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REPORT 2  
(1215/53/IM)

## APPLICATION FOR EXEMPTION FROM THE FENCING OF SWIMMING POOLS ACT 1987 FOR 50 CLARK STREET, KHANDALLAH

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### 1. Purpose of Report

To present to the Regulatory Committee, for its consideration for exemption on behalf of Mr and Mrs T & M Fairhall in accordance with clause 6 of the Fencing of Swimming Pools Act 1987 (the Act) also reference to New Zealand Standard 8500:2006, Safety Barriers and Swimming Pools, Spas and Hot Tubs.

### 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, six, seven and eight 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 Fencing of Swimming Pools Act 1987 provides that:

- Each exemption must be considered on its own circumstance
- An exemption provides no significant increase 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.”*

#### 3.2 Delegated Authority

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 that 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 the late 1920's and the swimming pool was installed in 1978. This indicates that the pool and house had been established prior to the Fencing of Swimming Pools Act 1987.

In 2002 an audit visit was carried out to verify compliance with the Act. The following inspections found eight access doors to the dwelling and out-house, were found to be opening in an incorrect direction. Also areas of the perimeter fence have openings that were non compliant.

### **4.2 Door Installation**

The doors for which exemption is sought are:

- *Three single outward opening doors (towards the pool), from the main household dwelling, being dining / family/ bedrooms. Identified as D6-D7-D8.*
- *These doors currently have complying hardware and door closers.*

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

- Door nine opens in the correct direction and has complying hardware.
- A complying swimming pool fence and gate separates the pool off from the remaining two protected sides.

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, the pool fencing will comply.

#### **4.4 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.

Report prepared by: *Owen Williams, Building Officer, Building Consents & Licensing Services*

## **Supporting Information**

### **1) Strategic Fit / Strategic Outcome**

*Example: The policy supports Council's overall vision of Creative Wellington – Innovation Capital. The policy supports Council activities as a facilitator of recreation partnerships and provider of recreation services. Agreement to the policy will contribute to Council meeting the outcome of offering a diverse range of quality recreation and leisure activities (see outcome 7.1 Recreation Opportunities).*

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

*Example: The project is contained in the Council Plan # CX651. The changes indicated here will lead to an increase in capital expenditure in the coming year. Operational expenditure to cover 0.5FTE is anticipated for each subsequent year.*

### **3) Treaty of Waitangi considerations**

*Example: The proposal is to be located on a site that Mana Whenua regard as important. The site is the former shoreline and waka used to moor there prior to reclamation. The Tenth Trust has been approached and considers the proposal an appropriate use of the land.*

### **4) Decision-Making**

*Example: This is not a significant decision. The report sets out a number of options and reflects the views and preferences of those with an interest in this matter who have been consulted with.*

### **5) Consultation**

#### **a) General Consultation**

*Example: All affected parties have been identified. The effects of this work are confined to the street and surrounding neighbourhood. It is proposed that consultation be targeted to the local neighbourhood. We propose a letter box drop and to hold a meeting with the residents. Council is not required under legislation to consult on this matter.*

#### **b) Consultation with Maori**

*Example: Mana whenua have been provided with a draft of the policy. Their comments were limited to the timing of the project. These concerns have been noted and are covered in section 3 of the report.*

### **6) Legal Implications**

*Example: Council's lawyers have been consulted during the development of this report, outlined in section 4.1*