



Building and Development Dispute Resolution Committees – Decision

Sustainable Planning Act 2009

Appeal Number:	05-11
Appellant:	The Body Corporate – Atlantis West Apartments
Pool Safety Inspector:	Mr Brian Ralph Walters
Concurrence Agency: (if applicable)	N/A
Site Address:	Atlantis West Apartments, 2 Admiralty Drive, Surfers Paradise, described as BUP 6435 (CTS8790) - the subject site.

Appeal

Appeal under section 532(1)(a)(i) of the *Sustainable Planning Act 2009* (SPA) against the decision of the Pool Safety Inspector to give a Pool Safety Nonconformity Notice (an Information Notice pursuant to the *Building Act 1975*) in relation to the compliance of the existing swimming pool safety barriers.

Date of hearing:	10.30am – Friday 18 March 2011
Place of hearing:	The subject site
Committee:	Don Grehan – Chair
Present:	John Page – Appellant's Representative John Lighthart – Appellant's Representative Ken Westaway – Appellant's Representative

Decision:

The Committee, in accordance with section 564(2)(c) of the SPA, **sets aside** both the decision of the Pool Safety Inspector dated 02 December 2010 and, in accordance with section 564(1) of the SPA, **makes the following directions** as considered appropriate:

- (a) The Appellant's are to alter and or replace the existing swimming pool barrier to comply with provisions of A.S 1926.1-2007, A.S 1926.2- 2007 and M.P. 3.4 of the QDC.
- (b) Within 20 business days of the date of this decision the appellant is to engage a Private Certifier, accredited at Building Surveyor level, and prior to the commencement of rectification works, obtain a Development Approval for building works in relation to the required alterations and or replacement the existing swimming pool barrier.

- (c) With reference to the emergency exit door discharging from the underground carpark into the pool enclosure, the Appellant, subject to the Development Approval for building works, is to erect a barrier complying with A.S 1926.1-2007 and M.P. 3.4 of the QDC to separate the pool enclosure from the required exit with due consideration being given to Part D 1.10 of BCA 2011, Volume 1.
- (d) With reference to the electronic doors discharging from the underground carpark into the pool enclosure, the Appellant, subject to the Development Approval for building works, is to erect a barrier complying with A.S 1926.1-2007 and M.P. 3.4 of the QDC to separate the pool enclosure from the electronic door;
or,
In conjunction with the development application for building works, seek a variation from the Department of Local Government and Planning in relation to how this particular building assessment provisions applies in relation to the door providing access to or from the underground carpark in accordance with section 38 of the BA.

Background

The appellant, to comply with legislative changes to the *Building Act 1975* of the 1st December 2010, sort to obtain a Form 23 Pool Safety Compliance Certificate from a Pool Safety Inspector in relation to an existing swimming pool on the subject site.

Following assessment, the Pool Safety Inspector issued a Form 26 Non Conformity Notice detailing the following fourteen areas of non-compliance relating to the existing swimming pool barriers:

- (1) Remove vegetation overgrowth off the pool fence barrier to allow a complete visual inspection of all of the perimeter pool fencing where covered.
- (2) Provide a compliant perimeter pool fence barrier from the Admiralty Drive street boundary up to the connecting pool fence barrier at the top of the sloped embankment adjacent to the water tanks where the sections of pool fences have failed and are laying on the ground.
- (3) Provide a compliant pool fence & gate to the underground car parking entrance into the pool area.
- (4) All perimeter pool fencing must maintain a minimum height of 1200mm.
- (5) No gaps greater than 100mm are permitted from the finished ground levels to the underside of the pool fence.
- (6) No gaps greater than 100mm are permitted vertically at any point in the pool fencing barrier.
- (7) No climbable objects are permitted within the 900mm non climbable zone to the outside of the pool fencing barrier.
- (8) No climbable objects within 300mm on the inside of the pool fencing barrier where the vertical members are more than 10mm apart.
- (9) Provide a Form 15 for the aluminium pool fencing.
- (10) All gates are to be self-closing from any position & self-latching.
- (11) All self-closing gate latching mechanisms are required to be 1500mm above finished ground levels.
- (12) All sections of the pool fence must be interconnected with mechanical connections and be structurally adequate in accordance with the requirements of AS1926.1• 2007 & the QDC MP3.4.
- (13) Protect exhaust fan vents from remaining climbable or relocate the pool fencing a distance of 900mm away from the climbable vent louvers.
- (14) Any chain link fencing must be free of over growth & climbable vegetation & must maintain 1800mm min vertically, the cranked top must be 450mm minimum at 90 degrees min -135 degrees max and have apertures less than 100mm.

The appellant, dissatisfied with the determinations of Pool Safety Inspector and being of the belief that existing levels of security from the underground carpark into the pool enclosure provides sufficient barriers to prevent access by young children, lodged an appeal with the Building and Development Dispute Resolution Committees.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice and appellant's correspondence accompanying the appeal as lodged with the Registrar on 01 February 2011.
2. The Pool Fencing Compliance Report, Ref No. ER1010148, dated 01 December 2010 issued by B.R Walters.
3. The Pool Safety Non Conformity Notice (Form 26) dated 02 December 2010 issued by B.R .Walters.
4. Australian Standard AS 1926.1 - 2007: Swimming pool safety, Part 1: Safety barriers for swimming pools.
5. Australian Standard AS 1926.2 - 2007: Swimming pool safety, Part 2: Location of safety barriers for swimming pools.
6. The Queensland Development Code (QDC), MP3.4 – Swimming Pool Barriers (MP3.4).
7. Verbal submissions from the appellant's representatives at the hearing.
8. The *Sustainable Planning Act 2009 (SPA)*.
9. The *Sustainable Planning Regulation 2009 (SPR)*.
10. The *Building Act 1975 (BA)*.
11. The Building Code of Australia 2010 Volume 1, Class 2 – 9 Buildings (BCA).

