



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

<b>Appeal Number:</b>	48 - 11
<b>Applicant:</b>	Tony & Gail Lynch
<b>Assessment Manager:</b>	Craig Blood of Auspect Building and Pest Consultants
<b>Concurrence Agency:</b> (if applicable)	N/A
<b>Site Address:</b>	3 Cash Place, Oxenford and described as Lot 425 on RP228383 – the subject site

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### **Appeal**

Appeal under section 532 (1)(a)(i) of the *Sustainable Planning Act 2009* (SPA) against the Pool Safety Nonconformity notice issued by a pool safety inspector under section 246AB of the *Building Act 1975* (BA).

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<b>Date of hearing:</b>	20 July 2011
<b>Place of hearing:</b>	The subject site
<b>Committee:</b>	Geoff Mitchell – Chairperson Tanya Smith – Assistant to the committee (test device operator)
<b>Present:</b>	Gail Lynch – Applicant Stephen Buge – Applicant’s representative Craig Blood – Assessment Manager

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### **Decision:**

The Committee, in accordance with section 564 of the SPA **confirms** the decision of the pool safety inspector to issue the nonconformity notice dated 9 May 2011. The Committee additionally **amends** the nonconformity notice by:

- Amending the solution to Item 2 which currently reads  
“Replace with new panels or fit Perspex to cover existing railings” ; to

**‘Replace with new panels or securely fit a material that complies with the strength requirements of AS1926.1-2007 Section 3.1, over the existing panels.**

## **Background**

The appellant, to comply with the legislative changes to the BA effective from the 1<sup>st</sup> December 2010, sort to obtain a Form 23 Pool Safety Compliance Certificate from a Pool Safety Inspector in relation to an existing swimming pool on the subject site.

On 9 May 2011 the pool safety inspector issued a Form 26 – pool safety nonconformity notice about a swimming pool fence he had assessed at the subject premises.

The nonconformity notice contained four (4) items that the pool safety inspector determined did not comply with the swimming pool standard namely:

- The fixed height of the gate hinges don't comply (AS 1926.1 – 2007).
- The fence railings are durable & when pressure is applied to the rails they separated to 125mm, 25mm more than the compliant allowance of 100mm.
- Climbable object within the NCZ.
- Loose pool fence bracket.

The applicant has appealed the nonconformity notice on several grounds as detailed in the correspondence forming part of the application for appeal. The essence of the appeal grounds are that the appellant considers the testing procedure to determine the strength of the fence was not an accurate determination.

The applicant has raised no issue with the remaining three items in the notice and has commenced rectification.

## **Material Considered**

The material considered in arriving at this decision comprises:

- 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 10 June 2011.
- Form 26 - Pool safety nonconformity notice given by the pool safety inspector on 9 May 2011.
- Verbal submissions from the applicant's representative at the hearing on 20 July 2011.
- Verbal submissions from the pool safety inspector at the hearing on 20 July 2011.
- Results of field tests conducted by the committee at the hearing on 20 July 2011
- The SPA.
- The BA.
- The *Building Regulation 2006* (BR)
- The Queensland Development Code MP 3.4 – Swimming pool barriers.
- The Building Code of Australia 2010 (BCA). Volume 1, Class 2 -9 Buildings (BCA)
- The Australian Standard AS 1926.1 – Swimming pool safety – Part 1 Safety barriers for swimming pools.
- Australian Standard AS 1926.2 2007 – Swimming pool safety – Part 2 Location of safety barriers for swimming pools

## **Findings of Fact**

The Committee makes the following findings of fact:

- The applicant seeks to have the nonconformity notice altered.
- The subject site is *regulated land* as defined by s231A of the BA
- The swimming pool subject to the appeal is a *regulated pool* as defined by s231B of the BA and is a *non-shared pool* as defined in s231A of the BA.
- The existing swimming pool barrier does not comply with AS1926.1- 2007, AS1926.2-2007 or MP 3.4 to the following extent:
  - The pool fence fails the strength and rigidity requirements of s3.1 of AS1926.1- 2007

## **Reasons for the Decision**

- The Committee conducted testing of several locations on the barrier with a device as described in Appendix A of AS1926.1 - 2007.
- All test locations allowed the device to pass through the fence well before the force of 150N was applied.
- The Committee considers the condition to replace the panels or fit with Perspex is restrictive as there are a number of other alternative methods which may be utilised to achieve compliance.

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**Geoff Mitchell**  
**Building and Development Committee Chair**  
**Date: 16 August 2011**

## **Appeal Rights**

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees  
Building Codes Queensland  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002  
**Telephone (07) 3237 0403 Facsimile (07) 3237 1248**