



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-038
Appellant:	Liam Kennedy
Respondent/ Pool safety inspector:	Cameron Coward
Site address:	32 Yardley Avenue, Ashgrove Qld 4060 and Lots 13 and 14 on RP20498—the subject site

Appeal

Appeal under schedule 1 of the Planning Act 2016 (PA) against a Form 26 Pool safety nonconformity notice issued by Cameron Coward, Pool safety inspector, following an inspection on 15 June 2026 in respect of the regulated swimming pool at 32 Yardley Avenue, Ashgrove Qld 4060, described in the Form 10 as Lots 13 and 14 on RP20498. The Form 10 records the appeal as an “Appeal against a pool safety nonconformity notice” and requests that the nonconformity notice be set aside.

The appeal concerns two principal matters: (1) whether a ribbed polyethylene water tank located adjacent to the pool barrier is a climbable object that compromises the required non-climbable zone; and (2) whether the balcony and associated balustrade/barrier arrangement adjacent to the swimming pool satisfies Queensland Development Code MP 3.4 – Swimming Pool Barriers (QDC MP 3.4), including the requirements illustrated by Figure 23.

Date and time of hearing:	7 August 2026 at 2.00 pm
Place of hearing:	Online hearing (Microsoft Teams)
Tribunal:	Mark Anderson—Chair Kylie Rojahn—Member
Present:	Liam Kennedy—Appellant / Property owner Cameron Coward—Respondent / Pool safety inspector

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(b) of the Planning Act 2016 (PA), changes the decision appealed against so that the two matters under appeal are determined separately as follows:

- Matter 1—Item 2, polyethylene water tank: The appeal in relation to Item 2 is dismissed. The Tribunal confirms the nonconformity finding concerning the water tank adjoining the pool fence.

- Matter 2—Item 3, latticework deck/balcony barrier: The appeal in relation to Item 3 is upheld. The Tribunal sets aside the nonconformity finding that the latticework barrier must be increased to 2,400mm on the basis stated in the Form 26. This does not dispense with the continuing requirement for the completed pool barrier system to satisfy QDC MP 3.4, including any applicable NCZ requirements.

Background

1. The appeal relates to a Form 26 Pool Safety Nonconformity Notice concerning the swimming pool barrier at 32 Yardley Avenue, Ashgrove. The appellant is Liam Kennedy, the property owner. The respondent is Cameron Coward, Pool safety inspector. The inspection occurred on 15 June 2026 and the Form 26 was issued in June 2026. The Form 10 records the decision notice as dated 15 June 2026 and received on 16 June 2026. The Tribunal hearing was conducted online on 7 August 2026 at 2.00 pm.
2. The relevant technical framework is QDC MP 3.4, which applies to regulated pools and has the purpose of safeguarding young children from drowning or injury. QDC MP 3.4 adopts AS 1926.1:2007 and AS 1926.2:2007 subject to the modifications in QDC MP 3.4.

Scope of the appeal

3. The Form 26 identified three nonconforming items. Item 1 concerned a gate that did not self-close. The appellant accepted Item 1 and it was not pursued as a ground of appeal. The appeal is therefore confined to Item 2, concerning the water tank adjoining the pool fence, and Item 3, concerning the latticework barrier associated with the deck/balcony.

Appellant's submissions

4. For Item 2, the appellant disputed that the ribbed water tank had been established to be a climbable object. He submitted that no published QBCC determination declaring water tanks to be climbable had been produced; that the fence/object junction should be assessed under clause 2.3.1 and Schedule 1 modifications 9 and 10; and that the photographs did not establish that the ribs failed any relevant angle or foothold test. The appellant also relied on the fact that a pool safety certificate had been issued in June 2024.
5. For Item 3, the appellant submitted that the latticework barrier is approximately 2,000mm high and that AS 1926.1:2007 clause 2.3.2 sets an effective fencing height of 1,800mm for perforated material or mesh. He argued that Schedule 1 item 12 removes the NCZ/clear-area requirements where a fence is 2,400mm high or 1,800mm high with a compliant cranked top, but does not itself impose 2,400mm as a universal minimum height. He further submitted that the balcony arrangement should be assessed as a whole and referred to the later AS 1926.1:2024 approach as supporting the performance of the existing arrangement, while acknowledging that the latter Standard is not the adopted acceptable solution under QDC MP 3.4.

