



VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN

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BUILDCORP COMMERCIAL PTY LTD

- and -

CFMEU

**RE: ALLEGED NON PAYMENT OF CPI INCREASE
SITE ALLOWANCE PROCEDURE**

041-2007

WEDNESDAY, 16 MAY 2007

DECISION

This matter relates to a claim by the Union that the Contractor has not adjusted a site allowance payment to reflect the annual CPI increase as required by Appendix C - Site Allowances contained in the 2005-2008 Enterprise Bargaining Agreement.

The matter was initially heard on 27 March 2007 where the views of the parties were expressed and the matter was then adjourned for consideration by the Industry negotiating parties which subsequently took place on 19 April 2007.

In my view the relevant provisions of Appendix C - Site Allowance Procedure are as follows:-

"4. Subject to the foregoing, where the union on behalf of its members, requests an employer to consider a claim for payment of a Site Allowance, such Site Allowance shall be determined either by:

4.1 Geographic location if the project is contained within the City of Melbourne as defined; or

4.2 The amount contained in Sub-Clause 7.

6. It is agreed by the parties that all new projects will be covered by the Site Allowance rates contained in this Agreement.

7. **Site Allowances applicable from 1 October 2005:**

The minimum project value, below which NO Site Allowance is payable, is \$2.1m as at 1 October 2005.

On sites which do not attract this Site Allowance, employees are entitled to be paid the relevant disability payments as the disability may arise in accordance with the Award.

7.1 **City of Melbourne (as defined in Clause 14. hereof):**

(a) **New Projects**

- \$2.1m up to \$175.5m:

\$3.15 per hour worked

- over \$175.5m:

as per subclause 7.3(b)

(b) **Renovations, Restoration &/or Refurbishment work**

\$2.70 per hour worked

The Site Allowance on projects which are a combination of new and renovation work, shall be governed by the majority of work involved. For example, where the majority of work is new work, then the Site Allowance appropriate to new work shall be paid for all employees on the project.

7.2 **New Projects Victoria**

Project Value \$m	Site Allowance \$ph
2.2m - 6.1m	\$1.85
6.1m - 15.1m	\$2.05
15.1m - 30.2m	\$2.25
30.2m - 60.3m	\$2.65
60.3m - 120.7m	\$3.15
120.7m - 180.9m	\$3.25
180.9m - 241.2m	\$3.35
241.2m - 361.9m	\$3.45
For projects above \$361.9 million, there shall be an increment of 10 cents per additional \$100m or part thereof.	

All new Docklands projects are to be in accordance with the new scale of Site Allowances. Existing projects at Docklands are to remain unchanged regarding site allowance and working hours.

8. The Rates shall be reviewed no later than 30 September 2006 and thereafter for each subsequent year of the Agreement taking account of the CPI movement and the economic circumstances prevailing in the industry at that time.
9. The Site Allowance values and project values in this Clause shall be adjusted by the CPI (All Groups, Melbourne), effective from 1 October 2006 and for each year thereafter according to the above CPI movement for the preceding period July to June in each year.

The Site Allowance shall be adjusted up or down to the nearest 5 cents and Project value to the nearest \$100,000”.

Clause 11 requires the Chairperson of the Victorian Building Industry Dispute Panel to determine Site Allowance when the parties failed to reach an agreement. Such decision must be consistent with the named Acts and Codes within the clause and also the guidelines contained within Appendix C.

The issue before the Chair is the correct application of Clause 6 of Appendix C in relation to Clause 7.2. As earlier indicated, the Chair met with the parties who negotiated this clause and the union's position is confirmed by two employer negotiators but not by the MBAV. It is the MBAV's advice that Buildcorp is acting upon.

In researching this matter, I have come to the conclusion that the drafting of Appendix C, Clause 6 is a shorthand version of what was Clause 40.6 in the Victorian Building Industry Agreement 200 - 2005 which stated -

“It is agreed by the parties that from 1 May 2000 onwards, all new projects will be covered by the Site Allowance rates contained in this Agreement. Projects which commenced prior to 1 May 2000, and the projects tendered and let before 1 May 2000 (as advised to the unions by MBAV) will be completed on the previous Site Allowance scale”.

Those parties expressing a view in opposition to the MBAV's position are clear that Clause 6 previously Clause 40.6 had a direct relationship to protecting existing building projects at the time when the definition of the CBD was expanded. This does not explain the reason why the scale under 7.2 has the heading New Projects Victoria, whilst on the other hand, does Clause 6 mean that existing projects are not subject to a site allowance?

In my view Clause 4 must refer to existing projects wherein the amount to be paid refers to Clause 7.

I have come to the conclusion that there are various views that can be taken in respect to Appendix C and I am charged with the responsibility by Clause 11 of the Appendix to resolve disputes concerning this Appendix.


I have concluded that Clause 7.2 should be adjusted by the CPI in accordance with Clause 9, both as to project value and the site allowance. This new scale, is to apply to all sites, in effect relying on Clause 4, and determining that Clause 6 can only be related to the project that were subject to the expansion of the CBD boundaries.

In taking this view, I rely upon the views of the majority of those involved in the negotiations, both union and employer and the substantive industry practice over many years. It appears from the evidence before me that this project, Buildcorp Commercial Pty Ltd, is the only known project to apply the interpretation advanced by the MBAV and as earlier indicated they have done this on the advice of the MBAV.

The effect of this decision is that Buildcorp should increase their site allowance on this particular project effective from 1 October 2006.

In conclusion there appears to be a number of examples of uncertainty and ambiguity in Appendix C. For example, what is the reference to sub-clause 7.3(b) in sub-clause 7.1(a)?

In my view the parties should attempt to rectify this Appendix.



**BOB MERRIMAN
CHAIRMAN**

DATED THIS

16

DAY OF

May

2007