



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	25-026
Appellant:	Pintari Apartments CTS 6231
Respondent:	Lindsay Kostiuk
Site Address:	3 Cunningham Avenue, Main Beach Qld 4217 and described as L1-72 BUP9078

Appeal

Appeal under section 229 of the *Planning Act 2016* (**PA**) and Schedule 1, Table 3, Item 3(a) – a decision under the *Building Act 1975* (**BA**), other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act. Section 246AB(2) of the BA provides for the giving of a nonconformity notice and section 246AB(5) of the BA states the nonconformity notice must include an information notice about the decision.

Date and time of hearing:	7 October 2025, 11am
Place of hearing:	The subject site
Tribunal:	Anne-Maree Ireland—Chair Peter Buckland—Member
Present:	Michael Wood and Malcolm Johnson—Appellant Lindsay Kostiuk and Samuel Kostiuk—Respondent

Decision:

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

The Appellant's pool is not a complying pool as it does not comply with QDC, part MP 3.4 – Swimming Pool Barriers of the Queensland Development Code (**MP3.4**), the pool safety standard for the pool, as required by section 232(1)(a) of the BA. Accordingly, the giving of a non-conformity notice by the Respondent under section 246AB of the BA is confirmed as the indoor pool does not have a separate compliant pool barrier independent of the outdoor pool barrier, the latches on the doors (to the common area, and to the car park) to the indoor pool must be upgraded and the windows along the wall (to the indoor pool and adjacent gym area) adjacent to the common area must be permanently restricted to not open more than 100mm.

Background

1. The Appellant is the body corporate of Pintari Apartments located in Main Beach. The subject site contains an indoor pool and an outdoor pool. A pool gate is located at the entrance to the outdoor pool, and there are stairs that lead down from the outdoor pool to a common area containing a pond where water from a waterfall flows into. Opposite the waterfall is an indoor pool which is separated from the common area by a door and wall containing windows. Entry can also be made to the indoor pool through a door from the underground carpark. Next to the indoor pool is a gym which likewise has a door and windows facing the common area. An internal door connects the gym and the indoor pool area.
2. The Appellant states that previous inspections have not revealed any pool safety issues, and nothing has changed since those inspections.
3. The Appellant and Respondent corresponded in late July in respect of the legislative basis for the non-conforming issues set out in the nonconformity notice dated 22 July 2025.
4. The Tribunal conducted a site inspection at the same time of the hearing on 7 October 2025 and observed the indoor and outdoor pools and surrounds.

Jurisdiction

5. 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 Tribunal only a decision under the 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 the nonconformity notice must include an information notice about the decision.
6. Per 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

7. Pursuant to section 253(2) of the PA, the Appellant must establish that the appeal should be upheld.
8. 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).
9. 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).
10. Pursuant to section 250 of the PA, the Tribunal may make directions it considers appropriate.
11. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

12. The material considered in arriving at this decision was:
 - (a) Form 10 Notice of appeal containing the nonconformity notice lodged with the Tribunals registrar on 18 August 2025.

- (b) Correspondence between the Appellant and Respondent dated between 23 and 29 July 2025. This was provided to the Tribunal by the Appellant on 8 October 2025 by way of a covering email containing an outline of the Appellant's position.

Findings of fact

13. The Tribunal makes the following findings of fact:
- (a) The indoor pool is completely enclosed by the walls of a building with three doors,
- one that leads to the basement carpark;
 - one at the side that allows entry to the gym area; and
 - one at the front which provides entry to a common area wherein the outdoor pool is located (up a set of stairs).
- (b) The doors that lead to the carpark, and the doors that provide entry to the common area from the indoor pool and the gym do not currently have compliant door latches.
- (c) The current windows along the indoor pool wall and the gym are not compliant as they are not restricted to open to a maximum of 100mm nor is a security type screen installed.
- (d) The indoor pool does not have a compliant pool barrier.

Reasons for the decision

14. There is no dispute that the indoor pool on the subject site is a regulated pool, and the relevant pool safety standard is MP 3.4.
15. The purpose of MP 3.4 is to safeguard young children from drowning or injury in regulated pools.
16. There is an interpretation question in this appeal as to whether the indoor swimming pool is to be assessed independently to the outdoor pool, or whether the situation is treated as one area to be assessed that contains two pools.
17. MP3.4 does not have a figure that precisely reflects the situation at the subject property.
18. 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.

19. As stated on page 2 of 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.
20. 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.
21. The Standard referred to in A1(a) is stated in the MP 3.4 to be the referenced edition of Australian Standard AS1926.1 and AS1926.2, which is the 2007 edition.
22. Section 4.4 of AS1926.2 provides:

4.4 Indoor pools and combined pools

4.4.1 Indoor pool

Access to an indoor pool shall be via a child-resistant doorset that complies with AS 1926.1. Where windows are present in the pool barrier, they shall be child-resistant in accordance with AS 1926.1.

4.4.2 Combined pool

Where there is a combined pool, the barrier requirements for each section of the pool shall be determined as if the pool was exclusive to the area in which that section is located.

The indoor section of the pool shall be accessible via a child-resistant doorset or gate that complies with AS 1926.1.

The outdoor section of the pool shall be accessible via a barrier that complies with Clauses 4.2 or 4.3, as applicable.

23. QDC MP 3.4 standard modification 23 provides, with reference to AS1926.2:2007, that 'Clauses 3.3, 3.6, 3.7, 4.3 and **4.4.2** and Appendix A do not apply' [**emphasis added**].
24. The modifications to the Standard are provided for in Schedule 1 of MP 3.4 and there are four modifications related to indoor pools:
 - (a) Gates and, for indoor swimming pools, doors must not open towards the pool area;
 - (b) Clause 2.8 (AS1926.1, Child-Resistant Doorset) applies to indoor swimming pools;
 - (c) The definitions of swimming pool, indoor pool and outdoor pool in the Standard are replaced by relevant definitions in the BA;
 - (d) Access to an indoor swimming pool must be via a child-resistant doorset that complies with this part or via another barrier that complies with this part. Where windows are present in the barrier, they must be child-resistant in accordance with this part.
25. The indoor pool fully meets the definition of indoor pool in the BA (the difference in definitions as between the BA and the Standard for the purposes of this Appeal is of no consequence).
26. The Tribunal is of the view that the indoor pool is to be assessed for compliance on its own. This is having regard to the fact there are two separate pools and they are both

regulated pools which are required to comply with pool safety standards, the purpose of which is drowning prevention and safety.

27. There is no evidence before the Tribunal of an alternative solution that complies with, or is shown to be at least equivalent to, the PR.
28. Accordingly, the Tribunal considers that the indoor pool must:
 - a) only have access to it via a child-resistant doorset that complies with AS 1926.1, including a latching device 1500mm above the floor.
 - b) in respect of any windows, they must be restricted to open no more than 100mm; and
 - c) have its own compliant pool barrier.
29. As the indoor pool is non-compliant with the above, the Tribunal confirms the decision of the Respondent to give a pool safety non-conformity notice.

Anne-Maree Ireland
Development Tribunal Chair

Date: 6 January 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:

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