



**Building and Development Tribunals**  
**Queensland Government**

Department of **Local Government, Planning,  
Sport and Recreation**

**APPEAL**  
*Integrated Planning Act 1997*

**File No. 3-05-012**

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**BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Bundaberg City Council

**Site Address:** *withheld* – “the subject site”

**Applicant:** *withheld*

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**Nature of Appeal**

Appeal under sections 22 and 24 of the *Building Act 1975* against the decision of the council relating to a building that was built before the commencement of section 22 and is dangerous. Part of the building is being used as a gymnasium and is located on land described as Lots *withheld* and situated at “the subject site”

The appeal was lodged by the owners’ representative against Bundaberg City Council.

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**Date and Place of Hearing:** 11:00 AM on Friday the 29<sup>th</sup> March 2005  
at “the subject site”

**Tribunal:** Ron Blake

**Present:** *withheld* Owner  
*Withheld* Owner  
Stephen Curran Assistant Building certifier, Bundaberg City Council  
Dan Ronan MRH Lawyers (Owners representative and  
Observer but indicated he is not a lawyer)

**Decision**

In accordance with Section 4.2.34 [2] (a) of the *Integrated Planning Act 1997*, I hereby **set aside** the decision being appealed against.

NOTE: The failure of the Council enforcement notice to comply with the legislation does not necessarily mean that the building is safe to partially occupy as a gymnasium.

## Background

The matter concerns the following;

- ◆ The existing building which may have been constructed in the 1920's as an industrial building;
- ◆ A gymnastic club commenced using part of the building in approximately 1985;
- ◆ The use of the area associated with the enforcement notice was the gymnasium;
- ◆ No building application was made for the new gymnasium use.
- ◆ The Fire brigade inspected the building and issued notices. A copy of the notices were forwarded to the council.
- ◆ Council had discussions with the Owner and the tenant, ie *withheld*, relating to building and planning issues.
- ◆ The Council records relating to building matter are not significant.
- ◆ The Council has issued two notices on the owners.
- ◆ The first relates to the ceasing use of a dangerous building and this is the enforcement notice appealed against.
- ◆ The second relates to a Show Cause notice requiring the owner to obtain a development permit for a "gymnastic club" on the land.
- ◆ The Council decision is not supported by any formal building surveying reports.

## Jurisdiction

### Attendees

The ability of Dan Ronan to attend the meeting was questioned by the referee.

Mr Dan Ronan indicated that he was not a solicitor although he worked for a firm of lawyers. It was confirmed that the matter had been discussed with the Registrar and provided Mr Dan Ronan is not a lawyer then he could attend the meeting. The Council accepted that the meeting continue on the basis that Mr Dan Ronan is not a lawyer.

The Queensland Law Society has confirmed that the name, Dan Ronan, is not on their register of solicitors.

### Timing

Date of enforcement notice: 25 February 2005. (Friday)  
Postage delivery: Allow 3 days.  
Expected delivery date 2<sup>nd</sup> or 3<sup>rd</sup> if not posted on Friday.  
Advised delivery date 3<sup>rd</sup> March 2005  
Conclusion: Satisfactory  
Appeal period: 5 Business Days.  
Date of appeal: 10<sup>th</sup> March 2005.  
Conclusion: Satisfactory as period includes weekend.

### Material Considered

The following materials have been submitted and considered.

Date	Provider/Receiver	Description / Reference	Comment on Content
12/7/04	From: QFRS To: <i>withheld</i>	Requisition by Chief Commissioner # 0086	Path of travel is restricted Fail to produce an evacuation plan Failed to instruct workers relating to fire and evacuation. Notice to undertake the following; <ul style="list-style-type: none"><li>• Provide alternative exits to comply with Building act;</li><li>• Install exit signage and emergency lighting that complies with Building Act;</li></ul>

			<ul style="list-style-type: none"> <li>Approval to continue occupancy.</li> </ul>
12/7/04	From: QFRS To: <i>withheld</i>	Notice by Chief Commissioner # 0085	The following hazards Insufficient exits Exit signage and emergency lighting not sufficient to assist evacuation.
14/7/04	From: Gary Barwick To: Stephen Curran	E-mail	Cancellation of joint inspection by QFRS and BCC. QFRS expressed concern about requiring upgrades if BCC would evict occupants due to planning difficulties.
7/3/05	Department of Emergency Services	Building Survey Report	All notices and requisitions served on the owner of the building have been lifted as of 7/3/05.
25/3/05	From: Bundaberg City Council To: <i>withheld</i>	Enforcement Notice under section 22(1) of the Building Act	The change of use is dangerous because it does not have a development permit for building works and "associated Fire Safety Provisions"
25/3/05	From: Bundaberg City Council To: <i>withheld</i>	Use of building as a Gymnastic Club	Council considered a report by S Curran. <ul style="list-style-type: none"> <li>Report indicated a complaint had been received from QFRS</li> <li>No building approval for the use.</li> <li>Town planning approval required.</li> <li>An enforcement notice issued requiring Owner to protect persons by immediately ceasing use of the described building.</li> </ul> Based on the information from Council this report must have been verbal.
Undated notes	From: BCC	Gymnastic Club Premises - Issues	<p>"QFRS has safety concerns No Town Planning Approval or Building Approval Referred to Town Planning Building is mostly of non-fire rated construction in a large complex, all of which appear to have fire safety concerns (See QFRS list) High Fire Load In large complex of non compliant occupancies Non compliant exits Large number of children use building (up to 300 total) Waiting on paperwork from QFRS QFRS have stated whilst they have withdrawn their "notice" the building still does not comply with the BCA."</p>
		<i>Integrated Planning Act 1997</i>	
		<i>Building Act 1975.</i>	
		<i>Standard Building Regulation 1993</i>	

### Submissions

Verbal submissions were made by both parties.

