



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	26-008
Appellant:	Damien Noel Peters (Appellant)
Respondent:	Townsville City Council (Council)
Site address:	25 Masuda Street, Annandale Qld 4814 and described as Lot 134 on RP 727977 (Subject Site)

Appeal

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

Date and time of hearing:	On the papers
Place of hearing:	N/A
Tribunal:	Mitchell Osborne—Chair Andy Rowley—Member

Decision:

The Development Tribunal (**Tribunal**), in accordance with section 254(2)(b) of the Planning Act, changes the Respondent's decision.

The Appellant's pool does not comply with MP 3.4 – Swimming Pool Barriers of the Queensland Development Code (**QDC**), the pool safety standard for the pool, as required by s232(1)(a) of the Building Act, nor has the Appellant's pool fence been kept in good condition, as required by s232(1)(b) of the Building Act. Accordingly, the Tribunal agrees with the giving of the Enforcement Notice by Council on 23 February 2026 under s248(1)(b) of the Building Act (**Enforcement Notice**) as the pool is dangerous.

Additionally, the Tribunal is of the view that the content of the Enforcement Notice complies with s168(3) of the Planning Act, and the time given for the Appellant to comply with the Enforcement Notice was reasonable, with the exception of the time allowed for the Appellant to be make the pool safe to eliminate any opportunity for young persons to enter the pool area.

The Tribunal changes the Enforcement Notice to require the following:

Within 5 business days of the date of this decision, the swimming pool situated at 25 Masuda Street Annandale Qld 4814 must be made safe by the installation of a temporary fence

complying with QDC MP 3.4 and AS1926.1 requirements to eliminate any opportunity for young persons to enter the pool area;

AND

Within 20 business days of the date of this decision, the swimming pool safety fence is to be rectified so that it complies with the requirements of section 232(1) of the *Building Act 1975*, and is to be maintained to ensure it continues to comply with the pool safety standard for the pool;

AND

Within 20 business days of the date of this decision, arrange for an on-site inspection to be conducted by a suitably qualified person (i.e. a suitably qualified Pool Safety Inspector) and provide Council with a new form 23 pool safety certificate;

OR

Within 20 business days of the date of this decision, lawfully remove / demolish the swimming pool from the property at 25 Masuda Street Annandale Qld 4814.

Background

1. The Appellant is the owner of the Subject Site.
2. Located on the Subject Site is the pool the subject of these proceedings (**Subject Pool**).
3. On 12 February 2026, Council carried out an inspection of the Subject Pool.
4. As stated in the enforcement notice issued 23 February 2026, Council identified at that inspection, the following nonconformities:
 - *Northern-most pool gate failed to self-latch and self-close from any openable position.*
 - *Gap of greater than 100mm located between the north most pool gate and the adjoining barrier fence.*
 - *A hole greater than 100mm located in the pool barrier adjacent to the north most pool gate.*
 - *Direct access to the pool enclosure from a Class 1a structure.*
 - *No compliant CPR located within the pool enclosure.*
 - *Garden wall located in the neighbouring property of 18 Fardon Street is reducing the effective barrier to below the minimum compliant height of 1200mm.*
5. On 16 February 2026, Tegan Grace Lyonelle Kern inspected the Subject Pool and by way of a QBCC Form 26 – Pool Safety Nonconformity Notice (Form 26) identified the following nonconformities with the pool safety standard:
 - *Pool gate not self closing.*
 - *Entrance into pool area via house not compliant.*
 - *Multiple gaps in fence larger than 100mm.*
 - *Multiple trees in NCZ.*
 - *Climable (sic) objects in NCZ (neighbour side as fence not 1.8mm).*
 - *Boundary fences fails strength and rigidity test.*
 - *No CPR chart.*

6. Further, the Form 26 listed the following “[a]ction required to make the pool a complying pool”:

- *Replace all boundary (sic) fence as required*
- *Install fencing and gates from any house doors entering pool area*
- *Install CPR chart*
- *Replace pool gate hinges and latches*
- *Remove any climable (sic) tress (sic)/objects in NCZ*

7. On 23 February 2026, Council gave the Appellant an Enforcement Notice alleging non-compliance with s232(1) of the Building Act, setting out the items identified during its inspection of 12 February 2026 and requiring the Appellant to:

