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| R E P O R T | TO | HEARINGS COMMITTEE |
| | FROM | REGULATORY SERVICES MANAGER |
| | FILE REF | P02482 - RE271144.RTF |
| | DATE | 5 MARCH 2007 |
| | SUBJECT | FENCING OF SWIMMING POOL – WAIVER - 05020/104.00 |

Mr and Mrs Shepherd, have an in ground pool on their property at 10 Kensington Road, Waihi, which is presently full of water and covered by a canvas cover secured around the edges. The pool area has a pool fence but there is access from the back door of the dwelling directly into the pool area. Council staff carried out inspections of the property on the 11th December 2006 and again on the 22nd February 2007 and noted several matter of non compliance with the gates and fencing and the fact that there was no exemption or waiver in place for the door opening directly into the pool area from the house. An application has been received from the Shepherds seeking a waiver from the fencing requirements where the back door from the dwelling opens into the pool area. In their letter (attached) they advise that that they no longer use the pool but have not emptied it as they state that "in their view the empty 4 feet deep concrete hole would be more of a safety issue than a full one." Photographs will be presented at the hearing.

The back door that opens directly into the pool area from the house has a locking device fitted above the floor which can not be reached by a child under the age of 6 years old, as allowed under clause 11 of the Schedule to the Act, nevertheless this needs to be specifically approved by Council under section 6 of the Act.

The Schedule to the Fencing of Swimming Pool Act 1987 is a means of Compliance and states in clause 11 that:

"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."

Section 12 of the Act states that:

"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 104 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."

Mr and Mrs Shepherd seek from the Committee, a waiver under Section 6 of the Act for the requirement for the door that open immediately onto the pool area to comply with clauses 8 to 10 of the Schedule, being the requirements to automatically self close, on the grounds that this would be impossible or unreasonable. The alternative is the construction of a pool fence between the house and the pool.

The pool area is effectively fenced off from access by children other than those staying as invited guests, and therefore under the supervision of the house owner. It should be noted however, that if children younger than 6 years of age were staying in house they could gain direct access to the pool if not supervised. The main access to the house for the public is via a separate door other than the doors to the pool area from the living area.

With respect to recommendation d) Council's lawyers, Brookfields have previously advised in response to the question concerning the requirement to register an encumbrance instrument over the property that this is appropriate and legal.

RECOMMENDATION

THAT the request from Mr & Mrs Shepherd seeking a waiver from the requirement of Clauses 8 to 10 of the Schedule to the Act be granted on the grounds that it would be unreasonable for the access to the pool from the house to comply with the Act. Clause 11 of the Schedule to the Act allows for this specific situation on condition that the doors are fitted with a lock that, when properly operated, prevents the door from being opened by children under 6 years of age. Allowing the exemption would not significantly increase danger to young children.

The waiver is subject to the following conditions:

- a) That all doors with access from the house into the pool area be fitted with a lock that when properly operated prevents the door from being readily opened by children under the age of 6 years.
- b) That the doors with access from the house directly to the pool are locked shut when the pool is not in use and under adult supervision.
- c) That the access from the house to the pool area be protected by an alarm complying with UL 2017 capable of detecting unauthorised access from the house into the immediate pool area, and that when activated emits a sound of 85 decibels or more to be heard from the house.
- d) That the decision of Council be entered on the title of the land for the information of a future owner.
- e) That in every other respect the pool and fencing complies with the Fencing of Swimming Pools Act 1987.

Russell Bierre
Regulatory Services Manager

