

MJB.51825

25th November 1981

The Secretary  
Proprietors Units Plan  
Urambi Village  
Crozier Circuit  
KAMBAH ACT 2902

Dear Sir

RE: PROPOSED SWIMMING POOL

Following discussions with three members of your Committee on the 12th November 1981, you have asked us to advise on various aspects of the Body Corporate's proposal for a swimming pool at Urambi Village.

The facts, as we understand them, are that on the original plan for the development of Urambi, the site was designated on common property for a proposed pool at some future date. At the Annual General Meeting of the Body Corporate held on the 23rd August 1981, it was resolved that the area lying east of the community centre be designated as the site for the pool which, we believe, was the site detailed on the original plan. As such, the owners adjoining the proposed site would most likely have been aware of plans for a pool in the future. It is also understood that the proposed funding for the construction of the pool would be by means of donations made to the Body Corporate by individual unit proprietors and not by way of a special levy upon any or all of the proprietors. These funds have been maintained in a separate account to the normal maintenance levies made under Section 38 of the Ordinance.

The minutes of the Annual General Meeting which I have perused mention the fact that the constitution and rules of the Urambi Swimming Pool Club have been approved. We have not sighted the constitution nor the rules and we are therefore not in a position to advise on this particular aspect, nor the manner in which it is proposed to work. Nonetheless, nothing hinges on this aspect in the advice given and the manner in which we believe the proposal can proceed. For this purpose of this advice, we have assumed that the standard second schedule articles contained in the Unit Titles Ordinance are operative, there being no effective alteration to such articles at this point in time.

As you are no doubt aware, Section 46(1) of the Ordinance empowers the Body Corporate by unanimous resolution to grant special privileges for the use and enjoyment of the common property to particular unit holders. Sub-section (2) provides that any special privileges so created may be terminated by special resolution. Section 9 of the Ordinance provides that a unanimous resolution requires the approval of all members which is defined in Section 30 of the proprietors for the time being of a unit. In this context, one must also look to the provisions of Section 67 in relation to Mortgagees who have given notice to the Body Corporate of an interest in any particular unit in which event the Mortgagee alone can vote on a motion requiring a unanimous resolution.

It would therefore appear that it is not feasible to obtain the requisite unanimous resolution of all members to enable the proposal to proceed on the basis indicated above, i.e. granting exclusive rights for the use of the swimming pool to only those unit owners who have contributed financially to the project.

Accordingly, any proposal or concept which would create such exclusive rights must be abandoned and an alternative method established. We believe this can be done as follows:-

1. Section 26 of the Ordinance provides that the Corporation shall hold the common property in trust for the unit owners and must afford those persons the opportunity for the reasonable use and enjoyment of the common property. In this fiduciary capacity as trustee a Body Corporate must act in the interests of and according to the wishes of the unit holders which clearly must mean the majority of them. Accordingly, an ordinary resolution alone would be required to empower the Body Corporate to proceed with the project. It would appear that the Body Corporate has already resolved this at the Annual General Meeting of the 23rd August 1981. This being so, Section 34 of the Ordinance delegates to the Committee the power to perform all duties and functions and exercise all powers conferred on the Body Corporate as directed by the General Meeting. It would therefore seem unnecessary to go back to a General Meeting in this respect provided that the directives contained in the resolutions passed at the Annual General Meeting are followed by the Committee.

The only qualification we would place upon this is the fact that any proprietors use and enjoyment of his or her unit is not affected by the installation of the swimming pool. In this respect, Article 4(a) of the second schedule provides that a member of the Body Corporate shall not use the common property or permit it to be used so as to unreasonably interfere with the use and enjoyment of the common property by another member. Article 4(c) in similar terms, speaks of factors such as noise. Accordingly, it would be necessary to ensure that adequate noise control was maintained and appropriate precautions taken against this.

2. It would not be possible for the Body Corporate to utilise the funds which it levies pursuant to Section 38 of the Ordinance for the purposes of the pool as these contributions are for the purpose of discharging expenditure that the Body Corporate may reasonably be expected to incur. Nor could the Body Corporate borrow monies to assist with the costs unless authorised by unanimous resolution (Section 42). However, we do not believe that there would be any objection in utilising the funds provided by various unit owners provided that:-

- (a) The funds were expressly donated to the Body Corporate for this purpose by the unit owners concerned, i.e. by way of gift and as such the unit owners have no claim for repayment of the contribution nor any special rights attached to the donation.
- (b) The individual unit owners concerned would need to unanimously resolve in the above fashion.

It should be noted that Section 44(1)(a) of the Ordinance provides ~~that~~ a special resolution if the Body Corporate purchases, hires or otherwise acquires or accepts personal property for any use in connection with the use and enjoyment of the common property. As the acquisition of a swimming pool would become a fixture and therefore part of the common property, we do not feel that this section is of any relevance.

As mentioned earlier, we have not advised on the swimming pool club proposal as we have no specific details from you as to the manner in which it is proposed that the club will operate. We reiterate however, that any proposals in this regard would need to ensure that any person, whether an original financial contributor or not to the swimming pool, must not be excluded from using the facilities.

Should you wish to discuss the matter further or, indeed, wish me to attend any Body Corporate meeting, please do not hesitate to contact me.

Yours faithfully  
SNEDDEN HALL & GALLOP

MICHAEL J PHELPS

ATTACHMENT Extract of Minutes from BCC Meeting

3.1 CONVENOR'S REPORT ON MEETING OF 8 DECEMBER

Mary Hodge reported that

- Robyn Lawson, Ralph Goldstein, Barry Clark and Libby Doak had attended the meeting to discuss their objections to the swimming pool. Mary had invited others who had objections, namely Sylvia Blomfield, Glenda McIntyre, Phil Spring, Tony McLeod and Kevin. None of these people (with the exception of Phil Spring) wished to pursue their objections further. Phil Spring wished the points in his letter of 14 September 1981 to be discussed.
- specific objections were:

(i) Siting of the pool

(Robyn Lawson and Ralph Goldstein)

An explanation was sought as to what alternative sites had been considered and why they had been found unsuitable.

On behalf of the swimming pool club Geoff McAlpine replied that:

- the site between houses 27 and 28 was too small
- the site between houses 59 and 60 might be suitable for a smaller pool than that proposed if the tree were removed and subject to location of services. The attitude of local residents was not known.
- there was no possibility of the Body Corporate acquiring additional land adjacent to houses 43 and 44 because it was zoned for residential/golf course use.

(ii) Landscaping and noise control

The current plans for the pool were circulated and discussion took place about the height of the mounds, density of the plantings and lines of sight from house 65. The pool club undertook to increase the height of the mounds on the north side of the pool and to lower the pool by 6" if technically possible. The hours of operation were discussed and it was noted that the pool was not expected to be used for more than six months of the year, and that the proposed timetables for types of swimming was specifically designed to minimise noise levels early in the morning and late at night. A discussion of the/



## 3.1 (ii) cont.

/mechanism for complaints and management of the pool ensued, during which it was pointed out that the Body Corporate Committee would have overall control of any pool built and could deny access to any persons creating unreasonable noise or infringing safety provisions. It was agreed that transistor radios would be banned, except if used with earphones.

(iii) Funding

(Goldstein, Clark, Doak and Spring)

Capital and maintenance funding were discussed and information sought on mechanisms for assessing electricity use, water and provisions for insurance. It was pointed out that users of the swimming pool would pay any extra premiums attributable to the pool. Meters would be installed for electricity and water.

(iv) Legal authority to proceed

(Goldstein and Lawson)

Ralph Goldstein questioned in general terms the Body Corporate legal authority to proceed with the pool.

It was explained that Legal opinion had been sought, on the basis of which the Body Corporate Committee had decided it was empowered to proceed, given that

- no special privilege was granted
- it was satisfied from the Annual General Meeting that the majority of residents wished to have the pool.

It was explained that the lawyer would be invited to examine the final proposal.

3.2 ANNUAL GENERAL MEETING RESOLUTION

The Committee noted that section 2 of the swimming pool motion passed at the 1981 Annual General Meeting required it to satisfy itself on provisions for funding, landscaping and noise control. Discussions and decisions on these aspects were as follows

(i) Funding

- \$13,000 was in hand with at least a further \$2,000 promised. This was considered sufficient.
- All contributors were agreeable to making <sup>a</sup> donation to the Body Corporate with no special provisions attached. It was noted that further capital costs might be required (for example, pergola, solar heating and automatic cleaning) which would be met by voluntary contribution.
- All maintenance and operating costs would be met by users, including water, electricity, cleaning, chlorination and insurance.
- Tenants of non-contributing owners would be invited to contribute towards the upkeep of the pool on a season ticket basis.

