hmm.</p> | <p>1 "Construction manager/project director". Is that your 2 signature? 3 A. No, that's the construction manager, Colin. 4 Q. That's Colin Mitchell's, is it? 5 A. Yes. 6 Q. So you didn't actually sign this backcharge? 7 A. No. 8 Q. But you would have been aware of it? 9 A. I was aware of it, yes. 10 Q. Did you instruct it to be sent? 11 A. I think we had a discussion and the commercial team 12 agreed it needed to be sent. Whether I instructed it, 13 I don't remember, but it was certainly spoken about and 14 we agreed to send it. 15 Q. If we look at "Part C" of the document, "Detailed 16 description of sub-contract works", it says: 17 "Backcharge of rebar, labour, material and resources 18 required for NSL stitch joint rectification upon 19 receiving NCR issued by MTRC." 20 And I think it's uncontroversial that NCR95 was sent 21 with this backcharge notice? 22 A. Correct. 23 Q. "You are to supply labour, material and resources for 24 the rebar fixing for rectification works of stitch 25 joint."</p> |
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| <p>1 Q. And you say that having referred not just to this letter 2 that we've looked at but also the letter of 26 February, 3 which we can look at in a moment. Was there just one 4 further conversation with Henry Lai after you had 5 received both letters, or did you speak to him after you 6 received this letter, of the 23rd? 7 A. I had a couple of conversations with Henry. The exact 8 timing in relation to receiving of letters, I can't 9 remember. 10 Q. We'll come to the 26th in a moment. 11 Would you go, please, to page 285, EE285. 12 On the 23rd, the same date as the letter we've just 13 been looking at, there is an email from Leighton to Wing 14 & Kwong; do you see that? 15 A. Yes. 16 Q. And it's enclosing what's called a sub-contractor 17 backcharge notice? 18 A. Correct. 19 Q. And the signatures at the bottom, in part F of this 20 form, are, as I understand, Regina Wong's, is that 21 right, and Kenneth Lau? 22 A. Yes. 23 Q. And is that two signatures or one signature? 24 A. Kenneth Lau? 25 Q. No, I beg your pardon -- to the right it's got</p> | <p>1 Did you really, at this stage, Mr Kitching, have any 2 intention of requiring or requesting Wing & Kwong to 3 carry out the remedial works? 4 A. I didn't think we would get any response from Wing 5 & Kwong in relation to fixing it. 6 Q. It goes on to say: 7 "Break out of existing stitch joint, including 8 and/all flood protection, grouting et cetera. Design, 9 procurement and erection of falsework and formwork." 10 Now, it is right, is it not, that you clearly could 11 not have had any intention of asking Wing & Kwong to do 12 the breaking out of the existing stitch joint, because 13 Mr Holden tells us that on 15 February, ie eight days 14 before this backcharge notice was sent, it had already 15 started? 16 A. Correct. 17 COMMISSIONER HANSFORD: Sorry, if I can just understand -- 18 so part C of this form, Mr Kitching, is not what you 19 expected Wing & Kwong to do; it's what -- your work had 20 to be carried out as a result of their defect; is that 21 right? 22 A. That is correct. It would appear to be. I think it 23 should have been worded better in that "this is what we 24 need you to do and this is what we will be charging for, 25 rather than asking you to come and do it." I think the</p> |

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| <p>1 wording could have been better.</p> <p>2 COMMISSIONER HANSFORD: I understand.</p> <p>3 MR PENNICOTT: Do you know why the photographs and plans</p> <p>4 were not sent to Wing & Kwong with the NCR?</p> <p>5 A. No.</p> <p>6 Q. Wing & Kwong, on a number of occasions, ask you to set</p> <p>7 up a joint inspection of the areas of the stitch joints.</p> <p>8 That didn't happen. Do you know why not?</p> <p>9 A. I don't recall. I thought there was an inspection with</p> <p>10 Ah Chun, or at some point with one of the engineers.</p> <p>11 I thought they did go in.</p> <p>12 Q. I think there was a very early inspection at just about</p> <p>13 the time of the meeting, but you had requests in writing</p> <p>14 from Mr Cheung, or Mr Chan who wrote these letters, for</p> <p>15 a joint inspection, but no formal joint inspection was</p> <p>16 ever convened, as I understand it, between Wing & Kwong,</p> <p>17 other than Ah Chun, and Leighton; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. Do you know why that was?</p> <p>20 A. Again, back to -- I didn't really see what benefit it</p> <p>21 would be at the time, because we had started the work or</p> <p>22 were getting on with the work. It was a busy time, and</p> <p>23 without wanting to -- at that time, without wanting to</p> <p>24 go into a witch hunt with everybody, the focus was to</p> <p>25 get the repairs done and finished at that time.</p> | <p>1 mismatch problem, because the Lenton couplers would have</p> <p>2 been revealed, presumably?</p> <p>3 A. Correct, yes.</p> <p>4 Q. So when you say, as you do, in your witness statement,</p> <p>5 that there was little support for what Wing & Kwong were</p> <p>6 saying to you in their letters, the existence of the</p> <p>7 mismatch does indeed, does it not, lend some support to</p> <p>8 what they were saying?</p> <p>9 A. No, I don't accept that, because, again, they are</p> <p>10 responsible -- they have a duty of care for the work.</p> <p>11 They are responsible to install the works in accordance</p> <p>12 with the requirements. If there's reasons for not doing</p> <p>13 it, they should advise us in writing why.</p> <p>14 Q. Because if one looks at it in this way, as a matter of</p> <p>15 fact, with the rebar that Leighton supplied Wing & Kwong</p> <p>16 with, they couldn't fulfil that obligation, could they,</p> <p>17 their contractual obligation to connect the rebar to the</p> <p>18 couplers? It was simply impossible, was it not?</p> <p>19 A. I'm not aware that Wing & Kwong requested the rebar.</p> <p>20 I would expect the sub-contractor to request what rebar</p> <p>21 or what bits of materials he needs and by when to fulfil</p> <p>22 his role.</p> <p>23 Q. But there was no way that Wing & Kwong knew at the time</p> <p>24 that they needed to request tapered threaded rebar as</p> <p>25 opposed to parallel rebar, was there?</p> |
| Page 94 | Page 96 |
| <p>1 Q. Thank you. If you knew about the mismatch at around</p> <p>2 23 February 2018, you really believed that there was</p> <p>3 justification in sending this backcharge notice?</p> <p>4 A. It's the responsibility of the sub-contractor to make</p> <p>5 sure the works are installed and completed as per the</p> <p>6 contract requirement, and if that's not been the case</p> <p>7 and there's a defect and we have to do some remedial</p> <p>8 works, then I would expect them to be liable for it,</p> <p>9 whether they do the work or somebody else does the work.</p> <p>10 Q. So you were taking a fairly strict contractual --</p> <p>11 adopting a very strict contractual position at the time?</p> <p>12 A. Yes.</p> <p>13 Q. When you did become aware of the mismatch problem, did</p> <p>14 it occur to you that there might be more to this than</p> <p>15 meets the eye? That this wasn't just a simple question</p> <p>16 of some defects in the sense of rebar not being</p> <p>17 connected to couplers, but there was actually a rather</p> <p>18 fundamental problem that had arisen?</p> <p>19 A. Well, of course, because it's the first time I've ever</p> <p>20 seen anything like that before. And when we started</p> <p>21 breaking out, the extent of it became known. It was</p> <p>22 a big problem, yes.</p> <p>23 Q. And the breaking out, getting ready for the</p> <p>24 reconstruction, if you didn't know it by now, you</p> <p>25 certainly knew it by then, that there was indeed this</p> | <p>1 A. Why not? They could go and have a look on site.</p> <p>2 Q. It wasn't until they discovered and opened up -- when</p> <p>3 the Gammon concrete had been removed and the Lenton</p> <p>4 couplers had been exposed, it was only at that point</p> <p>5 that everybody knew. I mean, not even your engineer,</p> <p>6 Mr Lai, apparently, knew that the Lenton couplers were</p> <p>7 there. That's right, isn't it?</p> <p>8 A. It appears to be the case, yes.</p> <p>9 CHAIRMAN: Could you tell me, did you at about this time</p> <p>10 discover that there was no RISC form or forms in regard</p> <p>11 to the stitch joints?</p> <p>12 A. It would have been around -- I can't remember the time</p> <p>13 but it would have been around May -- March time,</p> <p>14 I think, it was becoming evident.</p> <p>15 CHAIRMAN: And were you able to ascertain who from MTR had</p> <p>16 been responsible together with Henry Lai for inspections</p> <p>17 of the stitch joints?</p> <p>18 A. There were I think two inspectors, I don't recall their</p> <p>19 names, associated with that area. I don't recall the</p> <p>20 names. I know there was, I believe, two inspectors from</p> <p>21 MTR there.</p> <p>22 CHAIRMAN: Thank you.</p> <p>23 COMMISSIONER HANSFORD: Just following on from that --</p> <p>24 because presumably one of the questions that you or your</p> <p>25 team would have been raising would have been, "Who</p> |

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| Page 97 | 1 inspected this"; is that right? 2 A. We were asking those questions from our side. I didn't 3 ask MTR those questions. Internally, we were asking 4 those questions, yes. 5 COMMISSIONER HANSFORD: Right. 6 MR PENNICOTT: So in and around February, when the 7 investigations were being carried out, the opening-up 8 was being done, it didn't occur to you at that stage to 9 say, "Where are the relevant RISC forms for these stitch 10 joints"? 11 A. Well, again, the priority was to ascertain the extent of 12 the problem and get on with the work and rectify it, 13 because we were under a lot of pressure to get that done 14 quickly. 15 Q. So the RISC forms sort of came afterwards? 16 A. Later. 17 Q. Some months later. Okay. 18 Then that perhaps goes back to where I started this 19 afternoon: that had a thorough and rigorous 20 investigation been carried out and a detailed report 21 prepared, then this all might have been picked up in 22 that context, had it been done? 23 A. Yes. 24 Q. After the backcharge notice had been sent, you received, 25 I think, another letter from Wing & Kwong. It's at | Page 99 | 1 the Lenton couplers and the BOSA couplers, was a matter 2 which would, under normal circumstances, have been 3 identified at early interface meetings. 4 A. Correct. 5 CHAIRMAN: And having been identified, the information would 6 have been passed on to junior staff who would be 7 responsible for inspections and the like? 8 A. That's what -- you would expect that to happen, yes. 9 COMMISSIONER HANSFORD: And indeed ordering materials? 10 A. Absolutely, if we were to provide the materials, we 11 would, yes. 12 CHAIRMAN: So you had a situation here where it appears at 13 the moment -- and this is outside of your remit 14 of course -- but it appears that that information didn't 15 get down certainly to Henry Lai. And once you had 16 discovered the problem in the stitch joints, one of the 17 documents which may have assisted to determine matters 18 would have been looking at the RISC forms? 19 A. Correct. 20 CHAIRMAN: And the papers that accompany the RISC forms, 21 saying, for example, "non-connection here but 22 rectified", that sort of thing? 23 A. Correct. That's the purpose of that process, yes. 24 CHAIRMAN: But there weren't any. 25 A. No, there were not. Very few. |
| Page 98 | 1 EE290. 2 There is a specific reference in this letter, 3 towards the foot of the page, Mr Kitching, to the 4 difference between the parallel threads and taper-cut 5 threads; do you see that? 6 A. Yes, I do. 7 Q. So there's no doubt that by this date, 26 February, the 8 mismatch, either through Wing & Kwong's letters or the 9 investigations that have been carried out, was well 10 known to you and everybody else, presumably? 11 A. Correct. 12 Q. As I said earlier, after receiving either the 13 23 February letter that we looked at earlier and/or 14 this -- certainly after this letter, you spoke to Henry 15 Lai again? 16 A. Around that time, yes. 17 Q. You say that he gave you a similar response to your 18 previous discussion? 19 A. Correct. 20 MR PENNICOTT: Thank you very much, Mr Kitching. I have 21 nothing else. 22 WITNESS: A pleasure. 23 MR PENNICOTT: There may be others who do. 24 CHAIRMAN: Just so that I understand, my understanding at 25 the moment is that the issue of the different couplers, | Page 100 | 1 CHAIRMAN: All right. Are you aware of the fact that later 2 there was some problem in actually identifying who from 3 MTR had been responsible? That's as we understand it. 4 We may be disabused shortly. But it was difficult to 5 trace who had been responsible for doing the inspections 6 on the MTR side. 7 A. I wasn't fully aware of that. I knew that there were 8 supposed to be some inspectors allocated to that area. 9 I wasn't aware there was a problem of identifying who 10 they were. 11 CHAIRMAN: Okay. Thank you very much. 12 WITNESS: A pleasure. 13 Cross-examination by MR TSOI 14 MR TSOI: Mr Kitching, I act for Wing & Kwong. I do have 15 some questions for you. 16 Can I just ask you to cast your eye back to 17 paragraph 9 of your first witness statement, which is at 18 CC6488. 19 A. Yes. 20 Q. I'm not sure if you can recall now, but I think you've 21 been asked this question by Mr Pennicott just now: did 22 this conversation with Henry Lai we see at 23 paragraph 9 -- did that take place before or after the 24 NCR on 9 February was issued? 25 A. I can't recall. |

