



Presented to	19 April 2022 Ordinary Meeting of Council
Related to Item	16.2 Removal of Trees 23a St Michael Terrace, Mount Pleasant
Submitted by	Director Urban Planning, Steve Cope
Attachments	Nil

This Advice Note is in response to a Motion to Meeting of Council from Cr Ross regarding the removal of verge trees to address pool safety concerns below.

That the Council directs the CEO to arrange for the immediate removal of the two trees on the front verge of the property at 23A St Michael Terrace, Mount Pleasant that are within 500mm of the front fence that surrounds the swimming pool in the front yard of the property

The trees related to this request illustrated in the image below (refer to red box), noting that one of the trees in question (Queensland Box tree on the right) was subject to a Council resolution on 16 March 2021 to not support its removal as requested by the resident.

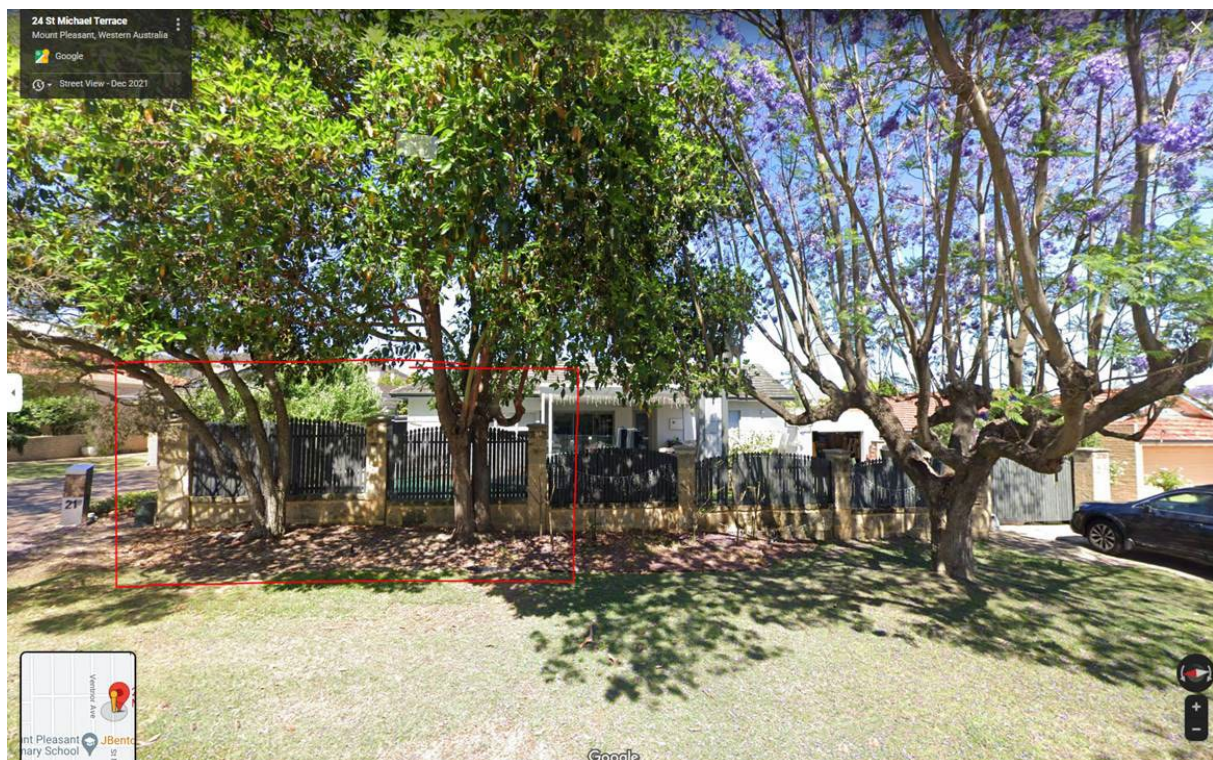


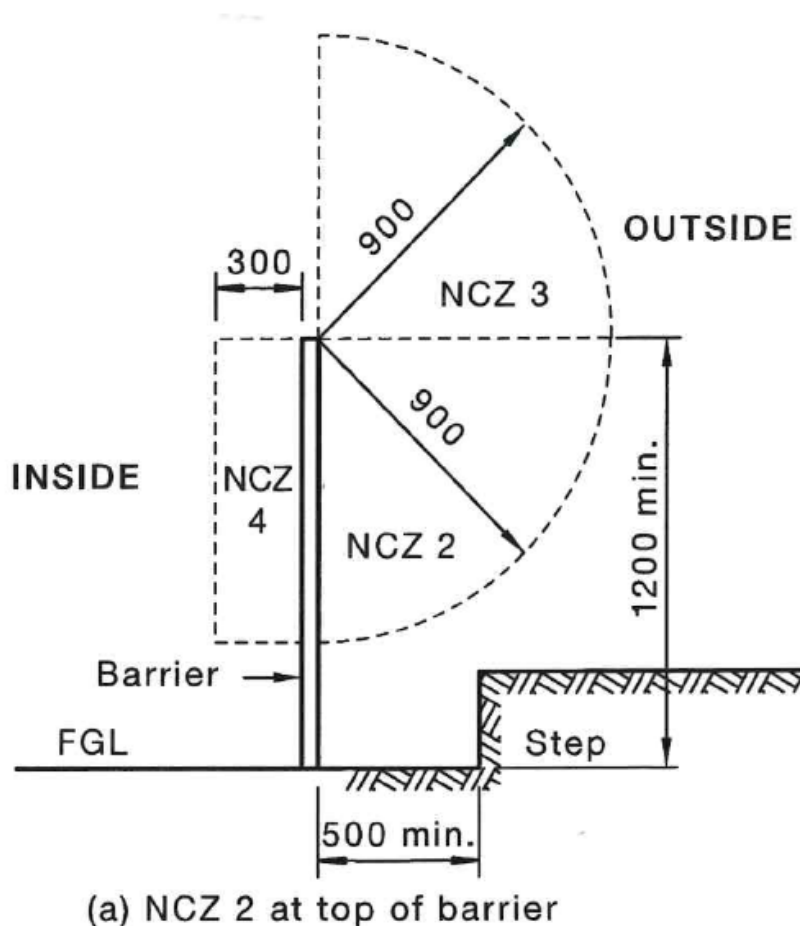


Photo above, taken by a City Officer at 23A St Michael Tce.

Swimming Pool Barrier Compliance Requirements

The suggested requirements within this Motion are not applicable to the verge trees and the front boundary fence, in this instance.

The information within the Motion appears to be referring to Figure 2.1 (a) AS1926.1-2012, Part 1: Safety barriers for swimming (diagram below), page 8. In particular, that there must be no climbable object within 500mm of the pool barrier.

AS 1926.1—2012**8**

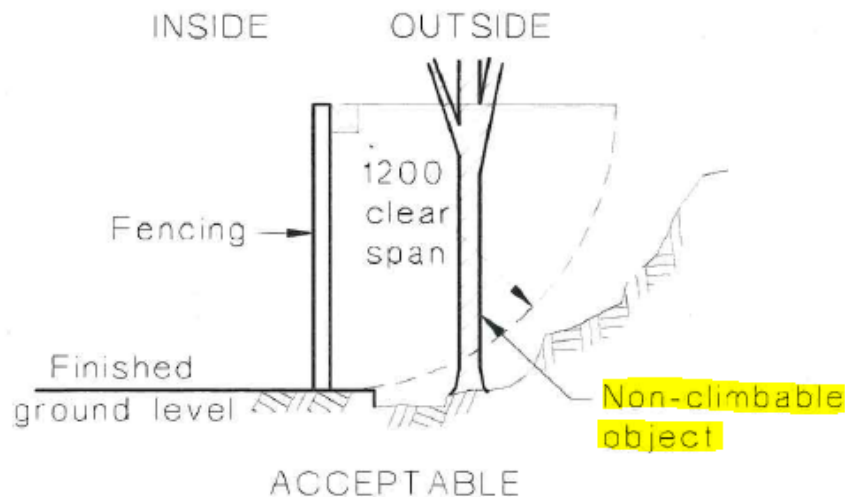
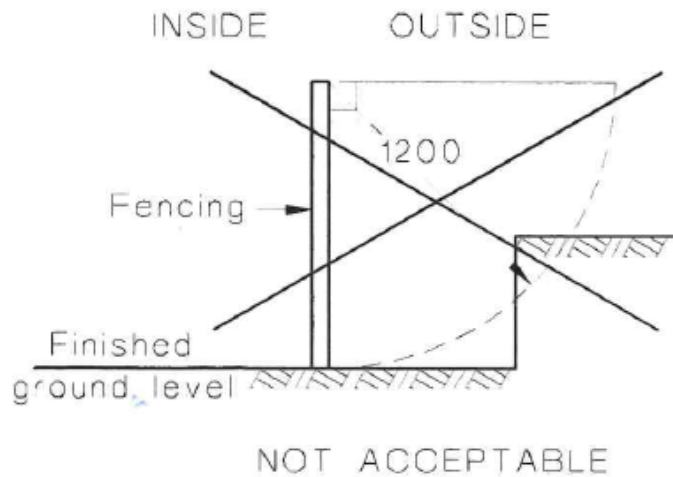
The suggested requirements within the Motion are not applicable in this instance, as the front boundary pool barrier, at 23A St Michael Tce, obtained building approval on 16 January 1995, which predates the Australian Standard AS1926.1-2012.