(ii) Landscaping

- It was noted that the pool site had been shifted to maximise the distance from all houses.
- The mounds near Ralph Goldstein's house will be made higher.
- The pool will be lowered by 6" if technically feasible.
- It was noted that plantings would not provide full benefit for 3 years. However, where possible advanced shrubs would be used initially.
- Geoff McAlpine advised that it was physically impossible to site a pool large enough to accommodate existing contributors between houses 59 and 60, even if the tree were removed. In addition the presence of a stormwater drain and electricity cables made it impracticable.
- Terry Healy and Geoff McAlpine reported that two residents in the area had objections to the pool on that site.

3.2 (iii) Noise control

- The Committee was satisfied that noise levels would be reasonable in all the circumstances, taking into account -
- The proposed acoustic mounds (including the proposal to raise the mound adjacent to Ralph Goldstein's house).
  - The controls on hours of operation and the timetable for types of swimming.
  - The proposal to ban transistor radios (except those used with earphones)
  - The proposed mechanism to deal with complaints about excessive noise, as detailed in the motion before the Meeting.

3.3 In the light of all these considerations the following motion was moved by Tony Pratt and seconded by Marion Powell:

The Body Corporate Committee, pursuant to the resolutions of the AGM on 23 August, 1981, having received reports, fully investigated and deliberated, and being subsequently satisfied with arrangements concerning noise control, landscaping and financing and being satisfied with the rules of the pool, resolve that -

NO SPECIAL PRIVILEGE

- 1.(a) Nothing in this resolution shall be deemed to constitute a grant of special privilege for the purpose of section 46 of the Unit Titles Ordinance of 1970 (the Ordinance).
- (b) To the extent that there is any inconsistency between paragraph (a) of this provision and any other provision of this resolution paragraph (a) of this provision shall prevail.

CONSTRUCTION

- 2.(i) a pool be constructed in accordance with the plans tabled at the meeting on 9 December, 1981; and
  - (ii) that quotations for its construction be considered.
3. The funds for construction of the pool shall be made up of voluntary contributions only, and not include moneys paid or to be paid to the corporation under section 38 of the Ordinance. Contributors must understand that they have no claim for repayment of the contribution nor any special privilege for the purpose of section 46 of the Ordinance attached to the contribution.

MANAGEMENT

4. The pool and the area inside the pool safety fence be managed by a body corporate sub-committee called the pool management committee convened by a member of the body corporate committee.
5. The pool management committee shall decide all matters by a majority of members present and voting, provided a quorum of at least two members is present. The convenor shall have a deliberative and casting vote.
6. The manner in which the pool management committee conducts its business and manages the pool shall be subject at all times to the direction of the body corporate committee.

7. Unless the body corporate committee otherwise directs, or approves a variation initiated by the pool management committee the pool management committee shall observe and, within its powers, enforce the provisions of the rules presented to the August 1981 Annual General Meeting of the corporation, subject to the following amendments:

Rule 1 to be amended to read:

The Urambi Swimming Pool Club consists of those Urambi owners who agree to join, and who pay the required costs. The costs of swimming pool construction, equipment purchase and maintenance costs shall be borne by users only - non users shall not be liable for costs. Costs shall be understood to refer only to the enclosed area of the pool. The area outside the enclosure remains the responsibility of the body corporate.

Additional Rule 24

Any complaints relating to noise or nuisance shall be put to the pool management committee, which may if appropriate refer them to the body corporate committee. It is noted that this rule does not limit the right of any Urambi resident to complain to the body corporate committee at any time on any subject.

Additional Rule 25

Transistor radios may not be operated inside the pool enclosure except through earphones designed for private listening.

8. For the purpose of swimming pool club Rule 8, maintenance costs shall be deemed to include the cost of:

- water
- electricity
- insurance

attributable to the pool, as determined by the body corporate committee.

The motion was carried unanimously.

4.A. (a) The Committee shall prescribe times at which the swimming pool may be used, and may specify to what uses the pool may be put at various times of day and on different days.

(b) A member of the corporation shall not use or permit the pool to be used otherwise than in accordance with the usages prescribed by the Committee under paragraph (a).

4.B. (a) A member of the Corporation shall not use or permit to be used the pool or the area inside the safety fence in such a way as unreasonably to disturb members or occupiers or users of neighbouring units.

(b) The Committee may prescribe particular activities as being likely, if carried out in or near the pool, to cause unreasonable disturbance.

(c) A member of the corporation shall not engage in or permit to be carried on activities prescribed by the Committee under paragraph (b)

4.C. (a) A member of the Corporation shall not use or permit the pool to be used in any way that it is likely to lead to physical harm to the person or property of any other user.

(b) The Committee may prescribe particular activities as being likely, if carried out in or near the pool, to lead to physical harm to the person or property of users.

(c) A member of the Corporation shall not engage in or permit to be carried on, activities prescribed by the Committee under paragraph (b)

4.D. Where the Committee prescribes any times, uses or activities under Articles 4A, 4B and 4C, it shall cause the substance of these prescriptions to be displayed prominently near the entrance to the pool safety fence.

Rules to be included.

..... The hours of access to the pool shall be as follows:

Weekdays

7am - 9am	Exercise swimming
9am - 12	Parents and children under school age
12 - 3.30pm	Adult use
3.30pm - 5pm	Children 5-15 years , under adult supervision
5pm - 8pm	General use
8pm - 9pm	Exercise swimming

Weekends

7am - 9am	Exercise swimming
9am - 2pm	General use
1pm - 6pm	General use - visitors permitted
6pm - 8pm	General use
8pm - 9pm	Exercise swimming

..... Children under 5 must at all times be in the direct care of an adult

..... During the period set aside for the use of school age children, there must be an adult supervisor present (with authority to evict for the day any child persistently disregarding the rules). The pool shall be closed for that access period if there is no adult prepared to accept responsibility for supervisory duties.

..... School age children may invite one guest each for 1 hour each weekday. Guests are subject to the rules and may be excluded for persistent disregard of the rules.

- ..... Adults may invite guests during weekend afternoons. Guests are subject to rules.
- ..... Houseguests of participants (ie staying overnight or longer) may use the pool on the same basis as their hosts.
- ..... No dogs or other animals shall be permitted within the pool enclosure
- ..... Running is not permitted within the pool enclosure.
- ..... Pushing people into the pool is not permitted.
- ..... Resuscitation equipment must be available at all times. The supervisor and parents of children under 5 must know how to use it.
- ..... The pool cover must be replaced each evening, when the pool is not in use and at the end of each access session.
- ..... Any complaints relating to noise or nuisance shall be put to the Pool Management Committee, which may if appropriate refer them to the BCC. It is noted that this rule does not limit the right of any Urambi resident to complain to the BCC at any time on any subject.
- ..... Transistor radios may not be operated inside the pool enclosure except through earphones designed for private listening.
- ..... During exercise swimming and general use periods, unsupervised children disregarding rules may be required by an adult user to abide by the rules; and if failing to do so, to leave the pool for that access period. For the purposes of these rules, an adult is a person over 18 years of age.



This subcommittee was formed to follow up the report made by Bill Mutton to the last AGM on the issue of a swimming pool for Urambi. Our report is necessarily tentative in some respects, because the decision of whether or not to proceed with a pool has yet to be made by residents. Until that decision has been made, all we can do is to submit a number of facts, options and suggestions. Though the report has been prepared in time for the AGM, in fulfilment of the resolution of the previous AGM to investigate the issue further, we recommend that Body Corporate Committee call a general meeting to consider the report and to decide the issue.

The Subcommittee has:

1. Obtained updated costs of the 50' x 20' in-ground pool recommended by the 1979 report.
2. Examined the legal situation, as expressed by the opinion obtained by the Body Corporate Committee from Macphillany, Cummins and Gibson, and suggested some ways by which a pool could be installed.
3. Considered problems of physical security
4. Examined landscaping of a pool, in order to minimize any adverse effects on house closest to the site, and so as to make most effective use of the area.
5. Drawn up draft rules of access.
6. Re-examined above-ground pools in case an above ground pool turns out to be the preferred option, because of cost considerations.

The Subcommittee believes that a swimming pool would be the most desirable leisure facility for the site, and one which would offer greatest and most equal access to and use by residents. If there were to be a single leisure facility on the proposed site, a pool would be a better choice than a tennis court, because of the larger number of people who could use it simultaneously and because equitable access can be guaranteed to different groups of users. Under the proposed rules of access, it should be possible for any resident to swim on any day; a tennis court could not possibly meet this demand, being limited to a maximum of four users at a time, with a clumping of demand on weekends or during the late afternoons and low demand at other times.