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| <p>1 Q. You can't recall. 2 If I can take you to the Wing & Kwong letters that 3 you have just been shown. The first one I want to talk 4 to you about is the one on 23 February 2018. 5 A. 277? 6 Q. Sorry, the page number is 277, that's correct. 7 In this letter, if you look at paragraph 2, the 8 engineer, Henry Lai, has been named. 9 A. Correct. 10 Q. Although you don't recall whether it was after this 11 letter or the one on the 26th that you spoke to Henry 12 Lai, but when you did speak to him about the letters of 13 23 and/or 26 February, did he tell you in the 14 conversation that he knew about the mismatch problem? 15 A. No, he did not. 16 Q. I'm asking you because last Friday he told us that he 17 knew about the mismatch problem as early as when the NCR 18 was issued on 9 February. Did he ever tell you that 19 when you met him around 23 or 26 February? 20 A. I don't recall. The questioning I asked Henry is more 21 along the lines of "Do we know why it happened, what 22 happened?" Not so much about the mismatch or the 23 alignment. 24 Q. In this meeting with Henry around 23 or 26 February, was 25 anyone else in the meeting? Was it just you and him?</p> | <p>1 Q. When you received the letter on 26 February, did you 2 talk to Joe Tam again? 3 A. I don't recall. I don't believe I did, no. 4 Q. Because at this point, you've made clear just now that 5 around 23 February you knew about the mismatch problem. 6 You just said. 7 A. Yes. 8 Q. Did you tell Henry that there was a mismatch problem 9 around that time? 10 A. I think it was pretty evident there was a mismatch 11 problem without having to tell anyone. 12 Q. But you did not talk to Joe Tam about it? 13 A. I can't remember. I don't think I did, no. 14 Q. When you talked to Henry, did he react to the mismatch 15 problem? 16 A. Yes, he did. 17 Q. Was he shocked? What happened? 18 A. He was visibly extremely upset, and this is why I didn't 19 want to really get into this business of the letters 20 because he's a junior engineer, very young engineer, and 21 I didn't see the -- getting any merit from worrying him 22 any more, because he was visibly upset and he was for 23 a number of weeks after we understood the gravity of the 24 situation. 25 Q. Yes, but this is an area which Henry was supposed to</p> |
| Page 102 | Page 104 |
| <p>1 A. I don't recall. I don't recall. 2 Q. Did you show Henry these letters from Wing & Kwong? 3 A. No, I did not. 4 Q. Sorry? 5 A. No, I did not. 6 Q. You did not? So what did you ask him when you met him? 7 A. I asked him if he could explain why we think we've got 8 these couplers which are not connected. 9 Q. I'm sorry, can you -- 10 A. I asked him why we think we have these couplers or do we 11 know how we've got to a position where we have 12 unconnected couplers, because my priority was to try to 13 ascertain the extent and what we needed to do to 14 reconstruct the stitch joints. 15 Q. Yes. There's a point I don't quite understand yet, but 16 can I ask you, by the time of 26 February -- if you can 17 just look at that letter. We find that at page EE290. 18 This letter contains very serious allegations against 19 Henry Lai. Is that not right? 20 A. It would appear to, yes. 21 Q. I'm sorry? 22 A. Yes, it would appear to. 23 Q. But you didn't think to show Henry or to tell him what 24 serious allegations have been made against him? 25 A. At that time, no, I did not.</p> | <p>1 have inspected. 2 A. Correct. 3 Q. Did you enquire with him why he missed the mismatch or 4 anything like that? 5 A. I asked him how are we in a situation where there 6 appears to be couplers or are couplers which are not 7 connected, and the answer he gave me was he could not 8 remember or he was not aware. 9 CHAIRMAN: Did you sort of revisit this later, when the full 10 extent was understood, that is the full extent of the 11 mismatch, and also the failure to properly connect 12 rebars? 13 MR PENNICOTT: Sorry, was that revisit with Henry Lai? 14 CHAIRMAN: Sorry, with Henry Lai. 15 A. I had a number of conversations with him, I can't 16 remember how many, but they were really informal 17 discussions and, as I say, trying to coax out from him 18 how we think we got to this situation. But again it was 19 always he couldn't remember or did not know. 20 MR TSOI: Yes. Now, by this time, this is 26 February, you 21 knew yourself about the mismatch and Henry knew about 22 the mismatch; that's right, isn't it? 23 A. It would appear so, through the letters, yes. 24 Q. Can I then take you to paragraph 16 of your witness 25 statement, which is at CC6489.</p> |

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| <p>1 A. Yes, I have it.</p> <p>2 Q. There, I think you are talking about the Wing & Kwong</p> <p>3 letters of the 23rd and 26th that we just looked at, and</p> <p>4 you say this:</p> <p>5 "I formed the view at that time that Wing & Kwong's</p> <p>6 allegations were not credible."</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. But we know, at the very least, that what Wing & Kwong</p> <p>10 has been saying to you about the mismatch, you knew that</p> <p>11 was true, did you not?</p> <p>12 A. At this -- it became evident at this time, yes.</p> <p>13 Q. Yes. But they have informed you about the mismatch on</p> <p>14 the 26th at the latest.</p> <p>15 A. Yes, but I understand this is talking about the</p> <p>16 allegations of Henry telling them to do something, which</p> <p>17 is what I'm talking about here, not whether there's</p> <p>18 a mismatch or not.</p> <p>19 Q. Yes, but I'm talking about the mismatch. So, by the</p> <p>20 26th, you knew about the mismatch; that was true?</p> <p>21 A. Correct.</p> <p>22 Q. So at least that part of what Wing & Kwong was telling</p> <p>23 you is in fact true?</p> <p>24 A. Correct.</p> <p>25 Q. But you formed the view that Wing & Kwong's allegations</p> | <p>1 specifically ask him about mismatched couplers or wrong</p> <p>2 types of couplers.</p> <p>3 Q. So he did not talk to you about the mismatch problem?</p> <p>4 A. I'm talking about couplers not being connected. If</p> <p>5 that's a mismatch, then -- that's what I spoke about.</p> <p>6 Q. I'm trying to be very specific here. Did Henry talk to</p> <p>7 you about the mismatch, the Lenton couplers?</p> <p>8 A. I don't think so. I don't recall.</p> <p>9 Q. Did Colin Mitchell talk to you about the mismatch</p> <p>10 problem?</p> <p>11 A. I don't recall.</p> <p>12 Q. Because Henry told us last Friday that he spoke to Colin</p> <p>13 Mitchell. That's why I'm asking you. So you don't</p> <p>14 recall Colin Mitchell asking you?</p> <p>15 A. No.</p> <p>16 Q. We cast your eye to paragraph 17 of your witness</p> <p>17 statement. I think there you are referring to the reply</p> <p>18 Leighton made to Wing & Kwong's letter on the 26th,</p> <p>19 which is also on the 26th, and we can find that letter</p> <p>20 at page EE293. Right?</p> <p>21 A. Yes.</p> <p>22 Q. In the letter, if you go to the latter part of that</p> <p>23 page, EE293, the letter says this:</p> <p>24 "It has been established that the sub-contractor has</p> <p>25 failed to complete the sub-contract works in accordance</p> |
| Page 106 | Page 108 |
| <p>1 about Henry instructing them to screw in a parallel</p> <p>2 rebar into a tapered coupler -- you think that was not</p> <p>3 credible; is that right?</p> <p>4 A. True.</p> <p>5 Q. You asked Henry about that?</p> <p>6 A. Yes.</p> <p>7 Q. What did he say?</p> <p>8 A. He did not recall any conversation along the lines of</p> <p>9 asking them to do -- not screw them in or put them in as</p> <p>10 best they can. He didn't recall or know anything.</p> <p>11 Q. He did not recall?</p> <p>12 A. Mm-hmm, any conversation like that.</p> <p>13 Q. Because, by this stage, again, this is a very serious</p> <p>14 allegation against Henry. Apart from asking Henry Lai,</p> <p>15 did you ascertain with anyone else about this</p> <p>16 allegation? Did you investigate the matter?</p> <p>17 A. Well, like we've established before, there was no</p> <p>18 thorough investigation done. The only people I spoke to</p> <p>19 would have been Henry, occasionally, and Joe Tam.</p> <p>20 Q. So do I understand from your evidence then, therefore,</p> <p>21 you did talk to Henry about the mismatch issue?</p> <p>22 A. I asked Henry why he thinks we've got into a situation</p> <p>23 where couplers were not connected. His answer was,</p> <p>24 "I didn't know -- understand or I can't remember."</p> <p>25 That's the sort of conversation we had. I didn't</p> | <p>1 with the sub-contract by correctly affixing the rebar to</p> <p>2 the couplers."</p> <p>3 Do you see that?</p> <p>4 A. Correct. I see it, yes.</p> <p>5 Q. But do you not agree that if one has a parallel rebar,</p> <p>6 it is not possible to fix that or to screw that into</p> <p>7 a Lenton coupler? You accept that, don't you?</p> <p>8 A. I accept that, yes.</p> <p>9 Q. So has it really been established that it was the</p> <p>10 sub-contractor who failed to complete the sub-contract</p> <p>11 at that stage?</p> <p>12 A. I believe so, because it's clear it's not fixed in</p> <p>13 accordance with the sub-contract.</p> <p>14 Q. At paragraph 17 of your witness statement, you say this:</p> <p>15 "On or around 26 February 2018, Leighton sent</p> <p>16 a response to Wing & Kwong's letters [that's the one we</p> <p>17 just looked at]. This was drafted by Leighton's</p> <p>18 commercial team on the project."</p> <p>19 And this is the part:</p> <p>20 "At that time, we did not address Wing & Kwong's</p> <p>21 allegation that they were acting on instructions because</p> <p>22 it was irrelevant and it would not have been productive</p> <p>23 to debate this matter with them."</p> <p>24 Do you see that?</p> <p>25 A. Yes, I see that.</p> |

