



<b>R E P O R T</b>	<b>TO</b>	MAYOR AND COUNCILLORS
	<b>FROM</b>	MANAGER, REGULATORY SERVICES
	<b>FILE REF</b>	414465
	<b>PORTFOLIO HOLDER</b>	CR CARMINE
	<b>DATE</b>	19 JUNE 2008
	<b>SUBJECT</b>	<b>SUBMISSION TO DEPARTMENT OF BUILDING AND HOUSING - REVIEW OF FENCING OF SWIMMING POOLS ACT 1987</b>

#### **RECOMMENDATION**

THAT the report be received.

#### **Introduction**

Statistics from Water Safety New Zealand clearly show that drownings of children under six (6) years old have almost halved since the introduction of the Fencing of Swimming Pools Act 1987. The decrease is significant in the fact that during the last ten(10) years the number of pools have increased by 30%. However the statistics also show that on average four(4) children under six years of age still drown each year, Clearly this is unacceptable.

In the Hauraki District Council, records show that there have been two drownings of children under six years old. The first drowning was in 1974 and the second in 1999. In both cases the pools were fenced. The 1974 incident was as a result of a tradesman propping the pool gate open and the 1999 incident, a consequence of poor maintenance of the self close mechanism of the pool gate. Since 1987 Council has had an ongoing policy of inspecting and enforcing the requirements of the Act. It has an extensive database of swimming pools which includes spa pools. The records show good compliance at the last inspection but there are ongoing problems with non notification of existing pools, lack of maintenance of fencing and gates and the resources to inspect and enforce the provisions of the Act.

#### **Restricting Access**

While there is no clear purpose statement in the Act it's obvious intention is to prevent the unsupervised access to swimming pools by young children. This implies that where there is no supervision of young children, access should be restricted. Legislation in New Zealand is shifting the focus away from prescriptive standards to acceptable solutions based on risk. The risk level ranges through from an unused locked covered pool, a supervised fenced pool, a pool protected by motion sensor alarms, an empty unfenced pool to an unsupervised and unfenced pool at the high risk end. The question is at what level is the risk acceptable?

The New Zealand Standard 8500 introduces alternatives to fencing. However these alternatives such as alarms and covers rely on a degree of supervision. For example if the pool is protected by a removable cover an adult needs to be available to respond in an emergency. It is possible that a cover would be removed for the first swim of the day and replaced at the end of the day. An alarm relies on someone being there to respond to it. Statistics show that it is not always children from the household that drown in the pool. A permanent barrier is the only effective means of preventing access to a pool. Covers and alarms are good secondary means of risk reduction but by themselves they are fallible as is human

nature. Well maintained fencing and supervision continues to be in Council's opinion the most effective means of lowering the risk of young children drowning in swimming pools.

### **Public Awareness**

Most pool owners in the Hauraki District are well aware of their obligations under the Act. Council records show that pools have been inspected a number of times since the introduction of the Act. Non compliance issues at inspection tend to have arisen from inconsistent interpretations of the schedule requirements when the Act was first implemented and a lack of ongoing maintenance. However existing pools are still being discovered that are unfenced. This indicates that perhaps the public are unaware of the requirement to notify the Council. Television advertising similar to the smoking and alcohol campaigns could be beneficial in this respect.

Incorporating the Fencing of Swimming Pools Act into the Building Act 2004 so that the provisions of Section 121 – Dangerous Buildings could be utilised as an enforcement tools, would also serve to raise public awareness.

### **Section 2 & 5 - Interpretation of Swimming Pool**

The Act defines "swimming pool and pool" and lists exempted pools. While the definition may not be clear to some people and is open to interpretation Council staff have interpreted the definition to only apply to purpose built swimming pools and spa pools used exclusively for that purpose. A garden fish pond while capable of drowning a young child is not an excavation or structure intended to be used for swimming, paddling, wading or bathing. Council requests that the definition be clarified.

### **Interpretation of Immediate Pool Area**

Council has used as its guide the 1999 Department of Internal Affairs document (ref Guidelines for Territorial Authorities on the fencing of Swimming pools Act 1987) and has had no significant issues with pool owners. Complying boundary fencing is permitted within the immediate pool area.

