



**HURUNUI**  
*District Council*

FOR AN ORDINARY MEETING OF THE:

**REGULATORY  
COMMITTEE**

**AGENDA**

TO BE HELD ON:

**THURSDAY 6 DECEMBER 2012  
COMMENCING AT 2PM**

IN THE COUNCIL CHAMBERS, 66 CARTERS RD, AMBERLEY.

**Community Partnership in growth and wellbeing.**

**REGULATORY COMMITTEE**

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**For the meeting timetable and order of business please refer to the back page fold-out.**

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**Committee Membership:**

Cr R Little (Chairperson)  
Mayor W Dalley  
Cr Marie Black  
Cr Russell Black  
Cr Gary Cooper  
Cr Vince Daly  
Cr Dick Davison  
Cr Jim Harré  
Cr Michael Malthus  
Cr Judith McKendry

**Quorum: no less than 5 members**

## Regulatory Committee – 6 December 2012

### TIMETABLE

Time	Item
2 pm	Meeting Commences
2 pm	Mr C F Mackenzie will attend the meeting to speak to his request for an exemption under Section 6 of the Fencing of Swimming Pools Act 1987.

ITEM	ORDER OF BUSINESS	Pages
	<ul style="list-style-type: none"> <li>• Apologies</li> <li>• Urgent Business</li> <li>• Conflict of Interest Declarations</li> <li>• Recording Device</li> </ul>	
<b>1.</b>	<b>Minutes:</b> Ordinary Meeting: 6 September 2012	1 - 10
<b>2.</b>	Action Sheet – there are currently no Actions listed on the Action Sheet	
<b>3.</b>	<b>Building:</b> 3.1 Exemption request under Section 6 of the Fencing of Swimming Pools Act 1987 – Mr C F Mackenzie	11 - 22
<b>4.</b>	<b>Compliance:</b> 4.1 Swimming Pool Audit Report 4.2 Environmental Health Report	23 – 30 31 - 33

**MINUTES OF THE ORDINARY MEETING OF THE HURUNUI DISTRICT COUNCIL  
REGULATORY COMMITTEE MEETING HELD IN THE COUNCIL CHAMBERS, CARTERS  
RD, AMBERLEY, THURSDAY 6 SEPTEMBER 2012 COMMENCING AT 9.30 AM**

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**PRESENT:**

Cr R Little (Chairperson), Mayor W Dalley, Cr R Black, Cr M Black Cr G Cooper, Cr M Malthus, Cr J McKendry, Cr J Harrè

**IN ATTENDANCE:** S Courtney (Team Leader Regulatory), M Hare (Committee Secretary)

**APOLOGIES:**

Cr V Daly Cr D Davison

THAT THE APOLOGIES BE ACCEPTED

McKendry/Malthus

CARRIED

**BUSINESS:**

**URGENT BUSINESS:**

There was no Urgent business.

**CONFLICT OF INTEREST DECLARATIONS:**

Cr Harrè advised that he owns a swimming pool and suggested that this could be perceived as a conflict of interest during the Swimming Pool Policy (item 3.1) discussion.

Cr McKendry advised that she has a spa pool which complies with the Swimming Pool Act and suggested that could be perceived as a conflict of interest during the Swimming Pool Policy (item 3.1) discussion.

Cr Harrè also advised that he owns a business which includes a food premise and suggested that this could be perceived as a conflict of interest during the discussion on Item 4.1 – Food Bill and Food Control Plans.

Cr Little noted that he did not believe that either Councillor had any conflict of interest however it was agreed that the declarations be recorded.

Mayor Dalley advised that he had a conflict of interest in Item 4.3 – Reconsideration of an Exemption for Mr A T W Morris requested under Section 6 of the Fencing of Swimming Pools Act 1987.

## **RECORDING DEVICE:**

The Committee was advised that a recording device was being used for this meeting.

## **1. MINUTES**

THAT THE MINUTES OF THE ORDINARY MEETING OF THE HURUNUI DISTRICT COUNCIL REGULATORY COMMITTEE MEETING HELD ON THURSDAY 21 JUNE 2012 BE TAKEN AS READ AND NOW CONFIRMED.

Malthus/Harrè

CARRIED

### **1.1 MATTERS ARISING FROM THE MINUTES**

#### **1.1.1. FENCING OF SWIMMING POOLS**

Cr Harrè noted that at the previous meeting he had suggested that a guide be prepared which would provide the pool owners with the requirements needed before a pool inspection. Cr Harrè suggested that the Policy as presented in the Agenda is not what he had intended. The Team Leader Regulatory advised that a 'pack' is available for pool owners

Cr R Black agreed noting that different staff have different interpretations of the Act and it is important that there be some consistency. It was agreed that this be discussed further during the discussion on item 3.1

#### **1.1.2 RC 110157 - HANMER HAULAGE**

Cr Little advised that the Hearing for Resource Consent 110157 has been put on hold because the scope of the application has been changed which means a change in those affected.

## **2. ACTION SHEET**

There was no Action Sheet for this meeting.

## **3. POLICY**

### 3.1 SWIMMING AND SPA POOL FENCING EXEMPTIONS POLICY 2012

The report from the Team Leader Regulatory advised that Section 6 of the Swimming Pools Act 1987 allows Councils to grant a special exemption from the requirements of the Act and provided a draft policy for exemptions Council's consideration. It was noted that a policy will ensure that a consistent approach is taken to the exemption process by both councillors and officers.

It was noted that Section 6 of the Fencing of Swimming Pool Act can be broken down into individual elements each of which must be satisfied before the exemption committee can grant an exemption. The draft Policy tabled set out the individual elements and provided examples for the exemption committee to consider. The Policy also provided guidance for some of the interpretation issues of the Act that are relevant to the exemption decisions, a list of inappropriate criteria often associated with exemption applications, information in relation to the decision-makers functions, how a decision should be written and conditions that can be applied.

Cr Little suggested that a decision on the recommended motion be left to sit on the table until the site visit for Item 4.3 has been undertaken but Cr Harrè disagreed stating that he did not believe the discussion on the policy would impact on the site visit.