However, while we believe that a pool is the best use of the area, we are concerned that other leisure requirements be not excluded, and have therefore endeavoured to site the pool so as to leave as much room as possible for other facilities.

We believe that the area could accommodate for example, the following facilities:



- a) the indoor games room
- b) children's play equipment
- c) a hitting wall
- d) a sandpit
- e) the pool
- f) a half court
- g) a hot tub
- h) barbecue facilities.
- i) productive gardens

This obviously would depend on keenness of residents to proceed with any or all of these. Our concern is that if our preferred option, the pool, be adopted, that it be done in a way that preserves options for other leisure activities in the future. The other siting requirement is that the houses closest to the pool and community centre be not adversely affected, and we believe that this can be achieved by effective landscaping which would obviate glare and noise problems.

We point out that by choosing to live in a medium density housing group, residents have foregone the opportunity of installing private pools; further, that the prospect of a communally owned pool was one of the things that attracted many people to Urambi and that had Urambi not suffered severe financial problems, we would have been enjoying the facility already. It would be a great pity if we were unable to agree upon sharing the costs and benefits of some leisure facilities. Even if some residents may feel that their use of such facilities may be infrequent, the existence of such facilities would add to the general value of Urambi houses, and help attract buyers in future.

We recognize that communally owned facilities are unlikely to be free from problems, and accordingly have given careful thought to ways of overcoming problems. The draft rules of access, which may appear on first reading to be rather stringent, have been designed to make the pool as safe and vandal proof as possible. We point out that no pool is drown-proof - nor is a bath - but the risks can be minimized. If the draft rules were adopted, a Urambi pool would probably be the safest in Canberra.

To summarize, the pool would be fenced with brush fencing, and entry would be by a key operated gate only. The children's pool would be fenced off from the main pool. Each participating household would be issued with a key, the use of which would be subject to the agreed rules. It is proposed that separate periods of access be provided for different groups in order to ensure as much as possible fair and equal access to the pool, and to ensure that different groups can use the pool for different purposes, for example: exercise swimming, swimming lessons, after school swimming for school children, after work swimming for adults. Furthermore, it is proposed that children unable to swim be in the care of an adult, and that during the period set aside for school children, that a supervisor be present with power to evict swimmers who breach rules.

Maintenance is an issue which has caused concern. Participants could opt for a roster system, or decide to hire an individual or a firm to perform regular maintenance tasks. However, maintenance could be kept fairly minimal as equipment can be purchased to perform many tasks - filters, chemicals dispensing, can operate automatically, and pool cleaning equipment can be obtained to do most of the cleaning. We cannot give an estimate of the cost, as it would depend on the sort of equipment purchased and the sort of pool decided upon. It is unlikely to be substantial however. Residents should bear in mind that we pay the gardening maintenance contractor \$3,500 p.a. to cut grass, control weeds and to perform sundry other tasks. This puts the question of pool maintenance cost into perspective.

Canberra Pools Limited provide a pool maintenance service - charges would be \$12 per service call and about \$16-18 per hour. Frequency of calls would depend on condition, but are likely to occur every 2-3 months. It is not possible at this stage to give more precise details.

The question of residents' liability for pool accidents has also been raised as a possible source of difficulty. Provided the security measures proposed elsewhere in this report are taken, there should be no particular problem from this direction. In other words, if the pool is sensibly fenced and constructed, no liability for accidents would fall on resident generally, either directly or through the Body Corporate. The position of individuals who cause pool accidents through their own negligent behaviour would, of course, be determined according to the legal principles applying in any situation.

Though the Committee would favour the 50' x 20' in-ground pool, if all resident were in favour, we have examined above ground pools as an alternative. Some details are attached. If residents were prepared to vote in favour of a pool being installed, on the basis of optional participation with the cost being borne by those wishing to participate, an above ground pool may be a preferable alternative. Above-ground pools cost substantially less; this may weigh with residents for whom cost would be the determining factor in deciding whether or not to participate. Furthermore, if fewer residents participated, the financial burden would be less.

If the problems of running a pool did prove to be insuperable, and it was decided to remove the pool, there would be fewer problems in removing an above-ground pool, and the financial loss would be less.

An above-ground pool would of course, be more susceptible to damage. It is possible to obtain made to order above ground pools; Blue Haven in Sydney and Blue Seas in Melbourne both make above-ground pools to measure and it is possible to get a pool of adequate size. Decking would be required, and would be an attractive means of landscaping. For all the above reasons, an above ground pool could well be our best alternative.

The choice depends on whether residents wish to proceed, or to allow interested residents to proceed. If residents vote against a pool, then other uses for the area can be considered, but if the pool is favoured, then we would be in a position to decide questions of cost, and size and participation.

## THE "LEGAL POSITION"

It would be possible to go about the business of creating and maintaining a Urambi swimming pool in many different ways, and each will have it's own set of legal implications. Some of these will derive from the laws applying anywhere in the A.C.T., and others from the peculiarities of the Unit Titles Ordinance 1970. The latter is the legislation that creates the legal entity called the body corporate that 'owns' the common land (which includes the place where the pool would go), and makes it possible for levies to be set and their payment by residents made compulsory.

Although there are countless ways of arranging matters, it may be helpful to sketch the outlines of three possibilities.

### (i) The 'formal' option

Under this scheme the aim would be to bring the pool into the same relationship to the body corporate as, say, the Community Centre now is, and to go to some pains to ensure equity in the distribution of the obligation on all residents to contribute a fair share to the cost, particularly in initial capital cost. Any such scheme would need to be approved "unanimously". There are special provisions in the Ordinance about how to do this and for practical reasons it would probably be easiest to do it by collecting proxy votes over a period. The solicitors engaged to advise on this question have set out the procedure we would need to go through, and a copy of their advice is attached. (Incidentally, it should be noted that the Ordinance was designed to cover the simple situation of a development which was completed before residents bought in; the solicitors therefore had to exercise some ingenuity in devising ways to achieve the desired result, and are to be complimented on thinking up at least three ways of proceeding).

If everyone was prepared to kick in about \$300 we could have a fine pool with very little difficulty. In the light of past experience, however, it seems unlikely that this will happen.

Under this option we would be seeking to ensure equity in the distribution of costs and benefits, and hence it would be necessary to devise a legally enforceable mechanism for preventing "free-loading". Basically, this means that those who are keen to proceed would pay the total cost, and others would voluntarily (but in a legally binding way) agree to pay later. For example, they could agree to pay something extra with each levy, or agree to pay a lump-sum whenever their house is sold. To be fair, any such scheme should allow for interest at the ruling rate to be added in to the debt. A further refinement would be to create two categories amongst the latter group: the first being those who wish to use the pool, and the second being those who do not (with an option to transfer from the second to the first). If this were done it might be appropriate to apply interest only to the first category. To stop debts building up to levels which are substantial, it might also be wise to place a time limit, say 10 years, on residence in category 1.



(ii) The "semi-formal" option:

This would be similar to option 1, but the complications associated with making legally binding arrangements for contributions from those not contributing initially would be dispersed with. That is, the amount payable would be calculated in the same way, but it would be simply a debt of honour.

We would still go through the same process of obtaining unanimity, but the complexity would be reduced (at some potential cost in terms of equity).

The pool would be a full community facility.

(iii) The "informal" option

Under this scheme, the pool would be financed by its proponents, who would form themselves into a club, but they would have no permanent right to keep the pool.

Such an arrangement would probably only be applicable to an above-ground pool - i.e. something relatively cheap which could be removed fairly easily.

The Pool Club would have no guarantee that their investment would be secure. It would be open to any Committee of the Body Corporate to order it to be taken away. That is, it would remain on the site only while a majority (reflected through the Committee) wanted it, or at least, did not mind having it there.

There could be a convention that only club members are entitled to use it, but if another resident insisted upon entering that patch of land, the Club members would have no legal right to eject them.

The main virtue of this arrangement is its simplicity. No unanimous resolution would be required. It would be agreed to (or at least, not actively opposed by) the Committee.

SUMMARY:

Even from this brief examination of three basic models it is apparent that there are many ways of arranging matters "legally".

The main task is for residents to decide what they really want. Thought can then be given to the legal implications and the steps necessary to achieve the desired result. While constraints do exist, it is difficult to imagine any sort of sensible arrangement that could not be accommodated somehow within the Ordinance.

12. Resuscitation equipment must be available at all times. The supervisor and parents of children under 5 must know how to use it.
13. The pool cover must be replaced each evening, when the pool is not in use, and at the end of each access session.
14. Participants will decide the manner of maintenance, whether to have a roster system or to contract it out to an individual or a firm.

