



## Development Tribunal – Decision Notice

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### **Planning Act 2016, section 255**

<b>Appeal number:</b>	<b>24-001</b>
<b>Appellant:</b>	Body Corporate for Griffin Views CTS 46941
<b>Respondent:</b>	Steven Hutchins, Pool safety inspector
<b>Site address:</b>	2 Lavender Drive, Griffin Qld 4503, described as lot 9999 on SP 267655

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### **Appeal**

Appeal by the owner of a residential swimming pool owner under section 246AO of the *Building Act 1975* against the decision by a pool safety inspector to give a Form 26 Nonconformity Notice for the pool under section 246AB of the *Building Act 1975*.

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<b>Date and time of hearing:</b>	1pm 20 March 2024
<b>Place of hearing:</b>	Online
<b>Tribunal:</b>	Mark Anderson– Chair Kylie Rojahn – Member

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### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* confirms the decision of the respondent to issue the Form 26 Nonconformity Notice dated 12 January 2024.

### **Background**

1. The appellant, of the subject site, engaged the respondent, in his capacity as a pool safety inspector, to inspect the regulated pool and to decide whether to give a pool safety certificate that states the pool is a complying pool.
2. The respondent inspected the pool barriers on the subject site and was not satisfied that the pool was a complying pool and, citing one area of non-compliance, issued a Form 26 Nonconformity Notice (an Information Notice).
3. The appellant lodged a notice of appeal against the nonconformity notice citing the following grounds of appeal:

*Due to the use of the pool after hours by unauthorised youth, who were drinking from glass containers and jumping off the roof, the Body Corp have installed a fob or swipe system.*

*This prevents entry by people outside the complex and overcomes the safety issue that these young criminals have caused.*

*There is a fob and a handle but there is no need for a physical latch and installing a physical latch would negate the fob system and create the safety issue we have tried to prevent. As our entry system is effective and safe, we ask for an exemption from the requirement of installing a physical latch and, to us, it seems nonsensical to ask us to decrease the security levels we have installed while there is an explosion of youth crime in Queensland.*

*Our installer, Peninsula Security, have added their response below:*

*Peninsula Security have installed the gate to add extra security as mentioned, the system is self-latching/locking, externally the gate required the fob for the door to open, internally is a lever for unlocking the system internally. There is no way for someone to reach around to bypass the security measure, both the reader and the lock are installed above pool gates standard height and the gate frame was designed to avoid people climbing up the gate. We used the same design which has been used in resorts and hotels by other security companies which has passed and the gate manufacturers who designed the gates have done similar designs for other companies installing similar setups with no issues on passing inspection. A D&D pool gate lock will not add any extra security to the system in fact it will reduce the security as we will have to cut out the Perspex allowing people to reach through and avoid the security all together. ....*

## **Jurisdiction**

4. The Tribunal has jurisdiction to hear the appeal under section 229 and schedule 1, section 1, table 3, item 3(a) of the *Planning Act 2016* (PA) and section 246AO of the *Building Act 1975* (BA), as the appeal is against the nonconformity notice issued by the Pool Safety Inspector and the nonconformity notice included an information notice as required under section 246AB(5) of the BA.

## **Decision framework**

5. Under section 253(2) of the PA, the appellant must establish the appeal should be upheld.
6. 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).
7. In hearing the appeal, the Tribunal was not bound by the rules of evidence and was able to inform itself in the way it considered appropriate (section 249(6) of the PA).
8. The Tribunal is required to decide this appeal in one of the ways identified in section 254(2) of the PA.

## **Material considered**

9. The material considered in arriving at this decision comprises:
  - a. Form 10 Notice of Appeal, grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 21 March 2022.
  - b. The application material including the Form 26 nonconformity notice dated 14 March 2022.
  - c. The Planning Act 2016 (PA).

- d. The Building Act 1975 (BA).
- e. The Building Regulation 2021 (BR21).
- f. Queensland Development Code Mandatory Part 3.4 – Swimming Pool Barriers (QDC MP 3.4).
- g. AS 1926.1 - 2007 (Amendment 1) Swimming pool safety – Part 1: Safety barriers for swimming pools (AS 1926.1- 2007).
- h. AS 1926.2 - 2007 (Amendment 1) Swimming pool safety – Part 2: Location of safety barriers for swimming pools.
- i. Pool Safety Inspector Guidelines 2016.
- j. Verbal submissions from the appellant at the hearing.
- k. Verbal submissions from respondent at the hearing.
- l. Queensland Building and Construction Commission (QBCC) 'PIN pad and swipe card entry to pool areas' at [https://www.youtube.com/watch?v=zFv53tz7ZOM&ab\\_channel=QueenslandBuildingandConstructionCommission](https://www.youtube.com/watch?v=zFv53tz7ZOM&ab_channel=QueenslandBuildingandConstructionCommission)
- m. Datasheets for the electric strike, the smart card reader and the Inception access system, provided by the appellant to the Registrar by email on 20 March 2024

