

REPORT 5
(1215/53/IM)

APPLICATION FOR EXEMPTION FROM THE FENCING OF SWIMMING POOLS ACT 1987 FOR 11 BOARDWALK LANE, SEATOUN

1. Purpose of report

The purpose of this report is to present to the Regulatory Committee, for its consideration, an application for exemption on behalf of Mr and Mrs Simmons in accordance with clause 6 of the Schedule to the Fencing of Swimming Pools Act 1987 (the Act).

2. Recommendations

Officers recommend that the Regulatory Processes Committee:

1. *Receive the information;*
2. *Agree to grant an exemption for the four sliding doors and one set of Bi-fold 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 will need to always be met by the applicant and any future owner of the property to enable this exemption to apply:*

The sliding doors, bi-fold doors and double opening doors entering the pool area are accepted to remain opening to the pool area as installed, provided that in addition to the existing raised locks on the doors and a floating automatic pool cover to the in ground pool the proposed Alternative Solution is installed.

“It is proposed to install two outdoor high security digital motion detectors (outdoor alarm sensors) to detect any unauthorised access to the immediate pool area. The alarm would be operational at all times, and regardless of whether the doors to the outdoor courtyard and pool area are open or closed. The outdoor motion detector will integrate with the current alarm system for the house.

The sensor will be fully programmable, and it is proposed to program it to self-arm automatically when no movement is detected in the pool area for a continuous period of 5 minutes (although this is flexible and could be reduced further to say 3 minutes if that was considered desirable). A pin code would be required to disarm the pool area prior to use, or to deactivate the alarm if triggered.

This arrangement will ensure that the pools cannot be used by anyone, and in particular a child, without the authorisation and deliberate action of the owners or other authorised adult. ”

3. Background

The property has three Building Consents issued;

1. SR 111922, house foundations issued 15 April 2004
2. SR113941, stage two – new 2 storey dwelling issued 23 May 2004.
3. SR138038, installation of a new swimming and spa pool, issued 22 December 2005.

The pool structure was built after the completion of the dwelling which neither have a Code Compliance Certificate approved.

All doors opening into the pool area were installed with latches above 1.5 meters above the floor level in accordance with clause 9 of the Schedule to the Fencing of Swimming Pools Act 1987.

The spa pool has a lockable cover and the in ground swimming pool has an automatic pool cover that will support a weight of 80 Kg without failure.

In February 2010, an audit of the swimming pool was carried out at the property to verify compliance with the Act and F 4 safety from falling of the building code. The inspection found the non self closing sliding doors, a set of bi-fold doors and a pair of double doors opening onto the pool area to be non-compliant as the doors have no means to self-close when in an open position.

4. Discussion

4.1 Description of Exemption Sought

The owners of the property are seeking an exemption for the sliding doors, bi-fold doors and double doors which open to the pool. The doors in question are:

- *Four aluminium sliding doors from the living and family rooms.*
- *A set of bi-fold doors off the living room.*
- *A pair of opening doors from the guest bedroom.*

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 doors in walls should comply with clauses 8 to 10 in the Schedule unless the territorial authority is satisfied of the matters in clause 11, *Delegation of powers to committees of Councillors.*

To achieve compliance the doors need to contain the required hardware, as listed below:

- a. *To be fitted with an automatic door closure adjusted to close and latch automatically; This is not feasible*
- b. *Latches and/or locks to be installed at above 1.5m from the finished floor level; This has been completed.*

Door latches above 1.5m have been installed by the Owners. It is now the additional protection to negate the danger of children from entering the pool undetected while the doors are open that requires exemption.

4.2 Each Application to be considered on its own merits

The Act provides the criteria that must be considered when reviewing pool fencing for compliance. Specifically, Clause 6 of the Act provides that:

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

4.3 Special exemption criteria

The special exemption criteria are as follows (with our emphasis in **bold**):

- (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.

4.4 Delegation of powers to committees of councillors

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

“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.”

4.5 Doors in walls of buildings

Clause 11 of the Schedule to the Act specifically requires;

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 clause 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.

“Every gate or door shall be fitted with a device that will automatically return the door to the closed position and operate the latching device when the door is stationary and 150mm from the closed and secured position.

4.6 Exemption where it is deemed unreasonable to comply

Clause 11 of the Schedule to the Act 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.”

4.7 Supporting Attachments

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

5. Conclusion

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

With the information provided Council Officers support the application for exemption on the basis that the owners have complied with all other requirements imposed by Officers (ie the conditions).

It is intended to replace the barrier with a self activating alarm system that will alert any unsupervised access of a child to the immediate pool area while the pool is not in normal use or supervised. As a result it is considered no significant increase in danger to young children will arise from Council granting this exemption.

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SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

This decision falls within the Urban Development Strategy Activity 6.2 Building Control and Facilitation.

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

N/A

3) Treaty of Waitangi considerations

N/A

4) Decision-making

This is not a significant decision.

5) Consultation

a) General consultation

All affected parties have been identified. The effects of this work are confined to the Home Owners property.

b) Consultation with Maori

N/A

6) Legal implications

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

7) Consistency with existing policy

This report is consistent with Council policy.