It has however had to deal with the growing trend towards indoor/ outdoor living and the situation where patio doors open from the living area of the dwelling into the fenced pool area. A number of applications for exemption under section 6 have been heard and in most cases granted subject to the following conditions:-

- Lockable tower bolts inaccessible to children on the doors and windows leading to the pool area.
- Doors to be locked when pool area unsupervised.
- Notation on the title of the property advising future owners of the exemption.
- Lockable lid for spa pools

Other issues of concern are the situation of the free standing pool with sides greater than 1.2m, no fence and the danger of chairs, loungers etc. and garden ornaments placed up against fences by the property owner or neighbour. These types of structures can be easily shifted by a small child to the fence, particularly if they are light, such as chairs made of aluminium, plastic or bamboo. Council has real concerns over the danger this situation can cause.

### **Ready made Pools**

Council has always included spa pools in its definition of pools and requires these to be fenced or granted an exemption on condition that a lockable lid be fitted. The area of concern is the portable play pools sold by retailers. Portable play pools present a medium risk and it is recommended that retailers of pools be required to give out information regarding statutory requirements at point of sale. Where Council becomes aware of these pools that have water in them to a depth of greater than 400mm it can enforce the legislation but because of the typical depth of these paddling pools the risk is considered to be medium. Guidance in this area would be welcomed.

### **Non notification of Pools**

Council agrees that non notification of swimming pools puts young children's lives at risk and it would promote any moves to increase the penalties available for wilful non notification. The issue of new property owners not knowing if a pool had been notified to the council can be addressed with a Land Information Memorandum. The failure to obtain a building consent for a new pool or fencing of an existing pool can be addressed as a section 40 contravention under the Building Act.

## **Records**

Council keeps records and maintains reporting systems for all property interventions.

## **Re-inspection of Pools**

Council categorises all its pools according to a risk matrix. Non complying pools, exempted pools under section 6 with conditions and those pools emptied of water to a depth of less than 400mm and unfenced, are categorised as high risk and are inspected annually. 5% of all complying pools at the last inspection are inspected annually. All pools are inspected at least every 10 years. In these cases there is an onus on the pool owner to take a greater responsibility. Where Council is notified of a non compliance the pool is immediately given a high risk status and this status remains until it is satisfied that the risk category can be safely reduced. As ongoing maintenance is seen as a critical issue re inspections are important. Council does not presently charge for these inspections.

## **Territorial Authority Powers**

Council presently uses notices under section 8 of the Fencing of Swimming Pools Act to good effect. It has not had cause to issue a Notice to Fix but will consider using this option in the next round of inspections. Council would encourage moves to sanction the use of infringement notices under the Building Act.

## **Summary**

- Well maintained fencing coupled with good supervision is in Council's opinion the most effective means of lowering the risk of young children drowning in swimming pools. The present Act incorporated under the Building Act 2004 achieves that purpose.
- Council would support incorporating the Fencing of Swimming Pools Act into the Building Act 2004 so that the provisions of Section 121 – Dangerous Buildings could be utilised as an enforcement tools would also serve to raise public awareness.
- Council would encourage moves to sanction the use of infringement notices under the Building Act.
- Clarification of the definition of swimming pool would be useful.
- Free standing pool with sides greater than 1.2m, no fence and the danger of chairs, loungers etc. present problems in enforcement as do garden ornaments placed up against fences by the property owner or neighbour.
- Portable play pools sold by retailers such as the Warehouse present a medium risk and it is recommended that retailers of pools be required to give out information regarding statutory requirements at point of sale.
- Non notification of swimming pools puts young children's lives at risk. Moves to increase the penalties available for wilful non notification would be welcomed.

### **RECOMMENDATION**

THAT Council endorse this submission on the operational issues identified with the Fencing of Swimming Pools Act 1987 and submit it to the Department of Building & Housing by the due date of the 30<sup>th</sup> June 2008.

Russell Bierre  
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