

SOUTH WAIRARAPA DISTRICT COUNCIL

29 JANUARY 2014

AGENDA ITEM C1

APPLICATION FOR SWIMMING POOL FENCE EXEMPTION – 3 EAGLE PLACE, MARTINBOROUGH

Purpose of Report

To obtain a decision from Council on an application for an exemption to the requirements of the Fencing of Swimming Pools Act.

Recommendation

Officers recommend that the Council:

1. *Receives the information.*
2. *Decline the application for exemption to fence a swimming pool at 3 Eagle Place, Martinborough under Section 6 of the Fencing of Swimming Pools Act 1987*

1. Background

An application has been received from Mr Mark Hadlow for an exemption to the Fencing of Swimming Pools Act. He wishes approval to use a manually operated sliding door (access from the dwelling) as part of the pool fence, at 3 Eagle Place, Martinborough. The property is residential.

The inclusion of the house (and therefore manually opened and closed sliding door) as part of the fence, is an amendment to their original swimming pool design that showed a fully compliant swimming pool fence around the pool (see site plan Appendix 1).

Council does not have a policy on exempting swimming pools from the requirements of the Fencing of Swimming Pools Act 1987. The current practice is to require swimming pools to be fenced in accord with the Act.

Any applications for exemption need to be resolved by the full Council.

2. Discussion

While the application for exemption applies only to the Fencing of Swimming Pools Act, this case also raises matters in relation to the Building Act, Building Code, and the New Zealand Standard Safety Barriers and

Fences around Swimming Pools, Spas and Hot Tubs. The requirements and relevance of these documents is set out below. Unfortunately they do not work seamlessly with the Fencing of Swimming Pools Act.

2.1 Fencing of Swimming Pools Act 1987

The Fencing of Swimming Pools Act 1987 states that all pools are required to be fenced. A pool is where the depth of water contained by a structure is greater than 400mm. The proposed pool is greater than 400mm deep.

Section 6 of the Act sets out the conditions under which a territorial authority may grant an exemption to the requirement to fence a pool. It states that "a territorial authority may ... grant an exemption ... where [they are] satisfied ... that such an exemption would not significantly increase danger to young children." Section 6 is provided in Appendix 2.

The applicant has stated that the sliding door will be locked and the key will be securely put away. They are of the view the locked door would provide sufficient mitigation to ensure that the risk to young children would not be significantly increased.

A copy of the email the owner has supplied to council in support of their exemption is attached as Appendix 5.

2.2 New Zealand Building Code

The Building Act 2004 (Section 17) states that all building work must comply with the Building Code. The Building Code has provisions relating to swimming pools including that "swimming pools having a depth exceeding 400mm shall have barriers provided" (F4.3.3). The full provisions are provided in Appendix 3.

This makes it clear that the consideration of whether or not a swimming pool should be exempt from the requirement to be fenced is to be considered under the Fencing of Swimming Pools Act 1987.

However, the Department of Building and Housing (DBH) has in 2011 issued determinations (e.g. number 2011/13) on this matter, thus implying that it could be considered under the Building Act, but not by Council.

2.3 New Zealand Standard 2006

A NZ Standard was published in 2006 – NZS 8500:2006 Safety Barriers and Fences around Swimming Pools, Spas and Hot Tubs (the Standard). The Standard sets out that a door is required to be self-closing and latching (Section 3.7). A copy of those requirements is attached as Appendix 4.

The Standard is not referenced in the fencing of Swimming Pools Act 1987 or in the Building Code. Essentially the standard is in a regulatory "no man's land" unless a Council adopts the Standard. Council has in the past approved two spa pools where no fence was provided using this guidance standard.

2.4 Assessment of Risk

The proposal may meet the requirements of the Building Code but not the Fencing of Swimming Pools Act 1987. The Council may (but is not required to) grant an exemption to the requirement to fence the pool where they are satisfied that the exemption would not significantly increase danger to young children.

In making a decision about whether a non-self closing and self latching sliding door is a sufficient alternative to a fence, the Council must decide the likelihood of a door being locked whenever the pool is not in use and consider the consequences if the door failed to provide a sufficient barrier to young children because it was left open.

Where a sliding door is not self-closing the reliance is solely on the owner to ensure the door remains closed and latched to prevent young children from entering the pool area. A self-closing door would mean if someone steps away from the pool, the barrier and door automatically prevents a child accessing that pool.

Such self-closing mechanisms are now available for installation on sliding doors without a great deal of difficulty or cost.

3. Conclusion

There is always a risk with approving any exemption under the Fencing of Swimming Pools Act 1987 and allowing a pool to have a non-complying barrier or fence. The difficulty is in determining whether the increase in risk is significant or not. To ensure a consistent approach and to best manage the risk to young children, officers recommend that Council decline this application.

4. Appendices

Appendix 1 – Plan of application for 3 Eagle Place, Martinborough.

