

Determination 2026/033

An authority's proposed decision to refuse to issue a building consent regarding a pool barrier

46 Euchre Way, Kahurānaki, Hawkes Bay

Summary

This determination considers an authority's proposed decision to refuse to issue a building consent in relation to a residential pool barrier. The determination considers whether the proposed barrier complies with Building Code clause F9 *Means of restricting access to residential pools*, which turns on whether the pool house and loggia can properly be considered part of the 'immediate pool area'.

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. A Conrad, the owner of the property and applicant for this determination (“the owner”)
 - 1.2.2. Hastings District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination arises from the authority’s decision that owner’s proposed pool barrier did not comply with Building Code clause F9. The authority considers areas enclosed within the proposed barrier cannot be part of the immediate pool area.
- 1.4. The matter to be determined, under section 177(1)(b) and (2)(a), is the authority’s proposed decision to refuse to issue the building consent (ABA20260399) due to the location of the pool barrier.
- 1.5. The determination will consider whether the building containing a sauna, bathroom, changing room and store (collectively referred to as “the pool house”), and the barbecuing and entertaining area (“the loggia”), can be properly considered part of the immediate pool area.
- 1.6. The determination does not consider the original proposal in the submitted consent (with a recreation room included within the immediate pool area), or the proposal in the approved consent, or compliance of the barrier itself.

2. The building work

- 2.1. The property is a large rural property of approximately 4.95 hectares, which contains several detached buildings, including the principal dwelling, garage, stables and sleepout.

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

- 2.2. The proposed immediate pool area submitted to the authority included the pool house, loggia and patio area (see Figure 1). There is a single entrance to the enclosure on its western side. The inclusion of the patio within the immediate pool area is not in dispute.

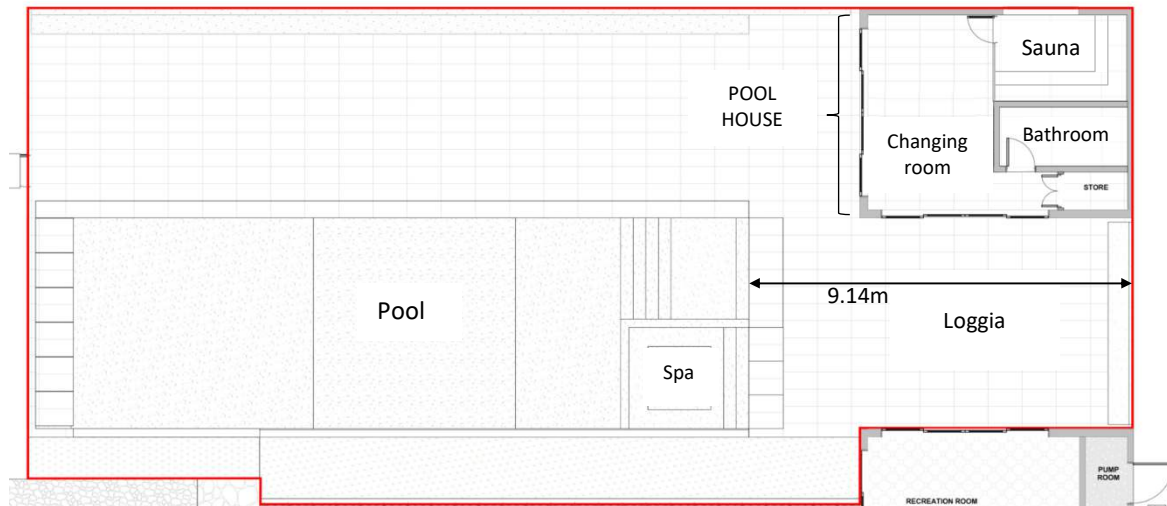


Figure 1. Plan showing the proposed immediate pool area (not to scale).

- 2.3. The proposed immediate pool area is 294m². The loggia directly adjoins the swimming pool, and the distance from the pool edge to the eastern edge of the loggia is 9.14m. The pool house is adjacent to the loggia, and is 32.5m².
- 2.4. The pool house has glazed walls on the two sides facing the patio and loggia. The sauna has one glazed wall on its western side (separating it from the changing room). Much of the seating in the sauna faces away from the pool, toward a window on its northern wall.
- 2.5. The loggia is a covered outdoor area, and contains an outdoor kitchen, bar and barbeque.

