

DECISION
NO.

SECRET

DECISION
NO.

CABINET MINUTE

BRISBANE, 9 / 12 / 1950.

34165

CIRCULATION RECORD.

SUBJECT: Clyde Industries Limited Takeover Bid for Evans Deakin

Industries Limited.

(Submission No. *30495*)

Copies Made

28

D. Edwards

CIRCULATION DETAILS.

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| 2 | MR. BJELKE-PETERSEN | <i>7</i> | 22 | <i>Deas</i> | |
| 3 | DR. EDWARDS | <i>7</i> | 23 | <i>Deas</i> | Copy of relevant Submission attached |
| 4 | MR. SULLIVAN | | 24 | | |
| 5 | MR. CAMPBELL | | 25 | | |
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SECRET

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

Copy No. _____

Brisbane, 9th December, 1980

Decision No. 34165

Submission No. 30495

TITLE: Clyde Industries Limited
Takeover Bid for Evans Deakin
Industries Limited.

CABINET decided: *SECRET*

1. That the Public Trustee of Queensland be authorised and directed to acquire upon trust for Her Majesty in right of the State up to a maximum of a 12.5% holding in the subscribed ordinary share capital of Evans Deakin Industries Limited in accordance with directions from time to time given by the Treasurer.
2. That the purchase of such shares be funded from investible funds available to the Treasurer of Queensland.
3. That there be established in the Treasury a Special Trust Fund entitled "The Queensland Industry Investment Fund" to record transactions made by the Public Trustee upon trust for Her Majesty in right of the State pursuant to Section 28 of the Public Trustee Act 1978.
4. That the timing of the purchases and the strategy and basis and manner for purchase be at the discretion of the Treasurer.
5. That the shares acquired be continued to be held until further consideration by Cabinet and that in any case their future deployment be considered by Cabinet at the same time as the broader question of a State takeover policy as envisaged in the Committee Report referred to in the Submission, and in this regard the Treasurer is to bring to Cabinet a Submission in the near future.

CIRCULATION: Treasury Department and copy to Treasurer.
Premier's Department and copy to Premier.
The Honourable the Minister for Justice and
Attorney-General.
All other Ministers for perusal and return.

Count
Certified True Copy

David Daly
Secretary to Cabinet.

Submission No.

Copy No. 21

FOR CABINETCLYDE INDUSTRIES LIMITED TAKEOVER BID
FOR EVANS DEAKIN INDUSTRIES LIMITED

1. Honourable Ministers will be aware that Evans Deakin Industries Limited, a major Queensland engineering company which is controlled, managed and staffed by Queenslanders, is presently the subject of a takeover bid by Clyde Industries Limited which is controlled and managed from outside the State.

This takeover bid for Evans Deakin again raises the whole issue of the takeover of Queensland incorporated companies.

Also, in particular, the takeover bid for Evans Deakin has a number of important implications for the Queensland economy and community.

2. Honourable Ministers will recall that the matter of takeovers of Queensland incorporated companies was considered in depth by Cabinet in June 1979.

Cabinet decided on 19th June, 1979 to appoint a Committee consisting of the Under Treasurer as Chairman, the Commissioner for Corporate Affairs and the Deputy Director (Technical) of the Department of Commercial and Industrial Development to examine the matter of the takeover of Queensland incorporated companies.

Cabinet subsequently settled the terms of reference of the Committee and provided that the Committee recommend to the Honourable the Minister for Justice and Attorney-General, for report to Cabinet a course of future Government action in the matter. An outline of the Committee's terms of reference is shown as Attachment A.

3. The Committee has completed its report. The report contains a detailed consideration of:
 - . the likely effects on the Queensland economy and community of takeovers of Queensland incorporated companies
 - . present legislative controls over takeovers
 - . possible courses of future Government action in the matter

The major Conclusions and Recommendations of the Committee's Report are summarised as follows:

- . The potential effect of takeovers of certain Queensland incorporated companies are on balance sufficiently adverse to the State to warrant action to reduce the likelihood of such takeovers occurring;
- . The likely adverse implications of introducing legislation designed to enable the prohibition or restriction of proposed takeovers of Queensland incorporated companies are so serious that such a course of action is not recommended;