Respondent's submissions

6. For Item 2, the respondent maintained that the water tank ribs provide potential footholds and that the relevant issue is whether the indentation/projection geometry permits climbing. In correspondence he referred to an angle of 60 degrees and an indentation of more than 10mm, while also acknowledging that a further measurement could conclusively determine the rib angle. The Form 26 proposed shielding the tank with flat material to deny access to the ribbed surface.

7. For Item 3, the respondent maintained that the lattice is climbable and lacks a 900mm non-climbable zone. He referred to QDC MP 3.4 Figures 12, 13 and 14 and stated that one compliance option would be to provide a 900mm deep non-climbable zone using polycarbonate. As an alternative and, in his view, simpler rectification, he proposed extending the perforated/lattice barrier to 2,400mm under Figure 17(a). He also stated that the drop from the deck edge was approximately 1,600mm and identified objects below as potential climbing/landing features.
8. In relation to item 2, the evidence considered by the Tribunal shows a ribbed polyethylene water tank positioned approximately 300mm from the pool barrier. Its horizontal moulded ribs and rolled upper edge create potential footholds and handholds. The issue is whether those features compromise the non-climbable zone and the effective height and operation of the barrier.

Jurisdiction

9. The Form 10 identifies the appeal type as an appeal against a pool safety nonconformity notice.
10. The Tribunal has jurisdiction to decide this appeal pursuant to section 229 and schedule 1, section 1(5) and table 3, which provide that a person can appeal to the tribunal a decision under the Building Act 1975 (BA), other than a decision made by the Queensland Building and Construction Commission, which requires the giving of an information notice. Section 246AB(2) of the BA provides for the giving of a nonconformity notice and section 246AB(5) of the BA states that the nonconformity notice must include an information notice about the decision.
11. Accordingly, Tribunal is satisfied that it has jurisdiction.
12. Under schedule 1 table 3 item 3(a) of the PA, the person given the information notice is the appellant and the respondent is the entity that made the decision.

Decision framework

13. The Tribunal has applied the decision-making framework in sections 253 and 254 of the PA.
14. The onus rests on the appellant to establish that the appeal should be upheld (section 253(2) of the PA).
15. 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).
16. The Tribunal may consider other evidence presented by a party with leave of the Tribunal, and information provided under section 246 of the PA.
17. Under section 254(2) of the PA, the Tribunal may confirm the decision appealed against, change the decision, replace the decision with another decision, or set the decision aside and return the matter with directions, as applicable.

Material considered

18. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of Appeal/Application for Declaration lodged in July 2026, including Attachment One setting out the appellant's grounds and submissions.

- (b) Form 26 Pool Safety Nonconformity Notice and Attachment A issued by Cameron Coward, including the photographs and proposed rectification measures.
- (c) Correspondence between the appellant, property manager and respondent from June and July 2026 clarifying the technical bases advanced for Items 2 and 3.
- (d) Form 23 Pool Safety Certificate PSC0216930, effective 19 June 2024 to 19 June 2026, issued by Helen Smith.
- (e) Queensland Development Code MP 3.4 – Swimming Pool Barriers, including Schedule 1 modifications to AS 1926.1:2007 and the figures relevant to non-climbable zones and balconies.

