VBIDP
VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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CONSTRUCTION, FORESTRY, MARITIME EMPLOYEES' UNION (CFMEU)
AND
MCCONNELL DOWELL CONSTRUCTORS PTY LTD (MCCONNELL DOWELL)

RE. MELBOURNE AIRPORT RAIL LINK PROJECT - ALLEGED UNDERPAYMENT OF SITE ALLOWANCE

005-2026 **15 APRIL 2026**

STATEMENT No. 2 and DIRECTIONS

[1] The CFMEU notified a dispute on 20 March 2026 concerning an alleged underpayment of site allowance by McConnell Dowell in relation to works that the CFMEU claim form part of the Melbourne Airport Rail Project, 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).

[2] The Panel convened a video Conference of the parties on 25 March 2023 and issued a Statement. This Statement No. 2 and Directions are to be read in conjunction with that Statement.

[3] The following paragraphs from the previous Statement are repeated here:

> *"[5] McConnell Dowell is presently undertaking works as part of an Alliance which has been awarded works by the Victorian State Government, variously referred to as Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade. McConnell Dowell is performing what are referred to as Enabling Works, involving relocation of utilities in an area variously referred to as the proposed Sunshine Station Superhub (source bigbuild.vic.gov.au). The relevant works commenced in January 2026.*

and
[7[In essence the question that the Panel is being required to determine in this matter is whether or not the relevant works form part of the Melbourne Airport Rail Project or not, and what should be the site allowance applicable.
[8] The parties acknowledge that the Panel will be assisted in its considerations by seeking information from the State as to what is included in the relevant Project(s), upon which the parties would seek to comment, from which the Panel can make its determination for the purposes of the Agreement."

[4] The Panel informed the parties on 30 March 2026 that it had sought relevant details from the State through the Victorian Infrastructure Development Authority (VIDA).

[5] On 14 April 2026 VIDA provided the attached document entitled *Development of Sunshine Superhub (SSH) and Melbourne Airport Rail Link (MARL) Projects*.

[6] The Panel has considered this material together with the other available public information and the initial *Summary of Dispute* document provided by the CFMEU with its application.

[7] The Panel must satisfy the criteria set out in the Agreement at Clause 2 Definitions:

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.

[8] What follows only outlines some preliminary considerations of the Panel, none of which are final concluded views, noting in particular that the parties are yet to provide a response to the material provided by VIDA. It may well be that our initial consideration may result in different conclusions having regard to the parties further submissions the process for which we will deal with later.

[9] It is apparent to the Panel that at the present time the MARL Project is far from settled such that the long standing principles as to the definition of a Project for the purposes of Appendix C of the Agreement might not be met. It is not known when MARL might commence, if at all.

[10] It is clear that what has now been labelled as *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* is proceeding. The work is fully funded and has commenced. The work is the same work previously referred to as the Sunshine Superhub Project (*SSH*). These labels are now utilised interchangeably it seems. They contain the same five (5) packages of works amounting to a value in the order of $4.1 billion which includes non-construction costs according to VIDA. VIDA

advises a construction cost figure in the order of $2.8108 billion, noting that the commercial terms of 2 packages are yet to be concluded. McConnell Dowell is presently undertaking the *Enabling Works Package,* one of the five packages. On this basis, the works now being undertaken by McConnell Dowell could be considered to be part of a project of works with a value of at least $2.8 billion which if accepted by the Panel would of itself result in a higher site allowance as set out in the Agreement than the presently paid $4.35 per hour.

[11] The various nomenclature utilised by the State over a long period is somewhat confusing, and on its face one could be excused for believing many of the labels used to describe various works are part of the one major rail Project. At one point even the Suburban Rail Link included the proposed Airport Rail Project. But VIDA claims, it seems, that ultimately this has really been done to provide confidence to the community that MARL will be delivered at some point. It says the rebranding to *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* is "*for the purposes of identifying to the community that the SSH scope was <u>an important step towards establishing the future airport rail spur line</u>.*" (our emphasis) For the purposes of settling this current dispute the Panel will require something much more than just spin. It is usual that works that are staged, as the branding now utilised clearly implies, would ordinarily be accepted by the Panel as a legitimate stage of a single project for the purposes of determining site allowances for an overall project. VIDA's response however advocates that the Panel should ignore the reference to these works being a stage, specifically *Melbourne Airport Rail Stage 1,* for those purposes. In effect the Panel is being asked to accept, that notwithstanding the label, these works should be considered in isolation to a future MARL.

[12] The Panel is essentially required to determine whether the *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade (*previously *SSH*) should be regarded as part of MARL for the purposes of establishing Project Value in accordance with Appendix C of the Agreement in relation to the works being undertaken by McConnell Dowell.