The most appropriate means to reduce the likelihood of takeovers of Queensland incorporated companies occurring is to establish a special Statutory Corporation by Act of Parliament which would be empowered, subject to statutory guidelines, to:

- acquire and hold up to 10 per cent of the subscribed ordinary capital in any listed public company which is important to the interests of Queensland and which could be the subject of an undesirable takeover bid;
- act as a "friend of Queensland", providing a solid rock of "Queensland interest" at the time of a takeover bid by refusing to sell its existing shareholding to the takeover bidder, and, if necessary, by acquiring additional shares in the Company up to the maximum percentage allowable under the Takeovers Code in order to prevent the takeover occurring;
- obtain funds for its purposes from
 - . capital funds appropriated to the Corporation by Parliament
 - . borrowings from the Treasurer of funds which would otherwise be invested by the Treasurer in short term investments
 - . borrowings from the private sector.

A more detailed outline of the Committee's Conclusions and Recommendations is attached as Attachment B.

4. Whilst I have until now been considering the Committee's Report and weighing up some of the philosophical implications of it, I have come to the conclusion that the Committee's Recommendation to establish a Statutory Investment Corporation represents the only realistic and effective means of preserving the State's sound economic base and of protecting Companies which are important to the interests of Queensland and which could be the subject of undesirable takeover bids.

On this broader question of an overall State takeovers policy, I propose to bring a further Submission to Cabinet in the near future presenting the Committee's Report and recommending action to enable future undesirable takeovers to be prevented.

There is not sufficient time to establish the Statutory Corporation to assist in the Evans Deakin case, as action may be required within the next few days.

5. The takeover bid for Evans Deakin is part of a series of bids by companies based outside the State to take over the two major Queensland controlled engineering companies of Evans Deakin Industries Ltd. and Walkers Limited of Maryborough.

The sequence of events surrounding the takeover bid for Evans Deakin is outlined as follows:

- (a) On 31st October, 1980 A.N.I. announced a takeover bid for Walkers Limited equivalent at the time to \$2.75 per Walkers Limited share.
- (b) On 11th November, 1980 the Directors of Evans Deakin and Walkers recommended a merger of both companies equivalent at the time to \$3.60 per Walkers Limited share.

- (c) On 17th November, 1980 Clyde announced a takeover bid for Evans Deakin equivalent to \$2.45 per Evans Deakin share.
- (d) On 3rd December, 1980 A.N.I. announced an increased takeover offer for Walkers equivalent to \$3.80 per Walkers share.
- (e) On 5th December, 1980 Clyde announced an increased takeover offer for Evans Deakin equivalent to \$2.75 per Evans Deakin share.
- (f) On 8th December, 1980 Clyde announced a further increased takeover offer for Evans Deakin equivalent to \$2.90 per Evans Deakin share.

An outline of the above takeover proposals is contained in Attachment C to this submission.

6. An assessment has been made of the impact that a takeover of Evans Deakin by Clyde is likely to have on the Queensland economy and community.

In summary, this assessment highlighted the following points in relation to the impact of the takeover on the State:

- (a) Evans Deakin will benefit very greatly from the resources development boom that will develop in Queensland in the 1980's. It would therefore be most advantageous to ensure that Evans Deakin remains owned, controlled, managed and staffed by Queenslanders.
- (b) A takeover of Evans Deakin by Clyde and a takeover of Walkers by A.N.I. or Clyde (through a takeover of a merged Evans Deakin - Walkers enterprise) will greatly reduce competition in tendering for major railway, power station and mining construction projects in Queensland.

This will require a greater commitment of State funds to such projects because of the higher project construction costs that will result from the reduced competition.

- (c) The rationalisation of Evans Deakin and Clyde activities and the loss of local decision making and control which is likely to follow a takeover of Evans Deakin by Clyde could well lead to

- . a loss of employment opportunities in Queensland;
- . a reduction in demand for local goods and services;
- . a cessation of Evans Deakin production facilities in Queensland in favour of production outside the State, and a consequent greater importation of manufactured equipment into Queensland;
- . the loss to Queensland of the considerable design and manufacturing expertise developed at Evans Deakin.

It is therefore considered that the potential effects of a takeover of Evans Deakin by Clyde are sufficiently adverse to the Queensland economy and community to warrant Government action to prevent the takeover from occurring.