Appendix 2 – Section 6 (Special exemptions) – Fencing of Swimming Pools Act 1987

Appendix 3 – Building Code F4.3.3

Appendix 4 – Section 3.10 NZS 8500:2006 – Above Ground Spas and Hot Tubs

Contact Officer: Derrick Thorley, Building Control Team Leader

Approved By: Murray Buchanan, Group Manager, Planning and Environment.

Appendix 1 – Plan of Application for 3 Eagle Place, Martinborough

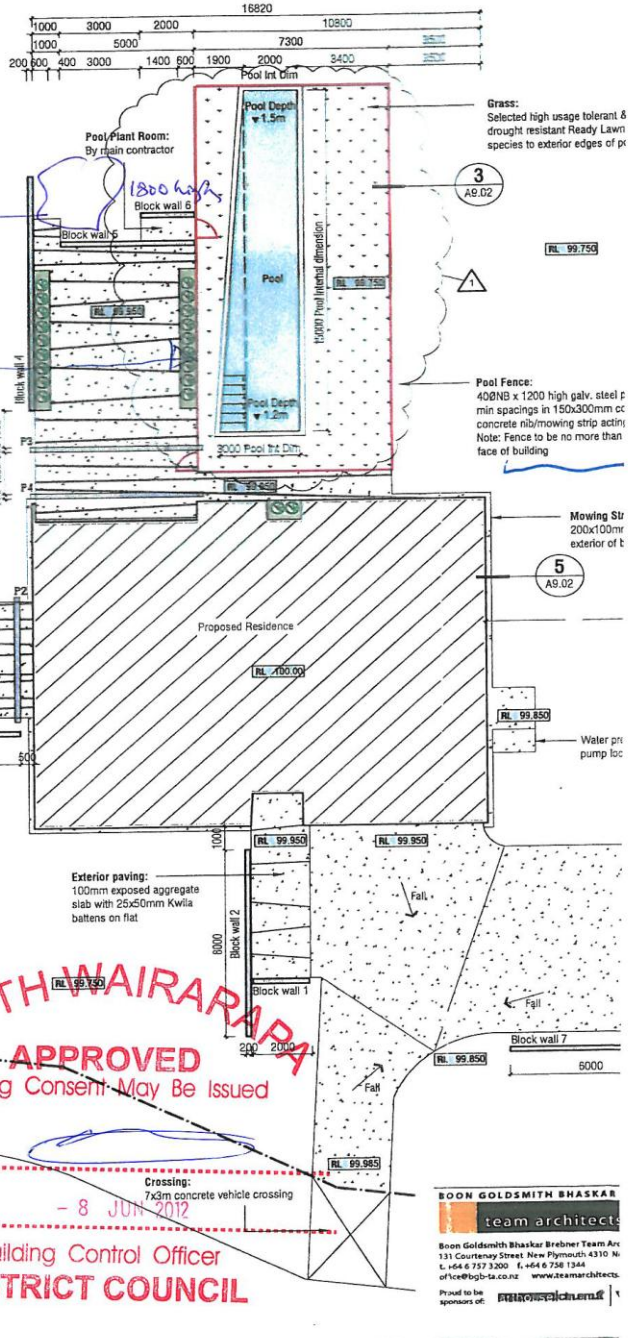
VACUUM BREATHER.
 BALUS FLOW TO BE FITTED
 TO NEAREST HOSE TAP
№72085

SOAK PITS TO BE
 DONE WITH HOUSE
 SOAK PITS

PLANTS TO BE
 UNCHANGABLE, DAISIES & TUBEL

No deviation shall be permitted
 from the approved plans without
 written approval from the Engineer.
 Foundations to be inspected when
 all reinforcing is in position and
 before any concrete is placed.

THESE PLANS ARE TO
 REMAIN ON SITE
 AT ALL TIMES



dscape Plan
 3)

SOUTH WAIRARAPA
APPROVED
 Building Consent May Be Issued

Eagle Place Building Control Officer
DISTRICT COUNCIL

**Appendix 2 – Section 6
(Special Exemptions) –
Fencing of Swimming Pools
Act 1987**

(1) A 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 under subsection (2) of this section, that such an exemption would not significantly increase danger to young children.

(2) In granting an exemption under subsection (1) of this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.

(3) Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.

Appendix 3 – Building Code F4.3.3

F4.3.3

Swimming pools having a depth of water exceeding 400mm, shall have barriers provided.