The Team Leader Regulatory advised that there are issues around different interpretations of the Act by different staff. She also noted that in the past an Inspector has recommended that a pool complies but hasn't recorded any details about the compliance. Cr M Black noted that the Policy will give more clarity around decision making and Cr Little agreed noting that consistency has to be applauded.

Cr McKendry queried who is liable if an exemption is granted for a pool and subsequently a drowning happens in that pool. The Team Leader Regulatory advised that as long as the decision on an exemption is well documented according to the six different elements in the policy Council would not be liable. It was also noted that it is the Pool owner's responsibility to maintain the compliance of their pool.

Cr R Black queried the status of a pool when a property changes hands and the Team Leader Regulatory advised that as an exemption does not expire it would be appropriate to record the details on the LIM.

The Mayor expressed the concern that if the committee accept the policy every exemption application may result in a site visit but the Team Leader Regulatory advised that this is a committee decision advising that some Councils visit all sites and others don't visit any. The Team Leader suggested that one way forward was for the committee to consider the officer's recommendation and if the committee did not agree with this then a site visit could be undertaken.

Cr M Black suggested that best practice is needed and if the Policy is used wisely there would only be an occasional exception requiring a site visit.

The Policies as below were then considered and the following points noted –

- *Policy 1 – A resolution is needed in order to grant the exemption.*

- *Policy 2 – An exemption may be for some or all of the requirements of the Act.*
- *Policy 3 – Each exemption application must be considered in relation to the particular pool.*
- *Policy 4 – The committee must be satisfied that grounds for an exemption have been made in relation to each particular application.*
- *Policy 5 – The Committee must consider the particular characteristic of the property and the pool.*
- *Policy 6 – The Committee must also consider whether any other factors are relevant.*
- *Policy 7 – Section 6 (a) allows the committee to impose conditions when it grants an exemption application.*
- *Policy 8 – The Committee must be satisfied that an exemption would not significantly increase danger to young children.*

Mayor Dalley suggested that the wording of this policy and in particular the word “significantly” is inappropriate and should be changed to mean that when a decision is made on an exemption the committee must be satisfied that the risk to young children is not being increased, The meeting agreed noting that safety is paramount.

The Team Leader Regulatory advised that the committee can change the wording as the Policy is for the Hurunui however she stressed that the committee must be satisfied that any decision made does not significantly increase the danger to young children.

THAT THE WORD ‘SIGNIFICANT’ IN POLICY NO 8 BE REMOVED AND THAT THE POLICY STATES THAT THE COMMITTEE MUST BE SATISFIED THAT AN EXEMPTION WOULD NOT INCREASE THE DANGER TO YOUNG CHILDREN

R Black/M Black

CARRIED

- *Policy 9 – The Committee can amend or revoke, by resolution, any previous exemption granted, or condition imposed under Section 6.*

Cr M Black queried the status of the recently granted spa pool exemption if the property is sold and Cr Harrè queried if this pool will need to be re inspected. The Team Leader replied that the exemption in question was granted under Section 5 of the Act and not Section 6.

Cr M Black queried if there is a record of where pools are sited on a property noting that if a pool is moved it may then become dangerous. Mayor Dalley reminded the committee that the onus is on the pool owner to be compliant. Cr Malthus expressed his belief that the details of all pools should be listed on the LIM.

THAT ALL POOLS ARE LISTED ON THE COUNCIL LIM REPORTS AND THAT THE CONDITIONS ATTACHED TO ANY POOLS EXEMPTED FROM THE FENCING OF SWIMMING POOLS ACT BE LISTED ON THAT LIM.

Harrè/Malthus

CARRIED

The Appendices attached to the Policy were considered and it was agreed that personal financial circumstances are not a valid reason for exemption from the Fencing of Swimming Pools Act.

THAT PARAGRAPHS 10 AND 11 OF THE APPENDIX A "FSPA INTERPRETATION ISSUES RELEVANT TO EXEMPTION DECISIONS" BEGINNING "*Examples of when a committee .....*" AND ENDING "*.....pose by the door remaining non-compliant*" BE DELETED.

Little/R Black

CARRIED

The Chairperson asked the meeting how it would prefer to handle exemption applications noting that the Waimakariri Council has a special committee and nearly all applications involve a site visit which he noted would be an onerous task and queried if the committee felt this was the best way. Cr Little suggested that a smaller committee be formed which would allow the officer some latitude to make decisions.

Cr Harrè suggested that the Regulatory committee considers the applications but if a site visit is needed then some agreement could be reached on which elected members would do the site visit required and noted that three elected members should be involved in a site visit.

The Team Leader Regulatory reported that there will possibly be several applications for exemption noting that one issue is the use of Tennis Court fencing around a pool. It was noted that although a Tennis Court Fence is high the netting used is usually of a large gauge and does not comply as young people could get a foothold in the netting,.

Cr R Black replied that Council is bound to apply the rules and must do so and Cr M Black agreed noting that the Act was implemented to promote the safety of young children.

*The Meeting adjourned at 10.39 for morning tea followed by a site visit (item 4.3) and resumed at 12.01*

Cr Harrè noted that the site visit the committee had just completed was a good example of how helpful such a visit can be but agreed that a smaller committee would be appropriate rather than the whole committee.

RESOLVED THAT ON THE COUNCIL OFFICERS REQUEST THAT A MINIMUM OF THREE MEMBERS OF THE REGULATORY COMMITTEE INCLUDING THE LOCAL COUNCILLOR, WHERE APPROPRIATE, CARRY OUT SITE VISITS FOR APPLICATIONS FOR FENCING OF SWIMMING POOL EXEMPTIONS.

Harrè/



Cr M Black expressed concerns about consistency if the members of the site visit committee are not constant but Cr Harrè noted that a building officer would be present which would provide consistency.

The Chairperson queried how members of the site visit committee would be appointed noting that the Regulatory committee does not meet very often., It was suggested that the Team Leader Regulatory could contact the committee seeking volunteers to make the visit.

