
REPORT 11
(1215/52/IM)

EVALUATION OF THE FENCING OF SWIMMING POOLS ACT 1987

1. Purpose of Report

To seek support from the Committee to a submission to the Department of Building and Housing on an evaluation of the Fencing of Swimming Pools Act 1987.

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Agree to the attached submission to the Department of Building and Housing on the evaluation of the Fencing of Swimming Pools Act 1987.*
3. *Agree to delegate to the Portfolio Leader, Urban Development and Transport, minor editorial changes required as a result of SPC discussion.*
4. *Note that the Council's submission will feed into a further round of consultation expected in early 2009.*

3. Background

The Fencing of Swimming Pools Act 1987 is being reviewed. The Department of Building and Housing (DBH) have issued a discussion document entitled 'Evaluation of the Fencing of Swimming Pools Act 1987'.

'Swimming pools' covered by the Act specifically refers to:

'an excavation, structure, or product that is capable of being used for the purpose of swimming, wading, paddling or bathing: and includes any such excavation, structure or product that is a spa pool.'

The Act specifically exempts some pools under section 5 including:

- Pools with a maximum depth of water that does not exceed 400mm
- Pools that are enclosed within a building

- Pools administered by a local authority, or otherwise supervised with restricted access when not supervised
- Pools with side walls that effectively form a fence (sides minimum 1.2 m and ladder readily removed).

The reference to pools in the discussion document and the proposed submission specifically refers to swimming pools as defined by the Act and not exempted under section 5.

The discussion document is the first phase of consultation with local authorities and other interested parties to identify operational issues with the current legislation. A second round of consultation is expected in early 2009.

Consultation on phase one closes on June 30. A proposed submission is attached as appendix 1.

4. Discussion

The underlying purpose of the Act is to prevent children from drowning in swimming pools. The Act places responsibilities on pool owners to fence swimming pools that are not exempted. Exempt pools are listed in section 5. Special exemptions are also possible under section 6 which provides for the territorial authority to grant exemptions that will not increase the danger to young children. Section 12 allows delegation of this power to a committee of members, but specifically bars delegation to officers of the authority. The Council's Regulatory Processes Committee considers such applications on a case by case basis.

The means of compliance for swimming pool fences is contained in a schedule to the Act. Building consent is required under the Building Act 2004 to construct these fences. Building consent is also required for pool structures. The term structure is not defined but is not interpreted as including ready-made pools.

The Council has a role in ensuring that pool owners comply with the fencing requirements of the Act through a general duty under section 10. It also approves and inspects the construction of pools and fences through the building consent process.

The Act appears to be working. The number of children under six who drowned in swimming pools has reduced dramatically since the Act came into force. (1980-86 = 81 compared to 1997-2006 =44). The Government is seeking feedback about how the Act might be further improved to build on the gains made already.

The discussion document from DBH sets out the operational issues identified in the review and the attached submission outlines officer's views for consideration by the Committee. Officers have participated in workgroup discussions with

officers from neighbouring Councils, and the views expressed in the submission are largely agreed regionally. The dominant themes are discussed below.

4.1 Provision of information

The submission supports initiatives for provision of information:

- Generally to increase public awareness through media and publications
- More specifically to pool owners regarding their responsibilities through labelling at point of purchase, and through compliance schedules
- To territorial authorities through guidance documents

4.2 Clarity of interpretation

Inconsistency in interpretation specifically around determining:

- Exempt pools
- Activities that are appropriate in the immediate pool area

have been identified as requiring clarification. Some examples are provided in the submission.

4.3 Notification

With spa and ready-made pools being sold through retail outlets, the Council is simply unaware of many installations. A notification system which could include mandatory notification at point of sale by retailers would help territorial authorities identify properties with new pools. Notification also by real estate agents when listing properties for sale would help territorial authorities identify properties with existing pools.

4.4 Relationship with Building Act 2004

Currently the building code cites compliance with the Fencing of Swimming Pools Act as the means of compliance. This is to some extent out of step as the building code is performance based and the schedule in the Fencing of Swimming Pools Act is prescriptive. Relying on the performance based approach of the building code as a means of compliance would allow some consideration of innovative solutions without the need for recourse to special exemption applications. It would also allow for waiving of the requirements where they were not sensible.