7. The Clyde takeover offer for Evans Deakin can only successfully be defeated by ensuring that a minimum of 50.1% of Evans Deakin shares remain in the hands of person who are willing to have Evans Deakin retained as an independent Queensland enterprise under the control of a Queensland Board and Queensland management. Naturally, the hope would be that more than 50.1% of Evans Deakin shares would remain in the hands of such "friends of Queensland".

Considerable efforts have been made within the Queensland business community since the announcement of the Clyde offer to obtain the required 50.1% support from shareholders of Evans Deakin who are "friends of Queensland", and who, as such, are not prepared to sell their shares to Clyde.

Evans Deakin considers that at present prices it can rely on shareholders, who presently hold in the order of 39% of Evans Deakin shares, not to sell to Clyde.

However, this leaves Evans Deakin around 11% short of the 50.1% level of support required to prevent the takeover.

In addition, Evans Deakin are concerned that major institutional investors in the company could sell out to Clyde at a substantial profit and that this could precipitate a rush by smaller shareholders in Evan Deakin to sell their shares.

Accordingly, Evans Deakin still needs the support of a further substantial "friend of Queensland" who is prepared to enter the market to acquire shares from major institutional investors and other Evans Deakin shareholders who would otherwise sell their shares to Clyde.

8. It is recommended that the State, in accordance with the principles outlined in the report of the Committee appointed to examine the matter of the takeover of Queensland Incorporated Companies, stand ready to act as the further substantial "friend of Queensland" if necessary, in the Evans Deakin takeover attempt.

It is proposed that the State stand ready to acquire up to 12.1/2% of the subscribed ordinary capital of Evans Deakin in order to assist in preventing the Clyde takeover bid for Evans Deakin.

For existing legal purposes, it will be necessary for the Public Trustee to acquire and hold the shares upon trust for Her Majesty in right of the State pursuant to Section 28 of the Public Trustee Act 1978.

Further, it will be necessary

- (a) for a special Trust fund to be established for the purpose, and
- (b) for the purchase of the shares to be funded from investible funds available to the Treasurer, which funds would otherwise be invested in short term investments.

It is proposed to restrict the purchase of shares by the State to the 12.1/2% limit because under the Queensland Takeovers Code 1979, a party, once it has reached a 12.1/2% shareholding in a company, can only either make a complete takeover offer for the Company or acquire a maximum 3% of the capital of the company over six months.

The most recent offer by Clyde is that it will purchase shares from shareholders in Evans Deakin at a price of \$2.90 per Evans Deakin share. However, depending upon further developments in the Clyde bid, it may be necessary to pay more than this for any shares which may have to be acquire to prevent a takeover.

A 12.1/2% shareholding in Evans Deakin at \$3.00 per share would cost approximately \$7.5 million.

9. I am confident that a purchase of up to a 12.1/2% shareholding in Evans Deakin will ensure that the Clyde bid for Evans Deakin fails. The State's shareholding, together with the shareholding of other "friends of Queensland" should ensure that 50.1% of Evans Deakin shares are held in the hands of "friends of Queensland".

Further, it is anticipated that the solid rock of "Queensland interests" in Evans Deakin created by the State's shareholding in the company will encourage Clyde to completely abandon its takeover bid and perhaps even sell substantial numbers of its share back to Queensland interests.

Also, it is considered that the State's support in the market place for Evans Deakin will encourage smaller shareholders to retain their shareholdings in Evans Deakin.

10. Evans Deakin will be a major beneficiary of the resources development boom that is developing in Queensland. There is little doubt that even at the prices presently being offered, the Evans Deakin shares represent a sound investment given the bright future prospects of the company. In fact it is anticipated that these prospects of the company should ensure that the price of the shares will rise and that the return to be obtained from holding those shares will be substantial.

The fact that Clyde has raised its offer price twice already from \$2.45 to the present \$2.90 per share is evidence of this.

