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CFMEU

AND

MCCONNELL DOWELL CONSTRUCTORS PTY LTD (MCCONNELL DOWELL)

RE. MELBOURNE AIRPORT RAIL LINK PROJECT

ALLEGED UNDERPAYMENT OF SITE ALLOWANCE

005-2026 ***7 JULY 2026***

BY MAJORITY DECISION

(Chairperson Parkinson and Panel Member Ziccone, Panel Member Cordier dissenting)

Preamble

[1] The CFMEU notified a dispute on 20 March 2026 pursuant to the *McConnell Dowell Constructors (Aust) Pty Ltd and the CFMEU (Victorian Construction and General Division) Major Civil Contractor Enterprise Agreement 2020-2023* (the **Agreement**). The dispute concerns an alleged underpayment of site allowance by McConnell Dowell in relation to works that the CFMEU claims form part of the Melbourne Airport Rail Project.

[2] The Panel convened a video Conference of the parties and issued a Statement on 25 March 2026 and issued a further Statement No.2 and Directions on 15 April 2026. This Decision is to be read in conjunction with those Statements.

[3] The parties made written submissions which have been considered by the Panel. The Panel has also been assisted by material provided by the State of Victoria (the **State**) through the Victorian Infrastructure Development Authority (VIDA) dated 14 April 2026 and entitled *Development of Sunshine Superhub (SSH) and Melbourne Airport Rail Link (MARL) Projects*. The Panel has also been informed by relevant government websites together with extensive media releases by the State. The Panel notes that in preparing its written submissions McConnell Dowell stated it had received input from and consulted with representatives of VIDA.

[4] In its primary written submission McConnell Dowell also requested a further opportunity to address the Panel in the event *"the Panel determines a higher site allowance than presently has been applied*". The Panel invited a further written submission from McConnell Dowell via email. The Panel received a short Supplementary Submission on 25 June 2026, which it has considered. The Panel determined that a reply to the Supplementary Submission from the CFMEU was not required.

[5] The dispute concerns a package of works described as Enabling Works with a contract value of $98.2m, contracted by VIDA to McConnell Dowell (**Enabling Works Package**). The package is one of five that comprise what is now branded the "*Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade"* but was previously known as the "*Sunshine Superhub Project*" (**SSH**).

[6] The Enabling Works Package commenced in January 2026 for which McConnell Dowell has been paying a Site Allowance of $4.35 per hour. The CFMEU submits that the Site Allowance should be $11.15 per hour.

[7] The Agreement provides that employees will be entitled to the payment of a Site Allowance for work performed on a *Project* as defined by the Agreement. *Appendix C* of the Agreement details the methods under which the quantum of the Site Allowance can be determined. In the event of a dispute or if there are special and/or exceptional circumstances, the Panel can be empowered to determine the quantum.

[8] The latter applies in this matter where the parties have sought that the Panel determine the matter. The Panel in its Statement No. 2 confirmed it was also satisfied that exceptional circumstances exist in this matter such as to enliven the Panel's jurisdiction to determine a site allowance. The parties have accepted this finding.

[9] The Panel must in the first instance determine whether the works being performed by McConnell Dowell fall within the definition of *Project* as defined by the Agreement.

The Agreement

[10] *Project* and *Project Value* are defined by the Agreement at clause 2 as follows:

> ***Project*** *means building and construction works performed on a site or combination of sites for which:*
>
> *(a) the site or combination of sites must constitute an enterprise or undertaking carefully planned to achieve a particular result; and*
> *(b) the site or combination of sites must have a clearly established entity or entities that exercise control over its development; and*
> *(c) the site or combination of sites must have a scope sufficiently definable at any given point during the project to enable its proper definition and costing for the purpose of determining the appropriate site allowance;*
>
> ***Project Value*** *including Total Project Value means the value of the Project (as defined above), comprising of:*
>
> *(a) Preliminary costs and profit margin;*
> *(b) Trade packages (including supplier and subcontractor costs); and*
> *(c) Provisional sums.*
> *Project Value does not include non-construction development costs.*

[11] The Panel must determine that all three of the principles or limbs in (a), (b) and (c) set out in the definition are satisfied for there to be a *Project* that is capable of qualifying for a site allowance.