Findings of Fact

The Committee makes the following findings of fact:

- Two multi storey residential towers being class 2 buildings with an appurtenant class 7b underground carparks and Class 10b swimming pools are located on the subject site. The existing pool barriers have been in place for approximately 26 years.
- This appeal relates solely to the residential tower and appurtenant underground car park and swimming pool known as “Atlantis West”.
- The subject site is *regulated land* as defined by s231A of the BA.
- The swimming pool on the subject site is a *regulated pool* as defined by s231B of the BA and is a *shared pool* as defined by s321A of the BA.
- The appellant seeks a Form 23 Pool Safety Compliance Certificate or equivalent Form 17 in order to comply with legislative changes to the Building Act effective 1st December 2010.
- The existing swimming pool barriers in their current configuration and locations do not comply with AS 1926.1-2007, 1926.2-2007 or MP 3.4 to the following extent:
 - (1) The existing aluminium pool fence barriers are less than 1200mm effective height in various locations;
 - (2) The openings between the balusters in the existing aluminium pool fence barriers are such that that they exceed 100mm in various locations.
 - (3) Gaps beneath the existing aluminium pool fence exceed 100mm in various locations;
 - (4) Climbable members are located within the 900mm non climbable zone surrounding the pool gate adjacent to the visitor car park
 - (5) Direct access is available to the pool enclosure via the emergency exit door discharging from the underground carpark.
 - (6) Direct access is available to the pool enclosure via the electronic door discharging from the underground carpark.
 - (7) Climbable objects are located within 300mm of the inside of the existing aluminium pool fence barriers at various locations and are accessible through the balusters.
 - (8) In various locations, the existing aluminium pool fence barriers are heavily overgrown with substantial vegetation in various to the extent that they are in themselves climbable.

Additionally and notwithstanding specific testing:

- (1) The existing aluminium pool fence barriers adjacent to the visitor parking area have sustained vehicular impact damage and their resultant structural integrity to withstand a force of 330N without breaking, fracture, loosening or deformation is questionable.
- (2) The spacing between the balusters in the existing aluminium pool fence barriers in various locations are such that they appear to lack sufficient rigidity to prevent the passing of 105mm conical test object between fencing elements under a force of less than 150N.

These areas on non-compliance are generally consistent with those detailed in the Pool Fencing Compliance Report, Ref No. ER1010148, dated 01 December 2010 and the Pool Safety Non Conformity Notice (Form 26) dated 02 December 2010 issued by B.R .Walters.

- The pool enclosure (and subsequently the pool barrier) includes landscaping and building platforms where change ground levels and retained areas exceed 1800mm, are free from climbing aids within the 900mm non-climbable zone and are constructed at an angle of less than 15degrees to the vertical, such areas are compliant with Clause 2.6 of AS 1926.1-2007.
- In relation to the emergency exit door discharging from the underground carpark into the pool enclosure, Section D 2.21 of the BCA clarifies that a door in a required exit, forming part of a required exit or in the path of travel to a required exit must be readily openable without a key from the side that faces a person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900 mm and 1.1 m from the floor. Additionally Section D1.10 permits the discharge of exits to open space provided access to road, with qualifications, is available.
- In relation to the electronic doors discharging from the underground carpark into the pool enclosure:
 - (1) Given the existing building configuration and classification of Atlantis West , the Acceptable Solutions of MP3.4 will not permit direct access from underground carpark into the pool enclosure;
 - (2) Performance Provision P1 (e) of MP 3.4 does not permit the formulation of an alternate solution that incorporates any doors providing access to or from a building.
- The existing building features and security measures associated with the access to the to the electronic doors discharging from the underground carpark into the pool enclosure include:
 - (1) Electronic fob key access as sole entry to the carpark via the vehicular driveway;
 - (2) Electronic fob key access as sole access to the passenger lift providing the only internal access to the basement level;
- The existing security measures associated with the electronic doors discharging from the underground carpark into the pool enclosure include:
 - (1) Electronic fob key access operating the latching mechanism.
- Section 38 of the BA permits application to be made to vary how a building assessment provision such as MP 3.4, applies.

Reasons for the Decision

- The committee believes that areas of non-compliance noted in the Pool Fencing Compliance Report, Ref No. ER1010148, dated 01 December 2010 have changed taking into consideration to the site conditions and Clause 2.6 of AS 1926.1-2007.
- The committee, having considered Schedule 1, Schedule 2B and Schedule 2C of the BR is satisfied that the scope of works required to bring the pool barriers into compliance with the BA exceeds the limitations prescribed for self-assessable development.

- The committee, having considered the nature of the rectification works and the effect on occupant egress from building exceeding 3 storeys and/or 2000m² is satisfied that the building assessment work should be undertaken by a Building Certifier holding the appropriate level of accreditation.
- The committee, having considered the existing security measures surrounding access to the pool enclosure via the electronic doors discharging from the underground carpark, believe that they **may** form a sufficient basis for an application to be made with regards section 38 of the BA. Notwithstanding, neither this decision nor the opinion of the committee in any way warrants the outcome of such an application.

Building and Development Committee Chair

Date: 31 May 2011

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:

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