4.5 Compliance schedules and the building warrant of fitness regime

Requiring swimming pools, ie pools capable of holding a depth of water of more than 400mm, to be covered by a compliance schedule, would ensure that the fence was regularly inspected and maintained. This approach has been recently adopted to ensure the safety of cable car installations. The approach utilises

existing mechanisms in the Building Act and enables the associated costs to be charged to the owners of pools rather than needing to be funded from rates.

4.6 Enforcement

Enforcement under the Building Act is preferred as it allows a range of enforcement options and is generally effective in resolving issues of non-compliance.

5. Conclusion

The Fencing of Swimming Pools Act 1987 is being reviewed and a draft submission is attached as appendix 1 for consideration by the Committee.

Contact Officer: Katharine Wheeler, Building Group Manager, Policy.

Supporting Information

1) Strategic Fit / Strategic Outcome

The Council has a statutory role under The Fencing of Swimming Pools Act 1987 and The Building Act 2004. The proposed submission supports the Council's outcomes in relation to safety – 'Wellington will offer a safe living environment, where people feel safe.'

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

The Building Consents and Licensing Business Unit monitors compliance with the Acts. No long term financial impacts have been identified.

3) Treaty of Waitangi considerations

No Treaty of Waitangi issues have been identified.

4) Decision-Making

This is not a significant decision. The submission sets out issues for part one of a two part process and reflects views of officers.

5) Consultation

Discussions have taken place with other local authorities in the Wellington region. The attached submission has been prepared by officers.

6) Legal Implications

No legal implications have been identified at this stage. The discussion document asks for feedback on the current legislation as part of the first phase of consultation.

7) Consistency with existing policy

The submission comments on proposed government policy.

Appendix 1



Department of
Building and Housing
Te Tari Kaupapa Whare

Fencing of swimming pools Act 1987 submission form

This submission form is intended to help you make a submission on the operational issues identified with the Fencing of Swimming Pools Act.

Submission can be sent by:

post or courier to: Fencing of Swimming Pools Act 1987
Evaluation Project
Regulatory Policy Group
Department of Building and Housing
Level 6, 86 Customhouse Quay
PO Box 10-729
Wellington

or email to: comments@dbh.govt.nz (please put 'Fencing of Swimming Pools Act 1987' in the subject line)

or fax to: (04) 494 0290 (please put 'Fencing of Swimming Pools Act 1987' in the subject line)

The **closing date for submissions is 30 June 2008**. Please fill out the questions that are relevant to you. You can also send additional feedback if you choose.

For more information please contact the Department on 0800 242 243 or refer to www.dbh.govt.nz

Contact details	
Name of person preparing submission:	
Position:	
Organisation:	Wellington City Council
Postal address	P O Box 2199, Wellington
Email:	katharine.wheeler@wcc.govt.nz
Telephone:	04 8013391

Questions

I am currently a pool owner.

Yes No

Do you agree with this breakdown of the causes of child drownings and, if not, why not? Have we missed anything?

We are a territorial authority and have no specific knowledge related to the causes of child drownings.

1 Restricting the access of young children to swimming pools

1.1 Is fencing the most effective means of preventing young children drowning?

Yes No

1.2 What alternatives to fencing are available? What are the advantages and disadvantages of these? How does the drowning risk compare to fencing a pool.

Although the most effective means of preventing young children drowning is effective supervision by responsible adults, fencing is the best means of preventing un-supervised access to the pool area. Our experience when inspecting is that although spa pools are often provided with lockable covers these are sometimes left off or open and are rarely locked.

1.3 What advantages do you anticipate from shifting the focus from fencing to a purpose statement requiring pool owners to restrict access to the pool to prevent drowning?

The Building Act has performance rather than prescriptive requirements and territorial authorities have developed expertise in the management of purpose statements. Shifting the focus to a purpose statement would achieve better alignment with Building Act requirements and likely result in fewer special exemption hearings.

1.4 What disadvantages do you anticipate from shifting the focus from fencing to a purpose statement requiring pool owners to restrict access to the pool to prevent drowning?

Assessing compliance with a purpose statement requires more careful consideration resulting in more time processing applications and potentially more complexity in inspections. Moving away from a prescriptive approach may result in potential inconsistencies in interpretation between different territorial authorities.

