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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

And

WATPAC CONSTRUCTION (VICTORIA) PTY LTD
EQUINIX ME2 DATA CENTRE PROJECT
578-552 LORIMER STREET PORT MELBOURNE

RE: ALLEGED NON PAYMENT OF ALTONA AREA ALLOWANCE

22 March 2019

007-2018

STATEMENT No. 5

[1] The CFMEU notified a dispute on 9 May 2018 concerning the alleged nonpayment of the Altona Area Allowance pursuant to the Enterprise Agreement, *Watpac Construction (Victoria) Pty Ltd and the CFMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018)*.

[2] The Panel convened Conferences of the parties and issued Statements on 7 June and 5 December 2018 and 24 January and 28 February 2019. Those Statements are to be read in conjunction with this Statement.

[3] The clause in question is set out below:

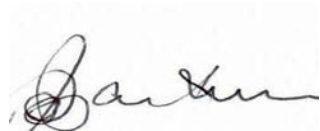
“An Employee working on construction work (as defined) within a 8 km radius from the intersection of Kororiot(sic) Creek Road and Millers Road, Altona shall, when employed on chemical or petrochemical plants or on commercial or industrial construction jobs within 1 km of the nearest part of the perimeter of such plants or within the perimeter of storage tank farms, be paid an all-purpose of \$1.10 per hour extra. This allowance will be adjusted annually (effective from 1 July) in accordance with CPI movements (All Groups, Melbourne) for the preceding 12 months to March (increase to be rounded to the nearest 5 cents)”

[4] Further to the Panel’s reference to the Castrol Plant at paragraphs [8] and [10] of Statement No. 4, there were no further submissions received by either party.

[5] In order to provide some further guidance as requested, the Panel has made its own enquiries of BP Castrol and through the Plant Manager, material has been provided, including discussions with the Chair, which confirms that the plant situated at 431 Douglas Parade, Spotswood is a petrochemical plant. It manufactures and processes petrochemical product. Accordingly the Panel finds that this plant can be regarded as a plant for the purposes of the clause whilst these processes are maintained on the site.

[6] To be clear, given the proximity of the Watpac Project which has been the subject of this dispute, the clause has no application to this particular Project and the Panel so determines.

[7] This concludes the matter and the Panel will close the file.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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578-552 LORIMER STREET PORT MELBOURNE

RE: ALLEGED NON PAYMENT OF ALTONA AREA ALLOWANCE

28 February 2019

STATEMENT No. 4

[1] The CFMEU notified a dispute on 9 May 2018 concerning the alleged nonpayment of the Altona Area Allowance pursuant to the Enterprise Agreement, *Watpac Construction (Victoria) Pty Ltd and the CFMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018)*.

[2] The Panel convened Conferences of the parties and issued Statements on 7 June and 5 December 2018 and 24 January 2019. Those Statements are to be read in conjunction with this Statement.

[3] The clause in question is set out below:

“An Employee working on construction work (as defined) within a 8 km radius from the intersection of Kororiot(sic) Creek Road and Millers Road, Altona shall, when employed on chemical or petrochemical plants or on commercial or industrial construction jobs within 1 km of the nearest part of the perimeter of such plants or within the perimeter of storage tank farms, be paid an all-purpose of \$1.10 per hour extra. This allowance will be adjusted annually (effective from 1 July) in accordance with CPI movements (All Groups, Melbourne) for the preceding 12 months to March (increase to be rounded to the nearest 5 cents)”

[4] Further to its Statement No. 3, the Panel inspected the Yarraville Terminal on 25 February 2019. The Panel is satisfied that whilst there was relevant activity at the site up until approximately 2011, including an adjacent laboratory, that could have been regarded as a relevant plant for the purposes of the clause in question, there is no doubt that the Terminal is now purely a storage facility.

[5] At the Yarraville Terminal facility, various products are received, stored and dispatched, either by truck, pipeline or ship. Today, there is no blending of product such that any chemical process is undertaken or performed. Certain additives, to identify and/or distinguish product, are introduced to product on site, but none of this activity amounts to a chemical process.

[6] The Panel is satisfied that the Yarraville Terminal is a storage tank farm, and not a chemical or petrochemical plant or part of such a plant, for the purposes of the clause.

