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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

and

VAUGHAN CONSTRUCTIONS PTY LTD

PLUMBING TRADES EMPLOYEES UNION/ CEPU

and

HAMILTON FIRE PTY LTD

AAA PREMIER ROOFING PTY LTD

BOYLE & GRIGG AIRECONDITIONING PTY LTD

CORMACK PLUMBING SERVICE PTY LTD

MELBOURNE SOUTHERN REGION DISTRIBUTION CENTRE PROJECT,

255 GLASSCOCKS RD DANDENONG SOUTH

**RE: ALLEGED FAILURE TO PAY APPROPRIATE SITE ALLOWANCE IN ACCORDANCE
WITH APPENDIX C OF THE ENTERPRISE AGREEMENTS**

24 April 2017

006-2017

Statement

[1] This Statement is to be read in conjunction with the Statement issued by the Panel on 29 March 2017.

[2] The CFMEU had notified a dispute to the VBIDP on 3 March 2017 concerning an alleged failure by Vaughan Constructions Pty Ltd (Vaughan) to pay the appropriate site allowance for the above Project in accordance with Appendix C of the applicable Enterprise Agreement.

[3] A further Notification of Dispute regarding the same subject matter in similar terms was received on 4 April 2014 by the Panel from the PTEU in relation to the above named 'plumbing' employers. The Chairperson issued notification to all parties formally joining both matters. Each of these Employers are bound by relevantly applicable Enterprise Agreements as set out in the PTEU Notification.

[4] To re-iterate, the dispute concerns the Project Value of a purpose built grocery distribution facility being constructed for Woolworths, and in particular, what constitutes the Project for the purposes of Appendix C of the relevant Enterprise Agreements. The parties generally agree that the overall Project and its various components amount to a total sum in the order of \$293m - 300m.

This total comprises:

- (a) Approx. \$93m, which is broadly the contract works to which Vaughan is responsible for executing, including design and consulting, and
- (b) A further two (2) parcels of work which amount to \$11m and \$33m respectively, that form part of the Vanderlande contract, and
- (c) Works of approx. \$156m - 163m, which represent the balance of the Vanderlande contract.

[5] Vaughan submits that (a) and (b) together should form the Project for the purposes of Appendix C of the Enterprise Agreement, which it is presently accepting in order to determine the relevant site allowance. The CFMEU and PTEU submit it should be the total of (a), (b) **and** (c), or at least a significant portion of (c), such that the total Project value for the purposes of Appendix C is in the range \$230.7m - \$307.5m., thereby justifying a higher site allowance than is presently being paid.

[6] Pursuant to the earlier Directions of the Panel:

- Written submissions were received from both Vaughan and the CFMEU on 13 April 2017 and a further CFMEU submission was received on 21 April 2017.
- No written submissions were received from any other party.
- Advice was provided in relation to the Vanderlande contract, represented by an email received by Vaughan from Woolworths on 11 April 2017 (Appendix 1 to the Vaughan submission).
- Whilst there had been limited further dialogue, the parties confirmed they had not settled the matter.
- A representative from Woolworths, Mr. T Lee, had confirmed with the Chairperson that the contents of Appendix 1 referred to above, in so far as the balance of the Vanderlande contract was concerned, correctly equated to the balance of the overall Project value that Vaughan and the CFMEU had earlier agreed was around \$156m - 163m.

[7] A Hearing was held on 21 April 2017. All parties were represented save for the four (4) 'plumbing' employers named above, who did not attend, nor did they provide any submissions.

[8] The Panel heard further from Vaughan and the CFMEU in relation to their written submissions and the PTEU made oral submissions, confirming also that it relied upon the submissions of the CFMEU.

[9] During the Hearing, Vaughan also sought to rely upon a document it had tabled at an earlier Conference with the Panel on 16 March 2017. The document, which represents notes recorded by Vaughan at a meeting held on 2 December 2015, has been identified as Exhibit V-1. A copy is provided to all parties with this Statement.

[9] Various matters were canvassed during the Hearing arising from which the Panel concluded it would issue relevant further directions to assist its determination in the matter.

[10] The Panel confirms the following further directions:

Directions:

1. That the parties seek to obtain a breakdown of the value of each of the items identified in Appendix 1 to the Vaughan submission of 13 April 2017, referred to as the “*balance of the Vanderlande project costs*” agreed by the parties and confirmed by Woolworths to be around \$156-163m, **and** to make written submissions as to which of the items, if any, should be included for the purposes of determining the Project Value pursuant to Appendix C. In absence of a breakdown of value being provided or identifiable, the parties are requested to submit what they consider would be a fair proportion, if not all, of the total of \$156m-163m that should be taken into account by the Panel having regard to previous decisions of the Panel. The Panel will also use its best endeavours to assist in seeking a breakdown from Woolworths and to advise the parties accordingly.
2. That the PTEU file written submissions as to its position.
3. That the CFMEU provide written submissions and relevant evidence in relation to the matters raised by Vaughan pursuant to Exhibit V-1.
4. That the parties make any further written submissions as to what consideration, if any, should be given by the Panel as to the effluxion of time and to any prior understandings as to site allowance.
5. That the parties make written submissions as to the operative date, in the event that the Panel was to find that a higher site allowance as presently paid should be paid, arising from a determination in this matter.
6. The Panel directs that in any event, there be further dialogue between the parties in an endeavour to reach agreement on the matters in dispute as soon as convenient.
7. Absent a resolution, the parties are to submit their written submissions to the Panel, copy to each other, no later than 5.00pm on Friday 5 May 2017.
8. Upon receipt of the submissions the Panel will determine if a further Hearing is necessary or proceed to determine the matter. The parties will be advised accordingly.

