

ADJUDICATORS DECISION

In the matter of adjudication pursuant to the
Building and Construction Industry Payments Act 2004 (the Act)

IAMA Adjudication No: 30066

Between

Casa Engineering (Brisbane) Pty Ltd

The Claimant

And

Multiplex Constructions Pty Ltd

The Respondent

The Decision

- a) **The adjudicated amount to be paid by the Respondent to the Claimant in respect of the Adjudication Application dated 23 October 2006, lodged 23 October 2006 is \$266,883.87 (inclusive of GST).**
- b) **The date on which the amount became payable is 30 October 2006.**
- c) **The applicable rate of interest payable on the adjudicated amount is the penalty rate prescribed under Queensland Building Services Authority Act 1991 Section 67P.**
- d) **The Claimant and the Respondent are liable in equal proportions for both the ANA application fee and the Adjudicator's fees and expenses.**

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Preliminary Matters

Background

- 1 This adjudication arises from a contract the parties entered into on or about 18 August 2005 for the Claimant to carry out steel fabrication and erection works for a wharf terminal and residential buildings development being delivered by the Respondent in Brisbane Queensland. A payment claim dated 25 September 2006 was served on and disputed by the Respondent who issued a payment schedule for a reduced amount. The contract is based on a conditioned tender including a schedule of rates for variations submitted by the Claimant however, there were protracted negotiations in relation to the terms and conditions of the contract and although the Claimant amended the Respondent's proposed terms and condition and formally submitted them on 30 November 2005 there has been no final resolution as to agreed terms and conditions. The original date for substantial completion was 19 January 2006 however delays have occurred and, subsequent to the non payment of a previously scheduled amount, the Claimant suspended work effective from on 6 September 2006. A prior Payment Claim in July 2006 was decided by adjudication.

Appointment of Adjudicator

- 2 The Claimant lodged an Adjudication Application with the QLD Chapter of the Institute of Arbitrators and Mediators Australia (IAMA) on 23 October 2006. The Institute of Arbitrators and Mediators Australia Queensland Chapter is an Authorised Nominating Authority under the Act.
- 3 By letter dated and received 26 October 2006 from the Institute of Arbitrators and Mediators Australia Queensland Chapter the Adjudication Application was referred to me to decide as the Adjudicator.
- 4 By letter dated 26 October 2006, transmitted by facsimile same day and sent by express post to the Claimant and the Respondent, I accepted the Adjudication Application and thereby became the appointed Adjudicator.

Scope of the Decision

- 5 The Act at Section 26(1) determines what I am to decide and states:
“(1) An adjudicator is to decide_
(a) The amount of the progress payment (if any) to be paid by the Respondent to the Claimant (the adjudicated amount); and
(b) The date on which any amount became or becomes payable; and
(c) The rate of interest payable on any such amount.”
- 6 The Act at section 34(3)(b) gives me the discretion to determine the proportion of the contribution to be made by the Claimant and by the Respondent to the Authorised Nominating Authority fees.

- 7 The Act at section 35(3) gives me the discretion to determine the proportion of the contribution to be made by the Claimant and by the Respondent to the Adjudicator's fees and expenses.

Matters Regarded in Making the Decision

- 8 Section 26(2) restricts the matters that I may consider in coming to my adjudication decision and states:

“(2) In deciding an adjudication application, the adjudicator is to consider the following matters only--

- (a) the provisions of this Act and, to the extent they are relevant, the provisions of the Queensland Building Services Authority Act 1991, part 4A;*
- (b) the provisions of the construction contract from which the application arose;*
- (c) the payment claim to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the claimant in support of the claim;*
- (d) the payment schedule, if any, to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the respondent in support of the schedule;*
- (e) the results of any inspection carried out by the adjudicator of any matter to which the claim relates.”*

- 9 In making my decision I have had regard for the following:
- (a) The provisions of the *Building and Construction Industry Payments Act 2004* and, the relevant provisions of Part 4A of the *Queensland Building Services Authority Act 1991*.
 - (b) The provisions of the Subcontract 4184-006 from which the Adjudication Application arose;
 - (c) The Payment Claim dated 25 September 2006 to which the application relates;
 - (d) The Payment Schedule dated 9 October 2006 issued by the Respondent;
 - (e) The Adjudication Application lodged 23 October 2006 and enclosed submissions;
 - (f) The Adjudication Response dated 30 October 2006 and received same date was considered by the Adjudicator;

- 10 In determining this adjudication I did not exercise the discretion empowered by Section 25(4) of the Act, to request written submissions, conference or inspections.

The Parties

- 11 Casa Engineering (Brisbane) Pty Ltd (the Claimant)
ABN: 28 099 919 990
1-7 Argon Street
Carole Park, QLD 4300
Phone Number: 07 3271 2300 Fax Number: 07 3271 2644

- 12 Multiplex Constructions Pty Ltd (the Respondent)
ABN: 70 107 007 527
Level 17, 240 Queen Street
Brisbane QLD 4000
Phone Number: 07 3002 0000 Fax Number: 07 3220 1177

The Contract and Application of the Act

- 13 Section 7 of the Act states:
*“Object of the Act
The object of this Act is to ensure that a person is entitled to receive, and is able to recover, progress payments if the person-*
(a) undertakes to carry out construction work under a construction contract; or
(b) undertakes to supply related goods and services under a construction contract.”
- 14 Section 10(1)(a) and (b) of the Act provides:
*“Meaning of construction work
(1) Construction work means any of the following work—*
(a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;
(b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;
- 15 The subcontract documents identified as “*Number: 4184-006*” provided in Annexure 1 of the Adjudication Application and Attachment ‘A’ of the Adjudication Response describes the nature of the work in the title of the project as: “*Structural Steel to Buildings 3, 7 & 8 at PORTSIDE WHARF DEVELOPMENT*”
- 16 The Subcontract Agreement describes in Schedule 3 at Item 1 of Scope details inter alia: “*Provide all labour materials, supervision, materials, equipment and plant to document, manufacture, fabricate, supply, test, deliver to site and erect all structural steel.....*” for the project.
- 17 I find, based on the descriptive evidence provided in the Subcontract Agreement, that the works the subject of the Payment Claim is “Construction Work” captured within the definition provided in Sections 10(1)(a) & (b) of the Act highlighted above.
- 18 Schedule 2 of the Act defines a construction contract:
*“**construction contract** means a contract, agreement or other arrangement under which one party undertakes to carry out construction work for, or to supply related goods and services to, another party.”*

- 19 The Claimant in the Adjudication Application Claimants Submissions A Item 1 states:
“On or about 18 July 2005, the Claimant, Casa Engineering (Brisbane) Pty Ltd at the request of the Respondent, Multiplex Constructions Pty Ltd, provided the Respondent with a quotation for the supply, fabrication and erection of steelwork at the Portside Wharf Development in Hamilton in the amount of \$2,722,200.00. The quotation was based on nominated “tender” drawings.
And at Item 3 states inter alia:
“On or about 18 August 2005, the Respondent accepted in writing the Claimant’s quotation of \$2,722,200.00.”
- 20 The Claimant at Annexure 1.2 has provided a copy of the Respondent’s letter of acceptance dated 18 August 2005.
- 21 The Respondent in the Adjudication Response has not contested these submissions.
- 22 The project has proceeded on the above stated basis and although there was continued negotiation of terms and conditions, I find that the contract is constituted by the conduct of the parties in the work progressing and progress payments being made. This evidence leaves little doubt that there was an intention between the parties to create legal relations and perform services for consideration.
- 23 Section 3(1) of the Act provides:
“(1) Subject to this section, this Act applies to construction contracts entered into after the commencement of parts 2 and 3-
(a) whether written or oral, or partly written and partly oral; and whether expressed to be governed by the law of Queensland or a jurisdiction other than Queensland”
- 24 I find a contract existing between the parties to which the Act applies satisfying Section 3(1) of the Act.
- 25 The Subcontract Agreement is dated 18 August 2005 and the Claimant asserts that the contract was entered into on or about this date. The Respondent has not contested the date of entering the contract of 18 August 2005.
- 26 I find the contract between the parties was entered into on or after the commencement of Parts 2 and 3 of the Act that being 1 October 2004, therefore satisfying the criteria of Section 3(1) of the Act.
- 27 Section 3(2)(a) provides:
“This Act does not apply to--
(a) a construction contract to the extent that it forms part of a loan agreement, a contract of guarantee or a contract of insurance under which a recognised financial institution undertakes--
(i) to lend an amount or to repay an amount lent; or

- (ii) to guarantee payment of an amount owing or repayment of an amount lent; or*
- (iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract; or”*

28 I find no evidence in the submissions provided from either party that would allow exclusion of this contract from application of the Act under this section.

29 Section 3(2)(b) provides:

“This Act does not apply to--

- (b) a construction contract for the carrying out of domestic building work if a resident owner is a party to the contract, to the extent the contract relates to a building or part of a building where the resident owner resides or intends to reside; or”*

30 The works as previously described are for a port terminal buildings and commercial residential complex buildings and the parties to the contract are companies rather than ‘resident owners’ and I find no evidence in the submissions provided from either party that the works relate to *“a building or part of a building”* that would allow exclusion of this contract from application of the Act under this section.

31 Section 3(2)(c) provides:

“This Act does not apply to--

- (c) a construction contract under which it is agreed that the consideration payable for construction work carried out under the contract, or for related goods and services supplied under the contract, is to be calculated other than by reference to the value of the work carried out or the value of the goods and services supplied.”*

32 The contract is constituted by a contract including a schedule of rates and I find no evidence in the submissions provided from either party that would allow exclusion of this contract from application of the Act under this section.

33 Section 3(3)(a) provides:

“(3) This Act does not apply to a construction contract to the extent it contains_

- (a) provisions under which a party undertakes to carry out construction work, or supply related goods and services in relation to construction work, as an employee of the party for whom the work is to be carried out or the related goods and services are to be supplied;”*

34 The Claimant and the Respondent are both commercial trading businesses and the agreement between them being a contract for building works therefore there is no exclusion of this contract from application of the Act under this section.

35 Section 3(3)(b) provides:

“(3) This Act does not apply to a construction contract to the extent it contains_

(b) provisions under which a party undertakes to carry out construction work, or to supply related goods and services in relation to construction work, as a condition of a loan agreement with a recognised financial institution; or”

36 I find no evidence in the submissions provided from either party that would allow exclusion of this contract from application of the Act under this section.

37 Section 3(3)(c) provides:

“(3) This Act does not apply to a construction contract to the extent it contains_

(c) provisions under which a party undertakes--

(i) to lend an amount or to repay an amount lent; or

(ii) to guarantee payment of an amount owing or repayment of an amount lent; or

(iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract.”

38 I find no evidence in the submissions provided from either party that would allow exclusion of this contract from application of the Act under this section.

39 Section 3(4) provides:

“This Act does not apply to a construction contract to the extent it deals with construction work carried out outside Queensland or related goods and services supplied for construction work carried out outside Queensland.”

40 The Subcontract Agreement Annexure 1 Schedule 1 at Item 4 describes the location of the project as *“37 Harbour Road, Hamilton Queensland”*.

41 I find that the works the subject of the Contract were carried out inside Queensland, allowing no exclusion of the contract under Section 3(4) of the Act.

42 Neither party has made any submission in respect of the work being the subject of a notice of claim of charge under the *Subcontractors’ Charges Act 1974*. Therefore Section 4 of the Act is not currently applicable to this adjudication.

43 I find the contract to be within the jurisdiction of the Act.

Reference Date

44 Section 12 of the Act states:

“Rights to progress payments

From each reference date under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work, or supply related goods and services, under the contract”

45 Schedule 2 of the Act provides:

“reference date, under a construction contract, means_

- a) a date stated in, or worked out under, the contract as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the contract; or*
- b) if the contract does not provide for the matter_*
 - (i) the last day of the named month in which the construction work was first carried out, or the related goods and services were first supplied, under the contract; and*
 - (ii) the last day of each later named month.”*

- 46 The Subcontract Agreement at Clause K2 (uncontested) refers to Annexure 1 Schedule 1 at Item 11 which states:
“Progress Claims to be submitted by the 25th day of each month”
- 47 The Claimant has asserted in its Adjudication Application Submissions at Item 16 that the reference date is the 25th day of each month and the Respondent has not contested this date.
- 48 I therefore find that the reference date is the 25th day of the month in which the work was first carried out and the 25th day of each later named month.
- 49 The Claimant has asserted in its Adjudication Application Submissions at Item 22 that the Reference Date for this Payment Claim is 25 September 2006. The Respondent has not contested this date or submitted that any other claim may refer to this reference date.
- 50 I find the Reference Date for the Payment Claim served 25 September 2006 is 25 September 2006.

Amount of Progress Payment

- 51 Section 13 of the Act provides:
“Amount of progress payment
 - (a) the amount calculated under the contract; or*
 - (b) if the contract does not provide for the matter, the amount calculated on the basis of the value of construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, by the person, under the contract.”*
- 52 The Claimant tendered for the work and submitted a schedule of rates and has been awarded with a lump sum contract therefore S13(a) applies and the amount of progress payment is calculated under the contract.
- 53 Section 14 of the Act provides:
“Valuation of construction work and related goods and services
(1) Construction work carried out or undertaken to be carried out under a construction contract is to be valued--
 - (a) under the contract; or*
 - (b) if the contract does not provide for the matter, having regard*

to--

- (i) the contract price for the work; and
- (ii) any other rates or prices stated in the contract; and
- (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and
- (iv) if any of the work is defective, the estimated cost of rectifying the defect.”

54 The Claimant in the Adjudication Application Submissions at Item 1, 3 and 4 states:

“1. On or about 18 July 2005, the Claimant, Casa Engineering (Brisbane) Pty Ltd, at the request of the Respondent, Multiplex Constructions Pty Ltd, provided the Respondent with a quotation of the supply, fabrication and erection of steelwork at Portside Wharf Development in Hamilton in the amount of \$2,722,200.00. The quotation was based on nominated “Tender” drawings.

3. On or about the 18 August 2005, the Respondent accepted in writing the Claimant’s quotation in the amount of \$2,722,200.00. This written acceptance also purported to incorporate terms from the Respondent’s standard general conditions of subcontract. The Claimant’s quotation, however, was not premised on such standard general conditions of subcontract (and were not incorporated into the quotation which was accepted by the Respondent). A copy of the Respondent’s written acceptance appears at Annexure 1.2 to these Submissions.

4. Since this time, there have been protracted negotiations between the parties in relation to the terms of the subcontract for the above work (the Subcontract). This culminated in the Claimant formally submitting to the Respondent on 30 November 2005 terms in the form appearing at Annexure 1.3 to these submissions.

55 The Respondent in the Adjudication Response Submissions at Item 2.2 states:
*“Multiplex contends that the 30 November terms do not represent the subcontract between Multiplex and Casa. Multiplex contends that the terms are those contained in **annexure A** to these submissions. The reasons for this follow.”*

56 The Claimant submitted a conditioned tender based on nominated ‘Tender Drawings’ which resulted in the Respondent accepting that tender subject to a set of terms and conditions that varied from the conditions forming part of the offer. The Claimant having received the letter of acceptance then commenced the construction work but refused to accept the Subcontract Agreement offered for signing of a formal agreement. The parties commenced negotiations as to the terms and conditions that were to apply to the Subcontract Agreement and a level of agreement was reached but the parties remained in dispute on several items. The Respondent has not accepted the proposed amendments to the Subcontract Agreement and Schedules submitted 30 November by the Claimant (Tab 3 of Claimant’s Application), however, those items that remain un-amended (not contested) in the Claimant’s proposed schedules I construe as accepted by the Claimant. Negotiations continued with both parties attempting to resolve the outstanding differences whilst the work continued. The tender for the work had comprised of lump sum and a schedule of rates for variations and the Claimant has been awarded with a lump sum contract with sufficient information to calculate progress payments due, therefore S14(1)(a) applies in this case.

The Payment Claim

- 57 The Payment Claim is comprised of a document (95 pages) described as ‘Claim No: 11, Month: September 06’ with included variation schedules and copies of ‘Request For Variation’ notices on Casa Engineering letterhead addressed to ‘Multiplex Constructions’ with first page being a pro-forma sheet as follows:

PROJECT: Portside Wharf



1-7 Argon Street, Carole Park QLD 4300
 Phone: (07) 3271 2300 Fax: (07) 3271 2644
 Mobile: 0417 664 622

ABN: 28-099-919-990

To: Multiplex Constructitons
 Agreement: 4184 -006
 Claim No. 11
 Month: September-06

SCHEDULE	TENDER VALUE	% complete	THIS CLAIM
Original Subcontract Sum	2,722,700	-	2,722,700.00
Variations Agreed	-		1,239,869.15
Variations Previously Submitted and Not Agreed	-		1,798,918.75
Variations Previously Not Submitted and Not Agreed	-		554,035.00
Variations Completed and Awaiting Submission			79,550.00
	2,722,700	234.88%	6,395,072.90
ADJUSTED CONTRACT SUM			6,395,072.90
LESS RETENTION (10% to a maximum of 5% of Contract Sum)			136,435.00
SUB TOTAL			6,258,637.90
LESS PREVIOUS PAYMENTS Certified			4,620,891.00
TOTAL THIS CLAIM (EXCLUDING GST)			1,637,746.90
PLUS GST			163,774.69
THIS PAYMENT VALUE			1,801,521.59

This payment claim is made under the Building and Construction Industry Payments Act 2004

- 58 The Claimant in the Adjudication Application Submissions at Item 17 states that the Payment Claim was served on 25 September 2006.
- 59 The Respondent in the Adjudication Response Submissions at Item 5.1(b) states:
 “5.1 Multiplex accepts (for the purpose of this adjudication only):
 (a) Casa’s payment claim complies with the formal requirements of section 17 of the BCIP Act; and”

- 60 Therefore, I am satisfied that the Payment Claim was served by the Claimant on the Respondent on 25 September 2006 as confirmed by both parties in their submissions.
- 61 Section 17(2) of the Act in respect to payment claims states:
“(2) A payment claim--
(a) must identify the construction work or related goods and services to which the progress payment relates; and
(b) must state the amount of the progress payment that the claimant claims to be payable (the claimed amount); and
(c) must state that it is made under this Act.”
- 62 The Payment Claim on Page 1 identifies the contract as “*Agreement: 4184-006*”, states the amount of the payment claim as \$1,801,521.59 (inclusive of GST) and states clearly in the last line “*This payment claim is made under the Building and Construction Industry Payment Act 2004*”
- 63 I have previously found the Reference Date for this Payment Claim to be 25 September 2006.
- 64 I find that the Payment Claim to which the Adjudication Application relates satisfies the requirements of section 17(2) of the Act and was served by a Claimant entitled to serve a Payment Claim on the Respondent under the Act.
- 65 Section 17(4) of the Act in respect to payment claims states:
“(4) A payment claim may be served only within the later of--
(a) the period worked out under the construction contract; or
(b) the period of 12 months after the construction work to which the claim relates was last carried out or the related goods and services to which the claim relates were last supplied.”
- 66 I have previously found the contract was executed on or about 18 August 2005. The copies of various correspondence between the parties in their respective submissions show that the work was in progress into September 2006 and the Claimant at Item 21 of Claimant’s Submissions states:
“The Payment Claim was served within the period of 12 months after the construction work to which the claim relates was last carried out (as per s17(4) of the Act)”. This has not been contested by the Respondent.
- 67 Therefore I find the Payment Claim complies with s17(4)(b) of the Act.
- 68 Section 17(5) and (6) of the Act in respect to payment claims states:
“(5) A claimant can not serve more than 1 payment claim in relation to each reference date under the construction contract.
(6) However, subsection (5) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim.”
- 69 As previously found and not contested by the Respondent there had been no other Payment Claim made in relation to the reference date of 25 September 2006. I find

only one payment claim relating to the reference date of 25 September 2006 satisfying Section 17(5) of the Act.

70 I find the Payment Claim to be a valid payment claim under the Act.

The Payment Schedule

71 The Payment Schedule is comprised of a document (50 pages) marked “*FAXED 9.10.06*” including variation schedules and ‘Multiplex Assessment of Variation’ sheets with the first page being a reconciliation of payment due as follows:

Payment Schedule

MULTIPLEX
Portside Wharf, Hamilton

Subcontractor: Casa Engineering (Brisbane) Pty Ltd
 Payment Claim No. 11
 Date of Claim Sep-06
 Date Claim Received 25-Sep-06
 Subcontract Ref: 4184-006

*To Peter Casa
 @
 CASA ENGINEERING (21)*

FAXED
*9.10.06
 JTC*

Summary of Payment to be Provided:

	Value Claimed by Subcontractor	Multiplex Assessment of Value	Payment Claimed by Subcontractor	Payment Value Approved by Multiplex	Diff b/w Payment Claimed and Payment Approved
(1) Contract Works*	\$2,722,700	\$2,722,700	\$2,722,700	\$2,722,700	\$0
(2) Contract Scope Reductions (Credits)*	\$0	\$0	\$0	<\$15,000>	\$15,000
(3) Variations Claimed*	\$3,702,585	\$2,619,075	\$3,650,680	\$2,613,519	\$1,037,161
(4) Reasons for Withholding Payment (Deductions)*	\$0	<\$812,161>	\$0	<\$812,161>	\$812,161
Subtotal	\$6,425,285	\$4,529,614	\$6,373,380	\$4,509,058	\$1,864,322
Less Retention (10% up to 5% of adjusted contract sum)	\$226,481			<226,481>	Casa yet to complete external painting and request PC
Subtotal				\$4,282,577	
Less Previously Paid				\$4,620,891	As @ 9/10/06
This Payment (excludes GST) [Scheduled Amount]				<\$338,314>	

CASA ENGINEERING

12 OCT 2006

RECEIVED:

Note - also sent via alex some day.

* Refer to attached sheets for details

File: Casa Payment Schedule - Sep 06 Draft

Multiplex Constructions Pty Ltd

1/8

72 Section 18 of the Act states:

- “(1) A respondent served with a payment claim may reply to the claim by serving a payment schedule on the claimant.*
- (2) A payment schedule--*
- (a) must identify the payment claim to which it relates; and*
 - (b) must state the amount of the payment, if any, that the respondent proposes to make (the scheduled amount).*
- (3) If the scheduled amount is less than the claimed amount, the schedule must state why the scheduled amount is less and, if it is less because the respondent is withholding payment for any reason, the respondent's reasons for withholding payment.*
- (4) Subsection (5) applies if--*
- (a) a claimant serves a payment claim on a respondent; and*
 - (b) the respondent does not serve a payment schedule on the claimant within the earlier of--*
 - (i) the time required by the relevant construction contract; or*
 - (ii) 10 business days after the payment claim is served.*
- (5) The respondent becomes liable to pay the claimed amount to the claimant on the due date for the progress payment to which the payment claim relates.”*

73 The Subcontract General Conditions of Contract Clause K3 (uncontested) provides for the Principal to issue a certificate of payment to the Contractor within 10 business days after the relevant reference date and in this instance matches the 10 days required by the Act for serving of a payment schedule, therefore I find that the Contract has provided for the time to issue a payment schedule and that it equals the default time under s18(4)(b)(ii) of the Act of 10 business days after the payment claim is served.

74 I have previously found that the Payment Claim was served on the 25 September 2006, and adding 10 days as per the Act it would require the Payment Schedule to be served on or before 9 October 2006. The Claimant in the Claimant's Submissions at Item 24 confirms that the Payment Schedule was served on 9 October 2006 and is therefore within the time allowed under the Act.

75 The Payment Schedule is identified as from the Respondent, has stated that it is in relation to the Claimant's Payment Claim of 25 September 2006, stated the amount of payment is to be made and provided reasons for reduced payment.

76 I find that the Respondent's Payment Schedule marked “*FAXED 9.10.06*” and received same day by the Claimant is a payment schedule and complies with the requirements of s18(2), s18(3) of the Act.

Due Date for Payment

77 Section 26(1)(b) of the Act requires that I am to decide the date on which any adjudicated amount became or becomes payable.

- 78 The parties have not made submissions as to the due date for payment, therefore, referring to the Subcontract at clause K5 (uncontested) states:
“Multiplex must pay the subcontractor the amount certified for payment by Multiplex’s project manager, or his delegate, within 25 business days after each reference date.”
- 79 Section 15(1) of the Act states:
“Due date for payment_
1) A progress payment under a construction contract becomes payable-
(a) if the contract contains a provision about the matter that is not void under section 16 or under the Queensland Building Services Authority Act 1991, section 67U or 67W11--on the day on which the payment becomes payable under the provision; or

(a) if the contract does not contain a provision about the matter or contains a provision that is void under section 16 or under the Queensland Building Services Authority Act 1991, section 67U or 67W-10 business days after a payment claim for the progress payment is made under part 3.”
- 80 Section 10(2) of the Act in defining ‘Construction Work’ states:
“(2) To remove doubt, it is declared that construction work includes building work within the meaning of the Queensland Building Services Authority Act 1991.”
- 81 The Claimant in the Adjudication Application Submissions at Part C ‘INTEREST’ has asserted in relation to interest that the contract is subject to the provisions of the QBSA Act 1991. This has been accepted by the Respondent (*“For the purpose of this adjudication only”*) in the Adjudication Response Submissions at Item 11.1.
- 82 The QBSA Act for construction management contracts at Clause 67U requires payment within 25 business days of submission of the payment claim and therefore in this case does not void the payment requirement in this contract.
- 83 I find that Section 15(1)(a) of the Act applies and for reasons set out earlier in this decision I am satisfied the Payment Claim was served on 25 September 2006. Therefore, adding 25 business days, I find the due date for payment is 30 October 2006.

