



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number:	3–08–084
Applicant:	Redcliffe Assembly
Assessment Manager:	Chris Trewin for and on behalf of The Certification Professionals
Concurrence Agency: (if applicable)	Not applicable
Site Address:	Mueller College, 75 Morris Road, Rothwell and described as Lot 14 on RP809883 – the subject site

Appeal

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* (IPA) against the decision of the Assessment Manager to issue of an Interim Certificate of Classification with restrictions on use of a building on the subject site.

Date of hearing:	10:00am – Wednesday, 10 December 2008
Place of hearing:	The subject site
Tribunal:	Mr Russell Bergman – Chair
Present:	Mr Roland Heazlewood – Applicant representative Mr Donald Heazlewood – Project manager on behalf of the Applicant Mr Bill Lowe – Director of Mueller College Mr Geoff Miller – Director of Mueller College Ms Gina Rogers – Project co-ordinator on behalf of PPACS (Peninsula Palms Aged and Community Services) Mr Graeme Knott – Applicant representative Mr Chris Trewin – Assessment Manager Mr Murray Maramba – The Certification Professionals representative Mr William White – Queensland Fire and Rescue Service representative Mr Michael Albrow – Queensland Fire and Rescue Service representative Mr Michael Duck – Fireguard representative (part meeting)

Decision:

The Tribunal, in accordance with section 4.2.34(2)(b) of the IPA, **changes** the decision appealed against and **directs** that the building development approval be amended to include the following conditions:

1. The Stair 3, Level 3 arrangement satisfies the performance requirements subject to compliance with the following conditions:
 - i. If not already installed, fire dampers on air ducts entering the fire-separated / fire-isolated stair shall be motorised and activate on detection of smoke anywhere in the building. See Building Code of Australia (BCA) E2.2(b).
 - ii. (a) Achievement of BCA D2.7(v) standard of construction for fire-protection of the enclosing structure ie. encapsulating the electrical switchboard cupboard.
 - (b) The services' engineers (electrical and mechanical) shall review anticipated heat loading generated by the switchboard. If deemed necessary, vent the cupboard to comply with AS1668.2 directly to the building's outside with draw air from within the stair by an approved means. Natural or mechanical ventilation can apply and shall be tested. Consult the certifier and provide a copy of the engineer's assessment and take any steps to permit any required assessment and inspection.
 - (c) Any extra air relief ducting of the switchboard cupboard shall be by use of non-combustible materials and smoke sealed to a standard equivalent to BCA Specification C3.4.
 - (d) If not already installed, the cupboard door shall have an approved door closer and a permanent sign affixed to the inside door. The purpose of the sign is to alert electrical maintenance staff and others to ensure the door is closed when the switchboard is not being worked on. Apply a standard of signage equivalent to BCA D2.23 to the satisfaction of the certifier.
 - (e) If not already installed, install a smoke detector in the switchboard cupboard connected to the building's fire detection system.
 - iii. The building owner/occupier will ensure adoption of written facility management procedures as approved by the executive director of Mueller College, for prohibiting the inclusion of any additional items into the fire-separated parts ie. to the areas connecting Stair 3 (all levels) including the adjoining Level 3 toilets. For example, there is to be NO inclusion of additional items such as:-
 - (a) storage including of cleaner's materials and equipment at any time for any period
 - (b) affixing of notice boards, display cabinets or the like to walls or items hanging from ceilings
 - (c) artworks or like displays or visual works as a result of seminars and workshops
 - (d) fixed or loose furniture
 - (e) school bags or music cases; and
 - (f) finishes that do not comply with the BCA for fire-isolated stairs.
 This includes anything of a similar nature. Signage may be permitted subject to assessment by the certifier. The QFRS shall note this requirement for checking under their statutory inspection program for Block Q.
 - iv. The building owner/occupier will ensure adoption of written facility management procedures as approved by the executive director of Mueller College, ensuring prompt removal of combustible items such as paper towels from waste bins in sanitary compartments, for servicing of any faulty equipment such as electrical hand dryers, light fittings and similar. This is for mitigating anything that could be attributed as a preventable fire ignition source that may compromise the integrity and tenability of the fire-isolated stair and use as a means of escape or, for the operations of the QFRS.
 - v. To be clear, the building owner/occupier will ensure adoption of written facility management procedures as approved by the executive director of Mueller College, that NO part of Block Q is to be used for sleeping or sleepover events or similar, unless the owner occupier has first sought an approval under the *Building Act 1975* (BA) for a change of use or additional use.
2. The Assessment Manager shall re-issue the Certificate of Classification as soon as practicable without conditions in accordance with the *Standard Building Regulation 1993* (SBR). This is once the Assessment Manager certifier is satisfied that the building is "substantially completed" meaning all 11 criteria of s98 have been satisfied. This can be for the whole building or part as the certifier sees fit to do so.

