

Part II Findings

Chapter 6 Very Difficult Stage (November 2013 to April 2014)

6.1 In this Chapter, reference to "Very Difficult Stage" covers various incidents that took place between November 2013 and April 2014 when the Government and the Corporation announced the project delay. It also sets out the Select Committee's observations on the causes of the project delay, as well as the deficiencies of the Government and the Corporation in respect of the monitoring and delivery of the Project in various aspects.

Key dates for the "Very Difficult Stage"

Date	Events
7 November 2013	Mr CHEW Tai-chong, the then Projects Director of the Corporation, wrote to the General Managers in the Project Team proposing that, if there were serious doubts on the commencement of service operation by December 2015, he wanted to have a plan to first inform the Board and the executives.
8 November 2013	The Project Team gave a presentation on partial opening to Mr Joseph LAI Yee-tak, Permanent Secretary for Transport and Housing (Transport); Ms Rebecca PUN Ting-ting, Deputy Secretary for Transport and Housing (Transport) ¹ ; Mr Peter LAU Ka-keung, Director of Highways, and RDO. THB raised the concern that, if testing could only commence in October 2015 as proposed, it was unlikely that HKS of XRL could commence operation by the end of 2015.

- 20 November 2013 Professor Anthony CHEUNG Bing-leung was briefed by HyD about the possibility that HKS of XRL might only commence passenger service operation after 2015 due to delay in the cross-boundary tunnelling works.
- 21 November 2013 Mr Jay H WALDER called Professor Anthony CHEUNG Bing-leung to express his disagreement on informing Railways Subcommittee that the 2015 completion target could not be met.
- 21 November 2013 Professor Anthony CHEUNG Bing-leung directed that an urgent meeting should be held the same day amongst THB (led by Mr Joseph LAI Yee-tak), Mr YAU Shing-mu, HyD and the Corporation (led by the then CEO).
- 22 November 2013 At the Railways Subcommittee meeting, the Government stated that, based on the latest assessment of the Corporation, the major works of HKS of XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted and this would normally take six to nine months.
- 19 December 2013 The Chief Programming Manager of the Corporation sent an updated Schedule Risk Analysis report to the General Manager of the Project, copied to Mr CHEW Tai-chong, stating that WKT could not be opened within 2015 even on a partial opening basis and suggesting an opening date in May 2016.
- 7 March 2014 In a programme status presentation given by the Project Team to Mr CHEW Tai-chong, the slides in the presentation showed the overall programme outlook and set January 2017 as the target month for the completion of the railway works and April 2017 as the target month for revenue operation.

- 30 March 2014 A black rainstorm of exceptional intensity led to serious flooding at the Yuen Long Tunnel.
- 15 April 2014 Professor Anthony CHEUNG Bing-leung informed the public that he had received verbal notification from the Corporation that the completion of HKS of XRL would be delayed. The Corporation subsequently held a press conference and stated that the completion date of HKS of XRL would be postponed to 2016 for operation in 2017.

Chronology of developments

Target to complete the Project by August 2015 became difficult or impossible to achieve

6.2 The Select Committee notes from the 1st IBC Report¹²⁷ that, starting from November 2013, the target to complete the Project by August 2015 had become well nigh difficult, if not impossible, to achieve, as shown in the internal communications of the Corporation below:

- (a) On 7 November 2013, Mr CHEW Tai-chong, the then Projects Director, wrote to the General Managers in the Project Team: *"The figures and achievement by each contract remain a serious concern. I am sure you have a plan or a DRM or two to secure the recovery to what we have committed in July to CEO of our Minimum Operating Requirement for Day-1 operation by December 2015. If we are now in serious doubt about this commitment, I want to be sure that we have a plan to first inform of Board and Executive ASAP..."*¹²⁸

¹²⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.66, 4.71 and 4.72.

¹²⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.66.

- (b) On 11 November 2013, Mr CHEW Tai-chong wrote: *"Further to my e-mail [of 7 November...], I have had a number occasions trying to come to some clearer understanding with all the progress and challenges associated with XRL [sic]. But I have totally failed. We have presented to our CEO and Executives in July indicating that we can make December 2015. A similar presentation was given to Perm Sec (Transport) last Friday. As you know, many of our planned target and production rate have failed to materialise and if anything, the pressure on our cost/contingency is increasing..."*¹²⁹
- (c) On 14 November 2013, a memorandum from the Chief Programming Manager to the Projects Director confirmed that the opening would likely be delayed to about April or May 2016, even on a partial opening basis. In his cover e-mail, the Chief Programming Manager stated: *"We need a major turnaround of events on 810A to Open to Public MOR in mid 2016 and complete all external works within a 2016 time frame."*¹³⁰

The Government contemplated making public the project delay

6.3 On 8 November 2013, HyD (represented by Mr Peter LAU Ka-keung) and the Corporation (represented by Mr CHEW Tai-chong) briefed Mr Joseph LAI Yee-tak and other THB officers on the latest position of the Project. The Corporation presented the progress of the works of HKS of XRL, including WKT and the contract 826 (Hong Kong/Shenzhen boundary to Mai Po) tunnelling works. At the meeting, the Corporation stated that WKT would be ready for partial opening by December 2015. They explained that, even with only six tracks in operation in this interim period, it would be sufficient to meet early demand. As for the contract 826 tunnelling works, they could only be completed by October 2015 and the testing (which would normally take three months) could only commence from October 2015. As it would

¹²⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.71.

¹³⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.72.

take another three months to conduct trial runs, the target opening date of end-2015 might be affected.

6.4 Mr Joseph LAI Yee-tak informed the Select Committee that it was at this meeting that the Corporation first formally put to THB the proposed Partial Opening Plan. At that meeting, the Corporation maintained that, notwithstanding the delay with the tunnelling works, HKS of XRL could still commence service in 2015 in a partial opening scenario. Mr Joseph LAI Yee-tak informed the Select Committee that as he considered that it was necessary for the Government departments, including HyD and Transport Department, to examine the feasibility of the proposal, he did not confirm whether the proposed partial opening was acceptable to the Government. He further queried whether and how the proposed partial opening would help, given that the slow progress of the tunnelling works remained a major obstacle. He pointed out to the Corporation that, if the testing of HKS of XRL could only commence from October 2015, it was unlikely that HKS of XRL could start operation by the end of 2015. If that were the case, the public should be informed as soon as possible.

