

DRBF 12th INTERNATIONAL CONFERENCE

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Sydney

Session 2: Dispute Avoidance

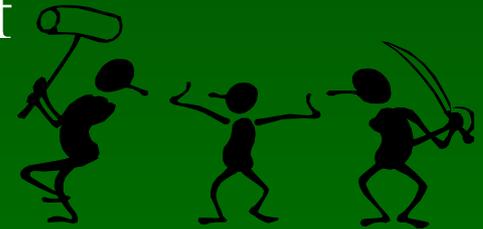
“Dispute Avoidance Using Dispute Boards”

by Alan McLennan



Construction in Australia

- ❑ Initiatives to minimise the effects of
disputation
- ❑ Range of contract forms in regular use
- ❑ Relationship (Collaborative)
Contracting is commonly used on
Public Sector Projects
 - Alliancing
 - Early Contractor Involvement



Research Into Dispute Avoidance

- ❖ **Quest to minimise / eliminate disputes is ongoing**



- ❖ **The Cooperative Research Centre for Construction Innovation – international research into recurring causes of disputes**
- ❖ **Published an authoritative study:
“The Guide to Leading Practice for Dispute Avoidance and Resolution”**

Critical Factors in Avoidance/ Minimisation of Disputes (from CRC Guide)

- 1. Each new project involves the creation of a new group of people:**
 - need to intentionally create a project oriented culture based on trust
- 2. Early joint involvement:**
Client, Constructor, Designer – prior to finalising contract requirements
- 3. Proactive issue/dispute resolution process that works in real time**
- 4. Contract framework and process architecture that reflects the above**



Key Research Findings

Dispute Avoidance / Minimisation is most likely when:



- ❑ There is a culture where working relations are defined by trust, openness, and cooperation
- ❑ There are joint governance arrangements, and a deliberate strategy to sustain the culture over time
- ❑ A proactive issue / dispute avoidance strategy is used



A Package of Initiatives to Avoid Disputes (from CRC Guide)

❖ Client Leadership:

- Adopt a process architecture that aligns the goals/objectives of the parties
- Fair and equitable approach to risk sharing



❖ Positive Response from Constructing Parties:

- Build and maintain cooperative working relations, building trust
- Open, honest communications

❖ Proactive Issue/Dispute Avoidance Strategy:

- Include independent monitoring through a DB

How Does the DB Work in Relationship Contracts

- The factors identified in the CRC Research on avoidance are similar to key features of Relationship Contracting
- Key features are:
 - Joint Governance arrangements, including PLG
 - Relationship Charter defining agreed team objectives, behaviours and principles
 - A proactive Issue Avoidance process
- The DB complements and reinforces the cooperative relations

How Does the DB Work in Relationship Contracts (cont)

- The DB uses skills and knowledge to facilitate the efforts of the parties to find practical solutions
- The open, trusting environment allows:
 - Issues to be identified, dealt with more effectively
 - The governance arrangements allow more effective monitoring by the DB
 - The facilitation and discipline provided by the DB achieves resolution earlier, and at a lower level



Effectiveness of Single-Member DBs

- Single-member DBs have found a place, especially in the collaborative environment
- Advantages of single-member boards:
 - Effective on projects up to \$100M AUD
 - Contains the cost of independent monitoring by a DB
 - Some clients are more comfortable with single-member boards

Local Experience with DBs on Collaborative Contracts

- Queensland experience is that total avoidance is possible when:
 - a DB operates as part of a Dispute Avoidance strategy in an open, trusting project culture
- The DBs role centres on:
 - Early identification of potential issues
 - Promotion of timely resolution at the lowest possible level
 - Independent facilitation and guidance on the escalated items
 - Seven (7) recent examples in Queensland of successful outcomes

Case Studies

Case 1:

- \$400 M AUD Motorway Upgrade
- 3-member DB, Collaborative ECI Contract
- High level of complexity and uncertainty
 - Traffic flows at capacity during construction
 - Geotechnical uncertainty
 - Extensive community interaction, pedestrians and cyclists



Case Studies

Case 1 (cont.):

- Collaborative Elements:
 - Joint governance – PLG
 - Relationship Charter
 - Issue Resolution Strategy, including DB

- Issues:
 - Extensive design variations early in project life
 - Major scope changes

- Effect of DB:
 - Provided validation of the jointly agreed value of design variations
 - No unresolved issues

Case Studies

Case 2:

- \$70 M AUD Highway Duplication
- Single-member DB, Collaborative ECI Contract



Case Studies

Case 2 (cont.):

- Collaborative Elements:
 - Joint governance – PLG
 - Relationship Charter
 - Issue Resolution Strategy, involving single-person DB

- Issues:
 - Interruptions in wet tropical environment
 - Traffic interaction
 - Geotechnical concerns

- Effect of DB:
 - Maintained harmonious relations
 - Timely resolution of all issues by Project Team

Conclusions

- Recent research into dispute avoidance points to major opportunities to avoid or minimise disputes when:
 - Collaboration exists in a trusting, supportive environment;
 - the process architecture is fair and appropriate to the project; and
 - there is a proactive dispute resolution strategy in place (improves with independent DB monitoring).
- Client leadership strategies condition the way people behave
- Constructors response to those strategies determines the level of success achieved.
- Experience in Queensland confirms the findings of the research.