Background

Block Q at Mueller College is a new building. Built over about four years, this project was advised as being in two stages. Stage 1 comprised the construction of the lower ground basement, ground level and surrounding road and landscape works with Stage 2 being erection of the main structure. The project is now completed. This building is a multi-functional facility and serves a number of purposes for the College operations.

The building's primary use is a performing arts auditorium with ancillary spaces typical of the main use, for example, provision for group assembly, storage and circulation spaces. At the lower ground level there is a carpark for 69 vehicles and on other levels, offices and a cafeteria has been planned but not in use at this stage.

The Tribunal was advised by the Applicant that due to high demand for enrolment places in 2009, some parts of Block Q will be used as general purpose classrooms (BCA class 9b) as accommodation across campus is tight. Resolution of this matter is therefore, highly urgent.

The building has these basic characteristics in terms of building regulatory assessment:

Item	Outcome	Reference
Classifications	5, 6, 7a and 9b	BCA A3.2
Rise-in-storeys	5 (6 storeys contained)	BCA C1.2
Type of Construction	Type A – the most fire-resisting	BCA C1.1
Effective height	<25m (14.09m)	BCA A1.1
BCA version applied	BCA 2004 (Volume 1)	<i>Building Act 1975</i>
Stairs connecting more than 3 storeys	Fire-isolation (Stair 3 connects 4 storeys)	BCA D1.3(b)(iii)
Rising and descending flights	Applies and is provided	BCA D1.3 and D2.4
Stairwell pressurisation	Does not apply as this is subject to a concession being where sprinkler system complies with BCA Specification E1.5 (compliance with AS2118.1-1999)	BCA E2.2, Table E2.2a – see table headings “Fire-isolated stairs” and “Class 5, 6, 7b, 8 and 9b” and subclause (g). For Table E2.2a Note 2, compliance with BCA D1.7(d) does not apply as no fire-isolation is required under the “General Provisions” ie. Block Q < 25m “effective height”.
Fire sprinklers	Installed throughout to AS2118.1-1999	BCA E1.5 and Specification E1.5. See also comments immediately above.

After both parties made representations and subsequent discussion, it was agreed that the following two (2) issues were outstanding:

- (A) *resolution of the standard of fire-isolation of Stair 3 at Level 3; and*
 (B) *issue of Certificate of Classification without condition.*

Material Considered

The material considered in arriving at this decision comprises:

- Documents, as follows:
 - ‘Form 10 – Notice of Appeal’ lodged with the Registrar of the Building and Development Tribunals on 3 December 2008 signatory Mr R L Heazlewood (Group G: appeal against the decisions by building certifiers and referral agencies about inspection of building work).
 - Copy of Form 11 Certificate/Interim Certificate of Classification dated 5 November, 2008 signatory

Mr Chris Trewin on behalf of the Certification Professionals. Certificate endorsed as an interim certificate dated to expire by 5 January 2009.