6.5 A similar briefing was conducted by Mr Peter LAU Ka-keung for Professor Anthony CHEUNG Bing-leung on 20 November 2013. Professor Anthony CHEUNG Bing-leung informed the Select Committee in his statement that as HKS of XRL was controversial, he considered that the Government should come clean if there was a possibility that the target of 2015 could not be achieved. Based on the assessment of the work progress then, he contemplated making it public at the Railways Subcommittee meeting scheduled for 22 November 2013 that HKS of XRL might only commence operation after 2015 and explaining the latest progress in construction and the actual challenges encountered.

The telephone calls on 21 November 2013, the day before the Railways Subcommittee meeting on 22 November 2013

6.6 The Select Committee notes that in the morning of the following day (i.e. 21 November 2013), Mr Jay H WALDER spoke with Professor Anthony CHEUNG Bing-leung over the telephone expressing his disagreement on informing Railways Subcommittee that the target for commencing operation in 2015 could not be met. According to paragraph 4.78 of the 1st IBC Report, Mr Jay H WALDER expressed the Corporation's concern that any such announcement would compromise

the Corporation's leverage to put pressure on the contractors to meet the timetable. The Select Committee notes from Professor Anthony CHEUNG Bing-leung's statement that, in response, he told Mr Jay H WALDER that the decision had been made after taking into account Mr CHEW Tai-chong's advice on the progress of HKS of XRL. Mr Jay H WALDER later telephoned Professor Anthony CHEUNG Bing-leung again and stressed that, after consulting Mr CHEW Tai-chong, it was still feasible to complete all the necessary works to enable HKS of XRL to commence operation by the end of 2015.

The urgent meeting in the evening of 21 November 2013

6.7 Professor Anthony CHEUNG Bing-leung informed the Select Committee that, as a result of the telephone conversation in the preceding paragraph, he had asked Mr Joseph LAI Yee-tak to convene an urgent meeting with the Corporation on the same day, i.e. 21 November 2013.

6.8 The Select Committee notes that at the meeting on 21 November 2013, Mr Joseph LAI Yee-tak, Mr YAU Shing-mu, Mr Peter LAU Ka-keung, Mr Henry CHAN Chi-yan (Head of RDO), and three other government representatives were present. The Corporation's representatives included Mr Jay H WALDER, Mr CHEW Tai-chong, Dr Jacob KAM Chak-pui, Operations Director, Mr Antonio CHOI Fung-chung, the former General Manager (XRL), and another representative. Jacobs was not present at the meeting.

6.9 The Select Committee notes that, at the meeting, the Corporation emphasized that it was imperative that the target completion in 2015 should be maintained, lest the Corporation would lose its leverage to press its contractors to complete the Project on time. The Corporation indicated at the meeting that it was still possible for HKS of XRL to be completed and to commence operation within 2015. THB pointed out that, according to an earlier briefing by the Corporation, HKS of XRL was experiencing problems at WKT and in the cross-boundary tunnelling works. THB queried that, even if the partial opening scenario for WKT were adopted, HKS of XRL could not commence operation if the

tunnelling works of contract 826 could not be finished in time¹³¹. THB queried why the Corporation should still take the view that HKS of XRL could be completed and commissioned in 2015. The Corporation responded that it was trying hard to identify solutions to meet this target and, at the very least, a single-track operation¹³² was possible. It was explained to the Corporation that a single-track operation would not satisfy the Government's requirements and was unacceptable. THB reiterated that while it appreciated that the Corporation needed to use the 2015 target as leverage with its contractors to expedite the works, the Government required a realistic assessment and should alert the public immediately if the 2015 target was not achievable. THB said that based on the Corporation's latest information, HKS of XRL would only be ready for testing in October 2015 and queried whether HKS of XRL could be commissioned in time within 2015. It was noted that there was delay in the cross-boundary tunnelling works and such delay would eat into the time for the tunnelling works on the Hong Kong side of the boundary, thus posing challenges to the Corporation. The Corporation responded that it would be in a position to assess the impact once the cross-boundary tunnelling works had been completed on the Mainland side and works had begun on the Hong Kong side.

6.10 THB cautioned the Corporation not to over-state its ability to overcome the challenges. To this Mr CHEW Tai-chong responded that without the single-track option, the Corporation would look at other ways to recover the delays (e.g. by bringing in an additional tunnel boring machine). While he was confident that this could be achieved over the next two years, he stated that the Corporation would be able to give a better picture in six months after the cross-boundary tunnelling works had commenced on the Hong Kong side.¹³³

6.11 The Corporation requested the Government to give it six months before making judgment on whether HKS of XRL could be completed by

¹³¹ The construction works of the Project can be grouped into two categories, namely WKT and the Approach Tunnels which are constructed by cut-and-cover method, and the 26 km tunnel.

¹³² Single track operation scenario is to use a single tunnel for the northbound and southbound trains, running alternatively between WKT and the boundary of the Mainland.

¹³³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.81.

2015. After much discussion, it was eventually concurred at the meeting that while the target completion of 2015 should be maintained at that stage, the Government and the Corporation should be upfront with the challenges faced by the Project when attending the Railways Subcommittee meeting on the following day. Meanwhile, the Corporation was asked to provide the Government with a clear roadmap on how the target could be met.

The Railways Subcommittee meeting on 22 November 2013

6.12 At the Railways Subcommittee meeting on 22 November 2013, Mr YAU Shing-mu, heading the Government team, stated that based on the latest assessment of the Corporation, the major works of HKS of XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted. In response to an enquiry from the Railways Subcommittee Chairman, Mr YAU Shing-mu said that the testing and trial runs normally would take about six to nine months. HKS of XRL would only come into operation after the relevant authorities had approved the test results on the safety and reliability of the service.

