

# **CHAIRMAN**

**VICTORIAN BUILDING INDUSTRY DISPUTES PANEL**  
**CHAIRMAN: BOB MERRIMAN**

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**ING WATERFRONT CITY**

**J A DODDS LTD**  
**EXAR (VIC) CONSTRUCTIONS PTY LTD**  
**FRESHMORE (VIC) PTY LTD**  
**FORM 700**

**CFMEU**

**CFMEU (FEDFA)**

**RE: CLAIM FOR SITE ALLOWANCE**

**MONDAY, 10 SEPTEMBER 2007**

**088-2007**

## **DECISION**

This matter was previously before me on 3 July 2007 at which time MBAV representing the employers submitted that the issue was not properly before me in accordance with the procedural requirements of Appendix C – Site Allowance Procedure of the relevant EBAs.

The matter was adjourned at that time in order for this process to be fulfilled.

I am now in receipt of correspondence confirming that the process has been completed and therefore the matter proceeded on 7 September 2007 as the preliminary point was now satisfied.

The Union confirmed their claim, that the appropriate site allowance, which should apply to the above named contractors for the work at Waterfront City, was \$3.45 per hour given that the total project value was \$332 million.

The above named employers are currently paying the CBD rate of \$3.25.

The Project for ING which is now totally controlled by Hansen Yuncken includes the following –

- Waterfront City Stage 1B North
- Waterfront City Stage 1B South
- Waterfront City Stage 1C Southern Star Observation Wheel (SSOW)
- Car Parking Areas

In its submission the Union referred to a Decision issued by the Chairman on 27 March 2007 (refer 016-2007) endorsing the implementation of a site allowance submitted by Hansen Yuncken Pty Ltd relating to their work on the ING Project at Docklands. The Union submitted documentation in support of their contention that the four work sites (with a value of \$332 million) constituted a single project and therefore should attract a site allowance of \$3.45 per hour.

The Union stated that there was one developer - ING, one principal contractor – Hansen Yuncken Pty Ltd and that the infrastructure was totally inter-connected i.e. power, stormwater, telecommunications, sewerage, car parking and roadways.

The Union strongly submitted that the works were part of a “whole” comprising residential, entertainment, commercial and car parking which clearly fell within the requirements of Deputy President Ives (refer CDK matter – C2006/2767) when he stated “... in my view a project is an enterprise or undertaking that is ‘carefully planned’ and has a clearly established entity or entities that exercise control over its development”.

The MBAV contended that the four areas of work in fact constituted separate competitively sought projects which did not meet the tests to be applied in the establishment of a single project under the terms of D.P. Ives’ CDK Decision. That Decision stated “Accepting that it is not unusual in building and construction projects for the scope to vary during the life of the project, it is still necessary for the scope to be sufficiently defined at any given point during the project to enable proper definition and costing of the project ...”.

MBAV strongly submitted that the scope of works was not clearly defined and the works had “kept growing”, therefore it did not meet that test. Each of the four parcels of works had been let by ING at different time and although Hansen Yuncken had been successful each time others had contested the bid process.

On that basis the MBAV submitted that each of the four major work areas should be regarded as stand-alone projects and therefore the Union’s claim should fail and that the CBD site allowance rate should apply.

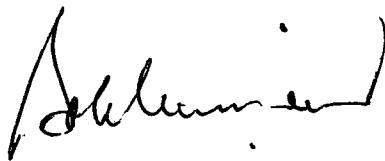
I have inspected the site and viewed the four packages of works for which Hansen Yuncken are ultimately responsible and for which they have engaged a range of sub-contractors including the employers subject to this decision. I am aware of the approach taken by Hansen Yuncken which I endorsed in my earlier Decision on this Project.

In considering all the material placed before me, I find that there is a very clear linkage between the developer and the construction of all works at Waterfront City.

It is a project with a staged development which progressively increases in value and which was carefully planned and totally envisaged as a complete concept at the time that the first packages of works were released. The staging of the release of the packages does not in my view fall within the category described by D P Ives in that part of his decision referred to me by M B A V.

Apart from the significant infrastructure embracing the total project it was also the connection of buildings by way of 27 bridges which adds to the overall linkage of this total project which convinces me that the Union's claim is the correct application of Appendix C. This view is further supported by fact that my of the sub-contractors work on a number of the four stages or have work which embraces more than one stage.

In determining this matter as a single project with a total value of \$332 million which therefore attracts a site allowance of \$3.45 per hour, I am convinced that such a decision meets all of the tests that have been recently developed, particularly as there is a direct linkage from the developer to the single principal contractor, then to work across the total identified four areas.



**BOB MERRIMAN**  
**CHAIRMAN**

**DATED THIS**

10

**DAY OF**

September

**2007**