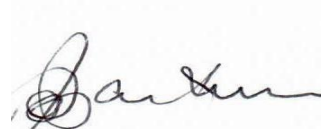
[7] Similarly, based on the information available to the Panel and the research it has undertaken, the Newport Terminal, now operated by Viva, now performs essentially the same functions as does the Yarraville Terminal, but on a smaller

scale. Again , there is no present chemical activity or process such that it could be regarded as a plant for the purposes of the clause. It is a storage tank farm.

[8] The Panel has received some limited information that suggests that the Castrol Plant that operates in Spotswood may undertake chemical processes such that it may have relevance to the clause. The Panel will make further enquiries but in the interim it invites the parties to make any submissions on this point, should they wish, no later than 15 March 2019.

[9] The Panel also notes the submissions of the MBAV received on 25 February 2019. The Panel accepts the submissions in relation to the distances set out in the submission regarding the proximity of the Watpac Project for which this matter first arose. It is not necessary for the CFMEU to respond to the MBAV submission. Having regard to the other findings by the Panel it is clear that the clause therefore has no application to this particular Project and the Panel so determines.

[10] The Panel will issue a final guidance note after 16 March 2019 in relation to the Castrol plant, which to be clear, has no relevance to the Watpac Project the subject of the dispute.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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578-552 LORIMER STREET PORT MELBOURNE

RE: ALLEGED NON PAYMENT OF ALTONA AREA ALLOWANCE

24 January 2019

007-2018

STATEMENT No. 3

[1] The CFMEU notified a dispute on 9 May 2018 concerning the alleged nonpayment of the Altona Area Allowance pursuant to the Enterprise Agreement, *Watpac Construction (Victoria) Pty Ltd and the CFMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018*.

[2] The Panel convened Conferences of the parties and issued Statements on 7 June and 5 December 2018. Those Statements are to be read in conjunction with this Statement.

[3] A further Conference of the parties was conducted by the Panel on 23 January 2019 to deal with the matters raised at the previous Conference. The MBAV represented Watpac.

[4] The Panel considers the provisions of the applicable sub-clause are clear:

“An Employee working on construction work (as defined) within a 8 km radius from the intersection of Kororiot(sic) Creek Road and Millers Road, Altona shall, when employed on chemical or petrochemical plants or on commercial or industrial construction jobs within 1 km of the nearest part of the perimeter of such plants or within the perimeter of storage tank farms, be paid an all-purpose of \$1.10 per hour extra. This allowance will be adjusted annually (effective from 1 July) in accordance with CPI movements (All Groups, Melbourne) for the preceding 12 months to March (increase to be rounded to the nearest 5 cents)”

[5] In this matter there has been a question as to whether or not the Yarraville Terminal operated by Exxon Mobil, the Newport Terminal operated by Viva and the Wilmar facility at 265 Whitehall Street Yarraville are chemical or petrochemical plants for the purposes of the subclause.

[6] In relation to the Wilmar site, the Panel is satisfied based upon the advice received from Wilmar that it is a chemical plant for the purposes of the subclause, whilst it conducts chemical processing activities such as blending and mixing of products with bio-ethanol to form products for the market. The Panel notes that the distilling of bio-ethanol is no longer carried out on the site, but that the present activities as advised by Wilmar are to be considered a chemical plant for present purposes. To be clear, should the activity cease the site would no longer apply for the purposes of the subclause.

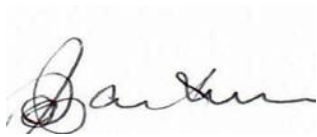
[7] The Panel is further satisfied, based on the agreed position of the parties, that Watpac's project does not fall within 1km of the nearest part of the perimeter of the Wilmar site.

[8] In relation to Yarraville Terminal, based on some of the information available to the Panel it appears arguable that the activities being undertaken are of such an integral part of the petrochemical undertaking that without it the Altona refinery would not otherwise function. Should that in fact be the case, the question before the Panel is whether this is a sufficient basis for finding that the Terminal should be regarded as a petrochemical plant for the purposes of the subclause. There however is some doubt as to whether or not this may presently be the case. Similarly, to some extent, the same issues may arise with respect to the Newport Terminal, although the Panel is less informed as to the activities on that site.

[9] Accordingly the Panel will undertake further investigation including inspections in order that it can determine whether or not either or both of the Terminals satisfy the necessary requirement that the activity undertaken forms part of a chemical or petrochemical plant.