6.13 According to the 7th half-yearly report presented to Railways Subcommittee, the Government indicated that *"[w]e will continue to monitor the progress of the project to ensure that it is within the approved budget and will be completed as scheduled with high quality."*¹³⁴

The Board meeting on 10 December 2013

6.14 The Select Committee notes that after the Railways Subcommittee meeting on 22 November 2013, the Board held a meeting on 10 December 2013. Professor Anthony CHEUNG Bing-leung, being a non-executive Director of the Board, mentioned that the actual opening date of HKS of XRL would depend upon the completion date of the construction works, given the six-month period required for testing and trial runs. Mr CHEW Tai-chong gave his Half Yearly Update of New Railway Projects presentation which included an update on the progress of the Project. He made a general statement that the project works were

¹³⁴ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)81/13-14(01).

managed with necessary mitigations, coupled with recovery plans in case of programme delay. The Select Committee notes from IEP¹³⁵ that the other Board members had put questions to Mr CHEW Tai-chong on the Project cost and progress, and Mr CHEW Tai-chong confirmed that "*XRL Project works would be completed by end of 2015.*"

6.15 The Board also asked questions regarding the budget (covering management of claims) and completion was also discussed¹³⁶. In response to a direct question from an independent non-executive director, Mr CHEW Tai-chong confirmed that the Project would be completed by the end of 2015. None of the other members of ExCom present or anyone else present with knowledge of the Partial Opening Plan challenged or qualified this statement made by Mr CHEW Tai-chong or mentioned the Partial Opening Plan to the Board. Another independent non-executive director¹³⁷, on the back of this dialogue, stressed the importance of keeping LegCo informed of any development which could have an impact on the budget for the Project.

Mr CHEW Tai-chong came to know that commissioning of WKT within 2015 was impossible even on a partial opening basis

6.16 The Select Committee notes that, on 19 December 2013, the Chief Programming Manager sent an updated Schedule Risk Analysis report to the General Manager of the Project, copied to Mr CHEW Tai-chong, stating that WKT could no longer be opened within 2015 even on a partial opening basis and suggesting an alternative opening date in May 2016. The actual progress of the Project by the end of December 2013 was reported as 51.34% complete against the planned progress of 81.41% in the original programme.¹³⁸

6.17 On 19 February 2014, the Project Team of the Corporation received an informal and incomplete response from the contractor of contract 810A in relation to the Partial Opening Plan which the Corporation had supplied to the contractor in October 2013. The

¹³⁵ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 177.

¹³⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.89 and 4.90.

¹³⁷ Mr Abraham SHEK.

¹³⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.91.

response indicated that according to the contractor's calculations, even with the proposed partial opening, there would be no track access until June 2016.¹³⁹

6.18 The opening date was further revised to mid-2017 in a programme status presentation given by the Project Team to Mr CHEW Tai-chong on 7 March 2014; the slides in the presentation showed the overall programme outlook and set January 2017 as the target month for completion of the railway works and April 2017 as the target month for revenue operation.¹⁴⁰

6.19 However, in the RDO/HyD coordination meetings held from January to March 2014, the Corporation maintained that the Project remained on target for completion in 2015.¹⁴¹

Two significant events at the end of March 2014

6.20 Two events occurred at the end of March 2014. The first was a black rain storm in the night of 30 March 2014, and its aftermath; the second was a formal presentation by the contract 810A contractor on 31 March 2014 regarding the construction progress at WKT.¹⁴²

6.21 On 31 March 2014, the contract 810A contractor gave a presentation to the Corporation in relation to the Partial Opening Plan, showing that access for track-laying would not be available in December 2015 and through 2016, and that a completion of contract 810A's scope of work would only take place in 2017. Hence at least one of the critical paths which the Partial Opening Plan had relied upon was unworkable. Mr CHEW Tai-chong indicated that the entire Project completion schedule should be re-assessed ignoring partial opening.

¹³⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.96.

¹⁴⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.99.

¹⁴¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.92 and 4.100.

¹⁴² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.102.

Implementation progress of the Project in April 2014

6.22 At the 44th Project Supervision Committee meeting held on 2 April 2014, the Corporation reported that the actual progress of the Project was 54.8% complete against the planned progress of 85.5% in the original programme. At the meeting, the Chairman (Mr Peter LAU Ka-keung) expressed concerns on the significant programme slippage and asked whether the target completion in 2015 was still attainable. The Corporation replied that they were reviewing the overall picture of project delivery and would give a presentation to Mr Peter LAU Ka-keung in May 2014.¹⁴³

6.23 The Select Committee notes that, at the above meeting, the Corporation reported a serious flooding incident concerning the Tai Kong Po to Tse Uk Tsuen tunnels, which had caused the submersion of a tunnel boring machine in flood water. The Corporation said that the contractor was assessing the damage and would make use of any available spare parts for replacement if the machine was repairable. The Corporation and the contractor were also looking into the feasibility of contingency plans. The Chairman requested the Corporation to report on the detailed findings of the incident and their assessment on the associated cost and time implications when available.

Announcement of the project delay

6.24 Professor Anthony CHEUNG Bing-leung informed the Select Committee that at around noon on 12 April 2014 when he was out of town, Mr Jay H WALDER called to inform him that the construction work of HKS of XRL could only be completed by the end of 2016 and that service could only be commissioned in 2017. More details had yet to be ascertained. According to Professor Anthony CHEUNG Bing-leung, he was shocked by the news as there was a two-year gap between the new and the original target and it had been projected by the Corporation at the 21 November 2013 meeting that HKS of XRL would be opened in 2015. He immediately contacted his staff after the telephone conversation. Ms Rebecca PUN Ting-ting, Deputy Secretary for Transport and Housing (Transport)¹, informed Professor Anthony

¹⁴³ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1328/13-14(03), Annex G.

CHEUNG Bing-leung that she had also just received the same news from Mr CHEW Tai-chong who had telephoned Mr Peter LAU Ka-keung and her in the afternoon of that day. Professor Anthony CHEUNG Bing-leung asked her to get in touch with Mr Peter LAU Ka-keung to find out more.

6.25 In the morning of 13 April 2014, the Chairman of the Corporation, Dr Raymond CH'EN Kuo-fung, called Professor Anthony CHEUNG Bing-leung with regard to the delay. Both of them agreed that the Government and the Corporation should inform the public as soon as possible. They also agreed to have an urgent meeting on 14 April 2014 when Professor Anthony CHEUNG Bing-leung would be back in the office.