- Copy of inspection report and advice on re-inspection of the *special fire services* by the Queensland Fire and Rescue Service (QFRS) dated 10 November, 2008 signatory Mr Michael Albrow.
- Copy of letter and addenda (various attachments included) to Mayor Alan Sutherland, Moreton Bay Regional Council from Peninsula Palms Aged Care and Community Services undated and signatory Mr Roland Heazlewood.
- Copy of final inspection for *Performing Arts Centre* undated (inspection 31 October, 2008) signatory Mr Murray Maramba, The Certification Professionals.
- Copy of letter to Mr Murray Maramba of The Certification Professionals from Peninsula Palms Aged Care and Community Services notated as 6 November 2008 being a response to defects listing and signatory being Ms Gina Rogers.
- A3 size copies of Mueller College Block Q project drawings (PN 02536) received with Notice of Appeal being architectural only drawings as follows:
 - Dwg no. WD04 14 - Level 3 – Auditorium/Music Floor Plan
 - Dwg no. WD93 02 - Level 3 – Auditorium/Music Fire Compartment Zones
 - Dwg no. unnumbered - Level 3 – Firewall Plan (as forwarded to building certifier)
 - Dwg no. WD01 02 – Site Plan
 - Dwg no. WD02 10 – Level 1 – Floor Plan
 - Dwg no. WD03 12 – Level 2 – Kitchen/Library Floor Plan
 - Dwg no. WD05 13 – Level 4 – Foyer
 - Dwg no. WD06 11 – Level 5 – Mezzanine Floor Plan
 - Dwg no. WD07 10 – Level 6 – Foyer/Gallery Floor Plan
 - Dwg no. WD30 09 – Elevations East and West
 - Dwg no. WD31 08 – Elevations North and South
 - Dwg no. WD36 04 – Sections 02
 - Dwg no. WD38 05 – Sections 04
 - Dwg no. WD40 02 – Stair Details 01
 - Dwg no. WD61 02 – Internal Elevations Wet Areas.
- Part plans of dwg no. PN 02536, WD04 08 (as part of the stamped building code assessment approval by The Certification Professionals)
 - Level 3 Stair 3 and floor arrangement and associated toilets, switchroom at Grids 1 – G, and indicating notations for wall construction
 - ditto showing applicable drawing legend for the wall construction; and
 - ditto showing the drawing title box.
- Copy of IPA Form 1 Part A applicant for Block Q being Shelmier Pty Ltd Architects being Gina Rogers dated 30 June 2004 (stamped received by The Certification Professionals 30 June 2004).
- Copy of IPA Form 1 Part B for assessment of building work Block Q (stamped received by The Certification Professionals 9 July 2004).
- Copy of Form 16 Inspection Certificate / Aspect Certificate / QBSA Licensee Aspect Certificate for installation of automatic fire sprinkler system, occupant warning and alarm systems signatory Mr Kevin Bray of Fireguard Pty Ltd dated 21 October 2008. Attached were copies of the Fire Systems Flow Tests (2 pages).

2. Legislation, as follows:

- The IPA
- The *Integrated Planning Regulation 1998*
- The BA applicable at the time of application, assessment and performance of the building work
- The SBR now superseded but having effect under transitional provisions of the BA
- *The Building Regulation 2006*
- BCA 2004 – Volume 1.

3. Verbal submissions from the Applicant's representatives and the Assessment Manager at the on-site hearing.

Findings of Fact

The Tribunal makes the following findings of fact:

Applicable legislation

- The applicable edition of the BA and SBR for this matter is the legislation having effect at the time of the assessment by the Assessment Manager i.e. June 2004. The current BA, as with all revising editions of the building legislation, permits a discretion to the building certifier for continuing his/her assessment and processing under former legislation even though changes of the legislation and BCA occur. This was the option adopted by the Assessment Manager. Therefore, the hearing established that BCA 2004 was applicable as law. Similarly, editions of the BA and SBR, again at the time of assessment, have effect. Note that references made in this decision reflect this fact.
- Classification of use and application of particular sections of the BCA is important. A primary and initial question concerns the use of the building. Should Block Q be seen exclusively as accommodating only typical school functions or should extra considerations be considered, for example, where the facility may at some later stage be used by groups other than the school? The BCA's deemed-to-satisfy clauses do permit in some instances a different standard for a school i.e. a minimum standard that is more reflective of school only uses while addressing possible and probable risks to occupants. An example of this is where a class 9b school only use is deemed less intense to a class 9b general public assembly use. I conclude that the approved school only use is acceptable and that this matter has been addressed by the building certifier and his applicant (on behalf of the owner/user).