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| <p>1 Q. As a responsible company, construction company, did you 2 not want to investigate the allegation and find out the 3 truth, whether it was in fact Henry Lai who instructed 4 Wing & Kwong to screw in the parallel rebars into the 5 Lenton couplers? 6 A. Our position at the time was that Henry was a very 7 junior engineer and it didn't seem credible that a very 8 experienced sub-contractor would do something which he 9 knew was wrong. 10 Q. But that's not my question, because, you see, this -- 11 Henry Lai holds a very important position. He inspects 12 works. He has to pass the rebar fixing works, the 13 hold-point checks and all that; right? So he's 14 an important man in terms of the inspections? 15 A. Correct. 16 Q. And the allegation by Wing & Kwong went to the very core 17 of his professional integrity; right? 18 A. Correct. 19 Q. You agree with that? 20 A. Agree, yes. 21 Q. So surely, as a responsible construction company, you 22 would have some interest to find out whether the 23 allegations were true? 24 A. At that point of time, around the end of February, where 25 everybody was extremely busy trying to demolish and</p> | <p>1 my understanding of it is that, yes, they became aware 2 of the allegations through the mail, but they didn't 3 think it was credible because you had an experienced 4 sub-contractor and you had a very junior engineer who 5 may not fully have understood the complexities of what 6 was happening. 7 MR TSOI: Sure. 8 CHAIRMAN: And the base rule was that the sub-contractor had 9 an obligation to complete the rebar fixing to a certain 10 standard. 11 A. Correct, yes, precisely. 12 MR TSOI: Henry Lai was promoted, we know, in April 2018. 13 A. Correct. 14 Q. Before he was promoted, did you do any steps, did you do 15 anything, to investigate the allegations that were made 16 against him? 17 A. Henry's promotion process was started way before 18 I joined the project and I wasn't aware he was promoted 19 at that time. 20 Q. So you are not sure? 21 A. Not sure about what? 22 Q. About whether there were investigations about the 23 allegations against him before he was promoted? 24 A. I believe not, no. 25 Q. You've seen the Wing & Kwong/Leighton -- I'm not going</p> |
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| <p>1 reconstruct, for which Henry was involved, I guess it 2 was just something that wasn't thought about at the time 3 and perhaps we'd have picked it up later, but at that 4 time it wasn't on the forefront of our mind. We just 5 wanted to fix the problem. 6 Q. But it wasn't irrelevant. This was a very serious 7 matter, would you not agree? 8 A. The sub-contractor should have completed the works in 9 accordance with the sub-contract drawings, 10 specifications, et cetera. Clearly that's not been 11 done. 12 Q. I understand your position about the sub-contractor's 13 work, but I am asking about the allegations against 14 Henry Lai. This was a very important matter, a serious 15 allegation has been made to the very core of this man's 16 professional integrity. 17 A. Correct. 18 Q. So it was an important matter? 19 A. This is an accusation against an extremely junior 20 engineer who may or may not have understood what was 21 happening, so this is why we discounted it at the time. 22 Q. But it wasn't irrelevant, surely? You have an interest 23 to find out whether that is in fact true, or did you 24 just not -- 25 CHAIRMAN: I think the question has been answered. I think</p> | <p>1 to take you through all of them, but essentially just 2 one of them, perhaps. On 28 February, Wing & Kwong 3 wrote Leighton another letter, which we can find at 4 page EE301, again mentioning -- and this time with some 5 pictures -- the issue with parallel rebars and Lenton 6 couplers. 7 I think this goes on throughout May and June, and in 8 June we see another letter. Perhaps if you can just 9 turn to that to refresh your memory. That's 1 June at 10 page EE308, essentially repeating what was said. 11 A. Mm-hmm. 12 Q. Then, on 23 July, there was a reply from you -- from 13 Leighton to Wing & Kwong. We can see that at 14 page EE312. 15 So, essentially, that was the main exchanges between 16 Leighton and Wing & Kwong. I just want to show you 17 that, just in case you want to refer back to them. 18 There was a time where MTR asked you about the 19 sub-contractor; is that not right? I can take you to 20 that. MTR wrote you a letter on 27 July 2018. We can 21 find that at page BB5073. 22 A. Okay. 23 Q. Perhaps you can just read paragraph 2 together. MTR 24 says: 25 "This letter relates specifically to: (i) the</p> |

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| <p>1 discovery of defects at the NAT stitch joints; (ii) the 2 remedial works which have been completed to the NAT 3 stitch joints to date; and (iii) the need for further 4 investigations including any non-destructive testing of 5 your works in the NAT that may potentially have similar 6 defects to those discovered at the three stitch 7 joints ..."</p> <p>8 Do you see that? 9 A. Yes. 10 Q. The next paragraph: 11 "I require you to provide information to enable me 12 to gain a full understanding of the NAT issues and 13 compliance with your obligations under the contract, and 14 so that any necessary further instructions, including 15 but not limited to further investigations and searches 16 for defects, and/or for further testing or taking of 17 samples, may be given under the contract." 18 Do you see that? 19 A. Yes. 20 Q. The next part then talks about the clauses. Then the 21 next bit: 22 "To this end, please provide the following", and 23 point 4 was this: 24 "Details of actions taken against responsible 25 sub-contractor(s) in respect of the NAT issues".</p> | <p>1 A. Yes. 2 Q. Therefore, Wing & Kwong's response that it was 3 Leighton's Henry Lai who instructed them to fix the 4 parallel rebars into the Lenton couplers, that was not 5 made known to MTR? 6 A. Correct. 7 Q. Of course, you may think that Wing & Kwong's answers to 8 you may not be relevant, but MTR is asking you what 9 actions you took against the sub-contractor, is that not 10 right? 11 A. Yes. 12 Q. For the purposes of investigating this issue? 13 A. Correct. 14 Q. Would you not agree that the answer you gave to MTR, 15 without disclosing the exchanges between Wing & Kwong 16 and yourself, would have kept MTR in the dark about what 17 was going on? 18 A. I don't believe so, because there would have been many 19 discussions with MTR. Again, we were just maintaining 20 a contractual position between Leighton and the 21 sub-contractor, which normally MTR wouldn't really be 22 that interested in, in a dispute or backcharge between 23 us and a sub-contractor. 24 Q. Well, I'm asking you because the question from MTR was 25 quite specific. They are asking you what actions you,</p> |
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| <p>1 Do you see that question? 2 A. Yes. 3 Q. If you turn over the page, point 5 was: 4 "Relevant reports produced or investigations 5 undertaken in relation to the NAT issues". 6 We can find the Leighton reply at page BB5081, 7 specifically to the question number 4 that we just read, 8 the actions taken against the responsible 9 sub-contractors. You can find that answer at 10 page BB5083. You gave this answer: 11 "Following the receipt of [NCR95 and 96] in February 12 and March 2018 related to the defective stitch joint 13 works, an internal non-conformance was raised [and you 14 gave the number] on 19 March 2018. A meeting was also 15 held with the senior management of Wing & Kwong, the 16 rebar fixing sub-contractor responsible for the NAT 17 works. After the meeting it was decided that Wing 18 & Kwong would not be carrying out any further work on 19 the project, including the remedial work required to 20 rectify the defective stitch joints." 21 Now, in this answer, there is no reference to the 22 backcharge notice you sent to Wing & Kwong. 23 A. Yes. 24 Q. And there's no reference to Wing & Kwong's reply to the 25 backcharge notice that you sent them.</p> | <p>1 Leighton, had taken against the sub-contractor, in the 2 context of investigating the stitch joints. It was 3 quite specific; right? 4 A. Yes. 5 Q. So they are not disinterested about the sub-contractor. 6 They are asking specifically about the actions you took 7 against the sub-contractor. 8 A. Correct. 9 Q. So I go back to my question: would you not agree that if 10 you don't disclose to MTR what has been going on between 11 you and Wing & Kwong, they will be kept in the dark and 12 they can't investigate this matter themselves? 13 A. They can surely investigate the matter themselves. 14 Q. No, but investigating the allegation that has been made 15 by Wing & Kwong, because they don't know an allegation 16 has been made against Henry Lai yet, have they? 17 A. In this letter, no, they don't. 18 Q. So, by this answer, would you agree that it is not 19 a full and accurate answer or response to MTR? 20 A. This is what we responded at the time. 21 Q. So it's not full or accurate? 22 A. This is what we responded at the time. 23 MR TSOI: I have no further questions. 24 CHAIRMAN: Thank you. 25 Mr Boulding?</p> |

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| <p style="text-align: right;">Page 117</p> <p>1 MR BOULDING: No questions from us, sir. Thank you. 2 MR CHOW: I have some questions for Mr Kitching, but I see 3 that it is 3.21. I wonder whether Mr Chairman would 4 prefer to -- 5 CHAIRMAN: 10 minutes? 6 MR CHOW: Sure. 7 CHAIRMAN: Thank you. Ten minutes. 8 (3.21 pm) 9 (A short adjournment) 10 (3.36 pm) 11 Questioning by THE TRIBUNAL 12 CHAIRMAN: Sorry. Just, Mr Chow, a moment or two. Thank 13 you very much. 14 Mr Kitching, I'm interested in the robustness and/or 15 the frailty of the RISC form process. As I understand 16 it, with the work we are looking at, the stitch joints, 17 there would have been at least two hold points; okay? 18 A. Mm-hmm. 19 CHAIRMAN: Now, it appears that there are no RISC forms in 20 respect of those hold points, and in fact the problem 21 has extended to other areas. The evidence so far that's 22 been indicated is that MTR wrote what in common parlance 23 may be called some snotty notes, saying, "Where are the 24 RISC forms? We can't continue to do this on a colleague 25 sort of basis."</p> | <p style="text-align: right;">Page 119</p> <p>1 process? 2 A. In the RISC form process, no, they don't. 3 CHAIRMAN: So you could have a situation, theoretically, 4 where one person comes along, hasn't filled out a RISC 5 form, and simply says, "Okay, I'm here to have a look; 6 yes, that's fine", and then goes to the next 7 sub-contractor -- the concrete pourer for example -- and 8 says, "Okay, you can continue"? 9 A. You could have that scenario, I would imagine, yes. It 10 depends who the person saying "okay" is. 11 CHAIRMAN: Of course. I'm not suggesting this was done by 12 Mr Henry Lai, please don't get me wrong. I'm looking at 13 the overall system to see, as I said at the beginning, 14 its robustness and/or its frailty, and I suppose what 15 concerns me is that you can have a situation where one 16 inspector could just decide, if he's rushed or she's 17 rushed, for example, just to go along on their own and 18 look at something and say, without having a RISC form, 19 without calling MTR, give the okay on something, then go 20 and pass on the okay to the concrete pourer, and within 21 a couple of days any defective rebar connections are 22 covered in concrete, and what the parties are left with 23 is a dispute between MTR and Leighton, just between 24 those two parties, as to what's happened to the RISC 25 forms.</p> |
| <p style="text-align: right;">Page 118</p> <p>1 My first question is: did that come to your notice, 2 that there was a severe shortage of RISC forms, that 3 there was a failure to produce these RISC forms? 4 A. Well, obviously through this Commission process it's 5 become evident there's been a failure in the RISC form 6 process, yes. 7 CHAIRMAN: Yes, but at the time, as a result of what 8 I termed, perhaps inappropriately, the snotty notes, did 9 it come to your notice? 10 A. I don't think -- at the time -- as I say, we established 11 that there was missing RISC forms after the stitch joint 12 issue became evident. That was in, I forget in relation 13 to the date of the letter, but that would have been in 14 March/April, I can't remember, of 2018. Prior to that, 15 I wasn't aware of issues with RISC forms. 16 CHAIRMAN: Okay. Can I ask you this. I appreciate 17 of course that sub-contractors who work with Leighton 18 and with MTR will get to know the system, but would it 19 be correct to say that sub-contractors themselves don't 20 have to countersign the RISC forms? 21 A. I believe that's the case, yes. It's just Leighton and 22 the MTR. 23 CHAIRMAN: And a sub-contractor may be responsible for 24 fixing something if the inspectors don't like it, but 25 leaving that aside, they play no role in that inspection</p> | <p style="text-align: right;">Page 120</p> <p>1 A. You are right. My opinion is that the RISC form process 2 in today's world is antiquated and there's a big 3 reliance on WhatsApps and emails which are probably not 4 as regulated as a more formal system would be. So, for 5 a fast-track highly complex job, the RISC forms, they do 6 take time to do, sometimes they are complicated, and 7 they are expected to be submitted days in advance, where 8 work may not be finished days in advance, because we 9 tend to work almost to just-in-time delivery. If it's 10 finished, we've got to pour the concrete, we can't wait 11 two days for it to be inspected. 12 CHAIRMAN: Absolutely. 13 A. That's my personal opinion. There's been a reliance on 14 WhatsApps with the modern technology, and -- I wouldn't 15 say that perhaps someone has gone and said, "Go and pour 16 the concrete." I'm sure there would have been 17 a WhatsApp message or some sort of communication of some 18 sort. 19 CHAIRMAN: But do you keep records of those WhatsApps? 20 A. They are more difficult to keep records of, because -- 21 CHAIRMAN: Unless they are fed into some pre-set system? 22 A. Correct, which wasn't set up. The teams tend to have 23 their own WhatsApp group or however it works between the 24 inspectors and the engineers and they just say, "Here's 25 a photograph of something, okay, please proceed"; that's</p> |