The Team Leader Regulatory sought clarification on the process and it was agreed that the smaller site visit committee would report back to a full committee hearing which could be the Regulatory committee, the Strategy and Policy Committee or Council

Cr Little suggested that the Chair of the Regulatory Committee or the Mayor be part of the site visit committee and Cr Copper suggested that one elected member from the local Ward should be on the committee too.

Cr Cooper suggested that there is a possibility that there will be a lot more applications for an exemption and the Team Leader Regulatory agreed.

*AMENDMENT TO THE MOTION:*

THAT THE COMMITTEE ADOPTS THE SWIMMING AND SPA POOL FENCING EXEMPTIONS POLICY 2012 WITH THE ALTERATIONS AS DISCUSSED

THAT A SITE VISIT REQUIRES A MINIMUM OF 3 ELECTED MEMBERS (INCLUDING A LOCAL COUNCILLOR) WHO WILL THEN MAKE A RECOMMENDATION

THAT SITE VISITS BE ORGANISED BY COUNCIL OFFICERS WHEN IT IS BELIEVED THAT IT WOULD BE USEFUL FOR MEMBERS OF THE COMMITTEE.

Harrè/Malthus

CARRIED

THAT ITEM 4.3 (RECOMMENDATIONS FOR AN EXEMPTION FROM MR A T W MORRIS REQUESTED UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987) BE CONSIDERED AT THIS TIME.

Harrè/R Black

CARRIED

*Item 4.3 - Recommendation for an exemption from Mr A T W Morris requested under Section 6 of the Fencing of Swimming Pools Act 1987 was considered at this time but is recorded as per the Agenda order.*

*The meeting adjourned for Lunch at 12.33 and resumed at 1.01pm*

#### **4. COMPLIANCE**

##### **4.1 ANNUAL REGULATORY REPORT**

The report from the Team Leader Regulatory providing the annual report on Resource Consent monitoring, complaints, parking infringements and dog and animal control was considered.

The Team Leader Regulatory advised that compiling the Report has been a valuable exercise for staff as it has shown the results of the Service Requests system and she advised that some changes will be noted in the next Annual Report.

Resource Consent monitoring – In the period July 2011 to June 2012 a total of 111 consents were monitored for compliance with their conditions. Cr Little queried what the complaints have been about and the Team Leader Regulatory replied that the numbers shown are for the monitoring of consents e.g. land use consent etc.

The meeting noted that the largest number of completed monitoring was in September 2011 when back dated inspections were targeted. The low number of completed inspections in January, February and March 2012 were due to a change Compliance Officers.

Cr R Black queried if there had been any complaints regarding the smell from the Kate Valley Landfill site and the Team Leader Regulatory agreed to check the system to see if there is an area for this.

The meeting noted that Councillors received complaints from ratepayers from time to time but these are not lodged in the system by the complainant and it was agreed that it is important that all complaints are lodged in the Council system. Cr Harrè noted that most ratepayers expect an immediate resolution when they do lodge a complaint in the system and the Team Leader Regulatory noted that when a call is made it must be actioned within 5 days. The staff member is also expected to respond to the complainant when the action has been taken, however Mrs Courtney noted that often the action taken is not what the complainant wanted and they consider this as nothing being done.

Freedom Camping monitoring – it was noted that the statistics provided do not include the freedom campers that are moved on by the regular monitoring contractor.

Cr Malthus queried progress of the Freedom Camping legislation and the Team Leader Regulatory advised that the current bylaw was passed under the Local Government Act rather than the Freedom Camping Act, however this has to now be done under the Freedom Camping Act and as it will have to go through the public consultation process it will take some time.

Noise complaints – Cr Black noted that there were a high number of complaints from the Glenmark Ward and suggested these may be related to the Motor Cross Events in the area. The Team Leader Regulatory advised that she believe the complaints were mainly in regard to stereo noise.

Litter complaints – The Team Leader advised that a large number of litter complaints related to household rubbish and green waste dumped in riverbeds Cr R Black suggested that if an area is mown and kept this does not happen.

Parking Infringements – it was noted that this is for the Hanmer Springs Ward only and Cr Malthus queried if any money is being made out of this monitoring. The Team Leader advised that there is no money being made

however she reported that more funding has recently been made available for monitoring.

Dog and Animal Control – it was noted that there are a reasonably large number of complaints

*Cr McKendry left the meeting at 1.31pm*

Animal Control – Cr M Black queried how many chances owners of wandering stock have before action is taken and the Team Leader advised that generally they will receive two letters and then some action is taken.

THAT THE INFORMATION BE RECEIVED

Malthus/Cooper

CARRIED

#### **4.2 FOOD BILL AND FOOD CONTROL PLANS**

The report from the Environmental Health Officer advising of the proposed Food Bill and the implementation of the Food Control Plans within the Hurunui District was considered.

Ms Morrison advised in her report that all food premises in the Hurunui have been advised of the Food Bill and what it is likely to mean for their type of business. Food Control Plans are promoted to eligible businesses and others that are likely to become eligible as templates are developed, These Food Control Plans contain templates so that each operator only needs to add the detail that is specific to their business and develop cleaning and maintenance schedules.

In the Hurunui there are 82 food premises which are eligible to register a Food Control Plan of which 16 have approved Plans.

The report advised that the barriers to Food Control Plans include there being no template for some food sectors, where the business is for sale, the perceived 'extra' book work required and those that are resistant to change. A Food Control Plan ceases when a business is sold so that the number registered changes. Mentoring is provided to new operators so they can commence their business based on the Food Control Plan processes.

Cr Little asked if there were any concerns about getting all premises up to speed and the Team Leader Regulatory advised that she did not see any issues.

THAT THE INFORMATION BE RECEIVED

Harrè/M Black

CARRIED

#### **4.3 RECOMMENDATION FOR AN EXEMPTION FROM MR A T W MORRIS REQUESTED UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987**

The report from the Team Leader Regulatory advising that Mr A T W Morris has requested that the Committee reconsider his exemption application from part of the fencing requirements of the Fencing of Swimming Pools Act 1987 was considered.