The applicable Australian Standard, in this instance, is AS1926.1-1993 Part 1: Fencing for swimming pools.

As the pool and front boundary pool barrier were approved by the City in 1995, the front boundary fence must be in compliance with Section 2.3.1 Fencing Height - General, AS1926.1-1993, as depicted in Figure 2.1 (below), page 7.

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AS 1926.1 — 1993



Note within Figure 2.1 (above), the location of a tree within the 1200mm clear span, is deemed a non-climbable object.

Further reference is made in the Rules for Pools guide, page 12.



Boundary or dividing fences

AS 1926.1-1993 requires that where fences are used to form part of the barrier, the effective height of 1200 mm should be maintained on the outside of the barrier. However in the case of boundary or dividing fences it is common to have objects positioned against them on the neighbour's side of the fence (non-pool side) that would be considered climbable. In these cases it is very difficult for the swimming or spa pool owner to have any influence over what a neighbour does within the confines of their property that may impact on the compliance of the barrier.

This situation has been recognised by the Regulations whereby a boundary/dividing fence is considered to comply if the requirements are satisfied in relation to either side of the fence.

Swimming and spa pool owners and occupiers are encouraged to discuss with neighbours any barrier requirements so that all parties are aware

Pre-May 2016



Building Regulations 2012

Part 8 Existing buildings
Division 2 Private swimming pools
r. 51

- (ii) approved alternative requirements;
- and
- (c) any wall comprising part of the barrier must have no means of access through a building other than —
 - (i) a window that is in accordance with the requirements of AS 1926.1; or
 - (ii) an approved door.

- (5) If a boundary fence of the premises is a part of the barrier to a pre-May 2016 private swimming pool, the boundary fence satisfies the requirements of clauses 2.3, 2.6 and 2.7 of AS 1926.1 if all those requirements are satisfied in relation to either side of the fence.

Scope of AS1926.1-1993

The scope of Australian Standard AS1926.1-1993 (Section 1.1) states, “*the Standard specifies requirements for the design, construction and performance of fences, gates, retaining walls, windows, doorsets and balconies intended to form part of a barrier that will restrict the access of **young children** to swimming pools*”.

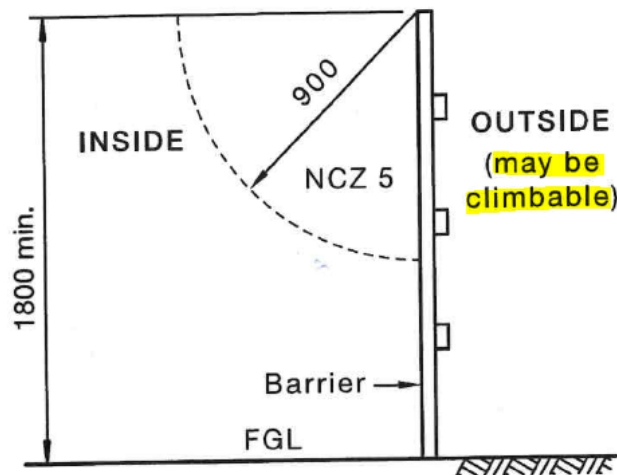
Section 1.3.9, AS1926.1-1993 defines a Young Child as, “*a child under the age of five years*”.

Regulation 48 – Terms Used, Building Regulations 2012 (WA), states a Young Child, “*means a child under the age of 5 years*”.



Post-May 2016 Boundary Fence/Pool Barrier Compliance

It may be of benefit to this Advice Note, to refer to the current boundary pool barrier requirements.