6.26 On 14 April 2014, an urgent meeting was held at THB attended by, amongst others, Dr Raymond CH'EN Kuo-fung, Mr Jay H WALDER and Mr CHEW Tai-chong. Professor Anthony CHEUNG Bing-leung requested the Corporation to provide a full assessment report on the construction progress including a full and proper account for the substantial delay. He also instructed Mr Peter LAU Ka-keung to provide him with an independent review and assessment of the construction progress of HKS of XRL, including an assessment of the reasons for the substantial delay.¹⁴⁴ At the meeting, it was agreed that Professor Anthony CHEUNG Bing-leung and the Corporation should inform the public on the following day, and make a report to Railways Subcommittee at the meeting originally scheduled for 2 May 2014 to explain the situation.

6.27 On 15 April 2014, Professor Anthony CHEUNG Bing-leung informed the public via the media that he had received verbal notification from the Corporation that the completion of HKS of XRL would be delayed, and that he had requested the Corporation to submit a full assessment report. At the same time, he had also requested Mr Peter LAU Ka-keung to conduct an independent review and assessment of the construction progress. The Corporation subsequently held a press conference and stated that the completion date of HKS of XRL would be

¹⁴⁴ The review report by HyD is attached in Annex C of the paper submitted by the Government to the Subcommittee on Matters Relating to Railways for the meeting on 5 May 2014, LC Paper No. CB(1)1328/13-14(03).

pushed back to 2016 for operation in 2017. Copies of the press releases of the Government and the Corporation appear in **Appendices 1 and 2** respectively.

6.28 Railways Subcommittee subsequently held two meetings on 5 May and 19 May 2014 to discuss the matter and conducted a site visit to WKT on 28 April 2014. The Government also submitted a paper to Railways Subcommittee¹⁴⁵ providing information on the latest position of the Project as at the end of March 2014.

Observations

Progress of the Project not fully reported to the Government by the Corporation

6.29 As revealed by the internal communications of the Corporation in November 2013 mentioned in paragraph 6.2 above, the Select Committee observes that the target to complete the Project by August 2015 had become impossible to achieve, even if HKS of XRL was to operate on a partial opening basis. However, the Corporation assured the Government on 21 November 2013 that it was still feasible to complete all the necessary works to enable HKS of XRL to commence operation by the end of 2015.

6.30 Professor Anthony CHEUNG Bing-leung informed the Select Committee in his statement that *"Now, from [the Corporation's] own submission to [Railways Subcommittee] in May 2014 and from its Independent Board Committee (IBC) Report of October 2014 that:*

- (i) *as early as February 2013 [the Corporation's] Projects Director was citing "critical" delays with WKT construction;*
- (ii) *despite delays, [the Corporation] had consistently adopted the stance that it was confident that the project could be delivered on time and on budget;*

¹⁴⁵ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1328/13-14(03).

- (iii) *[Project Supervision Committee] chaired by [Director of Highways] was not being given by [the Corporation] an accurate picture of the prognosis for the project as a whole so that it was unable to make timely decision on the critical delay of the whole XRL project;*
- (iv) *by December 2013, [the Corporation's] Management must have known clearly that WKT could not open, even on a partial basis, until May 2016, but it has failed to inform Government; and*
- (v) *from December 2013 onwards, [the Corporation's] Management had been contemplating various scenarios of XRL delay in commissioning target year, and the cost implications involved, but had all along failed to keep Government informed. This is not the kind of trusting, honest and timely communication expected of [the Corporation] under the Entrustment Agreement."*

6.31 The Select Committee notes a similar observation in the 1st IBC Report¹⁴⁶, which stated that Mr CHEW Tai-chong had not communicated with the Government regarding the mounting concerns of the Project Team expressed in November 2013 as to the cumulative effect of delays across the key parts of the Project and that, as a result, the completion date would be in 2016. IBC believed that while the Government clearly had access to a great deal of information about the delays on the contracts, it should have been given a fuller assessment of the achievability of the overall Project timetable. IBC also commented that the more analytical and objective assessment communicated by the members of the Project Team regarding the effect of the cumulative delays in the critical paths of the Project should have been reported by Mr CHEW Tai-chong to the Government.

6.32 The Select Committee notes from the IEP Report¹⁴⁷ that "*we [IEP] are not aware of meeting minutes for any Contract Review Meetings. Briefings prepared for Contract Review Meetings include*

¹⁴⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.38 and 5.41.

¹⁴⁷ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 192.

quantified delays (in weeks) for individual contracts. No reporting on overall Project delay is provided in the briefings that we [IEP] have reviewed. In briefings between June 2010 and August 2013, numerous bar charts with 'time-now lines' were included and the 'Estimated Handover Date' or 'XRL Opening' date on these charts remains at August 2015. From September 2013 bar charts were not included."

6.33 The Select Committee considers that the Corporation and its Project Team should have reported the actual progress of the Project to the Government in a timely and proper manner, so as to enable the Government to form its own judgment and deal with the problems much earlier. On the other hand, the Select Committee also takes the view that HyD had not properly and professionally performed its monitoring role in the Project and its performance was unsatisfactory. This issue will be examined further in paragraph 6.54.

Judgment of the Government

The urgent meeting between the Government and the Corporation on 21 November 2013

6.34 The Select Committee observes that starting from November 2013, THB became increasingly concerned about whether the target completion date of August 2015 could be achieved, and was aware that the chances of completing the Project by August 2015 were extremely low. Therefore, THB had contemplated reporting the project delay at the Railways Subcommittee meeting scheduled for 22 November 2013. However, the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung and the subsequent meeting between the Government and the Corporation on 21 November 2013 brought about a change of mind.

6.35 The Select Committee has examined whether the judgment of the Government made on 21 November 2013 was sound. Due to the importance of the events that took place on 21 November 2013, the Select Committee has asked THB and the Corporation to provide the telephone recording or transcript of the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung, as well as the record of the meeting on 21 November 2013. Professor Anthony CHEUNG Bing-leung responded (**Appendix 7**) that there was no telephone recording or record of the telephone conversation and that what

had transpired during the telephone conversation was already included in the Government's paper to Railways Subcommittee (LC Paper No.: CB(1)1328/13-14(03)) based on his recollection. The Corporation also advised (**Appendix 10**) that no recording or contemporaneous written record of this conversation had been prepared by the Corporation.