It was noted that the exemption related to roses and a hedge whci the committee believed created a greater risk to young children than fencing built to the standards detailed in the schedule of the Act. Mr Morris has advised that he has since removed the roses but the not hedge and netting and he now believes his fence to be child safe.

R Black noted following the site visit that although the fence around Mr Morris' pool does not comply with the Act it is safe and he suggested that these words should be recorded if an exemption is granted.

Cr Cooper agreed noting that the site visit was a valuable exercise.

The Team Leader Regulatory reminded the committee that under the Exemption Policy they have just adopted the decision requires a statement and Cr Harrè agreed noting that the hedge is too soft to climb and because the fence is in the middle of the hedge it is not accessible Cr Harrè noted that these condition will only apply while the hedge and the fence are present in conjunction with each other. Cr Cooper agreed and suggested that if there are any changes the exemption would no longer apply.

The Team Leader Regulatory advised that the committee decision is made in relation to the characteristics of the pool and property and the maintenance of the current standards are the responsibility of the owner.

The committee agreed that they are satisfied that granting an exemption will not increase the danger to the young children.

THAT THE COMMITTEE AFTER VISITING THE PROPERTY OF MR MORRIS AT 474 BRODIES RD, BROOMFIELD ACCEPTS THAT THE REVIEWED EXEMPTION BE GRANTED WITH THE CONDITIONS AS SPECIFIED BY THE TEAM LEADER REGULATORY

Harrè/M Black

CARRIED

## **5. PUBLIC EXCLUDED SESSION**

THE GENERAL SUBJECT OF THE MATTERS TO BE CONSIDERED WHILE THE PUBLIC IS EXCLUDED, THE REASON FOR PASSING THIS RESOLUTION IN RELATION TO THE MATTERS AND THE SPECIFIC GROUNDS UNDER SECTION 48 (1) OF THE LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 FOR THE PASSING OF THIS RESOLUTION ARE AS FOLLOWS:

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Grounds under section 48 (1) for the passing of this resolution</b>
<b>Item 6.1</b> Minutes of the Public Excluded Session of the meeting held on June 21 2012	The Minutes contain information withheld for the reason that the right of appeal exists.	Section 48(1)(a)(i) & Section 48(2)(a)

This resolution is made in reliance on section 48 (1) (a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 7 of that Act, which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public.

R Black/Cooper

CARRIED

THAT THE MEETING RESUME IN OPEN SESSION AND THAT THE MATTERS DISCUSSED IN THE PUBLIC EXCLUDED SESSION REMAIN CONFIDENTIAL.

Little/Harre

CARRIED

**6. URGENT BUSINESS**

There was no urgent business.

**7. NEXT MEETING**

The next meeting of the Regulatory Committee is scheduled for December 6<sup>th</sup>.

The meeting closed at 1.41 pm.

Signed \_\_\_\_\_



**HURUNUI**  
*District Council*

**Meeting Date:**

6 December 2012

**REPORT TO:** Regulatory Committee

**SUBJECT:** Application for an exemption for Mr Clutha Forbes Mackenzie requested under Section 6 of the Fencing of Swimming Pools Act 1987

**REPORT BY:** Compliance Officer

*Andrew Brown*

*J - Batchelor*

Signature: Author  
Andrew Brown

Manager  
Judith Batchelor

**Summary Report**

Mr Mackenzie has requested that the Committee consider his exemption application from part of the fencing requirements of the Fencing of Swimming Pools Act 1987. The exemption relates to doors in walls of buildings.

**Recommendation**

THAT THE COMMITTEE GRANTS THE EXEMPTION OF THE SWIMMING POOL FENCE UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987, SUBJECT TO ALL OF THE FOLLOWING CONDITIONS.

- THE SINGLE DOOR BE FITTED WITH A SELF-CLOSER AND THE TOP PATIO BOLT BE LOCKED WHEN THE POOL IS NOT IN USE
- NO MEANS OF HOLDING THE DOOR OPEN IS PERMITTED
- THE DOUBLE DOORS REMAIN SECURED WITH PATIO BOLTS AND HAVE AN APPROVED STICKER ATTACHED.

## **BACKGROUND**

Mr Mackenzie has requested an exemption from the Fencing of Swimming Pools Act for the pool on his property at 787 Happy Valley Road. The exemption application relates to doors opening from the house into the pool area.

The Schedule of the Fencing of Swimming Pools Act requires all doors opening into a pool area from a building that forms part of the pool fence to comply with the same requirements as a gate in a pool fence. That means that doors must:

- Open away from the pool (hinged doors)
- Be fitted with a self-closing device capable of closing the door from an opening distance of 150mm.
- Have a self-latching device fitted at least 1.5 metres above floor level.
- Be clear of anything that could hold them open

Clause 11 of Schedule addresses the issue of doors that do not meet the requirements above. It states:

*Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.*

There are two key differences between an exemption under clause 11 of the schedule (a "Schedule Exemption") and an exemption under section 6 of the Act (an "Act Exemption"). The first is that the threshold for obtaining a Schedule Exemption is higher than it is for an Act Exemption, and the second is that a Schedule Exemption will be available in fewer circumstances than an Act Exemption will be. It is best to think of the Schedule Exemption as being a kind of subcategory of Act Exemptions; all Schedule Exemptions could be Act Exemptions, but not all Act Exemptions could be Schedule Exemptions.

In practice, both applications will require the committee to consider similar matters, and the Act's overall purpose of protecting young children from danger is relevant to both. Further, because an Act Exemption allows you to consider "any other relevant circumstances", matters such as unreasonableness and impossibility of compliance will no doubt be relevant to such applications. This significance of carving out a special category of exemptions (being Schedule Exemptions) is simply a recognition that external doors/gates are more difficult to alter, but often are also simpler to secure in a way that makes them inaccessible to young children.

At the Regulatory Committee meeting on the 6 September 2012 the committee agreed that as approval, under clause 11 of the schedule, required similar consideration as that of an exemption under section 6, they would all be heard as Act Exemptions under section 6.