On before 26 February 2026, the swimming pool situated at 25 Masuda Street ANNANDALE QLD 4814 must be made safe to eliminate any opportunity for young persons to enter the pool area;

AND

On or before 23 March 2026, the swimming pool safety fence is to be rectified so that it complies with the requirements of section 232(1) of the Building Act 1975, and is to be maintained to ensure it continues to comply with the pool safety standard for the pool;

AND

On or before 23 March 2026, arrange for an on-site inspection to be conducted by a suitably qualified person (i.e. a suitably qualified Pool Safety Inspector) and provide Council with a new form 23 pool safety certificate;

OR

On or before 23 March 2026, lawfully remove / demolish the swimming pool from the property at 25 Masuda Street ANNANDALE QLD 4814.

8. On 27 February 2026, the Appellant commenced this appeal.

9. Since the commencement of this appeal, the Tribunal has received numerous written submissions from both parties.

10. The Appellant’s written submissions contained a request that the appeal be determined on the papers.

11. Council’s written submissions contained agreement to the appeal being determined on the papers.

12. To ensure natural justice and fairness to the parties, the Tribunal has based its decision solely on the written submissions of the parties and other materials referred to in this decision.

Jurisdiction

13. Schedule 1 of the Planning Act governs the matters that may be appealed to a tribunal.

14. Section 1(1) of Schedule 1 of the Planning Act provides that Table 1 states the matters that may be appealed to a tribunal. However, pursuant to section 1(2) of Schedule 1 of the Planning Act, Table 1 only applies to a tribunal if the matter involves a matter set out in sub-section (2).

15. Section 1(2)(h)(i) of Schedule 1 of the Planning Act, relevantly refers to a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g) of section 1(2).
16. The Appeal is against the decision to give an enforcement notice about a matter that relates to the Building Act, being section 1(2)(g), and accordingly satisfies section 1(2)(h)(i) of Schedule 1 of the Planning Act.
17. The Tribunal is therefore satisfied that it has jurisdiction to decide the Appeal.
18. Neither party in the proceeding took issue with the Tribunal's jurisdiction.

Decision framework

19. This is an appeal against the decision of Council to give an enforcement notice and in accordance with section 253(3) of the Planning Act, Council, as the enforcement authority, has the onus to establish that the appeal should be dismissed.
20. Pursuant to section 253(4) of the Planning Act, the Tribunal is required to hear and decide the appeal by way of reconsideration of the evidence that was before Council when the decision was made to give the Enforcement Notice.
21. The Tribunal may however consider evidence presented by the parties with leave or as provided under section 246 of the Planning Act.
22. The Tribunal must decide the appeal in accordance with section 254(2) of the Planning Act by:
 - (a) *confirming the decision; or*
 - (b) *changing the decision; or*
 - (c) *replacing the decision with another decision; or*
 - (d) *setting the decision aside and ordering the person who made the decision to remake the decision by a stated time.*

Statutory framework

23. Pursuant to section 231A of the Building Act, the Subject Site is 'regulated land' under the Building Act (as it is land on which a class 1 building is constructed), and accordingly the Subject Pool is a 'regulated pool' under section 231B(1) of the Building Act.
24. Under section 232(1) of the Building Act, the owner of a regulated pool must ensure –
 - (a) *the pool complies with the pool safety standard for the pool; and*
 - (b) *all barriers for the pool are kept in good condition.*
25. Section 231B(2) of the Building Act provides that the barriers for the pool include any of the following:
 - (a) *the fencing for the pool;*
 - (b) *the walls of a building enclosing the pool;*
 - (c) *another form of barrier mentioned or provided in the pool safety standard.*
26. Section 248(1) of the Building Act grants Council the power to:

... give an enforcement notice to the owner of a building, structure or building work if the local government believes the building, structure or building work –

...