IT IS ACCORDINGLY RECOMMENDED that in order to prevent the takeover of Evans Deakin Industries Limited by Clyde Industries Limited:

- (a) the Public Trustee of Queensland be authorised and directed to acquire upon trust for Her Majesty in right of the State up to a maximum of a 12.5% holding in the subscribed ordinary share capital of Evans Deakin Industries Limited in accordance with directions from time to time given by the Treasurer;
- (b) the purchase of such shares be funded from investible funds available to the Treasurer of Queensland;
- (c) there be established in the Treasury a Special Trust Fund entitled "The Queensland Industry Investment Fund" to record transactions made by the Public Trustee upon trust for Her Majesty in right of the State pursuant to Section 28 of the Public Trustee Act 1978;
- (d) the timing of the purchases and the strategy and basis and manner for purchase be at the discretion of the Treasurer;

- (e) the shares acquired be continued to be held until further consideration by Cabinet and that in any case their future deployment be considered by Cabinet at the same time as the broader question of a State takeover policy as envisaged in the Committee Report referred to in Submission, and in this regard the Treasurer is to bring to Cabinet a Submission in the near future.

DR. L.R. EDWARDS

DEPUTY PREMIER AND TREASURER
OF QUEENSLAND

The Treasury,
BRISBANE.

9th December, 1980.

MEMBERSHIP AND TERMS OF REFERENCE OF COMMITTEE
APPOINTED TO EXAMINE THE MATTER OF THE TAKEOVER OF
QUEENSLAND INCORPORATED COMPANIES

A Committee consisting of the Under Treasurer as Chairman, the Commissioner for Corporate Affairs and the Deputy Director (Technical) of the Department of Commercial and Industrial Development was appointed by Cabinet in June, 1979 to examine the matter of the takeover of Queensland incorporated Companies pursuant to the following terms of reference determined by Cabinet:

- (a) to assess the implications arising as a result of potential takeovers of Queensland incorporated Companies having regard to:-
 - (i) the need to foster investment in Queensland;
 - (ii) the effect on Queensland's economic base;
 - (iii) the interests of shareholders and other interested parties; and
- (b) to examine the legislative position throughout Australia and elsewhere in relation to existing and proposed takeover laws.

The Committee was requested to recommend to the Honourable the Minister for Justice and Attorney-General, for report to Cabinet, a course of future Government action in the matter.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS OF THE
COMMITTEE APPOINTED TO EXAMINE THE MATTER OF THE TAKEOVER
OF QUEENSLAND INCORPORATED COMPANIES

Recommendation 1 - Action is desirable

A number of serious adverse consequences of takeovers of certain Queensland incorporated companies were identified including:

- . Loss of decision making and control;
- . Loss of employment opportunities;
- . Decline in the availability of development capital in the State;
- . Loss of orders for local suppliers;
- . Loss of technological development capital;
- . Adverse competitive effects.

The potential adverse effects of takeovers of certain Queensland incorporated Companies are on balance sufficiently adverse to the State to warrant action to reduce the likelihood of such takeovers occurring.

Recommendation 2 - Regulatory Legislation Not Recommended

The introduction of legislation designed to enable the prohibition or restriction of proposed takeovers of Queensland incorporated companies would have a number of adverse implications including that it would:

- . unacceptably restrict shareholders' rights;
- . deleteriously effect the flow of investment capital into Queensland;
- . possibly affect share prices and the ability of Queensland companies to raise capital for investment;
- . introduce the risk of Queensland becoming economically and commercially isolated to the detriment of the State's long term development;
- . be against the spirit of the forthcoming National Takeovers Code, and put Queensland out of step with such Code.

These likely adverse implications of introducing legislation designed to enable the prohibition or restriction of proposed takeovers of Queensland incorporated Companies are so serious that such a course of action is not recommended.

Recommendation 3 - A Queensland Investment Corporation be established

The most valuable form of assistance that can be afforded to a target company in the circumstances of the undesirable takeover bid is generally that which can be provided by a sympathetic existing shareholder, with a significant holding of shares in the target Company, making it known that its shareholding is not available for sale to the takeover bidder.

The concept is for there to be such a purchaser and holder of shares, which could represent a solid rock of "Queensland interest" in a company at the time of a takeover bid.

The means to bring to reality a shareholder which could act as a "friend of Queensland" in a takeover situation is to establish a special Statutory Corporation which could invest funds in the share capital of a range of listed public Companies which the Corporation is satisfied are important to the interests of Queensland, and which could be the subject of an undesirable takeover bid at some time in the future.

