

- 4 In furtherance of assisting communication, safety and productivity on the project, the parties sought site inspection and conference proceedings on 29
- 3 The parties, while not in dispute, rely upon the broader definition of that term, which includes a question, difficulty or situation, to seek the assistance of the Commission in facilitation of the communication process prescribed by the relevant industrial agreement that is likely to give rise to an industrial dispute if preventative action is not taken.
- 2 Hatch Associates Pty Ltd ("Hatch") are managing construction works and have made an industrial agreement with Unions NSW, Newcastle Trades Hall Council and others to cover work on the site.
- 1 The Newcastle Coal Infrastructure Group (NCIG) comprises BHP Billiton - through Hunter Valley Energy Coal; Centennial Coal; Donaldson Coal; Peabody Energy; Felix Resources; and Whitehaven Coal, in joint venture to construct a coal export terminal on Kooragang Island in Newcastle Harbour.

STATEMENT

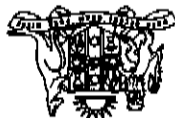
Request by Unions New South Wales for the assistance of the Industrial Relations Commission of New South Wales on the NCIG Coal Export Terminal Construction Project by Connell Hatch (for NCIG) for inspection and conference

Matter No IRC 1760 of 2008

31 October 2008

CORAM: HARRISON DP

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES



- A railway spur and balloon of about 8.7km and associated works
- Civil and structural works including construction of bunds, and berms for machine rails
- Materials handling facilities including rail unloading station, approximately 7km of conveyors, sampling systems, and ship loader
- Two combined stacker/reclaimer machines

8 The project work includes:

additional stages.

The project is in excess of eight hundred million dollars in value. The first stage of the project is to achieve a 30 million tonnes per annum coal export capacity, with a capacity to expand to 60 million tonnes per annum in an

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Discussion reviewed performance detailed below and reinforced the value of site safety, housekeeping and communication; appreciating that all are enhanced by the process of consultation and co-operation.

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The Commission as presently constituted

Stanton C

Regional Manager - AiGroup

Wayne Dawson

Construction Manager - Connell Hatch

Area Manager - Connell Hatch

Area Manager - Connell Hatch

Bruce Layzell

Paul Roberts

Site Co-ordinator - Connell Hatch

Project Manager - Daracon Group

Jason Hearn

Allan Ball

Project Director - Daracon Group

Nick Williams

Superintendent - Abigroup

Project Manager - Abigroup

David Houston

Kevin Brady

Operations Manager - Laing O'Rourke

Operations Manager - Downer Engineering Power

Paul Chircop

Paul McInnes

Crew Co-ordinator - Boskalis Dredco Joint Venture

Peter McPherson

Industrial Officer - Unions NSW/NTHC

Daniel Wallace

Official - AMWU

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Those present were:

33 of the Agreement.

October 2008, consistent with the communications process prescribed by cl

As a means to assist with ensuring effective and efficient consultation and communication processes to deal with Project issues and updates and to

- 13 Clause 33, Project Consultation, of the Agreement states:
- 12 The Agreement is comprehensive, setting out wages and conditions of employment and sets out site safety obligations, a project code of conduct, work rules and fair treatment system; a commitment to continuous improvement and communications.
- 11 The model agreement, known as the *Hatch Associates Pty Ltd NCIG CET Project Greenfield Agreement 2008-2010* ("the Agreement"), has been approved by the Australian Department of Education, Employment and Workplace Relations (No. 084582175).
- 10 Some twenty (20) agreements have been made by contractors by the time of these proceedings in identical or similar terms where amended by negotiation to reflect an employer's corporate standards and values.
- 9 A Greenfield Agreement was negotiated by the NCIG CET Project Manager (Hatch), Australian Industry Group (AiGroup), Unions NSW, Newcastle Trades Hall Council, and relevant unions with coverage of the construction work for the purpose of providing contractors at the pre-tender stage with a project specific model which could be used if they so chose. Use of the model agreement is at the contractor's discretion.
- Stockyard configuration to accommodate maximum coal storage for either dedicated or cargo assembly in single and double piles approximately 1200 metres long and 21 metres in height.
 - Buffer bin
 - Ship loader which will be a travelling, luffing machine with retractable telescopic feed chute
 - Wharf structure with two berths (K8 and K9)
 - Buildings and Services including office and administration facility, amenities, maintenance and service workshops with associated facilities for operational purposes.

discuss issues affecting Employees, communication meetings with Employees will be held on a monthly basis unless otherwise agreed.

