

CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN
26 QUEENSBERRY STREET,
CARLTON SOUTH VIC 3053
TEL: 03 9639 1322 FAX: 03 9639 2490
dboard@vbldb.org.au

BECTON PROJECT BRIDGE STREET, KEYSBOROUGH

CFMEU

RE: CLAIM FOR SITE ALLOWANCE

THURSDAY, 29 NOVEMBER 2007

110-2007

DECISION

This matter relates to a claim by the Union (CFMEU) for the application of a site allowance to apply to works currently under way and work proposed to commence thereafter.

A site visit occurred on Friday 2 November 2007, at that time Management advised that the works currently underway had a value of approximately \$1.9 million and were expected to be completed by the end of November 2007. It was then anticipated that a second stage would commence in early December (subject to objections) with a value of approximately \$5 -6 million.

In addition it was stated that a further stage was on hold due to issues involving the demolition of an existing building and associated matters.

It was envisaged that the total value of contemplated works would not exceed \$15 million.

The Chairman conducted a formal hearing on November 13, 2007, when the Union submitted that Stage 1 works constituted refurbishment, installation of refrigeration, storage and precast panels. The Union further submitted that the works underway and contemplated were interconnecting and that the Stage 1 works were essential to the proposed Stage 2 works and that some panels on the west wall will in fact connect Stage 1 to Stage 2.

It was further stated that Becton was in fact the owner of the premises (with different tenants) and that the works were not going to public tender. The Union noted that whilst Stage 2 was delayed the site sheds currently in place will cater for all proposed works and that similar contractors would be involved.

In all the circumstances the Union contended that a site allowance should apply to all of the proposed works and that such allowance should apply to the works currently underway and be retrospective in operation.

On behalf of the Builder, the MBAV submitted that Stage 1 works had a value of approximately \$1.9 million but in fact had a permit value of \$356,000. This contention was supported by an "Application for Building Permit" document tended at the hearing but was made out to an owner named as "Goldalley Pty Ltd".

In addition Management advised that a further document outlining detailed costings for the project would be forwarded as a priority. This document was received after the hearing and showed in great detail a number of variations and general costings for the project which raised the overall project cost to \$1.9 million.

Management further stated that at this time Stage 2 works had no building permit or contract due to objections earlier referred to and that these works in reality would not proceed prior to Christmas. Stage 3 works were at a very early stage of consideration at this time and may involve further alterations/variations prior to commencement.

In these circumstances Management stated that the claim could not be sustained and that no site allowance should apply to Stage 1 and further that an allowance should only apply when the contracted works exceeded the threshold on the proposed Stage 2 works.

I have given consideration to all aspects of the proposed works and find it necessary in my deliberations to again consider the meaning of "a project", in so doing reference is made to the Concise Oxford Dictionary (10th Edition) which defines a project as –

"an enterprise carefully planned to achieve a particular result".

In addition I must consider all aspects of the existence or not of a contract. I adopt the view that true it is that a contract or contracts may establish the existence of such a project but I do not accept the proposition that the existence of the project is dependant upon the existence of a relevant contract or contracts. 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.

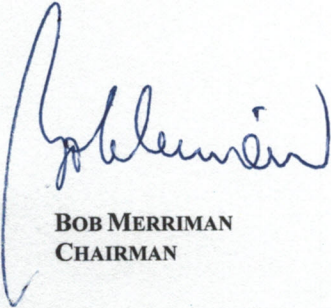
Another key feature of work in the industry is that it is not unusual in building and construction projects for the scope to vary during the life of a project, it is still necessary for the scope to be sufficiently defined at any given point during the project to enable proper definition and costing of a project.

In the matter under consideration, I have come to the conclusion that all of the works currently underway and proposed do in fact constitute a project and meet the test of being "carefully planned" with a clearly established entity which is exercising control over its development in the form of overarching Becton ownership and control. I find that there is a clear linkage between Stage 1 and Stage 2 and subject to final approval the same overall control, planning and operational responsibility will apply to Stage 3.

In these circumstances I find that the site allowance of \$2.10 per hour (project value \$6.3M – \$15.5 M) should apply to the first two stages and if Stage 3 is constructed the same level of site

allowance will apply because this further work will not take the project beyond the \$15.5 M ceiling.

The allowance should apply retrospectively from the commencement of works on Stage 1.



**BOB MERRIMAN
CHAIRMAN**

DATED THIS

29

DAY OF

November

2007