RULES

1. Each participating household agrees to abide by these rules which are subject to change by majority vote of participating households.
2. Each participating household shall be issued with a key to the pool. Entry to the pool shall be by the key operated gate only.
3. The hours of access to the pool shall be as follows:
  - Weekdays:

7 a.m. - 9 a.m.	Exercise swimming
9 a.m. - 12	Parents and children under school age
12 - 3.30 p.m.	Adult use
3.30 p.m. - 5 p.m.	Children 5-15 years, under supervision
5 p.m. - 8 p.m.	general use
8 p.m. - 9 p.m.	exercise swimming
  - Weekends

7 a.m. - 9 a.m.	Exercise swimming
9 a.m. - 1 p.m.	general use
1 p.m. - 6 p.m.	general use - visitors permitted.
6 p.m. - 8 p.m.	general use
8 p.m. - 9 p.m.	exercise swimming.
4. Children under 5 must be in the care on an adult.
5. During the period set aside for the use of school age children, there must be an adult supervisor present (with authority to evict for the day any child persistently disregarding the rules).
6. School age children may invite one guest each for 1 hour each weekday. Guests are subject to the rules and may be excluded for persistent disregard of the rules.
7. Adult participants may invite guests during weekend afternoons. Guests are subject to rules.
8. Houseguests of participants (i.e. staying overnight or longer) may use the pool on the same basis as their hosts.
9. No dogs or other animals shall be permitted within the pool enclosure.
10. Running is not permitted within the pool enclosure.
11. Pushing people into the pool is not permitted.



Updated costing of concrete (Marble sheen finish) in-ground pool.

50' x 20' pool*	14,720.
Pool blanket	750
	<hr/>
	\$15,470.
	<hr/>

60' x 25' pool	18,550
pool blanket	1,125
	<hr/>
	\$19,675
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Further options

Automatic pool cleaner	980
Roller for pool blanket	360
Automatic chlorinator	427
Additional filtration capacity	600 (900 for
	<hr/> larger
	\$2,367 pool)
	<hr/>

\* 'Pool' cost covers: pool ready to swim in; 2 underwater lights (3 in the larger pool), connections for future heating, 2 sets of steps.

Children's Pool

In-ground fibre glass	
12' x 12' x 2'	approx. \$1,400
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Above-Ground Pools

Driclad (Tony's Pools)

Olympic (Keyhole shape)

32' x 18' to 12'6" wide	
Deep end 6'	\$1,850

Installation	approx. \$800
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8' x 2'6" decking supplied.  
Colorbond walls (metal, treated)  
Vinyl liner, 12 years guarantee.

Clark's

Sunsoker

33' x 18'	\$1,645-\$1,815 (dep.on filter)
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38' x 15'	\$1,775-\$1,945
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2' each side must be allowed for uprights. Clark's do not do installation.

Blue Haven (Sydney)

47' x 15' \$3,500  
(includes installation)

Has dual filtration system. Galvabonded steel frame. Extra heavy duty vinyl liner, minimum life 6 years, replacements available - over \$200.

Blue Seas (Melbourne)

39' x 15' (standard width) \$2,500  
Can increase length in 4' modules.

51' x 15' \$3,500  
installation on level site approx. \$ 600

Blue seas will transport pool to Canberra but will not install.

Others

Bradley Dura Pools.

In-ground fibre glass.

33' x 14' Aristocratic \$6,850  
3' to 6' depth  
fully installed

33' x 14' 5' depth \$6,400

Cover approx. \$ 320

Oasis (Tony's pools)

30' x 15' installed \$5,200  
in-ground, compressed cement floor,  
asbestos cement panels, vinyl liner  
- cover not included.

Concrete surround  
Solar cover 30' x 15' \$ 195

36' x 17' \$7,150

---

Decking, paving, fencing, gates

\$4000

# PROPOSED SWIMMING POOL LAYOUT.

PREPARED FOR SWIMMING POOL SUBCOMMITTEE.

DRAWN BY: GRAEME HOPKINS, ARCHITECT/LANDSCAPER.  
SCALE: 1:200



NORTH.

EXISTING TREE

KERB

FOOTPATH

EXISTING PATH.

B

POSSIBLE LOCATION OF TENNIS COURT 32x16 M.

POOL 12x6 m.

GRASS AREA.

ACOUSTIC MOUND.

TIMBER DECK.

CHILDREN POOL 4x4

PAVED AREA

ENTRY

COMMUNITY CENTRE

PLAN.

DIRECTION OF NOISE DEFLECTED BY MOUND.

BRUSH FENCE WITH SCREEN PLANTING.

CUTOFF LINE FOR VIEW.

BRUSH FENCE

EYE.

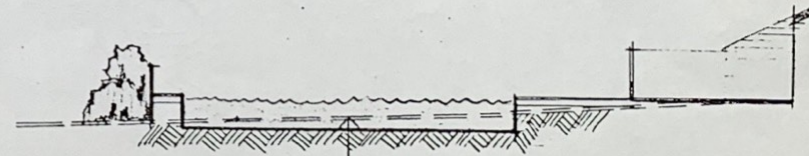
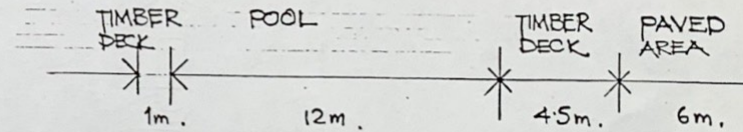
COURTYARD

UNIT N°66 & 67

ACOUSTIC & SCREEN MOUND 1.4M HIGH.

RETAINING WALL.

SECTION AA.



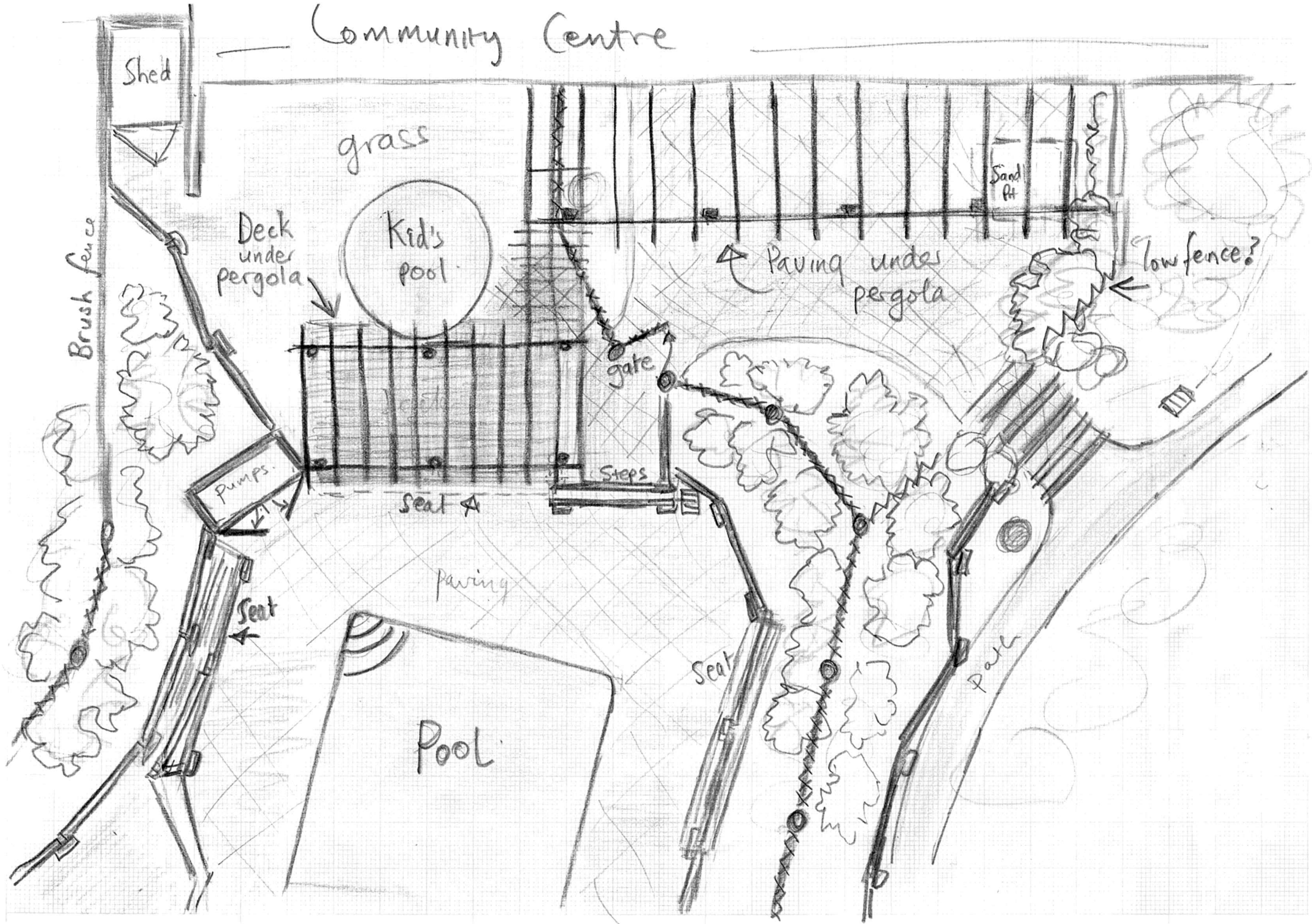
EXISTING GROUND LEVEL.

