

# CHAIRPERSON

## VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

**CHAIRMAN: BOB MERRIMAN**

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In the Matter of:

KANE CONSTRUCTIONS

FRANKSTON HOSPITAL

-and-

CFMEU

CEPU

RE: CLAIM FOR SITE ALLOWANCE

THURSDAY, 29 APRIL 2021

020-2008

### DECISION

This matter relates to a claim by the Union that contracted "decant" works to the value of \$7 million being undertaken by the contractor, in fact, form part of an overall \$45 million redevelopment of Hospital facilities and therefore should attract a site allowance based on that figure.

On 25 February, the Chairman and a panel member inspected the works and heard preliminary views of the parties and were advised that the overall development client was Peninsula Health/Department of Human Services and was being project managed by JohnStaff.

The matter was then adjourned for a formal hearing on 29 February 2008.

As earlier advised the contracted works being undertaken by Kane Constructions are being serviced by two sets of amenities, two separate foremen and two separate labourers and are associated with construction of a new Pharmacy and Health Information Services Department along with the construction of a new electrical substation and decommissioning of an existing substation and the modification and establishment of new plumbing and electrical services.

At this point, the Chairman advised the parties that he had been in contact with the project manager and had been advised that approximately \$32 - \$36 million of the \$45 million redevelopment would involve construction works. Equipment and associated installations would make up the remainder of the total value.

The Union submitted that the works currently underway were clearly interlinked and included preparatory works being undertaken to enable future construction works to be undertaken. It was stated that public information clearly demonstrated that 6,000 square metres of new and refurbished areas involving additional bedding, new surgical theatres, intensive care etc. were the centre piece of the upgraded facilities which would be operating in part in late 2009 and to be completed in 2010.

The Union representative detailed a broad range of activities being undertaken to enable the hospital to continue functioning during the construction phase, which in his view supported the contention that the totality of works constituted a single project and supported the view that the current works should be attracting the appropriate higher site allowance.

Management on the other hand, submitted that Kane's works were of a stand alone nature, which had been competitively tendered for, subject to a building permit and with specific amenities, inductions and site supervision. It was submitted that other works contracts had not been finalised and that the contractor had no knowledge of the detail.

In support of their position, management stated that in AIRC CDK decision (C2006/2767) dated 21 September 2006 the Deputy President at point 51 stated:-

“Accepting that it is not unusual in building and construction projects for the scope to vary during the life of the project, 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 addition, management referred to AIRC decision, Bovis Lend Lease (C2006/2974) dated 28 December 2006, at points 32, 33 and 34 supporting their “stand alone” contention with particular emphasis on point 34 which states in part:-

“The context of the Schedule is important. It deals with particularity – namely the particular site allowance to apply to a particular project. Uncertain definition and notional value are of little utility in the context of determining a particular level of site allowance for a particular building construction project.”

In their submission, management reaffirmed that the majority of works were an unknown fact at this point and that any site allowance application should be based on actual contract arrangements which are specific and unambiguous.

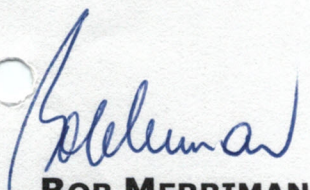
I have given consideration to all of the material and the inspection of works and have formed the view that the total of the construction works with a value of between \$32 and \$36 million do in fact meet the tests earlier referred to in the AIRC decisions which conclude that –

"... a project is an enterprise or undertaking that is 'carefully' planned and has a clearly established entity or entities that exercise control over its development ..."  
(refer to CDK decision at par. 45),

Clearly the works under consideration do constitute an integral part of an overall enterprise which has been carefully planned to achieve a particular result within a specific timeframe. The work being performed has a direct linkage to further work which has been identified and is to take place within a reasonable timeframe to be directly related to the work which I inspected.

The total project has an approved budget, it has defined completion dates and outlines in details what will be built.

In these circumstances I have decided that the work inspected should attract a site allowance of \$2.70 per hour based on a project with a construction value between \$32 - \$36 million. Such allowance should apply from the commencement of these works.

  
**BOB MERRIMAN**  
**CHAIRMAN**

**DATED THIS**

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**DAY OF**

March

**2008**