3. Background

- 3.1. On 6 May 2026, the owner applied for the building consent. The original building consent application included a recreation room within the proposed immediate pool area. The recreation room was removed following an information request from the authority, and the proposal which is the subject of the determination was then submitted.
- 3.2. In an email to the owner on 11 June 2026, the authority stated:

In this case, the sauna, pool house, and loggia collectively read as a broader, multi-use recreation and entertainment facility rather than spaces that are directly ancillary to swimming. While some elements (such as changing facilities) could

reasonably be considered pool-related, the scale and nature of the overall proposal go beyond what has typically been accepted.

In particular:

- The pool house and loggia provide dedicated destinations for entertaining and occupation independent of pool use;
- The sauna, while capable of being used in conjunction with the pool, is also a standalone activity and is part of a larger facility rather than a minor ancillary element; and
- The combined arrangement increases the likelihood that the area will be regularly used for purposes unrelated to swimming, which weakens the required nexus.

...

On that basis, we consider that the proposal does not meet the threshold for inclusion within the immediate pool area under Clause F9, and a compliant barrier between the pool and these areas is necessary to demonstrate compliance.

- 3.3. Following this, a proposal was submitted which removed the pool house and loggia from the immediate pool area, and the building consent was approved on that basis.

4. Submissions

- 4.1. The authority did not make any submission on the matter but provided copies of correspondence between the parties.
- 4.2. The owner submits (in summary):
- 4.2.1. The pool house and loggia “support activities ordinarily undertaken in conjunction with the use and enjoyment of the swimming pool. Collectively, they form a single integrated recreational environment in which the pool is the dominant feature and purpose of the Immediate Pool Area, rather than functioning as separate or independent destinations”.
- 4.2.2. The proposed immediate pool area has been designed to avoid functioning as part of the everyday circulation or living areas of the property. The enclosure is not used as a thoroughfare, and the principal dwelling has several of its own outdoor dining and sitting areas.
- 4.2.3. The loggia “is contiguous with the pool surround, maintains direct physical contact and visual connection with the pool, and exists to support activities associated with pool use”.
- 4.2.4. The pool house is modest in scale, subordinate to the 80m² swimming pool and wider setting, and has been designed as supporting facility. The pool house “directly fronts the pool and maintains an uninterrupted visual connection through floor-to-ceiling clear glazing. Users within all internal

spaces retain direct sightlines across the Immediate Pool Area and toward the pool”.

- 4.2.5. “The enclosure preserves the safety objectives of Clause F9 by maintaining controlled access, continuous supervision and activities that are inherently associated with the use of the pool. Accordingly, the proposal satisfies both limbs of the *Hickman* test² and should properly be regarded as forming part of the Immediate Pool Area for the purposes of section 7 of the Building Act 2004”.

5. Discussion

Legislation

- 5.1. Section 49 states an authority “...must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application”.
- 5.2. The relevant clause in relation to the immediate pool area is Clause F9 *Means of restricting access to residential pools*:

Objective

F9.1 The objective of this provision is to prevent injury or death to young children involving residential pools.

Functional requirement

F9.2 Residential pools with a maximum depth of water of 400 mm or more that are filled or partly filled with water must have means of restricting access that prevents unsupervised access by a child under 5 years of age.

Performance

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).

F9.3.2 Barriers must either—

- (a) surround the pool (and may enclose the whole or part of the immediate pool area); or ...

- 5.3. Clause F9.3.1 requires a barrier which encloses the pool or all or parts of the immediate pool area. Section 7 defines ‘immediate pool area’ as “the land in or on which the pool is situated and so much of the surrounding area as is used for activities carried out in relation to or involving the pool”.

² Refer to paragraphs 5.55.4-5.5.

5.4. What constitutes the immediate pool area, and what may be included within such an area, was previously considered by the High Court in *Waitakere City Council v Hickman* (“*Hickman*”).^{[3][4]}

5.5. Previous determinations have discussed *Hickman* in detail.⁵ In summary, *Hickman* provides that “...the outer extent of the immediate pool area is determined by its use. It will extend only so far as the surrounding area is used for activities or purposes carried on in conjunction with the use of the pool”. Further, that area is “subject to the test of immediacy” and must not extend any further than can properly be considered as being immediate to the pool.⁶

5.6. *Hickman* notes:

Whether an activity or association is sufficiently connected with the use of the pool is a matter of degree. Activities which are carried on independently of the use of the pool or which have only a remote or indirect association with the use of the pool are to be excluded from the immediate pool area which must be fenced. Examples of activities which would not usually be regarded as being carried on in conjunction with the use of the pool include clothes lines, vegetable gardens, vehicle or pedestrian access ways, and planting for landscape purposes.

