

# No Mystery In Statutory Interpretation, By A Metre.

Written by Stefano Marchesin, construction law expert, Lovegrove Solcitors

**The Owners - Strata Plan No. 69312 V Rockdale City Council & Anor; Owners of SP69312 V Allianz Insurance [2012] NSWSC 1244.**

This case concerned the meaning of the term "Effective Height" in the version of the Building Code of Australia ("BCA") in force between 23 January 2001 and 26 October 2001.

## Background

The "Effective Height" of the building was the critical point over which fire safety regulatory requirements became more onerous. If the "Effective Height" of the building was more than 25 meters, the building was required by the BCA to have:

- a sprinkler system for the whole building;
- a minimum of two fire exits;
- automatic stair pressurisation systems;
- a fire control centre; and
- an early warning information system, or an alternative suitable fire safety system.

Rockdale City Council granted building permits for the building based on an "Effective Height" of 25 meters, resulting in the construction of the building without all of the above fire safety infrastructure.

The Owners commenced proceedings against the Rockdale City Council, and the insurer of the Builder, for the rectification of defects - the defects being the lack of the abovementioned fire safety infrastructure, as the Owners claimed that the "Effective Height" of the building was more than 25 meters.

On this footing, Lindsay J presided over the exploration and application of the term "Effective Height" in the BCA, taking into account the provenance and nature of the BCA, the relevance of the Guide to the BCA and the admissibility of opinion evidence.

## What does this case mean for building surveyors and architects?

- The opinion of experts is just an opinion and not a fact, and guide is merely a guide, and neither have the power of law.

- The judicial interpretation of law is first and foremost based on the usual and accepted meaning of the words used in the relevant legislation.
- There is no mystery to the words "from the floor of the lowest storey providing direct egress to a road or open space"
- The fact that cars, as well as people, can use *the lowest storey providing direct egress to a road or open space* does not affect the calculation of "effective height".

### **A controversial case? No, it's just emotion clouding the law**

This is hardly anything new to lawyers. As Lindsay J states [at 110]

*"It is the text that must be construed. It is that text, not anything in the Guide, that was incorporated by reference in the Development Approval identified in paragraph 8 of the Statement of Agreed Facts. **It is that text**, not anything in the Guide, that was the subject of "adoption and application" by regulations made under the Environmental Planning and Assessment Act, 1979.*

Accordingly, Lindsay J went on to construe the meaning of Clause A1.1 of the BCA (Amendment 9) that was in force between 23 January 2001 and 26 October 2001 which defines effective height to mean:

*"the height to the floor of the topmost storey (excluding the topmost storey if it contains only heating, ventilating, lift or other equipment, water tanks or similar service units) **from the floor of the lowest storey providing direct egress to a road or open space**"*

Lindsay J then arrived at the obvious conclusion [at 114].

*In my opinion, the Lower Ground Level was "the lowest storey providing direct egress to a road or open space" of the proposed Building. Accordingly, the "effective height" of the proposed Building was 26 metres.*

### **Conclusion**

A court will be surgical in its precision, but straight forward and simple as well, in the interpretation of legislative provisions, as this case demonstrates.