

5. AMENDMENT TO FENCING OF SWIMMING POOLS POLICY (SPA POOLS)

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The purpose of this report is to provide the Councils Hearing Panel with background material needed to formulate a policy on lockable lids on spa pools.

INTRODUCTION

The Fencing of Swimming Pools Act 1987 requires (Section 8) –

Every owner of a pool to which this Act applies shall ensure that, except as provided in any exemption granted under section 6 of this Act, the pool, or some or all of the immediate pool area including all of the pool, is fenced by a fence that complies with the requirements of the [building code in force under the Building Act 1991 in respect of swimming pools subject to this Act] at all times when this Act applies in respect of the pool.

Section 6 of the Act allows for special exemptions –

- (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.

From time to time Council officers receive enquiries about pool owners applying for an exemption from the requirement to fence a pool because the pool has a cover or lockable lid on a spa pool. (Note: The definition of 'swimming pool' and 'pool' in the Act includes spa pools.)

In the past, pool covers and spa pool lockable lids have not been accepted as an alternative to acceptable fencing as there is no 'restriction to the access of children under six years of age to the pool' (as required by the Act and Building Code) when the cover is removed.

It is this unofficial policy that needs to be considered by the Committee and either confirmed as Council policy or be amended.

BACKGROUND

The Environmental Services Unit carried out a survey in October 2000 in regard to lockable spa pool lids.

The survey revealed the following:

Seventy-three territorial authorities were contacted requesting their interpretation of lockable spa pool covers.

There was only a 65% return on this survey and of this 22 authorities advised they do give exemption but with conditions attached and a further four had not received exemptions to date but would consider them on their merit if and when the time arose.

Following this survey, a letter was written to the Water Safety New Zealand asking for their comments. They replied that they do not support any exemption of spa pools with covers and not pool fencing. "The covering of a spa pool requires human intervention whereas compliance with the Fencing of Swimming Pools Act 1987 ensures that the pool is safe at all times through the self-closing and self-latching gate."

Support for this stance is provided by the Department of Internal Affairs in a booklet produced in August 1999 entitled *The Fencing of Swimming Pools Act 1987 – Guidelines for Territorial Authorities*. In the section on Special Exemptions they state:

Other means of protection

6.11 The Local Bills Committee investigated alternative methods of protecting pre-schoolers, including the use of pool covers, electric alarm systems, buoys, poles, and ropes. The Committee found them “unlikely to prove greatly effective in preventing pre-school drownings”.

Pool Covers

6.12 The Injury Prevention Research Unit of the University of Otago is opposed to reliance on pool covers, including heavy wooden covers on spa pools, as a safety measure, because they must always be replaced after use. Unfortunately, because they can be heavy and difficult to manage, there is a constant danger they will not be replaced. There have been cases where

- children drowned after climbing under insecure pool covers; and
- small children drowned in water that had collected on top of a cover.

Since January 1980 at least 14 pre-school children have drowned in pools which had covers (Water Safety New Zealand statistics).

6.13 The major advantage of fencing a pool to the standard required by the Fencing of Swimming Pools Act and the Building Code is that there is constant protection. It does not require continual action or surveillance to prevent children gaining access.

6.14 Territorial authorities should note that they must grant a specific exemption, pursuant to Section 6 of the Act, prior to permitting the use of only a pool cover. A general policy cannot be adopted to allow the automatic acceptance of pool covers as an alternative to fencing.

Pool Alarms

6.15 An alarm will not keep a young child out of a pool. Its sole purpose is to sound an alert after an incident has taken place, in the hope that someone will hear and come to the victim’s aid. It requires that someone will be continually available to monitor and respond to an alarm. This may not be the case.

6.16 The Local Bills Committee found the effectiveness of an alarm was often diminished because objects falling into a pool can set it off. With repeated false alarms, comes the danger that response time in a real emergency may be delayed.

Buoys, Poles, and Ropes

6.17 Buoys, poles, and ropes will not prevent pre-school children from gaining access to a pool.

Whether children are resident on the property

6.18 The absence of children as current residents of a property would not be an appropriate criterion for Councils to use when considering an application for an exemption. There is no guarantee that children will not visit the property, or live there in the future.

6.19 The normal stages of family development mean it is likely that young children will, at some time, either live on a property or visit as grandchildren or in the company of other relatives. In any event, the property may be later sold to people who have young children or who will be visited by children accompanying friends or relatives.

6.20 It is important that the pool, and its fence, should be seen as a permanent feature of the property that will still be there after its present occupants have moved on.

Distance of the pool from other residences

6.21 As has already been shown, the greatest danger is not to children on adjoining properties, but those who live on the property or who are visiting. Therefore, distance from other residential properties should not be taken into consideration. It is noted that a number of rural pool owners use this reason when applying for an exemption.

Effects on appearance of the property

6.22 An exemption granted on the basis that a pool fence would diminish the appearance of a property would be contrary to the intention of the Act. Exemptions can only be granted where the danger to young children is not significantly increased. As the Local Bills Committee commented: “The value of aesthetically pleasing gardens cannot be placed above the value of human lives”.

The Plunket Society Guide to Fencing of Domestic Swimming Pools states:

"Whilst any protection is better than none, fencing is more effective than alternative means, for the following reasons:

Covers

Pool covers, even if of satisfactory design, require to be removed and replaced before and after each use of the pool. Such a system is much less likely to be effective since it relies upon human motivation and memory. In recent years a number of small children have drowned in pools which have been covered.

Alarms

No alarm can be expected to work satisfactorily in all conditions. Even if it did, it requires that somebody be in earshot and be capable of taking immediate action."

In relation to the recent Coroner's inquest Water Safety New Zealand Inc in a letter to the Deputy Coroner dated 22 May 2002 stated:

- "4. A number of local authorities grant, or consider granting, exemptions to the Act for swimming and/or spa pool covers. This case highlights the inherent dangers associated in relying on pool covers to keep pre-school children out. It also raises questions about what would have happened if the pool cover had not been there and the child had been located in the pool on the first inspection. It is well known that attempts to revive young children who have been immersed in cold water for up to 5 minutes can be quite effective (as opposed to warm or hot water).
5. That constant and vigilant supervision is critical to ensuring pre-school children are safe when in or around water."

It is the interpretation of this Unit that swimming pool covers and/or lockable spa lids do not meet the criteria of the New Zealand Building Code 1991 or the Fencing of Swimming Pools Act 1987.

Staff

Recommendation: That the Council amend the Council's Fencing of Swimming Pools Policy definition of 'immediate pool area' to include item 5 as follows;

'Lockable spa pool covers do not constitute the immediate pool area for the purposes of this policy.'

Chairman's

- Recommendation:**
- (1) That the above recommendation be adopted.
 - (2) That the Council contact companies who manufacture or sell spa pools to remind them of the obligations under the Fencing of Swimming Pools Act for spa pools to be fenced as required by the Act.
 - (3) That in the 2003/04 budget round the Council ensures that there are adequate provisions for the on-going enforcement of and education about the Fencing of Swimming Pools Act.