The Dispute

[12] The CFMEU submits that the work being conducted by McConnell Dowell falls within the scope of the Melbourne Airport Rail Link (**MARL**) and that MARL meets the definition of *Project* under the Agreement. MARL has been previously estimated to cost between $10-13 Billion. For determining the quantum of site allowance the CFMEU primarily relies upon an understanding reached in August 2021, which was then reflected in a document entitled "*Melbourne Airport Rail Project Site Allowance Guidance Document"* (the **MARL Site Allowance Guidance Document**). The MARL Site Allowance Guidance Document included a quantum of site allowance for works that were then contemplated to be included in the MARL. If the Panel was so persuaded, this would result in a Site Allowance of $11.15 per hour for the disputed works.

[13] McConnell Dowell has submitted that the work it is conducting is one of five packages that comprise the SSH, which has now been rebranded as Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade. Its primary written submission was that SSH satisfies the definition of *Project* in the Agreement and has a *Project Value* of $2.81 Billion, which it says results in a Site Allowance of $7.95 per hour under the terms of the Agreement. It is apparent that in paying $4.35 per hour from the commencement of the works McConnell Dowell had regarded its Enabling Works

Package as a standalone project. Its primary submission no longer relied upon that proposition and accepted that $7.95 was the correct allowance. However, in its subsequent Supplementary Submission, it presented an alternative preferred view *"that the existing site allowance paid of $4.35 is applicable and appropriate…"*. Its Supplementary Submission went on to acknowledge that it would not oppose a site allowance of $7.95 for the works in Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade from commencement of its works. McConnell Dowell rejects the CFMEU's submission and argues that it is not presently possible for the broader MARL to meet the definition of *Project* in the Agreement, given it says, amongst other reasons, that the MARL itself has not been developed to a stage where it can satisfy the definition required by the Agreement.

[14] To resolve the dispute, the Panel must first determine whether the works being undertaken by McConnell Dowell satisfy the definition of a *Project*. The CFMEU says this is MARL, whereas McConnell Dowell says it is either SSH (now rebranded Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade) or its contracted Enabling Works Package. Once determined, the Panel can determine the site allowance that should apply to the work.

[15] It is necessary to traverse some of the history that brings us to this point.

Airport Rail Link History

[16] The concept of a rail link from Melbourne city to Melbourne Airport has a very long history. Many and varied designs and rail routes, both above and below ground, have been promoted at various times since the airport's construction in 1970. Multiple commitments to construct a rail link from the city to the airport have been made by successive State Governments, none of which have yet been brought to fruition.

[17] For present purposes, it is relevant to note that the State made announcements and published in November 2020 a Project route for *Melbourne Airport Rail*. This was followed in May 2021 by the declaration by the State of *Melbourne Airport Rail* as a major transport project under the *Major Projects Facilitation Act 2009*.

[18] This was followed by various directly relevant procurement activities commencing in June 2021 for a range of then anticipated MARL works packages. It appeared then that a rail link from the city to the Airport was in prospect.

[19] In August 2021, in expectation of MARL proceeding, the State Government, through what was then the Major Transport Infrastructure Authority (MTIA), now known as VIDA, requested the Chair of the Panel to chair conferences between it and construction unions *"the purpose of which was to assist the participants in concluding for themselves what could be the indicative site allowance applications for the Project, notwithstanding that such understandings would be non-binding on parties that might be ultimately engaged in works on the Project."*

[20] At that time, the MTIA presented to the unions the intended scope and proposed packaging of the works for MARL, as they were then comprehended.

