



Chairman: Peter Parkinson  
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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION**

**and**

**DELCON CIVIL PTY LTD**  
**CITYLINK TULLA WIDENING PROJECT**

**RE: INCORRECT APPLICATION OF CLAUSE 21**  
**APPENDIX C – SITE ALLOWANCE**

**14 February 2017**

**002-2017**

**STATEMENT**

[1] The CFMEU notified a dispute concerning the Site Allowance paid by Delcon Civil Pty Ltd (Delcon) in relation to works on the CityLink Tulla Widening Project (the Project).

[2] The Panel conducted a Conference with the parties on 14 February 2017.

[3] The CFMEU submitted that in accordance with the applicable Enterprise Agreement, *Delcon Civil Pty Ltd and the CFMEU Civil Construction Industry Enterprise agreement 2011-2015*, the Project Value of the works warranted a Site Allowance of at least \$4.80.

[4] Delcon has a contract with CPB Contractors Pty Ltd on the Bulla Road to Power Street section of the Project and a separate contract with Lend Lease Corporation Ltd for the Melbourne Airport to Power Street section of the Project. The CFMEU submitted that these works should be considered part of one overall project, for the purposes of determining the site allowance.

[5] A question arises as to whether or not both sections, one managed by Vic Roads another by Transurban, can be regarded as one Project for the purposes of determining a site allowance pursuant to the Enterprise Agreement.

[6] The CFMEU contended that based on the material available to it, and based upon the established principles applicable to determining Project Value, it submitted that the total value of the Project was at least \$874m, although according to Government sources it alleged it could be as high as \$1.5b.

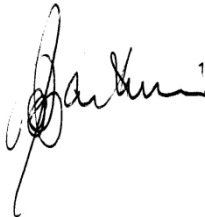
[7] It is noted that for the Bulla Road to Power Street section, a Project Agreement is in place applying only to some employers, which provides for a Site Allowance of \$4.50 to be indexed on 1 March 2017. Other employers are subject to the similar site allowance provisions of the Enterprise Agreement applicable to Delcon.

[8] It is understood that there are other employers with contracts on the Project whom may become the subject of similar claims by the CFMEU.

[9] Following discussions, the Panel recommended that there be further dialogue between the parties, including, if possible, with representatives of the Principal contractors, in an endeavour to reach agreement as to the applicable Site Allowance.

[10] Absent an agreement on the matter, the CFMEU is at liberty to seek a Determination by the Panel as to the Project Value and consequent Site Allowance. The parties were referred to the most recent Determination of the Panel which sets out the established principles, in *CFMEU and Freyssinet Pty Ltd Port Capacity Project 003-2016*. Should this matter proceed to Hearing for a Determination, the Panel indicated it would seek evidence from the parties, Principal contractors, Government and others to properly inform itself.

[11] The parties are to advise the Panel before close of business 24 February 2017 as to progress or otherwise of settlement.



***Peter Parkinson***  
***Chairman***



***Daniel Hodges***  
***Panel Member***



***Tony Cordier***  
***Panel Member***



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**RE: ALLEGED INCORRECT APPLICATION OF CLAUSE 21**  
**APPENDIX C – SITE ALLOWANCE**

**20 March 2017**

**002-2017**

**Statement No. 2**

[1] The Panel issued a Statement on 14 February 2017 in relation to a dispute notified by the CFMEU concerning the Site Allowance paid by Delcon Civil Pty Ltd (Delcon) in relation to works on the CityLink Tulla Widening Project (the Project). This Statement should be read together with the previous Statement.

[2] The Panel had recommended that there be further dialogue between the parties, including, if possible, with representatives of the Principal contractors on the Project, in an endeavour to reach agreement as to the applicable Site Allowance.

[3] The Panel conducted a further Conference with the parties on 20 March 2017, including representatives of the Principal contractors, CPB Contractors Pty Ltd and Lend Lease Corporation Ltd., represented by the MBAV.

[4] The parties confirmed that agreement had not been reached as a result of the further discussions, including with the Principal contractors, and it was agreed the matter should be determined by the Panel.

[5] The principal disagreement between the parties is whether the Project is one singular Project for the purposes of determining the Site Allowance pursuant to the applicable Enterprise Agreement or whether it is two distinct separate Projects for this purpose.