Issue (a) – standard of fire-isolation for Stair 3 at Level 3

- The private certifier has required the fire-isolation of the stair to separate the stair (at Stair 3 Level 3) circulation from the toilets and stair lobby area. No drawing details were presented to demonstrate how this arrangement might work in terms of construction details or of minimum widths for movement of persons seeking escape via the stair.
- Stair 3 at Level 3 is connected to male and female sanitary compartments. Both male and female facilities are airlocked. Door vents draw air from the stair lobby into the sanitary compartments for ensuring compliance with the ventilation requirements of BCA F4.5.
- The Stair 3, Level 3 PWD (people with a disability) and male and female toilets are fire-separated from the remainder of the building by construction denoted on WD93 02. Advice from the project co-ordinator is that this is for a duration of 2hrs. Door tagging to required exit doors to external verandah was noted as FRL -/120/30.
- BCA D1.3(b) requires Stair 3 to be fire-isolated. Concessions available in D1.3(b) only apply for the connection of an additional storey in this class or classes of occupancy under certain circumstances. As this section of the fire-isolated shaft connects Levels 2, 3, 4, 5 and 6, fire-isolation applies to service these storeys. Level 2 is the level of discharge at ground for Stair 3 to a connecting road or open-space.
- Relevant wording of BCA D1.7(a)(iii) has regard to connection of the sanitary compartment to the fire-isolated stair. This is a deemed-to-satisfy provision and the BCA permits “a sanitary compartment, airlock or the like” to enter directly off the fire-isolated stair. This arrangement can be assessed as a reasonable concession. However, satisfying the prevailing performance requirements still applies.

Source: BCA 2004

- (a) A doorway from a room must not open directly into a stairway, passageway or ramp that is required to be fire-isolated unless it is from—
- (i) a *public corridor*, public lobby or the like; or
 - (ii) a *sole-occupancy unit* occupying all of a *storey*; or
 - (iii) a sanitary compartment, airlock or the like.

- A “sanitary compartment” is defined by BCA A1.1. In short, this definition does not address the issue of whether sanitary compartments should be limited in their number or size where opening onto a fire-isolated stair. As two examples, this specifically relates to (a) minimisation of the potential for a fire start such as from an arson or nuisance act in a waste paper bin or the limiting combustibles (fire load) in this area or (b) where the air-venting needs of the sanitary compartments may unduly impact on tenable conditions in the fire-isolated stair. (In the second instance (b), this would be further complicated by a required stairwell pressurisation system.) A basic principle and requirement of fire-isolated stairs is that the evacuation route be smoke-free to assist evacuation.

Source: BCA 2004

Sanitary compartment means a room or space containing a closet pan or urinal.

Source: BCA 2004

Fire-isolated stairway means a stairway within a *fire-resisting shaft* and includes the floor and roof or top enclosing structure.

- Finishes in the fire-isolated stair and the circulation space are regulated by BCA C1.10a. At the time of inspection finishes were incomplete (eg. ceilings) but generally appeared compliant with this clause.
- Further to the previous item, within the fire-isolated (fire-separated) circulation space, there are some potential fire risks. At the time of hearing and site inspection, ceiling tiles were removed. These revealed air ducts above the ceiling as well as air grills.
- A small electrical switchboard cupboard (on Grid 1 – G) is within the confines of the fire-isolated lobby. The doorway has been smoke sealed at the door stops. A steel sheet has been fixed with screws to the back of the door. Refer to BCA D2.7(v).
- A Form 16 certificate was produced indicating that the stair lobby area is protected as are the toilets with a fire sprinkler system complying with AS2118.1-1999.

Issue (b) – Certificate of Classification without conditions

- No Certificate of Classification had been requested by the applicant to the Assessment Manager. The certifier took the initiative in this regard.
- The issue of the “Interim” Certificate of Classification was intended as a temporary measure. The Assessment Manager took steps to require safer occupation of the building as a result of him becoming aware of a recent school function, a one-off event. The expiry date as shown on the certificate is 5 January 2009.
- Section 99 of the SBR clearly permits the issue of an “interim” certificate of classification but for remote building work projects. A project at Rothwell is not remote in the meaning of this clause and is thus not subject to this provision.
- There are other minor defects with the Certificate of Classification as issued, for example, not all classifications are listed.
- According to section 98(2)(a) of the SBR, a certificate of classification shall be issued where the assessable building work is deemed “substantially completed”. Section 92 also states what is meant by “substantial completed”. Subsection (1) lists 11 elements. All 11 elements must be addressed and confirmed by the private certifier as finalised in order for the certificate to be issued.
- It is usual practice for the private certifier to receive advice from the QFRS (on matters pertaining to referral agency jurisdiction) before making the decision to issue a certificate of classification. This was the case as evidenced by the QFRS inspection advice. (See Material Considered – QFRS advice, dated 10 November 2008)
- The QFRS indicated that the giving of their inspection advice relates only to *special fire services*. There is no formal legislative involvement for the QFRS until such time as the Certificate of Classification has been issued. The QFRS is required to receive a list of *fire safety installations*

which would be advice as to the situation of Stair 3 at Level 3.

