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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION**

**AND**

**J HUTCHINSON PTY LTD T/A HUTCHINSON BUILDERS**

**AAH CONTRACTING PTY LTD**

**CITY CIRCLE DEMOLITION AND EXCAVATION PTY LTD**

**RE. REQUEST FOR ONSITE CONFERENCE OF THE PARTIES WITH LAING O'ROURKE AND  
FULTON HOGAN JV, AT THE BAYSWATER LEVEL CROSSING REMOVAL PROJECT IN  
RELATION TO OCCUPATIONAL HEALTH AND SAFETY CONCERNS**

**27 October, 2016**

**021-2016**

### **STATEMENT**

1. Notifications to the VBIDP received from the CFMEU on 21 October and 25 October 2016 requested a Conference on site regarding the Bayswater Level Crossing Removal Project (the Project) in relation to Occupational Health and Safety concerns and compliance with relevant Enterprise Agreements.
2. The Project is part of a major investment by the State Government in transport infrastructure. The Project involves the removal of two existing levels crossings and the

construction of a new premium station at Bayswater, approximately 25km east of Melbourne. Over the next eight years the Level Crossing Removal Authority (LCRA) will oversee the removal of 50 dangerous and congested level crossings across Melbourne.

3. It is noted that the notification was not in the form of a Dispute, rather a request for an on-site Conference with the parties to be chaired by the Chairman. The Chairman has encouraged a pro-active approach such as this, in accordance with the VBIDP Charter, to ensure positive dialogue can occur between parties in order to enhance Occupational Health and Safety performance and to avoid unnecessary disputation.
4. The parties to the applicable Enterprise Agreement's are the CFMEU and Hutchinson Builders, AAH Contracting and City Circle Demolition and Excavation. There is no dispute as to the role of the VBIDP in this matter.
5. The principal for the Project works is Laing O'Rourke and Fulton Hogan JV (JV) neither of which is a party to an Enterprise Agreement with the notifier.
6. The JV is part of an Alliance including AECOM, Public Transport Victoria, Metro Trains Melbourne and Vic Roads. The JV is responsible for the Project works programme. Each of the named contractors are sub-contracted to the JV as part of the Project works.
7. Following discussions with the parties, including the JV, the Chairman determined to hold an on-site Conference and inspection in accordance with the Chairman's powers set out in the VBIDP Charter at section 3.1 sub paragraph (vii).
8. An on-site conference was duly scheduled with all parties, including representation by the JV partners, by the Chairman for 27 October 2016.

9. The Chairman requested the assistance of the JV partners to facilitate the conference, including their attendance and direct participation, and to enable a site inspection. The Chairman met with representatives of the JV partners on 26 October 2016 to further explain the purpose and to encourage their direct participation to ensure the best possible outcome.
10. The JV however determined that it would not participate in the Conference nor would it enable an inspection of the site. The JV made arrangements for a conference room adjacent to the site to be made available for the other participants in the matter, but did not remain themselves to participate.
11. Representatives from CFMEU and CEPU (ETU) attended, together with representatives of Hutchinson Builders. Neither AAH or City Circle were able to attend. The Chairman however spoke with representatives of AAH during the conference and with a representative of City Circle following the Conference.
12. The Chairman wishes to acknowledge the participation of the participants today, notwithstanding the tragic circumstances in the industry of the previous day, which directly affected site personnel on this Project.
13. The CFMEU and ETU representatives clearly outlined their concerns with respect to occupational health and safety matters that had been occurring on the Project site recently.
14. The unions noted that none of their matters of concern were the responsibility of Hutchinson Builders but were in other areas of the Project. Hutchinson Builders scope of works includes the new rail station and forecourt. It was apparent to the Chairman that effective dialogue and exchanges had been and are occurring between Hutchinson

Builders' employees, site management and the unions about occupational health and safety in its scope of works, and this is to be encouraged.

15. The CFMEU reaffirmed that their stated intention of the Conference had been to engage in constructive dialogue with the JV in particular, given its overall responsibility for the Project, in a genuine attempt to ensure no further safety incidents on site, noting also that the proposed "occupation" period of some 37 days was scheduled to commence at the weekend which would likely heighten the risk of incidents.
16. The CFMEU noted that its concern primarily rested with the principal JV and that without participation by the JV and the ability to clearly demonstrate the union's concerns on site directly, was of no practical assistance in resolving the problems it believed existed.
17. It was noted that neither the JV or any subcontractor had yet engaged with the unions about any proposals as to changes to working hours and times or to ensure effective fatigue management during the proposed "occupation" period that might be necessary having regard to the relevant applicable industrial instruments. In this latter regard, Hutchinson Builders gave an undertaking that this engagement would occur well in advance of when the period of the occupation, in so far as it would affect their scope of works, was due to commence - for them, a few weeks hence.
18. The following issues were identified by the unions as demonstrating, in their opinion, an underlying failure of the JV to the properly focus on occupational health and safety issues at the Project:

A. Excavator rollover on site on 13 October 2016 - work ceased - Work safe investigating

- B. Two apprentices working on a live switchboard without supervision - breach - Worksafe investigating
- C. Non-compliant edge protection and use of empty water barriers to shore up deep drain pit Mountain Highway on 14 October 2016 - Worksafe issued cease work order
- D. Various alleged examples of inappropriate edge protection, fall protection
- E. Various alleged examples of failure to provide safe access and egress
- F. Alleged Inadequate review of SWMS's
- G. Bayswater Station building demolition - Failure to follow *Part 5* Asbestos identification and removal which was available. The process relied only on a *Part 6* Audit which was very much incomplete, as identified and confirmed by the discovery of additional asbestos by the asbestos removalist (AAH) on 20 October and again during demolition of the Station building on 22 October, requiring further remedial action and air monitoring. This was also confirmed by the principal of City Circle who was in attendance at the demolition - Worksafe investigating

19. Without the participation of the principal JV project management, the conference was adjourned.

20. Immediately following the Conference the Chairman conducted an inspection of the site from the boundary perimeter. Given the nature of the Project, its location, the requirements of operating transport and other facilities, the number of employees and sub contractors, together with the constraints of the site itself, it is clearly a site that demands the highest level of attention to Occupational Health and Safety as part of the planning and delivery stages. Every opportunity to respond positively to constructive contributions should not be lost, as occurred today.

21. It seems to the Chairman that there has clearly been an insufficient engagement of stakeholders prior to and during the Project to date. There now appears to be a reluctance on behalf of some to continue that failed approach, which must be corrected.
22. The recent incidents and concerns identified above, some of which have received public attention, should in the opinion of the Chairman, be more than an alarm bell that something is not right. In absence of any participation by the JV partners, even though there had been acknowledgement of some of the issues identified by the unions, it is difficult to discern what is going wrong.
23. I strongly recommend that the JV senior and project management, together with the Alliance members as appropriate, immediately seek to appraise themselves properly of the concerns raised by the unions, meet with them on site together with the relevant authorities, including Worksafe, and to discuss the future works programme and fatigue management procedures, with a view to leaving no stone unturned in order to complete the Project safely, without further incident. I similarly urge the relevant representatives of the State Government to encourage this approach, including the LCRA. The VBIDP remains available to assist the parties as necessary.

Peter Parkinson  
Chairman  
VBIDP

