

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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ASIAN PACIFIC BUILDING CORPORATION

PANCH, BELL STREET, PRESTON

- AND -

CFMEU

RE: CLAIM FOR MULTI-STOREY ALLOWANCE & SITE ALLOWANCE

006-2007

WEDNESDAY, 7 FEBRUARY 2007

DECISION

This matter relates to a claim by the CFMEU (the Union) for a Multi-Storey Allowance payment and a Site Allowance based on the project value being \$200 million for the work being undertaken by Asian Pacific Building Corporation (the Company) at Bell Street, Preston.

The matter was first heard on 27 November, 2006 where a decision was issued on 11 December 2006 as to the Multi-storey allowance consistent with the applicable Award. This aspect of the claim is concluded.

Following the decision by Deputy President Ives issued on 28 December (during the industry shut down) dealing with a matter between the Union and Bovis Lend Lease, I reconvened the parties to a further hearing as to the site Allowance claim. The Panel members visited the site on 2 February 2007 to further inform itself and did not seek any additional submissions.

I have considered all the material before me including submissions, exhibits and a previous decision of the Board Chairman dated October 2001 (which was tendered) and have recorded the views of the parties.

The background to this matter is that the Company obtained the property which was previously the PANCH site in Bell Street, Preston. The Company is a third generation Company who planned in 1999 to transform this large site into a multi-purpose centre by the year 2003. This would include:

- a state of the art day surgery with full radiology services
- a community medical centre
- a retirement village
- a 520 unit student accommodation block incorporating a swimming pool, a library, computer centres, a theatre, dining room and cafes
- two seven storey, glass encased commercial office blocks
- a four star Hotel complex with reception, convention and banquet facilities
- a child care centre, and
- multiple restaurant complex

In September 2001, the Company announced that it was commencing the first stage of the conversion of the former PANCH site into a multi-use Bell Centre.

The first stage received its occupancy permit on 9 September 2002 and in accordance with the earlier Board decision a site allowance was paid based on the then projected project value of \$200 million. On 17 November 2006, some four years later, the town planning permit was issued for what was described by the employer as the second and final stage of the project.

Effectively, what has been developed on the site is a student accommodation block as the first stage and a four star Hotel complex incorporating a restaurant as the second and final stage. This represents three of the projected items detailed in 1999.

The Union has claimed that the value foreshadowed in 1999 of \$200 million should be the project value used in determining a site allowance for this project. The Company argued that the current project is valued at just over \$44 million and that this should be used as the value for determining the site allowance.

I reject the Union's claim because the fact of the situation as it now stands in 2007 is that the total value of work performed by the Company when the second stage is completed will be around \$75 million. There is no indication of any further work nor is there additional land available to commence a further stage. Naturally, if the existing Medical Centre was to be refurbished or demolished, or if a building was placed above the car parks, then obviously more construction could take place on the site. However neither the original plan in 1999 nor any evidence before me suggests such development.

Whatever may have been the objective in 1999, and given that the Company paid a site allowance for stage one based on the \$200 million projection, this cannot be used to establish a precedent for further work, particularly when at this point in time, the value of work already performed and to be performed is no greater than approximately \$75 million.

In turning to the Company's argument that the site allowance should be based on \$44 million for stage two, it relies on the fact that this is a separate project with its own town permit and commencing some four years after stage one.

The parties referred me to various aspects of Deputy President Ives decision both in the CDK and Bovis Lend Lease matters. In CDK, Deputy President Ives provided a definition of project which was defined "as an enterprise carefully planned to achieve a particular result". In the Bovis matter paragraph 30 states "pursuant to that definition a project is an enterprise carefully planned to achieve a particular result, that has clearly established entity or entities that exercise control over its development and that has a scope sufficiently definable at any given point in time to enable its proper definition and costing for the purpose of determining the appropriate site allowance".

Further in paragraph 32 he states "Victor Harbour, as opposed to being an enterprise carefully planned to achieve a particular result, appears to me to be an enterprise plan to achieve a general result. That general result being a series of buildings of varying purposes constructed at some time within a relatively lengthy time frame in accordance with a market driven and largely dynamic master plan. Particularity is unascertainable based upon the changing nature of the master plan and the lack of other than notional, value that can be ascribed to the enterprise".

Whilst I accept that there is a four year gap in respect to the work on this site, I turn to the very important points made in CDK commencing at paragraph 49. There is evidence before me of a direct link between the two projects as detailed in the material in dot point form earlier outlined in this decision. Specifically student accommodation, the Hotel, the Restaurant and some other surrounding features. In considering CDK at paragraph 53 as to its application in this matter there is a direct link between the owner, the developer and the builder given their commonality of interest. This alliance exercises the overarching control of the development which was a key requirement missing in the Bovis Lend Lease matter as detailed at paragraph 30 of that decision.

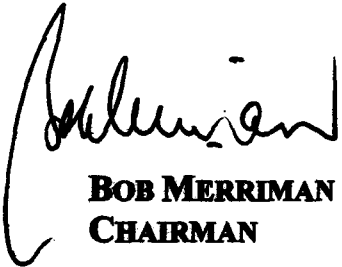
There is an enterprise bargaining agreement between the Union and the Company. In the CDK matter the developer and Delfin had no agreement with the Union which was highlighted in paragraph 56 of that decision.

It is very clear in this matter that the project at Bell Street being the PANCH project is "one stand alone project" being constructed by the Company and there exists an entity with the overarching control of the Project.

On the evidence before me the total project value of the work performed by the Company on this project is \$75 million.

Finally, I turn to paragraph 51 of the CDK decision where Deputy President Ives accepts the proposition that it is not unusual in the building and construction industry for the scope to vary during the life of the project. He goes on to state that "it is still necessary for the scope to be

sufficiently defined at any given point during the project to enable proper definition and costing of the project". In the case now before me, the original estimate was \$200 million. However, the costing at this point in time is no longer \$200 million but \$75 million because the project has been further defined. The Company's own evidence confirms that this is the second and final stage of the project and I therefore determine that the site allowance should be based upon \$75 million which is \$3.15 per hour at this time.



BOB MERRIMAN
CHAIRMAN

DATED THIS

7

DAY OF

February

2007