

R E P O R T	TO	HEARINGS COMMITTEE
	FROM	MONITORING OFFICER/PLANNER
	FILE REF	P28105 - RE284776.RTF
	DATE	26 JULY 2007
	SUBJECT	SWIMMING POOL WAIVER APPLICATION FENCING OF SWIMMING POOLS ACT 1987- 04771/603.00

Mr Lenihan & Mrs Berridge have a swimming pool on their property at 10 Harris Place, Ngatea which is presently full of water. The pool area has a pool fence that complies in part with the Fencing of Swimming Pools Act, but there is direct access via doors and windows from the dwelling into the pool area. In addition there is a side gate that does not meet the requirements of the Fencing of Swimming pools Act 1987. Council staff carried out an inspection of the property on the 9th July 2007 and noted the non compliance in that there was no exemption or waiver in place for the doors and widows opening directly into the pool area from the dwelling and no waiver in place for the non-compliant gate. An application has been received from the owners seeking a waiver from the fencing requirements where the doors and windows from the dwelling open into the pool area and where the side gate doesn't comply. Photographs will be presented at the hearing.

The doors and widows that open directly into the pool area from the dwelling have securing devices and inhibitors fitted above the floor which can not be reached or opened greater than 100mm 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 securing devices are capable of being locked.

The side gate is the only access to the back yard. When inspected the pool owners were not home and the gate was securely padlocked in place, in turn making it a fixed panel. However when speaking to Mr Lenihan the gate is used for practical reasons to gain access to the back yard and therefore will need an exemption put in place to allow Mr Lenihan to depart, with conditions from the Act. It would be in Councils best interest to discourage this type of application as it could have an accumulative effect in the community. The boundary fence makes up the greater proportion of the pool fencing although the property in question has room to fence the immediate pool area and avoid the exemption for the gate. Alternatively it would not be an unreasonable request from Council to make the side gate compliant.

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 Lenihan & Mrs Berridge seek from the Committee, a waiver under Section 6 of the Act for the requirement for the doors, windows and side gate 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.

RECOMMENDATION

That the request from Mr Lenihan & Mrs Berridge 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. In contrast the request to allow the side gate should not be granted on the grounds that it is not an unreasonable request to make the gate compliant to 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 and the windows with inhibitors that, when properly operated, prevents the doors and windows 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 dwelling into the pool area be fitted with a key operated lock that when properly operated prevents the doors from being readily opened by children under the age of 6 years. All windows opening out into the pool area are to be fitted with an inhibiting device to prevent the window being opened more than 100mm.
- b) That the doors with access from the dwelling into the pool area are locked shut when the pool is not under adult supervision.
- c) That the side gate is made compliant to The Fencing of Swimming Pools Act 1987 as this is achievable and is not an unreasonable request.
- d) That the access from the garage to the pool area be protected by an alarm complying with UL 2017 capable of detecting unauthorised access from the garage into the immediate pool area, and that when activated emits a sound of 85 decibels or more to be heard from the house.
- e) That the decision of Council be entered on the title of the land for the information of a future owner.
- f) That in every other respect the pool and fencing complies with the Fencing of Swimming Pools Act 1987.

Glenn East
Monitoring Officer/Planner