

# CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN

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FDC CONSTRUCTIONS  
450-466 PRINCES HIGHWAY  
NOBLE PARK

CFMEU

RE: CLAIM FOR SHOPPING CENTRE  
ALLOWANCE - APPENDIX C

18 May, 2009

034-2009

## DECISION

This matter relates to a claim by the Union for the application of the "Shopping Centre Projects" site allowance to the works currently underway on the above project.

Currently the project is subject to a site allowance of \$2.15 per hour which is the allowance applicable to a project with a value falling between \$6.5m - \$16m under Appendix C - Site Allowance Procedure "New Projects Victoria" - Clause 7.2 of the current EBA.

In order to assess the nature of the project, the Chairman directed the Panel representatives to attend the project on 13 May, 2009.

The inspection revealed that this \$10.6m project consists of two main buildings. The front section contains five Restricted Retail Tenancy outlets (typically catering for bulky goods) whilst at the rear three Warehouse tenancies incorporating mezzanine administrative levels. In addition the project incorporates landscaped areas, concrete driveways and extensive parking facilities.

Having viewed the project and having conferred with the parties a report was made to the Chairman following which a formal hearing was undertaken on 15 May, 2009.

At the hearing the Union submitted that the project works conformed with the definition of a shopping centre in that the retail tenancies have a value in excess of \$2.4m in addition to constituting in excess of 51% of the overall project. The relevant EBA clause reads as follows:

14. "Shopping Centre Projects

All new construction and extension/refurbishment work of shopping centres, retail strip shops and stand alone retail facilities having a project value in excess of \$2.4m will attract the then current City of Melbourne Site Allowance.

Where the project is of a mixed purpose, City of Melbourne site allowance rates will apply only where the retail component is at least \$2.4m and occupies at least 51% of the area of the project".

The union contended that the retail component of the project was well in excess of the minimum value required and that in allocating the required car parking to the retail component clearly was in excess of 51% of the total project and therefore the overall works were properly covered by the shopping centre provisions of the EBA.

On the other hand, management contended that a study of the site plans clearly demonstrated that the non retail component of the project was clearly the greater and in fact the end use of the designated restricted retail component (bulky goods) had as yet not been finalised.

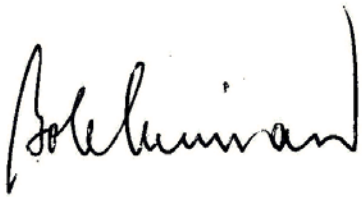
Management acknowledged that the designated retail area exceeded the minimum dollar value required to attract a site allowance, however they strongly submitted that the non retail component was significantly greater and on that basis the current claim could not be sustained.

I have carefully considered the information and submissions which have been presented and have concluded that the proper application of the clause requires that I determine the matter based on the total area of the project.

In so doing, I have taken into account all of the construction works including the provision of common asphalt, car parks, driveways and the landscaped areas.

If I accepted the division of the plan proposed by the Union, the fact remains that the floor area is greater for the Warehouse component than the retail area and if I then further add the common property, clearly the total Warehouse area remains greater than the retail.

I therefore conclude that whilst the retail component exceeds \$2.4m, the total consideration of the overall construction and ancillary works reveals that the non retail area of the project constitutes in excess of 51% of the overall project. In these circumstances the claim cannot be upheld.

A handwritten signature in black ink, appearing to read 'Bob Merriman', written in a cursive style.

*Bob Merriman*  
*Chairman*

*Dated*                    *18*                    *this day*                    *May*                    *2009*