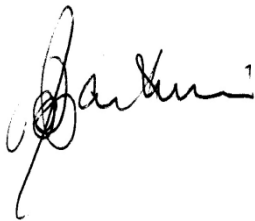
[6] The matters in dispute include:

- 1) What constitutes the Project for the purposes of determining the Site Allowance pursuant to the applicable Enterprise Agreement, and
- 2) What is the value of the Project for this purpose, and
- 3) What is the quantum of the Site Allowance arising from the foregoing.

[7] The Panel brought to the attention of the parties its majority decision in Determination number 003-2016, the "*Port Capacity Project*" matter, in which the principles hitherto applied by the Panel to determine such matters is outlined.

[8] The Panel directs that each party to the dispute and any interested party, including the Principal Contractors should they wish, make written submissions including the evidence upon which they seek to rely, to the Panel, copy to each party, **no later than 5.00pm on Thursday 30 March 2017**. The Panel will conduct a Hearing to receive any responses to those submissions on Wednesday 5 April 2017 at the Panel premises.

[9] As noted, the Panel will also seek to inform itself of the material already available publicly on the Project and through other means as it thinks fit.



***Peter Parkinson***  
***Chairman***



***Tony Cordier***  
***Panel Member***



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**RE: ALLEGED INCORRECT APPLICATION OF CLAUSE 21**  
**APPENDIX C – SITE ALLOWANCE**

**5 April 2017**

**002-2017**

**Statement No. 3**

[1] The Panel issued Statements on 14 February 2017 and 20 March 2017 in relation to a dispute notified by the CFMEU concerning the Site Allowance paid by Delcon Civil Pty Ltd (Delcon) for works on the CityLink Tulla Widening Project (the Project). This Statement should be read together with the previous Statements.

[2] The principal disagreement between the parties is whether the Project is one singular Project for the purposes of determining the Site Allowance pursuant to the applicable Enterprise Agreement or whether it is two distinct separate Projects for this purpose.

[3] In its Statement of 20 March 2017 the Panel directed “*that each party to the dispute and any interested party, including the Principal Contractors should they wish, make written submissions including the evidence upon which they seek to rely, to the Panel, copy to each party, no later than 5.00pm on Thursday 30 March 2017. The Panel will conduct a Hearing to receive any responses to those submissions on Wednesday 5 April 2017 at the Panel premises.*”

[4] The Panel received written submissions from both the CFMEU and Delcon on 30 March 2017.

[5] A Hearing by the Panel took place on 5 April 2017 attended by representatives of the CFMEU, MNAV representing the Delcon, and representatives of Lend Lease Corporation Pty Ltd and CPB Contractors Pty Ltd.

[6] The Panel took the parties to various aspects of their submissions and sought further written submissions on some specific matters, for which the parties were directed to file responses with the Panel by 5.00pm on 13 April 2017, copy to each party. The Panel advised that it was also seeking advice from the State Government as to certain relevant matters. Upon receipt of any relevant information the Panel will provide same to the parties.

[7] Upon receipt of the submissions and information sought from the State Government, the Panel will proceed to determine the matter unless a further Hearing is considered necessary.



***Peter Parkinson***  
***Chairman***



***Daniel Hodges***  
***Panel Member***



***Tony Cordier***  
***Panel Member***



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**RE: ALLEGED INCORRECT APPLICATION OF CLAUSE 21**  
**APPENDIX C – SITE ALLOWANCE**

**24 May 2017**

**002-2017**

**Statement No. 4**

[1] Further to the Statements issued by the Panel in this matter, the parties are advised that the Panel has commenced its deliberation on the various submissions received by the parties. It has also sought further dialogue with VicRoads as soon as possible in an endeavour to clarify a number of aspects of the Project arising from the material previously distributed to the parties as received from VicRoads.

[2] Upon receipt of the foregoing clarifications, the Panel will proceed to determine the matter, or, if it is considered necessary, convene a further hearing.

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**Peter Parkinson**  
**Chairman**

Handwritten signature of Daniel Hodges in black ink.

**Daniel Hodges**  
**Panel Member**

Handwritten signature of Tony Cordier in black ink.

**Tony Cordier**  
**Panel Member**