

Determination 2025/057

Compliance of part of a pool barrier on a property boundary with Building Code Clause F9

160 Cumberland Drive, Flagstaff, Hamilton

Summary

This determination considers whether part of a proposed pool barrier on a property boundary complies with Building Code Clause F9 – *Means of restricting access to residential pools*. The barrier consists of a 1.2m high timber fence on top of an existing retaining wall.



Figure 1: Photo of the timber fence on top of the retaining wall (photo taken from neighbouring property).

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).¹
- 1.2. The parties to the determination are:
 - 1.2.1. B and K Reymer, the owners of the property and applicants (“the owners”)
 - 1.2.2. Hamilton City Council (“the authority”), in its role as the building consent authority.
- 1.3. The matter to be determined, under section 177(1)(a), is whether part of a proposed pool barrier along the property boundary complies with Building Code Clause F9 – *Means of restricting access to residential pools*.
- 1.4. The proposed barrier was the subject of the owners’ application for an amendment to a building consent² which was refused by the authority.

2. The building work and background

- 2.1. The owners are carrying out building work to install a pool. The building work approved in the building consent included a 6.6m long section of 1.8m high fence, in accordance with Acceptable Solution F9/AS1³, to be constructed along the top of a retaining wall on the property’s southeastern boundary.
- 2.2. The retaining wall varies between 1.2m – 2m in height. Adjacent to the retaining wall, on the neighbouring property, is a raised garden approximately 1m above the lawn area. There is an established feijoa tree at one end of the raised garden and smaller lemon trees at the other.
- 2.3. The owners applied for an amendment to the building consent, proposing to reduce the height of the fence along the top of the retaining wall to 1.2m as an alternative

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² Building Consent number 007.2024.00047735.002.

³ Acceptable Solution F9/AS1 Residential pool barriers (first edition, effective from 27 April 2017).

solution (see Figure 1, constructed by the owners to demonstrate the proposed barrier).

- 2.4. While processing the amendment application, the authority sent a request for information, requiring an updated plan. The authority stated:

... climbable trees on the outside of [the] barrier at 1.2m below [the] top of [the] proposed barrier which is not in accordance with either [F]9.3.3 or cited Standard NZS8500:2006 that there be no permanent objects that could assist children in negotiating the barrier and that barriers on property boundaries be at least 1.8m high.

The existing trees and their growth cannot be controlled by the pool owner as per MBIE guidance, therefore a 1.8m high fence will be required if the fence is at the property boundary.

- 2.5. The owners submitted a further amendment, proposing to move this portion of fence away from the property boundary, but remained of the view the original proposal achieved compliance.
- 2.6. The owners are of the view that the addition of the 1.2m fence at the top of the retaining wall would result in an effective height of 2.4 to 3.2m along the boundary and meet the requirements of clause F9. The owners note that the proposed fence and retaining wall together present a continuous vertical non-climbable surface.
- 2.7. The owners noted that F9/AS1 prescribes a 1.8m high pool barrier (measured on the pool side) if it is on a property boundary, so that a child at the top is less likely to climb down into the immediate pool area. While the proposed barrier is only 1.2m high on the pool side, the owners consider it complies as an alternative solution.
- 2.8. In its submission, the authority referred to the Schedule to the Fencing of Swimming Pools Act⁴ and NZS8500:2016⁵, which were cited in the building consent application, and Acceptable Solution F9/AS1. The authority is of the opinion that the tree branches are within 1.2m of the barrier and are able to be grasped and climbed by a 5-year-old child, so would enable the child to more easily access the top of the proposed 1.2m fence. The authority also noted the trees could be grown to full height and provide even greater assistance to a child negotiating the barrier.
- 2.9. The authority took into consideration that an agreement with the current neighbour may not transfer to a new owner, and there is no means to bind the neighbour to an agreement about the tree height or any other permanent objects that may be placed within 1.2m of the barrier in the future.

⁴ The Fencing of Swimming Pools Act 1987 was repealed on 1 January 2017.