1.5 What costs would be involved for territorial authorities, pool owners and/or anyone else in making this change?

Generally there would be more time spent preparing applications, processing consents, inspecting and recording observations and decision making which equates to increased costs.

1.6 Are there other impacts we should consider in making this change?

Yes No

If yes, what are these

If the change in focus was to result in management procedures being accepted as alternatives to built solutions there will be an increased reliance on the continued behaviours/practices of those individuals managing the pools. Particularly in a domestic environment, continued management by subsequent owners or tenants would be difficult to guarantee and/or monitor.

1.7 Are there other options that should be considered?

Yes No

If yes, what are these

Currently a building consent is required for a pool fence but not necessarily a pool if it is of the ready-made variety. Many of the ready-made and spa pools are capable of being filled to a depth in excess of 400mm. Consideration should be given to requiring notification of the sale or installation of pools to the territorial authority. Obligation to notify could extend to points of sale and real estate agencies listing properties as well as to the property and pool owners.

2 Public awareness of the Act

2.1 Do you agree that there is low public awareness of pool owners' responsibilities under the Act?

Yes No

2.2 What evidence is available to support this view?

As a territorial authority we receive a number of queries from both owners and designers that indicate a general lack of understanding. This is further confirmed by the degree of non-compliance we find when undertaking property inspections and audits. There are also many real estate publications, magazines and even television programmes which show images of non-compliance, and often a complete lack of, fencing.

2.3 What do you think of the following options for increasing public awareness?

- More information available on the Act
- A clearly stated 'purpose' in the Act
- Information on the Act distributed to pool owners by territorial authorities, designers, retailers and builders of pools and pool fencing
- Incorporating the Act into the Building Act 2004

Although incorporation into the Building Act is less likely to greatly increase public awareness we believe that all the above proposals will assist and are necessary.

2.4 What other options are there to increase public awareness?

Legislation requiring labelling of ready-made and spa pools, similar to the rationale for labelling on cigarette packets, would provide information and increase awareness of pool

owner obligations

Work with the media, not only for public awareness campaigns but also to voluntarily reject the inclusion of non-compliant images in publications and encourage the inclusion of images showing good design solutions.

The guide to territorial authorities has proved a useful document in the past but it requires updating and the charge per copy limits its availability. Territorial authorities, pool supply outlets and the like could distribute information such as this if it was freely available.

Requiring a compliance schedule for a pool would provide the owner with information about maintenance requirements and heighten awareness of pool owner obligations

2.5 What is your preferred option and why?

In terms of raising general public awareness, working with the media is likely to have the most impact. Other suggestions (as per 2.3 above) will give more in-depth information in a more targeted way that is also valuable.

2.6 What would be the impact of your answers to the last question on pool owners, territorial authorities, and the public as a whole (including advantages and disadvantages and estimates of any financial impacts)?

Work with the media would project a more positive image and acceptance of restricting access to pool areas and the cost could be minimal if the media adopted the suggestions voluntarily. Other suggested mechanisms would provide the right level of information to the different stakeholders. Central government ownership of the information release would ensure consistency of message nationally. The costs of obtaining compliance schedules would be recovered by territorial authorities from building owners with pools rather than the rate payer.

2.7 What would be the impact if this issue is not addressed?

Continuing levels of misinformation and negative image of pool fencing as disruptive to the in-door out-door flow that is seen as desirable in housing. The general mis-understanding of requirements would be perpetuated and the opportunity to retrospectively increase existing pool owners knowledge of their responsibilities would be lost. There would also be a continuing level of non-compliance and non-notification of pools to territorial authorities.

3 Section 2 and 5 interpretation of 'swimming pool'

3.1 Do you agree that clarity of the law and inconsistent application of it are issues? If so, please provide examples of types of pools where the Act is not clear or where there has been inconsistent application of the Act

It seems clear that the definition in section 2 is modified by section 5, exempting some types of swimming pools from the scope of the Act. The lack of clarity is in application. For instance a claw foot bath is clearly capable of being used for bathing and is therefore a swimming pool if it is more than 400 deep. Where the bath is inside the house it is exempt under section 5 (e) but when it is outside the house it depends on what the intended use is as to whether or not it is exempt. If the bath is intended for use as a horse trough it is exempt under section 5(c) but if it intended for taking a bath on occasion it would need to be fenced every time it was filled. Clearly the horse trough use poses a greater risk to a small child than a bath that is only filled

when someone is bathing.