 - (b) *is dangerous.*

27. Under, s248(4) of the Building Act the requirement for Council to give a show cause notice before giving an enforcement notice, only applies where the matter, about which the enforcement notice is given, is not of a dangerous or minor nature.
28. Section 248(5) of the Building Act states that:
- An enforcement notice given under this section is taken to be an enforcement notice under the Planning Act, section 168.*
29. Section 168(3) of the Planning Act provides that an enforcement notice must state –
- (a) *the nature of the alleged offence; and*
 - (b) *if the notice requires the person not to do an act—*
 - (i) *the period for which the requirement applies; or*
 - (ii) *that the requirement applies until further notice; and*
 - (c) *if the notice requires the person to do an act—*
 - (i) *the details of the act; and*
 - (ii) *the period within which the act must be done; and*
 - (d) *that the person has an appeal right against the giving of the notice.*

Material considered

30. 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 Tribunal's registrar on 27 February 2026;
 - (b) the written submissions of the Appellant;
 - (c) the written submissions of the Respondent;
 - (d) the Planning Act;
 - (e) the Building Act; and
 - (f) the QDC.

Findings of fact

31. The Tribunal has been satisfied of the following findings based on the evidence given by both parties in the appeal:
- (a) The Enforcement Notice attaches photos (supported by video evidence) that show the pool fence:
 - (i) is in a state of disrepair;
 - (ii) has not been kept in a good condition;
 - (iii) is noncompliant in the ways specified in paragraph 41 below.
 - (b) There is no evidence of a performance solution under section 14 of the Building Act (see paragraph 35 below)
 - (c) There are no tolerances in a guideline made under section 258 of the Building Act that are relevant to the nonconformities identified. (See paragraph 36 below)
32. Additionally, the Tribunal has considered the form and content of the Enforcement Notice and notes the following:

- (a) the Enforcement Notice:
 - (i) states the nature of the alleged offence;
 - (ii) requires the Appellant to do acts;
 - (iii) states the details of the acts;
 - (iv) states the period within which the acts must be done; and
 - (v) states that the Appellant has an appeal right against the giving of the enforcement notice.

Reasons for the decision

Noncompliance with pool safety standard for the pool

33. Section 231D(1) of the Building Act provides that the pool safety standard is:

- (a) *QDC, part MP3.4; and*
- (b) *Any other standard prescribed under a regulation for ensuring the safety of persons using a regulated pool.*

34. Part MP3.4 of the QDC provides the following performance requirements for swimming pool barriers:

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.*

35. Pursuant to section 14(4) of the Building Act, building work complies with a performance requirement by complying with the relevant acceptable solution for the performance requirement, or by formulating a performance solution that complies with (or is at least equivalent to) the performance requirement, or a combination of both the acceptable solution and a performance solution.

36. Acceptable solution A1 in QDC MP 3.4 provides that swimming pools must have a barrier complying with the referenced standard (Australian Standard AS1926.1-2007 (Amendment 1) and AS1926.2-2007 (Amendment 1)), subject to any modifications to the standard specified in schedule 1 of QDC MP 3.4, and subject to any tolerance limits specified in a guideline for swimming pool barriers made under section 258 of the Building Act 1975.

37. Section 13 of the Building *Regulation 2021* (**Building Reg**) prescribes a standard for section 231D(1)(b) of the Building Act.

38. Section 13(2) of the Building Reg states that a 'resuscitation sign' must be displayed at a regulated pool.

39. Section 13(3) of the Building Reg provides that a resuscitation sign must:

- (a) *be attached to the barrier for the regulated pool, or displayed near the pool, so that the sign is conspicuous and easily visible to anyone near the pool; and*
- (b) *be at least 300mm x 300mm in size; and*
- (c) *be made of durable and weatherproof material; and*
- (d) *include a statement that is prominent on the sign explaining to anyone reading the sign how to act in an emergency, including, for example, telephoning for an ambulance, staying with the injured person, calling for help and providing first aid; and*

Example of what sign must state—

'In an emergency phone 000 and ask for ambulance. Stay with injured person, call for help and resuscitate.'

