

**The New Economic Reality:  
Implications for the Construction Industry in Hong Kong**

**A two-day charity Conference organized by the Civil Engineering Committee  
of the  
Hong Kong Construction Association**

**28th and 29th Oct 2009**

**Level 3, JW Marriott Hong Kong, Pacific Place**

**88 Queensway, Hong Kong**

**Closing Remarks**

**Colin Birkby**

**Chairman of Organising Committee and Vice Chairman of HKCA CEC**

### **Closing Remarks by Colin Birkby Chairman of Organising Committee and Vice Chairman of HKCA CEC**

Thank you to Conrad Wong President of the HKCA and Thomas Ho Chairman of the HKCA CEC for their visionary leadership and support for this conference.

When HKCA decided to organize this event they set out to involve the broadest cross-section of the Construction Industry possible in order to reflect the views and concerns of all participants. In order to do so the following co-organisers not only provided input and valuable support but members to join the organizing committee. I would therefore like to express my thanks to;-

1. The British Chamber of Commerce – Construction Industry Group and in particular Derek Smyth for his guidance and support.
2. The Association of Project Managers
3. Hong Kong Tunneling Society
4. Hong Kong Institute of Engineers Civil Engineering Division
5. The Chartered Institute of Building Hong Kong
6. Hong Kong University – Civil Engineering Department
7. Hong Kong Lighthouse Club
8. Association of Geotechnical and Geoenvironmental Specialists Hong Kong

Special thanks also to Wei Sun and Peter Berry of HKCA and the support staff for all their hard work and for the Marriot Hotel who've provided a quality venue and service for the event.

### **Setting the scene – Mr Thomas Ho Chairman of CEC Introduction**

Day 1 (a) The New Economic Reality (b) Ground Conditions and Underground Utilities

Day 2 (c) Alternative Contract Procurement Approach (d) Security of Payment

### **Key Note Address – Ms Carrie Lam Secretary for Development, Development Bureau**

Carrie Lam opened our conference with her excellent key note address. HKG Positive response to the economic downturn is a \$50B Public Works expenditure for coming medium term (5 years) to stimulate the construction industry, the HKG is now looking forward beyond this.

Carrie also highlighted the Policy Address from Chief Executive being given today on the theme of 'Breaking **New** Ground'. Items included;-

- 10 Major Projects
- Revitalising Industrial Buildings
- Conserving Central
- Establishment of the Development Opportunity Office to provide coordinated Enquiry Services with the Private Sector to stimulate more works in this area.

### **Morning Session day 1 – The New Economic Reality**

**Mr John Bishop** Senior resident Partner, Pinsent Masons explained that there has been a tightening of credit available in the Construction Sector worldwide leading to the need to look more closely at the whole of supply chain where the impacts are being felt.

Some Issues Highlighted were the need to review;-

- Resources and skills available
- Bad debts
- Increasing bond calls
- Effective real time dispute resolution techniques and the possible introduction of security of payment legislation.
- Advance payments to ease cash flow burden.
- The urgency for formal partnering contracts to be advanced together with more collaborative working practices.

**Prof Roger Flanagan** of Reading University gave us a good global perspective of the impact of the financial tsunami and how those companies surviving through such difficult economic times need to;-

- Think differently.
- Focus on margin not turnover.
- Establish a sustainable development strategy – non negotiable.
- Employ advanced Risk management techniques.
- Spread your wings outside of HK and trust our expertise.

**Mr. Nicolas Kwan** Regional Head of Research for Standard Chartered Bank gave an excellent overview from the perspective of macro economics, the new order of things in the world and their impact on HK's Economy and the Construction Industry.

- Emergence of China Banks in the last few years as the biggest in the world.
- Increasing liquidity but falling credit in the construction sector.
- The anomaly\_ of the current Property Market price increases not yet being reflected in investment by the private sector in property development.

#### **Afternoon Session day 1 – Ground conditions and underground utilities**

**Mr. John Elsdon** opened the afternoon session by reviewing progress made since the 'Whole Risk' Conference held in 2000 to address problems associated with underground utilities.

