



**HURUNUI**  
*District Council*

## **Regulatory Committee**

# **Meeting Agenda**

**1 PM Thursday 18 June 2015**

**In the Council Chambers, 66 Carters Rd, Amberley.**

**Community partnership in growth and wellbeing.**

**Regulatory Committee**

### **Committee Membership:**

Cr Marie Black (Chairperson)  
Mayor Winton Dalley  
Cr Julie Coster  
Cr Gary Cooper  
Cr Vince Daly  
Cr Dick Davison  
Cr Jason Fletcher  
Cr Fiona Harris  
Cr Jim Harré  
Cr Judith McKendry

**Quorum: no less than 5 members**

\*\*\*\*\*

#### **The purpose of local government:**

- (1) The purpose of local government is—
  - (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
  - (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- (2) In this Act, **good-quality**, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—
  - (a) efficient; and
  - (b) effective; and
  - (c) appropriate to present and anticipated future circumstances.

*(Local Government Act 2002 – Amendment Act 2012)*

**REGULATORY COMMITTEE  
THURSDAY 18 JUNE 2015 AT 1.00PM**

1.00pm	Meeting begins
1.15pm	Craig and Donna Rutherford will attend to speak to their application for an exemption from the Fencing of the Swimming Pool Act 1987 (Item 1.1)

ITEM	ORDER OF BUSINESS	Pages
	<ul style="list-style-type: none"> <li>• <b>Apologies</b></li> <li>• <b>Announced Urgent Business</b></li> <li>• <b>Conflict of Interest Declarations</b></li> <li>• <b>Recording Device</b></li> </ul>	
	<p><b>Minutes:</b> Confirmation of the Minutes of the Ordinary meeting held on 30 April 2015 Confirmation of the Minutes of the Extraordinary meeting held on 7 May 2015</p>	<p>2 – 6 7 - 14</p>
<b>1</b>	<p><b>Decision Items:</b></p> <p>1.1 Application for a special exemption under section 6 of the Fencing of Swimming Pools Act 1987 by C &amp; D Rutherford</p> <p>1.2 RC150025 &amp; RC150026 – Dickson – Appointment of a Hearing Commissioner</p>	<p>15 – 19  20 - 22</p>
<b>2</b>	<p><b>Discussion Items:</b></p> <p>Nil</p>	
<b>3</b>	<p><b>Information Items:</b></p> <p>Nil</p>	
<b>4</b>	<b>Urgent Business</b>	
<b>5</b>	<b>Next Scheduled meeting – Thursday 20 August</b>	

# HURUNUI DISTRICT COUNCIL MINUTES



<b>Meeting</b>	Hurunui District Council Regulatory Committee
<b>Time and Date</b>	12.00pm, 30 April 2015
<b>Venue</b>	Council Chambers, Carters Road, Amberley

<b>Members Present</b>	Cr Marie Black (Chairperson), Mayor Winton Dalley, Councillors Julie Coster, Vince Daly, Dick Davison, Jason Fletcher and Fiona Harris.
------------------------	---

<b>In Attendance</b>	Audrey van der Monde (Acting Chief Executive Officer), Judith Batchelor (Manager Environmental Services) Kerry Walsh (Technical Leader Building Consents) Liz Ashwin (Compliance Officer) and Graham Sutherland (Committee Secretary).
----------------------	--

<b>Apologies</b>	Councillors Gary Cooper & Judith McKendry. Cr Harré leave of absence. THAT THE APOLOGIES BE ACCEPTED. Harris/Davison <span style="float: right;">CARRIED</span>
------------------	---

<b>Absent</b>	Nil
---------------	-----

<b>Conflict of Interest</b>	Nil
-----------------------------	-----

<b>Declarations</b>	Nil
---------------------	-----

<b>Urgent Business</b>	Nil
------------------------	-----

<b>Minutes</b>	THAT THE MINUTES OF THE ORDINARY MEETING HELD ON 19 FEBRUARY 2015 BE NOW CONFIRMED.
----------------	---

Black/Fletcher CARRIED

**Matters Arising:**

Nil.