[21] It is important to record that the role of the Chair in those conferences was limited to facilitating the discussions. It was made clear in writing to the participants that the Panel did not reach any concluded view on the matters itself and that *"this would only properly arise if the jurisdiction of the Panel was enlivened in relation to a notified Dispute pursuant to an applicable Enterprise Agreement"*, which as it happens is now the case.

[22] From those conferences, the MTIA and unions together settled the MARL Site Allowance Guidance Document.

[23] The MARL Site Allowance Guidance Document was intended to form the basis of non-binding guidance material which was to be included by the MTIA in its tender processes for the various packages of works that were then intended to form the MARL Project, thereby assisting tenderers and other parties in developing appropriate tender responses. The MARL Site Allowance Guidance Document included the following provisions:

"This Guidance for a site allowance is a guidance note only; it is not a legally binding agreement. No legal responsibilities for either RPV (Rail Projects Victoria), the construction industry employers tendering for work on the Project (the Tenderers) or the Construction Unions arise from this Guidance Document."

"The purpose of this Guidance Document is to assist Tenderers to more accurately price the cost of labour for the life of the Project by setting out the shared understanding of what would be expected as a site allowance across the Project as a whole."

[24] The MARL Site Allowance Guidance Document set out the then intended MARL Project Scope and Works Packages for which the same site allowance would be applicable. This was consistent with the site allowance quantum on other major projects then underway in Victoria, commencing at $10.35 per hour from 1 March 2022 with escalations each year thereafter (it provided for a quantum of $11.15 from 1 March 2026).

[25] The Works Packages that were identified in the MARL Site Allowance Guidance Document included:

- Sunshine - Albion Package
- Corridor Package
- Maribyrnong River bridge package
- Viaduct package
- Airport package
- Systems package
- Early Works Package

[26] It is the MARL Site Allowance Guidance Document upon which the CFMEU seeks to rely in this matter.

[27] An original concept design for MARL was then finalised following publication of the Melbourne Airport Rail Business Case in September 2022 which included the following works packages, all but identical to the Works Packages identified in the MARL Site Allowance Guidance Document:

- Airport Station
- Viaduct (Airport West to Airport Station)
- Corridor Works (Albion to Airport West via Jacana corridor)
- ARTC freight slew
- Maribyrnong River Bridge
- Sunshine/Albion and Rail Systems
- Early Works (utility relocations)

[28] MARL was rebranded as "SRL Airport" from October 2022 until early 2026, when it again reverted to Melbourne Airport Rail. At the same time, the SSH was rebranded "*Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade*".

[29] Had all proceeded as envisaged in 2021-2022, it would have been reasonable to expect that once construction work commenced in accordance with the documented MARL Project Scope and Works Packages as set out in the MARL Site Allowance Guidance Document, that successful contractors with relevant Enterprise Agreements would have applied the Site Allowance set out in the MARL Site Allowance Guidance Document. There had been a similar process undertaken in February 2022 to provide guidance for the Suburban Rail Loop Project (SRL) which is presently underway.

[30] This is precisely what occurred with the MARL Early Works Package that had been awarded to Laing O'Rourke and undertaken by it and its subcontractors between 2022 and 2024, for which a site allowance of $10.35 per hour was paid to employees, as provided for in the MARL Site Allowance Guidance Document.

[31] These Early Works undertaken by Laing O'Rourke included relocation and protection of utilities along the then proposed rail route to the airport.

[32] In late 2022, the State selected a preferred contractor (FCC Construction and Winslow Infrastructure) to deliver a package of major MARL construction works including the bridge on Maribyrnong River and a contract was awarded to an Alliance (including John Holland Pty Ltd and others) which included the corridor, and other MARL packages. It was reasonable to expect that the contractors would follow the terms of the MARL Site Allowance Guidance Document and indeed John Holland entered into an Enterprise Agreement with the ETU (the *John Holland Pty Ltd and ETU Victorian Rail Infrastructure Enterprise Agreement 2025-2029*) that provided for a quantum of

allowance for major projects, that included the "Airport Rail Link", precisely in line with the MARL Site Allowance Guidance Document quantums.

