

CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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L. U. SIMON

STATE GOVERNMENT SCHOOLS
EASTERN METRO

-and-

CFMEU

RE: APPLICATION OF APPENDIX C OF EBA

THURSDAY, 16 JULY 2009

045-2009

DECISION

This matter relates to a claim by the Union that a package of works which the contractor successfully tendered for, as part of a major schools redevelopment program constituted a single project, being underwritten by both Federal and State funding. The Union submitted that the scope of works spelt out a single contract for works to be undertaken across the Eastern Metropolitan Region and embraced a large number of schools in various areas.

In these circumstances and consistent with precedent established by Australian Industrial Relations Commission Deputy President Ives, the Union submitted that the overall works constituted a single project and therefore the appropriate site allowance in Appendix C of the Company's 2008-2011 EBA should apply.

Management acknowledged that they had been successful in a "Tender for construction of school buildings and associated works - Round 1, Eastern Metropolitan Region, Tender Package No. EMR/Group 2" which was let by the State Department of Education and early Childhood Development through the Office for Resources and Infrastructure.

In considering this matter it is necessary to consider the criteria established by DP Ives when considering the question of site allowance and project value.

In the Bovis Lend Lease decision (PR 975618) dated 28 December 2006, Deputy President Ives states at paragraph -

"[30] Pursuant to the 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".

The work in question to be undertaken by L. U. Simon is part of a carefully planned project, to achieve a particular result in upgrading and renewing a significant

number of schools and there is an established entity i.e. the Department of Education and Early Childhood Development with a Project Manager and Superintendent of the Contract - Coffey Projects acting on their behalf.

At paragraph 32 of the same decision -

“[32] Victoria Harbour, as opposed to being an enterprise carefully planned to achieve a particular result, appears to me to be an enterprise planned 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”.

The L. U. Simon works constitute a total package of works forming part of the statewide “Building and Education Revolution” which has been initiated by the State Government and has been carefully planned to achieve a particular result, that being the upgrade of school facilities, in this case - Round 1 - Eastern Metropolitan Region within a clearly set time frame.

In considering all aspects of this matter, I am convinced that the Union's claim in this matter is justifiable and meets the requirements of the principles outlined above.

I therefore determine that the site allowance for the L. U. Simon's works attract a site allowance under Appendix C of the EBA for a project with a value ranging between \$16m-\$32.1m.

Bob Merriman

**BOB MERRIMAN
CHAIRMAN**

DATED THIS **16** DAY OF **JULY** 2009