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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

AND

FITZGERALD CONSTRUCTIONS AUSTRALIA PTY LTD (FITZGERALD)

RE: ALLEGED INCORRECT PAYMENT OF SITE ALLOWANCE

MELBOURNE METRO TUNNEL PROJECT

DETERMINATION

19 DECEMBER 2019

030-2019

[1] The CFMEU notified a dispute on 12 December 2019 alleging the incorrect payment of Site Allowance for work performed on the Melbourne Metro Tunnel Project. The CFMEU advised that the parties did not require a Conference.

[2] The Chairman conferred with the representative of Fitzgerald on 16 December 2019 and was advised that the Company has had employees engaged on the Melbourne Metro Tunnel Project pursuant to a contract with CYP JV since approximately March 2019.

[3] On 16 December 2019 the Panel sought written confirmation from the parties to the following:

1. *That the Determinations made by the Panel in Matter No. 014-2017 have been reviewed by the party (copies were provided to the parties).*

2. *That the party has no submissions to make that demonstrate why Fitzgerald Constructions should not be subject to the same outcomes found by the Panel in those Determinations in relation to scope, quantum of site allowance and operative date; and*

3. *That the party agrees that the Panel should proceed to make a Determination in this matter without further Conference or Hearing.*

[4] The CFMEU replied on 17 December 2019 and Fitzgerald replied on 18 December 2019, both advising their affirmation with the above three points in [3].

[5] The relevantly applicable Enterprise Agreement is the *Fitzgerald Constructions Australia Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016 – 2018*.

[6] There is no dispute that the Agreement applies to the matter in dispute.

[7] The Agreement provides that disputes in relation to site allowances can be determined by the Panel.

[8] The substantive issues in dispute here are no different to the matters in dispute in Matter No. 014-2017 which was determined by the Panel by Majority. In those matters Fitzgerald was not party to the dispute notifications.

[9] No party has made any submissions that in any way has identified anything that is so substantively different to the findings made by the Panel in 014-2017 such that it alters the Panel's findings in those matters in respect to the relevant considerations for site allowance in this matter. The Panel finds that the same issues arise for Fitzgerald in so far as the application of the applicable Enterprise Agreement, the scope of the Projects,

the value of the Projects and the quantum of the site allowance and the operative dates, as found and determined by the Panel by majority in Matter No. 014-2017.

[10] Accordingly the Panel determines that the Project scope, site allowance quantum and operative dates determined by majority in Matter No. 014-2017 will apply to Fitzgerald. The Panel requires Fitzgerald to implement the terms of this Determination expeditiously, including the making of any retrospective payments.

[11] To be clear, the Panel has determined that a site allowance of \$9.20 per hour shall be applicable with effect from 1 August 2018 for any works undertaken on the Project on or after this date. The indexation of the site allowance is to be effected on 1 October each year by the CPI (All groups, Melbourne) movement for the preceding period July to June in each year. Accordingly Fitzgerald is required to make the necessary payment adjustments retrospectively to the relevant employees from the date of their commencement of works on the Melbourne Metro Tunnel Project. The site allowance quantum of \$9.20 shall be indexed with effect from 1 October 2018 and each October thereafter.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Sheena Hoey
Alternate Panel Member