(a) Boundary barrier 1800 mm min.

The diagram above is from Figure 2.2 (a) AS1926.1-2012, page 10, and indicates boundary barrier must be 1800mm in height above Finished Ground Level (FGL). This is in reference to Section 2.2.4-Boundary Barriers, AS1926.1-2012.

Note that the outward facing fence elevation may be climbable and does not indicate a Non-Climbable Zone (NCZ) to the outside of the fence.

This requirement is not applicable to the current boundary front fence/pool barrier at 23A St Michael Tce, Mount Pleasant.

Risk Assessment

In applying the City's Risk Matrix to the likelihood and consequences associated with a child under 5 years old accessing the pool area from an external barrier fence, it has been concluded that the likelihood of such an event would be rare and the consequences potentially catastrophic resulting in a Medium risk.

A Medium risk is classified as acceptable with adequate controls, managed by specific procedures and subject to annual monitoring.

The controls in this case relate to parent supervision, surveillance from residents in the street and the removal of objects that residents may have put in place on the verge. In terms of procedures, the City undertakes four yearly pool inspections and its compliance checklist includes consideration of perimeter fence issues. The City would not be proposing to undertake additional annual monitoring for this level of risk in this circumstance, other than for verge treatment compliance matters.

Safety Risk Response

If the trees are considered a risk, then the City would meet the cost of removal and replacements.

City Officers have conducted swimming pool compliance inspections of the front boundary barrier and have found it to be compliant with AS1926.1-1993. The two verge trees adjacent to the boundary pool barrier were found to be non-climbable and do not provide a foothold for a young child.

To minimise the risk of the trees being climbable by *anyone*, tree guards or similar structures could be installed, or the like (depicted below). Or, a permanent fence is installed in the verge area measuring 1800mm in height. It is acknowledged that either of these options will set a precedent in terms of ongoing asset management costs and create a public expectation in the future.



Alternatively, the verge trees in question could be removed and, therefore, pose no climbing risk to any member of the public.

If any of the above actions are pursued, it should be noted that it is not in response to non-compliance of the pool barrier regulations and Australian Standards. Such a treatment to the verge trees would be going beyond the applicable legislation and Australian Standards and would not be recommended by officers.

Consequences

The Motion contains references to Australian Standards that are not applicable in this instance, however the trees have been assessed by City Officers to be non-climbable and compliant with the relevant regulations and Australian Standards AS1926.1-1993.



The decision to support the Motion has the potential to set a challenging precedent for the City in regards to the management of verge trees throughout the City.

If these verge trees, shrubs or other structures in similar situations are considered to represent a potential unacceptable risk, even though they may comply with relevant regulations, then the City would be compelled to take action and remove the trees, shrubs and/or structures. The removal and tree replacement would be at the City's cost.

An audit of all properties in the City with pools adjacent to the verge facing boundary fence would be required to determine the financial and resource implications of this action being undertaken across the City. In addition, the removal of healthy trees is contrary to numerous Council policies (Urban Forest and Green Spaces, Tree, Climate Action) and may create community concerns regarding loss of amenity and shade and increases in heat island impacts.

In summary, it is concluded that the relevant Australian Standards and building legislation does not apply in relation to this Motion. However the Council may wish to resolve to remove the trees noting that this would be contrary to Policy and set a precedent with financial and resource implications yet to be determined and requiring further investigation.

Legislative and Policy Alignment

- *Building Act 2011*
- *Building Regulations 2012*
- Australian Standard AS 1926.1-1993 Part 1: Fencing for swimming pools [incorporating Amendment No. 1 only] (AS 1926.1-1993)
- Australian Standard AS 1926.1-2012 – Part 1: Safety barriers for swimming pools (AS 1926.1-2012)
- Australian Standard AS 1926.2-2007 – Part 2: Location of safety barriers for swimming pools [Incorporating Amendment Nos 1 and 2] (AS 1926.2-2007)
- City of Melville Tree Policy CP-029
- Verge Treatment Policy CP-86
- Urban Forest and Green Spaces Policy CP –102
- Climate Action Policy CP -120

Financial Implications

The cost of removing and replacing the two trees in question is estimated at \$2,500. The cost for determining the removal of other verge trees, shrubs and/or structures across the City is unknown and would require further investigation to quantify the financial implications.

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Date Received