



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 5th and 6th days of June 2012, the 17th, 18th and 19th days of September 2012 and the 21st day of March 2013, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Bryce Ashton Eddleston.

The said Court finds that Bryce Ashton Eddleston aged 1 year, late of 13 Dalinga Court, Salisbury Heights, South Australia died at the Lyell McEwin Health Service, Haydown Road, Elizabeth Vale, South Australia on the 24th day of January 2010 as a result of hypoxic arrest due to drowning. The said Court finds that the circumstances of his death were as follows:

1. Introduction and cause of death

- 1.1. Bryce Ashton Eddleston was just over 1 year old when he drowned in the swimming pool at his family's home at Salisbury Heights on 24 January 2010. His cause of death was hypoxic arrest due to drowning¹, and I so find.

2. The CCTV footage

- 2.1. The family home was fitted with security CCTV equipment which was seized by police in the aftermath of Bryce's drowning². I have viewed footage from the CCTV recorder which depicted Bryce's fall into the swimming pool. The footage from a camera in the vicinity of the swimming pool shows the pool and a series of café style doors between the interior of the house and the swimming pool area. The footage

¹ Exhibit C2a

² Exhibit C8b

shows that there are three sets of café style doors. The middle group of doors were open and at 1838 hours on 24 January 2010 as shown on the CCTV display, a baby can be seen to crawl along the ground from inside the house through the open door and to the edge of the swimming pool on the southern side of the steps into the pool. The baby can then be seen to stand or kneel upright and then fall face first into the pool. The baby is then seen to be floating in the pool and drifting to the north western corner. At approximately 1848 hours according to the CCTV display, the father of Bryce, Mr Anthony Eddleston, is seen to come out of the same doorway that Bryce crawled through. Mr Eddleston is holding a rubbish bag and bin. He is seen to drop those items and run to the north western side of the swimming pool and pull Bryce out, place him on the ground and attempt resuscitation.

- 2.2. The South Australian Ambulance Service was called. On arrival the ambulance officers found Bryce to be unconscious with no respirations and no cardiac output. They commenced CPR and suction of Bryce's airway. Bryce was intubated by the paramedics and taken to the Lyell McEwin Health Service where emergency measures continued. Ultimately CPR was ceased after 50 minutes with no response having been obtained.

3. Focus of the Inquest

- 3.1. The Inquest focussed on the circumstances in which it transpired that the swimming pool was not enclosed by any form of fencing that would have prevented a child such as Bryce from drowning in the way that he did. The law of South Australia requires that a swimming pool be enclosed by a child-proof fence and has done so since the Swimming Pools (Safety) Act 1972 was enacted in that year. Following the enactment of the Development Act in 1993 the requirement for appropriate safety fencing around swimming pools was to be found in regulations made under that Act³.

³ See Regulation 83B, Development Regulations 1993 as in force between 01/07/2005 and 31/12/2005. The significance of the dates just set out is that the final development approval for the construction of the Eddleston's house and swimming pool was granted by the City of Tea Tree Gully on 21 November 2005 – See Exhibit C9

4. Events in Eddleston house immediately prior to Bryce's drowning

4.1. Mr Eddleston's account was that on Sunday 24 January 2010 the children had been playing in the pool area. At a time shortly before Bryce's drowning the family were having dinner. The older children (Bryce's siblings were aged 9 and 4) were seated at the breakfast bar. Mr Eddleston had Bryce with him in the family room and they were sitting on a chair. Mr Eddleston was eating his dinner and Bryce was trying to get at the food from his plate. Mr Eddleston asked Mrs Eddleston to take Bryce because he was trying to get at the food. Mr Eddleston said that he did not know where Bryce went from there because he thought that his wife was looking after him, although he did not remember her actually taking Bryce away. Mr Eddleston said that after this the dogs were 'jumping around' and he decided that he would feed them. He got up and went to feed them in what he describes as the 'entertainment area' which is the area immediately adjacent to the swimming pool. His statement contains the following passage:

'The entertainment area has a doorway that leads into the family room and kitchen which is an open plan area. The entertainment area leads out to the swimming pool and has doors that fold back so that it can be opened up to the outside. I saw that the middle door that lead out to the pool was open. We had been outside in the courtyard earlier and the children had been playing.'⁴

