



Building and Development Tribunals—Decision

Sustainable Planning Act 2009

Appeal Number: 51-10

Applicant: Angus E. Tattle and Christopher W. Johnson

Assessment Manager: Mr Martti Koskinen for and behalf of ABC Certification Pty Ltd

Concurrence Agency: N/A
(if applicable)

Site Address: 120 River Meadows Drive, Upper Coomera and described as Lot 183 on SP105462 – the subject site

Appeal

Appeal under section 531 of the *Sustainable Planning Act 2009* (SPA) against the decision dated 22 June 2010 by the assessment manager to refuse to change or cancel a condition of a development approval requiring the provision of an approved swimming pool barrier in accordance with the requirements of Queensland Development Code (QDC) MP 3.4 - Swimming pool barriers.

Date of hearing: 2:00pm on Friday 13 August 2010

Place of hearing: The subject site

Committee: Stan Spyrou – Chair

Present: Mr Angus Tattle – Owner & Applicant
Mr Gary Scicluna – Construction Manager, Malibu Pools

Decision

The Committee, in accordance with section 564(2)(a) of the SPA, **confirms** the decision appealed against to refuse to change or cancel a condition of the development approval requiring an approved barrier or enclosure to a swimming pool located on the subject property.

Background

The subject site contains an existing lowset dwelling located at the front of the subject site. A natural watercourse adjoins the rear boundary of the property. The assessment manager granted a development approval (Reference No. 29229) permitting the construction of an in-ground swimming pool, swimming pool fencing, pump-house, change room and outdoor kitchen as an addition and/or alteration to the rear of the existing dwelling.

A compliance inspection carried out by the assessment manager on 22 June 2010 resulted in an inspection certificate being issued by the assessment manager advising that the barrier/enclosure to the swimming pool was non-compliant. The inspection certificate advised the following items of non-compliance:

1. Gate latching mechanism to be minimum 1.4m from bottom rail.
2. 100mm max. gaps under fence.
3. Fence certification (glass/metal).
4. No openings to pool area.
5. Pool house to be separated from pool enclosure.

The Committee was advised by the property owner during the hearing that items 1 to 3 above had been rectified to the satisfaction of the assessment manager. This matter was confirmed by the Committee in a telephone conversation with Mr Martti Koskinen as the representative for the assessment manager.

Items 4 and 5 have not been complied with and are the subject of the appeal.

An approved barrier/enclosure has been provided between the outdoor living area of the dwelling and the swimming pool.

A "pool house" (referred to in Item 5 above) is located within the swimming pool enclosure.

An outdoor kitchen area (separate from the main kitchen in the dwelling), a pool pump-house and a change room have been constructed as an addition to the dwelling and are located within the swimming pool enclosure. Lockable doors are provided to these rooms.

There is no approved barrier/enclosure preventing access from these areas to the swimming pool.

A "Sunbather Pool Technologies" rigid Security Blanket has been provided to cover the swimming pool and spa. This device operated remotely from the Pool Pump House by way of a key which is stored in a location within the pool pump room and is not less than 1.5m above finished floor level.

The assessment manager has advised at Item 4 of its non-compliance notice it considers the doors to the outdoor kitchen, pool pump house and change room, the door to the pool house and the provision of the Sunbather Pool Technologies rigid Security Blankets not to constitute an approved barrier/enclosure to the swimming pool area.

The assessment manager refuses to change or cancel the conditions of the development approval requiring provision of an approved barrier/enclosure to the swimming pool in accordance with the legislation.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for appeal/declaration', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 9 July 2010.
2. Inspection certificate issued by the assessment manager dated 22 June 2010 advising that the barrier/enclosure to the swimming pool was non-compliant.
3. Hand-drawn partial site plan showing location of swimming pool, pool house, outdoor kitchen, pool pump house, storage room and pool fencing.

4. Unreferenced document provided by the property owners titled "Points to support application for appeal regarding pool fence located at 120 River Meadows Drive, Upper Coomera (Lot 183 RP-SP105462)".
5. Electronic version of Sunbather Pool Technologies product brochure for the rigid Security Blanket installed at the subject property.
6. Additional information and clarification correspondence submitted by the property owners and dated 13 August 2010.
7. Colour photographs showing the rigid pool cover and its load-bearing properties and the edge treatment for the pool cover. These photographs are supplied by the property owners.
8. Verbal submissions from the parties at the hearing.
9. The *Sustainable Planning Act 2009*.
10. The *Sustainable Planning Regulation 2009*.
11. The QDC MP3.4 - Swimming pool barriers.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The subject site contains an in-ground swimming pool and adjoining spa located to the rear of the dwelling.
2. The swimming pool and spa require separation from the dwelling and other buildings on the property pursuant to the provisions of QDC MP3.4 - Swimming pool barriers.
3. The property owners have installed a rigid pool cover known by the trade name Sunbather Pool Technologies" rigid Security Blanket. The intent of this installation is to satisfy the requirements of a swimming pool barrier required by QDC MP3.4.
4. The Sunbather Pool Technologies" rigid Security Blanket has not been demonstrated to be an acceptable alternative to the requirements of QDC MP3.4.
5. The inspection certificate issued by the assessment manager advising that the barrier/enclosure to the swimming pool was non-compliant with the QDC MP3.4 is valid.

Based on assessment of these facts, the Committee confirms the decision being appealed against.

Reasons for the Decision

1. The swimming pool and adjoining spa require a compliant "swimming pool barrier" pursuant to QDC MP3.4.
2. The barrier provided has not been demonstrated to be an approved alternative to the requirements of QDC MP3.4

Stan Spyrou
Building and Development Committee Chair
Date: 02 March 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:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
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