

CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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**STRUCTURAL SYSTEMS CONSTRUCTION PTY LTD
ALDI STORE PROJECT
241 MAIN STREET MORNINGTON**

CFMEU

RE: APPROPRIATE SITE ALLOWANCE

23 AUGUST 2011

DECISION

021-2011

[1] On 28 July 2011, the Construction, Forestry, Mining and Energy Union (“the CFMEU”) lodged a notification concerning a dispute between it and Structural Systems Construction Pty Ltd (“the employer”) over the appropriate site allowance payable pursuant to the provisions of Appendix C to the *Structural Systems Pty Ltd and the CFMEU Building and Construction Industry Enterprise Agreement 2008-2011* (“the Agreement”) [Agreement ID: AC318803] in respect to certain work being performed at the construction site at 241 Main Street Mornington.

[2] The CFMEU and the employer are parties to the Agreement and it is not disputed that the Agreement applies to the work in question. That work consists of the renovation of existing retail space to convert the space into premises for a proposed Aldi store.

[3] A site inspection was conducted on 4 August 2011 by Panel Members Fergal Doyle and Lawrie Cross. The matter then came before me for hearing on 17 August 2011.

[4] Pursuant to the Agreement, site allowances are to be paid in accordance with the formula appearing in Appendix C to the Agreement. The formula specifies appropriate site allowances based upon the relevant project value. For the purposes of determining this matter, the minimum project value, below which no site allowance is payable, is \$2.6 million. Clause 11 of Appendix C provides that “(i)n all cases where the parties fail to reach agreement on the Project Site Allowance to apply to a particular site or project, then such disagreement shall be referred to the Chairperson of the Victorian Building Industry Disputes Panel for determination”.

[5] The initial question for determination in this matter is what constitutes the “project” for the purposes of determining the relevant project value.

[6] The employer in this case is a subcontractor to the PDS Group which has a contract to perform structural works. Fit out works are to be performed by another or other builders or providers. The employer’s contention is that the value of the PDS Group’s contract is the value that should be applied for the purpose of determining the relevant project value. The CFMEU contends that the value of the fit out works should also be taken into account.

[7] In determining matters such as this, both the former Chairperson and I have relied significantly upon criteria established by the then Australian Industrial Relations Commission (Deputy President Ives) when considering the question of site allowances and project value [*Bovis Lend Lease Pty Ltd and CFMEU* 28 December 2006 PR975618; see also *CDK Commercial Construction Pty Ltd and CFMEU* 21 September 2006 PR974122]. In each of those decisions, Ives DP applied a definition of “a project” as being one that “is an enterprise carefully planned to achieve a particular result, that has clearly established entity or entities that exercise control over its development and that has a scope sufficiently definable at any given point in time to enable its proper definition and costing for the purpose of determining the appropriate site allowance”.

[8] In this case, I am satisfied from the material presently before me that the “enterprise carefully planned to achieve a particular result” is the establishment of an Aldi store. The construction and associated civil works form only part of that enterprise. The fact that the work done to achieve that particular result is being or to be done by different providers does not denigrate from the fact that the overall planned and intended result is the establishment of an Aldi store. Indeed, the building permits

issued by the Mornington Peninsula Shire Council consistently refer to being issued in respect to a “Proposed Aldi Store”.

[9] It beggars belief that the establishment of such a store would not be done to a standard required by Aldi whether or not it is the actual developer of the particular site or is in any contractual relationship with any of the construction providers. I am also satisfied that both Aldi and the developer are “*clearly established ... entities that exercise control over [the enterprise’s] development*”.

[10] It also beggars belief that the developer and Aldi would have entered into this enterprise without being aware of its overall expected cost. I am satisfied that the enterprise has a “*a scope sufficiently definable at any given point in time to enable its proper definition and costing for the purpose of determining the appropriate site allowance*”.

[11] I determine, therefore, that, for the purposes of ascertaining the relevant project value in this case, the contract value of the PDS Group’s contract is not the sole determinant. It is but one of the amounts that is to be taken into account in assessing the relevant project value, along with, for example, the value of any fit out works.

[12] I accept that a claimant for a site allowance needs to make out its claim. However, in the light of the conclusion I have reached as to the manner in which the relevant project value is to be ascertained, in this case, it would now be appropriate for the parties to cooperate in obtaining valid information as to the actual value of establishing the Aldi store in question. Once that information is to hand, the parties should be able to agree upon the relevant project value. If they cannot, the matter will be relisted for further hearing upon request from one or other of the parties.

[13] The further hearing and determination of this matter is, on that basis, adjourned to a date to be fixed.



Simon Williams
Chairman

Date: 23 August 2011