

<b>R E P O R T</b>	<b>TO</b>	HEARINGS COMMITTEE
	<b>FROM</b>	MONITORING OFFICER-GLENN EAST
	<b>FILE REF</b>	380965 – SWIM02336
	<b>DATE</b>	31 DECEMBER 2007
	<b>SUBJECT</b>	<b>WAIVER APPLICATION FENCING OF SWIMMING POOLS ACT 1987 04710/218.07 W G &amp; L MCCARTHY</b>

Mr & Mrs McCarthy have a Swimming pool on their property at 18 Hauraki Road, Turua, which is presently full of water. The pool area has a pool fence that complies with the Fencing of Swimming Pools Act, but there is direct access via a rear sliding door and windows from the dwelling into the pool area. Council staff carried out an inspection of the property on the 24<sup>th</sup> October 2007 and noted the non compliance in that there was no exemption or waiver in place for the door and windows opening directly into the pool area from the dwelling. An application has been received from Mr & Mrs McCarthy seeking a waiver from the fencing requirements where the rear sliding door and windows from the dwelling open into the pool area. Photographs will be presented at the hearing.

The door that opens directly into the pool area from the dwelling has a securing 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 securing device is capable of being locked.

The windows have inhibitors fitted that allow the windows to open only 85mm, 100mm being the NZS 8500:2006 standard for this given situation. Please find attached a copy of the relevant standard from NZS 8500:2006.

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 & Mrs McCarthy seek from the Committee, a waiver under Section 6 of the Act for the requirement for the door that opens 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. In addition Mr & Mrs McCarthy are seeking from the Committee, a waiver under section 6 of the Act to allow inhibitors to be fitted to inhibit the window to 100mm maximum opening capacity.

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 door to the pool area from the living area.

#### **RECOMMENDATION**

That the request from Mr & Mrs McCarthy 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 door is fitted with a lock that, when properly operated, prevents the door from being opened by children under 6 years of age. In addition, Mr & Mrs McCarthy seek from the Committee a waiver to allow him to fit inhibitors to the windows that allow direct access to the immediate pool area, under section 6 of the Act. 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 door from being readily opened by children under the age of 6 years.
- b) That 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.
- c) That the door with access from the dwelling into the pool area is locked shut when the pool is not under adult supervision.
- 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.

Glenn East  
Monitoring Officer