[33] However, these construction works for MARL did not proceed.

[34] In 2023, following a dispute between the Victorian Government and Australia Pacific Airports Pty Ltd (APAM) over whether the airport station should be underground or above ground, all development and procurement activities for MARL were 'paused' by the State. All procurement processes then underway for MARL were terminated, including the Alliance contract that had been awarded for major works packages and significant demobilisation costs were paid by the State as a consequence. The exception was the contract for the Early Works Package then underway by Laing O'Rourke with a Site Allowance of $10.35 per hour, which continued to completion in 2024.

[35] Whilst the major works packages and procurement processes for MARL were terminated in 2023, the State proceeded with developing works surrounding Sunshine Railway Station. VIDA advises this arose from recommendations, consequent upon the "pause" of MARL, that were accepted by the State and Commonwealth Governments that works should proceed at *"Sunshine comprising the building of infrastructure that would enable a future extension of the railway from Sunshine station to the airport (airport spur line) and that would enable future capacity uplifts in the west of Melbourne, primarily by way of electrification of the Melton line, without the need to commit to the construction of the airport spur line until a later date."*

[36] This work became the SSH in May 2025, works that have been funded by the State and Commonwealth Governments and have proceeded to the present time. More is said about SSH later.

[37] In March 2025, a Memorandum of Understanding (MOU) was reached between the Federal and State Governments and APAM which committed they would "*work together to commence delivery of MARL and will establish a Steering Committee led by senior delegates from each organisation to progress this project. With this understanding, all parties will work collectively, in good faith, to finalise the path to construction and deliver this important project for all Victorians."*

[38] As at this time, there has been no reported outcomes from the Steering Committee referenced in the MOU. VIDA advises that "*Working groups have been established under the MOU to seek alignment on matters such as scope of work, temporary and permanent land footprints, work packages and commercial agreements (among others)."*

[39] The recent Victorian Budget papers for 2026-2027 confirm what was reflected in the MOU, but notwithstanding that both State and Federal Governments have each publicly committed $5 Billion towards MARL, no allocation of funding has been provided, total estimated investment costs are yet to be confirmed, and project details have not been finalised.

[40] There is no agreed design, development or procurement process underway. VIDA cannot provide any indication as to when any of this might occur. VIDA has noted that "*the project budget (Total Estimated Investment) is yet to be agreed between the State and Commonwealth and any decision by government to progress the procurement and construction of the railway between Sunshine station and the airport site has not yet been made.*"

[41] There is nothing of substance presently before the Panel, or identified by VIDA, that demonstrates that MARL procurement processes associated with a spur line to the airport will be underway in the near future. There is also nothing presently before the Panel that provides any confidence that the construction of a spur line and associated infrastructure will be underway any time soon. It may never proceed. MARL was "paused" in 2023 and remains "paused".

[42] The SSH has, however, progressed. The SSH comprises the following works:

- Enabling Works Package
- Freight Package
- Metro Package
- Regional Package
- Albion Station Package

[43] In February 2026, SSH was rebranded to Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade. It was also then that the branding of SRL Airport reverted to MARL.

[44] Within these packages there are some works that were envisaged would be included in the design for MARL, which were specifically included within the MARL Site Allowance Guidance Document. These include some of the works associated with the infrastructure from Sunshine to Albion. They, however, do not include the works that were envisaged in the earlier major construction packages of the MARL Site Allowance Guidance Document namely:

- Corridor Package
- Maribyrnong River bridge package
- Viaduct package
- Airport package
- Systems package

[45] The Panel notes that the MARL Site Allowance Guidance Document was not provided to tenderers for any of the SSH work packages.

[46] None of the work included in Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade involves the construction of a spur line and associated infrastructure to the airport from Albion.

[47] It is only the Enabling Works Package of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade that is now being performed by McConnell Dowell, the subject of this dispute.