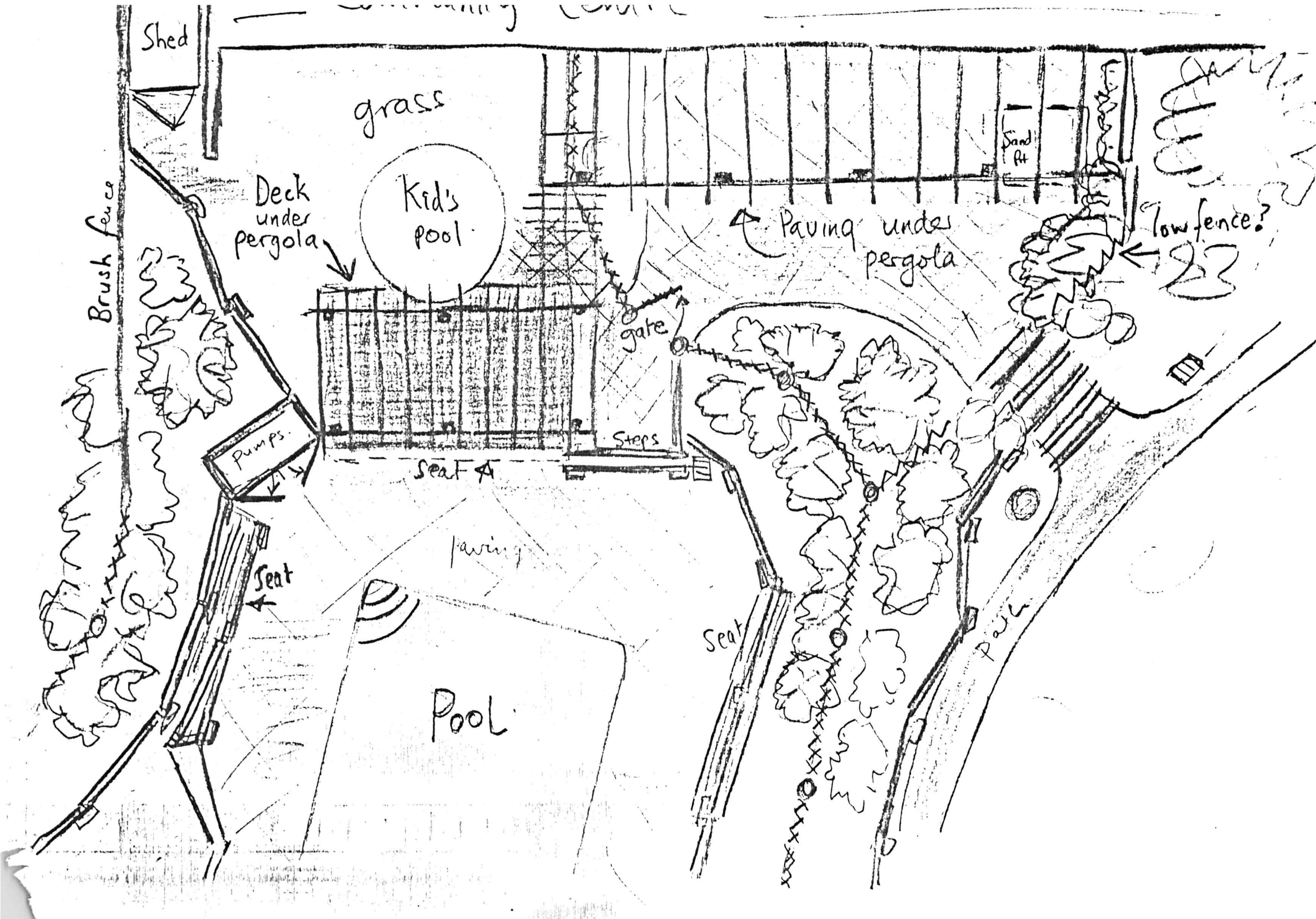
SECTION BB.

UNIT N°66



# Community Centre





Shed

grass

Kid's pool

Deck under pergola

Paving under pergola

low fence?

Brush fence

Pumps.

gate

Steps

Seat A

paving

Seat

Seat

Pool

Pave

# C R P Swimming Pool Calculations

Assumptions - (1)  $f_b = 206.8 \text{ MPa}$  (ie. 827)

41250/0

Bending strength  $152 \text{ KANSABLE No. } - 10.31 \text{ MPa}$

Received Building Section

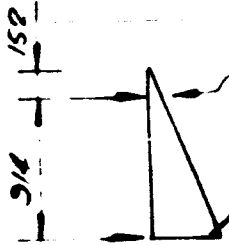
- 4 MAR 1982

Dept. of the Capital Territory

(2)  $E = 27579 \text{ N/mm}^2$

(3) Wall thickness  $63 \text{ mm}$

(4) Slab at ground level provides



$$152 \times 1001.2 \times 9.81 = 1493 \text{ N/m}$$

$$1066 \times 1001.2 \times 9.81 = 10470 \text{ N/m}$$

$$\text{Max B.M.} = \frac{1493 \times 9.14^2}{8} + \frac{128 \times 8.977 \times 9.14^2}{2}$$

$$= -156 + -480$$

$$= -636 \text{ KNm} = 636 \times 10^3 \text{ Nmm}$$

$$Z = \frac{1000 \times 63^2}{6} = 6615 \text{ mm}^3$$

$$f_b = \frac{636 \times 10^6}{6615} = 96 \text{ N/mm}^2 \ll 206.8 \text{ MPa}$$

$$I = \frac{1000 \times 63^3}{12} \quad E = 27579 \text{ N/mm}^2$$

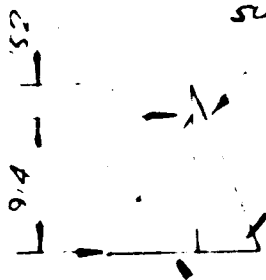
$$\text{Total pressure} = \frac{1493 + 10470}{2} \times 9.14$$

$$= 5467 \text{ KN} = 5467 \times 10^3 \text{ N}$$

$$\delta = \frac{0.13 \times 5467 \times 10^3 \times 9.14^3 \times 12}{27579 \times 10^3 \times 63^3}$$

$$= 94.4 \text{ mm}$$

Full height ground water conditions neglecting any surcharge



$$152 \times 1001.2 \times 9.81 = 1493 \text{ N/m}$$

$$1066 \times 1001.2 \times 9.81 = 10470 \text{ N/m}$$

$$9.14 \times 1001.2 \times 9.81 + 9.14 \times 3 \times 961 \times 9.81 = 11562 \text{ N/m}$$

Reaction of slab

$$= \frac{1493 \times 152}{2} + \frac{1493 \times 9.14}{2} + \frac{8.977 \times 9.14}{2 \times 3} - \frac{11562 \times 9.14}{2 \times 3}$$

$$= -113 + -682 + 1.367 - 1761$$

$$= 2.162 - 1761 \text{ KN } +ve$$

These figures should be read in conjunction with the brief which report submitted to K&C Atkins with the original figures

## Glass Fibre Reinforced Plastic Swimming Pool

Tensile Strength

551 to 827 MPa

Compressive Strength

413 to 482 MPa

Modulus of Elasticity

27579 N/mm<sup>2</sup>



These figures should be read in conjunction with the brief  
 and report submitted to K & C Atkins with the original  
 figures

Glass Fibre Reinforced Plastic Swimming Pool

Tensile Strength 551 to 827 MPa  
 Compressive Strength 413 to 882 MPa  
 Modulus of Elasticity 27.5 to 32.5 GPa  
 Safety Factor Used 4  
 Wall thickness 70mm

Notes

- (1) Provide continuous drainage layer under pool floor being 50mm of blue metal bladed with sand provide membrane between this & concrete base slab
- (2) Provide hydrostatic relief valve & man drain
- (3) Not reqd.
- (4) Sand-cement backfilling to be compacted to provide continuous support to pool walls. Mix 10:1.
- (5) The pool has not been designed for surcharge loadings i.e. traffic, sloping ground.
- (6) Engineering calculations are by Davies, Phillips, Chaplin & Parris
- (7) Floor profile pegs & aligners not shown
- (8) All concrete Fc 20 MPa

BUILDING WORK SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE APPROVED PLANS THE BUILDING MANUAL ACT, THE NOTATIONS MADE ON THE PLANS AND ANY MATTERS SPECIFIED ON THE BUILDING PERMIT. THE APPROVAL OF PLANS OR THE GRANT OF A BUILDING PERMIT DOES NOT AFFECT THE OPERATION OF ANY OTHER LAW IN THE TERRITORY, NOR DOES IT AUTHORISE THE USE OF THE LAND CONTRARY TO A PROVISION, COVENANT OR CONDITION OF LEASE.

