



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

| | |
|---|---|
| Appeal Number: | 75-11 |
| Applicant: | S.M Howard – Double Island C/- Mark Carrette |
| Assessment Manager: | Cairns Regional Council (Council) |
| Concurrence Agency: (if applicable) | Not Applicable |
| Site Address: | Double Island, Palm Cove Queensland described as Lot 20, RP 119697 – the subject site. |

Appeal

Appeal under Section 532(1) of the *Sustainable Planning Act 2009* against the decision of Cairns Regional Council to give an Information Notice refusing an application for exemption - compliance impracticable in relation to seven (7) swimming pools located on the subject site.

| | |
|--------------------------|---|
| Date of hearing: | 9.30am – Monday 10 October 2011. |
| Place of hearing: | Double Island, Palm Cove Queensland. |
| Committee: | Don Grehan – Chair |
| Present: | Mark Carrette – Applicant's Representative. Michelle Ewing – Applicant's Representative. Greg Mullens – Applicant's Representative. John Evans – Council's Representative. Steven Sargent – Council's Representative. |

Decision:

The Committee, in accordance with Section 564(2)(c) of the SPA, **sets aside** the decision of Council and replaces it with the following:

- (A) In accordance with the application made to Cairns Regional Council on 21 July 2011 and pursuant to Section 245 of the *Building Act 1975* (BA), a temporary exemption from compliance with pool safety standard in relation to the provision Swimming Pool Safety Barriers to seven (7) regulated swimming pools located on the premises known as Double Island, Palm Cove, Queensland described as Lot 20, RP 119697 is granted on the basis of impracticability subject to the following conditions:

- (1) The temporary exemption expires at 4.00pm on 01 May 2012 (the exemption period);
- (2) In regards to operation of the resort during the exemption period, the owner of the regulated pools and their agents must implement, in its entirety, the "Double Island Australia Children Policy - Pool Safety", (Ref.: Policy 001: Double Island - Children Policy June 2011) dated 06 May 2011 and appended to this Decision.
- (3) For the duration of the exemption period, the owner of the regulated pools and their agents must display and maintain warning signs on both the access jetty serving the island and adjacent to the islands helipad.

Warning signs must contain the following information:

- (i) **WARNING:** This resort complex includes swimming pools which have been granted a temporary exemption from the requirements to provide swimming pool safety barriers - unsupervised swimming pool area – Keep Children Out
- (ii) Emergency contact number

This signage must:

- (i) be positioned so as to be visible to persons alighting from vessels onto the jetty or accessing the resort from the helipad;
 - (ii) be made of weatherproof material; and
 - (iii) the lettering on the sign that relates to the warning mentioned above must be at least 50mm in height and of bold style which contrasts from the background.
- (4) For the duration of the exemption period, the owner of the regulated pools and their agents must display and maintain resuscitation signage complying with Section 13A(2) of the Building Regulation 2006(BR) in a conspicuous and easily visible location adjacent to each individual swimming pool within the resort complex.
 - (5) Prior to the expiration of the exemption period at 4.00pm on 01 May 2012; the owner of the regulated pools on the subject site shall have either of the following in place:
 - (a) An approved Pool Safety Management Plan pursuant to Section 245M of the BA; or
 - (b) Pool safety barriers that comply with the Pool Safety Standard surrounding the regulated pools together with a certificate in the approved form (Form 17) issued by a Building Certifier stating the pool is a complying pool.Note: To remove all doubt, a Development Approval for building work is required for the installation of the pool safety barrier.

Background

Double Island, situated approximately one kilometre seaward of Palm Cove, North Queensland is operated as a private resort facility by the applicant as Lessee.

The resort complex includes seven (7) existing swimming pools that, following the legislative amendments to the BA on 1 December 2010, now constitute regulated pools by definition and despite previously being free from requisition, now require the provision of pool safety barriers complying with the pool safety standard to restrict the access of young children to swimming pools and to safeguard young children from drowning or injury in the pools.

The applicant, having obtained a quotation for the provision of the requisite pool safety barriers and having taken into account other recent cost factors surrounding the operation of the resort, made application to Cairns Regional Council for an exemption from compliance with pool safety standard on the grounds of impracticality in accordance with Section 245 of the BA.

Council's refused the application in the belief that it was not impractical to install a barrier that complies with the pool safety standard and that less expensive options were available to those put forward by the applicant as part of the justification for exemption.

The Appellant dissatisfied with Council's refusal, appeals the decision.

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Appeal Notice and Appellant's correspondence accompanying the appeal lodged with the Registrar on 15 September 2011, inclusive.
- Council's Exemption Application Decision Notice, Ref No. 23252277, dated 26 August 2011.
- The applicants Form 28, "Application for Pool Safety Standard Exemption" and supporting documentation as lodged with Council on 18 July 2011.
- Verbal submissions from the Appellant's representative at the hearing.
- Verbal submissions from Council's representative at the hearing.
- The *Building Act 1975* (BA) and associated regulation.
- Mandatory Part MP3.4 of the Queensland Development Code (MP3.4).
- The *Sustainable Planning Act 2009* (SPA).

