



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	08 - 11
<b>Applicant:</b>	Leeward Tower Body Corporate
<b>Assessment Manager:</b>	Andrew Boike
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	7 Oatland Esplanade, Runaway Bay and described as Leeward Tower CTS 6260 — the subject site

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### Appeal

Appeal under section 532 (1)(a)(i) of the *Sustainable Planning Act 2009* (SPA) against the Form 26 - Pool safety Nonconformity notice issued by pool safety inspector Andrew Boike under section 246AB of the *Building Act 1975* (BA).

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<b>Date of hearing:</b>	20 April 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Geoff Mitchell – Chairperson
<b>Present:</b>	Peter Reichers – Applicant's representative Andrew Boike – Pool safety inspector

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### Decision:

The Committee, in accordance with section 564(2)(c) of the SPA **sets aside** the nonconformity notice given by the pool safety inspector dated 13 January 2011 and 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 the provisions of AS 1926.1-2007, AS1926.2 – 2007 and MP 3.4 of the QDC.
- (b) Within 20 days of the date of this decision the appellant is to engage a building certifier, and prior to the commencement of the rectification works, obtain a development approval for building works in relation to the required alterations and or replacement of the existing swimming pool barrier.
- (c) With reference to the sliding door linking the gym to the pool area, the appellant is to erect a barrier complying with AS 1926.1-2007 and MP 3.4 of the QDC to separate the gym area form the pool enclosure.
- (d) With reference to the basement fire exit door that allows direct access to the pool enclosure the appellant is to erect a barrier complying with AS 1926.1-2007 and MP 3.4 of the QDC, to isolate the basement exit and the staircase up to the foyer from the pool area.

## Background

The appellant, to comply with the legislative changes of the BA of 1 December 2010, sought 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.

On 13 January 2011 the pool safety inspector issued a Form 26 – Pool safety nonconformity notice about a swimming pool fence he had assessed at the subject site.

The nonconformity notice contained eight (8) items the pool safety inspector determined did not comply with the swimming pool standard namely:

- Item 1 – Projections and indentations, or any combination thereof, within the NCZ, shall not form a substantially horizontal surface with a depth greater than 10mm.
- Item 2 – Climbable trees & vegetation within 900mm non-climbable zone.
- Item 3 – The clear space between any adjacent vertical members shall not exceed 100mm at any point.
- Item 4 – The gates must be hung so that they only swing outwards away from the pool area as they are currently opening outwards. Latching device is currently not working correctly and maintenance is required.
- Item 5 – The sliding door linking the gym to the pool area is currently using a coded key entry to the gym as it is security which is not up to the current standard
- Item 6 – The air conditioner currently provides a foot hold which is inside the non-climbable zone
- Item 7 – Handrail beside steps can allow access to pool area as it is inside the non-climbable zone
- Item 8 – Fire exit door allows access to pool enclosure which will need to have a gate at the top of the stairs to prevent access from children.

The applicant has appealed a number of the requirements in the nonconformity notice, in particular:

- a. Perimeter fence piers
  - Because of the height and width of the piers it would be extremely difficult, if not impossible, for a child to enter the pool by climbing up the piers.
- b. Upgrade of fence panels
  - The existing fence has been in place for more than 25 years without incident and replacing it would be prohibitively expensive with no particular benefit gained.
- c. Gymnasium door
  - Door entry from the gym to the pool area is not available except by using an electronic fob with the fob panel located about 2m from the ground height in the gymnasium so no child could reach the panel in any event. As well, there is a sign on the internal entrance to the gymnasium that children under 14 years of age are not permitted into the gym unless supervised by a responsible adult.

## Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 9 February 2011.
2. Form 26 – Pool safety nonconformity notice given by the pool safety inspector on 13 January 2011

3. Verbal submissions from the applicant's representative at the hearing on 20 April 2011
4. Verbal submissions from the pool safety inspector at the hearing on April 2011
5. The SPA
6. The Sustainable Planning Regulation 2009 (SPR)
7. The BA
8. The Building Regulation 2006 (BR)
9. The Queensland Development Code MP 3.4 – Swimming pool barriers
10. Australian Standard AS 1926.1 2007 – Swimming pool safety – Part 1 Safety barriers for swimming pools.
11. Australian Standard AS 1926.2 2007 – Swimming pool safety – Part 2 Location of safety barriers for swimming pools
12. The Building Code of Australia 2010 Volume 1, Class 2 – 9 Buildings (BCA)

### **Findings of Fact**

The Committee makes the following findings of fact:

- The applicant seeks to have a number of the items on the Form 26 – pool safety nonconformity notice removed.
- The subject site is regulated land as defined by s231A of the BA
- The swimming pool subject to the appeal is a regulated pool as defined by s231B of the BA and is a shared pool as defined in section 231A of the BA.
- The swimming pool is located at the front of the unit complex and is accessible from the gymnasium, a fire exit to the front of the premises, a gate at the front of the premises and the side of the premises.
- The existing swimming pool barriers in their current configuration and location do not comply with AS1926.1- 2007, AS1926.2-2007 or MP 3.4 to the following extent:
  1. There is direct access to the pool enclosure from the basement exit door. The access to the gymnasium is from the internal parts of the unit complex with unit owners only able to access via an electronic security fob. Direct access to the swimming pool can then be achieved from the gymnasium.
  2. There are climbable trees and vegetation within the distances allowed within the pool safety standard.
  3. Some of the fencing construction has gaps that exceed 100mm wide as required by the pool safety standards
  4. There are some gates that currently swing towards the pool and have faulty latching mechanisms in contravention of the pool safety standard.
  5. There is a fixed air-conditioning unit that provides a foothold inside the non-climbable zone in contravention of the pool safety standards.
  6. The pool is separated from the carpark and roadway by fencing approximately 2.0m high placed between decorative square columns and the columns have raised architectural features that project greater than 10mm from the face of the column.

The areas of non-compliance are generally consistent with those detailed in the Pool safety nonconformity notice (Form 26) given by the pool safety inspector on 13<sup>th</sup> January 2011.

## **Reasons for the Decision**

- 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 is of the opinion that direct access from the gymnasium to the pool compound, even with secure access to the gymnasium, poses an unacceptable risk of young children being able to access the pool area unsupervised.
- The applicant's representative and pool safety inspector agreed in verbal discussions at the committee hearing that the construction of a new section of pool fence between the columns directly outside the gymnasium to separate the gymnasium area from the pool area was an agreeable option.
- The applicant's representative and pool safety inspector agreed in verbal discussions at the committee hearing that the construction of a new section of fence to isolate the basement exit and the staircase up to the foyer from the pool area was an agreeable option.
- The Committee is of the opinion that the decorative features on the columns have a bevelled edge which the Committee considers does not provide footholds for young children.

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**Geoff Mitchell**  
**Building and Development Committee Chair**  
**Date: 23 June 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  
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