MODIFICATIONS IF APPLICABLE

Y3

No.	AMENDMENT	DATE	APPROVAL
B	Main drain, wall thickness, walkways	29.1.82	S.D.

Revised sheet 2/3

~~QUARUS POOLS A.C.T.~~

~~P.O. BOX 22~~

~~KAMBAH 2902 A.C.T.~~

~~Ph. 88 4648~~

~~MONARO~~

~~SPA POOLS~~

~~193 NAMATJIRA DRIVE~~

~~FISHER A.C.T. 2611~~

~~TEL. (062) 88 4648~~

NORM DUFF

& BROOKS

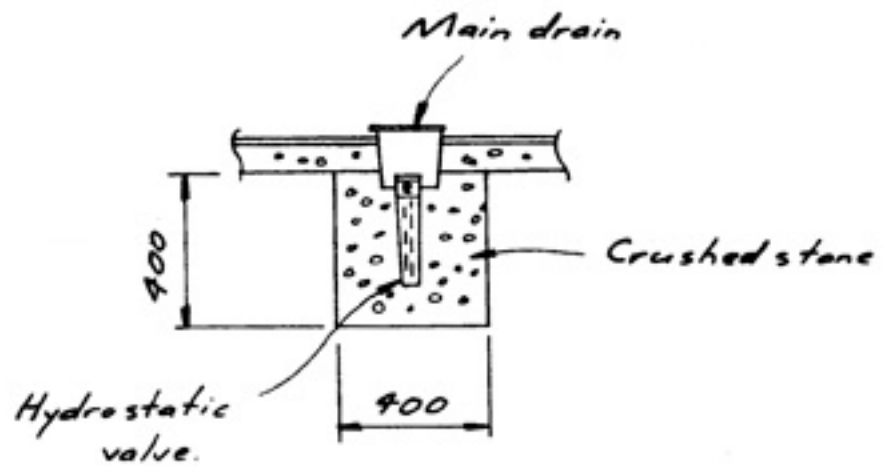
MITCHELL

PH 413343

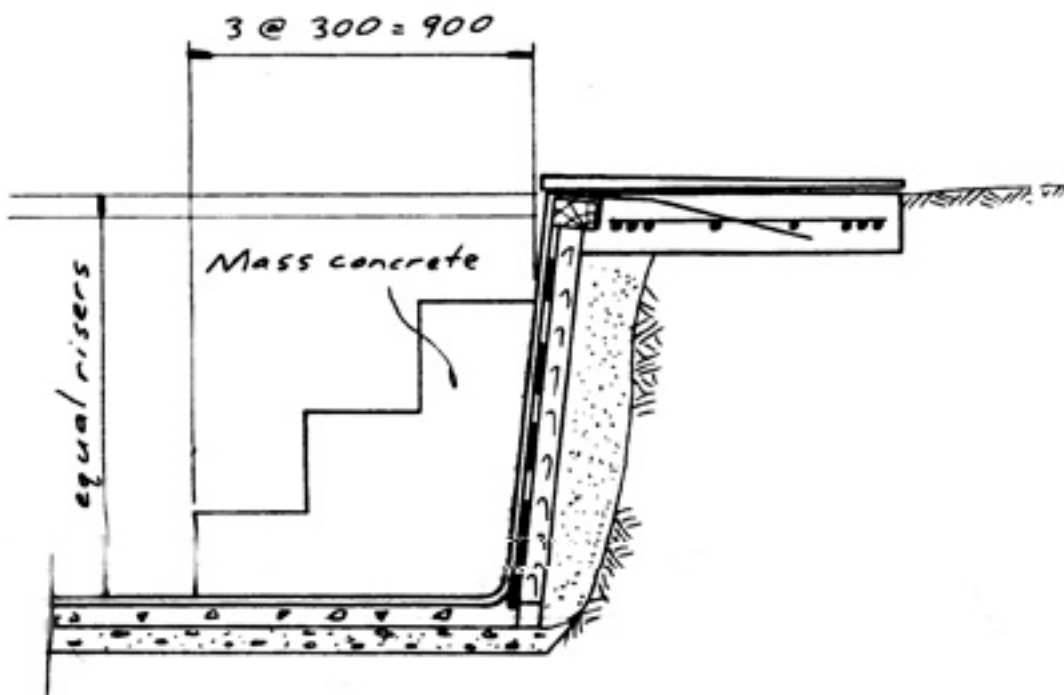
PROPOSED SWIMMING POOL FOR  
 URAMBI CO-OPERATIVE COMMUNITY  
 ADVANCEMENT SOCIETY LTD.  
 CROZIER CIRC. KAMBAH, A.C.T.