6.36 As for the record of the meeting on 21 November 2013, Professor Anthony CHEUNG Bing-leung informed the Select Committee (**Appendix 7**) that the key points of discussion at the meeting had already been put in the Government's response to Railways Subcommittee dated 15 May 2014 (LC Paper No.: CB(1)1422/13-14(04)) and that THB had no other record of that meeting. The Corporation informed the Select Committee (**Appendix 10**) that no contemporaneous written record of that meeting had been prepared by the Corporation.

6.37 Mr Joseph LAI Yee-tak informed the Select Committee in an open hearing that he had convened the meeting of 21 November 2013 on the basis that the discussion between the Government and the Corporation would be conducted in "good faith". The Corporation should have the professional engineering expertise and project management competence to tender sound advice to the Government. Further, the Corporation should have been well prepared for the meeting, with full grasp of the latest situation. He had also expected that the Corporation had fully understood the consequences of not informing the public in good time if it had known that it could not achieve the target date for commissioning HKS of XRL.

6.38 Mr Joseph LAI Yee-tak pointed out that the Government had two prime considerations at the meeting on 21 November 2013, namely:

- (a) while the commissioning of HKS of XRL by 2015 was an important policy and planning objective which should be achieved as much as possible, the Government had to face fairly and squarely any irreversible delay caused by insurmountable technical difficulties. If there were any irreversible delay, it was important that the Government should alert LegCo and the public as soon as possible; and
- (b) at the meeting, the then CEO and the then Projects Director both assured the Government many times that HKS of XRL could be commissioned in 2015, and

remained firm on their assurance despite the Government's repeated queries and challenges. Based on the information available, Mr Peter LAU Ka-keung and his colleague could not completely rule out the possibility of commissioning HKS of XRL in 2015. At the meeting, the Corporation also made it clear that should the target of 2015 be postponed at that stage, the Corporation would lose its leverage with its contractors in pushing the Project forward, and the commissioning of HKS of XRL in 2015 would then be really impossible. At the time, the Government representatives considered the Corporation's view not unreasonable.

6.39 Mr Joseph LAI Yee-tak further informed the Select Committee that the Government officers at the meeting had decided to give the Corporation the benefit of the doubt. The Corporation was requested to provide the Government with a clear roadmap to demonstrate how the target of opening in 2015 could be met.

6.40 Professor Anthony CHEUNG Bing-leung informed the Select Committee that, based on the judgment of Mr Joseph LAI Yee-tak and Mr Peter LAU Ka-keung, he had directed Mr YAU Shing-mu that the Government should not report to Railways Subcommittee that HKS of XRL would be commissioned in 2015 but the construction of HKS of XRL could be "*completed within 2015 plus six to nine months for testing and trial runs*".

The Railways Subcommittee meeting on 22 November 2013

6.41 The Select Committee has examined whether the Government and/or the Corporation had deliberately covered up the project delay at the Railways Subcommittee meeting on 22 November 2013 as instructed by its terms of reference. The Select Committee notes that the statement made by Mr YAU Shing-mu at the Railways Subcommittee meeting was consistent with the instruction given to him by Professor Anthony CHEUNG Bing-leung.

6.42 According to Professor Anthony CHEUNG Bing-leung, the statement made at the Railways Subcommittee meeting on 22 November 2013 by the Government reflected the respective views of THB (and HyD) and the Corporation on the progress of the construction. In particular,

THB sought to convey the message that while the major works could be completed within 2015, the date of commissioning had yet to be confirmed. The statement also took into account the consideration canvassed by the Corporation that by not giving up on the 2015 completion target, the Corporation could press the contractors to give the Project a further push, thereby giving the Corporation a chance to catch up with the delay.

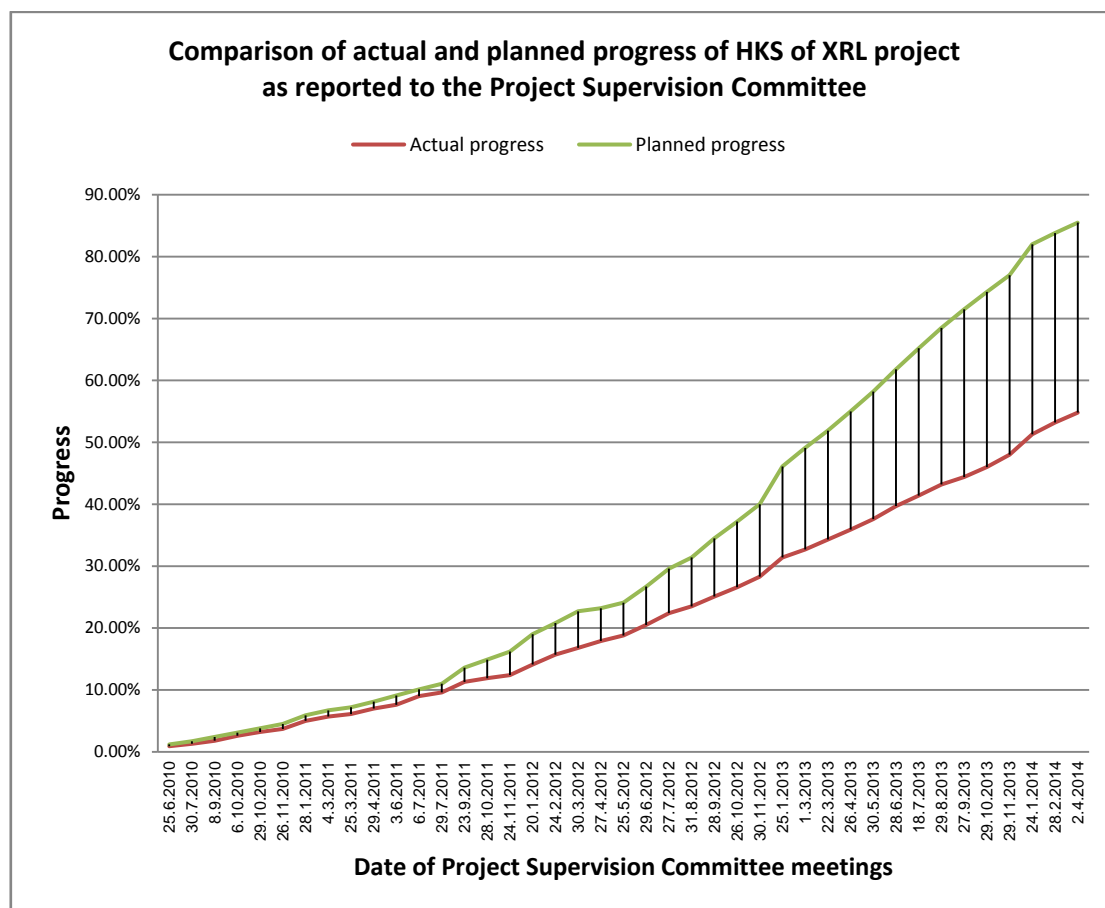
6.43 Nevertheless, Professor Anthony CHEUNG Bing-leung admitted in evidence that, with the benefit of hindsight, THB and HyD had reposed too much trust in the Corporation. In addition, the Government should have made public the difference of views between the Government and the Corporation at the Railways Subcommittee meeting in November 2013.