- 4.2. Mr Eddleston then said that he fed the dogs and decided to put out the rubbish. He said that he walked out with the rubbish to put it in bins which were in the vicinity of the swimming pool and it was then that he saw Bryce lying in the corner of the pool.
- 4.3. Mrs Eddleston's account⁵ was that she could not remember where Bryce went. She assumed that he was with Mr Eddleston because he was not with her. The first she knew of what had happened was when she heard her husband screaming.
- 4.4. The only other account of those present that afternoon comes from the eldest child who told Senior Constable Hadley that he had told everyone that they had to shut the door because he did not want Bryce to get out to the pool⁶.
- 4.5. I can only conclude that Bryce was not seen by anyone when he made his way from the kitchen meals area through the entertainment area outside to the swimming pool.

⁴ Exhibit C18, page 2

⁵ Exhibit C5b

⁶ Exhibit C5a

5. The building of the house and swimming pool

- 5.1. Mr Eddleston made a statement that he was the builder of the house and the swimming pool. In other words it was an owner/builder development. He stated as follows:

I subcontracted different tradesmen for the building of the swimming pool and fencing of the pool. I do not remember who I got to build the pool fencing. I do not remember who built the by-fold-doors (sic) adjacent to the swimming pool. I don't remember the plans of the building or the pool fencing. I don't remember there being plans of the pool fence being drawn on the plan. As far as I was aware it was that we had to have pool fences in certain areas specifically all entrances to the yard. At the time I wasn't sure that it was enough and I remember calling the council and speaking to someone from the council to ask them to inspect the swimming pool specifically. I can't remember if it was a male or female or when that was, but it was after the pool fences were up or while I was doing them. I remember the person from the council said something along the lines of they might or might not come, but didn't have the 'man power' to inspect all pools and pool fences.'⁷

6. The planning process

- 6.1. I heard evidence from two key witnesses. They were Maurizio Russo of Russo Design Construction who designed the plans for the house and swimming pool which were ultimately submitted for planning approval. I also heard evidence from Rocco Ciancio who is a private certifier. A private certifier is a person who carries out a part of the planning process, namely the granting of building rules consent. This can be done by officials employed by the Development Authority⁸ or by a private certifier. In the case of the Eddleston's project, a private certifier was used.
- 6.2. Mr Russo said that in late 2004 he was approached by Mr and Mrs Eddleston. He said that he had many meetings in the ensuing months and that the Eddlestons made a number of changes to the plans over that time. Mr Russo submitted the first set of plans for the house and swimming pool to the Tea Tree Gully Council for provisional development plan consent in early 2005. I set out here under an extract from the plans drawn by Mr Russo showing the design of the house and swimming pool as at that time⁹.

