

HUTT CITY COUNCIL

POLICY AND REGULATORY SUBCOMMITTEE

Report of a meeting held in the Moera and Waiwhetu meeting rooms, Pelorus Trust
Sportshouse, 93 Hutt Park Road, Seaview, Lower Hutt on
Monday 7 March 2016 commencing at 2.00pm

PRESENT:

Cr M Cousins (Chair)	Cr C Barry
Deputy Mayor D Bassett	Cr M Willard
Cr T Lewis	

IN ATTENDANCE:

Cr Angus Finlayson
Mr D Cano, Swimming Pool Officer, HCC
Mr D Kerite, Building Manager
Mrs H Clegg, Minute Taker
Ms Kate Glanville, Senior Committee Advisor
Mrs J Clendon, Applicant

PUBLIC BUSINESS

1. **APOLOGIES**

There were no apologies.

2. **APPLICATION FOR A SPECIAL EXEMPTION
UNDER THE PROVISIONS OF SECTION 6
OF THE FENCING OF SWIMMING POOLS ACT 1987 (16/209)**

Report No. PRSub2016/1/37 by the Swimming Pool Officer

The Swimming Pool Officer elaborated on the report. He summarised that he had been on site, and confirmed the garden section of the applicant's property was fully accessible from the dwelling, which meant the spa pool was also. He confirmed the garden and spa pool area were fenced from off site. He also expressed concerns that as the spa pool was not visible from the dwelling, it represented a danger to children. He explained both these factors meant the owners were in breach of the Fencing of Swimming Pools Act 1987 (the "Act"). He stated there were two solutions to ensure the property fully complied with the requirements of the Act - to either fully fence the spa pool area, or to raise the spa pool to above 1.2m, with a non-climbable structure. He added that the Bill currently before Parliament to repeal the current Act (amongst a number of changes) had not yet progressed through its initial feedback stage - this was expected in April 2016. He also re-iterated that having a lockable pool cover was not sufficient grounds under the Act for having a safe pool.

In response to questions from members, the Swimming Pool Officer confirmed that in order for a spa pool to not be fully fenced, it had to be over 1.2m in height (the measurement without a cover on it), with fully removable steps. He clarified that if the spa pool itself was on a platform to reach this height, the platform must form the exact shape of the pool, and not provide steps. He further clarified that the location of the spa pool was of great concern, as it was totally accessible from all parts of the dwelling and was not visible from the dwelling.

In regard to the current latches on the existing gate, the Swimming Pool Officer explained these met regulation, but that the gate itself opened the wrong way (adding this would be an easy task to rectify). He then explained there was sufficient room on site to construct another gate to make the spa pool compliant with the Act. He informed the members that the new Act currently being drafted would not come into effect until at least January 2017.

In response to further questions from members, the Swimming Pool Officer directed the members to pages 15 and 26 of the Order Paper, showing both ground and aerial views of the property to describe the exact location of the spa pool. He explained that originally the spa pool was to be sited in a different location on the property, but that it was actually behind the garage and beside the garden shed. He confirmed that on his site visit the steps to the pool were in place but that they were not attached to the concrete, and he believed they were removable. He then clarified that if an exemption under the current Act was granted, it was valid under any new Act superseding this one.

THE APPLICANT:

The Applicant presented her case, informing the members that she and her husband had recently installed a lock onto the window of the dwelling which overlooks the spa, resulting in that window not opening wider than 100mm, and that the steps to the spa

pool were removable. She added they had installed more screening of the spa pool and the dropbolt had been removed. She explained the cover to the spa pool was always locked, and the key kept in another location, out of reach of children. She stressed she and her husband had operated in the spirit of the law, and had actually acted against advice by making this application. She stated that with young children themselves, they were responsible parents and adults. She explained they had investigated raising the spa pool, but had received conflicting advice concerning the structure required.

In response to questions from members, the Applicant explained the reasons for the different location of the spa pool (electrical requirements), and that the cover was always on the spa pool and was always locked (apart from when in use). She informed the members the cover was relatively heavy and that it took one adult to move it - it folded back on itself to the back of the pool, and required two separate locks (approximately 1.0m apart) to be unlocked before it could be moved. The applicant confirmed she and her husband believed the measures they had in place resulted in the spa pool being safe from accidents, but agreed that human error could still occur. She reiterated the process followed on their property ensuring the cover was always locked and gave permission for members to undertake a site inspection should they require it.

SUMMARY:

In summary, the Swimming Pool Officer commended the applicant's installation of the window latch, but reiterated his initial statement that the entire house was accessible to the garden, and that resulted in the spa pool also being totally accessible. Therefore latching this one window was not effective at meeting the requirements of the Act. He stated all windows and doors would need to be appropriately locked and latched. He believed that as the spa pool was on ground level, a structure to raise its level to above 1.2m was achievable.

In response to questions from members, the Swimming Pool Officer explained an exemption under the Act could extend from permitting no fencing, to having conditions placed upon the operation of the pool. He added that it was his opinion that it was reasonable to require the spa pool area to be fully fenced to comply with the Act, as this would entail installation of one more gate with appropriate latch, and ensuring the existing gate opened the correct way. He confirmed the swimming pool death numbers contained in his report and that the design of spa pool covers had improved since 1987. He clarified that an exemption to the Act must not result in children being put in danger and that having a lockable cover was not satisfying the requirements of the Act. He further clarified that exemptions under the Act applied to the property, regardless of owner.

The Subcommittee held its deliberations in private.

CONCLUSION:

There was general discussion concerning the responsible attitude of the Applicant, and that the purpose of the Act was to not rely on one means of pool protection. The Chair highlighted the final part of section 6 of the Act (the test for which each exemption application must meet, namely that the exemption would not significantly increase danger to young children), and that exemptions apply to the property, not the current owners. After further discussion, the members agreed that it was a simple and reasonable action which could result in the spa pool complying with the Act. Members

were not prepared to recommend granting an exemption in this instance which would significantly increase the danger to young children given the full accessibility from the dwelling plus its lack of visibility. Members agreed no site visit was necessary.

RESOLVED:

Minute No. PRSub 16101(2)

"That the Subcommittee:

- (i) notes the information contained in the report; and*
- (ii) considers all matters relevant under section 6 of the Fencing of Swimming Pools Act 1987."*

RECOMMENDED:

Minute No. PRSub 16102(2)

"That the Subcommittee recommends that Council refuses a special exemption under section 6 of the Fencing of Swimming Pools Act 1987 for a spa pool at 5 Epuni Street, Lower Hutt on the grounds that it would significantly increase the danger to young children given the full accessibility to the spa pool and the lack of visibility from the dwelling."

There being no further business the Chair declared the meeting closed at 3.00 pm.

Cr MJ Cousins
CHAIR

CONFIRMED as a true and correct record
Dated this 15th day of March 2016