



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-023
Appellant:	Abby Henderson and Marek Petras
Respondent:	Gold Coast City Council
Site Address:	15 Tashey Court, Bundall Qld 4217 and described as Lot 7 on SP 250380 – the subject site

Appeal

Appeal under section 250 of the *Building Act 1975 (BA)* – the giving of an enforcement notice under section 248(1) of the BA (also taken to be an enforcement notice under the section 168 of the Planning Act 2016 (**PA**)).

Date and time of hearing:	8 September 2025, 1pm
Place of hearing:	The subject site
Tribunal:	Anne-Maree Ireland—Chair Peter Buckland—Member
Present:	Abby Henderson and Marek Petras—Appellant Bobby Matijevic, Mark Sullivan, Cristiane Dias—Respondent

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(a) of the PA, confirms the decision of the Respondent to give an enforcement notice.

The Appellant's pool does not comply with MP 3.4 – Swimming Pool Barriers of the Queensland Development Code, the pool safety standard for the pool, as required by section 232(1)(a) of the BA. Accordingly, the giving of an enforcement notice by the Respondent under section 248(1)(b) of the BA is confirmed as the structure (the swimming pool) is dangerous as it does not comply with the pool safety standard.

Background

1. The Appellant purchased the property with a Pool Safety Certificate dated 23 October 2023.
2. An inspection by a compliance officer of the Respondent occurred on 11 July 2025. The Respondent was not satisfied of compliance with the pool safety standard.

3. The Respondent issued an enforcement notice dated 16 July 2025. In summary the enforcement notice required the Appellant to construct a compliant barrier around the pool and provide the Respondent with approval and certification in respect of the barrier.
4. The position of the Appellant is that a barrier is not required because the part of the building that has the external sliding doors ('lower ground space') only services the pool. In other words, there is no access from the house to the lower ground space. Access to the pool and the lower ground space is only through the external sides of the dwelling.
5. The Appellant maintains that the lower ground space is uninhabitable and used for storage only and should therefore be classified as a Class 10a building rather than a Class 1 building. On that basis it should not be subject to the same requirements as a Class 1 or habitable building.
6. The Appellant also considers that the intention of the regulation of pools is safety and as the lower ground space is used for storage, the Appellant says it does not undermine safety objectives.
7. The Tribunal conducted a site inspection at the same time of the hearing on 8 September 2025 and observed the lower ground space and the pool.

Jurisdiction

8. The Tribunal has jurisdiction to decide this appeal pursuant to section 229 and schedule 1 of the PA, which provides that a person can appeal to the Planning and Environment Court or the Tribunal a decision to give an enforcement notice (section (2)(h)) in relation to paragraph (2)(g):

a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission

9. The enforcement notice was given under section 248(1) of the BA, and per section 248(5) is taken to be an enforcement notice under the section 168 of the PA.
10. As per section 250(1) of the BA, a person who is given an enforcement notice under section 248 of the BA may appeal to the Tribunal as if the appeal were an appeal under the PA.
11. Per Schedule 1, table 1, item 6 of the PA the person given the enforcement notice is the Appellant, and the Respondent is the enforcement authority, Gold Coast City Council. Table 1 applies if section 1(2)(a) to (l) of Schedule 1 of the PA applies, and this matter falls within section 1(2)(g) and (h)(i).

Decision framework

12. Pursuant to section 253(3) of the PA, the Respondent must establish that the appeal should be dismissed.
13. The Tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA).
14. The Tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).

15. Pursuant to section 250 of the PA, the Tribunal may make directions it considers appropriate. Following the hearing, the Tribunal made directions allowing the parties to make submissions. Both the Appellant and Respondent provided submissions.
16. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

17. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals registrar on 20 July 2025.
 - (b) Appellant's submissions dated 11 September 2025 (received on 10 September 2025).
 - (c) Respondent's submissions dated 12 September 2025.

Findings of fact

18. The Tribunal makes the following findings of fact:
 - (a) The lower ground space was observed to have sliding glass doors to the pool area with no barrier between the doors and the pool. No other access (i.e. no other access from the dwelling) exists to the lower ground space but for these doors. At the date of the inspection, the lower ground space comprises three rooms, one of which is a bathroom with a sink, shower and toilet and another which contained a desk.
 - (b) The lower ground space provides direct access through external sliding doors to the outdoor swimming pool.
 - (c) The lower ground space can only be accessed through the pool area (it cannot be accessed internally from the dwelling).
 - (d) The pool area can only be accessed from the sides of the house which have compliant gates.
 - (e) The lower ground space is not a patio, pergola, verandah, deck, balcony or the like.
 - (f) The lower ground space does not have one side permanently open.

Reasons for the decision

19. The Respondent's enforcement notice states that the enforcement notice was issued under section 248(1) of the BA, and within the notice the Respondent states that it reasonably believes the regulated pool is dangerous as it does not comply with section 232(1)(a) of the BA.
20. On this basis, the Tribunal assumes that Council issued the enforcement notice under section 248(1)(b) of the BA requiring that it reasonably believed that a building, structure or building work is dangerous.
21. The Respondent in its submissions states that the pool is a "structure/buildings for the purposes" of the BA. While no issue was raised with the classification of the pool for the purposes of section 248(1) of the BA, the Tribunal considers that having regard to the definitions of 'swimming pool' and 'structure' in Schedule 2 of the BA, the pool is a structure for the purposes of the BA. The Tribunal notes the Council could have issued the enforcement notice under section 248(2) of the BA.

