



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 09 - 12
Applicant: Bandini Builders
Assessment Manager: Total Building Consult
Site Address: 4 Tilia Place, Mudgeeraba and described as Lot 4 on SP 202045 -- the subject site

Appeal

Appeal under section 532(1) of the *Sustainable Planning Act 2009* (SPA) against the issuing of a Non-compliance Notice. The Non-compliance Notice relates to an indoor swimming pool within the gym of a class 1a building.

Date of hearing: 15 March 2012
Place of hearing: The subject site
Committee: Greg Rust – Chair
Present: Mario Banindi – Applicant (Banindi Builders)
Steve Morley – Assessment Manager (Total Building Consult)
Jiweon Oh – Property owner

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA **confirms** the decision of the Assessment Manager to issue a Non-compliance Notice stating that the indoor pool has not been provided with a compliant barrier constructed and built to the pool safety standard Section 234 of the *Building Act 1975*.

Background

Final inspection of the gym has resulted in the Assessment Manager issuing a Non-compliance Notice for the indoor pool located within the building. "The indoor pool/spa does not comply in regards to figure 30 of the Queensland Development Code (QDC) Mandatory Part (MP) 3.4 i.e. a complying door from the pool area". The gym for the purpose of the National Construction Code (NCC) is a class 1a building and has been built as part of the house.

The Non-compliance Notice is dated 16 February 2012. The appeal was received by Registrar on 28 February 2012 and was therefore made within the prescribed timeframe.

Of relevance, an outdoor pool constructed immediately adjoining the gym which has also failed an inspection by a different Assessment Manager, as a separate fence between the outdoor pool and gym had not been provided. The Chair notes that a temporary fence was in position between the gym and outdoor pool at the hearing and no further comment is required in that regard.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal
2. Non-Compliance Notice dated 16 February 2012.
3. Oral submissions by the applicant, the Assessment Manager and property owner at the hearing.
4. Written submission by the applicant, including photos.
5. A telephone discussion between the Chair and a representative of the Pool Safety Council.
6. *Building Act 1975* (BA) and associated regulations.
7. *Sustainable Planning Act 2009* (SPA)
8. National Construction Code (NCC)
9. Queensland Development Code Mandatory Part 3.4 (QDC)
10. Australian Standard AS1926.1.2 2007

Findings of Fact

The Committee makes the following findings of fact:

The gym (class 1a) building which contains an indoor swimming pool has failed the final inspection as it does not have a compliant barrier built in accordance with the requirements of the pool safety standard. The outdoor pool (class 10b) has also failed final inspection as it does not have a compliant barrier.

The gym has a barrier system consisting of a glass fence and gate within the building protecting access from a set of stairs rising from a lower level basement and a set of bi-fold doors located in the external wall of the gym. The total effect is that the indoor and outdoor pools are within a single enclosure.

Compliance notices

Both the indoor and outdoor pools have failed their respective final inspections. Section 33 of the Building Regulation 2006 provides that a Non-compliance Notice be given to the builder of assessable development when the inspector is not satisfied about the completion of a stage of work.

The property

The subject Lot is relatively large as is the recently constructed home and outdoor pool which is common place in the vicinity.

Reasons for the Decision

The pool safety standard set outs the requirements for swimming pool safety for both indoor and outdoor pools. The QDC MP3.4 makes modifications to the Australian Standard (AS 1926.1.2) not only for fences but also provides additional requirements for pools.

The first requirement is that indoor pools must have a barrier to separate the indoor pool from the remainder of the house. The second requirement for outdoor pools, is that any class of building including class 1a is allowed within the enclosure providing it has at least one side permanently open. Examples mentioned include a patio, pergola, verandah, deck, balcony or the like. The final requirement is that combined pools mentioned within the Standard are not permitted by the code and that provision is deleted from the Australian Standard.

The classification of a building or part of a building is determined by the purpose for which it is designed, constructed or adapted to be used. The classification is determined by the approval authority, in this case the certifier. From questions raised at the hearing the gym has been correctly classified as a Class 1a building and the outdoor pool as a Class 10b.

The central question for the Committee is the appropriateness of the barrier for the indoor pool as the purpose of the QDC is to safeguard young children from drowning or injury in regulated pools (regulated pools are defined by the BA). The indoor pool / spa does not comply with the requirements of the pool safety standard.

Greg Rust
Chair
Building and Development Committee
Date: 24 May 2012

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 Local Government and Planning
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