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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

and

TYCON GROUP (THE TRUSTEE FOR) T-AS TYCON GROUP PTY LTD
WAGSTAFF PILLING PTY LTD
MANTANIEL LAURATE PTY LTD T-AS CAREY CIVIL CONTRACTORS
DELTA PTY LTD

WEST GATE TUNNEL PROJECT

RE: ALLEGED INCORRECT APPLICATION OF SITE ALLOWANCE
CLAUSE

23 MAY 2018

008-2018

STATEMENT

[1] On 10 May 2018 the Construction Forestry Mining and Energy Union (“the CFMEU”) notified a dispute between it and various notified employers.

[2] The CFMEU advised that the West Gate Tunnel Project (the Project) had commenced and that the value for site allowance is uncertain and requested the assistance of the Panel to establish the correct site allowance and resolve the matter in relation to the Enterprise Agreements for each employer.

[3] The applicable Enterprise Agreements are:

- * *Tycon Group Trust (The Trustee for) T/as Tycon Group Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018.*
- * *Wagstaff Piling Pty Ltd and the CFMEU (Victorian Construction and General Division) Piling Agreement Enterprise Agreement 2016 - 2018*
- * *Mantaniel Laurate Pty Ltd t/as Carey Civil Contractors and the CFMEU Building and Construction Industry Enterprise Agreement 2008-2011*
- * *Delta Pty Ltd – T/as Delta Group and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*

[4] The West Gate Tunnel Project is a major construction project being undertaken including new tunnels from West Gate Freeway under Yarraville, the widening of West Gate Freeway from 8 to 12 lanes, 14km of new paths, a new bridge over Maribyrnong River and a new elevated road along Footscray Rd.

[5] The Western Distributor Authority on behalf of the Victorian Government is responsible for the management of the West Gate Tunnel Project and is working in partnership with Transurban to deliver the Project. Transurban has contracted CPB Contractors John Holland Joint Venture (the CPBJH JV) to build the Project. The Project is planned to be completed by 2022.

[6] Upon receipt of the Notification, the Chairman sought further particulars as to the alleged dispute from the CFMEU. From the response it was concluded that the prerequisite steps of the applicable Disputes Procedures had not been fully complied with and as a consequence the Chairman discussed the matter with each of the named employers, each of whom agreed to participate in a Conference before the Panel as an interim step in the process.

[7] Accordingly the Panel convened a Conference and extended an invitation to both Industrial Relations Victoria (IRV) and the principal contractor for the Project, CPBJH Joint Venture.

[8] The Conference before the Panel was held on 23 May 2018 at which all parties attended, including representatives from each of CPBJH JV, CPB Constructions and IRV.

[9] Delta submitted that it did not at this time have a contract for works on the Project. Each of the other three employers confirmed they had contracts with the JV and were performing works on the Project, each of whom were paying site allowances of various quantum to their employees.

[10] Based upon the information provided by the parties it was acknowledged that a formal dispute finding was somewhat premature at this stage, and certainly one could not be established with Delta. Notwithstanding this, the parties confirmed their agreement to the following process steps in order to resolve the application of a site allowance for the Project.

Agreed Steps

1. IRV undertook to provide certain particulars as to the scope and project value of the Project **no later than Friday 1 June 2018** to better inform the parties. In particular this, it is hoped, will confirm the scope of works and project value of the contract with CPBJH JV, and any other relevant design and construction works and their value, if any, anticipated to be conducted as part of the Project. The JV noted in the Conference that its contract value was greater than \$4B but less than \$5B. The CFMEU considered that it was greater than \$5B. The Panel notes various public references of Project Value which range from \$5.5B (Transurban) to \$6.7B (State Government) which may include some costs which may not be relevant for present purposes. The particulars to be provided by IRV will be provided to all parties.
2. Upon receipt of the particulars arising from 1. above, the CFMEU and each of the three employers (Tycon, Carey and Wagstaff) will meet in an attempt to settle the matter. In the event a settlement is not reached between the parties **by 5.00pm on 8 June 2018**, the next steps as agreed will be followed.

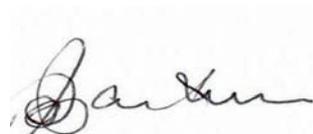
3. Arising from step 2. above, the parties will make written submissions to the Panel (copy to all other parties) on the following matters **no later than 5.00pm on 20 June 2018**. In this regard the JV is also invited to make written submissions, should it wish, in order to assist the Panel.

1. The Scope of the Project;
2. The Value of the Project for the purposes of determining a Site Allowance pursuant to the applicable Enterprise Agreements;
3. The Quantum of the Site Allowance;
4. The Operative date of any Site Allowance;
5. Any other matter of relevance.

4. Any party, should it wish, is to provide a written reply to the submissions arising from Step 3 **no later than 5.00pm on 27 June 2018** (copy to all parties).

5. A Hearing before the Panel will be conducted on **Wednesday 4 July 2018 at 10.00am** at the Panel's premises in order to receive any final submissions from the parties, from which the Panel will adjourn to determine the matter.

[11] Should circumstances arise that warrant a change to the above programme the Chairman will in the first instance consult with each of the parties and advise further. Otherwise it is expected that the parties will diligently comply with the agreed steps as set out above.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Lawrie Cross
Alternate Panel Member