A similar lack of clarity surround the consideration of water features, and pools and small dams on rural properties intended as a reservoir for fire fighting or for irrigation.

3.2 What do you think of the following options for improving clarity?

- Amending the Act to simplify the test
- More information available on the Act
- Information on the Act distributed to pool owners by territorial authorities, designers, retailers and builders of pools and pool fencing

All are needed.

3.3 What other options are there to improve clarity?

More specific definition, or specific guidance material, around ponds and other water features would improve consistency. Moving the control to the Building Act would allow a risk based approach with waivers to be applied if appropriate.

3.4 What is your preferred option and why?

Inclusion in the Building Act allows for other established mechanisms to be utilised. This includes the possibility of compliance schedules and a range of enforcement options including infringements.

3.5 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

More specificity and clarity would result in clearer understanding and less confusion. It would promote consistency of interpretation nationally.

3.6 Are there pools that should not require fencing? What are these and why?

Reconsideration of the definition of a swimming pool and what is exempt may resolve the issue. As a general premise we concur that access to swimming pools should be restricted. There are some pools where the relative risk would seem to be low and that the cost of fencing may not be appropriate. Instances may be where there are other water bodies in close proximity that pose a greater risk such as a stream on the property or the pool is in a remote location. It is not clear how far away from a house a pool would need to be before it could be considered to not be 'associated' with a house.

3.7 What would be the impact of your answer on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

Increased clarity will result in better understanding, fewer disputes, and improved consistency of application nationally. Reconsideration of the definition could result in fewer pools requiring to be fenced without increasing the risk to children, and possibly fewer applications for special exemptions.

3.8 What would be the impact if this issue is not addressed?

Continued inconsistent interpretation of the requirements. Without this clarity, and possibly reconsideration of the definitions, fences may be required for pools for which the cost/benefit is questionable.

4 Section 2 interpretation of 'immediate pool area'

4.1 Do you agree that the interpretation of 'immediate pool area' is unclear? Why?

From work with our regional partners there appear to be inconsistencies of understanding. Clearer definition will make it easier for territorial authorities to enforce compliance. In particular the understanding of 'outdoor living area' has changed since the Act was introduced in 1987.

4.2 What do you think of the following options for improving clarity?

- Amending the Act to increase clarity
- More information available on the Act
- Information on the Act distributed to pool owners by territorial authorities, designers, retailers and builders of pools and pool fencing

All these are important.

4.3 What other options are there to improve clarity?

Clarity may be enhanced through a public relations campaign through all media. The option of requiring labelling of pools at point of supply is also an opportunity to include information clarifying the immediate pool area.

4.4 What is your preferred option and why?

Providing information through labelling is preferred because it is easier to demonstrate that the owner had the knowledge if enforcement action becomes necessary.

4.5 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

The cost of labelling is likely to be an insignificant portion of the cost of a pool. The result is likely to be increased understanding by pool owners which should result in improved levels of compliance. Less debate will also enable territorial authorities to apply the requirements more consistently and in less time.

4.6 What do you think the 'immediate pool area' should include? Why?

Only those areas/activities directly associated with the pool including; space around the pool

sufficient to provide access, furniture for those supervising children in the pool, and a pool shed restricted to activities including changing, plant (filters and pump) and storage for pool cleaning equipment and chemicals. Other outdoor leisure activities, including bar-b-ques and the like, should be excluded from the immediate pool area because those socialising, cooking food etc are often distracted from the task of supervision.

4.7 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

There would be retrospective compliance issues for some existing situations. It is possible to design visually unobtrusive pool fencing so that the open feel can be retained without diminishing the security of access to the pool itself.

4.8 What would be the impact if this issue is not addressed?

The risk situation would not improve. In particular the prevalent practice of considering the house itself as part of the 'fence' as a necessary part of good 'indoor/outdoor' flow would be perpetuated.

5 Boundary fencing

5.1 Do you think the legitimacy of boundary fencing is unclear? Why?

There appears to be no restriction in the Act on considering boundary fencing to be part of the pool fence itself.

5.2 What do you think of the following options for improving clarity?

- Amending the Act to increase clarity
- More information available on the Act
- Information on the Act distributed to pool owners by territorial authorities, designers, retailers and builders of pools and pool fencing

It is not so much a question of clarity as a potential maintenance problem when the pool owner does not control what happens on the other side of the fence. It is recommended that the Act be changed to exclude boundary fences from being able to be considered part of the pool fencing.