On the other hand, there are activities which would ordinarily qualify as being carried on in conjunction with the use of the pool. Examples include the use of pool furniture, changing sheds, pumps or pool maintenance equipment, sunbathing areas, and diving boards or other pool equipment.⁷

5.7. I am satisfied the pool house will be used for activities related to the use of the pool. It is common for saunas to be used in conjunction with a pool, and the bathroom and changing facilities similarly support the use of the pool. It is reasonable to expect the store will be used for storage associated with the pool and related activities, and it is not a space intended for prolonged occupation.

5.8. *Hickman* suggests that barbequing and entertaining can be carried out within an immediate pool area, noting “In modern society, barbeques and entertainment frequently occur in the vicinity of a pool and in conjunction with the use of it for swimming and similar activities”, and confirming that it does not matter that the activity may also be capable of being carried out independently of the use of the pool.⁸

³ *Waitakere City Council v Hickman* HC AK CIV 2003-404-7266 [1 October 2004].

⁴ *Hickman* considered the interpretation of ‘immediate pool area’ as defined in section 2 of the Fencing of Swimming Pools Act 1987, which has since been repealed. While there are slight differences in the wording of the two definitions, I do not consider those differences to be material.

⁵ For example, Determination 2023/024 *Regarding the decision of the authority’s proposed decision to refuse to issue a building consent in respect of the location of a pool barrier* (25 August 2023) at [4.10-4.17], and Determination 2022/030 *Regarding the authority’s decision to refuse to issue two amendments to a building consent in respect of the location of a pool barrier* (22 December 2022) at [5.13-5.20].

⁶ *Hickman* at [29](b) and [34].

⁷ *Hickman* at [29](f) and (g).

⁸ *Hickman* at [32] and [33].

5.9. Accordingly, I consider the use of the loggia is sufficiently related to the use of the pool. I note that there are several other outdoor entertaining areas on the property, so it is reasonable to assume that the entertaining area in the loggia will often be used in conjunction with the pool.

5.10. Both the functional requirement in clause F9.2 and performance requirement in F9.3.1 refer to the restriction of access to the pool/immediate pool area by unsupervised young children. Previous determinations have discussed the importance of visibility of the pool within the immediate pool area, to ensure children can be adequately supervised.⁹

5.11. Determination 2024/005¹⁰ states:

[4.12] I am of the view that the swimming pool and spa pool should be visible from all parts of the immediate pool area to ensure any young children in and around the swimming pool can be supervised...

[4.13] I consider this to be particularly important given the purpose of the regulations for swimming pool barriers is to prevent injury or death to young children by restricting unsupervised access to swimming pools.

5.12. From the loggia there is a direct line of sight to the pool and spa, meaning that children in and around the pool will be visible to those in the loggia. As such, I consider that this area can be encompassed within the immediate pool area.

5.13. Although the pool house is a similar distance to the pool, its internal layout disassociates occupants from the pool for the purposes of observing activity in and around the pool. In particular, the layout of the seating in the sauna means that occupants in that space, where it is reasonable to expect they will spend extended periods of time, cannot maintain visual awareness of the pool and surrounding area.

5.14. As such, I consider the pool house does not enable adequate supervision of activity in and around the pool. In this regard, I consider encompassing the pool house as part of the immediate pool area does not comply with Building Code clause F9.

Conclusion

5.15. The loggia can be encompassed within the immediate pool area. However, it is not possible to adequately supervise children in the pool from all parts of the pool house, and therefore, the proposed pool barrier encompassing the pool house as part of the immediate pool area does not comply with Building Code clause F9.

⁹ See for example Determination 2022/025 *Regarding the compliance of an existing pool barrier that encompasses the rear yard of the property* (15 November 2022) at [5.36], and Determination 2024/005 *The authority's decision to issue a code compliance certificate for a swimming pool* (27 February 2024) at [4.10-4.13].

¹⁰ 2024/005 *The authority's decision to issue a code compliance certificate for a swimming pool* (27 February 2024).

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I confirm the authority's proposed decision to refuse to issue the building consent (ABA20260399).

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 14 September 2026.

Peta Hird

Lead Determinations Specialist