

3. USER CHARGES IN RELATION TO THE ADMINISTRATION OF THE FENCING OF SWIMMING POOLS ACT

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The purpose of this report is to respond to a request from the Committee for officers to report on the benefits or otherwise of introducing user charges in relation to administration of the Act.

The Council's Legal Services Unit has provided an opinion stating that Section 690A of the Local Government Act 1974 would enable the Council to set a fee for any inspection made under the Fencing of Swimming Pools Act.

Currently there is provision to charge an inspection fee of \$68.00 where a request has been made for an inspection (SP3) and there is a \$68.00 fee where an application is made for an exemption from the provisions of the Act (SP5).

At present, no fee is charged for the inspections being carried out to determine compliance with the Act. New pools and new pool fences require a Building Consent and are inspected by the Building Inspectors as part of the Consent process. These inspections are therefore paid for as part of the Building Consent fee.

A postal survey of territorial authorities throughout New Zealand was carried out in October to see if others were charging any fees. To date, only 36 replies have been received to the survey. These show that four Councils (11%) did charge some form of inspection fee, five charged only for re-inspections and eight (22%) charge a fee for an application for exemption.

From information obtained from the inspection of 200 properties (where the property was inspected and the pool made to comply or removed, including some re-inspections) it was found that the time involved ranged from 25 to 195 minutes. The average time per property worked out at 53 minutes. At a charge out rate of \$68.00 per hour this would require an inspection fee of \$68.00, with possibly a further fee for each re-inspection, in order to recover 'the reasonable costs incurred by the Council'.

Considerably more costs are incurred when dealing with the more 'difficult' pool owners who are not prepared to comply with the Act without considerable action from the Council.

Of the Councils who do charge fees, the fees range from \$22.50 to \$100.00 with most being in the \$65.00 to \$70.00 bracket. One Council is placing a \$40.00 annual fee on all pool owners to recover the cost of re-inspecting the pools every two years.

Three Councils treat applications for an exemption in a similar manner to a resource consent application, in that the full cost of the hearing is borne by the applicant regardless of the decision. The cost in one case is estimated to be between \$300 and \$800 depending on the complexity of the application, number of hearings to be held on that day and the number of and time committed by the Council officers and Councillors involved. A deposit of \$300 is required on submittal of the application with the remainder due prior to release of the hearing decision. Other fees charged for exemption range from \$56.00 to \$168.75.

There are two schools of thought on the topic of inspection fees:

1. That the cost of this activity should be met by those receiving the service (the pool owners) and not by the general rate payer.

or

2. Although pool owners receive the service, it is the public that benefits from reduced risks of children drowning. In other words, the Act has a significant 'public good' component. Further, enforcement of the Act is difficult enough without the added imposition of what would be an unpopular charge, which will be difficult to recover and may discourage openness about the existence of pools.

The options available to the Council in relation to inspection fees are:

1. Continue as at present with no fee charged for the routine inspections to ensure compliance, and an inspection fee for requested inspections.

2. Charge an inspection fee that would recover the costs of the inspection (\$68.00), with no charge for re-inspections.
3. Charge an inspection fee as above plus a further fee of \$35.00 for each re-inspection.
4. No fee for the first routine inspection but all re-inspections to be at a fee.
5. Set an annual registration fee to cover the costs of the proposed two yearly re-inspections (with or without inspection fees for the initial inspection). An annual fee of \$35.00 to \$40.00 would recover these costs.

As noted above, any inspection fee is likely to be unpopular and difficult to recover, as the pool owners have not asked for an inspection and indeed in some cases, do not want an inspection. Further, such fees may act as a further disincentive for pool owners to register their pools with the Council. The charging of fees for re-inspections is also not supported for the same reasons and also because after the first re-inspection, any subsequent inspections are either to confirm that the work has been completed or to collect evidence for prosecution. It is therefore recommended that option 1 above be supported.

In respect to the fee for considering applications for exemptions, the situation is quite different in that it is the pool owner who is requesting the Council to grant an exemption from some or all of the requirements of the Act. Section 6 of the Act provides that the Council may only grant an exemption if it is satisfied *'having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes ... that such an exemption would not significantly increase danger to young children.'*

The Council may delegate its powers and functions under section 6 to any Committee of the Council that comprises only Councillors; but may not delegate these powers to any Committee that has members who are not Councillors or to any Council officer.

The current procedure is that an application for exemption is received (usually after an inspection has been made), an officer prepares a report which is considered by the Council Hearings Panel (which may decide a site visit is necessary), the applicant is given an opportunity to be heard and a decision is made and communicated to the applicant. If the application is granted, a further inspection by a council officer is carried out to ensure that any conditions imposed have been complied with.

The options for 'applications for exemption' are:

1. Continue with the present fee of \$68.00.
2. Continue with a flat fee but increase it to more accurately reflect the costs involved.
3. Charge the full cost of the hearing in a similar manner to the Councils noted above.
4. A combination of 2 and 3 where a flat fee is charged for 'simple' applications, and more complex applications which may require a site visit by the Panel, is charged either a higher fee or is charged at actual cost.

The preferred option is option 2 as the present fee does not reflect the costs involved, the number of 'complex' applications is relatively small and it is desirable to keep any fee structure as simple as possible.

The fee suggested is \$350.00 per application. If there was only one application and the Subcommittee had to be convened especially to consider the application, this would not recover all costs. However, the likelihood of this is rare. It is more common to try and arrange for a meeting of the Panel before or after another scheduled meeting and to consider a number of applications at the same time. However, it is a fairer reflection of the costs involved, which include Councillors' and officers' time, secretarial and administrative costs, and inspections of the pool. (The present fee for non-notified resource consents, which are considered by an Officer Committee, is \$375.00.)

Recommendation:

1. That there be no change to the current method of charging which is only for inspection of swimming pool fencing requested by the owner.
2. That the fee for considering an application for exemption under Section 6 and Clause 11 of the Fencing of Swimming Pools Act be increased from \$68.00 to \$350.00 through the Annual Plan process.