- The SBR 1993 (section 100) does permit the certifier to issue a certificate of classification for part or parts of the building. This option was not taken by the Assessment Manager under the circumstances as it is difficult to effectively apply.

Reasons for the Decision

The Tribunal gives the following reasons for making its decision.

Identification of issues in dispute

- Issues in dispute – both parties agreed that issues unresolved were:
 - (a) the standard of fire-isolation of Stair 3 at Level 3; and
 - (b) issue of a Certificate of Classification without conditions.

Fire-isolation of the stair

Stair 3, given its size (capacity) and location, forms an essential part of the overall provision for evacuation of the building as well as supporting any fire-fighting operations. In terms of egress, it is relevant to considering the likely volume of school-age children (in particular) that in an emergency will require Stair 3 as a safe evacuation route to open space. The relevant BCA performance requirements along with the section “objective” and “functional statements” guide the designer and certifier in this regard.

It is incumbent on the designer/applicant to present a design that complies with the building code i.e. the technical content of the BCA or the application be refused or have conditions imposed. It is the role of the certifier then to check the design for building code compliance. The BCA requires the “building solution” satisfy the performance requirements – all relevant performance clauses. The actual clauses are as listed. (To be read in conjunction with all other BCA sections.)

Source: BCA 2004

A0.4 Compliance with the BCA

A Building Solution will comply with the BCA if it satisfies the *Performance Requirements*.

A0.5 Meeting the Performance Requirements

Compliance with the *Performance Requirements* can only be achieved by—

- (a) complying with the *Deemed-to-Satisfy Provisions*; or
- (b) formulating an *Alternative Solution* which—
 - (i) complies with the *Performance Requirements*; or
 - (ii) is shown to be at least *equivalent* to the *Deemed-to-Satisfy Provisions* or
- (c) a combination of **(a)** and **(b)**.

Where the deemed-to-satisfy provisions appear to fall short or may be silent or cause doubt on one or more aspects, the certifier has an obligation then to refer to the performance requirements. As stated before, this may also include use of the BCA’s “objectives” and “functional statements” (see BCA A0.6) to clarify what course of action should be taken to ensure the minimum compliance standard.

In this instance, the certifier has expressed doubts over the Stair 3, Level 3 arrangement as planned. In his judgement, the performance requirements had not been met and “life safety” for persons reliant on Stair 3, is in question. Therefore, the certifier makes his assessment in accordance with BCA A0.4 by assessing BCA DP4 and DP5 as the applicable performance requirements. (Note: other BCA performance clauses apply such as CP2 (a)(i)&(iv), EP2.2 (a)&(b), and FP4.2 and FP4.3).

On the question of fire-separation of the Stair 3 at Level 3, under the deemed-to-satisfy provisions of the BCA, it is clearly permissible to open a doorway to a sanitary compartment into the fire-isolated stairway. However, to what “extent” should this be permitted?

As background, there are instances where in some older building designs particularly in medium to high-rise buildings, there are sanitary compartments that have been located off fire-isolated stairs. However, such designs were found to be well flawed. They tended to adopt male then female toilets off alternating levels using the limited spaces provided at stair landings. This type of arrangements was quite unworkable for a multitude of other reasons, including:

- Not actually convenient for building occupants.
- Anti-discrimination legislation applied in terms of gaining access (or no access for some persons).
- Occupant security reasons (high-risk and lack of visual monitoring and a new need for stairwell door locking under non-fire mode).
- Lack of economy in design and tenant requirements.
- Problems with balancing air-flows where stairwell pressurisations systems were required.
- Hindering evacuation and fire-fighting operations.

The Block Q, Level 3 Stair 3 arrangement, is different to the above example in some, but certainly not in all respects.

Source: BCA 2004

DP4 Exits must be provided from a building to allow occupants to evacuate safely, with their number, location and dimensions being appropriate to—

- (a) the travel distance; and
- (b) the number, mobility and other characteristics of occupants; and
- (c) the function or use of the building; and
- (d) the height of the building; and
- (e) whether the *exit* is from above or below ground level.