- (e) *show information about the procedures for providing first aid, including performing cardiopulmonary resuscitation in the way stated in the document called 'ANZCOR guideline 8—Cardiopulmonary resuscitation (CPR)' published by the Australian Resuscitation Council in January 2016.*

40. Section 13(4) of the Building Act requires each statement or diagram written or placed on the resuscitation sign to —

- (a) *be clear and legible; and*
- (b) *be made by using a material that is durable and weatherproof.*

41. Based on the evidence before it, the Tribunal is satisfied that the Subject Pool is not in compliance with MP3.4 of the QDC. In particular, the following nonconformities are in evidence:

- (a) Northern-most pool gate failed to self-latch and self-close from any openable position—in breach of section 2.5.3 of AS1926.1-2007
- (b) Gap of greater than 100mm located between the north most pool gate and the adjoining barrier fence—in breach of section 2.3.7 of AS1926.1-2007
- (c) A hole greater than 100mm located in the pool barrier adjacent to the north most pool gate—in breach of section 2.3.7 of AS1926.1-2007.
- (d) Direct access to the pool enclosure from a Class 1a structure—in breach of section 4.2 and figure 2.1 of AS1926.2-2007
- (e) No compliant CPR located within the pool enclosure—in breach of section 13(2) of Building Reg.
- (f) Garden wall located in the neighbouring property of 18 Fardon Street is reducing the effective barrier to below the minimum compliant height of 1200mm—in breach of section 9 and figure 5 of schedule 1 of QDC MP 3.4.

42. In view of these findings and the findings in paragraph 31(b) the Tribunal is satisfied that the Subject Pool does not comply with the pool safety standard for the pool and the Appellant is in breach of section 232(1)(a) Building Act.

All barriers for the pool are kept in good condition

43. The term 'good condition' is not defined in the Building Act.

44. The orthodox approach to statutory interpretation in such circumstances requires the words be given their ordinary meaning, informed by the context in which they appear.

45. Having regard to the context in which 'good' and 'condition' appear, there are two dictionary definitions to which the Tribunal has regard. The Macquarie Dictionary (Second Revised Edition) defines 'good' to mean '*satisfactory in quality, quantity or degree; excellent*'. The word 'condition' is defined to mean '*particular mode of being of a person or thing; situation with respect to circumstances; existing state or case*'.
46. Drawing upon these definitions, the Tribunal is satisfied that the Subject Pool's barrier (i.e. the fence) has not been kept in good condition. The evidence shows a barrier that is in a state of disrepair. The Subject Pool's barrier has not been kept in good condition and the Appellant is in breach of section 232(1)(b) of the Building Act.

Giving of the Enforcement Notice

47. Section 248(1)(b) of the Building Act allows a local government to give an enforcement notice to the owner of a structure the local government reasonably believes is dangerous.
48. The word 'dangerous' is not defined in the Building Act.
49. Having regard to the context in which the word 'dangerous' appears, the Tribunal is assisted by the following definition in the Macquarie Dictionary (Second Revised Edition): 'full of danger or risk, causing danger; perilous; hazardous; unsafe'.
50. Due to the non-compliances with s232(a) and (b) of the Building Act, the Tribunal agrees with Council that the structure is dangerous and, in the circumstances, agrees that an enforcement notice should be given under s248(1)(b) of the Building Act.
51. Additionally, having regard to section 168(3) of the Planning Act, the Tribunal is of the view that the Enforcement Notice states what is required. Specifically, the Enforcement Notice states:
 - (a) the nature of the alleged offence;
 - (b) the details of the acts the Appellant is required to do;
 - (c) the period within which the acts must be done; and
 - (d) that the Appellant has an appeal right against the giving of the notice.
52. The Tribunal also wishes to address the Appellant's submissions regarding alleged human rights violations, financial hardship and adverse health effects caused by the giving of the Enforcement Notice and these proceedings. While the Tribunal is sympathetic to the Appellant's situation and does not question the sincerity of his concerns, the Tribunal considers that these issues do not invalidate the Enforcement Notice, nor do they excuse the Appellant's non-compliances with the Building Act.

Period within which the acts must be done

53. In his submissions, the Appellant also took issue with the period in which Council required compliance with the actions required in the Enforcement Notice. In the Tribunal's view, given that the Subject Pool was dangerous, the period given in the Enforcement Notice was reasonable, with the exception of the time allowed for the Appellant to be make the pool safe to eliminate any opportunity for young persons to enter the pool area.
54. In the Tribunal's view, the Appellant should be afforded more time to be make the Subject Pool safe, by way of a temporary barrier, complying with QDC MP 3.4 and AS1926.1 requirements, to eliminate any opportunity for young persons to enter the pool area.

55. In the circumstances, the Tribunal decides to change Council's decision.

Mitchell Osborne
Development Tribunal Chair

Date: 11 August 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
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Brisbane Qld 4001

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