The Adjudication Application

- 84 The Adjudication Application was lodged with the Institute of Arbitrators and Mediators Queensland office on 23 October 2006 and states that a copy was served on the Respondent on the same day.
- 85 The Respondent in the Adjudication Response Submissions at Item 5.1(c) states:
“5.1 Multiplex accepts that for the purpose of this adjudication only:
(c) Casa’s adjudication application was made within the period required by section 20(3)(c)(i) of the BCIP Act.”. NB: The reference to s20 appears to be a typing error and should read s21, see below.

86 Section 21(1)(a)(i) of the Act states:

“(1) A claimant may apply for adjudication of a payment claim (an adjudication application) if--

(a) the respondent serves a payment schedule under division 1 but--

(i) the scheduled amount stated in the payment schedule is less than the claimed amount stated in the payment claim; or”

87 The Payment Schedule provides for a negative payment amount, being less than the claimed amount. Therefore, I find that the Claimant is able to apply for adjudication in accordance with s21(1)(a)(i) of the Act.

88 Section 21(3) of the Act states inter alia:

“(3) An adjudication application--

(a) must be in writing; and

(b) must be made to an authorised nominating authority chosen by the claimant; and

(c) must be made within the following times--

(i) for an application under subsection (1)(a)(i)--within 10 business days after the claimant receives the payment schedule;”

89 The Adjudication Application is in writing and has been lodged with the Institute of Arbitrators and Mediators Australia (IAMA), a registered Authorised Nominating Authority under the Act (Registration Number N1057859).

90 I have previously found that the Payment Schedule was served by the Respondent on the Claimant on 9 October 2006 and the Adjudication Application was lodged with IAMA on 23 October 2006 being the 10th business day after receipt of the schedule.

91 I find that the Claimant has complied with the requirements of s21(3)(a), (b) and (c) of the Act.

92 Section 21(3)(d) of the Act states:

“An Adjudication Application----

(d) must identify the payment claim and the payment schedule, if any, to which it relates; and”

93 The completed pro-forma attached to the covering letter clearly sets out the details of the Contract, the Payment Claim and the Payment Schedule, and I find that the Adjudication Application satisfies Section 21(3)(d) of the Act.

94 Section 21(3)(e) of the Act states:

“An Adjudication Application----

(e) must be accompanied by the application fee, if any, decided by the authorised nominating authority; and”

- 95 Although the Adjudication Application did not include details of the payment of the application fee IAMA (QLD) has confirmed payment was made, therefore Section 21(3)(e) of the Act is satisfied.
- 96 Section 21(4) of the Act states:
“(4) The amount of an application fee must not exceed the amount, if any, prescribed under a regulation”
- 97 There has been no regulation that prescribes a fee amount issued under the Act.
- 98 Section 21(5) of the Act states:
“A copy of an adjudication application must be served on the respondent.”
- 99 The Adjudication Application states that a copy was served on the Respondent on the same day and the Respondent has confirmed service on that date in the Adjudication Response Submissions at Item 1.2, thereby satisfying s21(5) of the Act.
- 100 Section 21(6) of the Act states:
“(6) The authorised nominating authority to which an adjudication application is made must refer the application, as soon as practicable, to a person eligible to be an adjudicator under section 22.”
- 101 The IAMA referred the application to me on the third business day after receiving the documents satisfying the ‘as soon as practicable’ requirement of s21(6) the Act.
- 102 Section 22 of the Act states:
“When person may be an adjudicator
(1) A person may be an adjudicator in relation to a construction contract if registered as an adjudicator under this Act.
(2) A person is not eligible to be an adjudicator in relation to a particular construction contract--
(a) if the person is a party to the contract; or
(b) in circumstances prescribed under a regulation for this section.
(3) A regulation may be made under subsection (2)(b) only to prescribe circumstances in which the appointment of an adjudicator might create a conflict of interest.”
- 103 I am a Registered Adjudicator under the Act. Registration Number J1057073. I am not a party to the contract and I have no conflict of interest with the parties to this adjudication therefore Section 22 of the Act is satisfied.
- 104 The Claimant seeks adjudication of the Payment Claim for \$1,801,521.59.
- 105 The Adjudication Application comprised five lever arch files entitled Volumes 1 to 5 of documents containing the Claimant’s submissions and supporting attachments as listed:
a) Volume 1 comprising:
(i) Covering letter and application details sheets (3 pages)
(ii) The Payment Claim dated September 2006,

- (iii) The Payment Schedule marked faxed 9 October 2006,
 - (iv) The Claimant's Submissions (23 pages, index and 22 pages numbered 4 to 25) containing Items 1 to 166,
 - (v) Variation Schedules A to D,
 - (vi) Annexure 1 Subcontract Agreement including General Conditions of Subcontract, Annexure 2 Claims History, Annexure 3 Previous Adjudicators Decision and Annexure 4 Cases Referred to in Submissions.
- b) Volume 2 to Volume 5 – Supporting documentation for variations claimed.

The Adjudication Response

106 Section 24 of the Act states:

“Adjudication responses_

(1) Subject to subsection (3), the respondent may give the adjudicator a response to the claimant's adjudication application (the adjudication response) at any time within the later of the following to end--

(a) 5 business days after receiving a copy of the application;

(b) 2 business days after receiving notice of an adjudicator's acceptance of the application.

(2) The adjudication response--

(a) must be in writing; and

(b) must identify the adjudication application to which it relates; and

(c) may contain the submissions relevant to the response the respondent chooses to include.

(3) The respondent may give the adjudication response to the adjudicator only if the respondent has served a payment schedule on the claimant within the time specified in section 18(4)(b) or 21(2)(b)

(4) The respondent can not include in the adjudication response any reasons for withholding payment unless those reasons have already been included in the payment schedule served on the claimant.

(5) A copy of the adjudication response must be served on the claimant.”

107 I have already found that the Payment Schedule was correctly served on the Claimant within the time allowed under s18(4)(b) of the Act in response to the Payment Claim served 25 September 2006, therefore, I am able to consider the Adjudication Response pursuant to s25(1)&(2) of the Act and I find s24(3) of the Act is satisfied.

108 I accepted the Adjudication Application 26 October 2006 and commenced deciding the application after receiving the Adjudication Response on 30 October 2006.

109 I find that the Adjudication Response was in writing and identified the Adjudication Application to which it related in the covering letter and attached summary details and contains various submissions of the Respondents choosing, therefore satisfying s24(2) of the Act.

110 The Adjudication Response covering letter, prepared by the Respondent's solicitor, has stated that the same submission will be duly served on the Claimant.

Therefore, at this time I am unable to find that the Adjudication Response has been served on the Claimant to satisfy s24(5) of the Act. There is no time frame imposed by the Act for service of the Adjudication Response on the Claimant.

- 111 The Adjudication Response included one ring binder and two lever arch folders. The ring binder contained 'Submissions in support of Multiplex's adjudication response' numbered Page 1 to 31 and attachments:
- 'A' – Subcontract Agreement and Terms and Conditions
 - 'B' – Respondent's correspondence of 26 October 2006 to the Claimant
 - 'C' – Schedules of Variations
 - 'D' – Adjudication response to previous adjudication application dated 4 October 06
- The lever arch folder No 1 and 2 contained variation assessments and the Respondent's position with respect to the disputed variation amounts.

The Previous Adjudication Decision

- 112 There has been a previous adjudication decision, which I will refer to as the "*October 2006 Decision*" of a July 2006 Payment Claim for this contract. (NB: where quotes have been included from submissions generally the footnotes have not been included)

- 113 Section 27 of the Act states:
- "Valuation of work etc. in later adjudication application*
(1) Subsection (2) applies if, in deciding an adjudication application, an adjudicator has, under section 14 decided--
- (a) the value of any construction work carried out under a construction contract;*
or
 - (b) the value of any related goods and services supplied under a construction contract.*
- (2) The adjudicator or another adjudicator must, in any later adjudication application that involves the working out of the value of that work or of those goods and services, give the work, or the goods and services, the same value as that previously decided unless the claimant or respondent satisfies the adjudicator concerned that the value of the work, or the goods and services, has changed since the previous decision."*

- 114 The Claimant in the Adjudication Application Submissions at Items 40 to 63 has made submissions as to its interpretation of s27 quoting for authority McDougall J in Paragraph 44 Rothnere Pty Ltd v Quasar Constructions NSW Pty Ltd NSWSC 1151 [2004] and Einstein J in Paragraph 11 and 29 Baseline Constructions Pty Ltd v Classic Group Painting Services Pty Ltd NSWSC397 [2006].

The Claimant at Item 46 has made further submissions in relation to variations and the application of s27 of the Act stating:

"In the present circumstances, the Previous Adjudicator determined that there were agreed dayworks rates (ie as set out in the Claimant's quotation dated 18 July 2005 and Schedule 3 to the subcontract) and that the Claimant had been awarded a lump sum contract with sufficient information to calculate progress payments. Accordingly, it was determined that s14(1)(a) of the Act is applicable in these circumstances. The Previous Adjudicator proceeded to value the majority of the

construction work in respect of which the Claimant was entitled to payment on this basis.”

And at 47 states:

“As can be seen from the Previous Adjudicator’s decision, the Previous Adjudicator valued the following construction work pursuant to s14(1)(a) of the Act:

*(a) the work the value of the original contract sum in the amount of 2,722,700; and
(b) the variations listed in Schedules ‘A’ – ‘C’ that have a value in column C, titled
“Previous Adjudicator’s Valuation” in the total amount of \$2,909,323.80.”*

And at Item 48 states:

“The Previous Adjudicator did not, however, “Value” the construction work the subject of the remaining variation claims in the July Payment Claim (which are those variations in Schedules A-C which do not have a value in column C). He instead determined that the Claimant was not entitled to payment for the remaining variations on the basis that the Claimant had not submitted supporting material in respect of those variations to the Respondent within a reasonable time prior to the Respondent delivering its payment schedule.”

And at Item 49 states:

“Nor did the Previous Adjudicator value the construction work the subject of PVO Nos 150, 151 and 152 as these variation claims were not included in the July Payment Claim.”

And at Item 50 states:

“Therefore, in relation to the variation claims referred to in paragraphs 48 and 49 above, s27(2) of the Act has no application to the valuation of these variations by the adjudicator of this adjudication because the first precondition has not been met.”

115 The Claimant at Items 53 to 63 has further proceeded to identify those variations where it submits that the value of the construction work has changed.

116 The Respondent in the Adjudication Response Submissions at Items 6.1 to 6.13 has made submissions as to its interpretation of s27 and the instances where s27 applies and raises the question of whether a ‘concession’ by either party constitutes a valuation when that amount is included in an adjudicated amount. The Respondent at Item 6.6 to 6.9 states:

“6.6 In the Previous Adjudication, the value much of the construction work was simply not in contest for the purpose of the adjudication. Multiplex made numerous concessions for the purpose of the adjudication only. (Multiplex notes that Casa also purports to make concessions for the purpose of one adjudication only.)

6.7 Multiplex submits that such an approach is not prohibited by the BCIP Act, and is not inconsistent with the scheme of the BCIP Act.

6.8 It is difficult to see how a party (claimant or respondent) would be prejudiced if they agree to a position for one adjudication: if a dispute later arises, it can be determined by an adjudicator once the dispute has arisen and both parties can make submissions as to the appropriate resolution of the dispute.

6.9 Indeed, it is difficult to see how a claimant could be prejudiced. If a respondent accepts a claimant’s claim, the claimant is in the best possible position. Even if a dispute was later agitated, the BCIP Act prevents an adjudicator from requiring a claimant to make a payment to a respondent. ”

And at Item 6.11 to 6.13 states:

“6.11 Multiplex notes that this position is consistent with that described by McDougall J in Rothnere Pty Ltd v Quasar Constructions NSW Pty Ltd, a case cited and relied on by Casa. In that case, McDougall J noted that the previous adjudicator had not valued some work under the contract (finding that they were not properly claimable by the claimant for other reasons), which did not prevent a subsequent adjudicator from later valuing the work.

6.12 Indeed, McDougall J also said:

“In my judgment, [section 27] itself makes it clear that an adjudication determination need not necessarily include the valuation of construction work: the use of the introductory word “If” makes this clear.”

6.13 The concessions in connection with the Previous Adjudication meant that the adjudicator did not need to determine the value of some work under section 14 of the BCIP Act. On no view can the adjudicator be said to have formed a view as to the value of the work under section 14 of the BCIP Act covered by the concessions.”

And at 6.15 to 6.19 states:

6.15 That is, Casa submits that merely because it has now provided supporting information the value of the work has changed. However, when Multiplex has sought to revalue previous construction work because it has, eg, performed a remeasure, Casa submits that section 27(2) prevents the adjudicator from valuing the work differently in this adjudication.

6.16 Multiplex submits that it is either the case that:

(a) further information that goes to the value of construction work changes the value of the work within the meaning of section 27(2), allowing the adjudicator to revisit the value for that work; or

(b) further information that goes to the value of construction work does not change the value of the work within the meaning of section 27(2), preventing the adjudicator from revisiting the value for that work.

6.17 Put another way, the operation of section 27(2) should affect both Casa and Multiplex equally.

6.18 Further, Multiplex submits that merely providing supporting information does not, and can not, change the value of construction work. The value of construction work is a property of that work—if the work has not changed (and no defects have been identified), then the value of the work has not changed.

6.19 Casa does not support its submission to the contrary with any case authority. Multiplex is aware of none.

117 Section 26(1) of the Act required the previous adjudicator to decide the amount of the progress payment to be paid, this being the ‘Adjudicated Amount’. The calculation of the progress payment is, in the case of both the previous and this adjudication, determined by valuation of the complete works under the contract, in accordance with s13 and s14 of the Act, including all items where payment is due and adjustments are provided for under the contract (e.g. Retention), or the Act, and then deducting the amounts already paid on account to arrive at an amount payable. The previous adjudication dealt with agreed amounts for inclusion into the adjudicated amount, being the original contract sum and many variations described as ‘agreed’ or ‘conceded’ in the schedules. The parties can and have provided submissions to the adjudicator expressing agreement of an amount, but only the

adjudicator can decide the value of construction work to be included in the adjudicated amount and to so do he may 'adopt' the agreed amount between the parties. The fact that an item is 'in dispute' or 'contested' or 'agreed' is only of any relevance when used as a basis by the adjudicator for deciding that the payment is due under the contract. With regard to the Respondents statement included above at Item 6.6 of its submissions that "*Multiplex made numerous concessions for the purpose of the adjudication only*" and at 6.7 that "*Multiplex submits that such an approach is not prohibited by the BCIP Act, and is not inconsistent with the scheme of the BCIP Act*" I am unconvinced that the Act allows any relief as a result of conditioning any concession by making this statement. Once included, the value of the construction work has been decided by the adjudicator and this interpretation is seen to prevent adjudicator shopping by the parties. I do not accept that the decision of McDougall J in 'Rothnere v Quasar' was expressing any other view as to who decides the amount of progress payment for inclusion into the adjudicated amount and the item in question in that decision was found to be not properly claimable by the Claimant for other reasons, which then allowed a later valuation of the work. There was no suggestion by McDougall J that the adjudication amount could include amounts separately identified to be either by the adjudicator or agreed between the parties.

118 I will consider the nature of the prior assessment of each individual variation decided by the previous adjudicator on its merits. That is to determine on what basis the adjudicator decided the value of the construction work to be included in the adjudicated amount. For instance and as raised by the Respondent in submissions that a 'nil' amount may well have been valued by the Adjudicator. There may be instances where the adjudicator has determined another amount (i.e. where the Claimant has claimed less than that included in the payment schedule) and provided reasons for that determination and in those cases a valuation has been decided.

119 The Claimant in the Adjudication Application Submissions at Item 55 states inter alia:

"..., the previous adjudicator determined that he was not able to take into account any supporting material which was provided after the service of the Respondent's payment schedule in response to the July Payment Claim. This impediment is no longer applicable in relation to PVO Nos as the Claimant delivered to the Respondent its supporting material in respect of these variations prior to the service of the Payment Schedule (and even prior to the submission of the Payment Claim). As a result the value of the construction work the subject of these variation claims has changed since the previous Adjudicator's decision."

120 The Respondent in the Adjudication Response Submissions at Item 6.15 states:

"That is, Casa submits that merely because it has now provided supporting information the value of the work has changed. However, when Multiplex has sought to revalue previous construction work because it has, eg, performed a remeasure, Casa submits that section 27(2) prevents the adjudicator from valuing the work differently in this adjudication."

And at Item 6.17 and 6.18 states:

"6.17 Put another way, the operation of section 27(2) should affect both Casa and Multiplex equally."

6.18 Further, Multiplex submits that merely providing supporting information does not, and can not, change the value of construction work. The value of construction work is a property of that work—if the work has not changed (and no defects have been identified), then the value of the work has not changed.”

121 I concur with the Respondent that the mere provision of supporting information does not change the value of construction work. The Act requires the adjudicator to be satisfied by either party’s submissions that the value of the work has changed. To be satisfied that the value of the work has changed I will be seeking out material changes demonstrated by either party in their submissions that the value has changed and the operation of s27(2) will affect both parties equally.

122 The Respondent in the Adjudication Response submissions at Annexure ‘C’ has separated the variations into various categories and at Item 7.9 states:
*“(a) Agreed previously; agreed now. There is no contest in this adjudication between Multiplex and Casa in relation to these variations. They should be accepted by the adjudicator without any determination under section 14.
(b) Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.
(c) Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act.
(d) No supporting information provided previously. In relation to some variations, Casa provided no supporting information in the Previous Adjudication. Multiplex submits that, because no supporting information was provided, the value of the work was valued at nil in the Previous Adjudication. Merely providing supporting information does not change the value of the work (see paragraphs 6.18-6.19 above).
(e) Otherwise contested previously. These are variations that were otherwise contested in the previous adjudication. Multiplex notes that Casa submits that section 27(2) does not apply to some of the variations because the value of the construction work has changed. If the adjudicator is satisfied that this submission is correct (see paragraphs 6.14-6.19 above),
(f) New variations. These variations were not claimed in the Previous Adjudication. There is a dispute as to the value for these variations. They must be adjudicated on.”*

123 With respect to the Respondents assertion in Item (d) above that “, because no supporting information was provided the value of the work was valued at nil’, the Respondent further states at Items 7.13 to 7.15 :
“7.13 In relation to the variations referred to in paragraph 7.9(c) above, Multiplex agrees with Casa that section 27(2) does not apply. However, the reason for this is not that the value of the work has changed (though it may have in some cases). It is because the adjudicator did not make a determination of the value

of those variations under section 14, therefore section 27 is not enlivened. Multiplex notes, however, that what amounted to \$150,360.00 in the previous claim is now being claimed as \$529,947.00, a significant increase.

7.14 In relation to the variations referred to in paragraph 7.9(d) above, Casa has not articulated any reason why it was not in a position to provide supporting information in relation to those variations before, but is now. Multiplex considers that the Previous Adjudication can be construed as a decision under section 14 in relation to the value of those variations (as zero).

7.15 Without any reason from Casa as to why the supporting information was not available before the prior adjudication, Casa should be bound by its conduct in seeking an adjudication where it had no supporting material. In relation those variations (which Casa now claims should be valued at \$42,350.00—which is incidentally less than the \$51,060.00 sought in the Previous Adjudication), no amount should be adjudicated.”

124 With regard to the Respondent’s statements at Item 7.13 to 7.15 above. I concur with the Respondent that s27 of the Act is only enlivened if the Adjudicator has made a determination and decided the value of the construction work. Should the Claimant serve a payment claim without providing supporting information it is risking a determination of \$0.00 (nil) simply because the adjudicator is unable to satisfy himself of any other value, even having established an entitlement under the contract. Subject to my examination of each variation listed in the schedules provided at the Respondent’s Submissions Annexure “C”. I will assess the application of s27 of the Act for each variation claimed.

125 Therefore in the case of each variation where a previous adjudication decision included an amount in the Adjudication Amount, the requirement in s27(2) is for either the Claimant or the Respondent to satisfy me that the value of work has changed and I will address each submission in that regard.

The Adjudicated Amount

126 Section 26(1)(a) of the Act requires that I decide the amount of the progress payment, if any, to be paid by the respondent to the claimant (the adjudicated amount). I will assess each claimed element of the work in the Payment Claim and decide an amount to be carried to collection of the Adjudicated Amount for calculation of the progress payment due. These item amounts are excluding GST, which is added in the Collection. (NB: where quotes have been included from submissions generally the footnotes have been omitted)

127 I will be deciding the progress payment due from the amounts claimed in the Payment Claim, however, as there has been concessions in the Adjudication Response, and for clarity, I will consider the claims as categorized by the Claimant in its Schedules ‘A’ to ‘D’ and then any other claims that have not been included in those schedules. Refer Variation Register. The Respondent in the Adjudication Response Submissions at Item 7.9 has identified categories of variations in a similar manner and where possible I will group variations with ‘like’ issues.

128 Section 24(4) of the Act states:

“(4) The respondent can not include in the adjudication response any reasons for withholding payment unless those reasons have already been included in the payment schedule served on the claimant.”

129 The Payment Schedule has stated various reasons for withholding monies and these reasons will be considered in assessing each submission.

The Original Contract Sum

130 **The Original Contract Sum** is included in the Payment Claim and the Payment Schedule and the amount is not in dispute in this or the previous adjudication for work completed under the contract. The adjudicator in the previous adjudication decided that it did form part of the payment claim being adjudicated (albeit noted for ‘calculation purposes’) and determined from the submissions that there was agreement by the parties of the amount of \$2,722,700.00 and that having been included at the full amount in the payment schedule the Respondent accepted the Claimant’s entitlement under the contract and that it was due for payment (Item 114 of the October 2006 Decision). I am obliged to give the work the same value as the previous adjudicator and this is not contested in submissions from the parties for this adjudication, **therefore the amount of \$2,722,700.00 for ‘The Original Contract Sum’ is carried to Collection of the Adjudicated Amount.**

Schedule ‘A’

131 **Schedule ‘A’ Agreed Variations** Claimed Amount \$1,528,426.46. The Claimant has asserted that in Schedule ‘A’ all amounts have been agreed by the Respondent. The adjudicator in the previous adjudication decided that items listed in the previous “Schedules ‘A’ to ‘E’ in the Claimant’s adjudication application, that were asserted to be agreed between the parties, did form part of the payment claim being adjudicated and determined from the submissions that there was agreement by the parties of the amounts included and that having been included at the full amount in the payment schedule the Respondent accepted the Claimant’s entitlement under the contract and that it was due for payment (Refer October 2006 Decision). For all of these items that were included in the previous schedules that are now included in the current Schedule ‘A’ s27(1) of the Act applies. I am obliged to give the work the same value as the previous adjudicator unless pursuant to s27(2) of the Act I am satisfied by either party that the value of the work has changed. (Refer section ‘The Previous Adjudication Decision’).

132 The Respondent in the Adjudication Response Submissions at Item 7.9(a) has identified a category of variations as ‘Agreed previously; agreed now’ at Annexure ‘C’ which excludes variations PVO 35, PVO 96 and PVO 125 of Schedule ‘A’ and I will deal with those item first followed by other items where the amount included has changed from the previous adjudication.

133 With regard to Variation PVO 35, (Payment Claim \$105,846.00 and Payment Schedule \$105,846.00) where the value of the construction work in this variation has been decided by the previous adjudicator in an adjudication decision (October 2006

Decision at Item 121-125) at the lesser amount of \$89,969.10, the Claimant has claimed that additional work has been carried out and the Respondent in the Adjudication Response Submissions at Item 7.17 has stated inter alia:

“In relation to the variations in relation to which the adjudicator determined a value under section 14 of the BCIP Act:

(a) PVO No 35. Multiplex accepts (for this adjudication only) that additional work was performed. There is no dispute in this adjudication as to the valuation of this variation.”

I am therefore satisfied by the parties that the value of the work has changed for this item and the Respondent has agreed to the additional value of the construction work and included the full amount in the Payment Schedule for this variation. The additional amount of \$15,876.90 is to be included in the adjudicated amount. The full amount of PVO 35 is included in Schedule ‘A’.

134 With regard to Variation PVO 96, (Payment Claim \$2,556.00 and Payment Schedule \$2,556.00) where the value of the construction work in this variation has been decided by the previous adjudicator in an adjudication decision (October 2006 Decision at Item 162-165) at the lesser amount of \$1,800.00. The previous adjudicator decided not to consider the supporting material submitted by the Claimant for reasons of natural justice and fairness and decided the value of the construction work claimed in the payment claim, based on the fact that the Respondent’s assessment included in the payment schedule was a greater amount. The Claimant in the Adjudication Application Submissions at Item 55 asserts that because supporting material for its claim is now available the value of the work has changed. I do not accept this as a reason that changes the value of the work. The Respondent has included Variation PVO 96 under the category *‘Impermissible supporting information provided previously’* noted at Item 7.9(c) of the Adjudication Response Submissions and asserts that no valuation has been made by the previous adjudicator therefore I can decide the value of the work. For reasons previously stated s27(1) applies and I do not accept the Respondent’s assertion. Neither party has submitted any other reason for a change in value of the work and I am not satisfied from their submissions that any change has occurred. However, the Respondent has included this item in the Payment Schedule at the claimed amount and this denotes agreement between the parties that a change to the value of the work has occurred and therefore, I decide the additional amount of \$756.00 be included in the adjudicated amount. The full amount of PVO 96 is included in Schedule ‘A’.