He highlighted;-

- Some positive HKG moves such as WB TC 17/2004.
- Major problems remain – the 'control' and programme of utility companies remains a significant unmanageable risk which employers continue to try to pass onto to contractors.
- The planning and execution has a major impact on Civil Engineering infrastructure projects and gives rise to many claims. There is a need to establish a single 'body' or 'entity' with authority to plan and control the works of utility companies.
- Other suggestions included;
  - More equitable contract provisions for time and cost recovery are needed.
  - More advance planning and an agreed programme of works with utility companies by the project proponent need to be incorporated into the contract.

**Mr CK Mak** the Permanent Secretary for Development ( Works) lead us through his earliest experiences as an Assistant Engineer and Engineer on a drill and blast tunneling project which experienced a number of claims as a result of ground settlement.

His review of tunneling in HK touched on;

- 436 km already built with a further 178km under planning or construction stages.
- The Commitment of HKG to learn from lessons in the past to construct new schemes more harmoniously in future.
- Trial Schemes for Utility Conduits such as Stanley are now being reviewed to see whether there is scope to expand this programme in future. The issues relate to the future maintenance and ownership of such utility conduits.

**Mr. Roger Olds** the MD of Coffey International Australia explained in detail by the use of many case studies how Ground Risks were effectively managed to everyone's benefit by the adoption of 'Pure Alliance' Contracts in Australia.

Alliances establish a;-

- Single High Performance Team
- Allow no suing of the partners by one another and no V.O's issued under the contract.

This approach had delivered measurable results;

- Port of Brisbane Motorway 6 months early and 10% budget saving
- Wivenhoe Dam 60% budget reduction.

Conclusion was that engineered solutions can be effectively incorporated under Alliance Contracts to manage ground risk and deliver best value.

**Mr Russel Black** Projects Director of MTRC explained their structured approach to management of ground risks which in their Contracts are to be borne by the Employer.

The main points being that;-

- Geotechnical Baseline Reports (GBR's) are widely used to identify, mitigate and plan projects and are now a requirement for the procurement of insurance in line with International Tunneling Code of Practice.
- MTRC now have a large role out of tunneling projects where ground risk will be managed through the preparation of and incorporation into the Contract of the GBR.

In the future it is envisaged that;-

- There will be a broader usage of GBR's in our industry.
- A refining of the models used with more emphasis a ground investigation.
- A more collaborative approach for all participants to deliver the project successfully.

### **Morning Session day 2 – Alternative Contract Procurement Approach**

**Prof Mohan Kumaraswamy** from the Department of Civil Engineering, The University of Hong Kong started his detailed review of the various procurement approaches for construction by showing us that as far back as 4000 years ago a fully fledged partnering delivery approach was adopted by the original 'Master Builders'. Over time the delivery mechanism has evolved by adopting specialists to deliver one particular aspect of the project such as feasibility study, design or construction.

We were challenged to think about procurement and 'What it is?' and 'Why we need to be proactive?' The following conclusions were noted;-

- (1) For successful project 'delivery' the tone is set by the appropriate selection of the procurement model.
- (2) The objective must always be to deliver best value.
- (3) Procurement has come full circle in the last 4000 years with the adoption of formal partnering contracts and pure alliance models being adopted, similar to those of our Master Builder ancestors.
- (4) Above all else, no matter the procurement model there is a heavy reliance on the 'People' and their 'Mindset' in order for us to achieve the best results.

**Mr Tim Knee Robinson** a Partner of Davis Langdon spoke to us about the implementation of the NEC suite of Contracts in the UK and other parts of the world and the results recorded so far.

Why use the NEC?

- Offers a more collaborative approach.
- Offers integrated supply chains.
- Can deliver best value.

Tim observed that the key to success is ensuring;-

- A complete and smooth cultural transition involving a change of mindset.
- A proactive approach by all involved.
- The key drivers are the PM and the Contractor.
- It's very important to have good Contract documentation and in particular 'Works information'.
- The programme must be used as a key management tool.
- Risk management is a cornerstone of the management of the project.
- People must be supported by through competence training.

Amongst many examples given from the UK;-

1. Cross rail – this HK\$200B programme will adopt NEC conditions.
2. University of Cambridge – HK\$630M where results recorded on show a programme savings of up to 11% and budget savings of 1% whilst incorporating additional works over and above the original 'Works information'.

In his closing remarks Mr Colin Birkby observed that Cross rail alone is equivalent to 4 times the Public Works forecast annual expenditure and whilst recognizing the positive steps by both DSD and Hyd to test NEC conditions on some small value contracts, suggested maybe it was time to trust a proven model and test it in HK using more substantial technically challenging larger value projects.