## 1 DECISION ITEMS

### 1.1 Application for exemption from the Swimming Pool Act 1987 – Georgi Waddy – 198 Karaka Road

The Compliance Officer advised of a request from Georgi Waddy for an exemption from the Fencing of Swimming Pools Act for the pool on her property at 198 Karaka Road, Waikari. The application for exemption is from clauses 6 and 8-10 of the schedule and relates to a 1.8 metre high mesh fence forming three sides of the pool, constructed of mesh with openings which exceed 50mm when measured diagonally and four doors opening from the house into the pool area.

Ms Georgi Waddy was present for the meeting and made an oral submission.

The report advised that the pool fencing was inspected as part of the 2014 swimming pool audit programme. One set of double doors and three single doors opening from the house to the pool area are deemed to be non-compliant as they do not meet the Fencing of Swimming Pools Act requirements to be self-closing, self-latching, opening away from the pool and have a latch at a height of 1.50m above the ground. The doors are fitted with bolts at a height exceeding 1.50m (Doors 3 and 4) or have been locked and are in permanent disuse with the keys having been lost (Doors 1 and 2).

The Compliance Officer provided an explanation of the issues and reasons why officers consider the fence and doors in question do not comply. She noted the doors identified as non-compliant open into the pool area, were not self-closing, latches were not at the minimum height and do not self-latch. The Compliance Officer noted a discrepancy between the identification of particular doors on the maps and photos included with the agenda report and provided clarification for the Committee in its deliberations.

The Compliance Officer advised that Georgi Waddy applied for an exemption and a site visit was undertaken with councillors. The Compliance Officer said that the doors had been passed on previous inspections and when the owner purchased the property the LIM report noted there was compliance. She said this was due to high level bolts being in place for the doors and that now has to be approved with an exemption. The Compliance Officer said the mesh fence was 1.8m high, taut, well secured and planted on the inside with a dense evergreen hedge, which was gradually closing off the view. The two gates through the fence comply fully.

With respect to the doors from the house, there were four doors opening onto the pools area (identified on diagrams and photos in the report) and doors 1 and 2 had not been used for a long time. The owner advised that she did not have the keys for these doors and they were permanently closed. The main access point is through double doors (D3) and the fourth single door (D4), which is mostly only used during heavy weather events and a sheltered door is needed to get outside.

The Compliance Officer noted a discrepancy between the identification of particular doors on the maps and photos included with the agenda report and provided clarification for the Committee in its deliberations.

Georgi Waddy spoke to this matter and said the design of the house favoured windows and doors, with the double doors added to simplify access and views out through to the pool and outdoor area. She said that when she purchased the property, the pool fencing and access was noted as compliant and she had added high bolts to the doors, so it feels safer now than it was before. Georgi Waddy advised that she had a small child when first arrived at the house and was very aware of how to run a house safely with children and a pool. She noted that having a high latch worked well and the doors were always locked when not in use. Georgi Waddy commented that their family background was in surf lifesaving and they were very aware of water safety.

Cr Black thanked Georgi Waddy for her presentation and said it was important for the Committee to have an appreciation of the owner's understanding of pool safety as it makes its decision.

With respect to the fence mesh, Cr Davison said he understands the concerns and the size was set so small feet cannot get into them for climbing. He said the 50mm size meets the test but not when arranged on the diagonal, rather than square. Mayor Dalley said he considered the diagonal hole would be harder on a small foot if a child tried to climb. Cr Black agreed and said the Committee appeared to be happy to provide an exemption on the mesh fence and feels comfortable after hearing from the owner about accepting pool responsibility.

