

# Caution for commercial property owners

By Karen van den Brand

The past weeks have carried nightly stories of doom and gloom in the financial sector, though many analysts are also predicting that the short term to medium term will present opportunities for those investors who are liquid.

One traditional investment area in South East Queensland has been commercial property – though there have been a spate of recent cases that have pointed out traps for the unwary.

Planning schemes set out appropriate levels of development, and where a commercial property sits in relation to the planning scheme determines the 'use' that is allowable for that property. For example, the use of premises for a school would generally not be an allowable use in the middle of an industrial area, while a factory would be.

If you intend to acquire, have recently acquired, or intend to change the activities taking place on a commercial property, you should consider the allowable use for that property. The *Integrated Planning Act*

1997 specifies that the start of a new use of premises, the re-establishment on premises of a use that has been abandoned, or a material change in the intensity or scale of the use of premises, may constitute a 'material change of use' (MCU).

In some cases, an MCU to premises requires that the property owner obtain development approval for that MCU – if you don't, the use could be illegal.

Many people are simply unaware of these requirements, whilst others (erroneously) view it as a more cost-effective option to simply go ahead without obtaining approval. This can be a dangerous route to take – a property owner or tenant can be criminally prosecuted for unlawfully using premises, which carries a hefty fine, can carry a conviction or other penalties.

Similarly, planning schemes regulate some types of building works, for which approval must be obtained. In a recent case, restaurant owners leasing the premises, carried out illegal building works to create a deck that extended into a shopping centre's carparks.

The extension also doubled the size

of the restaurant, with the effect that illegal building works had been carried out, and a material change of use had occurred, all without development approval. The landlord was prosecuted and fined \$10,000, as the landlord had been aware of the illegal works, but had done nothing as the property owner to rectify it.

The restaurant owners were fined \$18,000 and orders were imposed to either obtain approval, or remove the offending works – a very expensive exercise for an \$8,000 structure.

In circumstances where an order for rectification works occurs, and a commercial tenant fails to comply with those orders, a property owner can also be hit with the costs of rectification.

As a commercial property owner, it pays to make sure you are aware of how your tenants are using premises. As a tenant, you are not absolved from responsibility. In these uncertain economic times, it pays to make sure all of the necessary approvals are in place, before you sign. ■

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## IN BRIEF >>>



### BADGE PINS ON BRISBANE HQ

COMMERCIAL CONSTRUCTION FIRM Badge has marked its 25th anniversary of helping to build Queensland by creating a new state-of-the-art office for its own operations. Located at 63 Oxford Street in Bulimba, the \$3million two-storey office replaces the company's former premises on the same site. Badge has been working in Queensland since 1983, with remarkable growth in recent years

leading to the decision to build larger, purpose-built premises, said Badge Queensland state manager Guenter Soby-Dammann. "Over the years we've managed to grow our annual turnover to almost \$200million by completing projects throughout the country and in New Zealand. The Queensland office has played an integral role in Badge's success and is currently responsible for a host of multi-million dollar projects across the state." [www.badge.net.au](http://www.badge.net.au) ■

## IN BRIEF >>>

### APG BUYS THE BRISBANE EMPIRE

The Amalgamated Property Group (APG) has bought the landmark Brisbane site which had been proposed for the luxury Empire Square development. APG's Queensland arm, headed by Barry Morris, has purchased the 2000sqm site located at 47-79 Elizabeth Street for an undisclosed sum from Brisbane-based Metacap Developments which had proposed the Empire Square office, hotel and residential development which would have featured a grand-luxe Westin hotel. Metacap announced recently it would not proceed with the development due to demanding pre-conditions required by financiers as a result of the global credit crunch. Mr Morris said APG was working up plans for the site but expected to develop a commercial office project some time next year. APG has retained Metacap to assist. [www.amalgamatedpropertygroup.com.au](http://www.amalgamatedpropertygroup.com.au) ■