



## Building and Development Dispute Resolution Committees—Decision

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### Sustainable Planning Act 2009

<b>Appeal Number:</b>	<b>63 - 10</b>
<b>Applicant:</b>	Path Developments Pty Ltd
<b>Assessment Manager:</b>	Caboolture Building Approvals
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	23 Adam Court, Kallangur, and described as Lot 35 on SP211090 – the subject site

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### Appeal

Appeal under section 532(1)(b)(ii) of the Sustainable Planning Act 2009 (SPA) against the decision by Chris Diggles for and on behalf of Caboolture Building Approvals as the assessment manager to issue a non-compliance notice requesting a form 16 from a fire engineer.

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<b>Date of hearing:</b>	9:00am on Thursday 9 September 2010
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Richard Prout – Chair David Mansell – General Referee
<b>Present:</b>	Peter Luckmann – Applicant Joanne Gough – Applicant Ngon Vo – Des Newport Consulting Engineers Aaron Ruhle – Preferred Plaster Michael Leonardi – MAW Electrical Pty Ltd Michael Duck – Fyreguard Pty Ltd Chris Diggles – Assessment Manager Trevor McLean – Caboolture Building Approvals Lachlan McLean – Manager, Caboolture Building Approvals

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### Decision:

The Committee, in accordance with section 564 of the SPA makes the following directions, to facilitate the existing building to be lawfully approved, built and used as a Building Code of Australia 2009 (BCA) Class 2 building (the building's correct classification));

1. The assessment manager shall have regard to Section 114 and Chapter 9 of the Building Act 1975 (BA) and take any appropriate measures within 5 business days from the date of this decision to ensure the safety of the public.

2. The assessment manager shall within 10 business days from the date of this decision issue to the applicant an information notice including a clear and concise list of any information or documentation required to enable the issue of a decision notice for the building to be used as a BCA Class 2 building.
3. The applicant shall within 20 business days of the assessment manager having satisfied instruction 2 above, provide any information or documentation required to enable the issue of a decision notice for the building to be used as a BCA Class 2 building.
4. The assessment manager shall within 20 business days of having received the required information or documentation, issue a decision notice or amended decision notice for the building to be used as a BCA Class 2 building. The decision notice must clearly list any required inspections that may be necessary for any alterations required to the existing building.
5. The applicant shall within 20 business days from the date of this decision obtain a plumbing approval from Moreton Bay Regional Council (Council) for an additional water sub-meter for the associated unit and ensure its installation is as per Council's requirements;
6. The applicant shall within 20 business days from the date of the new decision notice carry out any required alterations approved by the decision notice to ensure the building complies with the requirements of the BA;
7. The assessment manager shall undertake inspections during construction as required and a final inspection on completion of any required building work,
8. Within 5 business days of the assessment manager's final inspection, the applicant shall provide the assessment manager with a Form 16 from a Competent Person - BSA Licensee (Passive Fire Protection - Fire and Smoke Walls and Ceilings) certifying the fire resistant plasterboard system installation. The applicant shall also provide the assessment manager with a Form 16 from a Competent Person - BSA Licensee (Passive Fire Protection - Fire collars, Penetrations and Joint Sealing) certifying any penetrations through the fire resistant plasterboard systems.
9. The assessment manager shall work with the applicant to ensure a certificate of classification is issued within 10 business days of the assessment manager's final inspection.

## **Background**

1. On 3 February 2010 the assessment manager issued a development approval for building work for a Class 1a dwelling (Reference No. 20100089);
2. On 22 July 2010 the assessment manager issued a Form 61 – Non-compliance notice following an inspection of the site. The issues identified in the form were:
  - Certificate required a signed and dated copy of the Form 16 for the frame inspection conducted by engineer;
  - Certificate required Form 16 from a Fire Engineer for the separation between dwelling units for both the vertical and horizontal separation fire walls and floors.
3. On 17 August 2010 the applicant appealed the requirements of the Form 61 under section 532(1)(b)(ii) of the SPA with the following grounds;
  - Form 61 states Form 16 from fire engineer required. Form 16 supplied not accepted as not from 'fire engineer'. We do not believe this is required for a Class 1a dwelling.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 17 August 2010;