The Corporation be established by an act of Parliament, which would appropriate the Corporation's initial capital funds, specify the means of appointment of Members of the Corporation, and set down the guidelines which it must follow in the making of its share purchase decisions. In this regard the major features of the Corporation are envisaged as follows:

1. Membership

The Corporation to consist of five members, made up of :

- (a) 3 members of the business community appointed by the Treasurer of Queensland. The Treasurer to be empowered to make and terminate appointments at any time.
- (b) The Under Treasurer or his nominee, and
- (c) The Director of the Department of Commercial and Industrial Development or his nominee.

2. Functions and Objects

- A. The Corporation's function to be to invest in the share capital of listed public Companies which the Corporation is satisfied are:
 - (i) operated efficiently and profitably, and
 - (ii) important to the interests of Queensland.
- B. The Corporation to aim to -
 - (i) obtain an adequate rate of return on its investments in Company shares, and
 - (ii) obtain a sufficient holding in the share of Companies selected in accordance with A above, in order to assist in securing, to the greatest extent that is practicable, an ability to substantially influence the outcome of an undesirable takeover bid.
- C. There to be no requirement that any aim be given more emphasis than the other. The Members of the Corporation are to be left with a discretion to determine the emphasis that is to be given to each aim when making particular investment decisions.

3. Powers of Corporation, Government Policy Guidelines

The management of the business and control of the Corporation to be vested exclusively in the Members and, more particularly, decisions as to the investments to be effected by the Corporation to be made by the Corporation itself.

The Corporation to make its investment decisions on a responsible basis in accordance with the policy guidelines specified for it. Such guidelines for the Corporation in the exercising of its functions to be along the following lines:-

- (i) Representation on Company Boards
In general, the Corporation to not seek to have representatives appointed to the Board of any Company. An exception to this to be made if, for a particular reason, it is considered to be necessary to protect the investment of the Corporation in any particular Company.
- (ii) Guidelines for determining best interests of Queensland
In determining whether to invest in a Company the Corporation to take account of the implications for Queensland of a takeover of the Company involved, in the following respects:

- . the movement of control over substantial Queensland assets, industries and investment decisions out of the State.
- . prejudicial effect on Queensland employment opportunities.
- . the effect on the capital available within the State for expansion and new undertakings.
- . reduction in demand for local goods and services following a centralisation of purchasing decisions.
- . possibility of cessation of business in Queensland in favour of production outside the State.
- . transfer of technology developed in Queensland out of the State.
- . the use of local professional services such as accountant, solicitors, architects, consultants, and advertising agents.
- . the acceleration of industry concentration by the removal of competitors.
- . the effect on regional development.
- . the effect on State revenues.

(iii) Specific Investment Guidelines

- (a) In general, the Corporation to hold no more than 10 per cent of the subscribed ordinary capital of any listed public company, provided that if the Corporation considered it to be desirable to prevent the takeover of a Company it may acquire up to the maximum percentage allowable under the Takeovers Code of the subscribed ordinary capital of the Company.
- (b) If the Corporation acquires more than 10 per cent of the subscribed ordinary capital of a Company the Corporation to conduct a continuing review of its holdings in the Company with a view to disposing of those shareholdings that are considered to be unnecessary for the pursuit of its objects, provided that the Corporation would not be required to sell shares if a loss is to be made on the sale.

(iv) Accountability

The Corporation to report to the Treasurer of Queensland annually and such Report to be tabled in Parliament. The books and accounts of the Corporation to be audited annually by the Auditor-General.

4. Funds

The Corporation to have funds sufficient to enable it to carry out its functions.

These funds to be provided by means of -

- (a) equity capital appropriated to the Corporation by Parliament from time to time;
- (b) debt capital borrowed by the Corporation from funds available to the Treasurer of Queensland for investment and from the private sector, with the approval of the Governor in Council.

A suitable ratio of equity to debt capital would be 1 : 5. It will be necessary to ensure that the Corporation conforms with the requirements of the Australian Loan Council in its borrowing activities.

Recommendation 4 - Early Action desirable

Legislation be enacted at the earliest opportunity to establish the Statutory Corporation in view of a major surge of takeover activity in Australia which is likely to affect companies of major importance to Queensland.