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| <p>1 kind of how it goes.</p> <p>2 CHAIRMAN: It's of interest, and again please don't</p> <p>3 misunderstand me, but I'm not coming at this in</p> <p>4 a condemnatory fashion, more just to sort of enquire,</p> <p>5 but the impression I got as a complete layperson from</p> <p>6 some of the earlier witnesses who were with Leighton was</p> <p>7 that they placed great deal of store by the RISC</p> <p>8 process; they were proud of it, and I'm not saying they</p> <p>9 shouldn't be proud of it, I'm just saying that there</p> <p>10 appear to be -- a cynic, and I'm not a cynic, but</p> <p>11 a cynic might say they were almost self-satisfied with</p> <p>12 it. But it would seem that perhaps you and certain</p> <p>13 others may have a view towards more modernised systems,</p> <p>14 quicker, more certain.</p> <p>15 A. Absolutely. I think more modern systems are the way to</p> <p>16 go. I mean, it's better efficiency. It's realtime, you</p> <p>17 know. Everything is realtime these days, rather than</p> <p>18 having to wait many days for forms to be submitted,</p> <p>19 forms to be approved and come back.</p> <p>20 CHAIRMAN: How long would it take normally? So you get</p> <p>21 a request for the hold-point inspection of the rebar</p> <p>22 fixing that's done. Somebody has now got to fill out</p> <p>23 the form, the RISC form, and then has got to --</p> <p>24 A. If you follow the form to the letter, I can't remember</p> <p>25 the time but I think it's something like you need to</p> | <p>1 A. It's entirely a cost project, which means it's open</p> <p>2 book, so eventually MTR will see it all at that time.</p> <p>3 I forget the reason, to be honest, for that response,</p> <p>4 but at that time we were just trying to maintain</p> <p>5 a strict contractual position between us and MTR,</p> <p>6 because we could be getting into a situation where we</p> <p>7 would be exposed to what we call disallowed costs, where</p> <p>8 Leighton will have to actually pay for it themselves</p> <p>9 rather than going through target cost process.</p> <p>10 COMMISSIONER HANSFORD: That's what I was getting at really,</p> <p>11 because as I understand it the target cost contract</p> <p>12 nature of this makes that relationship, that commercial</p> <p>13 relationship, somewhat different.</p> <p>14 A. Very different, yes.</p> <p>15 COMMISSIONER HANSFORD: So, therefore, MTR does have a need</p> <p>16 to understand those transactions and commercial</p> <p>17 discussions between yourselves and sub-contractors?</p> <p>18 A. Yes, they should, yes.</p> <p>19 COMMISSIONER HANSFORD: Thank you.</p> <p>20 CHAIRMAN: Mr Chow, apologies for interrupting you, but</p> <p>21 that's helped both of us. Thank you.</p> <p>22 Cross-examination by MR CHOW</p> <p>23 MR CHOW: Good afternoon, Mr Kitching.</p> <p>24 A. Good afternoon.</p> <p>25 Q. I represent the government and I have a few questions</p> |
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| <p>1 notify them I think it's 48 hours in advance of the</p> <p>2 inspection, so the form should be filled in 48 hours in</p> <p>3 advance. Typically, on a fast-track project, we would</p> <p>4 still be fixing rebar 48 hours in advance of a pour.</p> <p>5 Then, when the pour comes, is inspected, submitted to</p> <p>6 MTR, it will be a number of days before it comes back</p> <p>7 ticked "approved". So it could be easily a week to go</p> <p>8 through the process, possibly longer.</p> <p>9 CHAIRMAN: Meanwhile --</p> <p>10 A. Meanwhile we're standing doing nothing, if you follow</p> <p>11 the process, yes.</p> <p>12 CHAIRMAN: And time is money?</p> <p>13 A. Absolutely.</p> <p>14 CHAIRMAN: Thank you. It's helped me just to get an idea.</p> <p>15 A. A pleasure.</p> <p>16 COMMISSIONER HANSFORD: Before Mr Chow stands up -- sorry</p> <p>17 about this, but it's a convenient juncture -- can I ask</p> <p>18 you on a different point, Mr Kitching. You had</p> <p>19 an exchange with Mr Tsoi about the letters between Wing</p> <p>20 & Kwong and yourselves and also the letter between</p> <p>21 yourselves and MTR, and in the letter with MTR you made</p> <p>22 some reference to Wing & Kwong, but is it your position</p> <p>23 that the relationship, the commercial relationship,</p> <p>24 between Leighton and Wing & Kwong is not a matter for</p> <p>25 MTR?</p> | <p>1 for you.</p> <p>2 Mr Kitching, do you recall that your counsel,</p> <p>3 Mr Shieh, took you to an organisation chart --</p> <p>4 A. Yes.</p> <p>5 Q. -- of Leighton?</p> <p>6 A. (Nodded head).</p> <p>7 Q. Do you need me to call up that organisation chart before</p> <p>8 I ask the question?</p> <p>9 A. Yes, please.</p> <p>10 Q. Okay. That would be in bundle CC2, page 529.</p> <p>11 In the middle, at the very top, right under "MTRC",</p> <p>12 we see that you are the project director --</p> <p>13 A. Correct.</p> <p>14 Q. -- of the project in question; right?</p> <p>15 A. Yes.</p> <p>16 Q. What I don't quite understand is your relationship at</p> <p>17 that stage with Mr Karl Speed and Anthony Zervas,</p> <p>18 because both of them are put right next to you, and</p> <p>19 I would like to know a little bit more about the</p> <p>20 internal organisation within Leighton.</p> <p>21 Now, at that stage, my understanding from Leighton's</p> <p>22 website is that Mr Speed was the managing or the general</p> <p>23 manager of Leighton Hong Kong; right?</p> <p>24 A. Correct.</p> <p>25 Q. So, in Leighton's hierarchy, his position is above you;</p> |

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| <p>1 is that right?</p> <p>2 A. Correct.</p> <p>3 Q. And how about Mr Zervaas?</p> <p>4 A. Mr Zervaas is what we call operations manager.</p> <p>5 Q. So, under Leighton's hierarchy, he is also above you; is</p> <p>6 that right?</p> <p>7 A. Correct.</p> <p>8 Q. But at that stage both of them would not be involved in</p> <p>9 the day-to-day operation of the project?</p> <p>10 A. Correct.</p> <p>11 Q. Now, I have some understanding of how some of the</p> <p>12 international contractors operate and I would like to</p> <p>13 ask you a few questions to see whether Leighton operates</p> <p>14 in a similar fashion.</p> <p>15 A. Okay.</p> <p>16 Q. Is it true that a project director is the one who was</p> <p>17 overall responsibility of a project?</p> <p>18 A. Correct, absolutely.</p> <p>19 Q. And above a project director, for instance in Leighton's</p> <p>20 organisation, you will still have senior management</p> <p>21 above a project director?</p> <p>22 A. Yes.</p> <p>23 Q. And because the senior management is not involved in the</p> <p>24 details of the operation of the project --</p> <p>25 A. Mm-hmm.</p> | <p>1 the work?</p> <p>2 A. Correct.</p> <p>3 Q. Major problems encountered on site?</p> <p>4 A. Correct.</p> <p>5 Q. That may have an impact on the financial position of the</p> <p>6 project, for example?</p> <p>7 A. Yes.</p> <p>8 Q. And for obvious reasons, that has to be done because if</p> <p>9 money is to be spent on certain things, the senior</p> <p>10 management has to know where the money goes?</p> <p>11 A. Yes, correct.</p> <p>12 Q. In the case of the defects in the stitch joint, I can</p> <p>13 imagine that this problem would have extensive financial</p> <p>14 implication to Leighton?</p> <p>15 A. A significant amount of money was spent repairing the</p> <p>16 stitch joint, yes.</p> <p>17 Q. And there would be programming implication as well</p> <p>18 because that would inevitably cause delay to the</p> <p>19 completion of the project?</p> <p>20 A. Correct.</p> <p>21 Q. And hence there would be financial impact on the project</p> <p>22 as a whole as well, because, as I understand it, there</p> <p>23 is liquidated damages provision in the contract that</p> <p>24 Leighton have with MTRC?</p> <p>25 A. Correct.</p> |
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| <p>1 Q. -- there must be a management system within, in the case</p> <p>2 of Leighton, which requires the project director to</p> <p>3 report to the senior management on how well or how poor</p> <p>4 a particular project is going?</p> <p>5 A. Correct.</p> <p>6 Q. Not only in terms of progress or programme but also the</p> <p>7 financial aspects of the project?</p> <p>8 A. Absolutely, yes.</p> <p>9 Q. So that reporting system has to be -- or the report has</p> <p>10 to be made on a regular basis, for obvious reasons;</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. Would it be a monthly update to the senior management?</p> <p>14 A. It depends on the situation. I mean, we generally have</p> <p>15 monthly reviews for each project which discuss a whole</p> <p>16 wide range of issues, but on serious issues, such as</p> <p>17 this, we could be reporting daily or by day, every other</p> <p>18 day, depending on the context and the seriousness of the</p> <p>19 issue.</p> <p>20 Q. And I would imagine that the report would be in writing</p> <p>21 rather than speaking over the phone?</p> <p>22 A. A combination of both, yes.</p> <p>23 Q. So there are reports in writing as well?</p> <p>24 A. Yes.</p> <p>25 Q. And, I can imagine the report will cover the progress of</p> | <p>1 Q. Someone has committed a mistake in the sense that</p> <p>2 couplers for the stitch joint have not been properly</p> <p>3 connected, and that has caused financial loss to</p> <p>4 Leighton?</p> <p>5 A. Correct.</p> <p>6 Q. So that has to be reported back to the senior management</p> <p>7 of Leighton?</p> <p>8 A. Correct.</p> <p>9 Q. So I would imagine, as a project director responsible</p> <p>10 for the project, and in particular you were not involved</p> <p>11 in the original stitch joint execution work --</p> <p>12 A. Correct.</p> <p>13 Q. -- when you took up the position as the project</p> <p>14 director, with the discovery of these -- is it fair for</p> <p>15 me to describe it as a serious mistake in the</p> <p>16 construction work?</p> <p>17 A. It's a big issue, yes. I wouldn't use the word</p> <p>18 "mistake", but yes.</p> <p>19 Q. So I would imagine that this would be one of the subject</p> <p>20 matters that you think has to be reported back -- up to</p> <p>21 the senior management?</p> <p>22 A. Of course, yes.</p> <p>23 Q. Because money would be spent on rectification work?</p> <p>24 A. Correct.</p> <p>25 Q. And there would be impact on the programme, hence the</p> |