135 With regard to Variation PVO 125, (Payment Claim \$1,252.00 and Payment Schedule \$1,252.00) where an amount of \$1,200.00 for this variation has been included in a payment claim subject to a previous adjudication decision (October 2006 Decision at Item 154), the adjudicator for reasons of natural justice and fairness, did not decide a value of the construction work for this variation. The Respondent has included Variation PVO 125 under the category *‘Impermissible supporting information provided previously’* noted at Item 7.9(c) of the Adjudication Response Submissions and asserts that there was no valuation of these items in the previous adjudication decision and s27 of the Act does not apply. I concur with the Respondent that the previous adjudicator did not decide the value of the construction work for this variation. The Respondent has included the full amount claimed in the

Payment Schedule, therefore, I decide the value of the construction work in this variation is \$1,252.00. The full amount of PVO 125 is included in Schedule 'A'.

136 With regard to Variation PVO 70, (Payment Claim \$36,219.00 and Payment Schedule \$36,219.00) where the value of the construction work in this variation has been decided by the previous adjudicator in an adjudication decision (October 2006 Decision at Item 117, 118) at the lesser amount of \$28,422.00. The Claimant in the Adjudication Application Submissions at Item 59 asserts that because of identification of a calculation error in the Claimant's detailed valuation of this variation the value of the work has changed. I am not satisfied that this a reason that has changed the value of the work, however, the Respondent has denoted agreement with the Claimant that the value of the work has changed by including the full amount in the Payment Schedule for this variation, I decide to adopt the parties agreement and the additional amount of \$7,797.00 is to be included in the adjudicated amount. The full amount of PVO 70 is included in Schedule 'A'.

137 With regard to Variation PVO 83, (Payment Claim \$232,524.00 and Payment Schedule \$232,524.00) where the value of the construction work in this variation has been decided by the previous adjudicator in an adjudication decision (October 2006 Decision at Item 126-127) at the lesser amount of \$227,873.52. The Claimant in the Adjudication Application Submissions at Item 57 asserts that the value of the work has changed because additional work has been carried out. The Respondent has not contested the Claimant's assertion and as I find this a reason that could change the value of the work and the Respondent having included the full amount in the Payment Schedule for this variation, I decide the additional amount of \$4,650.48 is to be included in the adjudicated amount. The full amount of PVO 83 is included in Schedule 'A'.

138 With regard to Variation PVO 84, (Payment Claim \$82,000.00 and Payment Schedule \$82,000.00) where the value of the construction work in this variation has been decided by the previous adjudicator in an adjudication decision (October 2006 Decision at Item 128, 129) at the lesser amount of \$77,900.00. The Claimant in the Adjudication Application Submissions at Item 57 asserts that the value of the work has changed because additional work has been carried out. The Respondent has not contested the Claimant's assertion and as I find this a reason that could change the value of the work and the Respondent having included the full amount in the Payment Schedule for this variation, I decide the additional amount of \$4,100.00 is to be included in the adjudicated amount. The full amount of PVO 84 is included in Schedule 'A'.

139 Therefore all variations listed in **Schedule 'A' Agreed Variations in the full amount of \$1,528,426.46 is carried to Collection for calculation of the Adjudicated Amount.**

Schedule 'B'

140 **Schedule 'B' Disputed Variations** – The parties in the Adjudication Application and Response submissions have asserted that different methods of assessing variations and different terms and conditions apply to processing variations in this

contract. In order to proceed beyond this point I will now address those submissions with a view to making a finding as to any agreement of the method of assessing variations and any agreement or otherwise of rates applicable to variations including dayworks variations. In the event that no contractual agreement be found I will then decide the basis on which I will assess the variation claims for the purpose of deciding an adjudicated amount.

- 141 The Claimant in the Adjudication Application Submissions at Items 1 to 6 states:
- “1. On or about 18 July 2005, the Claimant, Casa Engineering (Brisbane) Pty Ltd, at the request of the Respondent, Multiplex Constructions Pty Ltd, provided the Respondent with a quotation of the supply, fabrication and erection of steelwork at Portside Wharf Development in Hamilton in the amount of \$2,722,200.00. The quotation was based on nominated “Tender” drawings.*
 - 2. A copy of the Claimant’s quotation dated 18 July 2005 appears at Annexure 1.1 to these submissions.*
 - 3. On or about the 18 August 2005, the Respondent accepted in writing the Claimant’s quotation in the amount of \$2,722,200.00. This written acceptance also purported to incorporate terms from the Respondent’s standard general conditions of subcontract. The Claimant’s quotation, however, was not premised on such standard general conditions of subcontract (and were not incorporated into the quotation which was accepted by the Respondent). A copy of the Respondent’s written acceptance appears at Annexure 1.2 to these Submissions.*
 - 4. Since this time, there have been protracted negotiations between the parties in relation to the terms of the subcontract for the above work (the Subcontract). This culminated in the Claimant formally submitting to the Respondent on 30 November 2005 terms in the form appearing at Annexure 1.3 to these submissions.*
 - 5. The Claimant subsequently wrote to the Respondent in two letters dated 5 December 2005 noting the protracted negotiations in relation to the terms of the subcontract. In the second of these letters, the Claimant confirmed that it would continue to administer the subcontract on the basis of the terms appearing at Annexure 1.3 to these submissions. The Respondent did not contest this position in subsequent correspondence. Copies of the Claimant’s letters appear at Annexure 1.4 to these submissions.*
 - 6. Whilst the parties continued to negotiate some aspects of the terms of the subcontract, there was no signed agreement. However, there is no doubt that the subcontract works have been carried out under the terms set out at Annexure 1.3. This is evidenced by the conduct of both parties which shows that they consider themselves bound by these terms. ”*
- 142 The Respondent in the Adjudication Response Submissions at Item 2.2 states:
- “Multiplex contends that the 30 November terms do not represent the subcontract between Multiplex and Casa. Multiplex contends that the terms are those contained in **annexure A** to these submissions. The reasons for this follow.”*

143 The Respondent goes on to describe correspondence from the Claimant at Items 2.3 to 2.6 being two letters on 5 December 2005 (both provided) to the Respondent that refer to confirmation of a meeting to be held that day to discuss issues requiring resolution. One of the letters contained the following statement:
“We note that as at the 5 December 2005, no agreement on the general conditions has been reached. In order to progress this issue we confirm our meeting today at 2.00 p.m.”

144 The Respondent asserts at Item 2.5 that:
“There was a meeting between Casa and Multiplex at about 2.00 p.m. on 5 December 2005 at which, among other things, the contractual terms between Multiplex and Casa were discussed.”

And at Item 2.6 that:

“Casa’s recollection of that meeting was set out in a letter from Casa to Multiplex dated 6 December 2005. Casa has provided this letter to the adjudicator in volume 5 of its adjudication application under the tab labelled “Cranes”. That letter reads, relevantly:

We confirm the following outcomes of the meeting held at 2.30 p.m. on the 5 December 2005 to discuss issues raised in our letters dated 5 December 05 and handed to Multiplex by hand prior to the start of this meeting:

...

5. CASA agree to review the remaining issues under the General Conditions and Schedules 1 to 7 in light of the meeting outcomes shall be altered and signed by Casa and provided to Multiplex.”

And at Item 2.7 states:

“This—which is Casa’s own letter, on which it relies in this adjudication on another point—alone indicates that contractual matters were discussed and agreed between Casa and Multiplex on 5 December 2005. Logically, it cannot be that the 30 November terms represent the terms agreed on 5 December 2005.”

145 The Respondent also asserts at Items 2.8 to 2.15 that the Claimant’s own conduct in claiming variation amounts has been more consistent with the Respondent’s view of terms and conditions rather than all variations being treated as dayworks.

146 The Respondent submits at Item 2.16 and 2.17 that;
“2.16 In any event, on any view, Casa’s own record of the 5 December 2005 meeting indicates that it would provide a signed subcontract (including the general conditions of contract and the schedules) reflecting the agreement reached on 5 December 2005 to Multiplex. The purported contract provided with the adjudication application is not signed by Casa (and, Multiplex notes, neither are the 30 November terms).
2.17 There is no basis on which the adjudicator can reliably conclude that the 30 November terms reflect the agreement between Casa and Multiplex reached on 5 December 2005.”

- 147 The above submissions leave little doubt that there is no formal signed and agreed terms and conditions between the parties. Neither party has submitted any ‘Request for Tender’ documentation but it must be assumed that the Respondent provided a parcel of documents to the Claimant for quotation purposes which may or may not have included its Form of Agreement or Standard Terms and Conditions. The Claimant’s quote of 18 July 2005 clearly sets out that *“All work is to be performed in accordance with the drawings provided”*, the *“Scope of work”*, what *“We have not allowed for”* and the conditions that apply to the quote under a heading *“Please note that the following conditions apply:”*. One of those conditions stating: *“All standby rates and variations shall be charged at the following rates:”* and provides a list of applicable rates. Another of those conditions states: *“No allowance has been made for the following:”* and provides a list of exclusions.
- 148 The Respondent’s acceptance of 18 August 2005 refers to the offer of 18 July 2005 from the Claimant as being accepted. The letter then refers to formation of the contract by stating: *“In accordance with Clause P14, of the Multiplex standard general conditions of subcontract incorporated into the conditions of tender, that contract is formed between us upon your receipt of this letter.”*
- 149 The Respondent has not specifically stated that the documents it has submitted at Annexure A of the Adjudication Response, were enclosed with its letter of acceptance or not, but I consider it safe to assume they were. It is also unclear what changes may have been made to these documents from those that may have been provided in the ‘Request for Tender’ documents to the Claimant. The inclusion of a list of daywork rates is one item that is obviously a change.
- 150 The Claimant’s quotation of 18 July 2005 must be considered a conditioned non-conforming tender or at the very least a tender with significant non compliance. Neither party has adduced evidence to indicate the level of resolution achieved in relation to the non-conformance and non-compliance of the original quotation prior to the Respondent’s letter of acceptance being sent but it is clear, evidenced by the work commencing, that both parties showed an intention to create legal relations and belief that the outstanding issues could be satisfactorily resolved. The Respondent’s acceptance appears to have left unresolved issues outstanding for the Claimant to consider.
- 151 The issue of managing variations being one of those unresolved issues where the Respondent takes the view that dayworks are distinct variations and subject to particular rules with the list of rates stated in ‘Schedule 3 of the Subcontract Agreement’ applying and other variations to be assessed utilising a Bill of Quantities to be submitted by the Claimant. Evidenced by the Claimant’s submission of its ‘Amended Subcontract Agreement’ of 30 November 2005, the Claimant is maintaining its view that the conditions relating to assessing variations in its original quotation still apply. It is noted that the Claimant has included the Respondent’s list of daywork rates (presumed to be included with the Respondent’s letter of acceptance of 18 August 2005) but has amended the method of using those rates by deleting the requirement for a bill of Quantities and stating that all variations are to be priced at agreed daywork rates. I do not construe this to mean that the Claimant intended that all variations are to be treated as daywork variations merely that the

pricing of variations was to use the daywork rates. This is evidenced by the Claimant making no amendments to Clause D4 of the 'General conditions of subcontract' setting out requirements for 'Day work'.

152 The Claimant's letter of 6 December 2005 states that there are still items requiring further review by the Claimant after the 5 December 2005 meeting. Neither party has provided me with any submissions advising what agreement was reached on any of the unresolved issues at the meeting of 5 December 2005, therefore I can only assume that any resolution achieved does not add to either party's case as no affidavits and no copies of correspondence reflecting confirmation of agreement have been provided.

153 I have considered the submissions from both parties relating to the conduct of the parties subsequent to the letter of acceptance and commencement of work, but do not find either of the arguments put to be convincing sufficient to determine a method of assessing variations or as to determining terms and conditions that will apply based on that conduct.

154 This leaves me in a position of considering each variation on the basis that there is no agreed method of processing variations or agreed rates that will apply to those variations. I will not be assessing all variations as dayworks, but rather assess the submissions on and determine each claim on the particular and peculiar merits of that claim and proceed to value each claim on a fair and reasonable basis having established whether any agreed terms of the contract apply. The Respondent has submitted its assessment of many of the variations based on a composite or global rate method which it describes a 'market rate'. The Claimant has generally provided particularised and detailed breakdowns of labour, materials, drafting, transport and other items. I am required to be satisfied that the claim is reasonable and an entitlement under the contract exists. In carrying out this task in the limited time available to arrive at a value the work there is little doubt that on balance the detailed approach taken by the Claimant is going to be more convincing than the global rates approach taken by the Respondent. The computations the Respondent has used to determine the composite rate appear reasonable, however, one overall rate so derived using what can best be considered estimated tonnages of steel can only provide a loose indication when individual variations may be affected by any number of commercial, location, timing, urgency, disruptions and other pressuring factors which impact on cost. In the event of failure by either parties to provide an alternative well set out assessment of components and pricing of the variation components it will be difficult for me to prefer that submission and decide it favorably.

155 **Schedule 'B' PVO No 2 Additional Cinema Support Beams.** Payment Claim amount \$150,539.00, Payment Schedule amount \$139,139.00. The amount of \$150,539.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 119, 120 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent's reason for withholding payment being it found no reason for increase in the variation amount from \$139,139.00 to \$150,539.00 subsequent to prior submission and approval. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its

contractual right to the variation, therefore I find that the Claimant has an entitlement.

156 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*

And at Item 7.12 states inter alia:

"In relation to variations referred to in paragraph 7.9(b) above:

(a) PVO No 2. The amount originally claimed by Casa for this variation was \$139,139. Multiplex assessed the variation at that amount. Even if there was an arithmetic error in Casa's claimed valuation, that does not change Multiplex's valuation, nor make it unfair or unreasonable."

157 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

158 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a *"concession for the purposes of one adjudication only"* which is the reference to paragraphs 6.6 to 6.13 noted above. This 'conditioning statement' is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation, **therefore the amount of \$150,539.00 for PVO No 2 is carried to Summary of Schedule 'B' Variations.**

159 **Schedule 'B' PVO No 5 B7** Deletion of U12a Angles. Payment Claim amount deduction of \$23,436.00. Payment Schedule amount deduction of \$28,222.16. The deduction amount of \$23,436.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 115 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent's reason for withholding payment being its assessment based on using a composite tonnage rate for steel. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

160 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

161 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see*

paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”

162 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

163 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the deduction amount of \$23,436.00 for PVO No 5 is carried to Summary of Schedule ‘B’ Variations.**

164 **Schedule ‘B’ PVO No 7 B7** Cranked column added. Payment Claim amount \$12,762.00. Payment Schedule amount \$8,717.84. The amount of \$12,762.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 115 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent’s reason for withholding payment being its assessment based on using a composite tonnage rate for steel. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

165 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

166 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure ‘C’ that relates to the category at Item 7.9(b) which states: *“Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”*

167 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

168 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$12,762.00 for PVO No 7 is carried to Summary of Schedule ‘B’ Variations.**

169 **Schedule ‘B’ PVO No 12 SI001171** Workshop drawing changes. Payment Claim amount \$23,408.00. Payment Schedule amount \$8,126.80. The amount of \$10,000.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 155 to 158 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent’s reason for withholding payment being its assessment based on using a composite tonnage rate for steel. The Respondent has

assessed these works and indicated a payment amount due denoting acceptance that the work constitutes a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

- 170 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 171 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 172 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount. The amount included in the previous adjudication was determined by the adjudicator to be the amount scheduled by the Respondent in the payment schedule as the Claimant's supporting information was determined to be impermissible due to the date of submission of the variation claim.
- 173 The Claimant has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$10,000.00 for PVO No 12 is carried to Summary of Schedule 'B' Variations.**
- 174 **Schedule 'B' PVO No 16** Miscellaneous Dayworks for January. Payment Claim amount \$29,723.26. Payment Schedule amount \$23,909.66. The amount of \$29,723.26 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 114 to 115 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assertion that the variation rates are not representative of any agreed rates and rates have been adjusted back to those advised by the Claimant on its quotation dated 7 December 2005. The Respondent has assessed these works and indicated a payment amount due denoting acceptance that the work constitutes a variation and the Claimant asserts its contractual right to the variation, therefore having perused the submissions provided, I find that the Claimant has an entitlement.
- 175 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

- 176 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 177 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 178 The Respondent has submitted its re-assessment of this variation on the basis that no determination was decided by the previous adjudicator and has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$29,723.26 for PVO No 16 is carried to Summary of Schedule 'B' Variations.**
- 179 **Schedule 'B' PVO No 19** Additional column S20c on grid 39. Payment Claim amount \$14,723.00. Payment Schedule amount \$4,506.68. The amount of \$14,723.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 114 to 115 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent's reason for withholding payment being its assessment based on using a composite tonnage rate for steel. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 180 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 181 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 182 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 183 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$14,723.00 for PVO No 19 is carried to Summary of Schedule 'B' Variations.**

- 184 **Schedule 'B' PVO No 25** B7 Additional roof braces added grid 12-13. Payment Claim amount \$1,849.00. Payment Schedule amount \$0.00. The amount of \$1,849.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 114 to 115 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent's reason for withholding payment being its alternative assessment provided with the Payment Schedule. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 185 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 186 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 187 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 188 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$1,849.00 for PVO No 25 is carried to Summary of Schedule 'B' Variations.**
- 189 **Schedule 'B' PVO No 45** Cranked dropped stub western façade wall. Payment Claim amount \$40,549.00. Payment Schedule amount \$18,236.80. The amount of \$40,549.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 114 to 115 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent's reason for withholding payment being a reference to a letter 000431 dated 7/7/06. The letter is provided by the Respondent and is a covering letter for the prior Payment Schedule No 7. The reason for withholding payment in that schedule being the Respondent's assessment based on a composite rate for the steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 190 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 191 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states:

“Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”

192 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

193 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$40,549.00 for PVO No 45 is carried to Summary of Schedule ‘B’ Variations.**

194 **Schedule ‘B’ PVO No 46** Revised awning support to western façade grid 22-24. Payment Claim amount \$34,532.00. Payment Schedule amount \$19,413.00. The amount of \$34,532.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 114 to 115 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent’s reason for withholding payment being a reference to a letter 000431 dated 7/7/06. The letter is provided by the Respondent and is a covering letter for the prior Payment Schedule No 7. The reason for withholding payment in that schedule being the Respondent’s assessment based on a comparison with VO 38 pricing of the connections. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

195 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

196 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure ‘C’ that relates to the category at Item 7.9(b) which states:
“Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”

197 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

198 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$34,532.00 for PVO No 46 is carried to Summary of Schedule ‘B’ Variations.**

- 199 **Schedule ‘B’ PVO No 69** B7 Gangway revised steel to level 1. Payment Claim amount \$47,505.00. Payment Schedule amount \$35,891.00. The amount of \$35,891.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 117, 118 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment in that schedule being that the variation had been submitted and approved for \$35,891.00 and there was no reason for an increase in variation amount to \$47,505.00. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 200 The Claimant in the Adjudication Application Submissions at Items 59 and 60 asserts that because there is a change to the value of the construction work due to the identification of calculation errors in this variation, the Adjudicator is free to re-value the construction work.
- 201 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure ‘C’ that relates to the category at Item 7.9(b) which states: *“Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”*
- And at Item 7.12(b) states:
“PVO No 69. Since the previous payment claim, Casa has claimed an additional \$11,614.00 in relation to this variation without any further work occurring. Even if Casa made an arithmetic error in their original proposed valuation, it does not follow that Multiplex has made an error when valuing the work. Additionally, Multiplex notes that the same work is valued at \$500 per hour when an addition, and \$95 per hour when a deletion, with no reason given for the discrepancy.”
- 202 The reason submitted by the Respondent for allowing a change in value of the work is that it still maintains its original valuation and that it had previously made a *“concession for the purposes of one adjudication only”* which is the reference to paragraphs 6.6 to 6.13 noted above. This ‘conditioning statement’ is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 203 I am also not satisfied by the Claimant’s submissions that the value of the construction work decided by the previous adjudicator has changed due to identification of a calculation error in its assessment. Therefore, pursuant to s27(2) of the Act I decide that the value of the construction work remains as decided by the previous adjudicator, **therefore the amount of \$35,891.00 for PVO No 69 is carried to Summary of Schedule ‘B’ Variations.**
- 204 **Schedule ‘B’ PVO No 71** B7 Cinemas additional angle and sealing plates. Payment Claim amount \$112,670.00. Payment Schedule amount \$68,265.12. The amount of \$112,670.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 117 to 118 October 2006 Decision), therefore s27(1) of the Act applies. The Respondent’s reason for withholding

payment being its assessment based on using a composite tonnage rate for steel. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

- 205 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 206 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 207 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a *"concession for the purposes of one adjudication only"* which is the reference to paragraphs 6.6 to 6.13 noted above. This 'conditioning statement' is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 208 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 209 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$112,670.00 for PVO No 71 is carried to Summary of Schedule 'B' Variations.**
- 210 **Schedule 'B' PVO No 74** B7 Cinemas additional shear studs to level 2 & 3 landing. Payment Claim amount \$14,136.00. Payment Schedule amount -\$6,863.00. The amount of \$14,136.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 119 to 120 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on negative adjustments to the components claimed due to a different understanding of the processes involved. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 211 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

- 212 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 213 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a *"concession for the purposes of one adjudication only"* which is the reference to paragraphs 6.6 to 6.13 noted above. This 'conditioning statement' is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 214 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 215 The Respondent has made no specific submissions to substantiate a change in value of the construction work, however in perusing the supporting material for this variation there are reasons provided which would change the value of the construction work. The Respondent has submitted that the use of the 300 KVA generator is a decision for the Claimant to make when determining the most efficient method of carrying out the work and the shared use of the equipment on site satisfies me that this variation should be re-valued.
- 216 I have perused the documents provided and the Claimant's submitted detailed estimate inclusive of labour hours and itemised components, however, I concur with the Respondent in that the drafting activity would be very straight forward and prefer the Respondent's assertion regarding the generator set being onsite for other work. With regard to the question of site welding verses shop welding and the use of a process requiring a 300KVA generator set I am prepared to accept that the Claimant is in the best position to know the productivity benefits of particular equipment and has obviously preferred to site weld for the benefit of assisting its other activity being the Bondek installation. I am therefore decide to reduce the amount of the Claimant's claim by the value of the mobilisation (-\$2,000.00) and hire of the generator and stud welding equipment (-\$3,000.00) and prefer the lesser labour hours offered by the Respondent for shop drawing drafting (-\$855.00), but not the site installation time. Therefore, the claim of \$14,136.00 is reduced by \$5,855.00 and **the amount of \$8,281.00 for PVO No 74 is carried to Summary of Schedule 'B' Variations.**
- 217 **Schedule 'B' PVO No 75** B7 Cinemas stair 7.7 revised stair landing design. Payment Claim amount \$12,970.00. Payment Schedule amount -\$6,000.00. The amount of \$12,970.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 119 to 120 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on negative adjustments due to no mesh being installed and certification costs due to differences of understanding of the material substitutions involved by the parties. The Claimant

asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

- 218 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 219 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 220 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a *"concession for the purposes of one adjudication only"* which is the reference to paragraphs 6.6 to 6.13 noted above. This 'conditioning statement' is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 221 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 222 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$12,970.00 for PVO No 75 is carried to Summary of Schedule 'B' Variations.**
- 223 **Schedule 'B' PVO No 76** B7 Cinemas stair 7.7 shop detailing of handrails. Payment Claim amount \$3,325.00. Payment Schedule amount \$1,520.00. The amount of \$3,325.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 119 to 120 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on a reduced number of drafting hours for the activity. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 224 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 225 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see*

paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”

- 226 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a “*concession for the purposes of one adjudication only*” which is the reference to paragraphs 6.6 to 6.13 noted above. This ‘conditioning statement’ is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 227 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 228 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$3,325.00 for PVO No 76 is carried to Summary of Schedule ‘B’ Variations.**
- 229 **Schedule ‘B’ PVO No 77** B7 Cinemas stair 7.7 revised stair handrail support design. Payment Claim amount \$21,430.00. Payment Schedule amount \$16,940.00. The amount of \$21,430.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 119 to 120 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent’s assessment attached to the Payment Schedule based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 230 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 231 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure ‘C’ that relates to the category at Item 7.9(b) which states: *“Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”*
- 232 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a “*concession for the purposes of one adjudication only*” which is the reference to paragraphs 6.6 to 6.13 noted above. This ‘conditioning statement’ is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.