⁷ Exhibit C18a, pages 2-3

⁸ ie. the Council, in this case the City of Tea Tree Gully

⁹ Exhibit C25, Appendix A

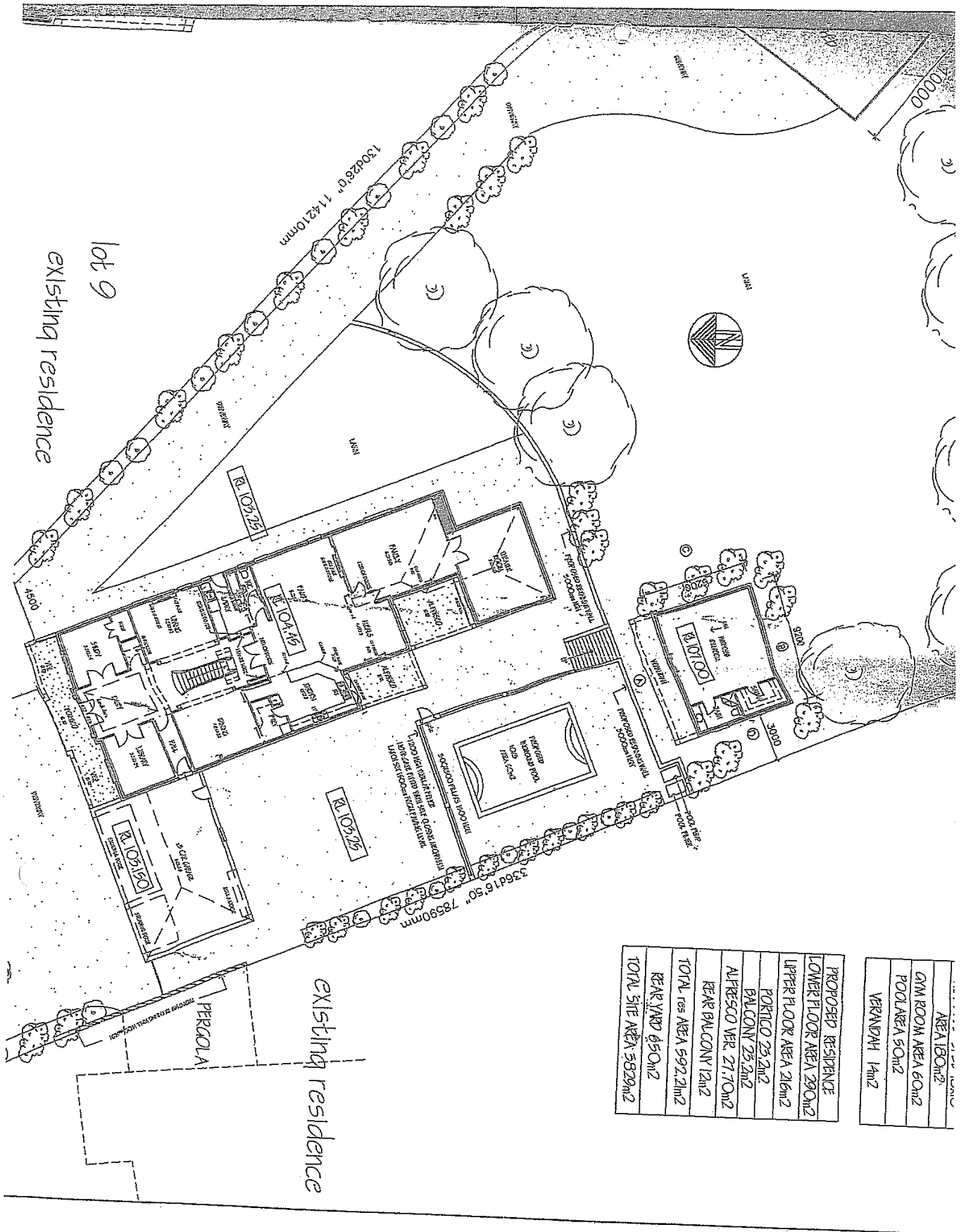


Exhibit C25 - Appendix A

6.3. It can be seen that the swimming pool is shown as being surrounded by its own 1200mm high tubular fence with a gate fitted with a self-closing mechanism. Mr Russo said that the Eddlestons wanted some changes to the design. He said that they wanted a larger 'alfresco' area¹⁰. The site plan that resulted from this alteration is shown below.