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| <p>1 completion of the works? 2 A. Well, there may be other things affecting the completion 3 of the work, not just that. There were other works 4 going on. So if the stitch joint became a critical part 5 of the work, yes. If it didn't, then it may not become 6 a part of -- 7 Q. Money-wise, you need to report back -- 8 A. Sure. 9 Q. -- to your senior management so that you can justify the 10 spending; right? 11 A. (Nodded head). 12 Q. As a project director, I would imagine that earlier you 13 mentioned to the Commission that your focus at the time 14 was on the extent of the defects and whether remedial 15 works, if so the extent of the remedial works to be 16 carried out? 17 A. Correct. 18 Q. But I would imagine that the financial implications 19 would be one of your major concerns as well at that 20 stage? 21 A. It was a concern but it wasn't the overriding concern 22 because it was a recognition -- work just had to be 23 done. 24 Q. So that was one of the concerns that you had at the time 25 as well?</p> | <p>1 one on the contract 1111 side and the other, the North 2 Approach Tunnel that Leighton built, have to be 3 stabilised in terms of settlement; right? 4 A. Mm-hmm. 5 Q. So do you agree with me that the formation of a gap of 6 up to 10mm actually suggests that the two structures 7 have moved? 8 A. Yes, it does. 9 Q. So the fact that the couplers were not connected, if the 10 two structures haven't moved relative to each other, the 11 stitch joint itself, which is only 2 metre wide, was not 12 going to go anywhere? There won't be any gap if the two 13 structures that it connects did not move; do you agree 14 with me? 15 A. If it was constructed in accordance with the drawings, 16 it would not have moved, no. 17 Q. Yes. So the first thing that came to your mind should 18 be, well, perhaps there is some design fault on the part 19 of MTRC. Did it occur to you, so that you need to ask 20 someone to look into the design? 21 A. It didn't occur to me at that point, no, because as 22 I said the focus was on trying to establish the extent 23 of the problem, and then look at the best way to fixing 24 the problem. 25 Q. Now, when these things occur, have you had a chance to</p> |
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| <p>1 A. Of course. 2 Q. Which I can fully understand. So, as a project 3 director, it is also, I can imagine, your duty to seek 4 to recover the cost of rectification from whoever party 5 would be responsible for this defect? 6 A. Correct. 7 Q. And to do that you must carry out a thorough 8 investigation into the cause of the problem? 9 A. Correct. 10 Q. For instance, we see and we know that at that stage, 11 when these things happened, all that we see -- all that 12 we knew at the time was the water seepage and the 13 formation of a gap of 5 millimetres to 10 millimetres; 14 right? 15 A. Mm-hmm. 16 Q. So, quite naturally, the first question -- well, for 17 someone to start to look into the cause of the problem, 18 one would at least dig out the drawings first, to see 19 whether there is any design fault on the part of MTRC; 20 correct? 21 A. You could do that, yes. 22 Q. Was this done at that stage? 23 A. I don't recall. 24 Q. As a matter of common sense, we know that the stitch 25 joint was to be constructed after the two structures,</p> | <p>1 look at the interface requirement set out in your 2 contract? 3 A. Sorry, say that again? 4 Q. Perhaps, in particular -- we now know that one of the 5 requirements in the interface requirements set out in 6 your contract is that the stitch joint should only be 7 built after the settlement of the structure has 8 stabilised. 9 A. There's a certain structural requirement, yes. 10 Q. You were aware of that? 11 A. Well, I know what stitch joints are. It's a common 12 thing, you know. There's a period of time when you have 13 to wait for certain things to happen before you can do 14 a stitch joint. 15 Q. Yes, and there is also a requirement in Leighton's 16 contract to monitor, to carry out monitoring work; are 17 you aware of that? 18 A. I'm not aware of that. 19 Q. Okay, so we can come to that later. You don't know if 20 the stitch joint was built after the structure on both 21 sides has stabilised; right? 22 A. I assume, because it was constructed, it was agreed that 23 it could have been constructed at the relevant time. 24 Q. In your investigation carried out after February 2018, 25 you have not asked anyone to look into this?</p> |

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| <p>1 A. No, we have not.</p> <p>2 Q. Mr Kitching, we have looked at -- during the course of</p> <p>3 the evidence that we had last week, we looked at</p> <p>4 a number of photos taken of the defective couplers</p> <p>5 connection. They were attached to the three NCRs;</p> <p>6 right? Do you have recollection of what the photos</p> <p>7 show?</p> <p>8 A. I have a recollection, yes.</p> <p>9 Q. You mentioned to us earlier that when you first learned</p> <p>10 about this, it was after a certain location on the</p> <p>11 stitch joint were open, do you recall that, and it was</p> <p>12 discovered that certain -- some of the couplers were not</p> <p>13 connected?</p> <p>14 A. Correct.</p> <p>15 Q. And at that stage you also went down to site to have</p> <p>16 a look for yourself of those couplers?</p> <p>17 A. Yes.</p> <p>18 Q. Would you agree with me that the kind of defects that we</p> <p>19 see are something pretty obvious to just any engineer.</p> <p>20 Even a graduate engineer, a junior engineer, would be</p> <p>21 able to realise that there must be something wrong?</p> <p>22 A. To someone who understands it, it would be pretty</p> <p>23 obvious, but we didn't understand the reasons why they</p> <p>24 were not connected. Maybe there were other reasons.</p> <p>25 Q. Right. Now, after these defects were discovered, have</p> | <p>1 construction manager.</p> <p>2 Q. Having looked at the type of defects and how serious and</p> <p>3 obvious they are, it did not occur to you that Henry Lai</p> <p>4 did not do his job properly?</p> <p>5 A. It occurred to me that Henry was an extremely junior</p> <p>6 engineer and may not have understood what needed to be</p> <p>7 done with couplers, and obviously we were also</p> <p>8 talking -- it was evident to me that it was an extremely</p> <p>9 experienced sub-contractor who we would have thought</p> <p>10 would have known better than to do something which was</p> <p>11 knowingly wrong.</p> <p>12 Q. So you would accept that an engineer, Henry Lai, may not</p> <p>13 have the knowledge of how couplers should be installed?</p> <p>14 A. Possibly. I mean, they are not a common occurrence,</p> <p>15 couplers. I believe this was Henry's -- Henry had been</p> <p>16 working in the industry for a relatively short amount of</p> <p>17 time. He may not have come across couplers in that</p> <p>18 short amount of time, so possibly he was not fully</p> <p>19 aware.</p> <p>20 Q. Don't you think that it's a matter of common sense that</p> <p>21 if you see exposed thread, you would at least expect</p> <p>22 that the thread should be properly screwed into the</p> <p>23 couplers? We don't need experience of an engineer to</p> <p>24 realise that.</p> <p>25 A. Of course --</p> |
| Page 134 | Page 136 |
| <p>1 you gone back to look at the corresponding requirements</p> <p>2 under the contract, regarding these couplers'</p> <p>3 connection?</p> <p>4 A. Sorry, I don't understand the question.</p> <p>5 Q. Sorry, perhaps I will re-frame it.</p> <p>6 Have you ever checked or looked at the acceptance</p> <p>7 letter issued by Highways Department in relation to the</p> <p>8 stitch joint?</p> <p>9 A. I've seen the acceptance letter from the Buildings</p> <p>10 Department where it stipulates the requirements for the</p> <p>11 type I and type II couplers, yes.</p> <p>12 Q. So you are also aware of the supervision requirement?</p> <p>13 A. I am now, yes.</p> <p>14 Q. But at that stage, how about in February 2018?</p> <p>15 A. Well, I have now, because -- at that time and before</p> <p>16 that time, no, I was not aware of the requirements.</p> <p>17 Q. But I would imagine it would come quite natural for you</p> <p>18 to at least ask your colleague as to who was responsible</p> <p>19 to supervise this particular part of the work and to</p> <p>20 inspect the work at that stage?</p> <p>21 A. Yes, we did, and we established it was Henry who was</p> <p>22 responsible.</p> <p>23 Q. So who told you it was Henry Lai who was responsible for</p> <p>24 this part of the work?</p> <p>25 A. It was Colin Mitchell, I believe, because he was the</p> | <p>1 Q. The fact that there are threads, they are meant to be</p> <p>2 screwed into something?</p> <p>3 A. Of course. If you are an experienced person, you would</p> <p>4 question it straightaway.</p> <p>5 Q. How about Joe Tam? Joe Tam was the construction</p> <p>6 manager --</p> <p>7 A. Correct.</p> <p>8 Q. -- have you asked him, "How come things like that could</p> <p>9 have happened"?</p> <p>10 A. Yes, we have had a discussion.</p> <p>11 Q. And what did he say?</p> <p>12 A. As we've said before, he was in a more senior position</p> <p>13 so I wouldn't have expected him to have a day-to-day</p> <p>14 presence right on the work face, because, being a more</p> <p>15 senior position, that wouldn't be his role. So he</p> <p>16 likely wouldn't have been aware or not known what was</p> <p>17 going on.</p> <p>18 Q. That's what he told you, he was not aware and he didn't</p> <p>19 know why --</p> <p>20 A. He said because he was in a senior position he did not</p> <p>21 know.</p> <p>22 Q. How about the one who supervised Henry Lai?</p> <p>23 A. Joe Tam?</p> <p>24 Q. So Henry Lai reported directly to Joe Tam?</p> <p>25 A. I believe so, yes.</p> |

