

CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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LYONS CONSTRUCTION

**VARIOUS PROJECTS
(PACKAGE OF WORKS)**

-and-

CFMEU & PTEU

**RE: APPLICATION OF EBA SITE ALLOWANCE
PROVISIONS**

054-2009

25 August 2009

DECISION

This matter is being dealt with under the terms of the CFMEU Union Collective Agreement 2008-2011 and the Plumbers (Vic) Plumbing Collective Agreement 2009-2011 and specifically relates to a claim by the Unions that a package of works which the contractor successfully tendered for, as part of a major schools redevelopment program constituted a single project. The project is being underwritten by both Federal and State funding and overseen by the State Department of Education and Early Childhood Development through the Office for Resources and Infrastructure.

The Unions submitted that the contractor's contracted works constituted part of Round One in Barwon South Western Regions package with a value of \$20.5 million forming part of the Australia wide "Building and Education Revolution".

They (the Unions) stated that the package was clearly defined and such works therefore attracted a project allowance of \$2.40 per hour worked under the relevant site allowance provisions.

In support of the claim the Unions also relied on an earlier decision made by myself relating to the “Eastern Metropolitan Region” package (Ref: 045-2009).

In their submission Management rejected the Unions’ claim and submitted that the package consisted of works at nine schools which are geographically separate and will operate in accordance with their own program of works. Further, management stated that, in fact, four building permits and associated plans had yet to be issued.

Reference was made to my Decision 045-2009 and particularly paragraph 32 of Bovis Lend Lease Decision (PR975618) referred to therein, dated 28 September 2006 where DP Ives stated at paragraph:-

“(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 the same 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 in the enterprise”.

Management stated that DP Ives’ conclusion supported the view that the works being contemplated were being undertaken to achieve a general result which is supported by the fact that those works could not be seen as being “carefully planned” - given the outstanding permits and plans.

It was further stated that the Concise Oxford Dictionary defines a project as “an enterprise carefully planned to achieve a particular result” which is not demonstrated as having occurred in this package.

For the reasons stated, management contended that the “Building Education Revolution” program was clearly designed to achieve a general result and not a particular result.

In addition, Management submitted that it would be unfair to sub-contractors who had tendered for works with a value less than the site allowance trigger then being subjected to the payment of a site allowance based on the overall package value.

I have carefully considered the comprehensive submissions of the parties and conclude as follows:-

- The works to be undertaken fall under the umbrella of the Building Education Revolution program.
- All works comprehended by the Building Education Revolution are packaged, tendered and overseen by the State Department of Education and Early Childhood Development specifically contract controlled through the Office for Resources and Infrastructure.
- The overall state wide upgrade program has been carefully developed and targeted to achieve a result consistent with DP Ives, Bovis Lend Lease Decision (PR975618) dated 28 December, 2006, when he stated 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”.

- I cannot accept management’s argument that the works being undertaken can be interpreted to be aimed at achieving a general result (Bovis Decision,

Para. 32 - earlier referred to) as concluded by DP Ives. In this matter it is known what the outcome will be, specifically a program to improve nine schools.

- Whilst four building permits and final plans have yet to be issued, contractual details, timeframes etc. were such as to enable the contract to be let which is consistent with the guidelines enunciated by DP Ives with regard to achieving a particular result. The project for nine schools was clear enough for tenders to be called and bids made by contractors and contracts awarded. Specifically, Lyons Construction valued the project at \$20.5 million.
- There is no doubt that the school communities embraced by the package have a clear understanding of the “Building Education Revolution” and its specific end result with regard to individual school upgrades

I am convinced that the Union’s claim in this matter is justifiable and meets the requirements of the principles earlier outlined. I therefore determine that the site allowance for the Lyons Construction works attract a site allowance in accordance with the respective EBAs for a project with a value ranging between \$16 - 32.1 million.



Bob Merriman
Chairman

In the 25 day of August 2009