[48] The Panel considers given the history and status of work that it is important to consider the extent to which the work being performed by McConnell Dowell impacts a broader MARL and its purpose.

McConnell Dowell's Enabling Works Package and Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade

[49] McConnell Dowell's work comprises the diversion, relocation and protection of existing utilities and underground services, including the Somerton jet fuel pipeline, as well as other enabling works for other Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade packages, including design works, procurement of long lead time equipment, installation of delineation fencing, demolition works and the provision of offset car parking. All these works are located in the vicinity of the Sunshine Rail Station.

[50] The McConnell Dowell works package has a contract value of $98.2m. This together with the other four works packages in Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade amount to a total construction cost of approximately $2.81 Billion as advised by VIDA. The Panel accepts these values.

[51] The Panel is satisfied that amongst the works being undertaken by McConnell Dowell some of the works are necessary for any future construction of a spur line to the airport, which would form part of any future MARL. However, these same works are also necessary for other unrelated rail related activities for which Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade will deliver. There can be no doubt that the realignment of the rail lines at Sunshine, a part of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade is necessary for any future MARL, just as it is necessary for the other rail projects, such as Melton Electrification and the Western Rail Plan, which rely upon the works contained in Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade.

[52] Some of these works were envisaged to be included in the works packages that MTIA presented to the unions in 2021, which in good faith the unions could reasonably have then expected they could rely upon to determine site allowances going forward. At that time, it was common ground that the work packages which included the Airport Station, the airport spur line itself and associated major infrastructure would all be proceeding. They have not.

[53] The works being undertaken now by McConnell Dowell are necessary and essential for rail projects, much of which do not form part of any future MARL. Not all these works were comprehended by the MARL Site Allowance Guidance Document, only some. Whilst there is some overlap, much of the work is necessary even absent an airport spur line.

[54] Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade is described in the Victorian Budget 2025/26 papers as follows: *"Funding is provided in partnership with the Commonwealth Government to untangle a complex section of the rail network around Sunshine Station. A program of works across more than six kilometers of track from West Footscray to Albion, will include two new dedicated regional platforms and an extended concourse at Sunshine Station, three new rail bridges, new and upgraded tracks, new signalling technology, and realigned passenger and freight lines. These works are an important precursor to the construction of Melbourne Airport Rail. They will also prepare the station for future upgrades to the rail network in Melbourne's west, paving the way for more train services for the growing communities of Melton and Wyndham Vale."* (Our emphasis). These future upgrades refer to the electrification of the Melton line, the Western Rail Plan and broader rail network capacity improvements in Melbourne's west, none of which have any relevance to a future MARL.

[55] It is significant in our view that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade, as advised by VIDA, "*does not construct infrastructure pertaining to the airport spur line. These elements, which include track formation and rail, overhead wiring, signalling systems, new traction power stations, rail bridges and other civil infrastructure between Sunshine and the airport, are subject to a future investment decision."* (our emphasis). Notably, all these elements were included in the scope of works that were included in MARL in the MARL Site Allowance Guidance Document. None of this work is proceeding at this time. These works make up by far the most substantial part of the construction work required for any future MARL.

[56] Whilst the works are a precursor to a future MARL, they also exist for other present and future purposes unrelated to a rail link to the airport. The other rail improvements include new regional rail train platforms, an extended rail concourse, new station forecourt, new rail bridges, new and upgraded track works, new signaling technology, realigned passenger and freight lines and a new Albion station. Much of these works are independent of and can stand alone from a future MARL.

[57] What is clear from the foregoing, is that what had been intended in relation to MARL and it's timing back in 2021 has since changed considerably.

What is the *Project?*

[58] The parties clearly have divergent views on what constitutes the Project for the purposes of determining the applicable site allowance in this matter. As previously traversed, the CFMEU submit the MARL satisfies the definition, whereas McConnell

Dowell maintains that it does not. Instead, McConnell Dowell submits that the SSH (now Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade) meets the definition. In the alternative, McConnell Dowell claims that their preferred view is that the Enabling Works Package is a *Project*.

