

# CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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AKRON ROADS

MIRVAC DOCKLANDS PROJECT

CFMEU

RE: CLAIM FOR SITE ALLOWANCE

064-2009

25 November 2009

## DECISION

This matter relates to a claim by the Union for the application of a site allowance in accordance with Clause 7.2 of Appendix C of the Company's 2005-2008 EBA.

The Union submitted that the application of the site allowance was consistent with the Chairman's decision No. 073-2008 dated 7 August 2008 - Mirvac Construction Vic. P/L which found that all works being clearly defined as falling within the Yarra Waters Precinct were subject to the appropriate site allowance.

Management on the other hand contended the following:-

- That decision 073-2008 did not apply to civil works within the Precinct as the contract was purely one of a civil nature.
- The works being undertaken have been specifically excluded at clause 4.1(c) of the company's 2005-2008 EBA as they are of an overall housing nature and also that the head contractor is not bound by the industrial agreement.
- That the pricing of the works was based on a separate "Greenfields" Civil Enterprise Agreement 2006-2009 designed to cover works not comprehended by the construction industry EBA earlier referred to and therefore also not applicable to a project primarily of a housing / domestic nature.

Both parties presented extensive supporting arguments with regard to their respective positions.

In determining this matter, I will consider the issues of jurisdiction and the application of the principles enunciated in decision 073-2008.

Appendix C - subclause 7.2 of the Company's EBA states in part-

"All new Dockland's 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".

Works undertaken in the precinct cover a wide range of construction including townhouse construction, piling works, wharf construction, a marina and extensive associated road works.

In decision 073-2008 it was noted that commercial type contractors had been engaged to perform major works essential to the overall development who were in fact paying the appropriate CBD site allowance.

Also in my decision 073-2008 I made reference to matters dealt with by IRC Commissioner Tolley on 15 November 2000 and also November 2001.

In his November 15, 2000 decision Commissioner Tolley referred to the overall development and stated -

“... three major project within the precinct namely the Colonial Stadium, Mirvac Yarra Waters and MAB Docklands”.

and went on to say that other major project developments are envisaged as part of the “whole precinct ” plan.

Commissioner Tolley applied this approach to the Victoria Harbour Development in Bovis Lend Lease matter (Decision C. No. 38671 of 2000) which was subsequently applied by Bovis Lend Lease and confirmed in correspondence to the Victorian Trades Hall Council when it was stated -

“Bovis Lend Lease is prepared to adopt for the projects at Victoria Harbour Docklands a site allowance in the decision of Commissioner Tolley of the AIRC in respect to the MAB development at Dockland (decision C. No 38671 of 2000) ...”

In previous Dockland's matters and referred to in decision 073-2008 I have concluded that the site allowance payable is to apply to all works undertaken in the precinct.

Management's contention that the 2006-2009 EBA solely applies to the works in the Yarra Waters Precinct cannot be sustained in the circumstances of this matter as the works merely constitute part of an existing commercial development as previously determined.

Once again I have reflected on the history of Docklands, custom and practice and the supporting decision relating to the definition of "existing projects" and I can only conclude that the appropriate CPI Indexed site allowance which applied to the initial Yarra Waters Project should properly apply to the works currently underway.

It is further my view that the argument relating to lack of jurisdiction cannot be sustained as both my decisions and IRC decisions have been previously made which establish that the works underway in the various Dockland's precincts do in fact constitute whole projects.

As previously stated, the integrated nature of the works within the precinct once again lead me to conclude that the principles adopted in the Tolley C decisions and my subsequent decisions should apply as the works underway constitute part of an existing project within the Yarra Waters precinct.

The original site allowance applied to the Yarra Waters precinct (with appropriate CPI adjustments) should therefore apply to the current works.



*Bob Merriman*  
Chairman

Dated this            **25th**            day of            **November**            2009