2. Form 61 – Non-compliance notice issued by the assessment manager on 22 July 2010;
3. Caboolture Building Approvals engagement & fee agreement (Reference No. 20100089) dated 29 January 2010;
4. Decision notice (Reference No. 20100089) dated 3 February 2010 from the assessment manager;
5. The approved drawings issued by the assessment manager dated 3 February 2010;
6. Form 15 - Compliance certificate for building design or specification for the footings and slab design signed by Ngon Vo of Des Newport Consulting Engineers, date 29 September 2009;
7. Form 15 – Compliance certificate for building design or specification for the structural timber framing and tie down design signed by Ngon Vo of Des Newport Consulting Engineers, dated 29 September 2009;
8. Form 15 – Compliance certificate for building design or specification for the energy efficiency assessment and BERS energy efficiency assessment both dated 9 October 2009 and signed by Lachlan McLean;
9. Form 15 – Compliance certificate for building design or specification for the fire rated separation walls design signed by Ngon Vo of Des Newport Consulting Engineers, dated 6 April 2010;
10. Form 16 – Inspection certificate/aspect certificate/QBSA license aspect certification for the installation of the fire rated plasterboard systems to front and rear units, including wall and ceiling systems, signed by Aaron Ruhle of Preferred Plastering dated 19 July 2010;
11. Verbal presentation at the hearing from Mr Trevor McLean who advised the following;
  - That Trevor McLean would act as spokesperson for the assessment manager;
  - That the building approval issued by the assessment manager was for a single Class 1a dwelling however the building may constitute a (BCA) class 2 building;
  - That the assessment manager had received the required Form 16 inspection reports for the mandatory inspections including the frame inspection;
  - That the assessment manager requested sufficient information from competent person (Mike Duck of Fyreguard) to enable inclusion within the Certifier's competent person register;
  - That the assessment manager requested a form 16 from a Competent Person (Mike Duck of Fyreguard) for the fire wall including the penetrations;
  - That the assessment manager would review the drawings and provide a written response to the Committee and the applicant within fourteen days as to the assessment manager's position and as to whether they would be prepared to issue an amended decision notice for a BCA Class 2 building;
12. Verbal presentation from the applicant who advised the following;
  - That the design was for a Class 1a dwelling with a separate associated unit as allowed under the Pine Rivers Plan;
  - That he was prepared within reason to rectify any non-complying issues related to the building in order obtain a lawful certificate of classification for his client;
13. At the hearing a limited inspection/assessment of the fire separation between the units was carried out and found to be non-complying in a number of areas.
14. Email dated 9 September 2010 from Lachlan McLean to the applicant and a letter dated 9 September 2010 signed by the assessment manager to the applicant stating;
  - That a Form 16 from Fyreguard was not required;
  - That the assessment manager would be issuing an amended development application decision notice for a Class 1a dwelling, Class 1a associated unit and two Class 10a private garages;
  - That in order to finalise the project the following was required;

- The rectification of the non confirming elements of the separating wall between the dwellings noted at the hearing;
15. Email from Council dated 20 September 2010 confirming the development complies with the requirements of Pine Rivers Plan for a dwelling and associated unit;
  16. Letter to the Committee dated 22 September 2010 from the assessment manager providing a summary of the inspection of the fire wall carried out at the hearing and their justification for a proposed new classification for the building as a Class 1a dwelling and Class 1a associated unit with two Class 10a garages;
  17. An amended development application decision notice (Reference No. 20100089) dated 3 February 2010 from the assessment manager for a Class 1a dwelling, Class 1a associated unit and two Class 10a garages;
  18. A Form 61 – Non-compliance notice issued on 20 September 2010 by the assessment manager;
  19. A Form 22 – Notice of discontinuance of engagement issued on 21 September 2010 by the assessment manager with the following reasons for the discontinuance;
    - Applicant/builder has refused to comment/confirm on the status of rectification work of non compliant issues relating to firewalls at this property.
  20. The BA
  21. The Queensland Plumbing and Wastewater Code – Part 4
  22. The BCA
  23. The SPA

## Findings of Fact

The Committee makes the following findings of fact:

The development approval issued by the assessment manager on 3 February 2010 constitutes two separate Class 2 sole occupancy units as per the BCA for the following reasons;

1. The approved drawings show the building separated into 2 sole occupancy units, being a house with its own double garage and a unit with its own single garage and laundry. The drawings also show a fire separating wall between the unit garage and the house garage;
2. As per the BCA the building constitutes a Class 2 building for the following reasons;
  - Section A3.2 Classifications states the following;
 