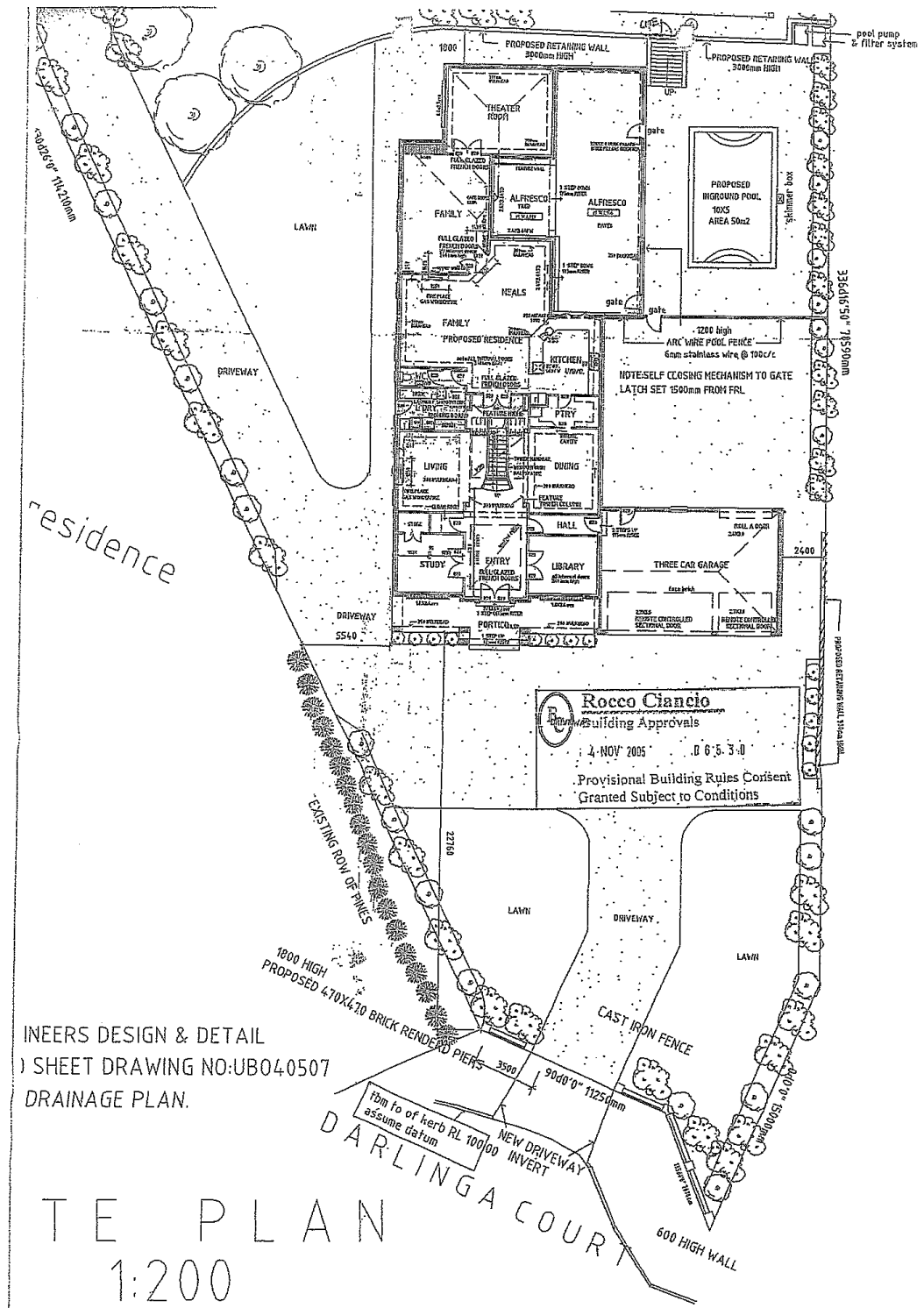


Exhibit C25 - Appendix B

¹⁰ I earlier referred to an 'entertainment' area. Ultimately that was the area of the house which was adjacent to the swimming pool. In this Finding I will refer to it hereafter as the 'alfresco' area.

6.4. In this plan the swimming pool is shown as being surrounded by an ARC wire pool fence 1200mm high. It has two gates, one of them opening into the alfresco area and the other opening into another area which is bounded by the garage to the north, the house to the east and the ARC wire pool fence I have referred to, to the south. The western boundary is between the Eddleston premises and the adjoining property. In this plan the ARC wire pool fence is shown as extending from the western fence line across to the house. It encloses the northern part of the open alfresco area. It is joined by a further pool fence which abuts the western edge of the alfresco area all the way to the southern end of that area which is in fact a full height wall. It is to be noted that this plan depicts the alfresco area as an open area which is covered by a roof. The only thing separating the alfresco area from the swimming pool, apart from the columns supporting the roof, is the ARC wire pool fence I have already described. At the south-eastern end of the swimming pool there is a set of steps leading up to a raised area in the southern part of the allotment. A gate is shown at the top of those stairs thus completing the enclosure of the swimming pool.

6.5. Mr Russo described the 'alfresco area' as really a verandah with another name. He confirmed that the only enclosed wall was that on the southern end of the alfresco area. He said that:

'There were no plans to my knowledge of installing any bi-fold doors to enclose the alfresco area.'¹¹

6.6. Mr Russo said that the Eddlestons never raised any concerns about the proposed pool fence with him¹². Mr Russo said that in order to have enclosed the alfresco area with bi-fold doors or any other form of door or window it would have been necessary to go back to the Council and seek an amendment to the provisional development plan consent¹³. Mr Russo said that he was never informed by the Eddlestons that they had enclosed the alfresco area. He said that he never inspected the building after its completion¹⁴.