- 233 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 234 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$21,430.00 for PVO No 77 is carried to Summary of Schedule 'B' Variations.**
- 235 **Schedule 'B' PVO No 78** B7 Cinemas skylight additional steelwork revised design. Payment Claim amount \$51,071.00. Payment Schedule amount \$11,082.00. The amount of \$51,071.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 115 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 236 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 237 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 238 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 239 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$51,071.00 for PVO No 78 is carried to Summary of Schedule 'B' Variations.**
- 240 **Schedule 'B' PVO No 81** B1 Window head TW 58 and W14 S&I CA 4195. Payment Claim amount \$2,456.00. Payment Schedule amount \$1,382.29. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment provided with the Payment Schedule based on comparable market rates. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

- 241 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 242 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 243 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 244 The Claimant has submitted in its variation supporting material that the Respondent's use of comparison with G James rates is not reasonable as they are a glazing company and this is a steelwork item.
- 245 The Respondent in its variation supporting material has asserted that the installation of window heads is regularly undertaken by glazing contractors and the market rates are provided to demonstrate the fact. The Respondent's assessment is a one line item lump sum and I am unable to source that figure from the information supplied or understand the comparison provided (i.e. the claimed amount is not reduced by 30%, in fact the Respondent's assessment is 56% of the claim). The Respondent has also provided an assessment based on using its composite market rate. This was not a reason for withholding payment raised in payment schedule and pursuant to s24(4) of the Act I am unable to consider this reason.
- 246 I have perused the documents provided and considered the nature of the work and although accepting that the work is sometimes carried out by glaziers as asserted by the Respondent, no breakdown or understandable comparison has been supplied with its assessment. I prefer the Claimant's particularised claim for valuing the work, therefore **the amount of \$2,456.00 for PVO No 81 is carried to Summary of Schedule 'B' Variations.**
- 247 **Schedule 'B' PVO No 85** B1 Additional fascia truss added as per CONTADV 3866 & 3878. Payment Claim amount \$4,277.00. Payment Schedule amount \$1,674.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment provided with the Payment Schedule based on market rates. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 248 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now

available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

- 249 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 250 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 251 The Claimant has submitted in its variation supporting material that the Respondent's use of purlin supply and installation market rates is not reasonable as the frame is a fully welded structure. The Claimant has also submitted that this work is not dayworks as the installation was performed as part of and incorporated in the roof erection.
- 252 The Respondent in its variation supporting material has asserted that the installation should have been done as dayworks but the variation was submitted some time after the works were completed. The Respondent's assessment is a one line item of lineal metres of purlin times a rate described as a market rate but no substantiation has been provided with this rate. The Respondent has also provided an assessment based on using its composite market rate. This was not a reason for withholding payment raised in payment schedule and pursuant to s24(4) of the Act I am unable to consider this reason.
- 253 I have perused the documents provided and considered the nature of the work and assertions by the Respondent regarding dayworks but, with no substantiation of the market rate being supplied with its assessment I prefer the Claimant's particularised claim for valuing the work, therefore **the amount of \$4,277.00 for PVO No 85 is carried to Summary of Schedule 'B' Variations.**
- 254 **Schedule 'B' PVO No 86** B1 Revised steelwork as per TRANSMIT - 001795. Payment Claim amount \$131,952.00. Payment Schedule amount \$0.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment provided with the Payment Schedule which was submitted with a note *"AP to come back in light of claim submitted totaling 131k"* with no additional comments. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 255 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now

available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

- 256 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 257 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 258 I do not consider the reason provided for withholding payment by the Respondent to be a reason at all. For authority I refer the parties to the judgment of Palmer J paragraph 70. *Multiplex Constructions Pty Ltd v Luikens and Anor [2003] NSWSC 1140*
"70 I am unable to accept this submission. For a respondent merely to state in its payment schedule that a claim is rejected is no more informative than to say merely that payment of the claim is "withheld": the result is stated but not the reason for arriving at the result. Section 14(3) requires that reasons for withholding payment of a claim be indicated in the payment schedule with sufficient particularity to enable the claimant to understand, at least in broad outline, what is the issue between it and the respondent. This understanding is necessary so that the claimant may decide whether to pursue the claim and may know what is the nature of the respondent's case which it will have to meet if it decides to pursue the claim by referring it to adjudication." NB: Section 14(3) is the NSW equivalent of s18(3) of the QLD Act.
- 259 The Claimant has submitted in its variation supporting material that the Respondent in the Payment Schedule has included a previous assessment, not updated, for this variation. The Claimant submits that given the Respondent has not raised any other reason for withholding payment in respect of this variation claim, that it is entitled to the full amount of its claim.
- 260 The Respondent has submitted in its variation supporting material reasons for not paying the claim which were not raised in the Payment Schedule which I find I am unable to consider pursuant to s24(4) of the Act.
- 261 I have perused the documents provided by the Claimant with the claim and considered the nature of the work and the Claimant's particularised claim for the work and consider it to be reasonable in valuing the work, therefore **the amount of \$131,952.00 for PVO No 86 is carried to Summary of Schedule 'B' Variations.**
- 262 **Schedule 'B' PVO No 88** B3 Parapet roof framing added as per drawing B3-S-R01-100, B3-S-00-560, B3-S-00-500-1. Payment Claim amount \$25,988.00. Payment Schedule amount \$-23,789.36. The amount of \$25,988.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work

(Item 195 to 198 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement

- 263 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 264 The Respondent in the Adjudication Response Submissions at Item 7.17(b) states: *"PVO No 88. A payment in relation to variation was not expressly sought by Casa in the Previous Adjudication. Multiplex therefore did not provide responsive material. Multiplex submits that the adjudicator may now consider Multiplex's valuation of the variation."*
- 265 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 266 I am without doubt that this variation was claimed in the prior July 2006 payment claim and contested by the Respondent with a lesser amount in the payment schedule leading to the previous adjudication of that payment claim.
- 267 The Respondent has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, **therefore the amount of \$25,988.00 for PVO No 88 is carried to Summary of Schedule 'B' Variations.**
- 268 **Schedule 'B' PVO No 89** B3 Roof access steelwork drawing B3-S-00-500-1. Payment Claim amount \$32,558.00. Payment Schedule amount \$5,171.60. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 269 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 270 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

- 271 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that in this case, due to the lightweight frames and ladders being used, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 272 The Respondent in its variation supporting material has contested the claim on the basis that on comparison with its global market rates of \$7,388.00/t the price claimed and the small tonnage involved results in a global rate of \$46,511/t and asserts that this is totally unacceptable. The Respondent goes on to provide general statements referring to the overall claims situation on the project, however, these statements have no bearing on an assessment of the variation at hand. A copy of the Claimants claim has been provided with handwritten notes added simply stating that the global "rate is wrong" (a reference to the rate of \$46,511/t it has computed).
- 273 The parties are referred to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 274 I have perused the documents provided by the Claimant with the claim and considered the nature of the work and the Claimant's particularised claim for the work and, without any particularised case being put by the Respondent to convince me otherwise, consider it to be the preferable assessment in valuing the work. Therefore **the amount of \$32,558.00 for PVO No 89 is carried to Summary of Schedule 'B' Variations.**
- 275 **Schedule 'B' PVO No 90** B3 lower awning hanger bracket (ContAdv 4001). Payment Claim amount \$22,078.00. Payment Schedule amount \$1,551.48. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 276 The Claimant in the Adjudication Application Submissions at Item 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 277 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 278 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that in this case, due to the extensive machining, core drilling, epoxy filling and craneage used, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.

279 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates apply to the small weight of steel involved and did not address the exotic items claimed by the Claimant.

280 The parties are referred to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.

281 I have perused the documents provided by the Claimant with the claim and considered the nature of the work and the Claimant's particularised claim for the work and, without any particularised case being put by the Respondent to convince me otherwise, consider it to be the preferable assessment in valuing the work. Therefore **the amount of \$22,078.00 for PVO No 90 is carried to Summary of Schedule 'B' Variations.**

282 **Schedule 'B' PVO No 94 B3 A/C Platforms.** Payment Claim amount \$13,440.00. Payment Schedule amount \$0.00. The amount of \$13,440.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 130 to 135 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's rejection of the variation stating: "*Works included under Subcontract original scope of works. Also refer Casa quotation dated July 2005 for inclusion of A/C Platforms.*" The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

283 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

284 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(e) which states: "*Otherwise contested previously. These are variations that were otherwise contested in the previous adjudication. Multiplex notes that Casa submits that section 27(2) does not apply to some of the variations because the value of the construction work has changed. If the adjudicator is satisfied that this submission is correct (see paragraphs 6.14-6.19 above).*"

And at Item 7.17(c) states:

"PVO No 94. This variation was valued by the adjudicator in the Previous Adjudication because the adjudicator determined that, in the adjudication, Multiplex raised a reason that was not included in the relevant payment schedule. Multiplex disagrees: the reason in the payment schedule was that it was part of the original contract work; in the adjudication, Multiplex submitted that Casa did not show that the work was a variation from the original contract works. Multiplex maintains this reason."

- 285 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 286 I have reviewed the previous adjudicator's decision and find that the 'reason' that was not considered by the previous adjudicator because it was raised for the first time in the Adjudication Response was "*that there has been no acceptance of the contract schedules*". The fact that this reason was not considered did not cause the variation to be valued by the adjudicator. The variation was assessed by the adjudicator who accepted that the Claimant had an entitlement and then determined the value.
- 287 I have perused the Respondents submissions on this variation and find no reason to satisfy me that the value of this variation has changed, **therefore the amount of \$13,440.00 for PVO No 94 is carried to Summary of Schedule 'B' Variations.**
- 288 **Schedule 'B' PVO No 95 B3** – Dome nuts to sun screens. Payment Claim amount \$5,000.00, Payment Schedule amount \$4,500.00. No reason was provided for withholding payment in the Payment Schedule. The amount of \$5,000.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 117 to 118 October 2006 Decision), therefore s27(1) of the Act applies.
- 289 The Respondent in the Adjudication Response Submissions at Item 7.11(a) states:
- "(a) PVO No 95. No reasons are given by Multiplex for withholding the amounts identified in the payment schedule. For the purpose of this adjudication only, Multiplex concedes the entire amount claimed by Casa in relation to those variations."*
- 290 Refer to my earlier comment as to conditional concessions. I am satisfied that the parties have agreed the amount to be included and I am deciding the agreed amount to be the value of construction work for this variation, **therefore the amount of \$5,000.00 for PVO No 95 is carried to Summary of Schedule 'B' Variations.**
- 291 **Schedule 'B' PVO No 97 B3** – Glazed entry support structure. Payment Claim amount \$31,488.00, Payment Schedule amount \$25,000.00. No reason was provided for withholding payment in the Payment Schedule. The amount of \$31,488.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 117 to 118 October 2006 Decision), therefore s27(1) of the Act applies.
- 292 The Respondent in the adjudication Response Submissions at Item 7.11(a) states:
- "(a) PVO No 95. No reasons are given by Multiplex for withholding the amounts identified in the payment schedule. For the purpose of this adjudication only, Multiplex concedes the entire amount claimed by Casa in relation to those variations."*

- 293 Refer to my earlier comment as to conditional concessions. I am satisfied that the parties have agreed the amount to be included and I am deciding the agreed amount to be the value of construction work for this variation, **therefore the amount of \$31,488.00 for PVO No 97 is carried to Summary of Schedule 'B' Variations.**
- 294 **Schedule 'B' PVO No 99** Podium steel street canopy. Payment Claim amount \$227,300.00. Payment Schedule amount \$119,735.00. The amount of \$227,300.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 115 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment based on applying a global composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 295 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 296 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 297 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a *"concession for the purposes of one adjudication only"* which is the reference to paragraphs 6.6 to 6.13 noted above. This 'conditioning statement' is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 298 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 299 The Respondent has made no specific submissions to substantiate a change in value of the construction work, however in perusing the Respondent's supporting material for this variation there are reasons provided which would change the value of the construction work. The Claimant has contested the Respondent's calculation of steel tonnage on the basis of extraction of the exact weight of the steel involved and indicated evidence was attached to prove that point, resulting in the Respondent amending its assessment of the value of the construction work, which satisfies me that this variation should be re-valued.
- 300 The Claimant has submitted in its variation supporting material that the Respondent accepted its quote for the work; however, no written evidence of

acceptance has been adduced. The Claimant also submits that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that in this case, due to the plated column members and significant full penetration butt welds used, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates. The Claimant does not accept the Respondent's calculated weight of 15.53t and asserts that the exact weight is 20.3t extracted from the fabrication ITP's (indicated to be attached but not found under this TAB). The Claimant provided a rough 'hand written' one page breakdown comprising 11 line items and noting the total weight as 25.5t and being totaled to \$151,192.00.

301 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to 15.53t extends to an amount of \$114,735.64 and has then added an amount of \$5,000.00 for miscellaneous items. The Respondent concedes that if weighbridge dockets could be provided to confirm the 20.3t weight claimed it would re-consider this variation to be valued at 20.3t x \$7,388/t (market rate) to an amount of \$149,976.40. The Respondent has not conceded that acceptance of the Claimant's quote occurred by virtue of its submissions to reduce the amount claimed.

302 I have perused the documents provided by the Claimant with the claim and considered the nature of the work, however, the Claimant has only provided a quoted lump sum and no particularised breakdown for the work to substantiate the claimed amount. The Claimant has provided no evidence to support its claim of acceptance of the quote and has provided a confusing breakdown that arrives at another amount altogether which I am unable to correlate with the quoted amount. I do not find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates, to be convincing in this case. I do find the Claimant's assertion that the tonnage weight is 20.3t convincing and supported by the conditioned concession of the Respondent, I am prepared to accept that tonnage weight for the purposes of valuing the claim. In this case I prefer the method of assessment submitted by the Respondent in valuing the work and by applying the 20.3t tonnage weight by the Respondent's submitted market rate of \$7,388/t, **therefore an amount of \$149,976.40 for PVO No 99 is carried to Summary of Schedule 'B' Variations.**

303 **Schedule 'B' PVO No 100** B8 MSC2 Screen on west elevation grid 30-31. Payment Claim amount \$22,901.00. Payment Schedule amount \$14,776.00. The amount of \$21,000.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 166 to 169 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being no detailed submission or breakdown received from the Claimant, comparable industry rates and the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

304 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now

available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

305 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(e) which states: *"Otherwise contested previously. These are variations that were otherwise contested in the previous adjudication. Multiplex notes that Casa submits that section 27(2) does not apply to some of the variations because the value of the construction work has changed. If the adjudicator is satisfied that this submission is correct (see paragraphs 6.14-6.19 above)."*

And at Item 7.17(d) states:

"PVO No 100. In the Previous Adjudication, the adjudicator considered Casa's claim as a "well set out and itemised claim". Casa now seeks a further \$1,901.00 beyond that. Casa must first show that the value of the work has changed. If Casa can do so, then the adjudicator may find that the value of the variation is less than that allowed in the Previous Adjudication. Multiplex submits that the adjudicator should prefer Multiplex's valuation."

306 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

307 The parties are referred to my prior comments in this decision in relation satisfying the adjudicator. I have perused the submissions provided in the variation supporting material on this variation and find no reason to satisfy me that the value of this variation has changed, **therefore the amount of \$21,000.00 for PVO No 100 is carried to Summary of Schedule 'B' Variations.**

308 **Schedule 'B' PVO No 102** Miscellaneous dayworks June 1 of 6. Payment Claim amount \$51,303.60. Payment Schedule amount \$41,042.88. The amount of \$51,303.60 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 116 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being that the variation rates are not representative of any agreed rates and rates adjusted back to those advised by Casa on its quotation dated 7 December 2005. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

309 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.

310 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see*

paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication.”

- 311 The reason submitted by the Respondent for a change in value of the work is that it still maintains its original valuation and that it had previously made a “*concession for the purposes of one adjudication only*” which is the reference to paragraphs 6.6 to 6.13 noted above. This ‘conditioning statement’ is not a reason that will satisfy me that there has been any change to the value of the construction work for this variation.
- 312 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 313 However, the Respondent in the Adjudication Response Submissions at Item 7.12 (c) states:
“PVO Nos 102–107. The day works rates used in Multiplex’s assessment of these claims are the ones corresponding to Casa’s quotation. Casa has given no justification for using a higher rate.”
- 314 The Respondent has submitted its re-assessment of this variation on the basis that no determination was decided by the previous adjudicator and has made no submissions to substantiate a change in value of the construction work or any other representation that satisfies me that this variation should be re-valued, and the parties are referred to my finding for PVO No 16, **therefore an amount of \$51,303.60 for PVO No 102 is carried to Summary of Schedule ‘B’ Variations.**
- 315 **Schedule ‘B’ PVO No 103** Miscellaneous dayworks June 2 of 6. Payment Claim amount \$62,584.29. Payment Schedule amount \$50,067.43. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$62,584.29 for PVO No 103 is included and carried to Summary of Schedule ‘B’ Variations.**
- 316 **Schedule ‘B’ PVO No 104** Miscellaneous dayworks June 3 of 6. Payment Claim amount \$52,243.02. Payment Schedule amount \$41,794.42. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$52,243.02 for PVO No 104 is included and carried to Summary of Schedule ‘B’ Variations.**
- 317 **Schedule ‘B’ PVO No 105** Miscellaneous dayworks June 4 of 6. Payment Claim amount \$52,088.45. Payment Schedule amount \$41,670.76. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$52,088.45 for PVO No 105 is included and carried to Summary of Schedule ‘B’ Variations.**

- 318 **Schedule 'B' PVO No 106** Miscellaneous dayworks June 5 of 6. Payment Claim amount \$35,717.61. Payment Schedule amount \$28,574.09. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$35,717.61 for PVO No 106 is carried to Summary of Schedule 'B' Variations.**
- 319 **Schedule 'B' PVO No 107** Miscellaneous dayworks June 6 of 6. Payment Claim amount \$68,326.56. Payment Schedule amount \$54,661.25. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$68,326.56 for PVO No 107 is carried to Summary of Schedule 'B' Variations.**
- 320 **Schedule 'B' PVO No 109** B7 Operable wall supports. Payment Claim amount \$18,333.00. Payment Schedule amount \$12,000.00. The amount of \$9,000.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 173 to 176 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being that there was no back up provided and these works have been included and claimed by the Claimant under day dockets for August 2006. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 321 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 322 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 323 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 324 The parties are referred to my prior comments in this decision in relation to satisfying the adjudicator. I have perused the submissions provided in the variation supporting material on this variation and find no reason to satisfy me that the value of this variation has changed, therefore **the amount of \$9,000.00 for PVO No 109 is carried to Summary of Schedule 'B' Variations.**
- 325 **Schedule 'B' PVO No 111** B7 Podium Arbour. Payment Claim amount \$64,499.00. Payment Schedule amount \$31,177.36. The amount of \$64,499.00 was

decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 115 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment based on applying a global composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

- 326 The Claimant in the Adjudication Application Submissions at Item 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator.
- 327 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(b) which states: *"Agreed previously; contested now. There is a contest in this adjudication between Multiplex and Casa in relation to these variations. Section 27(2) does not apply (see paragraphs 6.6-6.13 above) because there was no determination of the value of the construction work in the Previous Adjudication."*
- 328 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 329 The Respondent in its variation supporting material asserted that the method of installation of this item changed and did not require the use of a crane and I am satisfied that this would change the value of the construction work.
- 330 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that in this case, due to the heavy RHS dog leg frames with cleats slotted through and full penetration butt welds used, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 331 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to 4.22t extends to the scheduled amount. The Respondent also submits that the fact that heavy member materials were used the market rate would more than compensate as the economy of scale becomes more efficient and in addition the claimed method of erection was not used and a simpler and cheaper method was employed using scissor lifts only.
- 332 The parties are referred to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 333 I have perused the documents provided by the Claimant with the claim and considered the nature of the work, and although I concur with the Respondent that heavy members used would provide a compensating effect on use of a global market rate, this effect is offset by the more expensive section being used. I find the

Respondent's submission that the labour to material ratio of the work involved is consistent with standard fabrication rates to be unconvincing in this case due to the high drafting costs and overhead core drilling of concrete required. However, I do accept the Respondent's assertion that a cheaper method of erection was utilised. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim but will deduct the item claimed for craneage of \$2,250.00 therefore **an amount of \$62,249.00 for PVO No 111 is carried to Summary of Schedule 'B' Variations.**

- 334 **Schedule 'B' PVO No 112** Transit hall awning. Payment Claim amount \$21,192.00. Payment Schedule amount \$12,485.72. The amount of \$15,000.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 178 to 181 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment based on applying a global composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 335 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 336 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 337 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 338 This variation was claimed in the prior July 2006 payment claim and contested by the Respondent with a lesser amount in the payment schedule leading to the previous adjudication of that payment claim.
- 339 The parties are referred to my prior comments in this decision in relation to satisfying the adjudicator of a change to the value of the construction work. The Claimant in the variation supporting material has asserted that the Respondent had not taken into consideration the purlins in this variation and the Respondent in its variations supporting material has provided a new assessment that includes the adjustment for purlins therefore I am satisfied a change has occurred to the value of the work.

- 340 The Claimant has submitted in its variation supporting material that the Respondent composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, that due to the Respondent not considering the design component to the variation which is valued at \$7,705.00, nor the purlins or that the awning was a separate mobilisation/demobilisation from site after all other works were complete, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 341 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to 0.76t extends to the amended assessed amount.
- 342 The parties are referred to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 343 I have perused the documents provided by the Claimant with the claim and considered the nature of the work, and I find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim **therefore the amount of \$21,192.00 for PVO No 112 is carried to Summary of Schedule 'B' Variations.**
- 344 **Schedule 'B' PVO No 114** Smoke window truss and beam. Payment Claim amount \$27,122.00. Payment Schedule amount \$11,820.80. The amount of \$7,500.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 182 to 185 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment based on applying a global composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 345 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 346 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*

- 347 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 348 This variation was claimed in the prior July 2006 payment claim and contested by the Respondent with a lesser amount in the payment schedule leading to the previous adjudication of that payment claim.
- 349 The parties are referred to my prior comments in this decision in relation satisfying the adjudicator of a change to the value of the construction work. The Claimant in the variation supporting material has asserted that the Respondent had not taken into consideration the purlins in this variation and the Respondent in its variations supporting material has provided an a new assessment that includes the adjustment for purlins therefore I am satisfied a change has occurred to the value of the work.
- 350 The Claimant has submitted in its variation supporting material that the Respondent composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, that due to the Respondent not considering the purlins or that the awning or the complexity of the frame which has significant welded joints and had to be installed without mechanical access, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 351 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to 1.6t extends to the amended assessed amount.
- 352 The parties are referred to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 353 I have perused the documents provided by the Claimant with the claim and considered the nature of the work, and I find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **the amount of \$27,122.00 for PVO No 114 is carried to Summary of Schedule 'B' Variations.**
- 354 **Schedule 'B' PVO No 115** Retail blade brackets. Payment Claim amount \$6,286.00. Payment Schedule amount \$664.92. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment based on applying a global composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

- 355 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 356 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 357 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.
- 358 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 359 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, due to the lightweight metalwork used, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 360 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to 0.09t extends to the scheduled amount.
- 361 The parties are referred to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 362 I have perused the documents provided by the Claimant with the claim and considered the nature of the work, and I find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$6,286.00 for PVO No 115 is carried to Summary of Schedule 'B' Variations.**
- 363 **Schedule 'B' PVO No 116** Revised timber screens. Payment Claim amount \$19,826.00. Payment Schedule amount \$3,694.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment based on applying a global composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

- 364 The Claimant in the Adjudication Application Submissions at Items 52 asserts that because there is no change to the value of the construction work in this variation, the Adjudicator is required to value the construction work in the same amount as the previous adjudicator. However, the reverse is claimed in the Schedule 'B'.
- 365 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 366 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 367 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, due to a need to revise cleats, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 368 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to 0.5t extends to the scheduled amount.
- 369 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 370 I have perused the documents provided by the Claimant with the claim and considered the nature of the work find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case due to the high drafting costs and work required to existing cleats. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$19,826.00 for PVO No 116 is carried to Summary of Schedule 'B' Variations.**
- 371 **Schedule 'B' PVO No 117 B7 Western façade awning grid 22-24 ss support rods.** Payment Claim amount \$26,521.00. Payment Schedule amount \$21,517.00. The amount of \$21,517.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 117, 118 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment including credit of hours for original system, site diary records and materials handling included under original scope. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

372 The Claimant in the Adjudication Application Submissions at Items 61 to 63 submitting that the value of the work has changed as a result of the Claimant providing further details in this Adjudication Application therefore s27(2) of the Act does not apply and the work can be re-valued.

373 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(e) which states: *"Otherwise contested previously. These are variations that were otherwise contested in the previous adjudication. Multiplex notes that Casa submits that section 27(2) does not apply to some of the variations because the value of the construction work has changed. If the adjudicator is satisfied that this submission is correct (see paragraphs 6.14-6.19 above)."*

And at Item 7.17(e) states:

"PVO No 117. Section 27(2) clearly applies in relation to this variation. Only the amount allowed in the Previous Adjudication should be allowed in this adjudication."

374 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

375 This variation was claimed in the prior July 2006 payment claim and contested by the Respondent with a lesser amount in the payment schedule leading to the previous adjudication of that payment claim.

