



## Building and Development Dispute Resolution Committees—Decision

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### *Sustainable Planning Act 2009*

**Appeal Number:** 01 - 12

**Applicant:** Mark and Kerrie Street

**Assessment Manager:** All Construction Approvals

**Concurrence Agency:** Not applicable  
(if applicable)

**Site Address:** 17 Megalong Close, Smithfield and described as Lot 36 on SP222745 – the subject site

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### **Appeal**

Appeal under section 532 the *Sustainable Planning Act 2009* (SPA) against the Non-compliance Notice issued by All Construction Approvals for swimming pool fencing as they reasonably believe the posts are located in the non-climbable zone.

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**Date of hearing:** 6 March 2012

**Place of hearing:** The subject site

**Committee:** Bruce Shephard– Chair

**Present:** Mark Street – Applicant  
Kerrie Street– Applicant  
Martin Accatino of All Construction Approvals – on behalf of Assessment Manager

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### **Decision:**

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the *Sustainable Planning Act 2009* (SPA) **sets aside** the Non-compliance notice issued by All Construction Approvals and **replaces** the decision by approving the pool fence. The Committee directs the Assessment Manager to issue the approved Form 17 within ten business days of the date of this decision.

## **Background**

The subject site is part of a relatively new residential subdivision consisting of rendered masonry block single story detached dwellings and vacant allotments. The pool is located at the rear of the house and is surrounded by the house, which forms part of the pool safety fence and a glass pool fence.

The pool fence is a semi frameless glass pool fence system distributed by Highgrove Glass Solutions. The fence system consists of a series of frameless glass panels mounted into the recesses in the supporting stainless steel posts. The posts are fixed into the ground and finish approximately 600mm above the finished ground level. The top of the posts have a cap which is cone shape with a side approximately 68 degrees off horizontal. The top is finished with a small flat area of no more than 6mm in diameter.

The pool fence was installed by the owners during the construction of the house. While undertaking the final inspection of the dwelling on behalf All Construction Approvals, Reuben Thomas who is not a BSA licensed building certifier according to the BSA licence search, mentioned that style of pool fence did not comply with the pool fencing provisions. Correspondence continued between All Construction Approvals and the Applicant which finished with Martin Accatino who is an Assistant Building Surveyor for All Construction Approvals going to the site and issuing a Form 61, Non-compliance notice on 21 December 2011.

The reason for the Non-compliance was listed as the posts are located in the non-climbable zone with gaps more than 10mm between the panels. The notice referenced clauses 2.3.4 and 2.3.5 of Australian Standard 1926.1.

## **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 3 January 2012.
2. Building approval number 00011612 issued by All Construction Approvals
3. Form 61 Non-compliance Notice by All Construction Approvals dated 21 December 2011
4. Form 15 by Brad Sinclair of Highgrove Solutions dated 24 August 2011
5. Numerous Emails between the Pool Safety Council and Kerrie Street between the dates of 7 December 2011 and 20 December 2011.
6. Sustainable *Planning Act 2009* (SPA)
7. Sustainable Planning Regulation 2009 (SPR)
8. *Building Act 1975* (BA)
9. Building Regulation 2006 (BR)
10. Queensland Development Code M.P. 3.4 (QDC)
11. Australian Standard 1926.1 – 2007 (AS1926.1)

## **Findings of Fact**

The Committee makes the following findings of fact:

1. A building permit was issued for the construction of a pool and fence by Harald Weber of All Construction Approvals dated 22 March 2011, reference number 00011612.
2. A Non-compliance Notice or Form 61 was issued by Martin Accatino of All Construction Approvals on 21 December 2011. This certificate was issued as posts are located in the non-climbable zone with gaps more than 10mm between the panels.
3. Martin Accatino confirmed there were no other issues other than listed on the Form 61 which would prevent the issuing of the Form 17.

## **Reasons for the Decision**

The Non-compliance Notice listed climbing points within the non-climbable zone and the Assessment Manager based his decision on AS 1926.1 clause 2.3.4 and clause 2.3.5. Clause 2.3.4 deals with components located on the outside of the fence which could be used as holds for possible climbing of fence rails, bracings and gate hinges. Clause 2.3.5 allows substantially horizontal members to be considered non climbable if the top surface is at least 60 degrees off horizontal and the gaps between the vertical members is less then 10 mm. Both of these clauses deal with horizontal climbable members located on the outside of the fence.

The installation of this fence system requires the posts to be in line of the fence and the surface of the fence changes between glass and stainless steel posts. These factors should be considered as surface projections and indentations as opposed to horizontal members. The Committee therefore considers clauses 2.3.4 and 2.3.5 not relevant in this case. Clause 2.3.3 of AS 1926.1 states 'Projections and indentations, or any combination thereof, within the non climbable zone, shall not form a substantially horizontal surface with a depth greater than 10mm'. The post caps have a diameter of approximately 6mm, therefore the Committee is of the opinion that the projections or indentations that form the horizontal surface do not act as a hold for climbing and therefore complies with AS1926.1.

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**Bruce Shephard**  
**Building and Development Committee Chair**  
**Date: 26 March 2012**

## **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**