

DECISION NO.

CABINET MINUTE

DECISION NO.

BRISBANE, 22/1/1985

45147
145148

CIRCULATION RECORD

SUBJECT: WIVENHOE DAM PROJECT - CONTRACT NO. WV10-3 - CONSTRUCTION OF
NORTHBROOK-BRYDEN ROAD DEVIATION, STAGE 3.

(Submission No. 40621)

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3	MR. GUNN		23	<i>Sol-Gnd</i>	30 Copy of relevant Submission attached
4	MR. HINZE		24	<i>PXB</i>	
5	MR. WHARTON		25		
6	MR. GIBBS		26		
7	MR. AHERN		27		
8	MR. LANE		28		
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CABINET SUBMISSION NO. 40621

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C A B I N E T M I N U T E

Copy No. _____

Brisbane, 22nd January, 1985

Decision No. 45147

Submission No. 40621

TITLE: Wivenhoe Dam Project - Contract
No. WV10-3 Construction of
Northbrook-Bryden Road Deviation,
Stage 3.

CABINET decided:-

1. That approval be granted to The Co-ordinator-General to settle all of Civco's claims against The Co-ordinator-General, for an all-up sum of \$150,000, such figure to be inclusive of interest and costs; and is subject to Civco foregoing all other claims of every description whatsoever which have arisen or which might arise in connection with the construction of the Stage 3 roadworks for the Northbrook-Bryden Road Deviation.
2. That the approval of the Governor in Council be sought to the expenditure of \$1,451,294.40 on Contract No. WV10-3 for the construction of the Stage 3 roadworks for the Northbrook-Bryden Road Deviation, being the previously approved amounts totalling \$1,301,294.40 together with an amount of \$150,000.00 to cover the cost of settling all of Civco's claims against The Co-ordinator-General.

CIRCULATION: Premier's Department and copy to Premier
and Treasurer.
Solicitor-General and copy to Minister.
All other Ministers for perusal and return.

Certified True Copy



A/Secretary to Cabinet.



SECURITY CLASSIFICATION "C"

Submission No. 7.1.1.2.1.

Copy No.

F O R C A B I N E TWIVENHOE DAM PROJECT - CONTRACT NO. WV10-3
CONSTRUCTION OF NORTHBROOK-BRYDEN ROAD DEVIATION, STAGE 3

1. As Constructing Authority for the Wivenhoe Dam Project, The Co-ordinator-General has responsibility for relocating and/or reconstructing a number of Esk Shire Council roads which will be affected by the water storage behind Wivenhoe Dam. One such road on the eastern side of the water storage, is the Northbrook-Bryden Road.
2. In October, 1977, tenders were invited by the Co-ordinator-General for the construction of earthworks to subgrade level, drainage, fencing and ancillary works for 8.3 kilometres of the Northbrook-Bryden Road Deviation, Stage 3. The Contract was on a Schedule of Rates basis and included the excavation of about 518,000 cubic metres of rocky material in the roadway cuttings. The cost of excavation represented about 40% of the value of the Contract.
3. By Decision No. 27608 of 17th January, 1978, Cabinet decided:

"That it be recommended to the Governor in Council that the tender submitted by Civco Pty. Ltd., for Contract No. WV10-3 - 'Northbrook-Bryden Road Deviation Stage 3', for an amount of \$1,102,192.49, be accepted."
4. By Executive Council Minute No. 0226 of 26th January, 1978, approval was granted to the acceptance of the tender by Civco Pty. Ltd., and to the expenditure of \$1,212,411.74 on carrying out the work of the Contract. This amount had a contingency sum to cover escalation in labour and material costs and variations in the quantities of the two classes of material to be excavated.
5. By Executive Council Minute No. 2884 of 17th July, 1980, approval was granted to the expenditure of a further \$88,882.66 on the work of Contract No. WV10-3. This amount was also to cover escalation in labour and material costs and variations in the quantities of the two classes of material to be excavated. The total amount of funds approved for expenditure on the Contract was \$1,301,294.40.
6. The work of the Contract was carried out between 27th January, 1978 and 27th June, 1980. Late in 1979, close to the end of the excavation work to be carried out under the Contract, a dispute arose between The Co-ordinator-General (the Principal in the Contract) and the Contractor, concerning the payment for the excavation of a certain class of material in the cuttings for the roadworks.
7. In order to resolve the dispute, on 2nd November, 1981, the Contractor caused a Writ of Summons to be served on The Co-ordinator-General for \$967,503.00, together with interest thereon at the rate of 15% per annum pursuant to the Common Law Practice Act.