¹¹ Exhibit C25

¹² Transcript, page 150

¹³ Transcript, page 157

¹⁴ Transcript, page 172

7. Mr Russo signs a statement of compliance

7.1. Mr Russo's evidence was that he never attended the completed building and could not say whether it was built according to his plans. He said that Mr Eddleston had requested him to attend the site in the early stages of construction on a couple of occasions. Mr Russo did so but pointed out to Mr Eddleston that he had not been paid to build the house or to sort out problems Mr Eddleston was having during the building of the house. Thereafter he did not return to the site. Sometime later Mr Russo said that Mr Eddleston attended his office and wanted him to sign off the statement of compliance for the building¹⁵. Mr Eddleston said that he needed it to be signed for insurance purposes so that he could get home/building insurance. Mr Eddleston phoned Mr Russo first and Mr Russo said that he was not the building supervisor. However, Mr Eddleston attended his office nonetheless. Mr Russo told Detective Perkins:

'When he attended my office he was adamant and became aggressive and said that I had promised to help him out. I did sign the statement of compliance for him even though I wasn't the building supervisor. I just wanted him off my back and to stop anymore contact with him. I did not inspect the building prior to signing the document. Even though I signed the statement of compliance I wasn't the builder.'

7.2. Mr Russo went on to tell Detective Perkins that he had no knowledge of the final build of the house including any lack of pool fencing. He had no conversations with Mr Eddleston regarding the pool fencing or the lack of it. Mr Russo told Detective Perkins that he received no payment for signing the statement of compliance and added that he wished:

'To reiterate that I felt pressured by his aggressiveness at the time and him demanding that I sign so he could move into the house.'¹⁶

7.3. In his oral evidence Mr Russo declined to answer any questions about the signing of the statement of compliance on the grounds of self-incrimination¹⁷. Mr Russo did acknowledge that the law under which he was concerned he may incriminate himself was the Regulations made under the Development Act.

¹⁵ This was a statement contained in his written statement – Exhibit C25 – which he made to Detective Senior Constable Perkins, although never signed

¹⁶ Exhibit C25

¹⁷ Transcript, pages 167, 173-174

8. The evidence of Rocco Ciancio

8.1. Mr Ciancio gave evidence at the Inquest. He explained that in his role as a private certifier he never had any contact with the Eddlestons about the project¹⁸ and that this was the normal process as he dealt with Mr Russo who was the building designer. Mr Ciancio said that he gave his building rules consent subject to certain conditions. Condition 3 was that the pool must be fenced including access gates and that the condition made it very clear that the pool had to be totally 'encapsulated' within a pool fence¹⁹. He went on to add that under Regulation 83B of the Development Regulations the pool must not be filled with water unless it is fully fenced²⁰. Mr Ciancio confirmed that on the plans he approved there was no indication that the brick pillars on the western edge of the alfresco area would be enclosed by doors or windows²¹. He said he was never informed of any proposal to so enclose the alfresco area²². He was asked what his attitude would have been had such a proposal been put to him. He responded as follows:

'Café style doors are generally folding doors of multiple door leafs, so they can be two or more leafs - and they generally, in the open position, they have the doors stacked at one end of the door opening ... So, a café style door to be compliant with a child-resistant door set would have to be self-closing and self-latching ... So, the difficulty I see with a set of café doors being proposed as a pool fence is that when the doors are in the open position we essentially have an unprotected pool area. The Standard²³ is very clear about ensuring that any openings or any access ways into the pool area are self-closing and self-latching at all times.'²⁴

8.2. Mr Ciancio commented that due to the very heavy weight and inertial mass of café style doors such as those that were ultimately installed on the western side of the alfresco area, he did not believe that it would be possible to build such doors to be self-closing as required by the Australian Standards. He said that it would be dangerous because of the large inertial mass in the structure which might cause injury if a person were between the door leaf and the door frame while any self-closing mechanism were in operation²⁵. Mr Ciancio was shown photographs that were taken of the café doors on the night of Bryce's death²⁶.

¹⁸ Transcript, page 181

¹⁹ Transcript, page 187

²⁰ Transcript, page 187

²¹ Transcript, page 198

²² Transcript, page 199

²³ This is reference to the relevant Australian Standard

²⁴ Transcript, pages 200- 201

²⁵ Transcript, page 202

²⁶ Exhibit C7a



This photograph shows the middle set of doors. On the left side there is a hinged door which is in the open position. Clearly it is not of a self-closing design. The four door frames to the right of this hinged door are 'café style' and capable of being folded to the right hand side against one another creating a wide opening. Mr Eddleston's statement was that at the time of Bryce's drowning the entire set of doors was open²⁷. Note that there is no fence between the edge of the pool and the doors. Bryce entered the water on the right-hand side of the steps into the pool.