[59] To determine the relevant *Project*, we must consider the definition in clause 2 of the Agreement. This definition contains three long established principles or limbs:

> ***Project*** *means building and construction works performed on a site or combination of sites for which:*
> *(a) the site or combination of sites must constitute an enterprise or undertaking carefully planned to achieve a particular result; and*
> *(b) the site or combination of sites must have a clearly established entity or entities that exercise control over its development; and*
> *(c) the site or combination of sites must have a scope sufficiently definable at any given point during the project to enable its proper definition and costing for the purpose of determining the appropriate site allowance;*

Principle A: The site or combination of sites must constitute an enterprise or undertaking carefully planned to achieve a particular result

[60] To satisfy this principle the Panel considers that a construction project must have a degree of certainty and inevitability as to its development, with a confidence of timing such that a determination of the Panel will have application in a practical sense to a scope of works that will deliver a particular result. A determination for a future project that is subject to significant uncertainty in this regard, is not an approach that the Panel considers is appropriate.

[61] The Panel is not satisfied that MARL meets this first principle. At present, there is no certainty as to its possible timing, scope, design, procurement and development. These factors are each real determinants of what comprises an enterprise or undertaking, and at this juncture it must be said in this particular case they are unknown and certainly not settled. Without this, we cannot conclude that there is an enterprise or undertaking or something that is carefully planned. While envisaged, the MARL may never eventuate.

[62] The works being undertaken by McConnell Dowell are designed to deliver a range of outcomes. Many of these are completely unrelated to a possible future MARL. The Panel does not accept that these works can be regarded in combination with other yet to be finalised works that might achieve a particular result, in this case, a future rail link to the airport. Nor is it practical or feasible to carve out any of those works that may contribute to a future MARL and regard them alone as part of a future mega project for site allowance purposes.

[63] Notwithstanding that the McConnell Dowell works make up a package of works that have been now been labelled Melbourne Airport Rail Stage 1: West Footscray to Albion

Rail Upgrade, this mere rebranding is not sufficient to find that the works form part of a future MARL for the purposes of the Agreement. We consider the nomenclature utilised by the State of *Melbourne Airport Rail Stage 1* is a misnomer and unhelpful. This label has quite likely aided and fuelled the dispute.

[64] Ordinarily a label like this implies a clear stage of a major project that has been carefully planned to achieve a particular result. However, we have found Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade involves much more than activities associated with an airport line project.

[65] As stated by VIDA, the rebranding of the project was *"for the purposes of identifying to the community that SSH scope was an important step towards enabling the future airport spur line."* On the back of this branding the State has continued to publicise its intention to deliver an airport rail link. Its public pronouncements about Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade say that these works will enable a future MARL. It has to be said that these are simply public pronouncements that it intends that it will one day construct a MARL. It is a step too far for the Panel to accept that the title implies anything more, absent certainty of subsequent stages and noting its other purposes. The extent to which Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade impacts upon a future MARL compared to what else it does, significantly limits its impact or association to a future MARL in our view.

[66] We accept that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade does meet the first principle. As described by VIDA, this is a "*separate, defined and funded investment*". The Panel finds it has a clear and defined scope of work packages which represent an enterprise or undertaking that has been carefully planned to achieve a particular result. These are a combination of activities which are being managed as a single project of works by VIDA for the purpose of achieving clearly stated objectives. This a project that will enable a range of railway improvements upon which the works contained within Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade are predicated, such as a major freeing up of rail lines and routes that will enable a range of significant improvements to various and quite separate aspects of the rail system. Whilst this includes a possible future airport rail link, this does not mean its component parts or packages cannot form part of a separate and well-defined project. The Panel considers that it does.