376 The parties are referred to my prior comments in this decision in relation satisfying the adjudicator. I have perused the submissions provided by the Claimant in the variation supporting material on this variation, however, I am unconvinced by those submissions relating to the degree of difficulty, and find no reason to satisfy me that the value of the construction work in this variation has changed, therefore **the amount of \$21,517.00 for PVO No 117 is carried to Summary of Schedule 'B' Variations.**

377 **Schedule 'B' PVO No 119** B7 Passenger concourse truss, camber to truss. Payment Claim amount \$20,050.00. Payment Schedule amount \$16,040.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assertion that *"Variation rates not representative of any agreed rates. Rates adjusted back to those advised by Casa on his quotation dated 7 December 2005"*. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

378 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

- 379 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 380 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 381 The Claimant has submitted in its variation supporting material a fully particularised breakdown of its assessment.
- 382 The Respondent has provided no assessment in its variation supporting material to substantiate the reason given for withholding payment.
- 383 I have perused the documents provided by the Claimant with the claim and considered the nature of the work. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim, **therefore an amount of \$20,050.00 for PVO No 119 is carried to Summary of Schedule 'B' Variations.**
- 384 **Schedule 'B' PVO No 120** B7 Passenger concourse truss top chord revised from S25c to C20a. Payment Claim amount \$13,809.00. Payment Schedule amount \$1,376.64. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on applying a composite rate for additional steelwork. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.
- 385 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 386 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 387 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

388 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, due to the member substitution requiring revised joint details, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.

389 The Respondent in its Payment Schedule assessment has contested the claim on the basis that its global market rates applied to determine the scheduled amount.

390 . Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.

391 I have perused the documents provided by the Claimant with the claim and considered the nature of the work find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case due to the type of substitution and work required to revise jointing details. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$13,809.00 for PVO No 120 is carried to Summary of Schedule 'B' Variations.**

392

393 **Schedule 'B' PVO No 121** B7 Passenger concourse truss encl support revised detail. Payment Claim amount \$20,837.00. Payment Schedule amount \$4,372.72. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule based on applying a composite rate for additional steelwork. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

394 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

395 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

396 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, due to the installation of the end support revised details, design change of the skylight structure and revised fixing to concrete, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.

397 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the*

basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act.”

398 The Respondent in its Payment Schedule assessment has contested the claim on the basis that its global market rates applied to determine the scheduled amount.

399 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.

400 I have perused the documents provided by the Claimant with the claim and considered the nature of the work find the Claimant’s submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case due to the type of work involved. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$20,837.00 for PVO No 121 is carried to Summary of Schedule ‘B’ Variations.**

401 **Schedule ‘B’ PVO No 122 B7 Cinema revised bracket cleat support section 48 & 49 B7 S-01-552.** Payment Claim amount \$8,872.00. Payment Schedule amount \$3,767.88. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent’s assessment attached to the Payment Schedule based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

402 The Claimant in the Adjudication Application Submissions at Item 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

403 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure ‘C’ that relates to the category at Item 7.9(c) which states: *“Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act.”*

404 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

405 The Claimant has submitted in its variation supporting material that the Respondent’s use of a composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, due to the extent of labour required for

installation of the revised brace cleats, change of the anchor system that required core drilling and increased welding of thicker plates the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.

406 The Respondent in its Payment Schedule assessment has contested the claim on the basis that its global market rates applied to determine the scheduled amount.

407 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.

408 I have perused the documents provided by the Claimant with the claim and considered the nature of the work and find the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates to be convincing in this case due to the type of work involved. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$8,872.00 for PVO No 122 is carried to Summary of Schedule 'B' Variations.**

409 **Schedule 'B' PVO No 123** B7 Function area revised fascia purlin-fluted instead of standard C. Payment Claim amount \$15,234.00. Payment Schedule amount \$0.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's rejection that this claim is a variation as the engineers drawing always showed a fluted detail. The Claimant asserts it contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

410 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

411 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*

412 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

413 The Claimant has submitted in its variation supporting material that the engineers drawing originally showed a standard C section purlin and not a fluted fascia and that the Respondent had ignored the additional purlins on the revised drawings..

- 414 The Respondent in its variation supporting material has contested the claim on the basis of its opinion that the work constitutes contract works and are therefore not a variation and also refers to Section 4 of the Payment Schedule where adjustments to these drawings have been captured via a complete and comprehensive re-measure.
- 415 I have perused the documents and drawings provided by the Claimant and concur that the purlin type has changed, however, the Respondent has provided no alternative assessment for this variation and refers to a general re-measure that I will address later in this decision. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim, **therefore an amount of \$15,234.00 for PVO No 123 is carried to Summary of Schedule 'B' Variations.**
- 416 **Schedule 'B' PVO No 124** B7 Light box 1 revised design. Payment Claim amount \$38,638.00. Payment Schedule amount \$28,813.20. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 417 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 418 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 419 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 420 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant submits that in this case, due to the extent of additional chemical anchors, brackets, support beams and the degree of difficulty in installation, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 421 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to determine the scheduled amount. The

Respondent also submits that the extent of additional chemical anchors, brackets, support beams and the degree of difficulty in installation are not dissimilar to works that have already been incorporated into the base subcontract and would be covered under the applicable market rate.

422 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.

423 I have perused the documents provided by the Claimant with the claim and considered the nature of the work and find the Respondent's submission that the labour to material ratio of the work involved is consistent with standard fabrication rates to be reasonable for the type of work involved. However, the Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$38,638.00 for PVO No 124 is carried to Summary of Schedule 'B' Variations.**

424 **Schedule 'B' PVO No 129** B7 Gangway revised joint detail for grid A and F level 1 and 2. Payment Claim amount \$35,279.00. Payment Schedule amount \$28,223.20. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assertion that "*Variation rates not representative of any agreed rates. Rates adjusted back to those advised by Casa on his quotation dated 7 December 2005*". The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

425 The Claimant in the Adjudication Application Submissions at Item 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

426 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: "*Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act.*"

427 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

428 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply.

- 429 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to determine the scheduled amount.
- 430 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 431 I have perused the documents provided by the Claimant with the claim and considered the nature of the work. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim, **therefore an amount of \$35,279.00 for PVO No 129 is carried to Summary of Schedule 'B' Variations.**
- 432 **Schedule 'B' PVO No 134 B7** Gangway revised beam connection beams notched as per detail K Drawing B7-S-00-562-1. Payment Claim amount \$5,128.00. Payment Schedule amount \$1,699.24. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 433 The Claimant in the Adjudication Application Submissions at Item 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 434 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: *"Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act."*
- 435 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 436 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that due to the extent of labour and the installation of the notch in the beams, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates.
- 437 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to determine the scheduled amount.

- 438 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 439 I have perused the documents provided by the Claimant with the claim and considered the nature of the work. I do not fully agree with the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates for the type of work involved. However, the Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$5,128.00 for PVO No 134 is carried to Summary of Schedule 'B' Variations.**
- 440 **Schedule 'B' PVO No 137 B7 Revised gangway steelwork columns etc.** Payment Claim amount \$42,454.00. Payment Schedule amount \$0.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's rejection based on "*All costs for this item claimed under PVO numbers 67, 129, 134*". The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 441 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.
- 442 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: "*Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act.*"
- 443 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.
- 444 The Claimant, with respect to the Respondent's claim that all costs have already been claimed, has submitted in its variation supporting material that this variation explicitly nominates the three items it covers being:
- The revised attached connection and stiffeners to the B3 gangway columns
 - The additional 8mm forming plate fully welded around the perimeter of the B3 gangway
 - And the additional shear studs added to the B3 gangway.
- The Claimant goes on to fully describe what is included in PVO's 67, 129 and 134 to demonstrate that these items are not included.

445 The Respondent in its variation supporting material has not addressed the Claimant's assertion that the items are not included elsewhere and has submitted that should the claim be found a variation it should be priced on the basis that its global market rates applied to determine the scheduled amount. Pursuant to s24(4) of the Act I am unable to consider this second reason for withholding payment as it was not raised in the Payment Schedule.

446 I have perused the documents provided by the Claimant with the claim and considered the nature of the work and agree with the Claimant's submission that the work is not included elsewhere. The Claimant has provided a fully particularised breakdown which I find reasonable for the purposes of valuing the claim therefore **an amount of \$42,454.00 for PVO No 137 is carried to Summary of Schedule 'B' Variations.**

447 **Schedule 'B' PVO No 140** B7 Gangway design change B3-S-R01-100 fully welded frame grid A to B. Payment Claim amount \$16,350.00. Payment Schedule amount \$0.00. No amount was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 154 October 2006 Decision) therefore s27 of the Act does not apply. The reason for withholding payment being the Respondent's rejection based on "*All costs for this item claimed under PVO numbers 67, 129, 134*". The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

448 The Claimant in the Adjudication Application Submissions at Item 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

449 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(c) which states: "*Impermissible supporting information provided previously. In relation to these variations, the adjudicator made no decision in the Previous Adjudication on the basis that Casa could make a further payment claim in relation to those items. Multiplex submits that section 27(2) does not apply, not because the value of the work has changed as Casa submits, but because the adjudicator made no determination of the value of the work under section 14 of the BCIP Act.*"

450 In relation to this variation there was no valuation of the construction work decided by the previous adjudicator due to issues of natural justice and fairness.

451 The Claimant, with respect to the Respondent's claim that all costs have already been claimed, has submitted in its variation supporting material that this variation explicitly nominates the three items it covers namely:

- The revised attached connection and stiffeners to the B3 gangway columns
- The additional 8mm forming plate fully welded around the perimeter of the B3 gangway
- And the additional shear studs added to the B3 gangway.

The Claimant goes on to fully describe what is included in PVO's 67, 129 and 134 to demonstrate that these items are not included.

452 The Respondent in its variation supporting material has not addressed the Claimants assertion that the items are not included elsewhere and has not provided any evidence to show that this has occurred. The Respondent goes on to suggest that if the works are not included in PVO's 67, 129 and 134, then they were claimed under dayworks dockets. Pursuant to s24(4) of the Act I am unable to consider this second reason for withholding payment as it was not raised in the Payment Schedule.

453 This submission detailing what the items are is identical to the Claimant's submissions for PVO 137 which I find rather confusing and appears to be in error, as the item claimed here is for fully welding a frame grids A-B. I have perused the documents provided by the Claimant with the claim and considered the nature of the work and agree with the Claimant's submission that the work is not included elsewhere. I have also established that the items claimed here are different to those claimed under PVO 137 and relate to the welding of a previously bolted section of the frame. The Claimant has provided a fully particularised breakdown which I find reasonable for the purposes of valuing the claim, **therefore an amount of \$16,350.00 for PVO No 140 is carried to Summary of Schedule 'B' Variations.**

454 **Schedule 'B' PVO No 141** B3 AC Platform B3-S-R04-100 change in design. Payment Claim amount \$35,746.00. Payment Schedule amount \$11,968.56. The amount of \$18,000.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 189 to 193 October 2006 Decision), therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.

455 The Claimant in the Adjudication Application Submissions at Items 56 excludes this variation from Item 52 submitting that because the supporting material is now available there is a change to the value of the construction work in this variation and the Adjudicator is free to re-value the construction work.

456 The Respondent in the Adjudication Response Submissions has included this item in the list at Annexure 'C' that relates to the category at Item 7.9(e) which states: *"Otherwise contested previously. These are variations that were otherwise contested in the previous adjudication. Multiplex notes that Casa submits that section 27(2) does not apply to some of the variations because the value of the construction work has changed. If the adjudicator is satisfied that this submission is correct (see paragraphs 6.14-6.19 above)."*

And at Item 7.17(f) states:

"PVO No 141. In what the adjudicator found in the Previous Adjudication was a "well set out an itemised claim detailing the new work and crediting the original tendered work", Casa previously claimed \$18,000 for this variation. This amount was allowed by the adjudicator in the Previous Adjudication. Casa now seeks \$35,746. Multiplex submits that section 27(2) applies. If Casa succeeds in

persuading the adjudicator that the value of the work has changed, it submits that the adjudicator should prefer Multiplex's value of \$11,968.56."

457 For reasons previously stated in this Decision I have decided that s27(2) of the Act does apply because the previous adjudicator did decide the value of the construction work for this variation to be included in the adjudicated amount.

458 This variation was claimed in the prior July 2006 payment claim and contested by the Respondent with a lesser amount in the payment schedule leading to the previous adjudication of that payment claim.

459 The parties are referred to my prior comments in this decision in relation satisfying the adjudicator. I have perused the submissions provided in the variation supporting material on this variation and find no reason to satisfy me that the value of the construction work for this variation has changed, **therefore the amount of \$18,000.00 for PVO No 141 is carried to Summary of Schedule 'B' Variations.**

460 **Schedule 'B' PVO No 142** Miscellaneous directed dayworks for July 2006 1 of 2. Payment Claim amount \$60,787.92. Payment Schedule amount \$48,630.34. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$60,787.92 for PVO No 142 is included and carried to Summary of Schedule 'B' Variations.**

461 **Schedule 'B' PVO No 143** Miscellaneous directed dayworks for July 2006 2 of 2. Payment Claim amount \$47,412.73. Payment Schedule amount \$38,460.18. For the same reasons stated in the decision for PVO 102 that no submissions or representations were made by the Respondent to satisfy me that there has been a change to the value of the work from that decided by the previous adjudicator, **therefore an amount of \$47,412.73 for PVO No 143 is carried to Summary of Schedule 'B' Variations.**

462 **Schedule 'B' PVO No 150** Dayworks for August 2006. Payment Claim amount \$60,558.00. Payment Schedule amount \$48,446.40. The reason for withholding payment being that the variation rates are not representative of any agreed rates and rates adjusted back to those advised by Casa on its quotation dated 7 December 2005. The Claimant asserts its contractual right to the variation, and I find on perusing the information that it has proved an entitlement.

463 The Claimant has submitted in its variation supporting material that it rejects that the quotation of 7 December 2005 has any application to this variation claim and submits further that the Respondent has acknowledged acceptance of the applicability of the rates used by its agreement to a significant number of prior claims. The claimed amount is \$60,558.00, however, the material provided to substantiate the claim only totals \$30,923.70.

464 The Respondent in its variation supporting material has contested the claim on the basis that the rates used are not agreed rates between the parties and are higher than

rates submitted with the Claimant's quotation of 18 July 2005 and 7 December 2005. To determine an amount for inclusion in the Payment Schedule the Respondent has simply applied a 20% reduction to the Claimant's claim to reduce the figure to a level reflecting the original rates provided by the Claimant. The Respondent in its assessment also submits that the process of sign off for daily time sheets was flawed due to the time that lapsed prior to signing occurring.

465 I have perused the Claimant's assessment and having found that only an amount of \$30,923.70 is substantiated by back-up material I am unable to accept the Claimant's claim of \$60,558.00. The Respondent has stated that its assessment is based on rates originally quoted by the Claimant and it has elected to include that amount in the Payment Schedule and indicated agreement at least to that level of pricing, **therefore I decide an amount of \$48,446.40 for PVO No 150 is carried to Summary of Schedule 'B' Variations.**

466 **Schedule 'B' PVO No 151 B7 Stair 7.7 Void handrails.** Payment Claim amount \$45,916.00. Payment Schedule amount \$17,657.32. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts its contractual right to the variation, therefore I find that the Claimant has an entitlement.

467 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that due to the extent of labour required for the fabrication and installation of the stanchions, difficulties with detail drawings, use of chemical anchors and shimming for alignment, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates. The Claimant also asserts that a major portion of detailed valuation is made up from signed off daily claim sheets.

468 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to determine the scheduled amount. The Respondent in its assessment also submits that no instruction was issued to undertake these works on a dayworks basis. Pursuant to s24(4) of the Act I am unable to consider this second reason for withholding payment as it was not raised in the Payment Schedule.

469 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.

470 I have perused the documents provided by the Claimant with the claim and considered the nature of the work. I agree with the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates for the type of work involved. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim **therefore an amount of \$45,916.00 for PVO No 151 is carried to Summary of Schedule 'B' Variations.**

- 471 **Schedule 'B' PVO No 152** B1 Terrace level additional bondek support angles. Payment Claim amount \$24,088.00.00. Payment Schedule amount \$12,855.12. No previous claim. The reason for withholding payment being the Respondent's assessment based on applying a composite rate for additional steelwork. The Respondent has agreed in principle that these works constitute a variation and the Claimant asserts it contractual right to the variation, therefore I find that the Claimant has an entitlement.
- 472 The Claimant has submitted in its variation supporting material that the Respondent's use of a composite rate is not appropriate and agreed rates should apply. The Claimant also submits that due to the extent of labour required for the fabrication and on site fabrication of the formwork support angles, site measurement, site punching and short lengths of work, the labour to material ratio of the work involved is inconsistent with standard fabrication rates and cannot be assessed on tonnage rates. The Claimant also asserts that a major portion of detailed valuation is made up from signed off daily claim sheets.
- 473 The Respondent in its variation supporting material has contested the claim on the basis that its global market rates applied to determine the scheduled amount.
- 474 Refer to my prior finding in this decision as to agreed rates and comments on the use of a composite global rate for steelwork.
- 475 I have perused the documents provided by the Claimant with the claim and considered the nature of the work. I agree with the Claimant's submission that the labour to material ratio of the work involved is inconsistent with standard fabrication rates for the type of work involved. The Claimant has provided a fully particularised breakdown which I prefer for the purposes of valuing the claim therefore **an amount of \$24,088.00 for PVO No 152 is carried to Summary of Schedule 'B' Variations.**
- 476 **Summary of Schedule 'B' Variations**

PVO	Description	Amount
2	Additional Cinema Support Beams: (19t fabricated & painted out of 19t)	\$150,539.00
5	Deletion of U12a Angles Bldg 7	(\$23,436.00)
7	Cranked Column added on Grid 22 Bldg 7	\$12,762.00
12	SI 001171 Issue of Workshop Drawings by Multiplex with Changes	\$10,000.00
16	Misc. Directed Dayworks with Multiplex Signature for January 2006	\$29,723.26
19	Supply, Fabricate and Erect additional Column S20c on Grid 39	\$14,723.00
25	Building 7: Additional roof braces added between grid 12 and 13	\$1,849.00
45	Cranked Dropper Stub to Western Façade Wall	\$40,549.00
46	Revised Awning supports for western façade columns grid 22 to 24	\$34,532.00
69	B7 Gangway revised structural steel Level 1	\$35,891.00
71	B7-Cinemas- Additional angle and reo to seating plat beams	\$112,670.00
74	B7-Cinema : additional shear studs to level 2 & 3 landing	\$8,281.00
75	B7: Stair 7.7 revised stair landing design	\$12,970.00
76	B7: Stair 7.7 Shop detailing of handrails	\$3,325.00
77	B7: Stair 7.7 Revised stair handrail support design	\$21,430.00

78	B7: Skylight additional steelwork due to revised design	\$51,071.00
81	B1 Window head TW 58 and 9W14 Supply and install (Cont Adv 4195)	\$2,456.00
85	B1-Additional fascia truss added as per CONT ADV 3866 & 3878	\$4,277.00
86	B1-revised steelwork as per TRANSMIT-001795	\$131,952.00
88	B3-Parapet roof framing added as Drawing B3-S-R01-100, B3-S-00-560,B3-S-00-561	\$25,988.00
89	B3-roof access steelwork-B3-S-00-500-1	\$32,558.00
90	B3 Lower awning hanger bracket (Cont Adv 4001)	\$22,078.00
94	B3-AC Platforms mesh supply and install	\$13,440.00
95	B3- supply and install dome nuts to sun screen	\$5,000.00
97	B3-Glazed Entry support structure	\$31,488.00
99	Podium steel street canopy supply and install	\$149,976.40
100	B8 Supply and installation of MSC2 screen on west elevation grid 30 to 31	\$21,000.00
102	Misc. Directed Dayworks with Multiplex Signature for June 2006 (1 of 6)	\$51,303.60
103	Misc. Directed Dayworks with Multiplex Signature for June 2006 (2 of 6)	\$62,584.29
104	Misc. Directed Dayworks with Multiplex Signature for June 2006 (3 of 6)	\$52,243.02
105	Misc. Directed Dayworks with Multiplex Signature for June 2006 (4 of 6)	\$52,088.45
106	Misc. Directed Dayworks with Multiplex Signature for June 2006 (5 of 6)	\$35,717.61
107	Misc. Directed Dayworks with Multiplex Signature for June 2006 (6 of 6)	\$68,326.56
109	Operable wall supports B7 level 2	\$9,000.00
111	Arbour- B7 podium	\$62,249.00
112	Transit hall awning	\$21,192.00
114	Smoke Window truss and beam	\$27,122.00
115	Retail blade brackets	\$6,286.00
116	Revised Timber Screens	\$19,826.00
117	B7-Western Facade awning grid 22 to 24-support rods-stainless steel	\$21,517.00
119	B7-Passenger concourse truss- Camber to Truss	\$20,050.00
120	B7-Passenger concourse truss- top chord revised from S25c to C20a	\$13,809.00
121	B7-Pasenger Concourse Truss-End support revised details	\$20,837.00
122	B7-Cinema -Revised brace cleat support -section 48 & 49 -B7-S-01-552	\$8,872.00
123	B7-Function area-revised fascia purlin-fluted instead of standard C	\$15,234.00
124	B7-Light Box 1-revised design	\$38,638.00
129	B7-Gangway-revised joint detail for grid A and F level I and 2-changed from bolted to welded and site welded joint detail as section G of B7-S-00-561-1 also refer to DA-002104	\$35,279.00
134	B7-gangway-revised beam connection-Beams notched as per detail K Drawing B7-S-00-562-1	\$5,128.00
137	B3-Revised gangway steelwork-columns etc	\$42,454.00
140	B3-Gangway-design change--B3-S-R01-100-fully welded frame grid A to B	\$16,350.00
141	B3-AC platform-B3-S-R04-100-change in design	\$18,000.00
142	Misc. Directed Dayworks with Multiplex Signature for July 2006 (1 of 2)	\$60,787.92
143	Misc. Directed Dayworks with Multiplex Signature for July 2006 (2 of 2)	\$47,412.73
150	Dayworks for August 2006	\$48,446.40
151	Stair 7.7 Void handrails	\$45,916.00
152	Terrace Level additional bondek support angles	\$24,088.00
Carried to Collection of Adjudicated Amounts		\$1,907,850.24

Schedule 'C'

477 **Schedule 'C' Potential Variations Notified and Awaiting Submission**

The Claimant in the Adjudication Application Submissions at Item 102 states:
"Whilst the Claimant disagrees with the Respondent's assessment of the variations listed in Schedule C (as well as the other variations listed in the Payment Claim under the heading "Potential variations notified and awaiting submission"), for the purposes of this Adjudication application only, the Claimant does not contest these assessments."

478 The Respondent in the Adjudication Response Submissions has included these item in the list at Annexure 'C' that relates to the category at Item 7.9(d) which states:

*"No supporting information provided previously. In relation to some variations, Casa provided **no** supporting information in the Previous Adjudication. Multiplex submits that, because no supporting information was provided, the value of the work was valued at nil in the Previous Adjudication. Merely providing supporting information does not change the value of the work (see paragraphs 6.18-6.19 above)."*

And at Item 7.14 states:

"In relation to the variations referred to in paragraph 7.9(d), Casa has not articulated any reason why it was not in a position to provide supporting information in relation to those variations before, but is now. Multiplex considers that the Previous Adjudication can be construed as a decision under section 14 in relation to the value of those variations (as zero)."

479 I concur with the Respondent that the previous adjudicator has decided a value of the construction work for these items and s27(1) of the Act applies. Where the Respondent has included its assessed amount in the Payment Schedule which is greater than the amount decided by the previous adjudicator, I find that the Respondent has agreed in principle that these works constitute a variation and that the Claimant has an entitlement. I also consider that scheduled amount of payment to constitute agreement between the parties that the value has changed and I will adopt that agreement to satisfy me that the value of the construction work has changed.