Findings of fact

19. The tribunal makes the following findings of fact:

- (a) QDC MP 3.4 applies to regulated pools and requires a swimming pool barrier that restricts access by young children to the pool and immediate pool surrounds.
- (b) A Form 23 Pool Safety Certificate was issued for the pool in June 2024. The Tribunal has treated that certificate as relevant background but not as determinative of whether the barrier complied at the time of the 2026 inspection.
- (c) Compliance with QDC MP 3.4 may be achieved by the relevant acceptable solution, an alternative solution satisfying or shown equivalent to the performance requirement, or a combination of those approaches.
- (d) The polyethylene water tank is positioned approximately 300mm from the pool barrier. It has continuous horizontal moulded ribs and a rolled upper edge capable of providing repeated footholds and handholds.
- (e) The tank is located within the 900mm non-climbable zone relevant to the barrier arrangement. Its position and configuration provide an accessible climbing aid and reduce the effectiveness of the barrier.
- (f) The latticework barrier associated with the deck/balcony is approximately 2,000mm high on the evidence advanced by the parties. The respondent treated it as part of the pool barrier and asserted that it lacked a compliant 900mm NCZ, while the appellant disputed the asserted 2,400mm minimum height and contended that the relevant barrier/NCZ provisions permit the existing configuration. The Hearing File Note subsequently assessed the balcony barrier, adjoining barrier elements, required barrier height and associated non-climbable zones as one continuous barrier system.
- (g) QDC MP 3.4 Schedule 1 modifies AS 1926.1:2007 so that, for clause 2.9, a non-climbable zone complying with Figure 23 must be provided unless a barrier complying with QDC MP 3.4 is provided to the balcony.

Reasons for the decision

- 20. The Tribunal has considered the appellant's and respondent's competing interpretations rather than treating either party's characterisation as determinative. QDC MP 3.4 P1 requires a continuous barrier that restricts the access of young children. Acceptable Solution A1 adopts AS 1926.1:2007 subject to the Schedule 1 modifications, and QDC MP 3.4 prevails to the extent of inconsistency.
- 21. In relation to Item 2, the Tribunal accepts the appellant's point that no separate published QBCC "declaration" concerning water tanks was produced and does not rely on the

existence of such a declaration. The question can be decided from QDC MP 3.4 and the physical evidence. Schedule 1 requires the relevant NCZ and additional clear area to remain effective where a fence intersects with another barrier or object. The photographs show the tank very close to the fence, with repeated pronounced horizontal ribs and an upper rolled edge. Irrespective of whether the tank is itself described as “fencing”, those features are accessible from the fence and provide a sequence of potential footholds/handholds within the barrier’s climbing zone. The prior 2024 certificate does not establish that the 2026 inspector was required to accept the arrangement. The appellant has therefore not discharged the onus of establishing that Item 2 should be set aside.

22. In relation to Item 3, the Tribunal does not accept that Figure 17(a) establishes, by itself, that every perforated or mesh barrier must be 2,400mm high. Schedule 1 item 12 is expressed as an exemption from the NCZ, clear area and additional clear area requirements for a clause 2.3.2 fence where it is 2,400mm or more in height, or 1,800mm or more with a compliant cranked top. Where that exemption is not used, the applicable NCZ provisions still need to be assessed; this is materially different from saying that 2,400 mm is the only permissible barrier height. QDC MP 3.4 also specifically deals with balconies: Schedule 1 item 19 requires an NCZ complying with Figure 23 unless a barrier complying with the part is provided to the balcony. The respondent’s correspondence identified possible NCZ concerns and an estimated drop of about 1,600mm, but the Form 26 framed the rectification principally as a requirement to increase the lattice to 2,400mm because it was perforated/climbable. On the material ultimately recorded and annotated compliance drawing, the balcony/balustrade and adjoining elements were assessed as a continuous barrier system capable of maintaining the required isolation. The Tribunal is not satisfied that the respondent’s asserted 2,400mm requirement, as the basis of Item 3, was established. The appellant has therefore discharged the onus in relation to Item 3.
23. Accordingly, Item 2 of the Form 26 is confirmed and that ground of appeal is dismissed. Item 3 is set aside and that ground of appeal is upheld. Because Item 1 was accepted by the appellant and was not a subject of the appeal, this decision does not disturb Item 1. The decision appealed against is changed under section 254(2) of the PA to reflect these separate outcomes.

Mark Anderson
Development Tribunal Chair
Date: 4 September 2026

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:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833

Email: registrar@Hpw.qld.gov.au