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| <p>1 Q. And you just accept it as a complete answer; right?</p> <p>2 A. Well, we did at the time.</p> <p>3 Q. They all say, "I don't know, I have no idea"?</p> <p>4 A. Everybody was saying that at the time, yes, and as</p> <p>5 I said, my focus was to -- my focus at the time was</p> <p>6 not -- perhaps incorrectly but not create a witch hunt.</p> <p>7 We just wanted to get on and fix the work.</p> <p>8 Q. So that was the conclusion of the investigation; is that</p> <p>9 right?</p> <p>10 A. It wasn't really an investigation. It was more of a few</p> <p>11 discussions with Henry and Joe.</p> <p>12 Q. So that is what you have reported back to your senior</p> <p>13 management, that is --</p> <p>14 A. Yes.</p> <p>15 Q. -- how the work came about, nobody knows why it was done</p> <p>16 that way and our staff simply say they don't know, "so</p> <p>17 we'd better pay for the cost of rectification"? Is that</p> <p>18 the position?</p> <p>19 A. Well, we -- I was getting a lot of pressure from my</p> <p>20 senior management to ask these questions, and I'm still</p> <p>21 being asked these questions from my senior management.</p> <p>22 So on one side -- the gravity of it was such that it was</p> <p>23 recognised that it had to be fixed, so who paid for it</p> <p>24 would be sorted out later. It was just -- the priority</p> <p>25 was to get it fixed.</p> | <p>1 Q. But so far no action has been taken?</p> <p>2 A. Everything has been a little bit superseded by events</p> <p>3 through the Commission and probably lost a bit of focus.</p> <p>4 Q. Before I move on, can I just confirm with you -- now, we</p> <p>5 know that part of the requirements of the Highways</p> <p>6 Department in relation to the installation of couplers</p> <p>7 is that you, Leighton, needs to designate quality</p> <p>8 control coordinator to provide full-time supervision of</p> <p>9 the installation of the couplers, and a checklist has to</p> <p>10 be devised and details like date of inspection, who</p> <p>11 inspected those couplers, have to be recorded in</p> <p>12 a log book.</p> <p>13 Can I just confirm with you, none of these have been</p> <p>14 done by Leighton?</p> <p>15 A. I'm not aware of what's been done prior to me getting</p> <p>16 onto site.</p> <p>17 Q. Right.</p> <p>18 Mr Pennicott has explored with Mr Lai on the</p> <p>19 different steps taken in the execution of the stitch</p> <p>20 joint. I have counted the number and it appears to me</p> <p>21 that there are altogether -- there are four joints</p> <p>22 involved, three stitch joints, two on NSL --</p> <p>23 A. Correct.</p> <p>24 Q. -- one on EWL --</p> <p>25 A. Yes.</p> |
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| <p>1 Q. So that there is a report in writing that you made to</p> <p>2 your senior management in which you set out details of</p> <p>3 these problems and the findings and about financial</p> <p>4 implication; right?</p> <p>5 A. It's not just one report. There's a number of things we</p> <p>6 had to prepare. One was a brief overview of what the</p> <p>7 problem was. We did prepare some budgetary estimates of</p> <p>8 how much it would be to repair, to report to senior</p> <p>9 management.</p> <p>10 Q. Any question raised by your senior management?</p> <p>11 A. Yes, of course, many.</p> <p>12 Q. Can you share with us what --</p> <p>13 A. They obviously, of course, want to find out how this</p> <p>14 issue has come about; you know, find out who knew what,</p> <p>15 who did what.</p> <p>16 Q. Yes. So did you follow up on that?</p> <p>17 A. Of course. This is the reasons for the discussions with</p> <p>18 Mr Lai.</p> <p>19 Q. So now we are more than a year after, so Leighton</p> <p>20 decided just to drop this; Leighton is not going to seek</p> <p>21 to recover the cost from any third party? Is that</p> <p>22 right?</p> <p>23 A. We are. We are pursuing both an insurance claim and we</p> <p>24 will look at what action we can take against Wing</p> <p>25 & Kwong.</p> | <p>1 Q. -- and there is a shunt neck joint?</p> <p>2 A. Correct.</p> <p>3 Q. Altogether, there are more than 20 hold points, hold</p> <p>4 points for rebar checking or the pre-pour hold points as</p> <p>5 well.</p> <p>6 A. Mm-hmm.</p> <p>7 Q. We had a similar problem that occurred in all these</p> <p>8 joints, which means that whoever carried out the</p> <p>9 hold-point inspection missed these kind of defects on</p> <p>10 more than 20 occasions.</p> <p>11 A. It would appear so.</p> <p>12 Q. So we know that it was Henry Lai who carried out those</p> <p>13 hold-point inspections. He admitted that.</p> <p>14 Notwithstanding, you find it totally forgivable,</p> <p>15 understandable; is that right?</p> <p>16 A. Of course it's not forgivable, but you need to look at</p> <p>17 the circumstances. If the guy is junior and has</p> <p>18 genuinely not understood, it's completely different to</p> <p>19 wilful neglect. So this is where we took it.</p> <p>20 Q. Just now, you mentioned about -- when Mr Tsoi, counsel</p> <p>21 for Wing & Kwong asked you about the promotion that</p> <p>22 Leighton has given to Mr Lai two months after this</p> <p>23 matter was discovered. Do you recall that?</p> <p>24 A. Yes.</p> <p>25 Q. And you explained that the process of promotion actually</p> |

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| <p>1 started way before you took up the position as project 2 director? 3 A. Correct. 4 Q. I am curious to know what this process involved. Why 5 does it take months to get to the point when Henry Lai 6 was promoted in April? I recall that you joined -- you 7 took up the position as project director in September. 8 Just now you said very late August. 9 A. Yes. 10 Q. So it has taken almost eight months for this promotion 11 process to go through. Can you explain to us what sort 12 of work would be involved in this process? 13 A. Well, there would be an application made to give someone 14 a promotion. I believe in this case it was in -- 15 I think it was in July of 2017. Then that would have to 16 go through approval to senior management. And 17 typically, in Leighton, we do our promotion cycle so 18 that the promotions happen in April of a particular 19 year. So that's why it would have happened like that. 20 Q. So even for a graduate engineer, a very junior engineer 21 as you described, it would take months to go through, 22 I would imagine, a slight promotion? 23 A. Yes, and there may have been conditions for his 24 promotion. He may have had to do something, achieve 25 something. I don't know the background. But it does</p> | <p>1 Q. Okay. So if one has been promoted, they cannot be 2 downgraded? 3 A. Well, in theory, I guess you could be downgraded, yes. 4 Q. Now, Mr Lai, in cross-examination, also mentioned that 5 at some stage you and Colin have talked to him about the 6 defects. Do you recall that discussion with him? 7 A. There were a number of discussions. I may not recall 8 the exact discussion. But yes, there were a number. 9 Q. Do you recall the conversation that you had with him 10 after you have found out that he was responsible for 11 inspections and he failed to spot obvious defects? Do 12 you recall any discussion with him, talking about the 13 mistake that he has made, or improvement that he should 14 make? 15 A. After the -- of course, at the time, we wanted to try 16 and establish why that happened, and as we've already 17 said, the answers we were getting was he didn't know or 18 didn't understand. Subsequent to the remedial works or 19 during the -- I think it was subsequent to the remedial 20 works, we did put Henry on what we call an improvement 21 scheme, which was focused on his submission of quality 22 documentation. 23 Q. Mr Lai told us that nobody has given training to him as 24 to how to carry out the supervision and inspection work. 25 This is Mr Lai's evidence.</p> |
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| <p>1 take a while. 2 Q. And this promotion process, once started, couldn't be 3 stopped, no matter what happened? 4 A. Of course. It can be stopped. 5 Q. It could be stopped? 6 A. Yes. 7 Q. Who would be in a position to stop that process? 8 I imagine you as project director would be in a position 9 to stop it? 10 A. Could be. Yes. 11 Q. But having discussed with Mr Lai after February 2018, it 12 didn't occur to you perhaps it is premature to promote 13 him? 14 A. Like I said, the process was started in July 2017, so 15 I was not aware he was being promoted. 16 Q. Yes, but he was not promoted until April 2018. After 17 you realised that serious mistake has been made by him, 18 he has overlooked this obvious mistake on more than 20 19 occasions, and you still saw fit to promote him? 20 A. Like I said, the promotion cycle started in July. I was 21 not part of any of the process. I was not advised that 22 he was going to be promoted. So I did not know anything 23 about his promotion. 24 Q. But you took no steps to stop that promotion? 25 A. Because I didn't know it was happening.</p> | <p>1 A. Okay. I'm not ... 2 Q. After this incident was discovered, has Leighton taken 3 any steps to ensure that its frontline engineers, in 4 particular Henry Lai, would not make similar mistakes in 5 future? 6 A. Absolutely. 7 Q. What steps were taken, please? 8 A. Since this started and obviously with this Inquiry, we 9 have taken many steps to ensure that all the relevant 10 RISC forms or whatever forms required are submitted 11 on time. We monitor them to make sure they are 12 submitted on time, so we have a running schedule of 13 exactly how many forms have been submitted and when they 14 are supposed to be submitted and making sure they are 15 not late. We have a lot more training on the process. 16 There's a whole raft of procedures we are slowly 17 implementing to improve. 18 Q. Mr Kitching, I would like to refer you to paragraph 12 19 of your statement, at page 6489, please, where you said: 20 "Around the same time, we conducted an investigation 21 to ascertain if there were any similar areas/sections of 22 work which could have had similar issues. We concluded 23 there were none as these are the only stitch joint 24 locations on the project." 25 Here, when you mention about "similar areas/sections</p> |

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| <p style="text-align: right;">Page 145</p> <p>1 of work", are you talking about joints or are you 2 referring to other areas in the North Approach Tunnel? 3 A. I'm referring to areas where we could potentially have 4 had a similar situation. The stitch joints, these are 5 the only stitch joints, so we came to the conclusion 6 that because they were the only stitch joints, it's 7 likely that other areas would not have these same 8 problems. 9 Q. So like the other areas, what are the areas you are 10 referring to? We know that there are only three stitch 11 joints. There are no other stitch joints. 12 A. Correct. 13 Q. So when you refer to other areas or sections -- 14 A. Well, every time you have a concrete pour and you join 15 one concrete pour to another pour, it's called 16 a construction joint, and in some construction joints 17 you would also have couplers. But that's a very 18 different process, a much easier process than a stitch 19 joint. It's done realtime rather than, as you say, 20 maybe three, four, six months after the main structure 21 has been constructed. So we felt that they were not the 22 same and not likely to have the same defect. 23 Q. So have you carried out investigation into the quality 24 of the work in those areas, or you don't? 25 A. No, we have not.</p> | <p style="text-align: right;">Page 147</p> <p>1 other areas? 2 A. No. 3 COMMISSIONER HANSFORD: You didn't. Thank you. 4 MR CHOW: I will move on to another topic. Other counsel 5 have already investigated with you about the meeting 6 that you had with Mr Ng Chun? 7 A. Yes. 8 Q. Mr Ng Man Chun; right? 9 A. I can't remember. 10 Q. According to your witness statement, at that brief 11 encounter, all that you were interested in is to 12 ascertain the extent of unconnected couplers? 13 A. Correct. 14 Q. I have difficulty in understanding why, at that stage, 15 you were only interested in the extent but not the 16 reason behind the defective work. 17 A. At the time, obviously we were facing a substantial 18 rectification works. I think we just wanted to 19 understand the likely extent of the couplers which were 20 unconnected, which if it turned out to be a minimal 21 amount, perhaps we could have had a lesser rectification 22 procedure. As it turned out, it was a larger amount, so 23 the decision was made to obviously reconstruct the whole 24 joint, or reconstruct the joints. 25 CHAIRMAN: Could I interrupt there just a second. It's</p> |
| <p style="text-align: right;">Page 146</p> <p>1 Q. Okay. 2 So in paragraph 12 you are actually talking about 3 the three stitch joints that we have been talking about 4 all the time in this Inquiry? You are not referring to 5 any other areas; right? 6 A. Like I said, this stitch joint work is a unique bit of 7 work and we don't have any other similar works to the 8 stitch joint on that project. 9 Q. So I take it that your answer to my question is "yes"? 10 So you are not talking about any other areas; you are 11 always talking about the three stitch joints? 12 A. Correct. 13 COMMISSIONER HANSFORD: I wonder if the doubt here is 14 regarding the word "investigation". You say: 15 "Around the same time, we conducted 16 an investigation ..." 17 Do you mean a review? It's not a physical 18 investigation, is it? 19 A. No. "Review" is probably a better word. We just wanted 20 to know if there were any similar areas where we had a 21 similar problem. We established these were the only 22 stitch joints. There were other areas where there were 23 couplers but they were construction joints which were 24 a much easier piece of work. 25 COMMISSIONER HANSFORD: The point is you didn't open up any</p> | <p style="text-align: right;">Page 148</p> <p>1 puzzled me slightly that this gentleman, the rebar 2 fixing foreman, would actually say to you, "I think it's 3 about 30 per cent." 4 A. Yes. 5 CHAIRMAN: Because normally their job is to make sure that 6 all of them are in properly, and if they are not quite 7 as good, you wouldn't imagine them saying, "Well, 8 I think probably 30 per cent of them are just no good." 9 It almost sounds as if he had an idea, at the time when 10 everything was closed up, that there was a percentage of 11 defects there. 12 A. I get the impression that he knew there were some 13 defects there, yes. 14 CHAIRMAN: Which tends to raise the question that if he knew 15 there were defects there, as opposed to it just being 16 a level of sloppy workmanship that perhaps he turned 17 a blind eye to, had there perhaps been some earlier 18 discussion saying, "Don't bother with this, don't bother 19 with that", and he was able therefore to have an idea of 20 what it was that he had overlooked or had not actually 21 secured? 22 That's a rather difficult question but do you see 23 the point? 24 A. I'm not quite sure I follow. 25 CHAIRMAN: Well, if I was told to do some work that</p> |

