

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN
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DECISION

074-2006

**CDK CONSTRUCTIONS PTY LTD
CAROLINE SPRINGS SWIMMING POOL
BOULEVARDE ROAD, CAROLINE SPRINGS**

CFMEU

ISSUE RE NON-PAYMENT OF SITE ALLOWANCE IN ACCORDANCE WITH PREVIOUS DECISION OF THE DISPUTES PANEL

TUESDAY 20TH JUNE 2006

This matter relates to an application by the Union in accordance with Appendix C – Site Allowance Procedure of the CDK Commercial Construction Pty Ltd and the Construction, Forestry, Mining and Energy Union Enterprise Agreement 2005-2008 (“the agreement”) in relation to the above project.

In accordance with that Appendix the Panel Chairperson has been asked to determine the proper value of the works on the project, and having established that amount, correctly apply the site allowance consistent with the guidelines.

During the course of their presentation the Union presented a written and verbal submission incorporating a map and information relating to site allowance payments being made or having been made on the projects in the area in contention, all of which supported their argument that all projects were part of the “Town Centre Project”

On the other hand MBAV presented a written and verbal submission on behalf of its contractor member which strongly contended that the contractors “project” was one of a stand-alone nature with a value below the required threshold, thus not qualifying for the payment of a site allowance.

MBAV contended that the contractor was not bound by practice of the overall “Town Centre Project” value and further that the overall value of the “Town Centre Project” could not in fact be established.

In addition MBAV stated that the “Town Centre Project” was not specifically named in the EBA and this being the case the payment of a site allowance would render the EBA non-code compliant.

I have carefully considered the evidence presented and the public material relating to this project and the overall development. Clearly, as Chairperson I am charged with the responsibility of determining the matter under Appendix C, Clause 11 Site Allowance Procedure.

I must have regard for the relevant Acts. I conclude that there is no question of Code compliancy as I will be acting in accordance with the EBA which is code compliant.

Although at the initial hearing debate took place as to what constituted the Caroline Springs Town Centre Project, it was agreed at the final hearing as to what in fact constituted the boundaries. The map clearly reflected this understanding.

My research takes me to the media release of 24 June, 2003 at the time of the announcement of the Development. It described the project as comprising a mix of retail, commercial, recreation, residential and education buildings. Specific features included a shopping centre, medical centre, a 24 hour police station, extensive sporting facilities and four schools to be located in the town centre. The project before me is a sporting facility for the community.

I have formed the view that the total project value was fully understood by all parties because of earlier exhaustive debate and previous decisions of the former Disputes Board during the course of 2004. At least 10 other projects have applied this total project value and have paid a site allowance accordingly.

Clearly housing is not subject to site allowance and if I was persuaded to reduce the project value by the residential component there would be no alteration to the allowance, given the broad range of Clause 7.2-Scale of Site Allowances.

I see this current CDK Constructions project as forming part of a whole development as announced publicly on June 24, 2003, which is being developed progressively and continuously within clearly defined parameters. The result of which in applying the guidelines is that the current appropriate site allowance of \$3.15 per hour as claimed should apply from the commencement of the works.

Bob Merriman
Chairman

Dated this

20 day of June 2006