480 **Schedule 'C' PVO No 33** B7 Function Room increase thickness of connection cap plates. Payment Claim amount \$300.00.00. Payment Schedule amount \$4.95. The amount of \$0.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 153 October 2006 Decision) due to the adjudicator being unable to assess any amount payable from information provided by the Claimant, therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule. For reasons stated above I am satisfied that the value of the work has changed, **therefore I decide the amount of \$4.95 for PVO No 33 is carried to Summary of Schedule 'C' Variations.**

481 **Schedule 'C' PVO No 80** B1 Window head TW 37, 39, 40, 41, 7, 42 CA 4181. Payment Claim amount \$5,000.00. Payment Schedule amount \$3,455.72. The amount of \$0.00 was decided by the adjudicator in the previous adjudication to be

the value of the construction work (Item 153 October 2006 Decision) due to the adjudicator being unable to assess any amount payable from information provided by the Claimant, therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule. For reasons stated above I am satisfied that the value of the work has changed, **therefore I decide the amount of \$3,455.72 for PVO No 80 is carried to Summary of Schedule 'C' Variations.**

482 **Schedule 'C' PVO No 82** B12 Lift beams to B1.1 and 1.2 CA 4029. Payment Claim amount \$500.00. Payment Schedule amount \$500.00. The amount of \$600.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 159 to 161 October 2006 Decision) due to the Respondent scheduling an amount payable greater than the amount claimed the adjudicator was able to decide that the claimed amount was reasonable, therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment in accordance with J4. The Claimant's claim is less than the amount decided by the previous adjudicator (which remains the value of the work), **therefore the amount of \$500.00 for PVO No 82 is carried to Summary of Schedule 'C' Variations.**

483 **Schedule 'C' PVO No 91** B3 New chemical anchor spec for awning DA2287. Payment Claim amount \$1,000.00. Payment Schedule amount \$500.00. The amount of \$0.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 153 October 2006 Decision) due to the adjudicator being unable to assess any amount payable from information provided by the Claimant, therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule. For reasons stated above I am satisfied that the value of the work has changed, **therefore I decide the amount of \$500.00 for PVO No 91 is carried to Summary of Schedule 'C' Variations.**

484 **Schedule 'C' PVO No 92** B3 Additional steelwork added to roof drawing review. Payment Claim amount \$2,500.00. Payment Schedule amount \$886.56. The amount of \$0.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 153 October 2006 Decision) due to the adjudicator being unable to assess any amount payable from information provided by the Claimant, therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule. For reasons stated above I am satisfied that the value of the work has changed, **therefore I decide the amount of \$886.56 for PVO No 92 is carried to Summary of Schedule 'C' Variations.**

485 **Schedule 'C' PVO No 101** B8 window mullion detail changed to conceal fix. Payment Claim amount \$1,500.00. Payment Schedule amount \$600.00. The amount of \$1,800.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 170 to 172 October 2006 Decision) due to the Respondent scheduling an amount payable greater than the amount claimed the adjudicator was able to decide that the claimed amount was reasonable, therefore s27(1) of the Act applies. The reason for withholding payment being no detailed submission or breakdown received from the Claimant therefore assessment by

Respondent. The Claimant's claim is less than the amount decided by the previous adjudicator (which remains the value of the work), **therefore the amount of \$600.00 for PVO No 101 is carried to Summary of Schedule 'C' Variations.**

486 **Schedule 'C' PVO No 136** B7 Cinema 4 relief air duct design change as per CA 003167. Payment Claim amount \$1,000.00. Payment Schedule amount \$1,000.00. The amount of \$0.00 was decided by the adjudicator in the previous adjudication to be the value of the construction work (Item 153 October 2006 Decision) due to the adjudicator being unable to assess any amount payable from information provided by the Claimant, therefore s27(1) of the Act applies. The reason for withholding payment being the Respondent's assessment attached to the Payment Schedule. For reasons stated above I am satisfied that the value of the work has changed, **therefore I decide the amount of \$1,000.00 for PVO No 136 is carried to Summary of Schedule 'C' Variations.**

487 **Summary of Schedule 'C' Variation Amounts**

PVO	Description	Amount
33	Additional Cinema Support Beams: (19t fabricated & painted out of 19t)	\$4.95
80	Deletion of U12a Angles Bldg 7	\$3,455.72
82	Cranked Column added on Grid 22 Bldg 7	\$500.00
91	Revised Awning supports for western façade columns grid 22 to 24	\$500.00
92	B7 Gangway revised structural steel Level 1	\$886.56
101	B7-Cinemas- Additional angle and reo to seating plat beams	\$600.00
136	B7-Cinema : additional shear studs to level 2 & 3 landing	\$1,000.00
Carried to Collection of Adjudicated Amounts		\$6,947.23

Schedule 'D'

488 **Schedule 'D' Deductions from Payment Schedule Drawing Changes** – The Respondent in the Payment Schedule at Item (4) under title of 'Reason for Withholding Payment (Deductions)' has reduced the amount of payment due by withholding various amounts in relation to 'work deducted from scope drawing change'.

489 The Claimant in the Adjudication Application Submissions in relation to the reductions at Items 117 to 120 states:

"117 Schedule D to these Submissions lists the deductions from section (4) of the attachment to the Payment Schedule regarding drawing changes. The reasons for these deductions are vague and inadequately particularised. However, the Claimant has addressed each of these deductions to the best of its ability in the supporting material in Volume 5 of this Adjudication Application.

118 The Claimant is unable to assess the takeoff for these deductions due to the copy of the Payment Schedule being illegible. The Claimant has twice requested via Aconex that an electronic version of the spreadsheets be provided and backup forwarded so that the Claimant could analyse and assess these deductions.

119 The **Claimant** has refused to provide the requested documents. (highlighting added)

120 *As the Respondent's reasons for withholding payment in relation to these deductions are not detailed with reasonably sufficient precision and particularity to apprise the Claimant of the real issues in dispute, the adjudicator should exclude any material in the Respondent's Adjudication Response in respect of these deductions and added back into the Claimant's claim those amounts which were otherwise deducted."*

The word 'Claimant' highlighted above appears to be in error.

490 The Respondent in the Adjudication Response Submissions at Item 8.18 to 8.20 in relation to deductions for drawing changes states:

"8.18 Multiplex disputes that the payment schedule is illegible. In any event, the supporting information attached to the payment schedule is simply that: it is Multiplex's working for how it arrived at the deductions shown in the payment schedule.

8.19 LETTER-000431, referred to in the explanations beside each of the drawing-related deductions, is included in Multiplex's supporting material regarding PVO No 45: it is the payment schedule issued on 7 July 2005 (ie, the payment schedule before the payment schedule considered in the Previous Adjudication).

8.20 The deduction and the explanation for that deduction is shown clearly in the payment schedule. Casa would have all relevant drawings; it could easily verify Multiplex's calculations."

491 I have perused the Payment Schedule and attached supporting material and was able to interpret Items titled 'A' to 'K' back up information provided to the drawing changes and also have no issue understanding the reference to PVO 45 where a prior payment schedule is included. There is little doubt that the Claimant would have been sufficiently informed as to the claimed deductions by the Respondent in the Payment Schedule for this Adjudication Application.

492 The Respondent in the Adjudication Response Submissions at Item 8.21 and 8.22 in relation to deductions for drawing changes states:

"8.21 Casa also submits that it "has addressed each of these deductions to the best of its ability in the supporting material in Volume 5 of this Adjudication Application". However, Multiplex could find no material responding to these deductions in volume 5 of Casa's adjudication application.

8.22 Though the adjudicator must reach his own decision in relation to the valuation of the variations under section 14 of the BCIP Act, Multiplex submits that in the absence of any cogent submission as to why Multiplex's deductions in relation to drawing changes were impermissible or should be varied, the adjudicator should prefer Multiplex's submissions."

493 I concur with the Respondent assertion that no material has been provided by the Claimant in Volume 5 of the Adjudication Application in response to the deductions.

494 The Respondent has asserted its entitlement to deduct works under the contract referring to Clause J4, J4.1 and J3.2 for these deductions and I find an entitlement exists as these clauses are un-amended by the Claimant in its submissions of 30

November 2005. The reason provided in the Payment Schedule for withholding payment is the Respondents assessment of revised drawing changes that result in a reduced tonnage of steel. Therefore, I will now deal with each deduction separately.

- 495 **Schedule ‘D’ Drawing change ‘B3-S-00-100’** where the Respondent has withheld \$12,633.48. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate an lesser amount of \$12,559.60, **therefore the deduction amount of \$12,559.60 is carried to Summary of Schedule ‘D’ Variations.**
- 496 **Schedule ‘D’ Drawing change ‘B3-S-01-100, 02-100, 03-100 blades’** where the Respondent has withheld \$15,810.32. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to be a reasonable assessment of the value of the deduction, **therefore the deduction amount of \$15,810.32 is carried to Summary of Schedule ‘D’ Variations.**
- 497 **Schedule ‘D’ Drawing change ‘B3-S-03-100 stair stringer’** where the Respondent has withheld \$8,422.32. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to be a reasonable assessment of the value of the deduction, **therefore the deduction amount of \$8,422.32 is carried to Summary of Schedule ‘D’ Variations.**
- 498 **Schedule ‘D’ Drawing change ‘B3-S-/ 560 delete enclosure frame’** where the Respondent has withheld \$8,422.32. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to be a reasonable assessment of the value of the deduction, **therefore the deduction amount of \$8,422.32 is carried to Summary of Schedule ‘D’ Variations.**
- 499 **Schedule ‘D’ Drawing change ‘B3-S-R01-100’** where the Respondent has withheld \$24,380.40. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate the value of the deduction, **therefore the deduction amount of \$24,380.40 is carried to Summary of Schedule ‘D’ Variations.**
- 500 **Schedule ‘D’ Drawing change ‘B3-S-R04-100’** where the Respondent has withheld \$0.00. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate a much greater value of the deduction, however, no deduction amount is claimed, **therefore an amount of \$0.00 is carried to Summary of Schedule ‘D’ Variations.**
- 501 **Schedule ‘D’ Drawing change ‘B7-S-02-103 Reference to Vo2’** where the Respondent has withheld \$22,238.04. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations

provided by the Respondent and find them to substantiate the value of the deduction, **therefore the deduction amount of \$22,238.04 is carried to Summary of Schedule ‘D’ Variations.**

502 **Schedule ‘D’ Drawing change ‘B7-S-03-101 DDT beam and column grid 40’** where the Respondent has withheld \$10,121.56. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate an lesser amount of \$10,120.23, **therefore the deduction amount of \$10,120.23 is carried to Summary of Schedule ‘D’ Variations.**

503 **Schedule ‘D’ Drawing change ‘B7-S-04-102’** where the Respondent has withheld \$3,694.00. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate the value of the deduction, **therefore the deduction amount of \$3,694.00 is carried to Summary of Schedule ‘D’ Variations.**

504 **Schedule ‘D’ Drawing change ‘B8-S-09-100’** where the Respondent has withheld \$12,042.44. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate an lesser amount of \$10,834.18, **therefore the deduction amount of \$10,834.18 is carried to Summary of Schedule ‘D’ Variations.**

505 **Schedule ‘D’ Drawing change ‘B8-S-09-100’** where the Respondent has withheld \$13,815.56. In the absence of any supporting material being provided the Claimant, I have perused the claimed deduction calculations provided by the Respondent and find them to substantiate the value of the deduction, **therefore the deduction amount of \$13,815.56 is carried to Summary of Schedule ‘D’ Variations.**

506 **Summary of Schedule ‘D’ Deduction Amounts**

Description	Amount
Drawing Change B3-S-00-100	(\$12,559.60)
Drawing Change B3-S-01-100, 02-100, 03-100 blades	(\$15,810.32)
Drawing Change B3-S-03-100, stair stringer	(\$8,422.32)
Drawing Change B3-S-/-560, (delete enclosure frame)	(\$8,422.32)
Drawing Change B3-S-R01-100	(\$24,380.40)
Drawing Change B3-S-R04-100	\$0.00
Drawing Change B7-S-02-103 Reference to Vo2	(\$22,238.04)
Drawing Change B7-S-03-101 DDT beam and column grid 40	(\$10,120.23)
Drawing Change B7-S-R04-102	(\$3,694.00)
Drawing Change B7-S-R09-100	(\$10,834.18)
Drawing Change B7-S-R09-101	(\$13,815.56)
Carried to Collection of Adjudicated Amounts	(\$130,296.97)

Other Variations

507 **Other Variations** - The Respondent in the Adjudication Response Submissions at Item 7.16 states:

“Additionally, in relation to some variations (PVO Nos 31, 110, 126, 127, 128, 130, 131, 132, 133, 138, 139, and 146), they are not identified in any of the schedules to Casa’s Submissions. Casa makes no concession in relation to them for the purpose of this adjudication only. Though the adjudicator is required to reach his own view as to the value of the variation, in the absence of any other information from Casa, Multiplex’s valuation (totaling \$1,000) should be preferred.”

508 With respect to the variations listed at Item 7.16 above PVO 110 is noted as ‘Withdrawn’ in the Claimant’s Payment Claim Variation Register, PVO 31, 126, 127, 128, 130, 131, 132, 133, 138 and 146 have been decided by the previous adjudicator at \$0.00 in the previous adjudication at Item 153 October 2006 Decision and PVO 139 at \$0.00 at Items 186 to 188 October 2006 Decision to be the value of the construction work due to the adjudicator being unable to assess any amount payable from information provided by the Claimant, therefore s27(1) of the Act applies. The Claimant has claimed a total of \$42,750.00 for these items but I have been provided with no submissions from the Claimant regarding a change to the value of the construction work the subject of these variations. The Respondent at Item 7.16 noted above indicates its valuation at \$1,000.00, however I am unable to determine where this amount is included in the Payment Schedule as all of the above items are included at \$0.00 in the Payment Schedule. Therefore, I have included PVO numbers 31, 126, 127, 128, 130, 131, 132, 133, 138, 139 and 146 at the amount decided by the previous adjudicator and **an amount of \$0.00 for ‘Other Variations’ is carried to Collection for calculation of the Adjudicated Amount.**

509 Note: The remaining items listed in the Claimant’s Variation Register of the Payment Claim have been noted as not ‘referenced’ and ‘no amount claimed’ in the Variation Register annexed to this Decision.

Contract Scope Reductions

510 **Contract Scope Reductions Credits** – The Respondent in the Payment Schedule at Item (2) has reduced the amount of payment due by \$15,000.00 for the following reason:

“All access and equipment and materials handling by Casa (in Casa’s scope of works) in accordance with Schedule 4 Item ‘D’ “Plant” and page 18 (Special Notes accompanying Schedule 4 – Cranes and Hoists) of the Subcontract Agreement No 4184-006.”

511 The Claimant in the Adjudication Application Submissions in relation to the reductions at Item 112 states:

“Detailed responses to these deductions are contained in Volume 5 of this Adjudication Application.”

And at Item 113 states:

“For these reasons the amount so withheld should be added back to the Claimant’s claim.”

512 The Claimant in the submissions Volume 5 referenced above in relation to the reductions submits inter alia:

“... It should be noted that CASA recorded the particulars of all directed work to be undertaken at Dayworks including the type and duration of resources and materials used on Daily Time Sheets. Each Daily Claim Sheet was presented to MPX for approval and signature after completion of each days work. The original Daily Claim Sheet once signed and authorised by MPX, was provided to MPX for their records, a duplicate copy was retained by CASA.

The Dayworks claims were submitted progressively to MPX at the end of each month in which the Dayworks were completed. Currently CASA has completed \$882,064 worth of Dayworks on the project up to the end of August 2006 and despite strict adherence to the submission requirements has only been paid \$777,913. CASA is still waiting to be paid the outstanding \$105,000 owed by MPX for completed Dayworks. MPX have directed and signed all Dayworks claimed on the project. MPX have failed to provide any substantiation for the deduction to CASA. MPX still owe CASA \$105,000 in unpaid Dayworks. CASA reject this deduction.”

513 The Respondent in the Adjudication Response Submissions at Item 8.2 to 8.5 states:

“8.2 As set out in paragraph 7.6 above, these deductions should be interpreted as applying over more than one variation. Multiplex is entitled to do this to arrive at a “fair and reasonable” valuation for all the variations.¹

8.3 The deduction identified as a “contract scope reduction” should be treated as if it was a deduction. That is, it is a deduction that reflects the value of the work performed by Casa under the subcontract that is not solely referable to a single variation.

Contract scope reduction—additional access charges

8.4 Casa has charged Multiplex for moving of steelwork around the site. Under the subcontract, there should be no charge for this. Item 13 under the heading “Scope” in schedule 3—even in the 30 November terms—provides:

The subcontractor is to allow for all his own materials handling both horizontally and vertically ...

8.5 These charges were in relation to horizontal handling of Casa’s material. The subcontract requires they be borne by Casa.”

514 The Claimant has made only one amendment to the Subcontract Agreement Special Notes Item 2 of Schedule 4 by including *“It is noted that should Multiplex not make available tower cranes for erection of the purlins, then alternative cranage for purlin erection will be at Multiplex cost:”* which does not affect the context for this claim. I find that agreement is reached between the Parties for the remaining application of the Subcontract Agreement Special Notes Item 2 of Schedule 4 and the Claimant is responsible for its own cranage, hoisting, erection and distribution of materials. The Clause does however go on to state *“However, the Subcontractor is advised that Multiplex will provide, but without incurring any obligation to do so, other than for the erection of purlins, the following facilities, which maybe used by*

General conditions of contract, cl J4.

the Subcontractor free of charge whilst such facilities remain on site.” and lists building locations, dates and equipment that may be available. The clause goes on to state that it is the responsibility of the Subcontractor to make suitable arrangements for the use of the listed equipment.

515 The Respondent, by its actions in withholding payment, is asserting that this clause applies to all works under the subcontract. However, I am unable to perceive how this clause could apply to variations (including Dayworks) where the Respondent has directed the Claimant to carry out extra works and accepted that the provision of equipment is a cost to the Claimant for the activity, then the entitlement to be paid for that works must include any additional use of equipment.

516 In addition I have perused the Dayworks directions provided by the Respondent and have detected that on several occasions’ materials for other trades were to be moved around the site. E.g. Daily Claim Sheet 11272 where ‘unload pre-cast’ is mentioned, Daily Claim Sheet 11275 where ‘unload and stack two loads of smartfloor’ is mentioned, Daily Claim Sheet 11276 where ‘move gear around, unload pre-cast smartfloor truck and help with erection of smartfloor with pre-cast’ is mentioned, Daily Claim Sheet 11279 where direction is as a result of ‘concrete columns sit out 60mm too far’ is mentioned. Therefore, for the reason stated above I am not satisfied that this reduction is in accordance with the Subcontract Agreement and I decide **\$0.00 for ‘Contract Scope Reductions’ is to be carried to the Collection for calculation of the Adjudicated Amount.**

Mobile Crane Reductions

517 **Mobile Crane Reductions** – The Respondent in the Payment Schedule under an item titled “*Mobile crane hire docket*” at Item (4) has reduced the amount of payment due by \$90,580.50 and states the following reason:

“All access equipment and materials handling by Casa (in Casa’s scope of work) in accordance with Schedule 4 Item ‘D’ “Plant” and page 18 (Special Notes accompanying Schedule 4 – Cranes and Hoists) of the Subcontract Agreement 4184-006.”

518 The Claimant in the Adjudication Application Submissions in relation to the reductions at Item 115 states:

“Detailed responses to these deductions are contained in Volume 5 of this Adjudication Application.”

And at Item 116 states:

“For these reasons the amount so withheld should be added back to the Claimant’s claim.”

The Claimant in the Adjudication Application supporting material submissions has contested the mobile crane charge on the basis of that the Subcontract Agreement provides at Schedule 3, General, Item 21 states:

“The subcontractor acknowledges that any work carried out by Multiplex on the subcontractor’s behalf will be charged at the hourly rates as noted above. No work shall be carried out on behalf of the subcontractor unless the subcontractor provides written consent”.

And the Claimant goes on to state:

“At no time have Multiplex approached CASA to advise of their intention to provide cranes to CASA at our cost or to gain the written consent required under the contract.

The Claimant in repudiating the deduction also refers to the Respondent’s direction to use mobile cranes when it was using the tower crane for other trades, that it has never been presented with any hire dockets and that it had its own cranes and access equipment so there was no need to hire this equipment from a third party.

519 The Respondent in the Adjudication Response Submissions at Item 8.8 in relation to ‘Deduction for use of mobile cranes’ states:

“However, Multiplex does press the deduction of \$90,580.50 for mobile cranes. Multiplex submits that Casa’s reasoning in relation to the tower crane deduction supports, by corollary, Multiplex’s deduction in relation to mobile cranes.

520 The Respondent goes on to describe at Items 8.9 to 8.11 why it asserts that by corollary the Claimant claim is inconsistent in that it cannot have *“exclusive use of the tower crane”* and also be subject to direction by the Respondent as to the use of the tower crane.

And in the attached supporting material under title of Mobile Cranes states inter alia *“There was no agreement for Multiplex to supply mobile cranes for the use of Casa engineering.*

*Casa required additional crange for varying reasons (tower crane did not reach the location or Casa required more lifts than the crane could undertake), on this basis **crane were hired in the costs of these were agreed on site to be charged to Casa as the** (sic) Casa was unable to source mobile cranes at short notice.”* Highlighting added.

521 The Respondent in the Adjudication Response Submissions at Item 8.15 and 8.16 states:

“8.15 The only logical alternative is that Casa did not need to use the mobile cranes (either because Casa could use its own equipment or because it could use the tower cranes later). As such, it is entirely proper for Casa to be charged for the use of the equipment that it did, in fact, use.

8.16 Indeed, over the course of the subcontract, Multiplex has paid Casa \$192,435.00 for the use of Casa’s cranes. With the exception of the tower cranes (which were provided to Casa free of charge), it is fair, reasonable, and permitted under the subcontract for Casa to pay Multiplex for its use of Multiplex’s cranes.”

522 I concur with the Respondent that the Claimant’s case for the tower crane is inconsistent with its case for refuting the mobile crane cost deduction imposed by the Respondent and that the Respondent is permitted under the subcontract to charge the Claimant. If in fact the Claimant had exclusive use of the tower crane why did it not enforce the agreement that it has first use and other trades then be required to use the mobile cranes. I will therefore assess the submissions and decide a value of construction work for this item.

523 The Respondent claims to have agreement from the Claimant that charging of cost for cranes hired in would apply (See highlighting in previous inserted quote)

however it has adduced no evidence of this agreement. The Claimant refutes this on the grounds that it had no approach from the Respondent to provide written consent for the Respondent to carry out work on its behalf.

- 524 The onus to provide particulars of the deduction of payment withheld is with the Respondent in this case and the Claimant has made no concessions of any amount in respect of this claim. The Respondent in the Payment Schedule in supporting material to Item (4) 'Reasons for withholding payment (Deductions)' has provided a list of mobile crane hire docket with single lump sum amounts for each docket totaling an amount of “ -9058.05” which appears to be in error as the amount carried to the schedule is “(90, 580.50”).
- 525 I have been provided with no copies of dockets or any evidence of the Claimant's written consent for work to be carried out by the Respondent on any of the occasions in either the Payment Schedule or the Adjudication Response, therefore I have no supporting evidence to show that the pre-conditions to entitlement under the contract have been met or to decide a value of the construction work at any amount other than \$0.00. I have simply been provided with the Respondent's bold assertion as to the value of the construction work, therefore I decide that the reduction is **\$0.00 for 'Mobile Crane Reductions' to be carried to the Collection for calculation of the Adjudicated Amount.**

Tower Crane Reduction

- 526 **Tower Crane Reductions** – The Respondent in the Payment Schedule under an item titled “*Use of Multiplex tower crane to erect structural steel (other than purlins)*” at Item (4) has reduced the amount of payment due by \$140,000.00 and states the following reason:
“*Assume 2 months minimum charge for use of tower crane*”
- 527 The Claimant in the Adjudication Application Submissions in relation to the Tower crane reductions at Item 115 and 116 also refers to Volume 5.
- 528 The Claimant in the Adjudication Application supporting material submissions has contested the tower crane charge on the basis of an agreement having been reached with the Respondent at a meeting on the 5 December 2005 confirmed in writing by email to the Respondent on 8 December 2005, that:
“*MPX agree provide all Tower cranes free of charge for the erection of steel work as well as purlins and girts for this contract. The tower cranes will be used exclusively by CASA during erection of the steelwork and CASA will decide the coordination of other trade lifts as and when required.*”
The Claimant also refers to prior acceptance by the Respondent on subsequent occasions where the charge had been levied but was later corrected by the Respondent.
- 529 The Respondent in its Adjudication Response supporting material does not accept that agreement was reached and stated that it did offer the use of tower cranes “*as a goodwill gesture to aid Casa*” and also “*Multiplex did not agree that the tower cranes were not going to be charged to Casa.*”

530 The Respondent in the Adjudication Response Submissions at Item 8.6 and 8.7 in relation to 'Deduction for use of tower crane' states:

"8.6 Multiplex accepts, for the purpose of this adjudication only, that Casa was entitled to exclusive use of Multiplex's tower cranes, in accordance with the letter from Casa to Multiplex dated 6 December 2005.

8.7 Multiplex therefore does not press the deduction of \$140,000 for the purpose of this adjudication."

531 The Respondent is referred to my comments earlier in this Decision in relation to the use of the conditional phrase *"for the purpose of this adjudication only"*. Therefore, as the Respondent does not press the reduction I accept this agreement between the parties and I decide that the reduction is **\$0.00 for 'Tower Crane Reductions' to be carried to the Collection for calculation of the Adjudicated Amount**

Painting Defect Reductions

532 **Painting Defect Reductions** – The Respondent in the Payment Schedule under an item titled *"Rectification of paint system"* at Item (4) has reduced the amount of payment due by \$450,000.00 and states the following reason:

"As per Peter Casa's admission over the phone to Drew Brockhurst on 6 September 2006 that Casa had applied the incorrect paint system to all external steelwork. Rectification cost including, access, steel preparation (including cleaning and sandblasting), material, labour, cleanup and re-testing."

533 The Claimant in the Adjudication Application Submissions at Items 121 states:

"The Respondent has included a deduction in the amount of \$450,000.00 in the Payment Schedule for "Repainting of all exposed steelwork by MPX twice within the warranty period due to incorrect paint system by CASA"

And at Item 122 states:

"This action is not authorised by the subcontractor nor by the law and the amount so withheld should be added back into the Claimant's claim. Detailed reasons are set out below."