6.44 The Select Committee enquired whether the Government had consulted Jacobs after the meeting on 21 November 2013 and before attending the Railways Subcommittee meeting on the following day. Professor Anthony CHEUNG Bing-leung replied in the negative. The Select Committee considers that THB/HyD should have made better use of the M&V consultant to provide independent objective assessment and advice as to whether the Project could be delivered on time throughout the implementation of the Project.

6.45 The Select Committee recognizes that in the construction industry, it may not be uncommon for contractors to lose incentive to meet targets if completion dates were postponed. However, the Select Committee considers that the public should have been informed when the target completion date of the Project had become impossible or nearly impossible to achieve and that all the relevant parties should have been more pragmatic in accepting reality and come up with contingency plans and a revised schedule at the earliest opportunity.

6.46 The Select Committee notes that at the monthly Project Supervision Committee meeting, the Corporation had regularly reported the percentage of the actual progress of the Project against the planned progress of the Project. These figures were only presented to Railways

Subcommittee for the first time at its meeting on 5 May 2014¹⁴⁸ after the announcement of the project delay. The Select Committee has made use of these percentages provided in the Government's paper to Railways Subcommittee in May 2014 to produce the chart below.



6.47 It can be seen from the chart that there was persistently a widening gap between the planned progress and the actual progress of the Project despite the implementation of DRMs from January 2013 onwards. Together with the repeated warnings from Jacobs on the project slippage since December 2011¹⁴⁹ and on the ineffective DRMs as mentioned in Chapter 5 of this report, the Select Committee finds it incomprehensible why the Government should have accepted the repeated assurances from the Corporation in catching up with the delay which ran contrary to the figures presented to Project Supervision Committee on a monthly basis

¹⁴⁸ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1328/13-14(03), Annex G.

¹⁴⁹ Report of HKS of XRL Independent Expert Panel, paragraph 4.10.

and which conflicted with the assessment and advice of Jacobs. In fact, the figures showed that delay had been building up since late 2011 and still the Government chose to give the Corporation "the benefit of the doubt" at the meeting on 21 November 2013. It was said that the officers in THB were mostly generalists by training. The Select Committee considers that this factor could not absolve the Government as such civil service system was adopted by the Government. Even generalists could adopt various common management tools such as "management by exception" or "management by result" to ensure that their judgment was soundly based on the key performance indicators available to them. The Select Committee considers that the Government was not well prepared for its role under the new concession approach and might have in practice been affected by the ethos of the old ownership approach when monitoring the Project (paragraphs 3.10 to 3.13 of Chapter 3 of this report refer).

6.48 The Select Committee is of the view that, when the partial opening scenario was proposed to the Government in August and September 2013, the Government should have been alerted to the grave extent of the project delay and should have informed Railways Subcommittee of the possibility of delay. The chances of catching up with the delay appeared to be very remote even then.

Performance and judgment of HyD

6.49 As indicated in paragraphs 5.32 and 6.4 of this report, the Select Committee finds that both THB and HyD had queried the Corporation regarding the progress of the Project. In response, the Corporation consistently reassured the Government that the delays in the individual contracts could be recovered through DRMs and that the original target completion date could still be achieved.¹⁵⁰ HyD acquiesced in this response before April 2014.

¹⁵⁰ Report of HKS of XRL Independent Expert Panel, paragraph 4.18.

6.50 The Select Committee also notes IEP's opinion regarding the performance of HyD¹⁵¹ as follows:

- (a) *"In July 2013, the M&V Consultant estimated a 'potential delay of almost 11 months to the Completion Date' (i.e. July 2016). There is no indication that the Highways Department acted upon this information to request [the Corporation] for an in-depth review on XRL Project progress."*
- (b) *"Highways Department could have done more to validate the Corporation's opinions by demanding regular updates on: i) the forecast for overall project completion; and ii) the effectiveness of DRMs. This was not done."*
- (c) *"The Panel [IEP] has found no evidence of Highways Department exercising independent insight to plan, programme, forecast, etc. at any time prior to its review in April 2014."*

6.51 Mr Peter LAU Ka-keung informed the Select Committee in his statement that the "potential delay" mentioned in paragraph 6.50 above reflected what would happen if the Corporation did not do anything to catch up. In fact, HyD was at the time well aware of the delay and the Corporation had been asked to submit an overall PMP back in January 2013. The Corporation presented a revised programme in May 2013 and, at the same time, proposed a DRM to speed up the track work. According to Mr Peter LAU Ka-keung, it was recorded in the minutes of the 37th Project Supervision Committee meeting in July 2013 that the Corporation promised to make a presentation on the overall PMP and a revised WKT programme in August 2013 at HyD's request. Subsequent to the Railways Subcommittee meeting in November 2013, HyD had pressed the Corporation at every Project Supervision Committee meeting to submit a revised PMP to address the delay. The Select Committee notes that the requests for PMP and updated PMP by HyD were probably done at the request of Jacobs, but apparently to no avail.

¹⁵¹ Report of HKS of XRL Independent Expert Panel, paragraphs 4.11, 4.19 and 4.20.

6.52 Mr Peter LAU Ka-keung further informed the Select Committee at an open hearing that, since the construction of WKT was very complicated, HyD was not able to form a judgment itself on whether the assurances made by the Corporation should be accepted or not. As such, it had pressed the Corporation to submit a revised PMP to enable HyD to make an assessment on the completion date of the Project.

