
REPORT 1
(1215/53/IM)

APPLICATION FOR EXEMPTION FROM THE FENCING OF SWIMMING POOLS ACT 1987 - 115 CALCUTTA STREET

1. Purpose of Report

The purpose of this report is to present to the Regulatory Processes Committee, for its consideration, an application for exemption on behalf of Mr and Mrs Lander 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 double 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 to remain opening to the pool area as installed, provided that hardware is fitted and fully functional as listed below:

- (a) *The doors have been fitted with an automatic door closure adjusted to close and latch automatically;*
- (b) *Latches and/or locks have been installed at above 1.5m from the finished floor level;*
- (c) *The doors must not be fitted with hold open devices.*

3. Background

The property had a Building Consent issued 19 September 1994 for the pool structure and a Code Compliance Certificate was issued 16 April 1996. At this time the doors were changed from the consented Bi-fold doors, (then exempt from the Act) to a pair of French doors without consideration that while compliant with the Building Code they did not comply with the Fencing of Swimming Pools Act without an exemption.

In July 2010, an audit of the swimming pool was carried out at the property to verify continued compliance with the Act. The inspection found a lack of barriers to the immediate pool area and a pair of double doors opening incorrectly.

The surrounding pool area has now had a compliant barrier installed by the Owners. The only outstanding matter now is the issue of the double doors which open onto the pool.

4 Discussion

4.1 Description of Exemption Sought

The owners of the property are seeking an exemption for the double doors which open to the pool. The doors in question are:

...double outward opening aluminium doors (towards the pool) from the 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 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.

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;
- b. Latches and/or locks to be installed at above 1.5m from the finished floor level; and
- c. To not be fitted with hold open devices.

These three conditions have been met by the Owners. It is now only the opening direction that requires exemption.

4.2 Each Application to be considered on its own circumstance

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 circumstance;
- 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 is 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 Opening direction of gates and doors

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

“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:”*

4.6 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.”

4.7 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.

Officers support the application for exemption on the basis that the Owners have complied with all other requirements imposed by Officers (ie the conditions) and that as a result, it is considered no significant increase in danger to young children will arise from Council granting this exemption.

Report prepared by: *Owen Williams, Team Leader Inspections, Building Consents & Licensing Services*

Supporting Information

1) Strategic Fit / Strategic Outcome

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

2) LTCCP/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.