Class 1: one or more buildings which in association constitutes –

    - (a) Class 1a – single dwelling being –
      - (i) a detached house; or
      - (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire resisting wall, including a row house, terrace house, town house or Vila unit;

Which is not located above or below another dwelling of another class of building other than a private garage

Class 2: a building containing 2 or more sole occupancy units each being a separate dwelling
  - Part A1 Interpretation states a private garage means -
    - (a) Any garage associated with a Class 1 building; or
    - (b) Any single storey of a building of another class capable of accommodating not more than 3 vehicles, if there is only one such storey in the building; or

- (c) Any separate single storey garage associated with another building where such garage is capable of accommodating not more than 3 vehicles.
- Volume Two of the BCA, section 3.7.1.8(a) (separating walls) states the following in regards to Class 1 buildings;

#### 3.7.1.8 Separating walls

- (a) A separating wall between Class 1 buildings, or a wall that separates a Class 1 building from a Class 10a building which is not appurtenant to the Class 1 building must have an FRL of not less than 60/60/60 and –
  - (i) Commence at the footings or ground slab; and
  - (j) Extend –
    - (A) if the building has a non combustible roof covering, to the underside of the roof covering; or
    - (B) if the building has a combustible roof covering, to not less than 450mm above the roof covering.

In the configuration of this building, a sole occupancy unit is located above a Class 10a garage which is not appurtenant to the unit. In addition, the separating walls cannot commence at the footings or ground slab and extend to the underside of the non combustible roof as required by section 3.7.1.8(a) of Volume Two of the BCA for a Class 1 dwelling.

It should also be noted that Volume Two of the BCA, which is the specific document for Class 1 and Class 10 buildings, has no references to horizontal fire or acoustic separation. As such the building constitutes a Class 2 building as per the BA. The relevant State Government Department responsible for administering the building legislation has advised that Class 2 is the appropriate classification for the subject building.

3. There was no internal connection between the two dwelling units;
4. Each building contained the facilities required for a Class 2 building as per section F2.1 (Facilities in residential buildings) and Table F2.1 (Provisions of sanitary and other facilities in residential buildings) of Volume One of the BCA.
5. The decision notice issued by the assessment manager made no statements in the conditions of the approval preventing the use of the building as two separate dwelling units; and
6. As per Part 4 (Water meters for new premises) of the Queensland Plumbing and Wastewater Code each sole occupancy unit requires a water meter.

### **Reasons for the Decision**

The initial grounds of the appeal are relevant to fire separation and associated documentation required to satisfy the assessment manager that compliant fire separation has been achieved. To competently hear this appeal, the Committee needed to determine the required fire separation for the building. The reasons for the decision are relevant to fire separation and the steps required to achieve compliant fire separation.

It is clear from the design of the building that the intended use was two self contained sole occupancy units. As per Section 1.3.1 (Principles of classification) of Volume Two of the BCA and section A3.1 (Principles of classification) of Volume One of the BCA the assessment manager had a responsibility to ensure that the building approval reflected this use.

Section A3.1 (Principles of classification);

The classification of a building or part of a building is determined by the purpose for which it is designed, construction or adapted to be used.

Section 11 of the BA states the following;

1. Generally, the assessment manager for a building development application is the assessment manager for the application under the section 246(1) of SPA.
2. However, if under section 48 a private certifier (class A) is performing functions for the application, the certifier is the assessment manager for the application.

As per this section of the BA the assessment manager for this development was Chris Diggles of Caboolture Building Approvals.

Section 532 of the SPA states the following

(1) If—

(b) a person—

was an applicant for a building development approval; and

is dissatisfied with a decision under the BA by a building certifier or referral agency about inspection of building work the subject of the approval; the person may appeal against the decision to a building and development committee.

(2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the decision.

As per section 532 of SPA, the applicant had the right to appeal the Form 61 subject to the appeal commencing within the required 20 business days. The appeal was lodged within the timeframe and as such the Committee is of the opinion that even though the assessment manager has attempted to disengage himself from the project after the hearing he still remains the respondent and the Committee has the ability to issue directions to him.

**Richard Prout**  
**Building and Development Committee Chair**  
**Date: 22 October 2010**

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## **Appeal Rights**

Section 479 of the Sustainable Planning Act 2009 provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**