[10] The Panel wishes to make it clear that with respect to Tank Farms which fall within the 8km radius, which are stand alone and for storage purposes only with no linkages to refining or other chemical activity, the Panel considers these cannot be regarded as chemical or petrochemical plants for the purposes of the subclause. An example of such a Tank Farm is the Pacific Terminals site. The only relevance of such Tank Farms is when the relevant construction activity is undertaken within the perimeter of such Tank Farms.

[11] The Panel will advise the parties further upon the conclusion of its investigation and provide an opportunity, if necessary, for the parties to make final submissions, following which a Determination will be issued. In the meantime the parties are requested to make any further relevant written submissions should they wish, including as to the precise distance of the Project being conducted by Watpac from the Yarraville Terminal, noting that the distance will only become relevant if the Panel was to find that it was part of a petrochemical plant.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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578-552 LORIMER STREET PORT MELBOURNE

RE: ALLEGED NON PAYMENT OF ALTONA AREA ALLOWANCE

5 December 2018

007-2018

STATEMENT No. 2

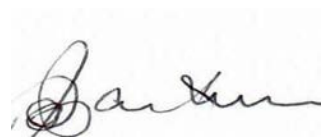
[1] The CFMEU notified a dispute on 9 May 2018 concerning the alleged nonpayment of the Altona Area Allowance pursuant to the Enterprise Agreement, *Watpac Construction (Victoria) Pty Ltd and the CFMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018*.

[2] The Panel convened a Conference of the parties on 7 June 2018 and issued a Statement. That Statement is to be read in conjunction with this Statement.

[3] Subsequently the CFMEU sought a further Conference which the Panel conducted on 5 December 2018. The MBAV represented Watpac.

[4] The CFMEU raised a number of new considerations in relation to the application of the relevant clause and indicated it would be helpful for the Panel to provide some guidance accordingly, given the range of projects in the area that could be impacted.

[5] The parties agreed that the matters raised by the CFMEU would be further reviewed and that a further Conference before the Panel would be held on **Tuesday 22 January 2018 at 10.00am.** at the Panel's premises. The CFMEU will circulate further information in relation to the matters it has raised.



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Chairman



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578-552 LORIMER STREET PORT MELBOURNE

RE: ALLEGED NON PAYMENT OF ALTONA AREA ALLOWANCE

7 June 2018

007-2018

STATEMENT

[1] The CFMEU notified a dispute on 9 May 2018 concerning the alleged nonpayment of the Altona Area Allowance pursuant to the Enterprise Agreement, *Watpac Construction (Victoria) Pty Ltd and the CMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018)*.

[2] The Panel conducted a Conference of the parties on 7 June 2018. The Employer was represented by the MBAV.

[3] The Panel expressed its concern that the Employer had not been fully appraised of the reasons for the union's allegation as required under the applicable dispute resolution

procedure, and noted that greater endeavour to resolve the dispute in advance of the Panel Conference would likely to have settled the matter.

[4] The CFMEU submitted it was seeking further clarity as to the application of the relevant clause in the Enterprise Agreement given the prospect of further projects in the area which could be instructive to other parties.

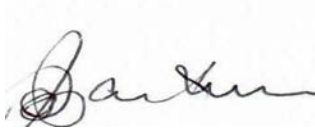
[5] The Panel noted that the provisions of the applicable sub-clause 25.15 of the Enterprise Agreement are clear:

“An Employee working on construction work (as defined) within a 8 km radius from the intersection of Kororiot Creek Road and Millers Road, Altona shall, when employed on chemical or petrochemical plants or on commercial or industrial construction jobs within 1 km of the nearest part of the perimeter of such plants or within the perimeter of storage tank farms, be paid an all-purpose of \$1.10 per hour extra. This allowance will be adjusted annually (effective from 1 July) in accordance with CPI movements (All Groups, Melbourne) for the preceding 12 months to March (increase to be rounded to the nearest 5 cents)”

[6] The CFMEU submitted that there were at least three (3) chemical or petrochemical plants within 1 km of the relevant construction job and provided details to identify these plants and the applicable geography.

[7] Should there be at least one chemical or petrochemical plant within 1 km of the relevant construction job, it appears to the Panel that there can be no question that the Altona Area Allowance is applicable. However, given the circumstances, the Employer is provided with the opportunity to reflect upon the submissions presented to the Panel and to respond to the CFMEU and to advise the outcome to the Panel, no later than 5.00pm on 8 June 2018.

[8] The Panel anticipates the matter will be settled in which case the file will be closed. Either party is at liberty to seek further assistance from the Panel should this be necessary.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member