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is an Island situated approximately one kilometre seaward of Palm Cove, North Queensland.
- The subject site operates as a high end private tourist resort and holds a current Certificate of Classification issued by the former Douglas Shire Council, Reference No. 421 dated 18 February 1994 referencing buildings of Classes 3, 6, 10a and 10b.
- There are seven (7) swimming pools on the subject site that were in existence prior to the legislative changes of the 1 December 2010.
- Prior to the legislative changes of the 1 December 2010 the seven (7) swimming pools on the subject site were not on or adjacent to residential land and were not required to be fenced under the then BA.
- Section 231A of the BA clarifies that:
 - (a) The subject site is regulated land.
 - (b) The letting of rooms on the subject site constitutes an accommodation agreement.
 - (c) The pools on the subject site are shared pools.
- Section 231B of the BA clarifies that currently, the seven (7) swimming pools on the subject site are regulated pools.
- Section 232 of the BA clarifies that the owner of a regulated pool must ensure the pool complies with the pool safety standard for the pool.

- Section 231D of the BA confirms that the Pool Safety Standard for the seven (7) swimming pools on the subject site is MP 3.4 of the Queensland Development Code including Australian Standards AS 1926.1 – 2007 and A.S 1926.2-2007.
- The subject site was adversely affected by the land fall of Severe Tropical Cyclone Yasi on the 3 February 2011 and the return of the property to marketable standard has required a substantial investment by the property owner.
- The subject site along together with much of Far North Queensland's Tourism industry has suffered a down turn in business activity following the effects of the Global Financial Crisis.
- The applicant has provided a quotation for the provision of pool safety barriers to the seven (7) swimming pools on the subject site indicating a cost of \$87735.00.
- The applicant has, in terms of resort management procedures, formulated the "Double Island Australia Children Policy - Pool Safety", (Ref.: Policy001: Double Island - Children Policy June 2011) dated 06 May 2011 which in effect restrict the access of children under the age of 13 to the Island via standard letting procedures.
- The nature of the Island, including its fringing reefs, is such access is only reasonably permissible by boat from the jetty to the south west of the Resort or via air.

Reasons for the Decision

- With reference to Section 245B (2)(b) of the BA, the Committee is satisfied that, in the short term, the cost of providing the barriers to ensure the pools comply with the pool safety standard is impractical given the recent economic and financial circumstances surrounding the subject site.
- With reference to Section 245B (2)(c) and 245(b)(3) of the BA, the Committee is satisfied that the physical nature of the subject site together with the management practices of the resort and the conditions imposed as part of this decision will reasonably restrict a young child from accessing the subject site during the exemption period.
- The Committee is satisfied that the subject site meets the prescribed criteria for consideration in regards the formulation of a Pool Safety Management Plan pursuant to Section 245M of the BA.
- The Committee cannot be satisfied as to the long term impracticality of providing pool safety barriers complying with the Pool Safety Standard.

Don Grehan
Building and Development Committee Chair
Date: 21 November 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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248

DOUBLE ISLAND AUSTRALIA CHILDREN POLICY – POOL SAFETY

Purpose

Double Island Australia aims to provide an environment where all guests and especially children are in a safe environment and that their general well being is catered for in regards to pool safety.

This policy has been implemented to ensure that all employees and guests are aware and acknowledge that the safety of children is a priority.

This policy has been implemented to ensure that all guests are aware that Double Island does not have approved pool barriers around the swimming pool areas and that all children are to be safe guarded at all times.

Commencement of Policy

This policy will commence from 1st June 2011.

Application of Policy

This Policy applies to all guests, employees and contractors that visit Double Island.

Breach of this Policy

All parties are required to apply to this policy at all times. All parties will be closely monitored whilst on the Island to ensure that this policy is being applied at all times. Any breach of this policy will result in an immediate internal investigation and dealt with accordingly.

Policy

It is the policy of Double Island Australia that no children under the age of 13 are allowed to have access and stay at the island.

This applies to day visits and overnight visits. Any child under the age of 13 will not gain permission or authorisation to visit the island.

Bookings

All bookings for Double Island are managed through the Director of Sales and Marketing/ Reservations Manager who are responsible for the screening of all potential visitors and guests to the Island to ensure that no child under the age of 13 years gains access

All guests that make a booking on Double Island are required to sign off on an agreement that clearly indicates that they are fully aware and have been advised that no pool barriers exist on the Island.

Guest Induction

All guests and visitors that visit Double Island are greeted and orientated on to the island. At this time it is reiterated that there are no pool barriers and that they need to be mindful of this whilst carrying out their day to day activities.

Staff Training

Double Island employs a full time Manger / Care taker who resides on the island. The Manager is responsible for ensuring the safety of all guests and visitors. It is a requirement of this position to hold a current First Aid Certificate.

Policy Review Date

This policy is to be reviewed annually. Review date will be June 2012 or prior.


Mark Carrette
General Manager

Date: 6-5-2011

WORKPLACE PARTICIPANT ACKNOWLEDGEMENT

I acknowledge:

- *receiving the Policy;*
- *that I should comply with the policy; and*
- *that there may be disciplinary consequences if I fail to comply,*

Your name: _____

Signed: _____

Date: _____