[67] While future works, like the MARL or Melton Line Electrification, may require some aspects of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade to enable those future works, it does not persuade us that it is appropriate for any consequential future project to be lumped together to provide a mega project for the purposes of determining site allowances. We are also not persuaded that certain, limited parts of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade should be carved out and allocated to a MARL project.

[68] When taken together the packages that make up both Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade and a future MARL achieve a range of quite different results in the context of railway service delivery.

[69] As the Panel noted in Statement No. 2, railway infrastructure works cannot always readily be separately identified in a way that brings logic to the definition of *Project*. Upgrades to railway infrastructure will ultimately facilitate the extension of new lines and/or the electrification of existing lines, or other infrastructure upgrades to ensure safe running, increasing capacity or similar, some of which are inherently necessary for the integrity of large parts of the railway system. This we consider is the case with the works being undertaken by McConnell Dowell and the other packages that make up Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade. Whilst there will be overlap between some works and subsequent projects which may proceed in the future, it does not by itself justify the inclusion of any future works that may or may not proceed for the purposes of determining site allowances.

[70] When taken together Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade and a future MARL achieve a particular broad result which could be described as the 'improvement of railway services' or similar. To extrapolate that as a *Project* in the context of determining site allowances in our view would be far too broad a result when considering particular rail projects. To do so, would mean that the project value of all consequential works, including for example the Melton Line Electrification, could be included together with the potential cost of a future MARL and a site allowance which would apply to all such works. Nor is it appropriate to lump the value of the Early Works Package ($98.2m) with a yet to be designed MARL that may have an estimated build cost of over $10 - $15 Billion to determine a site allowance. We do not believe this is warranted under present circumstances. Indeed it could lead to unreasonable consequences for works that would flow from Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade to rail improvements unrelated to MARL. This is a step too far and one the Panel cannot justify.

[71] Given this, the Panel does not consider the present McConnell Dowell contract for the Early Works Package in its entirety can properly be regarded as part of a broader contract to construct an airport line. It is not practical in our view nor would it make any industrial sense for only the limited works in the contract that may be associated with a future airport rail line to be compensated, with a different site allowance than what might be afforded work on the altogether unrelated works. It makes much more sense, both from a practical standpoint and for industrial commonsense, for all the works being performed by McConnell Dowell to be afforded the same site allowance.

[72] The question that then arises is whether the McConnell Dowell Enabling Works Package should be considered a standalone project, or part of a broader project together with the other four packages that make up Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade. The Panel has determined the latter. Clearly, the Enabling Works Package has been designed to facilitate all of the other packages which

are being managed as a single project. The Enabling Works Package together with the other four packages satisfies principle (a). McConnell Dowell itself makes this point and the Panel agrees.

[73] It follows in our view that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade is capable of meeting principle (a) but not a combination of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade and a yet to be determined MARL. As for MARL, it is still being planned and is not so sufficiently defined that it can meet the test of this principle. Nor do we find that the works being performed by McConnell Dowell, the Enabling Works Package, can be considered an enterprise it its own right – we consider it is clearly part of the broader project of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade for the purposes of the Agreement.

Principle B: The site or combination of sites must have a clearly established entity or entities that exercise control over its development;

[74] The Panel is satisfied that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade does satisfy this principle with VIDA having overall control of its development.

[75] McConnell Dowell submitted that MARL could not satisfy this limb, because the land on which Melbourne Airport sits is owned by the Commonwealth rather than the State. Whilst it is now unnecessary for us to consider whether MARL could satisfy this principle, we accept that a future MARL could be expected to meet this principle given the controls that would more than likely ultimately sit with a VIDA or similar authority on behalf of the State, if it ever proceeded. We do not consider that McConnell Dowell's argument could be determinative in that event.