And at Item 123 states:

"The Respondent is not entitled to withhold payment in respect of this deduction as:

- (a) the Respondent's reasons for withholding payment are not detailed with reasonably sufficient precision and particularity to apprise the Claimant of the real issues in dispute (which is further discussed in paragraphs 124 and 125 below);*
- (b) there is no defect in the paint for the external steelwork which has been nominated as "Exposed" by the drawings issued by the Respondent (which is further discussed in paragraphs 126 – 131 below);*
- (c) alternatively, even if there is a defect in this work (which is denied), the Respondent is not entitled to under the subcontract to include such a deduction in the Payment Schedule (which is further discussed in paragraphs 132 – 142 below);*
- (d) alternatively, even if there is a defect in this work and the Respondent is entitled to include such deduction in the Payment Schedule (all of which is denied), the*

true quantum of rectifying such defect is approximately \$150,000 (which is further discussed in paragraphs 143 – 146 below)

- 534 The Claimant in the Adjudication Application Submissions further states in relation to ‘precision’ at Item 125:
“This is not sufficiently precise for the Claimant to be apprised of the issues in dispute. The Adjudicator should therefore exclude any material in the Respondent’s Adjudication Response in respect of this deduction.”
The Claimant incorrectly quotes McDougall J [2003] NSWSC 1140 at paragraph 76 for authority. It was a Palmer J judgment as asserted by the Respondent.
- 535 The Respondent in the Adjudication Response at Items 9.1 and 9.2 in relation to the telephone call referenced in the Payment Schedule states:
9.1 *In withholding payment because of defective painting, Multiplex referred to a telephone conversation between Peter Casa (of Casa) and Drew Brockhurst (of Multiplex).*
9.2 *Casa’s response to this is (footnote omitted).
This is not sufficiently precise for [Casa] to be apprised of the issues in dispute. The adjudicator should therefore exclude any material in [Multiplex’s] Adjudication Response in respect of this deduction.*
And at Items 9.4 and 9.5 asserts that the Claimant does not deny that the telephone call took place or the substance of the call being in relation to the incorrect application of the paint system.
And at Item 9.6 asserts that the reason provided in the Payment Schedule was in fact from the Claimant’s own statement so how could it lack precision sufficient for the Claimant to respond.
The Respondent quotes Palmer J at paragraph 76 in Multiplex Pty Ltd v Luikins [2003] NSWSC 1140 and also McDougall J at paragraph 387 in Timwin Pty Ltd v Façade Innovations Pty Ltd [2005] NSWSC 548 for authority.
- 536 I concur with the Respondent and find that as there is no denial by the Claimant that the telephone call took place or that the substance of the call was the incorrect application of the paint system, I can only conclude that this was the case. I also concur with the Respondent that the ‘precision’ issue being agitated here is ‘on point’ in the supporting authorities quoted, therefore I find that there was no lack of ‘precision’ by the Respondent in the reason provided in the Payment Schedule.
- 537 The Claimant in the Adjudication Application Submissions further submits its case in relation to ‘no defect’ at Items 126 to 131 and in the supporting material under the TAB ‘Reduction for Paint System’ Part 1. Briefly stated, the Claimant relies on the notations on the Respondent’s drawings indicating ‘Exposed’ external steel work which is to receive the higher class finish as distinct from other external steelwork to receive a lower class of finish. The Claimant submits that the variation drawings issued for PVO 83, 99, 111 and 35 (significant sections of the steelwork) do not nominate any external steelwork as ‘Exposed’ for the purpose of the paint specification, therefore it defaults to the lower class of finish. The Claimant concedes that there may be some defects in the thickness of the paint for the external steelwork that has been nominated on the original drawings as ‘Exposed’ and it will rectify such defects once the ‘suspension of work’ has been lifted.

- 538 The Respondent in the Adjudication Response at Items 9.10 and 9.11 in relation to ‘no defect’ states:
*“9.10 The statement made by Casa reproduced in the payment schedule—which is not denied by Casa—is:
Casa had applied the incorrect paint system to all external steelwork.
9.11 The statement encompasses all external steelwork—not just that identified as “exposed” on certain drawings. The statement implies that for all external steelwork, Casa has not followed the specification, whatever that specification may be.”*
- 539 The above statement purported by the Respondent to be made verbally by the Claimant (uncontested) does refer to all external steelwork and not just ‘Exposed’ external steelwork and the Respondent asserts in its Adjudication Response at Items 9.12 and 9.13 that, due to the operation of s24(4) of the Act, the Respondent is denied natural justice as a result of being hampered in its response to the claim of ‘no defect’ now being raised for the first time in the Adjudication Application. In this case I find it difficult to accept that s24(4) of the Act has operated to ‘hamper’ the response of the Respondent to the extent of denying natural justice where the Claimant is simply providing more specific details and defining the delineation between the specified finish for external steel work that is ‘exposed’ or ‘not exposed’. The Claimant’s statement generalises across all finishes for external steelwork and the use of the word ‘incorrect’ does not mean that the finish applied is in fact defective.
- 540 The Respondent in the Adjudication Response at Items 9.14 to 9.23 in relation to the delineation of the different classes of paint finish submits that the Claimant’s argument relating to variation drawings is inconsistent with its variation claims for PVO’s 99 and 111 which clearly claim for the higher class of paint finish. I concur with the Respondent that the Claimant’s argument is inconsistent and also add that in deciding the value of the work for those variations I am aware that the higher class of finish was included.
- 541 The Respondent in the Adjudication Response at Items 9.24 and 9.25 states:
*“9.24 Casa’s submission that samples 23, 24, and 25 in the ETRS report show that Casa’s paint application complies with the specification should be rejected.
9.25 The material provided by Casa in the adjudication application shows that, despite its submissions, Casa understood that the external paint system was required. Casa has not applied the external paint system. There should be a deduction from the contract value on this basis.”*
- 542 I have perused the reports submitted by the Respondent and there is little doubt that in some areas the paint finish is stated to be defective and the Claimant has conceded some area are in fact defective, however, I will address later the question of interpretation of the documents in relation to each class of paint finish, only if required, after deciding whether the Respondent has an entitlement under the subcontract to deduct monies from payment due to the Claimant in addition to the retention amounts withheld.

- 543 The Claimant in the Adjudication Application at Items 132 to 137 submits that the clauses K3.3 and K3.4 of the Subcontract Agreement provide a right for the Respondent to ‘account’ for any money payable from the Claimant to the Respondent by deducting an amount from money that has been certified for payment. However, the Claimant asserts that any amount set-off under this clause must first be ‘payable’ and the painting defect reduction at issue is not currently ‘payable’ due to the fact that it is not “*owed, to be paid, due*” but rather a disputed unliquidated claim therefore providing no entitlement for the Respondent to withhold payment. For authority the Claimant quotes Merritt Cairns Constructions Pty Ltd v Wulguru Heights Pty Ltd [1995] 2 Qd R page 521 and Holmes J at pages 259 to 269 in Queensland University of Technology v Project Constructions (Aust) Pty Ltd [2002] 1 QD R.
- 544 The Claimant in the Adjudication Application at Items 138 to 142 goes on to submit that the clauses at D10 of the Subcontract Agreement place a further restriction on when an amount will be payable in the context of defects by setting out the conditions precedent to be met for determining any amount payable by the Claimant to the Respondent in respect of any alleged defect. The Claimant further asserts that it is only liquidated costs incurred in rectifying defects which can be set off by the Respondent.
- 545 The Respondent in the Adjudication Response in relation to the Claimant’s assertion of type of amounts that can be deducted, at Item 9.46 and 9.47 states:
- “9.46 First, the amount Multiplex has purported to deduct is not “an unliquidated amount”. Though it is an estimate, it is liquidated at an amount of \$450,000. Casa may well dispute it, but the mere dispute does not make the amount unliquidated.*
- 9.47 Secondly, Multiplex does have an entitlement under the subcontract to deduct the amount in the payment schedule. Multiplex deducts this amount as part of the “fair and reasonable” valuation it is required to reach in relation to the variations,² which include the defective work. Simply put, Casa has not performed the work that it said it would do, and which it has claimed payment for.”*
- 546 The Respondent in the Adjudication Response Submissions at Item 9.48 to 9.52 further states:
- “9.48 Multiplex has not purported to claim amounts from Casa under clause D10.6 of the general conditions of contract, as Casa suggests. Instead, Multiplex has used the expert reports it has received to inform the “fair and reasonable” valuation it is required to reach in relation to variations under clause J4 of the general conditions of contract.*
- 9.49 Multiplex also notes that it may, under the subcontract, choose to accept Casa’s defective work, which would result in a corresponding reduction in the subcontract sum.³ Multiplex has not yet chosen to do this. However, Multiplex*

General conditions of contract, cl J4.

General conditions of contract, cl D11.

submits that this contractual provision supports its approach to valuation of the construction work performed by Casa.

9.50 *This defect has only recently come to Multiplex's attention.⁴ Accordingly, it is only recently that Multiplex has sought to value Casa's construction work under the subcontract appropriately.*

9.51 *To the extent that allowing the deduction to account for the defect requires the adjudicator to revisit a previous determination of the value of construction work, Multiplex submits that discovery of a defect amounts to a change in the value of the construction work, which allows the work to be re-valued.*

9.52 *In any event, the payment schedule can be seen as a certification by Multiplex of an amount payable by Casa to Multiplex in accordance with clauses K3.3 and K3.4 of the general conditions of contract. Those clauses have their own operation, and are not dependent on clause D10 as Casa submits."*

547 In relation to the Respondent's statement that its estimate of \$450,000.00 is not 'an unliquidated amount' at Item 9.46 above. I concur with the Respondent, having referred to the Merriam Webster's Dictionary of Law which defines unliquidated as "*not calculated or established as a specific amount*", and that the fact it is in dispute does not make it unliquidated.

548 In relation to the Respondent's statement that the Respondent is the certifier at Item 9.52 above, the cases quoted by the Claimant as authority for defining 'payment due' both support the fact that a 'disputed' amount is not 'payable' until, in those cases, the 'Superintendent' has certified an amount under those contracts. The Respondent is the nominated certifier for this contract and as such cannot be referred to an 'independent' certifier in the same manner as a Superintendent would be. Therefore, even after certification of an amount payable by the Respondent, that amount, and the entitlement to deduct it, can remain in dispute and at large as to the quantum of the payment. I find that the authority stated by the Claimant supports the view that the Respondent cannot simply assert and then certify an amount for deduction as a set off when that amount remains in dispute.

549 In relation to the Respondent's statement at Item 9.48 above that it has an entitlement to deduct monies from payment due to arrive at a "*fair and reasonable valuation it is required to reach in relation to variations under clause J4 of the general conditions of contract*" I consider that the Respondent has taken this requirement totally out of context as it is only referred to in the last dot point of four preceding rules at Clause J4 providing as a last option for the assessment of variations on a fair and reasonable basis. The deduction here is not an amount for a variation resulting from any direction by the Respondent to delete work or vary the work. It is in fact a defect rectification by its own admission at Item 9.50 above, noted in the footnote 88 referring to "*See section 13 of Multiplex's submissions for the Previous Adjudication (annexure D)*" which is titled "*Defects in Casa's Work*" and is also described in the reason for withholding payment in the Payment Schedule as 'Rectification'.

See section 13 of Multiplex's submissions for the Previous Adjudication (**annexure D**).

550 I am not satisfied by the Respondent's submissions that it has established an entitlement to deduct the amount of \$450,000.00 for defective painting finishes, in addition to the Retention amount withheld for the purpose of defect rectification under the contract, from any payment due to the Claimant. I will not be addressing the submissions relating to rectification costs therefore I decide that the reduction is **\$0.00 for 'Painting Defect Reductions' to be carried to the Collection for calculation of the Adjudicated Amount**

Retention

551 The Claimant's original quotation of 18 July 2005 specifically stated no allowance had been made for retention or liquidated damages. At some stage after submitting the quotation and prior to the acceptance of tender 18 August 2005 by the Respondent, the Claimant must have accepted that a form of retention would apply to the contract and this has resulted in the contract agreement being offered to the Claimant including clauses providing for retention. The Claimant in its submission to the Respondent of 30 November 2005 has amended the clauses administering retention and this may have been one of the unresolved issues discussed at the meeting of 5 December 2005. . (NB: where quotes have been included from submissions generally the footnotes have been omitted)

552 The Respondent's purported contract agreement documents at Annexure A of the Adjudication Response and the Claimants purported contract agreement documents at Annexure 1.3 of the Adjudication Application are significantly different in terms and conditions that apply to the withholding of retention monies and neither party has provided any evidence of subsequent agreement as to the method of application, calculation of retention amounts and release of retention amounts.

553 The Claimant in the Payment Claim has calculated an amount for retention based on the Respondent withholding \$136,435.00 indicated as being 5% of the contract sum.

554 The Respondent in the Payment Schedule has retained retention of \$226,481 indicated as being 5% of adjusted contract sum value it has approved.

555 The Claimant in the Adjudication Application Claimants Submissions at Item 149 to 152 states:

"149 Pursuant to clause L1 and Item 12 of Schedule 1 of the Contract, the Claimant provided the Respondent with security for performance in the form of retention money. This retention money is 10% of each progress payment to a maximum of 5% of the contract sum (with the contract sum being \$2,722,700, as adjusted by variations as per clause J1 of the subcontract).

150 Pursuant to clause L2 (as amended by the Special Conditions in Schedule 7), as at the date of completion, the Respondent is required to return to the Claimant an amount of the retention money that leaves the Respondent holding 2.5% of the adjusted subcontract sum.

151 In relation to the retention money:

- (a) *the Respondent has previously conceded in its payment schedule in response to the July Payment Claim that the Claimant is entitled to the return of half of the retention money;*
- (b) *the Previous Adjudicator accepted that the Respondent was obliged to return an amount of the retention money which left the Respondent holding 2,5% of the adjusted contract sum;*
- (c) *the Respondent has issued a recipient Created Tax Invoice for the adjudicated amount in respect of the July Payment Claim which will leave it holding 2.5% of the adjusted contract sum.*
- (d) *the Respondent has informed the Claimant that practical completion was granted under the head contract on 10 August 2006.*

152 *In light of the above, it is not legitimate for the Respondent to now contend that it is entitled to hold any more than 2.5% of the adjusted contract sum.”*

And at Item 153 and 154 the Claimant asserts that the Adjudicator must adopt its claimed approach being the same valuation of the retention as the previous adjudicator as s27(2) of the Act applies.

The Claimant at Item 155 concedes that the amount of retention withheld should be \$158,148.15 being 2.5% of the adjusted contract sum rather than the amount claimed in the Payment Claim of \$136,435.00.

556 The Respondent in the Adjudication Response Submissions at Items 10.1 states: *“Casa submits that section 27(2) requires the adjudicator to reach the same conclusion in relation to retention as in the Previous Adjudication. Multiplex disagrees.”*

And at Item 10.2 states:

“The amount of retention is not the value of “construction work”, which is what section 27(2) deals with. As well as being intuitively obvious, it is also supported by the BCIP Act, which deals separately with claims for release of retention. Section 27 has no operation (except insofar as it affects the value for construction work, on the basis of which the retention is calculated).”

557 I concur with the Respondent that Section 27 of the Act refers to the ‘value of any construction work’ and deals separately at s17(3) with any amount that is held under the construction contract being a legitimate portion of a claimed amount when release is requested. Retention is money withheld from certified (and in this case ‘adjudicated’) payment of construction work for the purpose of security for the Respondent to ensure the Claimant’s performance of its obligations under this subcontract (refer Clause L1 of General Conditions of Subcontract un-amended by Claimant) and is not an item of construction work to be ‘valued’. Indeed the money withheld has already been valued as construction work. I therefore find that the method of calculation of retention amounts is not an assessment captured by s27 of the Act and I am at liberty to decide how it will be applied.

558 The Respondent in the Adjudication Response Submissions at Items 10.5 in relation to the method of calculation of retention in the July 2006 payment schedule states inter alia:

“...., Multiplex submits that it did not apply retention on the basis that the project had reached practical completion; it proposed to release some retention on the execution of a deed of release by Casa, which did not occur.”

And at Item 10.6 states:

“Casa’s submission that “[Multiplex] has previously conceded in its payment schedule in response to the [previous] Payment Claim that [Casa] is entitled to the return of half of the retention money” is incorrect, and has no foundation in either the payment schedule to which it refers or any subsequent submissions made by Multiplex. Multiplex has made, and makes, no such concession.”

559 I concur with the Respondent and accept the reasoning for its actions and prior conduct in the July 2006 payment schedule, and that it does not impose any obligation to follow suit in this payment schedule.

560 The Respondent in the Adjudication Response Submissions at Item 10.7 and 10.8 refers to the general conditions of contract clause L2 for method of dealing with release of retention and in particular to the release being tied to practical completion under the head contract and secondly that the release requires the Claimant to have complied with its obligations under clause D28. The clauses L2 and D28 have been amended by the Claimant in its submissions of 30 November 2005, therefore as I have been advised of no subsequent agreement (from the meeting of 5 December 2005), the only conclusion I can draw is that there is no agreement between the parties on these clauses. I do not accept the Respondent’s assertions that these clauses apply.

561 The Respondent in the Adjudication Response Submissions at Item 10.10 states:
“Casa submits that Multiplex has informed it that there has been practical completion under the head contract. Though the allegation is completely un-particularised, Multiplex denies so informing Casa.”

And at Item 10.12 states;

“Casa provides no evidence of there being practical completion under the head contract. It has not occurred, and is not due to occur until December 2006. There is no basis for the retention to be reduced.”

562 I concur with the Respondent in that the Claimant has provided no evidence to support its bald statement that it has been advised practical completion has been achieved on 18 August 2006 and no certificate of practical completion has been provided. The Claimant’s amendments to clause L2 make reference to ‘substantial completion stated in Schedule 1 Item 6’ in its submissions of 30 November 2005 to the Respondent, however, it has not provided no evidence that this has been achieved.

563 The Respondent in the Adjudication Response Submissions at Items 10.13 to 10.26 presents its argument in relation to the interpretation of the ‘subcontract sum’ referred to in Schedule 1 Item 12.2 of the subcontract agreement in response to a reference made by the adjudicator in the previous adjudication decision highlighting different wording being used in that document where retention is calculated prior to and subsequent to practical completion. The adjudicator in that case based his decision on the conduct of the parties leading up to that payment claim and not on the interpretation offered as to the definition of ‘subcontract sum’.

564 The Claimant in the Adjudication Application Submissions at Item 149 (quoted previously) and at Item 155 has accepted the varying nature of the ‘subcontract sum’ when calculating retention stating:
“For the reasons given above, the adjusted subcontract sum is \$6,370,072.90 (as per paragraph 147 above). Therefore, the amount of the retention which the Respondent is entitled to hold is \$158,148.15 (and not \$136,435 as referred to in the Payment Claim or \$140,800.61 as valued by the Previous Adjudicator).”

565 In the absence of any evidence by the Claimant of compliance of obligations under the contract or certification by the Respondent that practical or substantial completion has taken place or commanding evidence of a completion occurring, I find for the reasons stated above **that ‘Retention’ is to be applied at 5% of the Adjusted Subcontract Sum.**

Previous Payments

566 The parties concur with the amount of previous payments being \$4,620,891.00 at the time of serving the Payment Claim and the Payment Schedule and that the Respondent has subsequently paid a further amount of \$870,332.91 (all amounts excluding GST) and **the deduction amount of \$5,491,223.91 for ‘Previous Payments’ is carried to the Collection for calculation of the Adjudicated Amount.**

The Collection of Adjudicated Amounts:

Original Contract Sum	\$2,722,700.00
Schedule A Variations	\$1,528,426.46
Schedule B Variations	\$1,907,850.24
Schedule C Variations	\$6,947.23
Schedule D Variations	(\$130,296.97)
Other Variations	\$0.00
Contract Scope Reductions Credits	\$0.00
Mobile Crane Reductions	\$0.00
Tower Crane Reductions	\$0.00
Painting Defect Reductions	\$0.00
Adjudicated Adjusted Subcontract Sum	\$6,035,626.96
Retention 5%	(\$301,781.35)
Previous Payments	(\$5,491,223.91)
Total (Exclusive of GST)	\$242,621.70
GST	\$24,262.17
Adjudicated Payment Amount	\$266,883.87

Rate of Interest

- 567 Section 26(1)(c) of the Act requires that I am to decide the rate of interest payable on the adjudicated amount.
- 568 Section 15(2) and (3) of the Act provides:
“(2) *Subject to subsection (3), interest for a construction contract is payable on the unpaid amount of a progress payment that has become payable at the greater of the following rates—*
(a) *the rate prescribed under the Supreme Court Act 1995, section 48(1) for debts under a judgment or order;*
(b) *the rate specified under the contract.*
(3) *For a construction contract to which Queensland Building Services Authority Act 1991, section 67P applies because it is a building contract, interest is payable at the penalty rate under that section.*”
- 569 The Claimant in the Adjudication Application Submissions at Part C has submitted that the penalty rate under s67P of the QBSA Act is applicable. The Respondent “*For the purpose of this adjudication only*” in the Adjudication Response Submissions at Item 11.1 has accepted s67P of the QBSA Act applies.
- 570 Schedule 2 of the QBSA Act definition of building work states inter alia:
“*Building work means---*
(a) *the erection or construction of a building; or*
(b) *the renovation, alteration, extension, improvement or repair of a building; or*
(c) *the provision of lighting, heating, ventilation, air-conditioning, water supply, sewerage or drainage in connection with a building; or*
(d) *any site work (including the construction of retaining structures) related to work of a kind referred to above; or*”
- 571 I find no exclusion of the work under QBSA Act Regulations Part 2 section 5 and that the construction work in this contract, being port terminal buildings and commercial residential complexes, is captured by the QBSA Act definition of “building work”.
- 572 I find that the contract is governed by the provisions of the Queensland Building Services Authority Act 1991 and Section 67P of this Act provides:
“*Late Progress Payments_*
(1) *This section applies if_*
(a) *the contracting party for a building contract is required to pay an amount (the progress amount) to the contracted party for the building contract; and*
(b) *the progress amount is payable as the whole or a part of a progress payment; and*
(c) *the time (the payment time) by which the progress amount is required to be paid has passed, and the progress amount, or part of the progress amount, has not been paid.*
(2) *For the period for which the progress amount, or part of the progress amount, is still unpaid after the payment time, the contracting party is also required to pay*

the contracted party interest at the penalty rate, as applying from time to time, for each day the amount is unpaid.

(3) *In this section_*

Penalty rate means_

(a)the rate made up of the sum of the following_

(i) 10% a year;

(ii) The rate comprising the annual rate, as published from time to time by the reserve Bank of Australia, for 90 day bills; or

(b)If the building contract provides for a higher rate of interest than the rate worked out under paragraph (a) _ the higher rate.”

573 For example the 90 day bill monthly rate published by the Reserve Bank of Australia for September 2006 is 6.21%, therefore the penalty rate of interest payable under Section 67P of the QBSA Act 1991 will be 16.21% per annum simple interest. The monthly rate for October 2006 to be used if published at the time of calculation of interest payable.

574 The rate prescribed under the Supreme Court Act 1995, section 48 (1) nominated in the Regulation is 10% per year. The Contract does not provide a rate for interest on overdue payments.

575 I find the rate of interest payable on any amount due is the penalty rate prescribed under the QBSA Act 1991 Section 67P(3)(a) being the greater of the two rates.

Authorised Nominating Authority and Adjudicators Fees

576 Section 34(3) of the Act provides for Authorised Nominating Authority fees stating:

“The claimant and respondent are--

(a) jointly and severally liable to pay any fee; and

(b) each liable to contribute to the payment of any fee in equal proportions or in the proportions the adjudicator to whom the adjudication application is referred may decide.”

577 Section 35(3)of the Act provides for Adjudicators Fees stating:

“The claimant and respondent are each liable to contribute to the payment of the adjudicator's fees and expenses in equal proportions or in the proportions the adjudicator decides.”

578 The Claimant in the Adjudication Application Submissions at Item 164 to 166 submits that I should exercise my discretion to decide that the Respondent is liable for all adjudication fees and expenses on the basis that the Respondent has shown a lack of good faith and reasonableness in *“issuing a Payment Schedule for an amount less than \$0.00”* and *“purporting to include a credit and deductions in the Payment Schedule to reduce the progress payment when it had not entitlement to do so”*, without which it may not have been necessary for the Claimant to apply for an adjudication of the Payment Claim.

579 The Respondent in the Adjudication Response Submissions at Item 12.2 to 12.8 submits that neither of the Claimants submissions should be accepted as “*Multiplex considers that there were no irregularities in the Payment Schedule*” and it had “*an entitlement to do what it did*” and further submits that “*at the least it believes its case is meritorious and not frivolous*” therefore the costs should follow the outcome of the Decision.

