
REPORT 3
(1215/53/IM)

APPLICATION FOR EXEMPTION FROM THE FENCING OF SWIMMING POOLS ACT 1987 FOR 97 BEAUCHAMP STREET, KARORI

1. Purpose of Report

To present to the Regulatory Committee, for its consideration, an application for exemption on behalf of Mr P.G. Rutherford in accordance with clause 6 of the Schedule to the Fencing of Swimming Pools Act 1987 (the Act).

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Agree to grant an exemption for the doors entering the pool area as it is deemed unreasonable in accordance with clause 11 of the Schedule to the Act to require the applicant to reconfigure the existing doors.*
3. *Agree to impose the following conditions that need always be met by the applicant and any future owner of the property to enable this exemption to apply:*
 - *The doors entering the pool area are accepted as installed, to remain opening to the pool area and to have hardware fitted and fully functional as listed below.*
 - *The doors numbered 1 and 3 are to be fitted with an automatic door closure adjusted to close and latch automatically.*
 - *Latches and/or locks must be installed at or above 1.5m from the finished floor level.*
 - *The doors must not be fitted with hold open devices.*

3. Background

3.1 Special Exemptions

Clause 6 of the Schedule to the Fencing of Swimming Pools Act 1987 provides that

- each application must be considered on its own circumstance
- an exemption provides no significant increase in danger to young children
- the Council may impose conditions.

The Act says:

- “6. *Special exemptions—*
- (1) *A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the **case of any particular pool** where the territorial authority is satisfied, having regard to the **particular characteristics** of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2) of this section, that such an exemption **would not significantly increase danger to young children.***
- (2) *In granting an exemption under subsection (1) of this section, the territorial authority **may impose such other conditions** relating to the property or the pool as are reasonable in the circumstances.*
- Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.”*

Note our emphasis in **bold text**.

3.2 Councillor Involvement

Clause 12 of the Fencing of Swimming Pools Act 1987 specifically requires the granting of exemptions to be made by elected members of the Territorial Authorities, not Council Officers.

- “12. *Delegation of powers to committees of councillors—*
- The territorial authority may delegate its powers and functions under section 6 of this Act and clause 11 of the Schedule to this Act to any committee of the territorial authority appointed under [section 114P] of the Local Government Act 1974 that comprises only members of the territorial authority; but may not delegate those powers to any committee that has any members who are **not members of the territorial authority or to any officer of the territorial authority** under section 715 of the Local Government Act 1974 or otherwise.”*

Note our emphasis in **bold text**.

3.3 Opening direction of gates and doors

Clause 8 of the Schedule to the Fencing of Swimming Pools Act 1987 specifically requires the opening direction of a gate or door to be away from the pool area.

“8. Every gate or door shall be so constructed as to comply with the relevant requirements of clauses 1 to 7 of this Schedule, and shall be so mounted that—

(a) It cannot open inwards towards the immediate pool area:”

3.4 Exemption where it is deemed unreasonable to comply

Clause 11 of the Schedule to the Fencing of Swimming Pools Act 1987 provides exemption from compliance with clause 8.

“Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 of this Schedule to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.”

4. Discussion

4.1 Site Report and Address

Legal clarification on this matter was obtained from Simpson Grierson. The legal advice disclosed this part of the Act to be ambiguous, but they were of the opinion that the hinged doors should not open out into the pool area and should open away from the pool area unless it was unreasonable to do so and, if allowed to open into the pool area, they must be fitted with a child-proof locking device.

The dwelling was built in 1950, the pool was constructed and completed in 1969. This indicates that the pool and house had been established at least 18 years prior to the Fencing of Swimming Pools Act 1987. In 2004 an audit visit was carried out to verify compliance of the Act. The following inspection found four access doors to the house were found to be opening the wrong way and no perimeter fence to the pool. Subsequently a Building Consent has been approved to construct a complying pool fence.

4.2 Door Installation

The doors for which exemption is sought are:

- *Door One, single aluminium inwards opening door (towards the pool) leading off a Study.*
- *Door Three, single timber framed door, glazed panels, inwards opening (towards the pool) leading off a bedroom.*

The doors need to contain the required hardware, as listed in the recommendations, to achieve compliance. It is the opening direction that requires exemption.

- *Door Two, is to be permanently removed as per the Owners proposal.*
- *Door Four, solid timber, with no access to the house. Pool pump room only.*

It is apparent from previous inspections of existing pools undertaken by Wellington City Council that a large area of non-compliance with the Fencing of Swimming Pools Act 1987 is where hinged doors open into the pool area.

Once an exemption for the doors has been granted in accordance with the recommendation and the construction of the pool fence as per the current Building Consent, the pool fencing will comply.

4.3 Attachments

Refer to the attached owners' documentation and current photographs in support of the application.

5. Conclusion

An exemption can only be granted where the exempted features of the pool fencing do not pose any greater risk than a fence built in accordance with the schedule to the Fencing of Swimming Pools Act 1987.

Each application for exemption to the Fencing of Swimming Pools Act 1987 needs to be considered on its particular circumstance to determine the presence of any greater risk.

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Supporting Information

1) Strategic Fit / Strategic Outcome

Not applicable

2) LTCCP/Annual Plan reference and long term financial impact

Not applicable

3) Treaty of Waitangi considerations

Not applicable

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

Not applicable

b) Consultation with Maori

Not applicable

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

Not applicable