Peter Parkinson
Chairman

Tony Cordier
Panel Member

Lawrie Cross
Alternate Panel Member



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**MELBOURNE SOUTHERN REGION DISTRIBUTION CENTRE PROJECT,
255 GLASSCOCKS RD DANDENONG SOUTH**

**RE: ALLEGED FAILURE TO PAY APPROPRIATE SITE ALLOWANCE IN
ACCORDANCE WITH APPENDIX C OF THE ENTERPRISE AGREEMENT**

29 March 2017

006-2017

Statement

[1] The CFMEU notified a dispute to the VBIDP on 3 March 2017 concerning an alleged failure by Vaughan Constructions Pty Ltd (the Employer) to pay the appropriate site allowance for the Project in accordance with Appendix C of the Enterprise Agreement, *Vaughan Constructions Pty Ltd and the CFMEU Building and Construction Industry Enterprise Agreement 2011-2015*.

[2] The Panel conducted a Conference with the parties on 16 March 2017. There was no dispute that the matter was properly before the Panel. The parties were unable to reach agreement on the matters in dispute.

[3] Essentially the dispute concerns the Project Value, and in particular, what constitutes the Project, for the purposes of Appendix C of the Enterprise Agreement.

[4] The Employer has a contract to Design and Construct a warehouse facility for Woolworths. Another contractor, Vanderlande, has a contract with Woolworths to execute various works associated with the facility.

[5] It was agreed that a site inspection be undertaken by the Panel, which proceeded on 29 March 2017, with all parties represented, including the MBAV, and observers from the AMWU and PTEU

and site representatives from the CFMEU and ETU. The PTEU indicated it intended to file a dispute in similar terms to the CFMEU.

[6] It is noted that construction works for this Project commenced in November 2015. It is submitted by the Employer that early discussions with the CFMEU as to the Project and site allowance took place.

[7] It is noted that the parties to this dispute generally agree that the overall Project and its various components amount to a total overall in the order of \$293-\$300m leaving a balance of around \$156-163m. This comprises:

- (a) Approx. \$93m, which is broadly the contract works to which the Employer is responsible for executing, including design and consulting, and
- (b) A further two (2) parcels of work which amount to \$11m and \$33m respectively, that are being executed by Vanderlande,

which together, the Employer agrees, forms the Project for the purposes of Appendix C of the Enterprise Agreement, and it has applied this project value, a total of \$137m, for the purposes of determining the site allowance applicable on the site, and has done since commencement of its works.

[8] The CFMEU submits that the balance of the overall Project cost, i.e. in the order of \$156-\$163m ('balance of Project') or part thereof, should be included for determining the Project Value for the Purposes of Appendix C. The Employer disagrees and submits that none of this element ought be comprehended in the project value for the purposes of Appendix C. This is the essence of the dispute.

[9] The site inspection was able to establish that this latter element of the Project cost is likely to be attributable to conveyer mechanisms, robotic processes, wrapping mechanisms and general fit out, amongst other things, that are likely to form part of the contract held by Vanderlande. None of those works are comprehended by the contract held by the Employer. Vanderlande are not a party to this dispute and were not represented at the inspection.

[10] Following the inspection, the Panel issued the following directions:

Directions:

1. That both the CFMEU and the Employer seek to obtain from Vanderlande or other sources, a breakdown of the works included in the 'balance of the Project' and an approx value for each component thereof, such that this might provide a basis to assist the parties and the Panel in determining whether or not any of the works might be considered relevant in determining the Project value, or not. The parties are to share any such information as soon as convenient in the event that it might assist in a resolution of the matter. Should either party find difficulty in obtaining the relevant data the Chair man is to be advised.
2. The Panel directs, in any event, that there be further dialogue between the parties in an endeavour to reach agreement on the matters in dispute as soon as convenient.
3. Absent a resolution, the parties are to submit written submissions on the matters in dispute to the Panel, copy to each other, no later than 5.00pm on Wednesday 12 April 2017.

4. A Hearing to receive final submissions by the parties will be conducted on Friday 21 April 2017 at 10.00am at the Panel's premises, unless otherwise advised.

[11] The matters to be determined by the Panel 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 consideration is to be given by the Panel as to the effluxion of time and any prior understandings as to site allowance, if any, and
- 4) What is the quantum of the Site Allowance arising from the foregoing and, should it be any different to the current allowance, what is the operative date.

[12] The parties written submissions and evidence in Direction 3. should deal with each of the above matters. The parties should also have regard to the principles hitherto followed by the Panel and other authorities in determining project value. In this latter regard the parties are encouraged to appraise themselves of the Panel's majority decision in Matter number 003-2016, the "*Port Capacity Project*", in which the principles are outlined, together with Matter number 046-2008, the "*CSR Project, Yarraville*".

[13] Should the PTEU file a formal dispute in the same terms as has been intimated it will, subject to the convenience of all parties and the timeliness thereof, the Panel would seek to join the matters for convenience as far as this is practicable.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Lawrie Cross
Alternate Panel Member