6.53 Mr Peter LAU Ka-keung said in his statement to the Select Committee that with the benefit of hindsight, HyD should have considered whether it would be appropriate to request Jacobs to conduct an independent assessment on the completion of WKT. However, as mentioned in paragraph 6.50(a) above, it would appear that Jacobs had already estimated that the completion date would need to be postponed to July 2016 and had alerted HyD. But no follow-up action was taken.

6.54 The Select Committee considers that the approach taken by HyD in assessing the completion date of the Project was highly unsatisfactory. While the performance of HyD might have been restricted by its role under EA2, the Government had nonetheless failed to make the best use of Jacobs as the M&V consultant in the Project. The Select Committee considers that HyD's excuse of having limited manpower resources in the Department, compared to that of the Corporation, to perform its monitoring role is not acceptable. When information was presented to HyD, it showed, more often than not, that the progress in the construction work was seriously lagging. The Select Committee shares IEP's opinions set out in paragraph 6.50 that HyD should have done more to validate the Corporation's opinions by, for instance, demanding regular updates on the forecast for overall project completion and the effectiveness of DRMs.

Flooding as one of the causes of the project delay

6.55 The Select Committee notes that the flooding as a result of the severe black rainstorm in the night of 30 March 2014 was one of the causes of the project delay as reported by Mr Peter LAU Ka-keung in his statement and in the 2nd IBC Report.¹⁵² When the Corporation announced the project delay on 15 April 2014, the first paragraph of the

¹⁵² Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 1.3.

press release (**Appendix 2**) reads: *"A tunnel boring machine (TBM) severely damaged by floodwater is affecting progress on the Hong Kong Section of the Express Rail Link (XRL) project. This unforeseen challenge has added to the difficulties of the project and will push the completion date to 2016 with the line ready for operation in 2017."* This was a major reason then given by the Corporation to the public.

6.56 The Select Committee has enquired whether the Corporation had required the contractor of contract 823A (Construction of Tse Uk Tsuen to Tai Kong Po Tunnels) to take flood prevention measures at the work site; and whether the Government has assessed the impact of the damage to the tunnel boring machine on the progress of the Project.

6.57 The Corporation's response to the Select Committee (**Appendix 22**) was that flood protection plans for the work sites were constantly revised to suit each particular construction stage. The flood plan at the contract 823A work site prior to the black rainstorm on 30 March 2014 had been implemented accordingly. The principle behind the flood plan was to have a surface flood wall built around the cut-and-cover tunnel to channel surface water away from the tunnel. A drainage system and multi-tier flood protection measures were in place within the site boundary and protected the site during past typhoons and rainstorms. The flood on 30 March 2014 was caused by a collapsed slope, which was built in compliance with the Government requirements but could not withstand the exceptionally heavy rain that blocked the drainage system and the resultant flood damaged part of the surface flood wall in that area, allowing water to enter the tunnel.

6.58 Mr Peter LAU Ka-keung also stated in his statement that the situation caused by flooding was made worse by the mal-functioning of the emergency pumps at the tunnel boring machine shaft. The mining operation of the relevant tunnel was stopped due to the incident.

6.59 The Select Committee notes IBC's comment in its report¹⁵³ that *"by its tone and content the press statement materially overstated the effect on the Project programme of the flooding of the [tunnel boring machine] (contract 823A)"*. The Select Committee asked Mr Joseph

¹⁵³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 5.62 (E).

LAI Yee-tak whether the Corporation had reported at the 44th Project Supervision Committee meeting held on 2 April 2014 on the damage of the tunnel boring machine and how it had impacted on the progress of the work.

6.60 Mr Joseph LAI Yee-tak informed the Select Committee (**Appendix 23**) that at the 44th Project Supervision Committee meeting held on 2 April 2014, the Corporation had reported that a tunnel boring machine had been damaged due to flooding. The contractor was assessing the damage to the machine and would make use of any available spare parts for replacement if necessary, provided that the machine was not beyond repair. The Corporation had also said at the meeting that they had been working on measures to minimize the delay. At that meeting, the Chairman, Mr Peter LAU Ka-keung, requested the Corporation to make detailed findings of the incident, as well as their assessment on the associated cost and programme impact, and report back to Project Supervision Committee. The Corporation submitted on 5 May 2014 a preliminary investigation report on the flooding incident and a final report on 5 June 2014 which addressed the queries from HyD.

6.61 According to the statement of Dr Philco WONG Nai-keung, due to the severe damage to the tunnel boring machine at the north down-track tunnel as a result of flooding, more than 2 000 (mostly electrical and electronic) components in the machine required replacement. While it was originally anticipated that the damaged machine would only be able to resume full operation after repair and testing in December 2014, the contractor was able to borrow the parts from another tunnel boring machine that had just completed a task and was being repositioned. As such, the damaged machine was able to resume operation in July 2014, several months earlier than planned.

6.62 The Select Committee notes that the assessment of the impact of flooding to the project delay was not provided to the Government by the Corporation before the public announcement of the project delay in mid-April 2014. In addition, at the Project Supervision Committee meeting on 2 April 2014, the Corporation did not mention that the damage to the tunnel boring machine had an impact on the project delay.

6.63 The Select Committee notes that flood prevention measures were in place at the work site of contract 823A (Construction of Tse Uk Tsuen to Tai Kong Po Tunnels). Unfortunately, the rainfall in the night of 30 March 2014 was exceptionally heavy, causing damage to a tunnel boring machine and making it impossible to catch up with its programme. The Select Committee considers that the damage to the tunnel boring machine caused by flooding was a contributing factor to the project delay which was beyond the control of the Corporation. However, the Select Committee also notes that, before the black rainstorm on 30 March 2014, Mr CHEW Tai-chong had known that the target to complete the Project by August 2015 had become impossible to achieve (see paragraphs 6.16 and 6.18 of this report). As such, the Select Committee shares IBC's view that the press statement of the Corporation on 15 April 2014 had overstated the effect of the damaged tunnel boring machine caused by the flooding on 30 March 2014 on the Project programme.

Comprehensiveness and timeliness of reporting to Railways Subcommittee on the progress of the Project by the Government and the Corporation

6.64 The Select Committee notes that, as agreed at the Railways Subcommittee meeting on 16 April 2010, the Government would submit reports at six-month intervals to Railways Subcommittee which would cover the progress and the financial position of the Project. The first report covered the period between 16 January 2010, i.e. when FC approved the project funding of HKS of XRL, and 30 June 2010. The subsequent half-yearly reports covered the Project progress for the periods ending 30 June and 31 December respectively of each of the following years.¹⁵⁴ The Select Committee notes that, up to April 2014, the Government had submitted a total of seven half-yearly progress reports to Railways Subcommittee.