22. Section 232(1)(a) of the BA provides that an owner of a regulated pool must ensure the pool complies with the pool safety standard for the pool. The owner of the property is the Appellant and the owner of the regulated pool.
23. There is no dispute that the pool on the subject site is a regulated pool, and the relevant pool safety standard is QDC Part MP 3.4.
24. As stated in MP 3.4, the purpose of MP 3.4 is to safeguard young children from drowning or injury in regulated pools.
25. MP 3.4 provides the following performance requirement P1 (**PR**) and acceptable solution A1 (**AS**):
- P1** *Swimming pools must have a barrier which:*
- (a) is continuous for the full extent of the hazard; and*
- (b) is of a strength and rigidity to withstand the foreseeable impact of people; and*
- (c) restricts the access of young children to the pool and the immediate pool surrounds, including access from class 1, 2 or 3 buildings or class 4 parts of buildings located within or outside the pool area; and*
- (d) has any gates fitted with latching devices not readily operated by young children, and constructed to automatically close and latch; and*
- (e) except for indoor swimming pools, does not incorporate any doors providing access to or from a building.*
- A1** *Swimming pools must have a barrier complying with the Standard, subject to the:*
- (a) modifications to the Standard specified in schedule 1; and*
- (b) tolerance limits specified in a guideline for swimming pool barriers made under section 258 of the Building Act 1975.*
26. As stated in MP 3.4, compliance can be achieved only by complying with the AS for the PR and/or having an alternative solution that complies with, or is shown to be at least equivalent to, the PR, or a combination of an AS and an alternative solution.
27. Therefore, the Tribunal must consider whether compliance is achieved in respect of the AS and/or an alternative solution that complies with, or is shown to be at least equivalent to the PR.
28. No issue was raised in respect of A1(b) presumably because the barrier is said in the first instance to not comply with the A1(a).
29. The Standard referred to in A1(a) is stated in the QPC Part MP 3.4 to be the referenced edition of Australian Standard AS 1926.1 and AS 1926.2, which is the 2007 edition.
30. Section 4.2 of AS 1926.2 provides:
- 4.2 Outdoor pools**
- Barriers for outdoor pools shall not permit direct access to the pool area from the building or adjoining properties. Where the wall of a building forms part of the barrier, a child-resistant window that complies with AS 1926.1, is permitted.*
31. The modifications to the Standard are provided for in Schedule 1 of MP 3.4 and relevantly include in respect of 4.2 and figure 2.1 (Figures 1 to 13 apply instead of figure 2.1):

27. The term “class 1, 2 or 3 building or class 4 part of a building” applies instead of the term “building”.

28. Despite anything in this part to the contrary, a barrier may permit direct access to the pool area from a patio, pergola, verandah, deck, balcony or the like (of any class) with at least one permanently open side provided that the barrier otherwise complies with this part (see figures, 27, 28 and 29).

29. In addition to the requirements of clause 4.2 and figure 2.1, the access of young children to the pool and the immediate pool surrounds from a class 1, 2 or 3 building or class 4 part of a building located within the pool area must be restricted by a barrier complying with this part, unless the building is a patio, pergola, verandah, deck, balcony or the like (of any class) with at least one permanently open side and access is via a compliant barrier (see figure 24 and 25).

30. In addition to the requirements of clause 4.2 and figure 2.1, if a building or structure of any class allows access by young children from outside the pool area to inside the pool area, a barrier complying with this part must be provided to restrict the access (see figure 26).

32. Therefore, for section 4.2 ‘building’ is modified to relate to a building of a class 1-4 but also the modification provides an additional requirement in 30 for all classes of building.
33. There is a dispute in this appeal as to whether the lower ground space is a class 1 or class 10a building.
34. If the lower ground space is a class 1 building, it does not comply with 4.2 as modified as it permits direct access to the pool area and is not a patio, pergola, verandah, deck or the like and in any event does not have one side permanently open and therefore does not comply with figure 24.
35. If the lower ground space is a class 10a building, it may comply with the figure 25 which states a class 5-10 building may be within the pool area. The Tribunal considers that the lower ground space is not a class 10a building. While it might be said to be used for storage only, it was clear on the date of the Tribunal’s inspection that it was a habitable area in which a person could sleep or study/work. Accordingly, the Tribunal considers that figure 25 does not apply on the basis the lower ground space is not a class 10a building, nor is it a patio, pergola, verandah, deck, balcony or the like (of any class) with at least one permanently open side.
36. As the lower ground space is not compliant with the pool safety standard as set out above, the Tribunal considers the Respondent has discharged its onus of establishing the appeal should be dismissed.
37. Accordingly, the Tribunal confirms the decision of the Respondent to give an enforcement notice.

Anne-Maree Ireland
Development Tribunal Chair

Date: 24 October 2025

Appeal rights

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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