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| <p>1 contained a lot of individual little bits and pieces, 2 and somebody came and said to me, when I was meant to 3 have done that work properly, "Right, how much do you 4 think you haven't done properly?", I would probably say, 5 "Hopefully virtually nothing. I know you have 6 discovered a couple that are not joined in, but 7 hopefully you won't find many more." But he actually 8 turns around and says, "I think it's about 30 per cent." 9 That tends to suggest he had an idea, at the time the 10 whole thing was closed up, that there was a specific 11 percentage that hadn't been done properly, and then, by 12 extension, it may be argued that he knew that because he 13 had been told, "Don't do this work." 14 A. It would seem the case, yes. But again, going back, why 15 would an experienced sub-contractor, doing anything -- 16 knowingly do something that's wrong, without seeking 17 further approval, higher authority approval? It doesn't 18 make sense to me. 19 CHAIRMAN: But let's just say that sometimes there is 20 a competition between the cost of delay and the possible 21 injury by not doing the work properly. So if you know 22 that there's excess, you may say, "Look, we've got 23 problems fitting these rebars in. It's going to take us 24 three days to get more. Forget it. We don't need these 25 rebars anyway. It's all excess."</p> | <p>1 you have done to us; why did you produce something like 2 that?" 3 Do you agree with me it would be just natural for 4 you to ask this question? 5 A. You could say that, but at the time, we were confident 6 in our contractual position, so, you know, in the 7 interests of just getting on with the rectification, 8 I didn't see it was crucial that we had to go down some 9 long, protracted conversations or letters going 10 backwards and forwards, tit-for-tat letters. It was 11 just maintaining our contractual position. That's what 12 I was trying to do. 13 Q. The fact that you didn't ask what an ordinary person 14 would have asked, if I may borrow the terminology of 15 Mr Chairman, a cynic may suggest, although I'm not sure 16 I'm not a cynic, you did not ask of course because you 17 knew well it was your own engineer who instructed this 18 defective work to be done. That's why you didn't need 19 to ask the sub-contractor why. What do you say about 20 that? 21 A. I repeat what I said before. Our position, quite 22 clearly, is that a sub-contractor needs to -- has a duty 23 of care to construct the works in accordance with the 24 relevant drawings and specifications and requirements. 25 Clearly that's not been done. Why do we need to go into</p> |
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| <p>1 A. You wouldn't be able to make that decision if you hadn't 2 had any structural analysis done on that joint. You 3 couldn't make -- if you hadn't had that analysis done. 4 CHAIRMAN: So for you, as an ordinary -- as the foreman, not 5 the general in charge of everything, looking down over 6 the field, so to speak, but you are just not in 7 a position to make that sort of assumption? 8 A. No, you are not. If it's there, it should be fixed, 9 unless someone specifically says the design shows you 10 it's not required, these numbers aren't required, but 11 you have to go through a whole process to get that. 12 CHAIRMAN: The same would apply to a very junior engineer? 13 A. Yes, of course. 14 CHAIRMAN: Sorry. 15 MR CHOW: Not a problem. 16 Mr Kitching, that brief encounter with Mr Ng, was it 17 the first occasion that you had a chance to meet someone 18 from Wing & Kwong face to face? 19 A. I think it was. I didn't meet them. I think I met 20 Mr Ng once. 21 Q. I'm asking this question just on the basis of my common 22 sense. Now, this very person caused Leighton a big 23 trouble, so when you had a chance to talk to him 24 face-to-face, I would imagine as a matter of human 25 nature that you would at least ask him, "Look at what</p> | <p>1 an argument backwards and forwards when it's clear it's 2 not been done? We just want to fix the job, we have 3 a contractual position. That's it. 4 Q. I will move on. Can I ask you to look at a document at 5 bundle DD2, page 423, please. 6 This is part of the responses made by MTRC to 7 queries or questions raised by the government. Item 8 number 9, where the government asked MTRC to provide the 9 "findings and photo records of site inspection carried 10 out by MTRC in March 2018 to record the conditions of 11 exposed rebars after" -- if we can go on to the next 12 page -- "breaking and removal of three defective stitch 13 joints including the numbers and locations of 14 unconnected/defective couplers observed should be 15 provided. Name and details of sub-contractors involved 16 in the open-up works should be provided." 17 Do you see that? 18 A. Yes. 19 Q. That's the question asked by the government, and if you 20 look at MTR's response, which is this: 21 "Leighton has mobilised mechanical breakers to NSL 22 Tunnels and commenced breaking work on 12 February 2018. 23 During the breaking process for the defective stitch 24 joints, all rebars were torn down together with the 25 broken concrete debris. Site personnel including MTRC</p> |

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| <p>1 inspectors were prohibited by Leighton staff from 2 entering the breaking zone for inspection purposes due 3 to safety requirements. Therefore, the quantity and 4 locations of any unconnected rebars could not be checked 5 and recorded by MTRCL inspectors." 6 Do you see that? 7 A. Yes, I see that. 8 Q. At the time, were you aware that MTRC's inspectors were 9 prohibited from going into the working zone to inspect 10 the unconnected couplers? 11 A. Of course they're not. We can't prohibit MTR doing 12 anything. 13 Q. So are you saying that MTRC is not telling the truth? 14 A. We would not prevent MTR going into somewhere. You 15 know, I haven't seen this before, so -- I mean, all they 16 had to do if there was a problem was come and talk to 17 a senior. But obviously the work was, of its very 18 nature, complicated and a lot of machinery, a lot of big 19 machinery, a lot of cutting tools, but it doesn't mean 20 they can't go and inspect. We could stop the work for 21 ten minutes if they wanted to have a look. 22 Q. Exactly. That's what I was going to ask. 23 A. So if they didn't ask, they can't say, "We were 24 prevented." 25 Q. Because if they -- of course we don't know what actually</p> | <p>1 witness statements giving the reason for their failures 2 to issue RISC forms as per the requirement of the 3 project management requirement; that is to say, to issue 4 RISC form before the hold-point inspection, and they all 5 say they were too busy at the time, they couldn't afford 6 the time to issue the RISC form. 7 Now, I appreciate that that happened before you took 8 on the job, but can I ask you this. Had MTRC insisted 9 that RISC form be issued before hold-point inspection -- 10 without RISC form, they refuse to carry out hold-point 11 inspection with you and therefore you could not proceed 12 with the concreting work -- now, would you, as a project 13 director, in such circumstances, put in resources to 14 make sure that RISC forms are issued in good time so as 15 not to cause delay to the project? 16 A. I think the -- from what I can gather, what we 17 understand now is that the whole -- the RISC form 18 process became, I would call it, somewhat informal, and 19 probably an understanding on both sides. So if you are 20 talking about resources, of course, if we had to stick 21 to the letter and the exact requirements of the RISC 22 forms, then we would need to have additional resources 23 to complete the forms, yes. 24 Q. So you would provide additional resources to make sure 25 the RISC forms --</p> |
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| <p>1 happened but I would imagine that, first of all, the 2 working area would not be too dangerous, because you are 3 also concerned with the safety of the workers working on 4 that particular part of the work too; right? 5 A. There was a lot going on on the stitch joints. There 6 was a lot of breaking, a lot of big machinery, there was 7 a lot of big, heavy cutting equipment, so we would want 8 to minimise the amount of people in the area, for safety 9 reasons. But it does not prevent MTR going and doing 10 any inspections they want to. We could stop the work 11 for 10 or 15 minutes. They are our client; we have to 12 give them access to whatever they want. 13 Q. All right. Now, today, in the documents, we have to say 14 that there are -- one would expect a lot more photos, 15 but unfortunately we only have very few. Has Leighton 16 taken many photos? 17 A. I don't remember how many photos we have taken. We've 18 certainly taken, I would say, quite a few. I don't know 19 what you mean by "not many". But normally it's the MTR 20 take a lot more photos because their role is inspection, 21 making sure things are done properly. Our role is more 22 doing the work. 23 Q. I would like to move on to the last topic, about the 24 lack of RISC forms. We see from a number of witness 25 statements, your witnesses put down in their respective</p> | <p>1 A. Well, if it became a bottle-neck and works were not 2 proceeding because RISC forms were not being done 3 properly, then yes, you would have to. 4 MR CHOW: Mr Chairman, I have no more questions. 5 CHAIRMAN: Thank you. 6 MR LIU: No questions from Pypun. 7 CHAIRMAN: Thank you very much indeed. 8 Mr Shieh? 9 MR BOULDING: Sir, just before Mr Shieh goes, I just wonder 10 whether I can ask for clarification from Mr Chow as to 11 whether or not it's positively contended that there was 12 some sort of design fault on the part of MTR. Because 13 questions were put on that basis, "Was it a design 14 fault?" I just wonder if that can be clarified because 15 it may well affect what we do and say over the course of 16 the next few days. 17 MR CHOW: I don't have a positive case on that and we don't 18 take that stance either, so it's just -- 19 MR BOULDING: Thank you. 20 CHAIRMAN: So you were exploring whether Leightons itself 21 have explored that possibility? 22 MR CHOW: That is correct. That is correct. So that would 23 be part of the investigation that one would normally do, 24 to look for which party would be responsible for it. 25 CHAIRMAN: Thank you very much.</p> |

