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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

and

MAINBRACE CONSTRUCTIONS PTY LTD (MAINBRACE)

RE: SITE ALLOWANCE , SHOPPING CENTRE, MOUNT ELIZA

27 SEPTEMBER, 2018

022-2018

STATEMENT

[1] On 18 September 2018 the CFMEU lodged a notification of dispute with Mainbrace regarding payment of a site allowance pursuant to the provisions of Appendix C of the Enterprise Agreement [*Mainbrace Constructions Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*].

[2] A site inspection was conducted on 25 September 2018 by the Panel together with the parties, at Mount Eliza.

[3] The Project involves the the construction of a significant addition to an existing shopping centre, which includes an existing Woolworths supermarket, refurbishment of the existing shopping centre throughout including re-roofing, asbestos removal and various complete shop fit outs in the existing facility and the addition. It has been suggested by the CFMEU that the value of the works could be well in excess of \$8.0m.

[4] The constructions works are being undertaken by Construction Engineering (CE) and its various sub contractors by way of a principal contract with the owner of the shopping centre and include the new addition and re-roofing and other works throughout the existing shopping centre structure.

[5] Mainbrace have a contract with Woolworths, a tenant of the shopping centre, to complete the shop fit out of the refurbished Woolworths store which is also expanding into the new addition to the shopping centre. The value of the Mainbrace contract is in the order of \$2.2m based upon building permit value. Other shop fit outs will be conducted by other contractors, including the refrigeration fit out works for Woolworths.

[6] The CFMEU argues that all of the works being undertaken form part of the overall project and for the purposes of a site allowance, the relevant shopping centre allowance should apply, pursuant to Appendix C of the agreement. Mainbrace on the other hand regard its contract with Woolworths as a stand alone contract for which no site allowance should apply as it does not meet the value threshold for a site allowance under the agreement.

[7] CE is paying the relevant shopping centre allowance to its employees under the terms of its applicable enterprise agreement, presently \$4.15 per hour. The Panel is not presently appraised of the site allowances, if any, that are being paid by other sub contractors undertaking works on the project.

[8] The works being undertaken by Mainbrace are immediately adjacent to and within the works being undertaken by CE. Mainbrace employees access the work site through the new addition and perform set up works in the new addition, interacting with the employees of CE and other contractors working on the project.

[8] The Panel notes that whilst there is no dispute that the matter is properly before the Panel pursuant to the applicable enterprise agreement, it was recognised during the

course of the site inspection that further discussions between the parties may be of assistance in resolving the matter. The Panel urged the parties to do so.

[9] The questions to be answered are whether or not the works being undertaken by Mainbrace fall within the definition of “Project” and if so whether the project value is in excess of the qualifying threshold, pursuant to the applicable enterprise agreement. In particular the 3 principles that each need to be established are set out in the definition clause of the agreement and are set out below:

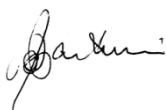
“Project means building and construction works performed on a site or combination of sites:

i. for an enterprise or undertaking carefully planned to achieve a particular result;

ii. with a clearly established entity or entities that exercise control over its development; and

iii. contains a scope sufficiently definable at any given point during the project to enable its proper definition and costing for the purpose of determining the appropriate site allowance;”

[10] The Panel determined that should the matter remain unresolved, it would require oral submissions to be made on the above matters, including the Project Value as defined in the agreement and any other relevant matter, by the parties at a Hearing to be conducted on **Wednesday 3 October 2018 at 10.00am** at the Panel’s premises.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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and

MAINBRACE CONSTRUCTIONS PTY LTD (MAINBRACE)

RE: SITE ALLOWANCE , SHOPPING CENTRE, MOUNT ELIZA

3 OCTOBER 2018

022-2018

STATEMENT NO. 2

[1] On 18 September 2018 the CFMEU lodged a notification of dispute with Mainbrace regarding payment of a site allowance pursuant to the provisions of Appendix C of the Enterprise Agreement [*Mainbrace Constructions Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*].

[2] A site inspection was conducted on 25 September 2018 by the Panel together with the parties, at Mount Eliza, arising from which a Statement was issued which urged the parties to engage in further discussions to resolve the matter. The Panel set the matter down for Hearing on 3 October 2018. That Statement is to be read in conjunction with this Statement.

[3] Further to discussions with the Chairman and the CFMEU, the CFMEU has now confirmed that the matter has been settled with the employer agreeing to pay a site

allowance of \$4.15 per hour. The Panel has been provided with a copy of an email exchange between the parties confirming same which will be held on file.

[4] On the basis of this agreement it is no longer necessary to proceed to formal Hearing and the file is closed.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member