OUTLINE OF TAKEOVER PROPOSALS
INVOLVING EVANS DEAKIN & WALKERS

1. Initial ANI Takeover offer for Walkers

On 31st October, 1980 ANI offered one ANI share for each share in Walkers.

ANI held 12.49 per cent of Walkers shares prior to the offer. At the time of the offer ANI shares were selling for \$2.75, and Walkers' shares for \$1.65.

The capital of Walkers consists of 4.54 million 50 cent shares so the ANI offer valued Walkers at \$12.5m, compared with a net tangible asset value of \$8.67m.

2. Proposed Merger of Evans Deakin & Walkers

On 11th November, 1980 the Directors of Evans Deakin & Walkers jointly announced and recommended a merger of the two companies.

It involved the issue of one Evans Deakin share plus \$1.55 cash for each share held in Walkers.

At the time of the announcement, Evans Deakin shares were trading at \$2.05 and Walkers' shares at around \$3.00 and consequently Walkers was valued at \$16.3m.

However, since the offer was made the price of Evans Deakin shares has risen to approximately \$2.90 so, on this latest price the proposed merger values Walkers Limited shares at \$4.35 and the Company at \$20.2m.

3. Initial Clyde Takeover Offer for Evans Deakin

On 17th November, 1980 Clyde announce a takeover proposal for Evans Deakin involving:

(i) A Formal Takeover Offer.

The Clyde offer here is on the following alternative bases:

(A) Two (2) ordinary fully paid stock units of 50 cents in Clyde to be issued by Clyde credited as fully paid up for every three (3) fully paid ordinary shares in Evans Deakin

OR

(B) \$2.45 in cash for every fully paid ordinary share in Evans Deakin.

(ii) A Takeover Announcement.

This is a new takeover method provided for under the Queensland Takeovers Act 1979.

Clyde announced that it would be prepared to stand in the share market for a period of a month and purchase the Evans Deakin shares of all willing sellers at \$2.45 per share.

An Evans Deakin shareholder could elect to sell to Clyde under either the formal Takeover Offer or the Takeover Announcement.

The capital of Evans Deakin consists of 19.93m shares following a recent one-for-four cash issue, so the Clyde offer valued Evans Deakin at \$48.9m, compared with a net tangible asset value of \$28.1m.

4. Increased ANI Takeover Offer for Walkers

On 3rd December, 1980 ANI announced a revised offer for Walkers involving:

(i) A Formal Takeover Offer.

The ANI offer here is on the following alternative bases:

(A) Thirteen (13) ordinary fully paid stock units of 30 cents in ANI to be issued by ANI credited as fully paid for every ten (10) fully paid ordinary 50 cent shares in Walkers

OR

(B) \$3.80 in cash for every fully paid ordinary share in Walkers.

(ii) A Takeover Announcement.

ANI would stand in the share market for a month and purchase the Walkers Limited shares of all willing sellers at \$3.80 per share.

This revised offer values Walkers at approximately \$17.3m compared with Evans Deakin - Walkers merger proposal which values Walkers at approximately \$20.2m.

5. Increased Clyde Offer for Evans Deakin

On 5th December, 1980 Clyde announced that it was revising its takeover proposal for Evans Deakin.

Clyde increased the Takeover Announcement price that it was prepared to pay on the share market for Evans Deakin shares from \$2.45 to \$2.75.

Clyde also advised that it would vary its Formal Takeover Offer to match the new \$2.75 Takeover Announcement price. Details of this revised Formal Takeover Offer are not yet available, but will be announced by Clyde on or before 12th December, 1980.

This revised bid by Clyde values Evans Deakin at \$54.86m, compared with \$48.9m under the first Clyde offer.

Clyde presently holds approximately 13.9% of the issued ordinary capital in Evans Deakin.

6. On 8th December, 1980 Clyde announced that it was again revising its takeover proposal for Evans Deakin.

Clyde increased the Takeover Announcement price that it was prepared to pay on the share market for Evans Deakin shares to \$2.90.

Details of the revised Formal Takeover Offer are yet to be announced by Clyde.

This further revised bid by Clyde values Evans Deakin at \$57.86m.