### **Consideration for Exemption under section 6 of the Fencing of Swimming Pools Act 1987**

#### **A resolution is needed in order to grant an exemption**

A resolution of the Council, or an appropriate delegated Council committee (comprising only members, not a council officer), is needed in order to grant the exemption. The Hurunui District Council has delegated authority to the Regulatory Committee to consider its section 6 applications.

The word “may” means the committee has discretion as to whether or not to grant an exemption; no applicant can expect to be entitled to an exemption.

**An exemption may be for some or all of the requirements of this Act**

In this case the exemption is required for a set of double doors and a single door that open from the house into the pool area. The exemption will be from the requirements of clauses 8 to 10 of the Schedule.

Clause 11 of the Schedule allows the committee to approve doors that do not meet the requirements of clauses 8 to 10 provided the committee is satisfied that

- compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and
- the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.

**Each exemption application must be considered in relation to the particular pool**

Each exemption application must be considered by the committee in relation to the specific pool/situation before it. That is not to say, however, that the committee cannot take note of previous decisions it has made, so as to promote consistency in its decision-making.

The publication ‘FENCING OF SWIMMING POOLS ACT 1987 GUIDELINES FOR TERRITORIAL AUTHORITIES’, published by the Department of Internal Affairs in 1999, contains the following paragraph:

*A door may be built in the wall of a building that forms part of a pool fence. If it does, it must be fitted with a lock which prevents it being readily opened by children under the age of six. As an extra safety precaution, it is preferable that the lock be at a height not easily reachable by toddlers.*

Although the document later states that these doors can only be approved by a committee of elected members of the council, it appears that in the past this paragraph has been taken to mean that a door with a lock which prevents it being readily opened by children under the age of six can be deemed to be compliant.

As a result of this, doors opening to pool areas were required to be fitted with a tower bolt, high handle, or similar, and then deemed to be compliant. The requirement that this solution can only be approved by a committee of elected members appears to have been overlooked.

**The committee must be satisfied that grounds for an exemption have been made in relation to each particular application.**

The doors were noted as having patio bolts fitted in the report prepared for the exemption hearing (for the garden) in June 2001. The pool was also inspected in February 2007 and October 2009. They were not identified as being non-compliant on any of these occasions.

The double doors are fitted with patio bolts on the inside at the top and bottom, and on the outside at the bottom. The single door is fitted with a patio bolt at the top. Due to the height of the top bolt from the ground these can be considered to be locking devices that when properly operated prevent the door from being readily opened by children under six.



Because the doors open towards the pool, simply fitting them with self-closing mechanisms would not make them compliant. To be made compliant the doors would have to be made to open inward. This is not impossible, nor in breach of any regulation or bylaw, however would involve significant work and expense.

As it is not impossible to modify these doors the committee must be satisfied that to require their modification would be unreasonable.

**The committee must consider the particular characteristics of the property and the pool**

The pool at 787 Happy Valley Road is a concrete in-ground pool. The house is at one end of the pool and forms part of the pool fence. The house has a set of double doors opening from the sitting room, and a single door opening from the study. All of these doors open into a veranda which is part of the pool area. The doors open towards the pool and do not self-close or self-latch but do have patio bolts fitted at the top and bottom. The internal door used to access the study is fitted with a self-closer, but not a self-latching device.

The double doors from the sitting room have additional bolts fitted at the bottom on the outside. When these are locked the doors cannot be opened from inside the house - access to the veranda area is gained by going through the self-closing door into the study, and going out through the study door. This requires operating the top bolt on the study door.

At the opposite end from the house the pool is fenced by a compliant metal pool fence. On one side of the pool there is a compliant wooden paling fence, and on the other side the barrier is formed by a raised garden area. This garden area was granted an exemption under Section 6 in June 2001 subject to conditions, that the garden is maintained so as to always be impenetrable, and that all other fencing be maintained so as to always comply with the Act. Subsequent inspections have found that these conditions have been complied with.

**The committee must also consider whether any other factors are relevant.**

It may be possible to fence the veranda area that the doors open into so that the doors no longer give access to the immediate pool area.

**Section 6(2) allows the committee to impose conditions when it grants an exemption application**

The committee can choose to impose conditions "relating to the property or the pool as are reasonable in the circumstances". In addition, any conditions imposed must be clear and enforceable by the council.

A condition that Waimakariri District Council imposes when dealing with exemptions for doors is to require the owner to place a prescribed sticker on the door. The sticker that Waimakariri District Council uses reads: "*Avoid Drowning Risk. The door forms part of a pool fence/barrier and must be locked shut when the pool is not in use.*" It also has a line that states "*This sticker must not be removed*". A copy of the sticker is attached to this report.

Another possible condition that the Committee could consider is the attachment of self-closing devices to one or all of the doors. It should be noted that getting double doors to independently self-close and self-latch is very difficult. Having one door

secured with a patio bolt and attaching a self-closer to the other door is a more reliable method of having the door self-close. Under normal operation this solution will help protect against the door being accidentally left open, but it is not completely fool proof as it relies on the second door being correctly secured. This could be combined with a condition that the patio bolt is locked when the door is not in use or, to move the door handle to a height of 1.5m above ground level which is the height required by the Act for latching devices accessible from the outside of the pool area.

In this situation with the double doors being locked from the outside, other possible conditions could be to require the single door to be self-closing, and the double doors to remain locked with the patio bolts.

Should the committee impose a condition requiring a self-closing device it is recommended that they also stipulate that no means of holding the door open is permitted.

**The Committee must be satisfied that an exemption would not significantly increase danger to young children.**

Although the Committee may give an exemption for a pool, which is not to the FSPA/Building Code standard, it must be satisfied that there is no increased risk of danger to young children if it does grant that exemption.

The use of the term “significantly” in the FSPA has not been tested in the Courts. Its ordinary meaning is “having, or likely to have a major effect; important”. This would mean an exemption could be granted if there will be a slight increase in the level of danger to young children, provided the increase is not so great as to have a major effect.