14 Clause 30, Settlement of Disputes provides:

30. SETTLEMENT OF DISPUTES

(a) Any dispute arising on the Project shall be dealt with in the following manner:

(i) The Employee concerned shall raise the matter with the immediate supervisor for resolution.

(ii) If not resolved, the Employee will raise the matter with the next more senior manager of the Employer for resolution.

(iii) If discussions fail to resolve the dispute in accordance with the above, the matter shall be referred pursuant to this Agreement to the Industrial Relations Commission of NSW in Newcastle (the Commission) to act as agreed dispute resolution provider, for conciliation and mediation.

(iv) If the parties involved fail to resolve the dispute in accordance with (iii) above, they may, by agreement, request the Commission to determine the matter. The parties agree to act in accordance with the determination. Any appeal rights must be agreed to prior to seeking the determination. The outcome of any agreed conciliation, mediation or determination process must be consistent with the requirements of the National Code of Practice for the Construction Industry or the Implementation Guidelines, as varied from time to time, and all applicable legislation.

(v) Work shall continue normally while the Employer and Employee, and if applicable their representatives, utilise this procedure to resolve the matter and no party shall be prejudiced as to final settlement by the continuance of work in accordance with this sub-clause.

(vi) The parties will comply with directions given by the Commission for the purpose of carrying out its functions under this clause fairly, quickly and in a way that avoids unnecessary technicalities and legal forms.

Note: Both the Employee and Employer may involve their representative in any discussions, as a means of resolving the matter.

b) In order to facilitate the procedure in this clause:

- i) The party with the grievance must notify the other party at the earliest opportunity of the problem.
- ii) Throughout all stages of the procedure all relevant facts must be clearly identified and recorded.
- iii) Sensible time limits must be allowed for completion of the various stages of discussion. However, the parties must co-operate to ensure that the disputes resolution procedures are carried out as quickly as possible.
- c) While the parties are attempting to resolve the matter each Employee is to continue to work in accordance with this Agreement and their contract of employment unless the employee has a reasonable concern about an imminent risk to his or her health and safety. Subject to relevant provisions of any State occupational health and safety law, even if the Employee has a reasonable concern about an imminent risk to his or her health or safety, the Employee must not unreasonably fail to comply with a direction by his or her Employer to perform other available work, whether at the same site or another site, that is safe and appropriate for the Employee to perform.
- 15 As is apprehended from the provisions of cl 30, the parties have exercised their rights pursuant to the *Workplace Relations Act* to nominate the NSWIRC as the disputes resolution provider.
- 16 Section 146B of the *NSW Industrial Relations Act 1996* ("the Act") facilitates this course.
- 17 The effective use of and adherence to the disputes settlement procedure as a means of early identification and resolution of issues on site is reinforced, noting that identification of an issue by employees should not be taken to be a challenge or dispute of management, but an early warning mechanism.
- 18 The parties will treat each other with dignity and respect and where issues are identified those so doing should offer a constructive solution consistent with the tenets of safety , productivity and continuous improvement set out in the Agreement.
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- 20 The project, which commenced in the fourth quarter of 2007, is approximately 25% complete and on schedule.
- 21 To date there have been in excess of eight hundred thousand (800,000) man hours worked on the project. Employment is at some 353 people on site each day, expected to peak in excess of 500.
- 22 There has been no lost time injuries, no time lost due to industrial disputes, two medical treatments, twenty three (23) first aid treatments and twenty nine thousand, one hundred (29,100) take-five safety review/assessment events recorded.
- 23 The extent of take-five events is reflected in the good safety record and is to the credit of all concerned.
- 24 These proceedings are adjourned, subject to relist on request by any party, to a further site inspection and conference on a date to be fixed in March 2009.

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