[13] It is apparent that some of the works to be undertaken as part of the *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* or *SSH* will indeed be necessary for the MARL to proceed as presently proposed. But clearly not all of the works have relevance to MARL. Other works within *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* or *SSH* are required for other important upgrades to the rail network, much of which have nothing to do with MARL. The works being undertaken by McConnell Dowell transgress all these uprades/packages and are indeed preparatory to other future projects. To the extent that some of it may ultimately facilitate the construction of MARL does not persuade us, at this time, that the total value of the *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* works should be lumped together with projected but yet to be confirmed values for works that may at some point in the future be executed on MARL. We note that values of from $10 billion up to $13 billion have been estimated for MARL but not yet allocated or funded.

[14] The Panel notes that *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* will continue through to 2030. Perhaps greater clarity as to MARL proceeding and its construction costs will emerge before then. Nevertheless we are presently of the view that it would be premature to find that MARL can be considered a Project for the purposes of the Agreement such that a site allowance could be determined at this time. Moreover it seems that at present it is far too big a leap to include the five packages of works now proceeding as part of those estimated costs such that a site allowance can be struck now to cover all of those works.

[15] We note the CFMEU's initial submission that some earlier works were conducted and regarded it seems as part of a future MARL Project for which according to the CFMEU was paid at a site

allowance of $10.35 per hour. The Panel would be assisted if further particulars of these works and the industrial instrument applicable were made available by the CFMEU.

[16] We note also that the CFMEU seeks to rely upon the *John Holland and ETU Victorian Rail Infrastructure Enterprise Agreement 2025-2029* (ETU Agreement) in which a site allowance of $11.15 per hour is established for the *Airport Rail Link Project* as at 1 March 2026.

[17] The Panel does not presently consider these matters referenced at paragraphs [15] and [16] are persuasive in setting similar quantums for the works presently underway. The CFMEU also submitted that a provision in the ETU Agreement dealing with Special Project Productivity Allowance of $4.00 per hour should be incorporated in the site allowance for this matter. The Panel can find no sound reason as to why it would do this and reject the proposition.

[18] Another question that arises here is whether railway infrastructure works can readily be separately identified in a way that brings logic to the definition of Project and the subsequent determination of site allowances. Certain 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 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. Whilst there will be overlap between some works and subsequent projects which may proceed in the future, this is not sufficient in our present view to warrant the combining of the construction value of all those works to establish one project for the purposes of determining a site allowance. Nor are we convinced that it is possible or indeed practical to separate out from one set of works, such as the McConnell Dowell package, the value that might be contributed to subsequent rail projects (eg. MARL). For *Melbourne Metro Tunnel Project* the Panel was able to determine appropriate boundaries around what the scope of works should be included in the Project for site allowance purposes, given the relationship the works had to the Project, although it was left open to subsequent argument if works not then contemplated arose. It is not so straight forward in this matter.

[19] We do accept that the issues at play here do constitute exceptional circumstances such as to enliven the Panel's jurisdiction to determine a site allowance, as submitted by the CFMEU.

[20] We are presently of the view that the settlement of this dispute is not a matter of confining our consideration only to the five packages of work that make up the *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade.* We do not presently accept that MARL can be disregarded in its entirety. It seems too convenient if not unconscionable to do so having regard to the relationship established publicly and the works that appear to have been previously undertaken.

[21] This is not a precise science but perhaps it is reasonable however that there should be some relationship between the *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* works and future MARL work for the purposes of site allowances such that some other logic or rationale might prevail. One consideration that has been suggested is a 'staged' approach to site allowance adjustment for the works presently included in *Melbourne Airport Rail Stage 1: West Footscray to Albion Rail Upgrade* and ultimately MARL when works associated with the MARL spur get underway. Perhaps this could be achieved by a stepped approach in quantum. The Panel is keen to hear from the parties accordingly and as to whether there is any scope for agreement to be reached along these lines. In this regard we encourage direct dialogue between the parties in case some common ground can emerge.

Directions

[22] To assist the Panel in reaching a Determination in this matter the parties are directed to make written submissions in response to the issues canvassed in the foregoing Statement and the *Response* provided by VIDA, as follows:

1. The CFMEU is to file written submissions no later than 5.00pm on Friday 8 May 2026;
2. McConnell Dowell is to file written submissions no later than 5.00pm on Friday 22 May 2026; and
3. The CFMEU is to file final written submissions in reply no later that 5.00pm on Friday 29 May 2026.

[21] Subsequent to the receipt of these submissions the Panel may convene a further Conference and Hearing with parties or proceed to issue a Determination.

Peter Parkinson	***Tony Cordier***	***Adrian Ziccone***
Chairman	***Panel Member***	***Panel Member***

Attached: Response by VIDA Rail to VBIDP - *Development of Sunshine Superhub (SSH) and Melbourne Airport Rail Link (MARL) Projects*