**Mr Martin Dunn** General Manager (Procurement and Contracts) for MTRC gave a thorough presentation of their procurement approach for traditional Design and Build lump sum contracts and the more recently adopted target cost procurement approach for technically challenging projects.

Underpinning MTRC's approach was the principle that the risks must be clearly understood by their management and informed decisions made to ensure that they are fairly allocated to the party best placed to manage them and take their consequences. To do this there was a systematic approach to the review of:-

1. Methods & Programme
2. Risk Allocation
3. People
4. Good Packages
5. Quality
6. Contract documents

The key points emerging from the speakers in the morning session on 'Alternative Contract Procurement Approach' were that:-

- Collaborative forms of contract empower people in the industry to deliver 'best value'
- Champions to be brave and try a different way of delivering infrastructure in HK are needed.
- We need to TRUST EACH OTHER MORE.
- The 'Development' of 'People' to proactively engage with one another to deliver a successful outcome is needed.

#### **Afternoon Session day 2 – Security of Payment**

**Mr Neil Kaplan** CBE, QC, SBS opened the final session of the conference with an eloquent reminder that disputes were not new! He quoted experts from the period of Louis XIVth to underline the point. The underlying message from the presentation was clear, there was an absolute need to ensure that disputes were avoided when possible or resolved immediately once they had arisen, must be provided for.

Whilst mediation can do so the recent history in HK showed that it was failing to deliver on its original promise and had become very expensive and lengthy. Neil gave an outline of contractual and statutory adjudication where he favoured:-

- (i) Compulsory adjudication underpinned by;
- (ii) A statutory scheme

Some of the many advantages given were;

- (1) Disputes nipped in the bud and not left to fester and spoil the project
- (2) Avoidance of non related disputes
- (3) Commercial relationships preserved.
- (4) Correspondence + Claims reduced.

**Mr Niels Kraunsoe** mediator and facilitator reviewed progress over his 31 year international career and concluded that in HK the pace of development for creative procurement solutions and dispute resolution has sadly slowed. In recognizing the industry was inextricably governed by cash flow it was critical that prompt and decisive decision making to resolve conflicts was of critical importance.

Having been involved in numerous mediation she recognized that they had become cumbersome, expensive and drawn out. It is commonly the case that one is dealing with final account mediations when decision makers have a narrow window to finalise a deal successfully which is not assisted by the government machinery involved.

The conclusion of his presentation was that;-

- 1. There is no silver bullet to avoid disputes or resolve them quickly once they have arisen, however, mandatory adjudication strongly supported by legislation and the courts is strongly commended based on experience elsewhere.
- 2. No matter the form of contract a good or bad result is often defined by the 'People' empowered to administer it.

#### **Ms Janey Milligan** MD Construction Dispute Resolution

Janey opened by explaining under the 'New Economic Reality' it is now more important than ever before to get paid fairly and on time. She continued by setting out in detail the requirements of 'Construction Act' in the UK adopted since 1996.

Measurable results were presented and showed that legislation underpinning compulsory adjudication mechanisms under the contract had been very effective and that the 'Act' was working. Evidence showed that;-

- (1) Administration of payment throughout the supply chain had improved and hence cash flow.
- (2) Whilst it was not all good news but predominantly showed a significant improvement from previously had been achieved.

Janey recommended that should such legislation be considered in HK that the lessons learned from the UK experience were incorporated. The legislation is now currently being reviewed for an update shortly based on past UK experience.

**Dr. Philip Chan** Associate Professor, Department of Building, School of design and Environment, Singapore gave a compelling argument for the adoption of security of payment legislation and outlined its success in Singapore.

Legislation had come about as a result of payment and cash flow issues along the supply chain and in particular with subcontractors not having been paid on time or indeed at all.

As a result Singapore has adopted a;-

- (1) Statutory Adjudication Scheme
- (2) Statutory Payment Scheme
- (3) Statutory Enforcement Scheme

The primary benefits were measurable and shown to be improved cash flow throughout the supply chain and a fast and cheap resolution of payment related disputes.

In summary, the afternoon session presented strong evidence that the adoption of 'Security of Payment' legislation together with a statutory adjudication scheme in Hong Kong is one proven path requiring further detailed consideration.