⁵ New Zealand Standard 8500:2006 Safety barriers and fences around swimming pools, spas and hot tubs (24 November 2006).

3. Discussion

3.1. There is no dispute between the parties that the barrier does not comply with Acceptable Solution F9/AS1. However, the Building Code is performance-based and allows for the use of different methods to achieve compliance. In considering the pool barrier as an alternative solution, I must be satisfied that it meets the performance criteria of clause F9.

3.2. The relevant performance criteria of clause F9 are:

F9.3.1 Residential pools must have or be provided with physical barriers that restrict access to the pool or the immediate pool area by unsupervised young children (ie, under 5 years of age).

F9.3.3 A barrier surrounding a pool must have no permanent objects or projections on the outside that could assist children in negotiating the barrier.

3.3. Determination 2020/028 considered whether a pool barrier which incorporated 1.8m high boundary fences complied with clause F9. Although there were objects/projections on the pool side of the fences (that could assist a child in climbing down the inside of the fences), the fences presented a sheer face on the outside and there were no permanent objects or projections on the outside that would assist a young child to climb up from outside the barrier. The determination concluded the barrier complied with clause F9.3.3 in this respect and complied with F9 as an alternative solution.⁶

3.4. In this case the barrier is only 1.2m high on the pool side. However, the proposed fence and retaining wall together present a continuous vertical face on the outside of between 2.4 to 3.2m in height. In my view, a continuous vertical face of this height would be very difficult for a child to climb up from the outside.

3.5. I note the retaining wall is constructed with vertical posts which finish at the top of the retaining wall (see Figure 1). Given the distance between the top of the posts and the top of the barrier (1.2m), I do not consider these are projections that will assist a child in negotiating the barrier.

3.6. With regard to clause F9.3.3, the authority considers that the branches of the feijoa tree on the outside of the barrier are able to be grasped and climbed by a child, which would enable them to more easily access the top of the barrier. The height of the feijoa tree is approximately 700mm below the height of the barrier. The tree trunks (of both the feijoa tree and smaller lemon trees) are located approximately 1m from the retaining wall.

3.7. In my view, the top branches of the feijoa tree (especially those within or near a 1200mm arc from the top of the barrier) are very thin and would not support a

⁶ Determination 2020/028 *Regarding the compliance of a pool barrier with Building Code Clause F9 Means of restricting access to residential pools* (16 October 2020), at [5.13] to [5.16].

child's weight. Although the vegetation can be considered a permanent object on the outside of the barrier, given the age and size of the trees and their distance from the retaining wall, they will not assist a child to negotiate the barrier. In my view, the vegetation at this point in time does not compromise the compliance of the barrier.

- 3.8. As such, I conclude the barrier complies with both F9.3.1 and F9.3.3 in that the 1.2m high barrier on top of the 1.2-2m high retaining wall will restrict access by unsupervised young children, and the permanent objects on the outside of the barrier will not assist children in negotiating the barrier.
- 3.9. It is important to note that the owners have an ongoing obligation under section 162C(4) of the Act to ensure that the pool barrier remains compliant. As discussed in Determination 2021/009⁷, the compliance of a pool barrier that is on or near a property boundary can be impacted by circumstances on the adjacent property, and this can include the growth and maturity of nearby trees. If the barrier is rendered non-compliant by changes on the adjacent property, the owners will be required to either change the barrier to make it compliant or drain the pool of water.
- 3.10. I also note that under section 162D of the Act, the authority is required to carry out periodic inspections of residential pools within its jurisdiction once every three years.

4. Decision

- 4.1. In accordance with section 188 of the Building Act 2004, I determine the part of the proposed pool barrier, consisting of the timber fence on top of the retaining wall on the southeast property boundary, complies with clause F9.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 21 November 2025.

Peta Hird

Lead Determinations Specialist

⁷ Determination 2021/009 *Regarding the compliance of a new section pool barrier* (24 May 2021), at [6.30] to [6.36].