580 I have worked through the submissions of the Payment Claim, Payment Schedule, Adjudication Application and the Adjudication Response, and found both parties pursued their respective well prepared cases with significant vigor and belief in their entitlements and concurred with the Respondent as to the Claimant’s assertions in respect of the Payment Schedule, however, neither party has been entirely successful in their respective claims. I am not persuaded by the submissions to deviate from the default provision of the Act and decide not to exercise the discretion provided in the Act and find the Claimant and the Respondent jointly liable to contribute to the ANA’s and the Adjudicator’s fees and expenses in equal proportions.

DECISION

581 I, John Savage, as the Adjudicator (Registration No J1057073) pursuant to the Building and Construction Industry Payments Act 2004 (the Act) for the reasons set out in this decision having perused all of the properly served submissions decide that:

- e) The adjudicated amount to be paid by the Respondent to the Claimant in respect of the Adjudication Application dated 23 October 2006, lodged 23 October 2006 is \$266,883.87 (inclusive of GST).**
- f) The date on which the amount became payable is 30 October 2006.**
- g) The applicable rate of interest payable on the adjudicated amount is the penalty rate prescribed under Queensland Building Services Authority Act 1991 Section 67P.**
- h) The Claimant and the Respondent are liable in equal proportions for both the ANA application fee and the Adjudicator’s fees and expenses.**

John Savage
Adjudicator (Registration No J1057073)
15 November 2006

Variation Register

Variation Register

CASA PVO No.	DESCRIPTION	Sched A	Sched B	Sched C	Sched D	Other	Adjudicated Value	Payment Claim	Payment Schedule
1	Additional Drafting Costs due to delay in issuing For Construction Drawings	\$18,750.00					\$18,750.00	\$18,750.00	\$18,750.00
2	Additional Cinema Support Beams: (19t fabricated & painted out of 19t)		\$150,539.00				\$150,539.00	\$150,539.00	\$139,139.00
3	Disruption to Workshop due to Delay in RFI responses - Withdrawn								
4A	Drafting: Additional Costs due to Multiplex Drawing Changes for Cinema plats shown on drawing B7-S-02 Rev D	\$18,444.03					\$18,444.03	\$18,444.03	\$18,444.03
4B	Drafting: Additional Costs due to Multiplex Drawing Changes	\$15,843.75					\$15,843.75	\$15,843.75	\$15,843.75
5	Deletion of U12a Angles Bldg 7		-\$23,436.00				-\$23,436.00	-\$23,436.00	-\$28,222.16
6	Additional Glazing Supports to Western Façade Bldg 7	\$31,531.00					\$31,531.00	\$31,531.00	\$31,531.00
7	Cranked Column added on Grid 22 Bldg 7		\$12,762.00				\$12,762.00	\$12,762.00	\$8,717.84
8	RFIs: Ongoing changes (raised for Notification Purposes) - No amount claimed								
9A	Drawing Revisions as notified by Alpetros in their letter dated 14 December 2005. Drafting Component Only	\$3,900.00					\$3,900.00	\$3,900.00	\$3,900.00
10A	Drawing Revisions sent to Alpetros via Aconex on 5/12/05: Drafting Component only	\$2,437.50					\$2,437.50	\$2,437.50	\$2,437.50
11A	Drawing Revisions as notified by Alpetros in their letter dated 1 December 2005 and received by CASA on the 5 December 2005, Workshop Drawing Component	\$21,612.50					\$21,612.50	\$21,612.50	\$21,612.50
12	SI 001171 Issue of Workshop Drawings by Multiplex with Changes		\$10,000.00				\$10,000.00	\$23,408.00	\$8,126.80
13A	Workshop Drawing Credit for deletion of angles: 6ton as requested by Multiplex	-\$2,437.00					-\$2,437.00	-\$2,437.00	-\$2,437.00
14A	Drafting: Additional Costs due to Multiplex Drawing Changes: 99hrs based on documented changes from Alpetros letter dated 22/12/05	\$8,043.75					\$8,043.75	\$8,043.75	\$8,043.75
15	Alpetros letter dated 16/01/06, report for week ending 16/01/05. Additional drafting, fabrication and erection costs	\$11,050.00					\$11,050.00	\$11,050.00	\$11,050.00
16	Misc. Directed Dayworks with Multiplex Signature for January 2006		\$29,723.26				\$29,723.26	\$29,723.26	\$23,909.66

PVO		Sched A	Sched B	Sched C	Shed D	Other	Adj Value	Pay Claim	Pay Sched
17	Alpetros letter dated 25/01/06, report for week ending 25/01/05. Additional drafting, fabrication and erection costs	\$4,875.00					\$4,875.00	\$4,875.00	\$4,875.00
18	Western Façade of Building 7 Grids 22 to 24, New member added 4 off 200x9 RHS	\$5,388.00					\$5,388.00	\$5,388.00	\$5,388.00
19	Supply, Fabricate and Erect additional Column S20c on Grid 39		\$14,723.00				\$14,723.00	\$14,723.00	\$4,506.68
20	B7- Revised stair penetrations between grids 12 and 13	\$2,493.00					\$2,493.00	\$2,493.00	\$2,493.00
21	B7- Credit: Revised steelwork to level 2 between grids 23 and 13	-\$1,132.00					-\$1,132.00	-\$1,132.00	-\$1,132.00
22	Supply, Fabricate and Erect additional steel Building 7 added for Floor Penetration Steel to P20s and P15s. Claimed in RFV 021 - Withdrawn								
23	Supply of additional columns on Easter Wall Building 7 grids 12 to 22 and grids 20 to 22 on grids 36, 37 and 38 - No amount claimed							\$0.00	\$0.00
24	B7- Revised Roof Beam Grid 22 to 40	\$4,866.00					\$4,866.00	\$4,866.00	\$4,866.00
25	Building 7: Additional roof braces added between grid 12 and 13		\$1,849.00				\$1,849.00	\$1,849.00	\$0.00
26	B7: Revised roof struts between Grids 12 and 15	\$228.00					\$228.00	\$228.00	\$228.00
27	No amount claimed								
28	No amount claimed								
29	No amount claimed								
30	Supply, Fabricate and Erect additional 200UC columns on Building 7 Grid 44	\$19,912.00					\$19,912.00	\$19,912.00	\$19,912.00
31	Remeasured purlin and girt quantities, Building 7 Function Room					\$0.00	\$0.00	\$1,000.00	\$0.00
32	Full Penetration Butt Welds to column Cap Connection Plates to Building 7 Function Room	\$8,100.00					\$8,100.00	\$8,100.00	\$8,100.00
33	Increase in thickness of connection cap plates in Building 7 Function Room (Ref Section 201 on R04-500)			\$4.95			\$4.95	\$300.00	\$4.95
34	Addition of Soffit purlins to Function Room Area Bldg 7 grids 40 to 45	\$56,527.00					\$56,527.00	\$56,527.00	\$56,527.00
35	Supply and Install Steel Framed Timber Screens to Western Side of Building 7	\$105,846.00					\$105,846.00	\$105,846.00	\$105,846.00
36	Truss added to roof plan on Grid 39 and Grid A Building 7 - No amount claimed								
37	300PFC Wind Beam added to Function Room Roof on Building 7 - No amount claimed								
38	Supply and Install Awning Support Plates to Western Façade grids 12 to 22 (Building 7)	\$8,613.00					\$8,613.00	\$8,613.00	\$8,613.00
39	Misc. Directed Dayworks with Multiplex Signature for February 2006	\$19,988.12					\$19,988.12	\$19,988.12	\$19,988.12

PVO		Sched A	Sched B	Sched C	Shed D	Other	Adj Value	Pay Claim	Pay Sched
40	Claim for Additional Workshop Drafting from Alpetros resulting from Weekly Report ending 20/02/2006	\$9,587.50					\$9,587.50	\$9,587.50	\$9,587.50
41	Misc. Directed Dayworks with Multiplex Signature for March 2006	\$40,878.50					\$40,878.50	\$40,878.50	\$40,878.50
42	No amount claimed								
43	No amount claimed								
44	No amount claimed								
45	Cranked Dropper Stub to Western Façade Wall		\$40,549.00				\$40,549.00	\$40,549.00	\$18,236.80
46	Revised Awning supports for western façade columns grid 22 to 24		\$34,532.00				\$34,532.00	\$34,532.00	\$19,413.00
47	B7-Cinemas: Additional floor beams added to level 3 Platform between grids 12 to 22	\$8,753.00					\$8,753.00	\$8,753.00	\$8,753.00
48	B7-Cinemas: Additional floor beams added to level 3 Platform between grids 12 to 22 - Withdrawn							\$0.00	\$0.00
49	Alpetros Claim for additional drafting due to issue of drawing B8 S 04 101 Rev O not previously issued	\$3,087.50					\$3,087.50	\$3,087.50	\$3,087.50
50	Alpetros Claim for additional drafting as reported in Weekly Report for Week Ending 06/03/06	\$4,225.00					\$4,225.00	\$4,225.00	\$4,225.00
51	Cinemas-Supply and Install Bondek and Edge form	\$138,708.00					\$138,708.00	\$138,708.00	\$138,708.00
52	Misc. Directed Dayworks with Multiplex Signature for April 2006 (1 of 4)	\$41,775.59					\$41,775.59	\$41,775.59	\$41,775.59
53	Misc. Directed Dayworks with Multiplex Signature for April 2006 (2 of 4)	\$34,397.48					\$34,397.48	\$34,397.48	\$34,397.48
54	Misc. Directed Dayworks with Multiplex Signature for April 2006 (3 of 4)	\$40,057.92					\$40,057.92	\$40,057.92	\$40,057.92
55	Misc. Directed Dayworks with Multiplex Signature for April 2006 (4 of 4)	\$46,691.60					\$46,691.60	\$46,691.60	\$46,691.60
56	Alpetros Claim for additional drafting due to Multiplex Transmittal 001795 & Multiplex Cont adv 3866 and 3878	\$2,762.50					\$2,762.50	\$2,762.50	\$2,762.50
57	Misc. Directed Dayworks with Multiplex Signature for May 2006 (1 of 2)	\$68,927.21					\$68,927.21	\$68,927.21	\$68,927.21
58	Misc. Directed Dayworks with Multiplex Signature for May 2006 (2 of 2)	\$30,421.90					\$30,421.90	\$30,421.90	\$30,421.90
59	Misc. Directed Dayworks with Multiplex Signature for May 2006 (3 of 3)	\$37,518.11					\$37,518.11	\$37,518.11	\$37,518.11
60	B7- Cinema-Supply and install Bondek and edge form for Cinema 5	\$5,148.00					\$5,148.00	\$5,148.00	\$5,148.00
61	B7-Gangway- Installation of Smart Floor panels	\$12,000.00					\$12,000.00	\$12,000.00	\$12,000.00
62	B7-Cinemas- J2 joists added to front of cinemas	\$6,140.00					\$6,140.00	\$6,140.00	\$6,140.00
63	B7-Cinemas-Additional Angle bridging between Seating plat beams	\$15,951.00					\$15,951.00	\$15,951.00	\$15,951.00
64	B7-Podium supply and install stair 7.7 steelwork	\$65,000.00					\$65,000.00	\$65,000.00	\$65,000.00

65	B7-Function room mechanical plant platform	\$38,900.00						\$38,900.00	\$38,900.00	\$38,900.00
PVO		Sched A	Sched B	Sched C	Shed D	Other	Adj Value	Pay Claim	Pay Sched	
66	B7- Cinema stairs supply and install stair B7-15,16,17 and 18 (SI 1707)	\$18,600.00					\$18,600.00	\$18,600.00	\$18,600.00	
67	B7-Gangway-Revised window heads to level 1	\$13,588.00					\$13,588.00	\$13,588.00	\$13,588.00	
68	B7-Function room-operable wall support beams - supply and install grid D42 to 44	\$4,981.00					\$4,981.00	\$4,981.00	\$4,981.00	
69	B7 Gangway revised structural steel Level 1		\$35,891.00				\$35,891.00	\$47,505.00	\$35,891.00	
70	B7 Gangway revised structural steel Level 2	\$36,219.00					\$36,219.00	\$36,219.00	\$36,219.00	
71	B7-Cinemas- Additional angle and reo to seating plat beams		\$112,670.00				\$112,670.00	\$112,670.00	\$68,265.12	
72	B7-Cinema additional awning grid 12-13 supply and install	\$7,562.00					\$7,562.00	\$7,562.00	\$7,562.00	
73	B7-AC Platforms mesh supply and install	\$24,288.00					\$24,288.00	\$24,288.00	\$24,288.00	
74	B7-Cinema : additional shear studs to level 2 & 3 landing		\$8,281.00				\$8,281.00	\$14,136.00	-\$6,863.00	
75	B7: Stair 7.7 revised stair landing design		\$12,970.00				\$12,970.00	\$12,970.00	-\$6,000.00	
76	B7: Stair 7.7 Shop detailing of handrails		\$3,325.00				\$3,325.00	\$3,325.00	\$1,520.00	
77	B7: Stair 7.7 Revised stair handrail support design		\$21,430.00				\$21,430.00	\$21,430.00	\$16,940.00	
78	B7: Skylight additional steelwork due to revised design		\$51,071.00				\$51,071.00	\$51,071.00	\$11,082.00	
79	No amount claimed									
80	B1 Window head TW 37,39,40,41 and 42 Supply and install (Cont Adv 4181)			\$3,455.72			\$3,455.72	\$5,000.00	\$3,455.72	
81	B1 Window head TW 58 and 9W14 Supply and install (Cont Adv 4195)		\$2,456.00				\$2,456.00	\$2,456.00	\$1,382.29	
82	B1 lift beams to lifts B1.1 and B1.2 (Cont Adv 4029)			\$500.00			\$500.00	\$500.00	\$500.00	
83	B1 roof structural steel as per quote Q3348	\$232,524.00					\$232,524.00	\$232,524.00	\$232,524.00	
84	B1:B3:B8 stairs as per quotation Q3363	\$82,000.00					\$82,000.00	\$82,000.00	\$82,000.00	
85	B1-Additional fascia truss added as per CONT ADV 3866 & 3878		\$4,277.00				\$4,277.00	\$4,277.00	\$1,674.00	
86	B1-revised steelwork as per TRANSMIT-001795		\$131,952.00				\$131,952.00	\$131,952.00	\$0.00	
87	No amount claimed									
88	B3-Parapet roof framing added as per Drawing B3-S-R01-100, B3-S-00-560,B3-S-00-561		\$25,988.00				\$25,988.00	\$25,988.00	-\$23,789.36	
89	B3-roof access steelwork-B3-S-00-500-1		\$32,558.00				\$32,558.00	\$32,558.00	\$5,171.60	
90	B3 Lower awning hanger bracket (Cont Adv 4001)		\$22,078.00				\$22,078.00	\$22,078.00	\$1,551.48	
91	B3 New chemical anchor spec for awning DA2287			\$500.00			\$500.00	\$1,000.00	\$500.00	
92	B3 Additional steelwork added to roof during drawing review			\$886.56			\$886.56	\$2,500.00	\$886.56	
93	B3-Gangway Installation of Smart Floor Panels	\$4,000.00					\$4,000.00	\$4,000.00	\$4,000.00	
94	B3-AC Platforms mesh supply and install		\$13,440.00				\$13,440.00	\$13,440.00	\$0.00	
95	B3- supply and install dome nuts to sun screen		\$5,000.00				\$5,000.00	\$5,000.00	\$4,500.00	
96	B3 -Entry window head -podium level	\$2,556.00					\$2,556.00	\$2,556.00	\$2,556.00	

PVO		Sched A	Sched B	Sched C	Shed D	Other	Adj Value	Pay Claim	Pay Sched
97	B3-Glazed Entry support structure		\$31,488.00				\$31,488.00	\$31,488.00	\$25,000.00
98	Podium trolley ramp supply and install	\$48,500.00					\$48,500.00	\$48,500.00	\$48,500.00
99	Podium steel street canopy supply and install		\$149,976.40				\$149,976.40	\$227,300.00	\$119,735.00
100	B8 Supply and installation of MSC2 screen on west elevation grid 30 to 31		\$21,000.00				\$21,000.00	\$22,901.00	\$14,776.00
101	B8 Window mullion detail changes to conceal fix (Cont Adv 3883)			\$600.00			\$600.00	\$1,500.00	\$600.00
102	Misc. Directed Dayworks with Multiplex Signature for June 2006 (1 of 6)		\$51,303.60				\$51,303.60	\$51,303.60	\$41,042.88
103	Misc. Directed Dayworks with Multiplex Signature for June 2006 (2 of 6)		\$62,584.29				\$62,584.29	\$62,584.29	\$50,067.43
104	Misc. Directed Dayworks with Multiplex Signature for June 2006 (3 of 6)		\$52,243.02				\$52,243.02	\$52,243.02	\$41,794.42
105	Misc. Directed Dayworks with Multiplex Signature for June 2006 (4 of 6)		\$52,088.45				\$52,088.45	\$52,088.45	\$41,670.76
106	Misc. Directed Dayworks with Multiplex Signature for June 2006 (5 of 6)		\$35,717.61				\$35,717.61	\$35,717.61	\$28,574.09
107	Misc. Directed Dayworks with Multiplex Signature for June 2006 (6 of 6)		\$68,326.56				\$68,326.56	\$68,326.56	\$54,661.25
108	Centre management steelwork-supply and install	\$26,706.00					\$26,706.00	\$26,706.00	\$26,706.00
109	Operable wall supports B7 level 2		\$9,000.00				\$9,000.00	\$18,333.00	\$12,000.00
110	Skylights B1 - Withdrawn								
111	Arbour- B7 podium		\$62,249.00				\$62,249.00	\$64,499.00	\$31,177.36
112	Transit hall awning		\$21,192.00				\$21,192.00	\$21,192.00	\$12,485.72
113	restaurant Grille Angles-B7 - No amount claimed								
114	Smoke Window truss and beam		\$27,122.00				\$27,122.00	\$27,122.00	\$11,820.80
115	Retail blade brackets		\$6,286.00				\$6,286.00	\$6,286.00	\$664.92
116	Revised Timber Screens		\$19,826.00				\$19,826.00	\$19,826.00	\$3,694.00
117	B7-Western Facade awning grid 22 to 24-support rods-stainless steel		\$21,517.00				\$21,517.00	\$26,521.00	\$21,517.00
118	B7-Western Facade awning grid 22 to 24-change in awning number and size - No amount claimed								
119	B7-Passenger concourse truss- Camber to Truss		\$20,050.00				\$20,050.00	\$20,050.00	\$16,040.00
120	B7-Passenger concourse truss- top chord of truss revised from S25c to C20a		\$13,809.00				\$13,809.00	\$13,809.00	\$1,376.64
121	B7-Pasenger Concourse Truss-End support revised details		\$20,837.00				\$20,837.00	\$20,837.00	\$4,372.72
122	B7-Cinema -Revised brace cleat support -section 48 & 49 -B7-S-01-552		\$8,872.00				\$8,872.00	\$8,872.00	\$3,767.88
123	B7-Function area-revised fascia purlin-fluted instead of standard C		\$15,234.00				\$15,234.00	\$15,234.00	\$0.00
124	B7-Light Box 1-revised design		\$38,638.00				\$38,638.00	\$38,638.00	\$28,813.20
125	B7-revised beam as per DA-001676	\$1,252.00					\$1,252.00	\$1,252.00	\$1,252.00
126	B7-additional window heads added the level 1 and level 2 as per DA-002086					\$0.00	\$0.00	\$5,000.00	\$0.00
127	B8-Relocation of 5 window mullions and revised sizes after drafting was complete-CONTADV-3993)					\$0.00	\$0.00	\$750.00	\$0.00

PVO		Sched A	Sched B	Sched C	Shed D	Other	Adj Value	Pay Claim	Pay Sched
128	B7 revised window head details grid A/45 as per RTRFI-000105					\$0.00	\$0.00	\$1,000.00	\$0.00
129	B7-Gangway-revised joint detail for grid A and F level I and 2-changed from bolted to welded and site welded joint detail as section G of B7-S-00-561-1 also refer to DA-002104		\$35,279.00				\$35,279.00	\$35,279.00	\$28,223.20
	NB: Item 129 second claim under Potential Variation Notified and Awaiting Submission							\$15,000.00	
130	B7 -Function room roof-revised steelwork around lift shaft 7.4					\$0.00	\$0.00	\$2,500.00	\$0.00
131	B7 function room - revised details given during shop drawing review					\$0.00	\$0.00	\$2,500.00	\$0.00
132	B7-Cinema-North wall grid 12- supply and fit structural head and sill as per DA-001938					\$0.00	\$0.00	\$2,500.00	\$0.00
133	B7-Light Box 1-Additional steelwork added fro revised glazing line					\$0.00	\$0.00	\$2,500.00	\$0.00
134	B7-gangway-revised beam connection-Beams notched as per detail K Drawing B7-S-00-562-1		\$5,128.00				\$5,128.00	\$5,128.00	\$1,699.24
135	B7-Gangway-							\$0.00	\$0.00
136	B7-Cinema 4 relief air duct -Design change as per CONTADV-003167			\$1,000.00			\$1,000.00	\$1,000.00	\$1,000.00
137	B3-Revised gangway steelwork-columns etc		\$42,454.00				\$42,454.00	\$42,454.00	\$0.00
	NB: Item 137 second claim under Potential Variation Notified and Awaiting Submission							\$2,500.00	
138	B3-window heads-deleted-B3-S-00-100-A					\$0.00	\$0.00	-\$10,000.00	\$0.00
139	B3-awning design change-B3-S-R01-100-change in rafter					\$0.00	\$0.00	\$10,000.00	\$0.00
140	B3-Gangway-design change--B3-S-R01-100-fully welded frame grid A to B		\$16,350.00				\$16,350.00	\$16,350.00	\$0.00
	NB: Item 140 second Claim under Potential Variation Notified and Awaiting Submission							\$7,500.00	
141	B3-AC platform-B3-S-R04-100-change in design		\$18,000.00				\$18,000.00	\$35,746.00	\$11,968.56
142	Misc. Directed Dayworks with Multiplex Signature for July 2006 (1 of 2)		\$60,787.92				\$60,787.92	\$60,787.92	\$48,630.34
143	Misc. Directed Dayworks with Multiplex Signature for July 2006 (2 of 2)		\$47,412.73				\$47,412.73	\$47,412.73	\$38,460.18
144	No amount claimed								
145	B9 Podium Trolley Ramp Supply and install bondek and edge form	\$9,840.00					\$9,840.00	\$9,840.00	\$9,840.00
146	Material Supply Price Increased due to prolongation of project by MPX					\$0.00	\$0.00	\$25,000.00	\$0.00
147	No reference or amount claimed								
148	No reference or amount claimed								
149	No reference or amount claimed								
150	Dayworks for August 2006		\$48,446.40				\$48,446.40	\$60,558.00	\$48,446.40
151	Stair 7.7 Void handrails		\$45,916.00				\$45,916.00	\$45,916.00	\$17,657.32
152	Terrace Level additional bondek support angles		\$24,088.00				\$24,088.00	\$24,088.00	\$12,855.12

PVO		Sched A	Sched B	Sched C	Shed D	Other	Adj Value	Pay Claim	Pay Sched
DEDUCTIONS									
	Contract Scope Reductions - Access Equipment overcharge in Dayworks					\$0.00	\$0.00	\$0.00	-\$15,000.00
	Mobile Crane Use					\$0.00	\$0.00	\$0.00	-\$90,580.50
	Use of MPX Tower Crane					\$0.00	\$0.00	\$0.00	-\$140,000.00
	Drawing Change B3-S-00-100				-\$12,559.60		-\$12,559.60	\$0.00	-\$12,633.48
	Drawing Change B3-S-01-100, 02-100, 03-100 blades				-\$15,810.32		-\$15,810.32	\$0.00	-\$15,810.32
	Drawing Change B3-S-03-100, stair stringer				-\$8,422.32		-\$8,422.32	\$0.00	-\$8,422.32
	Drawing Change B3-S-/-560, (delete enclosure frame)				-\$8,422.32		-\$8,422.32	\$0.00	-\$8,422.32
	Drawing Change B3-S-R01-100				-\$24,380.40		-\$24,380.40	\$0.00	-\$24,380.40
	Drawing Change B3-S-R04-100				\$0.00		\$0.00	\$0.00	\$0.00
	Drawing Change B7-S-02-103 Reference to Vo2				-\$22,238.04		-\$22,238.04	\$0.00	-\$22,238.04
	Drawing Change B7-S-03-101 DDT beam and column grid 40				-\$10,120.23		-\$10,120.23	\$0.00	-\$10,121.56
	Drawing Change B7-S-R04-102				-\$3,694.00		-\$3,694.00	\$0.00	-\$3,694.00
	Drawing Change B7-S-R09-100				-\$10,834.18		-\$10,834.18	\$0.00	-\$12,042.44
	Drawing Change B7-S-R09-101				-\$13,815.56		-\$13,815.56	\$0.00	-\$13,815.56
	Repainting of all exposed steelwork by MPX twice within the warranty period due to incorrect paint system by CASA					\$0.00	\$0.00	\$0.00	-\$450,000.00
Totals Variations		\$1,528,426.46	\$1,907,850.24	\$6,947.23	-\$130,296.97	\$0.00	\$3,312,926.96	\$3,672,372.90	\$1,786,357.93
		Sched A	Sched B	Sched C	Sched D	Other	Adjudicated Value	Payment Claim	Payment Schedule