

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRPERSON: BOB MERRIMAN

26 QUEENSBERRY STREET,
CARLTON SOUTH VIC 3053
TEL: 03 9639 1322 FAX: 03 9639 2490
dboard@vbidb.org.au

HOOKER COCKRAM

INVESTA PROJECT

GATE 1 EASTERN DRIVE - BURNLEY

-and-

CFMEU

RE: CLAIM FOR MAN/MATERIAL HOIST

SATURDAY, 28 AUGUST 2021

083-2008

DECISION

The matter before the Panel relates to a claim by the Union that the abovementioned building meets the criteria to qualify for the installation of a passenger and material lift in accordance with **Appendix D – Passengers and Materials Lifts** of the contractors 2005-2008 EBA.

The Panel representatives visited the project on 15 August 2008 for the purpose of inspecting the works and conferring with the parties.

As the matter remained unresolved, the Union requested that the matter be heard and determined by the full Panel.

The matter was listed for hearing on 22 August, 2008 however, due to the unavailability of Management the matter was adjourned until 1 September 2008.

The parties submitted extensive verbal, written and site plan evidence which provided the Panel with a clear appreciation of the nature of the project.

Appendix D provides for the installation of a lift when the completed building will consist of more than six (6) storey levels excluding the roof, parapets and basement levels but including the ground floor. If the building meets those criteria then it should be operational from the date of commencement of form work erection above the floor level of the fifth (5) storeys when counted from the lowest adjacent street level.

In addition Appendix D provides that a Plant Room which does not exceed 25% of the top floor area shall not be counted as a storey level.

In their submission the Union relied on the provisions of Appendix D with regard to the number of storey levels and Plant Room dimensions being in excess of 25% and also referred to the Plant Room provisions (ref. 24.4.2(d) of the National Building and Construction Industry Award) which states –

“Plant room: Further provided that a plant room situated on the top of a building shall constitute a further storey level if the plant room occupies 25% of the total roof or an area of 100 square metres whichever is the lesser”.

Management discounted the Union reference to the Award provisions on the basis that they related specifically to Multi-Storey Allowance and should not be considered by the Panel. Management further stated that the building did not qualify with regard to the number of storey levels and certainly the fact that the plant area did not exceed the dimensions

referred to in Appendix D and were of an open - plan nature which did not constitute a “Plant Room” by any definition.

Having considered the submissions and documentation submitted by the parties, the Panel forms the view that the argument in support or otherwise of the installation of a man and material hoist relies solely on whether the placement of plant and equipment on an open non-roofed section of the project constitutes a Plant Room or similar structure.

The Panel has an understanding of the meaning of the words “Plant Room” however seeks assistance as to the meaning of the word “structure” and therefore refers to the Oxford Dictionary definition which is:-

“structure

A whole constructed unit, esp a building or a set of interconnecting parts of any complex thing; a framework.”

In addition the Panel needs to consider the intention of the parties when the word, “structure” was originally included in the Appendix.

Having considered the matter and based on the provisions of Appendix D of the current EBA, the Panel can only conclude that Plant and equipment in this instance does not constitute a Plant Room as such and also cannot be considered to be a structure. In addition the Panel concludes that the Plant and equipment referred to cannot be seen to exceed 25% of the top of the building.

Therefore the claim for the installation of a passengers and materials lift cannot be upheld.

It is important to note that Management stated that they intended to install a materials hoist as soon as certain external works are completed.

In turning to the concerns expressed by the Union relating to the emergency evacuation of workers from the upper levels, the Panel expects that the parties will ensure that agreed evacuation procedures are operating. The Occupational Health and Safety Committee should be involved in this process.

