

<b>R E P O R T</b>	<b>TO</b>	HEARINGS COMMITTEE
	<b>FROM</b>	MONITORING OFFICER/PLANNER-GLENN EAST
	<b>FILE REF</b>	P02654 - RE286038.RTF
	<b>DATE</b>	8 AUGUST 2007
	<b>SUBJECT</b>	<b>SWIMMING POOL WAIVER APPLICATION 05020/199.01</b>

Mr Frederick R & Mrs Cynthia J Bing have a swimming pool on their property at 31 Russell Street, Waihi, which is presently full of water. The Committee will recall that Mr and Mrs Bing were granted an exemption for the access points from their dwelling to the immediate pool area on the 19<sup>th</sup> of July 2007 that will not be effective until this compliance issue is heard by the Committee. Moreover, condition (e) of the previous hearings decision states:

*That in every other respect the pool and fencing complies with the Fencing of Swimming Pools Act 1987.*

Please find attached a copy of the previous report and the decision.

The pool area has a pool fence that complies with the Fencing of Swimming Pools Act in part, but there is a block wall that makes up part of the pool fencing and is noncompliant in that the gaps in the blocks are greater than 50mm. Council staff carried out an inspection of the property on the 21<sup>st</sup> June 2007 and noted the non compliance in that the block wall had gaps greater than 50mm and therefore was noncompliant in that the Fencing of Swimming Pools Act 1987 has no provisions for this type of wall. An application has been received from Mr & Mrs Bing seeking a waiver from the fencing requirements where the block wall makes up part of the swimming pool fencing. Photographs will be presented at the hearing.

Section 6 of the Fencing of Swimming Pools Act states that the 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, that such an exemption would not significantly increase danger to young children.

In granting an exemption under this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.

Mr and Mrs Bing have supplied Council with a proposed plan to alter the wall by fixing a corrugated polycarbonate sheet over the top of the block wall splaying out 0.5m to prevent children 6 years and under from gaining access to the immediate pool area 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 1 that:

- (1) *The fence shall extend—*
- (a) *At least 1.2 metres above the ground on the outside of the fence; and*
- (b) *At least 1.2 metres above any permanent projection from or object permanently placed on the ground outside and within 1.2 metres of the fence.*

- (2) *Notwithstanding subclause (1) of this clause, where the fence is constructed of perforated material, netting, or mesh and any opening in the material, netting, or mesh has a dimension (other than the circumference or perimeter) greater than 10 mm, the fence shall extend at least 1.8 metres above the ground or the projection or object.*

*Clause 6 states:*

*Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.*

*Clause 7 States:*

*All perforated material, netting, or mesh material shall be firmly attached at both top and bottom to a rail, pipe, or similar firm structure, or otherwise be of such a nature that the fence cannot readily be crossed 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 & Mrs Bing seek from the Committee, a waiver under Section 6 of the Act for the requirement for the proposed cover over the noncompliant block wall to comply with clauses 1 to 7 of the Schedule, being the requirement to comply with the Act, on the grounds that this would be impossible or unreasonable. The alternative is the construction of a pool fence that complies with the Fencing of Swimming Pools Act 1987 or cover the wall with perforated material that has a dimension less than 50mm making the block wall compliant with the Act. The pool area is not effectively fenced off from access by children in that the block wall has gaps greater than 50mm and on inspection it could easily be climbed and give access to child 6 years old and younger.

#### **RECOMMENDATION**

That the request from Mr & Mrs Bing seeking a waiver from the requirement of Clauses 1 to 7 of the Schedule to the Act be declined on the grounds that it would not be impossible nor unreasonable to require the applicant to make the block wall compliant with the schedule to the Act.. Clause 6 of the Schedule to the Act allows for 50mm maximum dimension mesh, netting or perforated material to be used and the fence height must be a minimum of 1.8m. If this was implemented the wall would be compliant.

Glenn East  
Monitoring Officer/Planner