6.65 The Select Committee further notes that the scope of the progress reports, in addition to the work progress, also covered some major aspects of the Project such as pre-construction preparatory work, claims situation, interface issues and employment opportunities created by the Project.

¹⁵⁴ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1573/09-10(04).

6.66 The Select Committee notes that, except for the 1st half-yearly report which mentioned that *"Up to 30 June 2010...[t]here is no sign of budget overrun or programme delay"*,¹⁵⁵ the remaining six half-yearly reports did not mention at all whether there was any budget overrun or programme delay in the Project. Furthermore, although the seven half-yearly reports contained descriptions of the progress of some major contracts in the Project, there was no information on the actual progress against the planned progress of the Project. Nevertheless, the Select Committee notes from a report submitted to Railways Subcommittee in May 2014 that such information had been regularly included in the monthly reports submitted by the Corporation to Project Supervision Committee chaired by Mr Peter LAU Ka-keung.

6.67 Furthermore, as mentioned in paragraph 5.68 of this report, Jacobs had repeatedly alerted HyD on the project slippage since December 2011¹⁵⁶. Mr Peter LAU Ka-keung also informed the Select Committee that HyD had been well aware of the project delay. However, the Select Committee notes that Railways Subcommittee members were not informed of the worsening situation and the accruing slippage in the overall programme.

6.68 The Select Committee finds that the Government and the Corporation did not report the Project's progress to Railways Subcommittee in sufficient detail, including those figures mentioned in paragraph 6.46 of this report, to enable the Subcommittee to fully understand the actual status and progress of the Project. Further, both the Government and the Corporation appeared to have reported only the good news but not the bad news about the Project before April 2014. The progress of the construction work at WKT is an obvious example.

6.69 In the 7th half-yearly report for the period ending 30 June 2013¹⁵⁷ presented at the Railways Subcommittee meeting on 22 November 2013, the progress of the construction work at WKT was reported in Annex 1 to the report that: *"[a]s regards the main structure of the WKT, the concrete*

¹⁵⁵ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)2290/09-10(01).

¹⁵⁶ Report of HKS of XRL Independent Expert Panel, paragraph 4.10.

¹⁵⁷ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)81/13-14(01).

structure of the underground station to the south of Austin Road was being constructed by top-down approach. Underground structural works at the southern end of the WKT reached the lowest level B4 (a total of four levels from B1 to B4). For the northern part of the WKT, excavation works reached the lowest level B4 and construction of the main structure by bottom-up approach continued."

6.70 However, in another paper submitted by the Corporation to Railways Subcommittee in May 2014¹⁵⁸ (i.e. after the announcement of the project delay), which was discussed at the Railways Subcommittee meeting on 5 May 2014, it was reported that "*[w]hile one part of the 810A works area has been excavated down to the B4 level and that part of the terminus structure is being built using the bottom-up method, **the north top-down area of the site** still requires the removal of approximately 78,000 cubic metres of fresh bedrock, out of 100,000 cubic metres of rock, to reach B4 level."* [emphasis added]

6.71 It is noted that in relation to the same area at WKT, in the 7th half-yearly report presented at the Railways Subcommittee meeting on 22 November 2013, it mentioned that "*For the northern part of the WKT, excavation works reached the lowest level B4*"; whereas in the other paper submitted to Railways Subcommittee in May 2014, it mentioned that "*the north top-down area of the site still requires the removal of approximately 78 000 cubic metres of fresh bedrock, out of 100 000 cubic metres of rock, to reach B4 level*". Obviously, the necessity for removing about 78 000 cubic metres of fresh bedrock in the top-down area of the site had not been reported in the 7th half-yearly Report submitted to Railways Subcommittee in November 2013.

6.72 The Select Committee further observes that the slide presented at the Railways Subcommittee meeting on 5 May 2014 (**Appendix 24**) showed the division of different parts of the site, i.e. WKT(core area), WKT(North) and WKT(South) as well as the construction methods adopted for the different parts together with their respective progress. It was clearly noted from the slide that the **north top-down area** of WKT(North) only reached B1/B2 Level. In comparison, none of these details had been included in the slide presented at the Railways

¹⁵⁸ Paper submitted by the MTR Corporation Limited to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1354/13-14(01).

Subcommittee meeting on 22 November 2013 (**Appendix 25**). The slide presented at the 22 November 2013 meeting would give an erroneous impression that the bottom-up method had been adopted for the whole of WKT(North) when no detail was given on the north top-down part of WKT(North). A member of the Select Committee pointed out that the report and the slide presented to Railways Subcommittee on 22 November 2013 had misled some members of Railways Subcommittee.

6.73 In addition, the Select Committee gets the impression that the wording used in the half-yearly reports submitted to Railways Subcommittee was toned down compared with the wording used in the monthly Project Supervision Committee reports relating to the progress of the Project. The Select Committee has enquired into how the half-yearly reports to Railways Subcommittee were prepared. In response, Mr Peter LAU Ka-keung said that HyD had to "digest" the reports prepared by the Corporation and then produce the half-yearly reports to THB, which would then submit the reports to Railways Subcommittee. Railways Subcommittee received its reports on the progress of the Project at six-month intervals whereas Project Supervision Committee received its reports on a monthly basis. Hence the situation might not be the same.

6.74 Professor Anthony CHEUNG Bing-leung informed the Select Committee (**Appendix 26**) that the Corporation, as the project manager, was responsible for preparing the first draft of the half-yearly progress reports. Upon receipt of the Corporation's draft progress reports, HyD would verify the accuracy of their content and proof-read the original version, such as correcting spelling and grammar as well as improving presentation to facilitate easier reading and comprehension. In principle, the main content in the Corporation's draft progress reports was retained. Any amendment to the draft would first be given to the Corporation for review. With the agreement of the Corporation, the Government would submit the reports as the joint reports of the Government and the Corporation to Railways Subcommittee. The Select Committee considers that the "digesting" of the reports submitted by the Corporation to HyD might have led to a failure in providing a full picture of the situation to Railways Subcommittee.