- 8.3. Mr Ciancio said that he would not have certified or approved a setup such as depicted in the photographs because the bi-folds or café style doors depicted in those photographs:

'... are non-compliant door sets with Australian Standard 1926 Part 1 and in breach of the requirements of the Building Code Australia and the development legislation in regards to ensuring that there is a compliant fence around the pool area.'²⁸

9. Summary of evidence of planning process

- 9.1. The evidence of Mr Russo and Mr Ciancio is clear and may be summarised as follows. Neither Mr Russo nor Mr Ciancio would have approved the installation of the café style doors. Neither of them was aware of the installation of the café style doors. Both of them understood at all times that the swimming pool would be surrounded by a 1200mm ARC style fence as depicted in the plans that were approved in November 2005. Whilst Mr Russo may be criticised for having signed the statement of compliance without having inspected the final build, that does not alter the fact that he had no idea that the plans had been departed from in the final build in

²⁷ Exhibit C18, page 2

²⁸ Transcript, page 213

two significant respects, namely that the alfresco area was enclosed, contrary to the development plan consent, and secondly that, contrary to all legal requirements, the ARC style pool enclosure was never installed. I accept their evidence and find that neither of them had any involvement in the decision which must have been made at some point in the process that the alfresco area would be enclosed with café style doors and that the ARC fencing depicted on the approved plans would not be constructed.

10. Council inspections

- 10.1. The evidence was that the Tea Tree Gully Council never carried out a site inspection after the filling of the swimming pool to ensure that the pool was fenced in accordance with legal requirements. The Council's policy was not to inspect every swimming pool because of a lack of resources to enable that to happen. Mr Eddleston's claim that he contacted the Council and requested an inspection may or may not be true. The fact remains that had the Council inspected the pool after it was filled with water, the inspection would have revealed that there had been two significant departures from the plans as approved by Council. Those departures have been described above. As the owner/builder, Mr Eddleston must take responsibility for this departure. I draw no conclusion one way or another about whether Mr Eddleston knowingly and deliberately decided to omit the ARC fencing shown on the plans and to install café style doors contrary to the plans. It is difficult to see how this could have occurred by accident or by some minor error or omission.
- 10.2. I have considered whether I should make a recommendation that every swimming pool should be inspected upon completion by the relevant planning authority. However, there would be nothing to prevent a departure from the plans as depicted on the planning approval after such an inspection. It thus becomes necessary to consider a regime in which there is a regular inspection for compliance. The establishment of such an inspectorial regime clearly has the potential to incur significant cost. I have no evidence about the likely magnitude of those costs and I therefore refrain from making any recommendation other than that the Minister consider this finding and consider whether it is necessary or desirable to establish such a regime. I note that the evidence of Mr Bates who was the General Manager, Royal Life Saving South Australia, was that a regime of 4-yearly inspections of pool barriers exists in Western Australia²⁹. Whether that is frequently enough to discourage an owner from making

²⁹ Transcript, page 223

alterations in the intervening period to enable straightforward access from an alfresco area such as the Eddleston's enjoyed to a swimming pool without the inconvenience of a safety barrier, is a moot question. No doubt, any consideration of this issue will require the Minister to consider the responsibility of individual pool owners to comply with the law and the policy considerations inherent in imposing a cost on all to prevent what may be an infrequent occurrence, that is, a significant departure from building plans such as occurred in this case. In any event, these are policy considerations which are better left to the Minister than this Court to consider.

11. Conclusion

11.1. In my opinion, Bryce's tragic death was preventable. It would not have occurred had the swimming pool and dwelling been constructed in accordance with the plans developed and approved by Mr Russo and Mr Ciancio. It is clear that Bryce exited the house through the open bi-fold doors which were self evidently not of a self-closing design. As a result he was able to access the edge of the swimming pool and was attracted to the water in the way that so many children tragically are.

12. Recommendations

12.1. Pursuant to Section 25(2) of the Coroners Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.

12.2. I recommend that the Hon John Rau MP, Deputy Premier, Attorney-General and Minister for Planning, Industrial Relations and Business Services and Consumers give consideration to the facts established in these findings and whether it is appropriate to establish a regular system of swimming pool safety inspections such as exists in Western Australia.

Key Words: Drowning; Pool Fencing

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 21st day of March, 2013.

State Coroner