



## Building and Development Tribunals—Decision

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### *Integrated Planning Act 1997*

<b>Appeal Number:</b>	<b>3—09—058</b>
<b>Applicant:</b>	Ms Katherine Ashton (Ashton Property Trust)
<b>Assessment Manager:</b>	Mr Wayne Cripps (Palm Beach Plan Approvals)
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	80 Manly Drive, Robina and described as Lot 353 on SP 198641 - the subject site

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### **Appeal**

Appeal under section 4.2.12A of the *Integrated Planning Act 1997* (IPA) against the condition to require the existing pool to be isolated from the lake with a complying fence. All as contained in the Decision Notice, for a development approval for a swimming pool on the subject site, issued by the Assessment Manager Mr Wayne Cripps (Palm Beach Plan Approvals) on 14 July 2009.

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<b>Date of hearing:</b>	3.30pm - Wednesday 26 August 2009
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Mr Leo Blumkie— Chair
<b>Present:</b>	Ms Katherine Ashton - Applicant Ms Ashton – Applicant's sister Mr Leo Blumkie – Chair

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### **Decision:**

The Tribunal, in accordance with section 4.2.34 (2) (c) of the IPA, **sets aside** the decision appealed against and **directs** that the Assessment Manager **remove** the conditions :-

*"pool to be isolated from the lake" and "pool to be isolated by complying fence" from the approved documents and **add** the condition :-*

*"western side boundary pool fence is to be returned along the outermost edge of the revetment wall (northern boundary) for a minimum distance of 900mm with a complying pool fence"*

## **Background**

The subject site is a typical rectangular residential block with the rear boundary abutting a lake. A single-storey class 1 residence (house) and swimming pool (empty) are currently constructed on the property.

The swimming pool is located between the house and the lake.

The house and pool were approved in 1985. The approved plans, at that time, did not indicate fencing for the pool, let alone a fence between the lake and pool.

On 27 July 2007 the applicant purchased the property and found that the timber retaining walls, patio structures and timber pool fence (between the house and pool erected after 1985) were beyond repair and needed replacement.

In June 2009 a development application for alterations to the existing property (house and pool) was lodged with a private certifier (Plan Beach Plan Approvals). The application included, amongst other things, new block retaining walls, decks, steps and new pool fencing separating the house from the swimming pool.

The certifier required a separate application for the swimming pool fencing. This separate pool application was approved but had conditions, which required a complying fence between the lake and the existing pool.

The lake boundary has a vertical wall separating the lake from the property. The lake is not tidal and the applicant claims the water level is constantly around 800mm deep at the property boundary.

The decision notice dated 14 July 2009 included a notation, namely: *"conditions & endorsements on or attached to the drawings by the Building certifier must be complied with"*.

The approved drawings had the following words added:-

- *"Pool to be isolated from lake"*
- *"Pool to be isolated by complying fence"*.

An appeal was lodged with the Registrar on the 24 July 2009.

On 30 July 2009 the Acting Registrar advised the Assessment Manager in writing that an Appeal had been lodged regarding the Decision Notice on the subject property.

On 18 August 2009 the Acting Registrar advised the Applicant and Assessment Manager in writing that a Tribunal had been established to consider the appeal and also the time, date and location for the hearing.

## **Material Considered**

The material considered in arriving at this decision comprises:-

1. 'Form 10 – Appeal Notice', grounds for appeal drawings, photos, extracts and correspondence accompanying the appeal lodged with the Registrar on 24 July 2009.
2. Decision Notice issued by the Assessment Manager dated 14 July 2009.
3. Verbal submissions from the Applicant at the hearing.
4. Pool fencing guidelines - third edition March 2008.
5. *Building Act 1975*.
6. *Building Regulation 2006*.
7. Australian Standard AS 1926.1 – 1993.

8. Australian Standard AS 1926.2 - 1995
9. Australian Standard AS 1926.1 - 2007
10. The IPA.

## **Findings of Fact**

The Tribunal makes the following findings of fact:

- The site backs on to a non-tidal lake.
- A vertical wall has been erected between the lake and subject property.
- The depth of the water at the revetment wall on the day of the hearing was measured to be 710mm.
- The distance between the bottom of the lake at the revetment wall and the top of the wall is 1450mm.
- The land is residential land and a class 1 building and pool has been constructed on the land.
- The pool is an outdoor swimming pool.
- The pool has been constructed on the site between the class 1 building and lake.
- An outdoor swimming pool erected on residential land must have fencing complying with the standards.
- The fencing standards are as outlined in AS 1926.1-1993.
- Section 4.2.33 of the IPA allows the Tribunal to *"give weight to any new laws and policies the tribunal considers appropriate"*.
- AS 1926.1-1993 has been updated to AS1926.1-2007 but at the time of the hearing had not been called up by Queensland pool fencing legislation.
- Clause 2.6.2 *"Retaining wall below the pool level"* in the new standard has been expanded to include new methods of satisfying pool fence connections where they meet retaining walls.
- Clause 2.6.3 provides for *"Permanent Bodies of Water"*. *"Permanent bodies of water such as canals, lakes, rivers with a depth of water not less than 300mm at the edge of the pool area shall be considered as an effective barrier"*.
- The new methods of providing an effective barrier, in the opinion of the Tribunal, are appropriate to the subject site.

## **Reasons for the Decision**

The outdoor pool is required to be fenced in accordance with AS 1926.1 (1993).

The Clause 2.4 of AS 1926.1- 1993 allows specific retaining walls to be included as complying fencing.

The subject retaining wall (revetment wall) does not slope away from the pool by more than 15 degrees, hence it complies.

The water depth at the edge of the revetment wall was greater than 300mm i.e. 710 mm on the day of the hearing.

Should the water level drop to less than 300mm the revetment wall has an overall effective height of 1450mm above the bottom of the lake measured at the edge of the revetment wall.

The existing eastern side boundary fence ranging between 1200mm and 1800mm high has been returned 1200mm along the outer edge of the revetment wall and is approximately 1800mm high.

If the western side boundary fence were to be similarly returned 900mm along the outer edge of the revetment wall and be a minimum of 1200 high, as required in clause 2.6.2 of the new standard AS 1926.1-2007, in the opinion of the tribunal, the retaining wall (revetment wall) would comply as an effective pool fence barrier.

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**Leo Blumkie**  
**Building and Development Tribunal Chair**  
**Date: 31 August 2009**

## **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 Infrastructure and Planning  
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