

CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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**2 CONSTRUCT PTY LTD
MELTON HARNESS CENTRE PROJECT**

CFMEU

RE: APPROPRIATE SITE ALLOWANCE

21 JANUARY 2011

DECISION

002-2011

[1] On 3 December 2010, the Construction, Forestry, Mining and Energy Union (“the CFMEU”) lodged a notification concerning a dispute between it and 2 Construct Pty Ltd (“2 Construct”) over the appropriate site allowance payable pursuant to the provisions of Appendix C to the *2 Construct Pty Ltd and the CFMEU Building and Construction Industry Enterprise Agreement 2008-2011* (“the Agreement”) [Agreement ID: AC316708] in respect to certain work being performed at the Tabcorp Park at Melton (sometimes known as the Melton Harness Centre).

[2] The CFMEU and 2 Construct are parties to the Agreement. It is not disputed that the Agreement applies to the work in question. That work consists of the construction of a multi-purpose building adjacent to the main building so as to provide additional dining area and hospitality training facilities and thus cater for additional race day patronage.

[3] The matter originally came before me on 14 December 2010 and, after some brief submissions by the parties and discussion between the parties and myself, was adjourned to 19 January 2011 to enable a site visit to be conducted on 17 January 2011 and to enable the parties, amongst other things, to obtain and present further information. The site visit was conducted on 17 January 2011 and the parties completed their submissions on 19 January 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] In support of its claim that a site allowance is payable, the CFMEU effectively relies upon a press release dated 31 March 2010 issued by the then Deputy Premier and Minister for Racing and a sign that appears at the site of the building.

[6] The press release, amongst other things, contains the following statements:

“Victoria’s home of harness racing Tabcorp Park will receive a \$2.6 million boost to enhance the facility’s reputation for excellence and community involvement, Deputy Premier and Minister for Racing Rob Hulls said today.”

and

“the ... Government has provided more than \$2.3 million to the new building and Harness Racing Victoria has contributed \$260,000.”

[7] The sign at the site states, amongst other things, that “Melton’s Tabcorp Park will soon have a new \$2.6 million facility”.

[8] The CFMEU also produced documentation that demonstrated that:

- the Department of Justice Grant Funding Agreement for the construction of the building specified the amount of the grant as being \$2,340,000 (exclusive of GST);
- the contract sum for the construction of the building is \$2,098,469.00 (excluding GST), and

- the building permit issued by Melton Shire Council specified the cost of building work as being \$2,000,000.00.

[9] 2 Construct did not seek to disagree with any of the above information. It did, however, state that there is no work to be performed in relation to the project other than the work it was performing pursuant to its contract and that the contract value includes not only the construction of the building but all associated work. It went on to point out that, with only four weeks of the project left, it was anticipated that the total cost of the construction would be likely to be some \$700,000.00 less than the contract price.

[10] It is well established that, for the purpose of determining an appropriate site allowance, “*contract value*” is not in every case the sole determinant of “*project value*”. It is but one of the factors that may be taken into account in assessing “*project value*”.

[11] However, in this matter, there is no information before me that would satisfy me that the value of the particular project is any more than the specified value of the contract. Indeed, all the information before me compels me to that conclusion. When GST is added, that contract value amounts to \$2,308,315.90, less than the threshold amount at which a site allowance would become payable.

[12] A claimant for a site allowance needs to make out its claim. In this case, the CFMEU has not done so. When contrasted with well documented facts, the statements made in Ministerial press releases or on construction site hoardings are unreliable and may be said to amount to no more than mere puffery. They do not establish the *actual* project value for the purposes of determining the appropriate site allowance payable on the project.

[13] For the above reasons, I determine that no site allowance is payable in respect to the work in question.



Simon Williams
Chairman

Date: 21 January 2011