DESIGNED AND DRAWN BY

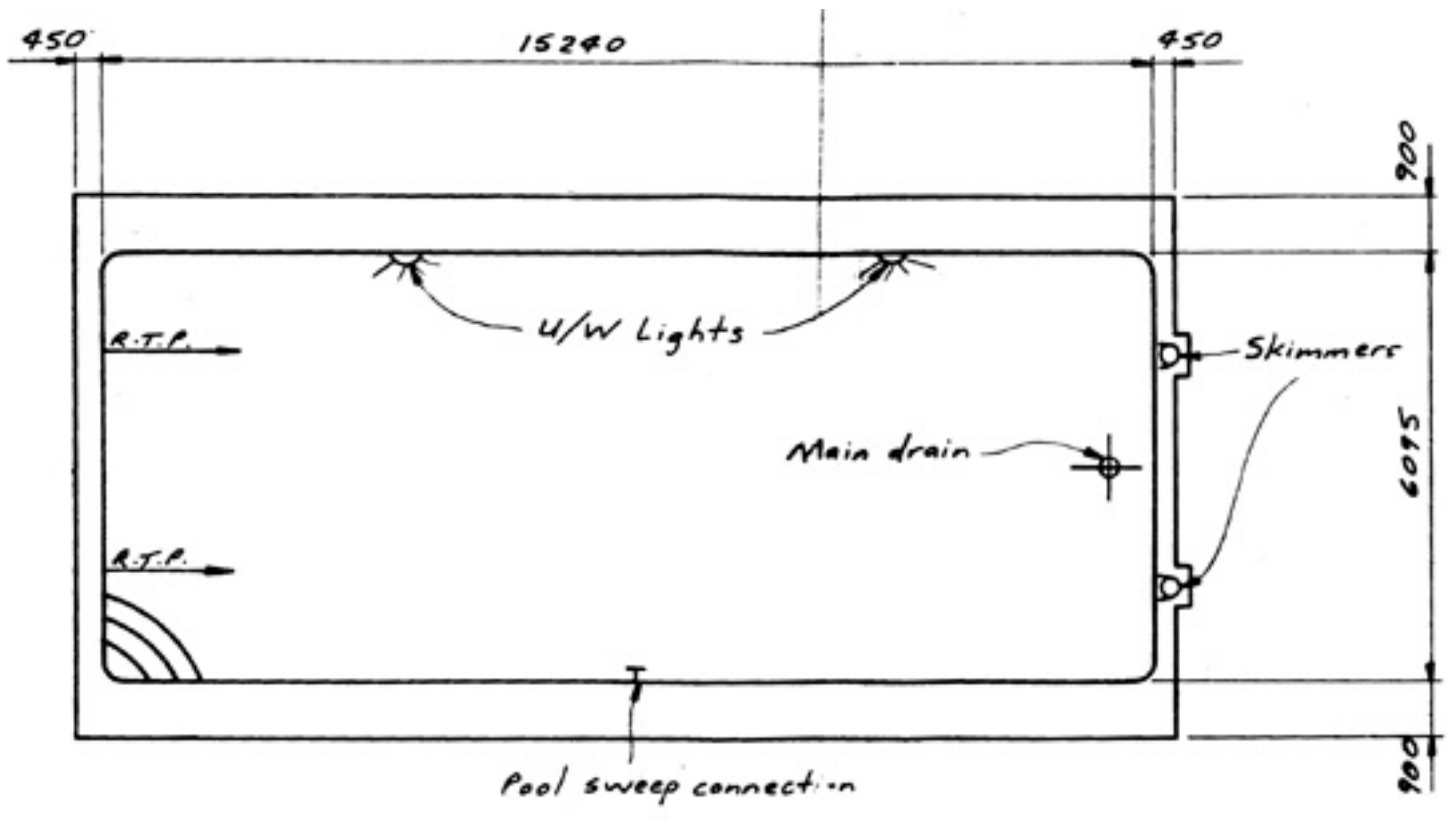
SWIMMING POOL CONSULTANTS

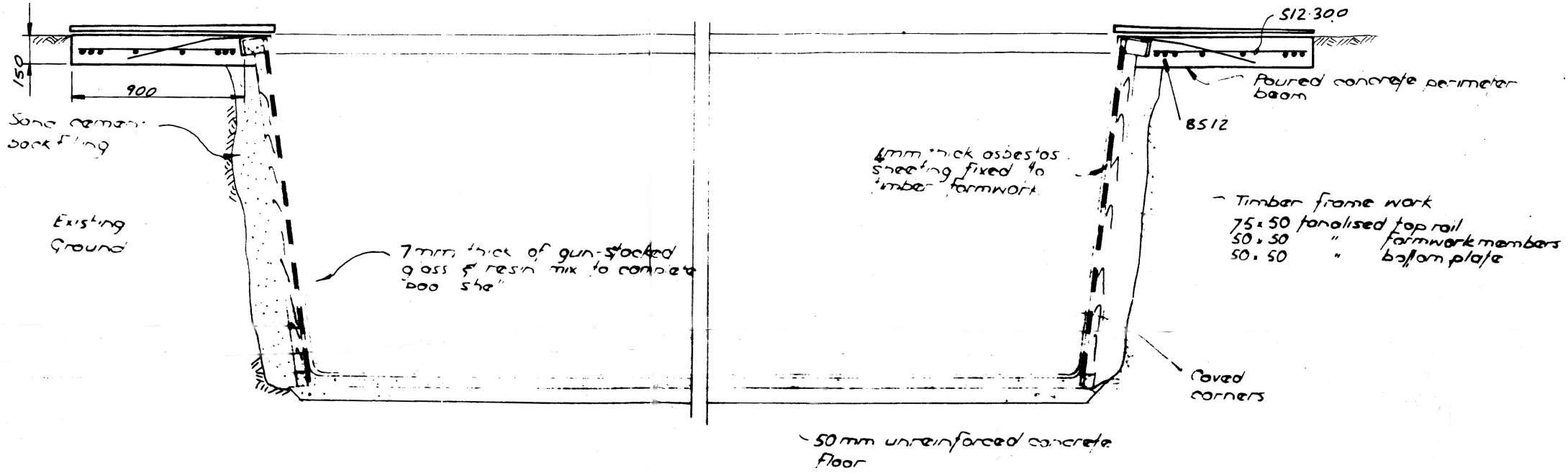


MAIN DRAIN DETAIL



SECTION THRU' STEPS





150  
 900  
 Sand cement  
 back filling

Existing  
 Ground

7mm thick of gun-sprayed  
 glass & resin mix to complete  
 "boo she"

7mm thick asbestos  
 sheeting fixed to  
 timber formwork

S12.300

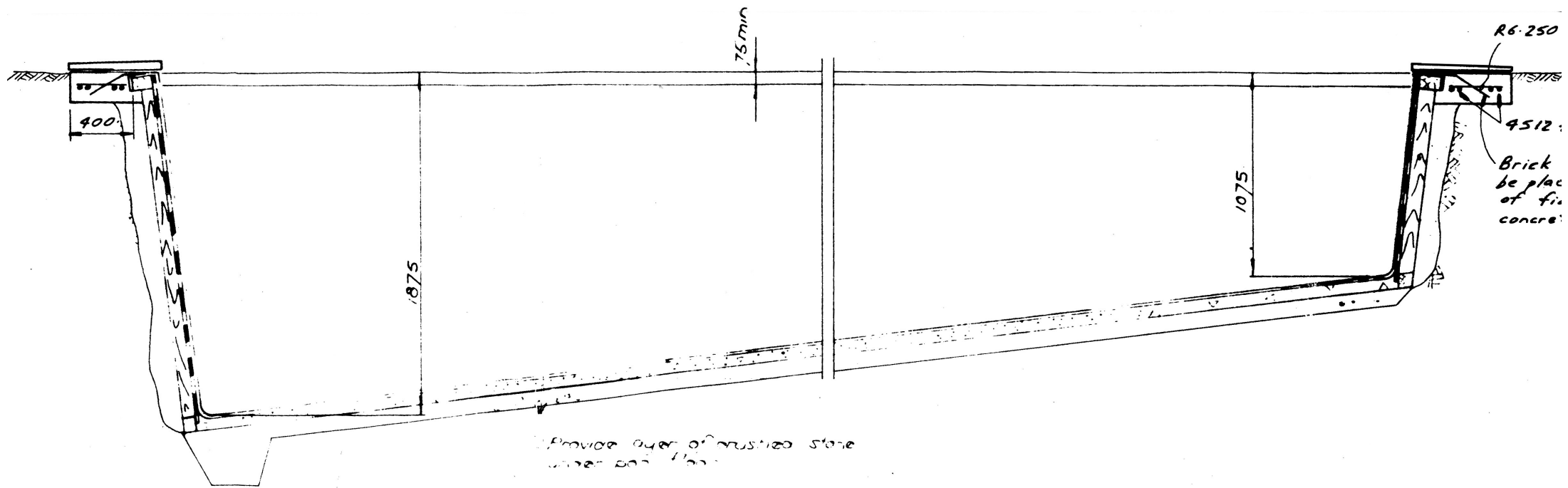
Poured concrete perimeter  
 beam

8512

Timber frame work  
 75 x 50 finished top rail  
 50 x 50 farmwork members  
 50 x 50 bottom plate

Coved  
 corners

50 mm unreinforced concrete  
 floor



R6-250

4512

Brick  
be plac  
of fi  
concre

Provide layer of rustized stone  
under and top

## Letter from Angus Houstone on the Swimming Pool

Opposition to a swimming pool (I am small 'p' pro) appears to summarise in three main areas:

1. Noise and invasion of privacy to houses nearby.
2. Who will maintain and supervise it, and at what cost ?
3. Initial capital cost.

All or most who bought here, particularly those in the early stages, were aware of the pool being a part of the overall concept. Screening with trees, brush fencing could be devised so that noise and invasion of privacy would be minimal.

If "somebody else" was to adequately maintain and supervise, all or most of us would be happy to swim in it, just so long as we were not burdened with twice weekly working bees just to maintain the pool.

A way of getting these jobs done would be to lease the pool as a business proposition to a group of residents as a part time income earning enterprise. This group would be responsible for maintenance, hours of opening, supervision, etc.. They would charge users on a casual use or period of time basis, cover costs and make a profit.

m An agreement could be drawn up which would define an upper level of profitability so that the pool entrepreneurs would not get too rich at other residents' expense. Excess profits could go to reducing levies for all.

The group (or its individual members) would re-tender at appropriate intervals of time - say yearly, then 2 or 3 yearly if the system settled down.

At this stage access should be restricted to Urambi residents, their overnight guests and friends, a limited number per resident or household. I don't think access to non-Urambi people should be contemplated in the early stages.

Residents would contribute to the initial cost on a house pro rata basis. Those who did not wish to could either come in at a later stage or pay when they sold and moved.

Angus Houstone - Unit 72

P.S. If the whole pool thing gets rolled what about a couple of Urambi Sailing Boats - any takers ?

\*\*\*\*\*

### ACCESS BEHIND THE COURTYARD HOUSES

Access to the back of courtyard houses along what used to be the Kambah Pool road is still available to residents, but only when it's absolutely necessary - eg when delivering something that couldn't be carried down from a carpark. If you're using this access, please drive very slowly, as children play along this area.

### BINS

The kids who clean the areas are having problems - esp in Car Park c - because residents are still putting rubbish out in boxes or bags.

### YOGA

Quite a number of people have expressed an interest in a general yoga class (probably for beginners) taking place in Urambi. Last year several residents asked Pamela Brown (Woden Valley School of Yoga) if she would take classes here. For this term, she can only run a daytime course - Thursdays 10-11 am . She will be prepared to hold an evening class for residents & their friends if numbers warrant - i.e. 10 to 15 people. If you're interested in the idea of an evening class, please let Margaret Shann (House 40, 317149) know, and also nominate two possible evenings.



