



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

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| Appeal Number: | 10 - 11 |
| Applicant: | Waterways Body Corporate |
| Assessment Manager: | John Walker |
| Concurrence Agency: (if applicable) | N/A |
| Site Address: | 40 Ferny Ave, Surfers Paradise and described as Lot 2 on WD 811701 – the subject site |

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 John Walker under section 246AB of the *Building Act 1975* (BA).

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| Date of hearing: | 20 April 2011 |
| Place of hearing: | The subject site |
| Committee: | Geoff Mitchell – Chairperson |
| Present: | George Rouvas – Applicant's representative Angela Osta – Applicant's representative John Walker – Assessment Manager |

Decision:

The Committee, in accordance with section 564 of the SPA **confirms** the decision of the pool safety inspector to issue the nonconformity notice dated 17 January 2011. The Committee additionally **amends** the nonconformity notice by adding an additional option to achieve compliance in section 5 of the notice to read:

“or by constructing a new section of fencing/gate within the existing pool enclosure to isolate the non-complying gate and possibly include the existing complying adjacent access point from the podium”.

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 17 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 premises.

The nonconformity notice contained one (1) item that the pool safety inspector determined did not comply with the swimming pool standard namely:

- A pool safety gate must open away from the pool enclosure.

The applicant has appealed the nonconformity notice on several grounds as detailed in the correspondence forming part of the application for appeal. The appellant considers the requirement to provide complying protection as described in the notice impractical and will not resolve the risk of children entering the pool enclosure unsupervised.

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 14 February 2011.
2. Form 26 – Pool safety nonconformity notice given by the pool safety inspector on 17 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 20 April 2011.
5. The SPA.
6. The BA.
7. The Building Regulation 2006 (BR).
8. The Queensland Development Code MP 3.4 – Swimming pool barriers.
9. The Building Code of Australia 2010 (BCA). Volume 1, Class 2 -9 Buildings (BCA).
10. The Australian Standard AS 1926.1 – 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.

Findings of Fact

The Committee makes the following findings of fact:

- The applicant seeks to have the 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 subject swimming pool is located at the side of the unit complex and is accessible from three points, namely complying front access gate, complying access gate from the podium level and a non complying access gate from the rear 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:
 - The rear gate leading to the waterway is non-compliant as it swings in the direction of the pool enclosure in contravention of the pool fencing standard.

- Clause D2.15 of the BCA requires that any doorway must not incorporate a step or ramp at any point closer to the doorway than the width of the door leaf.

Reasons for the Decision

- The Committee is of the opinion that the current situation with the gate swinging towards the pool poses an unacceptable risk to a small child entering the pool enclosure.
- The Committee is of the opinion that the layout of the entertainment area adjacent to the canal boundary is such that it does not afford sufficient direct supervision of the access area to the swimming pool.
- The principle behind swinging gates away from the pool is that when a child approaches a gate the first reaction is to push which in effect closes the gate should it be not seated in its latch correctly.
- Whilst clause D2.15 of the BCA is not directly applicable to the subject gate, the current location of the pool gate would not comply with the BCA if the subject stairway was a “required” path of travel.
- The Committee considers that merely swinging the gate in a complying direction would pose a significant risk of injury to persons by falling when operating the gate from the stairway, given that there is no threshold.
- The Committee is of the opinion that whilst the option presented by the pool safety inspector in the nonconformity notice would achieve a level of compliance, is not the most desired option to remedy the non-compliance. A more economical and easier solution is available by isolating the subject gate.

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:

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