F4.3.4 Barriers shall:

- (a) Be continuous and extend for the full extent of the hazard,*
- (b) Be of appropriate height,*
- (c) Be constructed with adequate rigidity,*
- (d) Be of adequate strength to withstand the foreseeable impact of people and, where appropriate, the static pressure of people pressing against them.*
- (e) Be constructed to prevent people from falling through them, and*
- (f) In the case of a swimming pool, restrict the access of children under 6 years of age to the pool or the immediate pool area.*
- (g) Restrict the passage of children under 6 years of age when provided to guard a change of level in areas likely to be frequented by them.*
- (h) Be constructed so that they are not readily able to be used as seats.*

F4.3.5 Barriers to swimming pools shall have in addition to performance F4.3.4:

- (a) All gates and doors fitted with latching devices not readily operated by children, and constructed to automatically close and latch when released from any stationary position 150 mm or more from the closed and secured position, but excluding sliding and sliding folding doors that give access to the immediate pool surround from a building that forms part of the barrier, and*
- (b) No permanent objects on the outside of the barrier that could provide a climbing step.*

**Appendix 4 – NZS
8500:2006 Section 2.3
Above Ground Spas and Hot
Tubs**

2.3 Requirements for new and existing pools

2.3.1 General

NZS 8500 has been developed on the basis that TAs will gradually seek an upgrade to existing pools over a transitional period. It is expected that this transitional phase would be completed within 5 years of the publication of this Standard.

2.3.2 Specific requirements for pools

For new and existing pools at least one of the following requirements shall be met:

- (a) The pool shall be enclosed by an isolation barrier (see figure 2.1(a));
- (b) The pool shall be enclosed by an isolation barrier which includes boundary fences (see figure 2.1(b));
- (c) The pool shall be enclosed by an isolation barrier, where a wall of a house forms part of the barrier (see figure 2.1(c));
- (d) The pool shall be enclosed by an isolation barrier where a wall of a house contains a child-resistant window (see figure 2.1(d));
- (e) The pool shall be enclosed by an isolation barrier where a wall of a house contains a child-resistant window and/or a child-resistant doorset or doorsets, regardless of the direction of door swing (see figure 2.1(e)); or
- (f) The pool shall be enclosed by an isolation barrier where a wall of a house contains doors opening from the house to the immediate pool area (regardless of direction of door swing). Should the doors not be self-closing and self-latching, then a lockable door latch 1500 mm above finished floor level shall be provided on every opening door-set. In addition there shall also be:
 - (i) An automatic pool cover that complies with ASTM F1346-91, and
 - (ii) 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.

Where an automatic pool cover is not installed in an existing pool, an alarm that complies with UL 2017 and a pool alarm that complies with ASTM F2208 shall be fitted in addition to lockable door latches at 1500 mm from the finished floor level including safety signage on every doorset.

NOTE –

- (1) A pool alarm that complies with ASTM F2208 provides additional protection and may also be used in conjunction with any of the above methods.
- (2) The TA has the authority under the FOOSP Act to provide an exemption for a specific pool and the Department of Building and Housing can make determinations on specific pools.

It is the responsibility of the property owner(s) or person(s) in possession of the property on which any pool is situated to ensure that the pool is not filled or partly filled with water at any time when the person(s) knows or could reasonably be expected to know that the pool/fence/barrier does not comply with this Standard. This means that the property owner(s) or person(s) in possession of the property must check that any layers of protection are functioning at all times.

Appendix 5 – Email from Owner (Mark Hadlow)

Derrick Thorley - Building Control Team Leader

From: Mark Hadlow <markhadlow@me.com>
Sent: Saturday, November 23, 2013 2:00 PM
To: Derrick Thorley - Building Control Team Leader
Subject: Code of Compliance 3 Eagle Place, Martinborough. Mark and Jane Hadlow

Derrick, firstly thank you so much for your time Thursday morning. Thanks for listening and as requested am emailing you with our undertaking to explain that pool safety is NOT COMPROMISED through the 2nd bedroom of our property at 3 Eagle Place.

We are firstly full time residents, not weekenders so the security and maintenance of the pool is taken very seriously and as a proactive swimmer and former Events Production Team Manager with the Christchurch City Council understand the need for safety and security of swimming pools.

1. The door is locked at the handle.
2. The door is also dead bolt locked at the top of the door well out of the reach of anyone six years old or under.
3. The dead bolt requires a key to unlock it. It is in the locked position and cannot be unlocked without the key. This maintains 100% security and does not allow access from the room at any times. The window opens 3 inches to allow air flow but cannot be opened further due to wooden shutters top to bottom of the entire outside wall.
3. The fence surrounding the pool is anchor wire with MagnaLatch gates and is Council approved.
4. The key to unlock the dead lock to the door, is further secured in a locked, strong box.
The key is not LABELLED, but never out of the strong box in any case.
5. Since we moved into our residence, The door has never been utilised as an egress to the pool. It is kept locked 24/7.
6. We are prepared to guarantee the door will be dead bolt locked at all times. We are confident that the stringent levels of pool safety we implement are not just a summer activity we uphold this all year round.

As a family we implemented these measures immediately upon moving into our house in January 2013. We understand our responsibilities and our accountability.
The importance of pool safety and security at 3 Eagle Place is top priority.

I thank you for your time and look forward to your response.

Kindest regards Mark Hadlow

Sent from my iPad