DP5 To protect evacuating occupants from a fire in the building *exits* must be fire isolated, to the degree necessary, appropriate to—

- (a) the number of *storeys* connected by the *exits*; and
- (b) the *fire safety system* installed in the building; and
- (c) the function or use of the building; and
- (d) the number of *storeys* passed through by the *exits*; and
- (e) *fire brigade* intervention.

I take the view that given attention to timely and competent completion of building works and ongoing, stringent management of Block Q by the building's owner and occupiers as stated in my decision that a reasonably standard of life safety will be achieved. This building work will be of a standard that will satisfy the BCA performance requirements DP4, DP5 and others. In this building there is advantage in having wide, unencumbered circulation space as planned to aid ready egress. This is subject to controls over sources of fire ignition and ensuring materials incorporated achieve early fire hazard properties of BCA C1.10.

Other key reasons include:

- main building population is located at Level 3, one level above ground;
- overall travel distance for any person at the worst location on a storey and seeking egress via Stair 3 in the building complies with BCA Part D1;
- building height is multiple storey but low-rise;
- predominant use of the building is during daylight hours;
- building is protected by complying sprinkler and smoke detection systems with sensing connected to the local attending fire service. Sprinklers and smoke detection extend into the circulation area and

sanitary compartments. Emergency lighting is per the deemed-to-satisfy requirements of BCA E4.2; and

- occupants are typically well supervised and managed at all times whilst the building is lawfully occupied.

Issue of the Certificate of Classification

As applicable, the issue of a Certificate of Classification is an important milestone in the building project. The Assessment Manager have demonstrated a clear intention to work with their client whilst fulfilling their statutory obligations.

However, for the compliance assessment of the Block Q project, there had been a breakdown in communication at the critical point for issue of the Certificate of Classification. It is incumbent upon the applicant for the building work, as the linkage between project co-ordination (including the performance of the building work by the builder) and the approval of the building work, to be in control of that part of the process which ultimately leads to a request for issue of the Certificate of Classification. The certificate is written evidence of the right of occupancy and thus permits lawful use of the building. The timing of this request is largely in the power of the applicant. This is supposedly as and when required by the owner or occupier. This request failed to materialise. By default, the certifier was placed in a difficult and awkward position given the manner in which the certifier had learnt of the school's planned use of the building for an end-of-year function. Section 95(3) of the BA permits issue of the Certificate of Classification where only minor items are outstanding. Correctly, the certifier did not regard the fire-isolation of Stair 3 at Level 3 a minor matter. It is noted that section 95 of the BA, permits issue of an enforcement notice for premature occupation without a valid Certificate of Classification.

The SBR is clear about the process for the issue of a Certificate of Classification. As well, there exists supporting guidelines published by the Chief Executive of the responsible State department. The availability of this information and statutory obligations apply to both applicant and certifier respectively.

Legislation having effect and obligation to comply

Comment was made about the ability for the certifier to require "extra" work after issue of the decision notice and after long period of time.

There exists the obligations of the owners/occupiers to comply with the building code regardless under Section 4(2) of the SBR. See text below and as applicable at the time of assessment.

Source: Standard Building Regulation 1993

Section 4(2) In carrying out building work or in occupying a building a person must comply with the Standard Building Regulation even if a development permit given by an assessment manager is contrary to the Standard Building Regulation.

This sub-clause states whose obligation compliance is. It should be noted that this is regardless of any erroneous decision or omission by the private certifier, the assessment manager under the IPA for the building work. It should be further noted that this provision and its specific wording is no longer a part of the current building legislation. However, it can be argued that the general tenet stands. Section 3.5.28 of the IPA has partly similar but not as definitive wording.

A certifier has specified statutory obligations for the assessment and inspection of building work as does the owner or occupier in the ongoing use of the building as approved. Where building work is further instigated including a change of use, the legislation places the obligation upon the owner or occupier to comply. This usually includes obtaining assessment by a suitably licensed building certifier depending on the scope and nature of the work.

The questions raised by the applicant about (i) post approval timing of any request by the certifier to the applicant for further requirements of compliance and (ii) a strict following of the conditions of a decision notice as issued being a defence for not adhering to any additional compliance requests are subsequently without substance.

Therefore, the owner/occupant of Block Q has an obligation to comply regardless.

Russell Bergman
Building and Development Tribunal Chair
Date: 23 December 2008

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:

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