The Proprietors  
Units Plan No. 119  
Urambi Village  
KAMBAH A.C.T 2902

Dear Sirs

23 May 1980

CONSTRUCTION ON THE COMMON PROPERTY

We refer to our conference on 20 May 1980 with Mr. Stephen Shann and Mr. Keith MacIntyre of your committee.

They discussed various aspects of the problem and we undertook to formulate in a letter by way of reply the questions as they emerged and our advice in relation to them. Accordingly these are set out below.

1. Has the body corporate the legal capacity to erect a structure on the common property?

We advise no for the following reasons. Upon registration of the units plan there came into existence by virtue of Section 29 of the Ordinance a body corporate. That is a separate legal entity recognised by law as independent of those who are members of it. Being an artificial creation of the law it has only those legal powers given it by the law, in this case the Unit Titles Ordinance 1970.

By Section 34 the committee may exercise all the powers imposed or conferred on the body corporate. One must then look to the individual sections to ascertain what powers the body corporate has.

By Section 36 (1)(a) the corporation is responsible for the "management and administration" of the common property. By Section 36 (1)(b) the corporation must keep the common property in a state of good repair and properly maintained. By Section 44 (1) the corporation may purchase etc. personal property for any use connexion with the use and enjoyment of the common property. Section 26 provides that the body corporate shall hold the common property in trust for its members "and shall afford those persons opportunity for the reasonable use and enjoyment of the common property".

.2.

None of these sections gives the body corporate power to construct new buildings or works. "Good repair and maintenance" does not extend to erecting improvements (although an apparent exception may be that which is properly preventive maintenance e.g. a guard rail). "Personal property" cannot include labour or a building contract.

2. What can be done to confer the necessary power?

In our opinion what is required is nothing short of an alteration to the Ordinance. This would take many years to achieve if past performance is any guide.

An alteration to the Articles would have no force or effect (see Section 80 (3) (b)).

An alteration to the units plan can only be made under Section 100. This requires as a pre-condition that "a building or other improvement on the parcel is damaged or destroyed" and allows for a scheme which makes provision for its reinstatement. Clearly this section is of no assistance.

An alteration to the covenants in the title to the common property is a last possibility. At the moment we cannot see how this would be achieved but even if it were the acceptance by the body corporate of an obligation under the title to erect a building does not of itself give the body corporate the necessary power. It must have that power in the first place in order to accept the obligation.

3. By what right can anyone else (who has the necessary legal capacity) enter and occupy the common property for the purpose of erecting and using a building?

A. Transfer or subletting

Section 26 provides that the lease of the common property is not capable of being transferred assigned or sublet. It follows that none of these devices can be used.

B. Easement

Section 44 (2) gives the body corporate power by a unanimous resolution to grant an easement over any portion of the common property and also to release such an easement. The easement must be on specified terms as to grants and release.

- (3) If the resolution is unanimous there is no person left to object to what is being done.

Your committee may conclude from this that the answer is simply to proceed as though the body corporate has the power remembering that no commitment can be made until there is unanimity.

- 5. Can a unanimous resolution be passed without having everyone present in person at the meeting called for the purpose?

Yes.

Section 9 (1) (b) refers to a resolution at a duly convened general meeting being unanimously passed by all members of the corporation.

Section 74 provides for absentee votes. A quorum is still necessary, that is not less than half the number of units. If there is no quorum at the first meeting Section 65 (2) provides for an adjourned meeting one week later.

However to have absentee votes means that a date for the meeting must first be fixed and than unanimity must be achieved within that fixed time frame, that is before the meeting is held.

A preferable choice is to have proxies appointed for each unit to vote in favour of the resolution. As long as one unit declines there can be no unanimity, however, when all proxies are held the meeting becomes a formality.

- 6. How relevant is it that the pool was shown on the units plan?

We believe of no legal significance. It may be thought to be morally persuasive by some in casting their votes to approve the construction of it.

- 7. What is necessary to borrow funds?

This is not possible.

Section 42 provides for the body corporate to borrow funds "for the purpose of performing its duties or functions or exercising its powers".

As discussed above the body corporate itself has not power to build on the common property. It is more likely that a financier would explore the question of whether the body corporate has power than it is that a swimming pool contractor would do so.

Consider a unanimous resolution to grant an easement to all members of the body corporate and their successors in title to use a designated area of the common property for the purpose e.g. of a swimming pool on condition that there is no capital cost to the body corporate or obligation on it to construct any improvements and further on condition that on completion of construction the easement be released freed from any claim by those previously entitled to the easement such that the improvements would then pass to the body corporate.

If the grant is to all members rather than designated ones the body corporate cannot be said to be in breach of section 26 (1) of the Ordinance. There can be no doubt that each of the members would have the legal capacity to enter a building agreement. Plans would have to be submitted under the Building Ordinance and an individual would have to be nominated as the person entitled to take out a building permit.

In our opinion this scheme would be effective although it is clearly a device to achieve indirectly that which cannot be achieved directly.

C. Special priveleges

Again by a unanimous resolution under Section 46 the body corporate may grant to a member and his successors in title any special privilege in respect of the enjoyment of a part of the common property. The grant may be terminated on a special resolution.

There seems to us to be only some technical differences between this special privilege and an easement. In neither case does an owner acquire a legal title equivalent to a unit subsidiary. This may be a relevant question in financing. It follows that a similar device could be used as that outlined above in relation to an easement.

- 4. What are the alternatives to using this type of device?

Your committee may consider the following factors:

- (1) It appears that it is possible to achieve the object although indirectly.
- (2) To achieve the object a unanimous resolution is required.



We imagine the rules would cover such things as:

- (1) Cleanliness
- (2) Right of access (for proprietors bear in mind Section 26; for guests there may need to be limits both as to numbers and frequency)
- (3) Times of use
- (4) Noise
- (5) Consumption of alcohol
- (6) Dress

We envisage that the Building Controller would require a safety fence. In turn you may wish to upgrade this to a security fence with a self-locking gate and a key for each proprietor.

10. What if the scheme is to proceed?

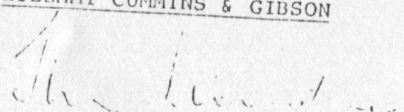
- A. The financing will have to be thought through.
- B. We suggest that the terms of the motion in the proxy will have to be very carefully drawn. You will need to ensure that on the one vote all matters requiring unanimity are covered.
- C. The manner of presentation of the proxy and the personell to do the necessary jobs will have to be decided.
- D. The delay between obtaining the first proxy and the last will have to be kept to an absolute minimum to avoid having too many changes in proprietorship or mortgagees. Any change will mean having to obtain fresh proxies.

Because of the undoubted interest of your managing agents, we have taken the liberty of forwarding a copy of this letter to them.

As this completes the action required of us to date, we enclose a memorandum of our costs.

If we can help you further, we would be pleased to do so.

Yours faithfully  
MACPHILLAMY CUMMINS & GIBSON  
per



T.M. Johnstone

8. Can a scheme be devised whereby those reluctant to pay raise a charge on their unit to be repaid for example when their unit is sold?

Section 38 enables the corporation to determine contributions to discharge expenditure reasonably expects to incur "by reason of the performance of the duties and functions and the exercise of the powers imposed or conferred on it" by the Ordinance.

Since the construction of a swimming pool is not in the exercise of its powers the body corporate cannot acquire the legal right to recover contributions. Owners can of course gift the money to the body corporate. A promise to do so which is not made by deed or is not supported by consideration cannot be enforced. At the time a proxy is given it would therefore be necessary to obtain either the payment or an executed deed making a commitment to payment.

We understand that seventy-two members each paying \$300.00 making a total of \$21,600.00 would provide an adequate sum for the construction of the pool. It follows that if only fifty made an immediate payment of \$432.00 each the cash flow would be the same and future payments would then fall into general funds.

There could be problems where an owner offers to charge his unit with a future payment if he has already mortgaged his unit. Mortgages generally prevent the creation of any further charge without the mortgagee's consent. If consents from all mortgagees of a unit are obtained the cost of documenting the charge and registering it on the title to be produced by the first mortgagee would have to be allowed for. We suggest these costs would be out of proportion to the sum to be secured. It could be left as unsecured with the risk of the money not being recovered. It would be possible for the promise to include an automatic increase of 10% per annum to cover holding charges.

The motion may have to cover the situation of a proprietor agreeing to the unanimous resolution and taking no action about paying or promising to pay. The motion could be worded for instance to lapse say six months after passing if by that time a certain figure has not been received by the body corporate.

9. If a pool is constructed how can the rules to run it be best established?

The Articles would be the best means because they bind both proprietors and occupiers (see Section 79 (2) of the Ordinance).