5.3 What other options are there to improve clarity?

As noted in 5.2 above, it is recommended that the Act exclude boundary fences as part of pool fencing. If the intention is to retain the boundary fence, then it would be helpful to clarify that the boundary fencing may form part of the pool fencing. Alternatively further information at the point of sale, through labelling and the like, would provide information to the pool owner about the potential problems of relying on boundary fences as part of the pool fencing.

5.4 What is your preferred option and why?

To change the Act to exclude boundary fencing from forming part of the pool fencing. This is recommended because the pool owner does not control what happens on the other side of the

fence. For instance a neighbour may nail a timber trellis to the fence (the opposite side of the fence from the pool) to grow a vine up rendering the fence immediately climbable and creating a compliance issue that the pool owner can not rectify.

5.5 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

There would be retrospective compliance issues for existing situations where the pool fencing is currently on the boundary. The longer term advantage would be that alterations to boundary fences will not compromise the safety / integrity of the pool fence.

5.6 Do you think boundary fencing should be a means of compliance? Why?

See 5.4

5.7 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

See 5.5. The changes to the Act could include a transitional period for owners of existing pools to comply or even exempt existing situations. The latter would result in no more risk than presently exists while improving the risk profile for new situations. This approach would not have additional financial implications for existing (compliant) pool owners.

5.8 What would be the impact if this issue is not addressed?

The current problem of maintaining the integrity of boundary fences as pool fences would not improve.

6 Ready-made pools

6.1 What could be done to increase compliance with the Act in respect of ready-made pools?

Improving public awareness through the media and at point of sale, such as through mandatory labelling of pools capable of holding water to a depth of 400mm or more, may make some gains in the level of compliance. Mandatory notification, of the sale of pools and their intended location of use, by retailers would aid territorial authorities in their audit work but, because they are easily relocated and often only in use for part of the year, any enforcement programme would be difficult.

An alternate approach may be to require all swimming pools, including ready-made pools, to have a compliance schedule. The already established building warrant of fitness regime would ensure that the security of access to the pool is maintained.

6.2 Given the level of risk, should spa pools be treated the same as swimming pools?

Yes. Our inspectors frequently find spa pools without restricted access which poses a potential risk to young children.

6.3 What do you think of the following options for improving compliance?

- More information available on the Act
- Information on the Act distributed to pool owners by territorial authorities, designers, retailers and builders of pools and pool fencing

As noted earlier, a multifaceted approach is needed to get general information into the public arena and more detailed information about their responsibilities to pool owners. Mandatory labelling is considered to be an effective means of getting detailed information to new pool owners about their obligations.

6.4 What other options are there to improve compliance?

Requiring all swimming pools that are not exempted under the Act to have a compliance schedule would allow for regular monitoring through the building warrant of fitness regime. This approach is analogous to the recent changes to the Building Act 2004 which required cable cars owners to obtain a compliance schedule. The number of accidental deaths due to drowning in a domestic pool, out-number accidental deaths due to cable car accidents. Mandatory notification by retailers of pools capable of holding more than 400mm depth of water to the territorial authority would allow for follow up if a building consent application for fencing for the new pool was not received. The follow up process may result in increased levels of compliance.

6.5 What is your preferred option and why?

The preferred option is to require a compliance schedule for all swimming pools (as defined in the Act) that are not exempted. This would ensure an on-going inspection and maintenance programme and allow enforcement options under the Building Act 2004, including the possibility of infringement fines. The compliance schedule would also be a means of transferring the information about pool owner obligations to subsequent owners.

6.6 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

There would be increased awareness of pool owners of their obligations and annual costs associated with the requirement for inspection and issuing of a building warrant of fitness. For territorial authorities it would allow for funding of the audit inspections directly from the pool owners rather than funding through general rates. This alone is likely to result in improved resourcing of this function within territorial authorities and higher levels of compliance. The owners would engage Independent Qualified Persons (IQPs) to undertake the work, many of whom would work across territorial authority boundaries potentially improving consistency of inspections. The advantage to the public would be a reduction of the level of risk, higher levels of compliance and less of a financial burden through rates.