**OPTIONS CONSIDERED**

**Do Nothing**

As Mr Mackenzie has written a letter requesting the committee to consider his exemption application, a reply is required, and therefore to do nothing is not an option.

**1<sup>st</sup> Option - Grant the exemption without conditions**

This option would allow the doors opening from the house to remain as part of the pool barrier, but would not satisfy clause 11 of the Schedule of the Fencing of Swimming Pools Act by ensuring that the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.

**2<sup>nd</sup> Option - Grant the exemption with conditions**

This option would bring the door closer to complying with the Act without imposing significant expense on the owner. Conditions could include the double doors being secured with patio bolts (as they are already) and attaching a self-closer to the single door with the inside door handle being fitted at least 1.5m above floor level, or requiring the use of the top patio bolt. An approved sticker could also be attached to remind the pool owner that the door must be locked shut when not in use.

**3<sup>rd</sup> Option - Decline the exemption application**

This option would mean the doors have to be made compliant with the Fencing of Swimming Pools Act, by being made to open away from the pool and independently self-close and self-latch, or being removed from the immediate pool area by fencing off the porch area, or by the pool being emptied of water.

**POLICY AND PLAN CONSIDERATIONS**

This is consistent with the Swimming and Spa Pool Fencing policy

**SIGNIFICANCE**

The recommendation is not deemed significant.

**FINANCIAL CONSIDERATIONS**

There are no financial implications for Council

**LEGAL CONSIDERATIONS**

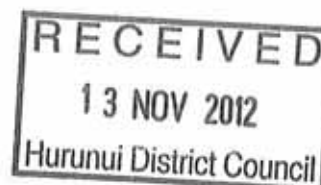
The Committee needs to ensure that they are fulfilling their obligations by taking all reasonable steps to ensure that the FSPA is complied with within the district.

**CONCLUSION**

After considering all issues, options and the known views of those affected, as well as giving consideration to the level of significance and the legal and financial implications, the recommendation of this report is that the Committee grants the exemption of the swimming pool fence under section 6 of the Fencing of Swimming Pools Act 1987 with conditions.

**APPENDICES**

Application for exemption by Mr Mackenzie  
Photos of pool area and doors  
Waimakariri District Council sticker



## Application for Special Exemption under Section 6 of the Fencing of Swimming Pools Act 1987

The Manager Environmental Services  
Hurunui District Council  
P O Box 13  
Amberley

Application No. \_\_\_\_\_

I, CLUTHA FORBES MACKENZIE being the owner/occupier of  
(State full name of applicant) (Delete one)  
the property located at 287 Happy Valley Road hereby apply for a  
(Street address - name and number)

Special Exemption under the provisions of Section 6 of the Fencing of Swimming Pools Act 1987.

I consider that for the following reasons, it is not reasonable or practicable to enforce the provisions of the Act relating to doors that open from the house to the veranda & pool. These have passed all previous inspections.

in respect of this particular site for the following reasons \_\_\_\_\_

These doors have bolts which were in line with previous requirements.  
The doors open outwards & it would be a huge & very expensive job to change that.  
Each door has two bolts one at top & one at the bottom (ie 4 bolts) We could double up to four bolts to each door, which in practical terms would not really alter anything.  
(Please use separate sheet if necessary)

**Note: The Council can grant an exemption only when it is satisfied "that the danger to young children would not be significantly increased".**

Contact address:

FORBES MACKENZIE  
HAPPY VALLEY  
PRIVATE BAG  
GRETA VALLEY  
NORTH CANTERBURY, N.Z.

[Signature]  
To be signed for or on behalf of the applicant

Date 12/11/2012

Telephone No. (03) 314 3441

**FOR OFFICE USE ONLY**

Application received: \_\_\_\_\_ Receipt: \_\_\_\_\_  
Report prepared by (copy attached) \_\_\_\_\_



# AVOID DROWNING RISK



The door forms part of a pool fence/barrier and must be locked shut when the pool is not in use.

This sticker must not be removed



# AVOID DROWNING RISK



The door forms part of a pool fence/barrier and must be locked shut when the pool is not in use.

This sticker must not be removed















**HURUNUI**  
*District Council*

**Meeting Date:**

6 December 2012

**REPORT TO:** Regulatory Committee

**SUBJECT:** Swimming Pool Audit Report

**REPORT BY:** Compliance Officer

*Andrew Brown*      *J - Batchelor*

Signature:      Author  
                         Andrew Brown

                         Manager  
                         Judith Batchelor

**Summary Report**

Attached for the Committee's information is an update of the council's current swimming pool fencing audit program.

**Recommendation**

THAT THE INFORMATION BE RECEIVED.

## BACKGROUND

Drowning is a major cause of the accidental death of young children in New Zealand. Many drownings happen in private homes, in unfenced, or inadequately fenced, swimming and spa pools.

General concern about these unnecessary deaths led Parliament to enact the Fencing of Swimming Pools Act 1987. This Act requires that, in the absence of a specific individual exemption, every private swimming pool and spa pool be properly fenced.

Each territorial authority is responsible for the enforcement of the Act and therefore to fulfil our obligations we audit one third of all our recorded swimming and spa pools each year.

A brochure was sent out in September with the letters advising pool owners that their pool would be inspected this year. A copy of the brochure is attached to this report. The aim of the brochure was to encourage pool owners to perform maintenance on their pool areas, gates and fences prior to the inspection. This seems to have been well received, with many owners having been out and trimmed vegetation back from the fences along with other minor maintenance. A newspaper advertisement ran in the Hurunui News on 22 November reminding all pool owners to ensure that their pool fencing is up to standard.

This year's round of swimming pool fencing inspections began in October with 122 pools scheduled for inspection.

The inspection programme is on-going, however at the time of writing 94 pools have been inspected. Of these 65 were found to be compliant and 29 non-compliant.

Five pools have been removed or destroyed beyond repair and two have been moved to next year's list due to being in the process of having earthquake repairs completed or new fences built.

Of the 29 pools found to be non-compliant 12 had gates not operating correctly, seven had non-compliant doors opening into the pool area, two had hedges making up part of the pool fence, and the other eight were a variety of minor issues.

