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VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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HOOKER COCKRAM LIMITED

CORKE INSTRUMENT ENGINEERING (AUSTRALIA) PTY LTD

JOHN BEEVER (AUST) PTY LTD

AND

CFMEU

AMWU

ETU

CSR PROJECT – YARRAVILLE

RE: PROJECT VALUE

DECISION

Tuesday 17 June, 2008

046 - 2008

This decision applies to three matters wherein the Unions were seeking a decision as to the project value as to work being performed at the CSR Project at Yarraville, Victoria by Hooker Cockram Limited, Corke Instrument Engineering (Australia) Pty Ltd and John Beever (Aust) Pty Ltd.

Following notifications from the appropriate Unions, I conducted a joint hearing of the Victorian Metal, Engineering Associated Industries Dispute Panel acting in my role of

Alternate Chairman, the Electrical and Communications Industry Dispute Board, and the Victorian Building Industry Disputes Panel, acting in my role as Chairman of both bodies.

The first Conference occurred on the 1st May, 2008 wherein the Unions outlined their claim stating that the project value was in excess of $100 million. The Employers detailed the value of their individual contracts and I determined that the matter would be assisted if an inspection of the work occurred.

The Inspection took place on 13 May, 2008 and following the inspection on that the day further submissions were made.

I then determined that the matter should proceed by way of a formal Hearing and requested that the client's representative who had attended the Conference and the Inspection should produce at the next Hearing the client's management representative who had earlier briefed the Unions.

The final Hearing occurred on 27 May 2008 where a submission was made on behalf of the AMWU as to the methodology that should be adopted in respect to their Engineering Agreement which included in the project value, Architects fees, client expenditure including equipment, licensing costs and every expense associated with the project.

CFMEU confirmed their argument as to the project having a value of in excess of $100 million and this was supported by the ETU, both Unions highlighting the announced value by the Company which was supported at an earlier briefing session conducted by the Company.

NECA representing Corke Instruments Engineering (Australia) Pty Ltd submitted that Appendix N as claimed by the Union does not apply to the project because that Appendix does not apply to projects which commenced or were tendered prior to 1 February, 2008. Corke's evidence substantiates the awarding of the tender on the 7 January 2008. NECA then confirmed that Appendix B was being applied together with a site allowance $2.70 based on Corke's understanding of the project value being $52 million. Corke confirmed that their contract value was just under $12 million.

MBAV representing Hooker Cockram Limited stated that their contract value was just under $40 million and that in their view that was the project value. However, in the alternative they referred to a recent decision involving Viridian (Pilkington Glass) and would accept the adoption of a similar approach.

Turning to the AMWU submissions, John Beever following the 27 May 2008 Hearing responded in writing to the Union's submission in the following terms:-

> *"At the hearing on 27 May, submissions were put by Mr N Washington on behalf of both the AMWU and CFMEU relating to the interpretation of the John Beever (Aust) Pty Ltd Construction Agreement 2006-2009 and especially in relation to the application of the 'major construction appendix'. Mr Washington made reference that in negotiations with Mr Bill McGuire of Downer Engineering concerning their agreement, there was either some discussions and/or some earlier drafts exchanged which gave further explanation to the interpretation of project value in the application of that appendix.*
>
> *At no point during discussions for an agreement between the AMWU and John Beever (Aust) Pty Ltd – neither between myself nor my industrial relations consultant – was there any discussion or negotiations other than that executed between the parties to the AMWU Construction Agreement negotiated in any respect, especially in relation to the 'major construction' appendix or any interpretation of project value."*

I have also had discussions with Mr Bill McGuire and he informs me that no new agreement has been reached with the AMWU as to the definition of project value but confirmed that discussions were ongoing.