### **Findings of fact**

- 10. The tribunal made the following findings of fact:
  - a. The subject site is located in an established strata titled residential area of 2 Lavender Drive, Griffin.
  - b. A number of dwellings are located on the subject site and an inground swimming pool is situated roughly in the middle of the development.
  - c. The subject site is regulated land as defined under section 231A of the BA.
  - d. The swimming pool is deemed to be a shared, regulated pool as defined under sections 231A and 231B of the BA.
  - e. The swimming pool is an Outdoor Swimming Pool as defined under Schedule 2 of BA.
  - f. The pool safety standard applicable to this swimming pool is QDC MP 3.4 and, by reference therein, AS 1926.1 2007 Amendment 1 Swimming pool safety – Part 1: Safety barriers for swimming pools and AS 1926.2 2007 Amendment 1 Swimming pool safety – Part 2: Location of safety barriers for swimming pools.
  - g. On 12 January 2024 the respondent inspected the pool for compliance with the pool safety standard and, identifying one area of non-compliance, was not satisfied the pool was a complying pool.
  - h. On 12 January 2024 the respondent, in accordance with s246AB of the BA, issued the appellant with a Form 26 Nonconformity Notice (an Information Notice) detailing

how the pool did not comply with the pool safety standard and citing the following issue:

*Gate to pool area has an electronic latch fitted but does not have a physical latch installed.*

- i. The respondent made the following statement in the nonconformity notice under ‘...Action required to make the pool a complying pool’:

*Gate to have a physical latching device installed to the gate. (See attached Aus Std. Gates & Fittings docs, attached video and Pin/swipe card requirements)*

- j. The Australian AS1926.1 – 2007 relevantly provides as follows:

## **2.5 GATES AND FITTINGS**

### **2.5.1 Direction of opening**

*Gates shall be hung so that they only swing outwards, i.e., away from the pool area.*

### **2.5.2 Operation of gate**

*The gate shall have sufficient clearance to enable it to swing freely through its arc of operation.*

*The maximum gap under the gate shall not to exceed 100 mm at any point when in a closed position.*

### **2.5.3 Self-closing device**

*All gates shall be fitted with a device that will return the gate to the closed position and operate the latching device from any position with a stationary start without the application of a manual force. The self-closing device shall be capable of complying with these requirements with the gate at any position from resting on the latching mechanism to fully open.*

#### **NOTES:**

*1 The self-closing device may require a cushioned back-checking operation to prevent shock when the gate is closing.*

*2 Self-closing devices subject to wind loading (which may prevent their closing) may require special consideration.*

### **2.5.4 Latching device**

#### **2.5.4.1 General**

*Gates shall be fitted with a latching device that will automatically operate on the closing of the gate and will prevent the gate from being re-opened without being manually released.*

*The latching device shall not be able to be—*

*(a) inadvertently adjusted during operation;*

*(b) able to be locked in the ‘open’ position; and*

*(c) able to be adjusted without the use of tools.*

*When in the closed position, the latching mechanism shall not be able to be released by the insertion of any implement in the 10 mm gap shown in Figure 2.6(a). ...*

- k. QDC MP 3.4 is a performance-based code, which may be satisfied by complying with the relevant acceptable solution for the performance requirement or, by formulating an alternative solution that complies with, or is shown to be at least equivalent to, the relevant performance requirement or a combination of these measures. Notwithstanding, the Pool Safety Inspector Guidelines 2016 confirm that a performance solution to the pool fencing standards can only be applied by a

licensed building certifier during the pool's development approval stages.

- l. Section 245 of the BA permits the owner of a regulated pool to apply to the local government seeking exemption from complying with a part of the pool safety standard relating to barriers for the regulated pool on the basis on impracticality.
- m. The Tribunal requested further details from the appellant about the access latch mechanism after the hearing and the appellant supplied these on 21 March 2024.
- n. The evidence showed that the gate latch could be opened by use of the electronic latch, without the need to operate a physical latch as well.

### **Reasons for the decision**

- 11. The video information published by the QBCC identified at paragraph 9(l) above, relied on by the respondent, establishes the need—where a security access system is in use—for the following actions to be necessary to open the pool gate:
  - 1. Enter a pin code
  - 2. Manually release a latch mechanism
  - 3. Swing the gate away from the pool area
- 12. The respondent established that no physical action was necessary to release the gate.
- 13. The Tribunal, based upon the evidence provided at the hearing and subsequently about this matter, decided that the Form 26 Nonconformity Notice (an Information Notice) issued by the respondent on 12 January 2024 correctly identified that a physical latch release is necessary to comply.

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**William Mark Anderson**

**Development Tribunal Chair**  
**Date: 10 June 2024**

## **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:

The Registrar of Development Tribunals  
Department of Housing, Local Government, Planning and Public Works  
GPO Box 2457  
Brisbane Qld 4001

**Telephone 1800 804 833**

**Email: [registrar@epw.qld.gov.au](mailto:registrar@epw.qld.gov.au)**