6.7 What would be the impact if this issue is not addressed?

No improvement in the level of compliance.

7 Non-notification of pools

7.1 Do you think there is a problem of non-notification?

Yes No

7.2 If so, why is this? How big a problem is it?

Inspections of properties, for other reasons, frequently reveal pools, particularly spa pools, having been installed without our knowledge and without compliant fencing. Frequently such pools have no restriction of access at all. Because of the prevalence of non-notification, the size of the problem is unknown. Spa pool retailers may be able to supply details of the numbers of pools sold. Our experience is that there are few spa pools for which we receive building consent for fencing. Potential owners are not aware of the need to fence the pool when purchasing. They are therefore unaware of the need to notify and commonly do not consider the costs involved for providing fencing before purchase. The costs of obtaining a building consent and the cost of installing the fencing itself is likely to be a factor, as is the desire to avoid the look of fencing of these areas.

7.3 What do you think of the following options for improving notification?

- More information available on the Act and pool owners' responsibilities
- Information on the Act distributed to pool owners by territorial authorities, designers, retailers and builders of pools and pool fencing

Both are needed.

7.4 What other options are there to improve notification?

Mandatory reporting by retailers/installers of details of the pool owner, including the location and intended installation. Such details would address the issue related to new pool installations.

Mandatory notification by real estate agents when listing properties would help locate existing installations which the territorial authority could then follow up if the pool was not already on the database as compliant.

7.5 What is your preferred option and why?

Mandatory reporting by retailers/installers of pool owner, and location of intended installation details would allow the territorial authority to add the pool to the database and follow up if a building consent was not obtained for fencing the pool.

7.6 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

More pools would be added to the database held by the territorial authority with more opportunity for follow up resulting in higher levels of compliance and reduced risk. It would only impact on pool owners that would otherwise avoid complying with the Act. Notification would result in an increased work load with more potentially non-compliant situations for follow up.

7.7 What would be the impact if this issue is not addressed?

There would be no change in the level of compliance and pool owners would continue to avoid their obligations under the Act.

8 Records

8.1 How important is record-keeping, and why?

Critical to achieving high levels of compliance

8.2 Do you think record-keeping is necessary for territorial authorities to meet their obligations under the Act

Yes No

8.3 What do you think of the following options for improving records?

- Amending the Act to require records to be kept
- More guidance information available on how territorial authorities can meet their obligations under the Act

More guidance information would be helpful. It will not be necessary to amend the Fencing of Swimming Pools Act to require the keeping of records if compliance schedules are required under the Building Act. Without incorporation in the Building Act, requiring records to be kept under the Fencing of Swimming Pools Act would be ineffective because of the high level of avoidance of notification.

8.4 What other options are there to improve record-keeping?

Transfer of requirements to the Building Act will ensure records are kept including IQP certificates (12A certificates) provided with the annual building warrant of fitness.

8.5 What is your preferred option and why?

Transfer of requirements to the Building Act will ensure records are kept and updated for the life of the pool. It would allow territorial authorities to fund this activity.

8.6 What would be the impact of your answers on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and estimates of any financial impacts)?

The Building Act allows for charges to be made for functions under the Act. The effect would be to transfer the costs associated with record keeping from the general ratepayer to the pool owner. There would be transitional issues establishing records for existing pools that are currently unknown to the territorial authority.

8.7 If you are a territorial authority, what system of record-keeping do you have? If none, please state this.

Records are associated with the property in a database that is also used for the building consent process and other territorial authority activities.

8.8 If none, what other means do you use to meet your obligations under the Act?

8.9 What would be the impact if this issue is not addressed?

Up to date monitoring and inspection details would not be available.

9 Re-inspection

9.1 How important are re-inspections, and why?

Regular inspection is critical, as circumstances can change quickly. Pool fences can fall into dis-repair if not maintained. Boundary fences can be compromised by the actions of others. Whilst regular inspection is necessary it is not only territorial authority officers that could carry out those inspections. As with other activities under the Building Act 2004, the proposed compliance schedule would document the types of people who can carry out the various inspections including those that may be carried out by owners or IQPs.

9.2 Do you think re-inspections are necessary for territorial authorities to meet their obligation under the Act? How frequently should re-inspections occur? Who should meet the costs of re-inspections?