At the hearing on 27 May, 2008, Mr Phil Lane of CSR detailed the full costing of the project in the following terms:-

Hooker Cockram	**$38.7m – Supply and Install Buildings includes contingencies.**
Beever/Corke	**$11.198m– Mechanical and Electrical Installation.**

J A Dodd	$2 .70m – Car park, Fire System and Miscellaneous Civil (Preparatory Work)
Total	$52.598m

Over the last two years the question of project value has been the subject of decisions of the Commission and by me in my role as Chairman of the Panel and/or Board.

Project value has a long history as a term used in Victorian Building Industry Agreements and in decisions dating back some twenty years in the Commission.

Project value has excluded equipment etc provided by the client but has included the value of all contracts to be performed by workers including the installation of equipment or machinery provided by the client. On most occasions the public statements as to what is to be spent on a new development or project, has not been the actual project value when examined agianst the actual work to be performed.

In support of this statement I refer to the following decisions of the Panel and the Board before it:-

Qanstruct Ajax Fasteners Project – 1995 – The public announcement indicated $39 million however the project value was determined as $13 million with the remaining $26 million being plant and equipment provided by the client.

Royal Melbourne Hospital – Radiology Project - Report 053-2002 – The project cost was in excess of $2 million however a new MIR scanner constituted 50% of that value which placed the project value beneath the site allowance minimum.

CDK Constructions – Caroline Springs – Decision 074-2006 – the public announcement was $155 million. Residential housing was not included in the project value.

Asian Pacific – Panch Hospital - Decision - 006-2007 – Initially a project of $200 million was established but subsequently on re-examination the total contracts let was only $75 million.

J A Dodd - Pilkington Glass Project - Decision 016-2008 – Although a public announcement indicated a $130 million upgrade, upon examination the site allowance was established within the range concluding at $61.9 million having taking into account the cost of plant and equipment purchased by the client and the licence and Architect's fees paid.

Kane Constructions – Frankston Hospital - Decision 020-2008 – The public announcement advised of an overall $45 million development. The contracts value totalled $36 million which became the project value.

In further considering the submission of the AMWU, which involved a much broader application as to the contents contained within a definition of project value on one view it could be argued that by seeking such a change the Union is trying to move away from an existing position. Such a view may well confirm the existing practice.

Recent decisions of the Commission have confirmed that the project value is not just the value of a contract. Deputy President Ives stated the following:-

> *"True it is that a contract or contracts may establish the existence of such a project but I do not accept the proposition that the existence of the project is dependent upon the existence of a relevant contract or contracts. In my view a project is an enterprise or undertaking that is "carefully planned" and has a clearly established entity or entities that exercise control over its development.*
>
> *In the context of Appendix C, the scope of a project must also be definable. That is it must be possible to ascertain with a degree of certainty what works are included in the project in order to value the project and determine the appropriate site allowance." (Refer to paragraph 45 & 46 President DP Ives Decision PR974122)*

he also stated

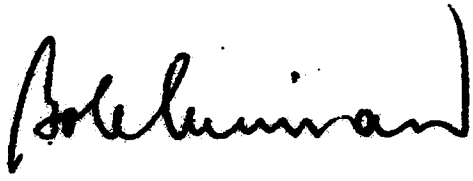
> *"Accepting that it is not unusual in building and construction projects for the scope to vary during the life of the project, it is still necessary for the scope to be*

sufficiently defined at any given point during the project to enable proper definition and costing of the project". (Refer to paragraph 23 PR975618)

On this project at Yarraville, CSR announced an upgrade just in excess of $100 million. The project is clearly defined and carefully planned. CSR is the controlling entity which exercises control over the project's development.

It is certainly possible to ascertain with certainty what works are included in the project so that a project value can be established which then determines the appropriate site allowance.

The works included in this project were detailed by Mr Phil Lane of CSR and contained earlier in this decision with a total value of $52.598 million. Given that it is not unusual for public announcements to vary from the actual works to be performed and given the detailed information together with submissions and the on site inspection, I conclude that the project value is $52.595 million.



Bob Merriman
Chairman

Dated this 17 day of June 2008