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| <p style="text-align: right;">Page 157</p> <p>1 MR CHOW: That may be one of the questions they would ask 2 themselves, to see if they can recover some cost from 3 whoever is in a position to compensate them. 4 CHAIRMAN: Thank you. 5 MR PENNICOTT: Sir, I am bound about to say, when those 6 questions were put, I was having a brief chat with my 7 learned friend Mr Cheuk, sat next to me, and we had 8 rather inferred that the reason the questions were being 9 put was really on the basis that I asked Mr Kitching 10 about, about why there wasn't a thorough, rigorous 11 investigation, and I think that was probably part and 12 parcel of that point. 13 Re-examination by MR SHIEH 14 MR SHIEH: Just a few questions in re-examination, 15 Mr Kitching. First of all, you remember you said 16 earlier, in answer to questions concerning the missing 17 or the fact that the RISC forms were not done -- you 18 said things to the effect that you would expect senior 19 people to appreciate that RISC forms were not done, and 20 you also said that if they were habitually not done you 21 would expect this to elevate to the top. I'm 22 paraphrasing. 23 But do you remember having given answers to this 24 effect? 25 A. I do, yes.</p> | <p style="text-align: right;">Page 159</p> <p>1 were actually completed, but were not monitoring the 2 RISC forms that were outstanding. Were you aware of 3 that? 4 A. Not at the time, no. I mean, one of -- obviously, it's 5 important for us to get the completed forms back as 6 quickly as possible. In some cases, they don't come 7 back very quickly. But certainly the quality department 8 should be -- in my opinion, should be monitoring both, 9 both our submission and the response that comes back. 10 COMMISSIONER HANSFORD: Thank you. 11 MR SHIEH: My next topic is in relation to the question of 12 what steps have been -- whether any steps have been 13 taken to pursue Wing & Kwong for the rectification 14 costs. You remember that line of questioning? 15 A. Yes. 16 Q. Can I ask you whether you were aware -- I don't need 17 dollars and cents but on a rough-and-ready basis -- how 18 much is the cost of the rectification work for the 19 stitch joints and the shunt neck joint? 20 A. Yes, I'm aware of how much it cost. 21 Q. Can you tell us? 22 A. It's in the order of \$50 million. 23 Q. Right. In your answer, I think you mentioned -- well, 24 part of the effort that you mentioned was there's 25 an insurance claim?</p> |
| <p style="text-align: right;">Page 158</p> <p>1 Q. I just want to clarify: when you said you expect senior 2 people to appreciate the fact that RISC forms were not 3 done, and you expect the matters to elevate to the top, 4 what did you mean by "the senior people" and what did 5 you mean by "the top"? 6 A. Okay. Perhaps I could explain that a bit better. 7 The RISC forms would -- the quality department would 8 check -- will track the RISC forms, so they will keep 9 a register of all RISC forms, and I would expect the 10 quality department to notify all levels of people, from 11 the people especially filling the forms in, to the 12 section managers that the forms were not being done in 13 an appropriate or timely manner. Then, if the problem 14 maintained, then it should be elevated up to, 15 potentially, the project director, if it was still 16 something that wasn't being done satisfactorily. So the 17 project manager could make a call and try and establish 18 the reasons, and then put in place methods to make sure 19 they were done properly. 20 COMMISSIONER HANSFORD: Sorry, I don't wish to interrupt 21 you. 22 A. I have finished. 23 COMMISSIONER HANSFORD: If I can just clarify that point. 24 Mr Kitching, the quality -- as I understand it, the 25 quality department were monitoring the RISC forms that</p> | <p style="text-align: right;">Page 160</p> <p>1 A. Correct. 2 Q. Can you briefly explain the nature of the insurance and 3 the nature of the insurance claim? 4 A. So we've submitted to the insurer a claim for damage, 5 which we are currently pursuing. It's certainly 6 obviously a long way before that gets resolved. That's 7 how we are trying to recover the majority of the cost 8 for the stitch joint. 9 Q. Can you briefly explain to us the nature of that 10 insurance? Is that a kind of liability insurance, or is 11 it insurance against damage suffered by property or -- 12 A. I'll have to refresh my memory but I think under our 13 contract it's all risk insurance. 14 Q. All risk insurance? 15 A. Yes. 16 Q. Now, in relation to Wing & Kwong, you talked about 17 matters maybe losing focus because of the Commission of 18 Inquiry, et cetera. 19 A. Yes. 20 Q. Can I just ask you, generally speaking, in 21 a construction contract, are there any methods or usual 22 techniques to cater for the possibility of defects being 23 found in works after they are done? 24 A. Yes, there are clauses in the sub-contract agreement 25 that identify defects should be rectified by the</p> |

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| <p>1 sub-contractor. If they fail to rectify within 2 a certain amount of time, then we reserve our right to 3 do it on their behalf and we will seek to recover the 4 money from them. 5 Q. But what I am trying to get at is whether there is any 6 particular scheme or method to cater for or to 7 facilitate the recovery of such moneys from a defaulting 8 contractor? 9 A. I'm not sure what you mean by scheme. We were just -- 10 Q. Any clauses, any method, any -- 11 A. There would be clauses in the sub-contract. I don't 12 know off the top of my head which ones they are. But we 13 would just notify them under that particular clause, 14 saying, "We've notified this defect. If you are found 15 to be responsible, we expect you to come and fix it 16 within this amount of time, otherwise we will fix it on 17 your behalf and expect to recover the money." 18 Q. Are you aware of the financial means or backing of Wing 19 & Kwong? 20 A. I'm not but I can't imagine it's that substantial. 21 Q. Usually, in relation to companies which you think may 22 not be substantial, are there any particular steps or 23 methods that you would take to cater for possible 24 recovery? 25 A. We try to withhold payments on sub-contractors which may</p> | <p>1 a number of questions about that. 2 The Commission has asked Leightons, through their 3 solicitors, for a copy of that appraisal, assuming it to 4 be in writing, of course, together with any other 5 appraisals that may have been done in relation to other 6 staff connected with the stitch joint incident. We 7 asked for any documentation by lunchtime today. We 8 haven't received it, but we have had what I think might 9 be described broadly as a "holding reply" from 10 Leighton's solicitors, which at the moment has drawn 11 a blank in terms of any written documentation, but as 12 I understand it, the message we've had is "so far", and 13 that's why I've said it seems in the nature of a holding 14 reply; so far, that's what the investigations or the 15 research has shown. 16 Now, it is possible, I don't know, that if there is 17 nothing in writing in due course, then I'm afraid it may 18 be necessary -- I'm not saying it will be but it may be 19 necessary -- to recall Mr Kitching, to ask him some 20 questions about the appraisal process, because at the 21 moment we are a little uncertain as to what that process 22 comprises, and I certainly don't want to start asking 23 any questions of Mr Kitching or indeed anybody else 24 until I know the answer to the question whether there is 25 any documentation. If there's documentation, obviously</p> |
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| <p>1 be defaulting. So we try and have a reserve of money 2 against them, to try and cover the costs. Obviously, 3 this was substantial. So, I mean, I believe that, you 4 know, due to the value of the repairs, we will be very 5 unlikely to recover them from Wing & Kwong. That's why 6 the insurance route. However, we would still have some 7 significant deductibles which we would have money held 8 on Wing & Kwong which we would use to recover those 9 deductibles. 10 Q. When you said you have money withheld on Wing & Kwong, 11 or a reserve of money against them, how much is that 12 reserve or how much -- 13 A. It's only -- it's about \$1.5 million, I think. Not 14 much. I can't remember. 15 MR SHIEH: I have no further questions for you. Thank you 16 very much. 17 CHAIRMAN: Thank you very much. 18 Is that completed? 19 MR PENNICOTT: Sir, we have I think completed Mr Kitching's 20 evidence, subject to one observation. 21 Sir, you will recall, during the cross-examination 22 of Mr Henry Lai, by my learned friend Mr Khaw for the 23 government, that we were told that following the 24 investigation of the incident back in February 2018, 25 Mr Lai went through an appraisal, and Mr Khaw asked him</p> | <p>1 we can then take a view of who we need to ask questions 2 of, but if there's no documentation, obviously we may 3 have to ask different people different questions. 4 Sir, subject to that point ... 5 The only other point -- the next point is that Wing 6 & Kwong or rather Mr Cheung of Wing & Kwong produced 7 that documentation late in his evidence this morning. 8 I've still not had an opportunity of looking at it. 9 I think Mr Kitching probably has, albeit rather 10 briefly -- 11 WITNESS: Briefly. 12 MR PENNICOTT: -- with his solicitors. So whether there's 13 anything arising out of that that needs to be put to 14 Mr Kitching as well, I simply don't know at the moment. 15 I have no idea because I haven't looked at the material 16 that was produced. 17 So there are, if you like, two markers with regard 18 to Mr Kitching's evidence. 19 CHAIRMAN: Yes. 20 MR PENNICOTT: But subject to that, those two points, he is 21 finished. 22 CHAIRMAN: All right. Mr Kitching, thank you very much 23 indeed. Your evidence is now complete, subject to those 24 footnotes -- 25 WITNESS: Sure.</p> |

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| <p>1 CHAIRMAN: -- that Mr Pennicott has just outlined. You may 2 have to come back and assist us a bit further, but 3 hopefully not, and thank you for all your assistance. 4 WITNESS: My pleasure. Thank you. 5 CHAIRMAN: Thank you. 6 (The witness was released) 7 MR PENNICOTT: Sir, the next witness on the list is I think 8 Mr Johnny Leung, but I see what the time is. 9 CHAIRMAN: Yes. No, it's ... 10 MR PENNICOTT: And I know Mr Leung has been -- I know he is 11 not a current employee of Leighton, but he has been told 12 by the Commission that he may have been required this 13 afternoon and has been asked to be here tomorrow as 14 well. So he will be available, I presume, tomorrow. 15 I mention that because tomorrow morning we have 16 a fixture, as it were, that is Mr Jeff Lii. I assume 17 that's how you pronounce his name. 18 MR SHIEH: Yes. 19 MR PENNICOTT: So it in fact will not be Johnny Leung first 20 thing tomorrow morning, it will be Jeff Lii who we have 21 given this fixed time to at Leighton's request. 22 CHAIRMAN: Good. Okay. Yes, I've got that here. 23 MR PENNICOTT: It's right at the end of the timetable, 24 I think. 25 CHAIRMAN: Yes.</p> | <p>1 COMMISSIONER HANSFORD: Thank you. 2 Can I just ask, Mr Pennicott, on the programme -- 3 so, as I understand it, we've got Mr Jeff Lii and then 4 Johnny Leung. Do we see Karl Speed tomorrow? 5 MR PENNICOTT: No, we then see Regina Wong, because Mr Speed 6 has been given a fixture on Wednesday morning at 7 10 o'clock. 8 CHAIRMAN: Okay. Good. 9 MR PENNICOTT: So we will have Mr Lii, Mr Leung, Ms Wong, 10 I'm not sure who is after Ms Wong -- Mr Holden. Whether 11 we will get to Mr Holden, I'm not sure. We may. Mr Lii 12 I think will take a little bit of time. But Mr Holden 13 no doubt will also be standing by just in case we need 14 him. 15 CHAIRMAN: And as far as general progress is concerned? 16 MR PENNICOTT: I think we are doing all right. As always, 17 the government is able to slow things up a bit on 18 a Monday afternoon. But no, sir, I think we are doing 19 fine. 20 CHAIRMAN: Good. Thank you very much. Then tomorrow 21 morning, 10 am -- Mr Pennicott, 10 am? 22 MR PENNICOTT: Yes, sir. 23 CHAIRMAN: Tomorrow morning, 10 am. 24 (4.56 pm) 25 (The hearing adjourned until 10.00 am the following day)</p> |
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| <p>1 MR PENNICOTT: In that connection, if it's of any assistance 2 to anybody and indeed yourselves, we will be, because of 3 the nature of Mr Lii's evidence, focusing very much on 4 the HHS rather than the NAT or the SAT. So we will be 5 switching geographical areas with Mr Lii. It's not 6 terribly satisfactory. We will try to keep everything 7 in some sort of order. But it doesn't matter. We will 8 be going to the HHS area. 9 I mention that because one of the documents we will 10 need to look at in some detail with Mr Lii is the 11 equivalent of the NAT pour summary, which has been 12 referred to as my favourite page. That's the NAT 13 summary at BB9/6363, that's just one page. The HHS 14 summary is eight pages long, and it's much better in A3 15 and we will need to look at it in a little bit of 16 detail. So it may be helpful if you equip yourself with 17 a hard copy of the A3 version, and anybody else as well, 18 rather than looking at it on the screen, because some of 19 the points I will want to make to Mr Lii are much better 20 made by reference to the hard copy where one we can see 21 it in all its glory. 22 COMMISSIONER HANSFORD: What are the numbers? 23 MR PENNICOTT: That's CC9/5642 and following. 24 COMMISSIONER HANSFORD: And the pages thereon. 25 MR PENNICOTT: That's correct.</p> | <p>1 INDEX PAGE 2 3 MR CHEUNG YICK MING, BEN (affirmed in Cantonese)1 4 Examination-in-chief by MR TSOI1 5 Examination by MR PENNICOTT12 6 Cross-examination by MR SHIEH35 7 Cross-examination by MR HO56 8 Re-examination by MR TSOI60 9 (The witness was released)67 10 MR JONATHAN CHARLES KITCHING (affirmed)69 11 Examination-in-chief by MR SHIEH69 12 Examination by MR PENNICOTT72 13 Cross-examination by MR TSOI100 14 Questioning by THE TRIBUNAL117 15 Cross-examination by MR CHOW123 16 Re-examination by MR SHIEH157 17 (The witness was released)165 18 19 20 21 22 23 24 25</p> |