



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	10-17
Applicant:	Marius Archer
Assessment Manager:	Stephen Henry – Pool safety inspector
Concurrence Agency: (if applicable)	N/A
Site Address:	35 Conebush Circuit, Ormeau and described as Lot 424 on RP 880731 – the subject site

Appeal

Appeal under section 532(1)(a)(i) of the Sustainable Planning Act 2009 (SPA) against a Pool Safety Nonconformity Notice issued by a pool safety inspector under section 246AB of the *Building Act 1975* (BA).

Date and time of hearing:	19 April 2017 - 2:00PM
Place of hearing:	The subject site
Committee:	Geoffrey Mitchell– Chair Joanna Lee - Member
Present:	Tracey Jackson – Representative of the Applicant Stephen Henry – Assessment Manager and Pool Safety Inspector

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the pool safety inspector, Stephen Henry, to issue the non-conformity notice dated 20/02/17

Background

The Applicant engaged the Assessment Manager to obtain a Form 23 Pool Safety Compliance Certificate in relation to an existing swimming pool on the site.

On 20 February 2017, the Assessment Manager issued a Form 26 – pool safety Nonconformity Notice (Notice) about the swimming pool fence.

The Notice contained five (5) items the Assessment Manager determined did not comply with the swimming pool standard, namely;

- A screen door with mesh wider than 13mm was within the clear area required outside the pool fence;
- There were horizontal climbable objects on the outside of the pool fence;

- The CPR sign had faded;
- There was a climbable object on the outside of the pool barrier namely a water tank on a stand;
- There were plants and tree sections that are climbable objects outside of the pool barrier.

On 16 March 2017, the Applicant lodged a Notice of appeal (Form 10) with the Committees Registrar. The appeal was against certain parts of the Notice principally on the grounds that the fence has received two previous complying form 23 certificates from other pool safety inspectors who had determined the items in dispute complied.

The grounds of appeal were primarily the water tank stand and the trees and plants on the adjoining property.

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 Committees Registrar on 16 March 2017.
2. Form 26 - Pool safety nonconformity notice given by the pool safety inspector on 20 February 2017.
3. Verbal submissions from the Applicant's representative at the hearing on 19 April 2017.
4. Verbal submissions from the pool safety inspector at the hearing on 19 April 2017.
5. The *Sustainable Planning Act 2009* (SPA).
6. The *Building Act 1975* (BA).
7. The Building Regulation 2006 (BR)
8. The Queensland Development Code MP 3.4 – Swimming pool barriers. (QDC)
9. The Australian Standard AS 1926.1 (2007) – Swimming pool safety – Part 1 Safety barriers for swimming pools.

Findings of Fact

The Committee makes the following findings of fact:

1. The Applicant seeks to have the Notice altered;
2. The Assessment Manager holds Queensland Building and Construction Commission (QBCC) Pool Safety Licence No 101621 and is properly authorised to give a Form 26 Nonconformity Notice;
3. The subject site is regulated land as defined by s231A of the BA;
4. The swimming pool subject to the appeal is a regulated pool as defined by s231B of the BA and is a non-shared pool as defined in s231A of the BA;
5. The existing swimming pool barrier does not comply with AS1926.1- 2007, AS1926.2-2007 and the Queensland Development Code MP3.4 (QDC) to the following extent:
 - There is a water tank on a stand that presents a horizontal climbable edge in excess of 10mm within the non-climbable zone on the outside of the pool fence; and
 - There is vegetation on the outside of the fence that provides climbable objects and the subject fence section is less than 1800mm high to allow application of Figure 10 of QDC MP 3.4.

6. Three items on the Notice had been rectified to the satisfaction of the Committee at the time of the hearing namely:
- A perspex shield has been applied to the outer face of the screen door to shield the climbable mesh to address Item 1; and
 - There has been fresh timber fillets and fence panels applied to the rear of the fence to address Item 2; and
 - The CPR sign has been replaced to address Item 3.

Reasons for the Decision

The Committee is satisfied that the items identified in the Nonconformity Notice were all items that do not comply with the swimming pool standards and the Assessment Manager appropriately issued a Form 26 Nonconformity Notice.

Geoffrey Mitchell
Building and Development Committee Chair
Date: 11 May 2017

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 Housing and Public Works
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