

CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL
CHAIRMAN: BOB MERRIMAN

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BURBANK GROUP
MTK PLASTERING
PETMA BRICKLAYING

DENTON MILLS PROJECT
NICHOLSON STREET - ABBOTSFORD

-and-

CFMEU

**RE: ALLEGED NON PAYMENT OF SITE ALLOWANCE TO
EMPLOYEES ON BURBANK PROJECT**

WEDNESDAY, 5 APRIL 2017

018-2009

DECISION

This dispute first arose in late 2008 when the Union sought the assistance of the Chairman in the determination of the total project value and commercial nature of the above project.

The Chairman directed a Panel member to visit the site and report back to him prior to the matter being heard on 11 November, 2008

On the morning of the site visit the Management representative advised the Chairman that as the Company was a domestic builder and had no EBA with the Union, therefore the Panel had no jurisdiction in respect to the matter. Management did indicate that they would not object to a site visit despite this fact.

A Panel member did visit the site, met with senior management and their representative along with a representative of the Union.

The Panel member advised the parties that he intended to report to the Chairman his observation of the site and the construction methods underway and works already carried out.

Following lengthy discussion as to the claim and ongoing works Management reaffirmed its position that they would not be attending the hearing set down for 11 November 2008.

The Union stated that it was seeking to have further discussions with management in an attempt to resolve the matter in a positive way. Therefore, the matter that was set down for 11 November 2008 did not proceed.

Following the industry shut down a request for a conference was received from the Union and a notification for a conference with project management and two site sub-contractors was set down for 11 February, 2009.

Project management did not attend this Conference.

Arising from the Conference, the Union sought a hearing of the matter, and subsequently a hearing was set down for 19 February, 2009 and later rescheduled to 23 February 2009.

The Management representative corresponded with the Chairman on 18 February, 2009 restating the position that the Company had no EBA with the CFMEU. The hearing proceeded notwithstanding the non attendance of the principal contractor where the Union reiterated that the overall project (supported by commercial documentation) was a single commercial development known to have a value of approximately \$16 million with continuity of construction from start to finish.

Further, that a number of sub-contractors engaged on the project are continuing to perform commercial type works in the overlapping of stages 1 and 2. For example, fixed permanent craneage commercial scaffolding methods, tilt slabs, multi-level car park and reconfiguration to heritage chimney not to mention shops and business premises beneath apartments in the heritage area.

Subsequent to the hearing further information was requested from the parties including documentation relating to EBAs and the status of the project principal contractor.

I have carefully considered my obligations under Clause 11 - Appendix C - Site Allowance Procedure which requires me to determine site allowance matters which cannot be agreed to by the parties.

On that basis, I have considered all of the material including the site visit information by way of conference and hearings and documentation provided and I find as follow:

- The project constitutes a major commercial development (with an overall value in excess of \$16 million) which incorporates overlapping and integrated commercial and apartment/townhouse accommodation.
- These works are being undertaken concurrently and employees utilise the same facilities and work under similar conditions.
- Methods of construction include specialised commercial techniques which are typical of other projects which have been determined and/or agreed to be of a commercial nature.

The only conclusion available to me is to determine that the project is a commercial project and therefore properly provided for under the terms and conditions of the site allowance (Appendix C) provisions of the relevant EBAs which normally would apply to such a project.

Material provided to me indicates that this Company Burbank, the principal contractor on this project, does not have an EBA with the CFMEU.

The site allowance is effective from the date that the claim was made.

I am concerned that some contractors may have been wrongly advised by the principal contractor at the commencement of their work as to the nature of this project and therefore had not properly provided for the application of Appendix C in their tender.



BOB MERRIMAN
CHAIRMAN

DATED THIS **4TH** *DAY OF* **MARCH** *2009*