Principle C: the site or combination of sites must have a scope sufficiently definable at any given point during the project to enable its proper definition and costing for the purpose of determining the appropriate site allowance;

[76] The scope of Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade is well established. There are clear costings, detailed design and packages of work. It is clear that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade is proceeding and procurement well underway with significant works being performed. The work is fully funded for the five (5) packages of works amounting to a value in the order of $4.1 billion which includes non-construction costs. The Panel has accepted for these purposes that the construction costs amount to $2.8108 billion, noting that the commercial terms of 2 packages are yet to be concluded. The Panel finds that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade clearly satisfies this principle. The Panel does not consider this is yet so for any future MARL.

[77] For MARL so much is yet to be confirmed in the way of design, procurement and construction costs. As the Panel has previously observed, we accept that "*sufficiently*

definable" for mega projects does not require that every part of the scope needs to be conclusively designed and costed *"at any given point"*. In this case, however, we do not consider that sufficient and fundamental aspects of MARL have yet been defined which "*enables its proper definition and costing"* as much of that detail is yet to be determined.

[78] Accordingly the Panel confirms that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade, having satisfied each of the 3 principles that define a *Project* pursuant to the Agreement, is a *Project* for which the Panel is able to determine a site allowance.

The MARL Site Allowance Guidance Document

[79] The CFMEU has relied on the MARL Site Allowance Guidance Document and submits that the site allowance provisions contained therein should apply to the works being conducted by McConnell Dowell. Given our finding we cannot agree. The Panel acknowledges that having, in good faith, participated in a process in 2021 the purpose of which we have set out earlier, the CFMEU would understandably have had an expectation of those allowances applying once MARL construction works began consistent with the MARL Site Allowance Guidance Document, and for the life of the project. As we have outlined those construction works have not transpired.

[80] The CFMEU has submitted that in the event the Panel did not find in its favour *"it is difficult to see how the parties could view the MARL Site Allowance Guidance Document as having any ongoing relevance. It could not sensibly operate as a 'project-wide" guidance instrument if the very works identified within it are treated as external to the project for the purposes of employee entitlements."*

[81] Given the history, the Panel accepts that the MARL Site Allowance Guidance Document no longer has any relevance. It was prepared by the parties involved for a particular purpose, in good faith, but the considerable and unique effluxion of time and change of events has meant the landscape has changed significantly. What was anticipated and genuinely expected would occur nearly five years ago clearly has not occurred. Time has moved on and the nature of works now being performed by McConnell Dowell under the present arrangements and the program of works now in place is different to what was envisaged 5 years ago. The future of MARL is yet to be determined. Accordingly, the Panel must adopt a commonsense approach to the facts before it and determine site allowances that properly reflect the works being performed.

A staged or stepped Site Allowance

[82] The Panel, as noted in Statement No. 2, had formed a preliminary view that we could not disregard MARL altogether in our considerations, from which the Panel raised the concept of a staged or stepped site allowance quantum. This we had in mind might be justified if certainty as to MARL could be established. Upon reflection the Panel does not consider the current circumstances warrant such an approach in this matter.

Future MARL

[83] In reaching its decision in the matter the Panel notes its understanding from enquiries of VIDA that should there be any future contracted works relevant to an airport rail spur and works associated with a future MARL these would be the subject of separate and new procurement contracts and will not be incorporated into any Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade contracts. The Panel has accepted this in its consideration of the present dispute. Should the contrary arise, the CFMEU would be at liberty to apply to reopen this matter.

Decision as to amount of Site Allowance

[84] Notwithstanding our finding that the issues at play in this matter have amounted to exceptional circumstances, we consider that the methods set out in the Agreement at *Appendix C subclause 9.2* do not need to be deviated from in this case. We are satisfied that Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade is a *Project* under the terms of the Agreement and that its *Project Value* is $2.8 Billion, resulting in a Site Allowance of $7.95 per hour.

[85] Accordingly McConnell Dowell is required to pay a site allowance of $7.95 per hour with effect from the commencement of its works in January 2026 and to make adjustments for any shortfall in payments to employees within 3 weeks of the date of this Decision. This site allowance is to be adjusted in accordance with the provisions of *Appendix C subclause 10*.

Peter Parkinson

Adrian Ziccone