In December, 1984, the liability aspects of the action were finally set down for hearing in the Supreme Court for a three week period commencing on 11th February, 1985, with the possibility of a further two to three week hearing at a subsequent time.

8. In the three years after 2nd November, 1981, the Plaintiff has enlarged the scope and grounds of his claims and has varied the amounts claimed a number of times. As at the present date, the smallest of the claims is for \$401,168 plus interest. An alternative claim is for \$507,332 plus interest. A claim of \$250,000 for exemplary damages attaches to both the alternative claims. In all cases, costs of litigating the actions are claimed. In total, the smaller of the claims with damages, interest and costs, would amount to about \$900,000.
9. While recent work was in progress on the preparation for the hearing in February, 1985, the Crown Solicitor was approached by the Plaintiff's Solicitors for information on the Defendant's (i.e., The Co-ordinator-General) attitude towards settling the claims. This request was referred to the Engineer appointed by The Co-ordinator-General under the terms of the Contract, to administer the Contract. The Engineer, acting on opinions previously given by eminent Senior Counsel, Junior Counsel and the Crown Solicitor's Officers, on various aspects of Civco's claims, reached agreement (through the Crown Solicitor) with the Contractor on settlement of the claims. The Engineer's assessment of the claims was based on one particular claim involving the value of excavating 56,447 cubic metres of rock material which the Plaintiff claimed was more difficult to excavate than he had anticipated at the time of tendering, as a consequence of alleged misleading and erroneous geotechnical information made available to tenderers by the Principal when tenders were called in 1977. It is on the liability for the cost of excavating this material that The Co-ordinator-General might be held responsible. The Contractor has claimed \$401,168 plus interest and costs for this, which in total, could amount to about \$650,000. It is understood from the Crown Solicitor that the Plaintiff only has to succeed on part of this claim in order to be awarded the very substantial costs that he would have incurred on the action (likely to be of the order of \$90,000 to \$100,000).
10. The factors the Engineer for the Contract took into account in determining a basis of settlement of the Plaintiff's claim with respect to the 56,447 cubic metres of rock material mentioned above, were:
 - . The extra cost of excavating this material, which involved ripping with bulldozers and drilling and blasting operations;
 - . The extra cost of loading and transporting the material using shovels and off-highway trucks instead of scrapers;
 - . The likely costs that could be awarded against The Co-ordinator-General should the Plaintiff be successful;
 - . The Co-ordinator-General's legal costs to be incurred in defending the action over the three week long hearing in the Supreme Court.

11. The amount offered to the Contractor to settle all claims was an all-up sum of \$150,000.00. This figure was inclusive of:

- . All of Civco's claims.
- . Interest claimed by Civco under the Common Law Practice Act.
- . Costs.

The offer was subject to Civco foregoing all other claims of every description whatsoever which have arisen or which might arise in connection with the construction of the Stage 3 roadworks for the Northbrook-Bryden Road Deviation. (In addition to the claims covered by this Action, Civco also has a number of minor claims totalling \$36,187, against The Co-ordinator-General, which still have to be resolved.)

12. The Contractor, through his Solicitors, has advised the Crown Solicitor that he would be prepared to settle all claims of every description whatsoever, for \$150,000.

The figure of \$150,000 is considered by the Crown Solicitor to be most favourable to The Co-ordinator-General. The Co-ordinator-General agrees with this opinion.

13. It is recommended that:

- . Approval be granted to The Co-ordinator-General to settle all of Civco's claims against The Co-ordinator-General, for an all-up sum of \$150,000, such figure to be inclusive of interest and costs; and is subject to Civco foregoing all other claims of every description whatsoever which have arisen or which might arise in connection with the construction of the Stage 3 roadworks for the Northbrook-Bryden Road Deviation.
- . Executive Council approval be sought to the expenditure of \$1,451,294.40 on Contract No. WV10-3 for the construction of the Stage 3 roadworks for the Northbrook-Bryden Road Deviation, being the previously approved amounts totalling \$1,301,294.40 together with an amount of \$150,000.00 to cover the cost of settling all of Civco's claims against The Co-ordinator-General.

14. Submitted for consideration by Cabinet.

J. BJELKE-PETERSEN
PREMIER AND TREASURER.

Brisbane.

18th January, 1985.