The brochure also highlighted an area where our approach has changed. This is around the use of padlocks to 'permanently' fix shut a gate. All gates into pool areas are required to self-close and self-latch or be permanently fixed shut. Padlocks have previously been accepted as a means to permanently fix shut a gate. This is not accepted by our neighbouring councils in Christchurch, Waimakariri, or Selwyn. The argument against padlocks is that they are not 'permanent' because they are designed to be opened.

With the aim of the Act (to promote the safety of young children by requiring the fencing of certain swimming pools) in mind, inspectors no longer accept a padlock as a means to fix a gate shut. This means that owners have to make their gates meet the requirements of the Fencing of Swimming Pools Act, including making their gates self-close and self-latch, or find a permanent means of fixing them shut, for example; nailing, bolting, or welding.

Some gates are quite challenging to fix shut. After reading the brochure one owner engaged a contractor who made her double gate compliant at a cost of \$700. She

noted that she wouldn't be getting new gloves for the A&P Show this year, but she said that getting the brochure with information on the changes was helpful.

Because of the difficulty in modifying some of these gates some owners may make applications for their gates to be exempt from these requirements, although none have been received yet.

The Fencing of Swimming Pools Act requires all doors opening into a pool area from a building that forms part of the pool fence to comply with the same requirements as a gate in a pool fence. That means that doors must:

- Open away from the pool (hinged doors)
- Be fitted with a self-closing device capable of closing the door from an opening distance of 150mm.
- Have a self-latching device fitted at least 1.5 metres above floor level.
- Be clear of anything that could hold them open

Clause 11 of The Fencing of Swimming Pools Act addresses the issue of doors that do not meet the requirements above. It states:

*Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.*

The publication 'Fencing of Swimming Pools Act 1987 Guidelines For Territorial Authorities', published by the Department of Internal Affairs in 1999, contains the following paragraph:

*A door may be built in the wall of a building that forms part of a pool fence. If it does, it must be fitted with a lock which prevents it being readily opened by children under the age of six. As an extra safety precaution, it is preferable that the lock be at a height not easily reachable by toddlers.*

Although the document later states that these doors can only be approved by a committee of elected members of the council, it appears that in the past, this paragraph has been taken to mean that a door with a lock which prevents it being readily opened by children under the age of six, can be deemed to be compliant by the inspector.

As a result of this, we have a number of doors opening to pool areas that were required to be fitted with a tower bolt, high handle, or similar, and then deemed to be compliant. The requirement that this solution can only be approved by a committee of elected members appears to have been overlooked.

Where these types of doors have been encountered during this year's round of pool inspections the owners have been informed of the requirements for the doors. It is unfortunate that in nearly every case the owners, through their previous dealings with the council, believed their doors to be compliant.

It should be noted that most of these doors open towards the pool, so simply fitting them with self-closing devices would not make them compliant. A factsheet has been created to explain the requirements for the doors and is either left with the owners on site or mailed to them afterwards. A copy of the factsheet is attached to this report.

It is anticipated that the majority of owners with these doors will apply for exemptions under Clause 11 of the schedule.

Our current application for an exemption form is quite dated. In order to get more complete information from applicants a new form is being developed. The new form will ask applicants to provide information on why they can't comply with the Fencing of Swimming Pools Act, and to detail how their exemption or proposed alternative will not significantly increase the danger to young children.

#### Appendixes

- 1) Brochure
- 2) Fact sheet on doors

# Finally ...

This list isn't exhaustive; it is a list of a few common 'quick fix' faults that have come up regularly during pool fence inspections. A more comprehensive guide to pool fencing can be found on the Council's website at: [hurunui.govt.nz/services/consents-and-permits/swimming-pools/](http://hurunui.govt.nz/services/consents-and-permits/swimming-pools/)

Please remember .... Our goal is to ensure that your pool is as safe as possible this summer ....

If you have any questions or require more information about the Fencing of Swimming Pools Act, or want to discuss the fencing of your swimming pool, you can phone 03 314 0100 or email [andrew.brown@hurunui.govt.nz](mailto:andrew.brown@hurunui.govt.nz)



*"Making our district even better"*

## Make Your Pool Safe This Summer



Hurunui District Council  
PO Box 13  
AMBERLEY

Ph 03 314 8816  
Fax 03 314 9181

Andrew Brown:  
Direct Dial 03 314 0100  
Mobile 027 637 7945

# Five Quick Checks for Your Fence

Here are five common maintenance checks that can help you pass your pool fencing inspection:

## 1. Check that your gate is self-closing and self-latching

To check this, hold your gate open with a 150 mm gap and release it (don't push it). The gate should close and latch. If it's not working, possible reasons are:

- Is there enough spring tension?
- Is it still hanging correctly?
- Is it catching on the frame?
- Does the latch itself need attention/CRC/general love?



## 2. Trim trees and vegetation, and remove climbable objects near your pool fence

Check that there aren't any trees, plants, hedges etc. that could assist a child to climb your pool fence. Trim climbable vegetation back. Also make sure there aren't any other objects (picnic tables, plant pots, etc.) near the pool fence that could be used to help climb the fence.

## 3. Look for gaps under the fence

The gap under the fence must be less than 100mm all the way around, including under the gate. See if any gaps have appeared under your fence. If they have you can either raise the ground, or add something sturdy to the bottom of your fence.



## 4. Fix broken fence paling or holes in mesh

Make sure no bits of your fence have broken, come loose, or fallen off. You can't have any holes in your fence bigger than 100mm.



## 5. Make sure all your pool gates are self-closing gates

You may have extra gates that are padlocked shut. While these have been accepted in the past, padlocks will no longer be accepted as making the gate 'permanently fixed shut', and they will no longer be compliant. If this affects you, you will need make these gates self-close and self-latch, or turn them into part of the fence. Feel free to contact us to discuss this point.



# FSPA - Factsheet 1

## Doors from buildings that access the Pool Area

The Hurunui District Council is responsible for enforcing the provisions of the Fencing of Swimming Pools Act 1987 in this District.