Generally the owners were confused about planning issues. When they purchased the building the use was already occurring. Compliance with QFRS issues were seen as compliance with building issues at least as far as safety was concerned.

The Council representative indicated that a building surveying report was not submitted to Council for its consideration.

No Building surveying report exists and the Owner has not been advised of any details in writing of why the building is dangerous. The Council indicated that the cost of preparing a full report to identify the unsafe building issues would be significant.

The Council is aware of a number of continuing non-compliances which relate to occupant safety but

these have not been put in writing.

### **Findings of Fact**

I made the following findings of fact:

1. The enforcement notice is not based on a suitable methodology to identify items as dangerous.
2. Council has not prepared a list of building non-compliances that could lead to the building being classified as dangerous.
3. The enforcement notice did not identify dangerous items for the owner to rectify.
4. The Council had made no reference to structural engineering issues that may be associated with the identified change of use. Similarly no detail attempt was made to identify fire safety items associated with Standard Building Regulation 110 2 (b).
5. Council was aware of QFRS requisitions and the Council made no attempt to advise the owners that some of the items involved building work that would require a Building Development Application and approval prior to their installation.
6. Because a building does not have a building development approval, does not mean that it does not comply with building code requirements and is dangerous.

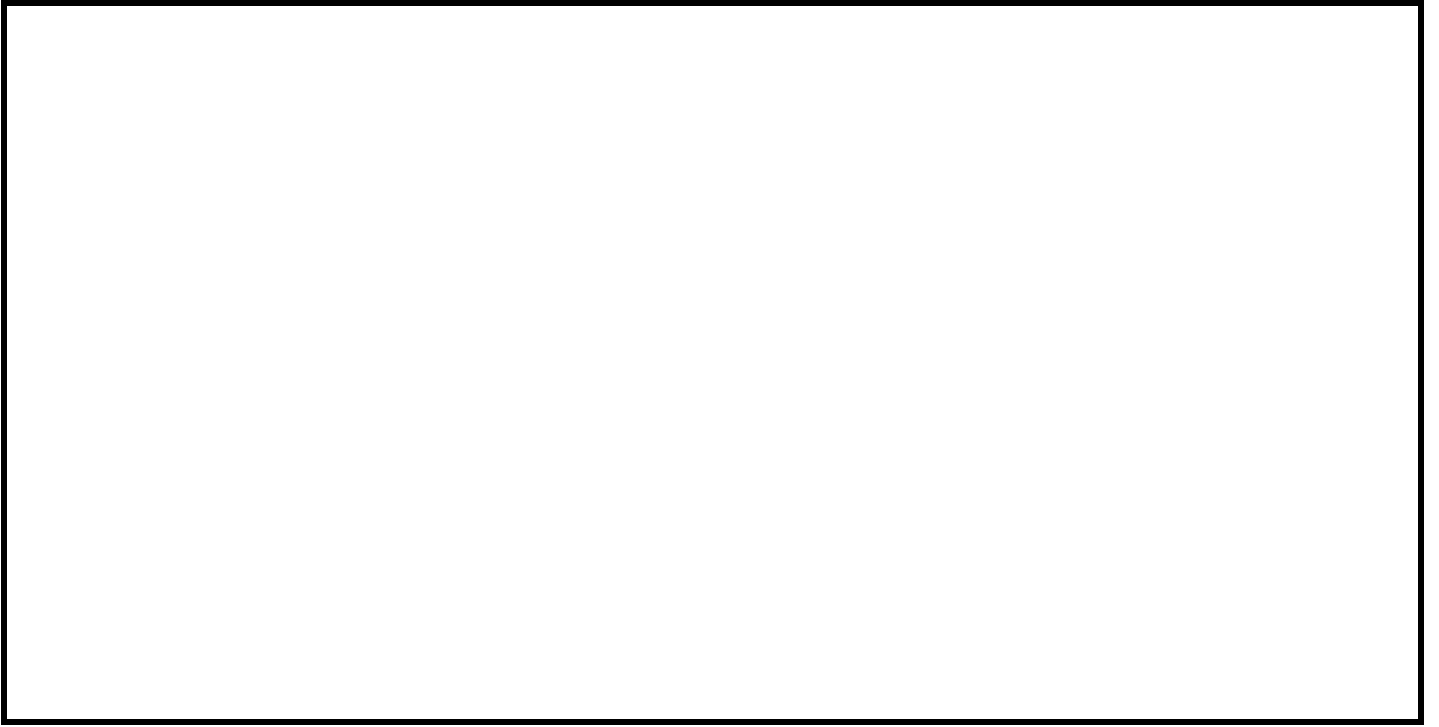
### **Reasons for the Decision**

After assessing the facts and the submissions of the parties, I have reached the following conclusions relating to the issue of the enforcement notice:

- Due to the lack of detailed dangerous items associated with the enforcement notice it is considered invalid.
- The withdrawal of the notice does not necessarily mean that the building is safe to occupy.

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**Ron Blake**  
**Building and Development**  
**Tribunal Referee**  
**Date: 10 May 2005**



## **Appeal Rights**

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
Department of Local Government and Planning  
PO Box 31  
BRISBANE ALBERT STREET QLD 4002  
**Telephone (07) 3237 0403: Facsimile (07) 32371248**