Under legislation territorial authorities have a general duty of care. The recommendation that compliance schedules be required for swimming pools would ensure that regular inspections take place by competent persons, with territorial authorities primarily carrying out audit inspections. Inspections would be paid for by the pool owner. The ideal frequency for inspection would be annually by an independent qualified person (IQP) and quarterly by the owner. This level of frequency is necessary to ensure that vegetation that could provide footholds for climbing close to the fence is regularly cut back.

9.3 What do you think of the following options for re-inspections?

- Amending the Act to require territorial authorities to do regular re-inspections
- More guidance information available on how territorial authorities can meet their obligations under the Act

Requiring territorial authorities to carry out regular inspections without a mechanism to recover the costs would create an unacceptable burden on rates funding. The suggested requirement for compliance schedules overcomes this problem.

9.4 What other options are there for re-inspections?

Inspections by IQPs (licensed building practitioners from 2010).

9.5 What is your preferred option and why?

A requirement for swimming pool owners to obtain a compliance schedule. This would ensure that regular inspections are made and shares the burden of inspections with the private sector and with pool owners. The territorial authority costs would be recoverable.

9.6 What impact would your suggestions have on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and financial costs)?

For pool owners there would be obligations and costs in complying with the building warrant of fitness regime. They would have a better level of information about their responsibilities and a higher degree of ownership. Territorial authorities would be able to recove their costs from pool owners. The level of compliance would improve and the risk to youg children would be reduced.

9.7 If you are a territorial authority, what policy of re-inspection do you have? If none, please state this.

The Council carries out swimming pool audit inspections in conjunction with other inspections, usually building consent inspections when other work is being undertaken on the property.

9.8 If none, what other means do you use to meet your obligations under the Act?

9.9 What would be the impact if this issue is not addressed?

Continued levels of non-compliance and associated risk.

10 Territorial authorities powers

10.1 There have been a very small number of prosecutions brought by territorial authorities since the Act came into force. In your view, does this accurately reflect the number of pool owners not complying with the Act? If not, please provide more details about why there are not more prosecutions.

In our view the small number of prosecutions is not an accurate record of the number of pool owners complying with the Act. It is partly a reflection that the prosecution process is cumbersome and costly to territorial authorities in terms of both time and money. The cost becomes a financial burden on ratepayers. Lack of experience taking prosecutions may also be a factor. The small number of prosecutions is also a reflection of the lack of notifications. Often the territorial authority is simply unaware of a non-compliant pool situation.

10.2 If you are a territorial authority, what is your policy for enforcing the Act when a pool owner is not complying with their obligations? Do you regularly use Notices to Fix and, if so, how many did you issue in the last year? How effective are they in enforcing the Act?

Where inspection finds that there is an unfenced swimming pool, or a fence is in a state of disrepair so as to pose a danger, the Council issues notices (e.g. notices to fix) as appropriate under the Building Act 2004. We are unable to report directly on the numbers of notices specifically related to swimming pools. Notices issued under the Building Act can be time consuming to enforce but usually results in resolution of the problem.

10.3 What do you think of the following options?

- *Amending the Act to enable territorial authorities to issue infringement notices and fines for offences under the Act*
- *Moving enforcement of the Act under the Building Act 2004 to bring it into line with other building-related offences, ie, by moving the offences under the Act into the Building Act, and providing for infringement notices to be issued for offences under the Building Act.*
- *Do nothing*

The preferred option is to provide for swimming pool requirements within the Building Act itself. It would therefore follow that the enforcement options would be under the Building Act.

10.4 Are any other options available?

Requiring compliance schedules for swimming pools is recommended.

10.5 What impact would each of these options have on pool owners, territorial authorities, and the public as a whole (including advantages, disadvantages and financial costs)?

There are a range of enforcement powers under the Building Act which could be applied. It would be possible to provide for infringement fines by a change to the regulations to the Act.

10.6 What is your preferred option and why?

Provide for the legislation under the Building Act, as this already contains mechanisms providing for inspection, charging and enforcement.

10.7 Do you think the penalty for an offence under the Act needs to be increased? If so, by how much? What would be the advantages and disadvantages of this?

Penalties and fines available under the Building Act are considered to be adequate.

10.8 In light of your responses above would enforcement measures be improved, and to what extent?

Establishment of infringement fines under the Building Act specifically for non-compliant pool fencing could prove helpful to territorial authorities.