Where a building forms part of the pool fence, any doors that give access to the pool area must:

- Open away from the pool (hinged doors)
- Be fitted with a self-closing device capable of closing the door from an opening distance of 150mm.
- Have a self-latching device fitted at least 1.5 metres above floor level.
- Be clear of anything that could hold them open



The Fencing of Swimming Pools Act has a clause which addresses the issue of doors that do not meet the requirements above. It states:

*Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated, prevents the door from being readily opened by children under the age of 6 years.*



*Example of a locking device*

Any decision of the *territorial authority* to approve any non-complying door must be made by the council; or a committee or subcommittee of council delegated for that purpose. (See section 12 of the Act).

This means that the council or a committee made up only of council members may approve any doors that do not comply with the schedule to the Fencing and Swimming Pools Act.

Council officers do not have the authority to approve doors that do not meet the requirements of the Act. These must be dealt with by way of an application for a special exemption.

*(See factsheet on applying for a special exemption for more information).*





## FSPA - Factsheet 2

# Special exemptions

Section 6 of the Fencing of Swimming Pools Act allows councils to grant a special exemption in particular circumstances.

This means that if you apply for an exemption for your pool it will be required to be heard by the Regulatory Committee of the Council who must consider the following points:

- Each exemption application must be considered by the committee in relation to the **specific pool/situation** before it. However the committee can take note of previous decisions it has made, so as to promote consistency in its decision-making.
- The committee must be satisfied that **grounds for an exemption** have been made in relation to each particular application. *You need to explain why you can't or why it's unreasonable for you to comply with the requirements of the Act.* This could include where you have a building that forms part of the swimming pool fence and it has a door that gives access to the immediate pool area, and that door cannot easily be fitted with self-closing or self-latching devices.
- The **particular characteristics** of the property and the pool must be considered, such as the location of a gate in a fence in relation to a steep bank immediately behind the gate (the gate may not be able to open outwards); or unique physical features of the property (such as a large tree, which might not come within the definition of "immediate pool area" but cannot be removed because of District Plan rules, and it is impracticable for it to be located outside the pool fencing).
- The committee must also consider whether any **other factors** are relevant.
- The committee must be satisfied that an exemption would **not increase the danger to young children**. *You need to show that your fence is as safe as a fence built to the standards of the Act.*
- Section 6(2) allows the committee to **impose conditions** when it grants an exemption application.

When you fill out an exemption application you must explain which requirement/s of the Act you are requesting exemption from. Use the points above to explain why each part should be exempted giving reasons to satisfy the committee that there would be no increase danger to young children.

Council staff need to provide a report to the committee and may comment on possible deficiencies or relevant factors raised in your application. The committee has discretion to grant or not to grant an exemption; no applicant can expect to be entitled to an exemption.



**HURUNUI**  
*District Council*

**Meeting Date:**

6 December 2012

**REPORT TO:** Regulatory Committee  
**SUBJECT:** Environmental health report  
**REPORT BY:** Dianne Morrison

A handwritten signature in black ink, appearing to read "D Morrison".

A handwritten signature in black ink, appearing to read "J - Batchelor".

Signature: Author  
Dianne Morrison

Manager  
Judith Batchelor

**Summary Report**

A summary of environmental health activity for the period 1 July 2012 to 23 November 2012.

**Recommendation**

THAT THE INFORMATION BE RECEIVED.

## BACKGROUND

### Algal Blooms

The recreational water and cyanobacteria monitoring by Environment Canterbury has commenced for the 2012/13 summer. This includes fresh and marine water sampling at specific sites throughout the district. When levels of the indicator organisms exceed the protocol alert levels either temporary information or warning signs are put in place. New algal bloom information/warning signs are to be placed at four locations, Waipara River at the Teviotdale Bridge, Waipara River at entrance near the Waipara Hotel, Hurunui River at SH1 Bridge layby and at SH7 Balmoral Camp.

The new signage is a joint approach with the signs supplied by Environment Canterbury and Community and Public Health and to be erected by Hurunui District Council.

### Sub-standard housing issues

Public health issues have been addressed in relation to sub-standard housing/living conditions in conjunction with the Council's Building Officers and Waste Manager, and on occasions outside agencies have been involved. Most have been resolved with others still under action.

### Registered premises

The number of registered premises in the Hurunui District continues to rise with 197 premises currently registered.

Food premises	148	Mobile Shops	6
Camp grounds	26	Offensive trades	6
Hairdressers premises	9	Markets/stalls	2

Frequent enquiries are received on the establishment of new ventures within the District, including new food premises, food operators wishing to sell products via the Waipara Valley Farmer's Market and new camping grounds.

The registration and approval of Food Control Plans is relatively static at present. Further progress of the new food legislation through the parliamentary processes would assist in increasing the number of premises formally adopting these programmes.

The government agency responsible for overseeing food safety in New Zealand has had a name change and is now the Ministry for Primary Industries, formerly MAF.

## NOTIFIABLE DISEASES

Community and Public Health notified the following notifiable disease cases in the Hurunui District for the period 1 July 2012 to 15 November 2012:

Campylobacter	23	Cryptosporidium	3
Giardia	6	Pneumococcal Invasive Disease	2
Pertussis	4		

The enteric disease cases (i.e. Campylobacter, Cryptosporidium, Giardia, Salmonella and Yersinia) tend to peak in spring and early summer with risk factors such as

increased contact with stock during lambing and calving. The number of enteric cases reported for July to November in 2012 (32) are comparable to those reported for the same period in 2010 (36). In 2011 there were 18 cases of enteric illness reported for the same period.

From time to time there are queries from within the community of perceived increases of illness in an area. These need to be assessed in conjunction notified disease data, infections present within communities (e.g. Norovirus), risks associated with the season/farming activities, information from local medical practices, school absentee rates, and any issues with Council services, including water supplies. It is important to avoid making assumptions regarding particular causes without assessing relevant information. Where residents have concerns relating to their health or that of their family it is important to visit their GP and have the illness diagnosed, then the source of infections can be assessed and advice given as appropriate.