Cr Fletcher sought clarification of requirements for fixing panel B of the double doors. The Compliance Officer said to comply with permanent fixing, it needs to be a nail or screw fixing or a small metal fixing into the door stop. She said it does need to be fixed in that respect to comply. Cr Fletcher commented that he did not like disabling double doors, as they may be required for access at some time. He said a deadbolt patio lock with key removed is more preferable.

Cr Black said while considering each individual case in front of it, the Committee needs to be consistent with other decisions made in this respect. Cr Black said the Act talks about the Council being fair and reasonable to property owners, but it also needs to maintain high standards in terms of requiring compliance with rules designed to ensure swimming pool safety.

Georgi Waddy said that keeping one side of the double doors permanently closed makes having double doors pointless. She said to put another high key lock there and remove the key would be safe and said it would be a real shame to not be able to open the double doors, to take furniture out for example.

Cr Black said if the Committee granted an exemption on the double doors with a key lock bolt, it would still look at requiring a self-closing device on the other door. The Compliance Officer said if the first panel has a self-closing device and bolt at acceptable height, there would need to be something to latch into so the second panel needs to be held in place, whether by a high level locking device or screwed shut. She said the compliance of that door is dependent on that panel being in place and the opening panel would comply if a lockable device was in place at a higher level. The Compliance Officer commented that this all relies on the owner ensuring operation.

Cr Fletcher reiterated that it was his preference to allow the owner to install a high lock rather than screwing or nailing to permanently fix panel B of the double doors. The Committee agreed but said the lock needs to be key lockable and up high, with the key removed. It agreed that panel A would need to comply through having a self-closing device, be self-latching with the device being above 1.5m from the floor level.

THAT THE COMMITTEE GRANTS AN EXEMPTION FROM CLAUSE 8 OF THE SCHEDULE FOR DOOR D4, AND PANEL A OF DOOR D3; AND FROM CLAUSE 6 OF THE SCHEDULE FOR THE MESH FENCE UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987 SUBJECT TO ALL OF THE FOLLOWING CONDITIONS:

- THAT OPENING PANEL A OF DOOR D3 AND DOOR D4 BE FITTED WITH SELF-LATCHING AND SELF-CLOSING DEVICES.
- THAT THE DOORS REMAIN LOCKED AT ALL TIMES WHEN THE POOL IS NOT IN USE.
- THAT APPROVED STICKERS BE AFFIXED TO THE DOORS.
- THAT DOORS COMPLYING WITH THE REQUIREMENTS OF THE FENCING OF SWIMMING POOLS ACT 1987 ARE INSTALLED IN PLACE OF THE NON-COMPLIANT DOORS SHOULD THEY BE REMOVED IN THE FUTURE.
- THAT MESH FENCING COMPLYING WITH THE REQUIREMENTS OF THE FENCING OF SWIMMING POOLS ACT 1987 IS INSTALLED IN PLACE OF THE NON-COMPLIANT MESH SHOULD IT BE REMOVED.
- THAT FENCING COMPLYING WITH THE REQUIREMENTS OF THE FENCING OF SWIMMING POOLS ACT 1987 IS ERECTED IN PLACE OF THE MESH FENCE SHOULD IT BE REMOVED IN THE FUTURE.

THAT THE COMMITTEE GRANTS AN EXEMPTION FROM CLAUSES 8-10 OF THE SCHEDULE FOR THE FIXED PANEL (SECONDARY PANEL B OF DOOR D3) SUBJECT TO THIS HAVING A HIGH LEVEL LOCKING BOLT DEVICE FITTED AS A MEANS OF FIXING THE DOOR SHUT.

THAT THE COMMITTEE REQUIRES DOORS D1 AND D2 (CURRENTLY DISABLED), TO REMAIN PERMANENTLY FIXED SHUT.

Coster/Fletcher

CARRIED

**1.2 Application for exemption from the Swimming Pool Act 1987 – Isla McFadden – 1463 Greta Road, Cheviot**

The report from the Compliance Officer advised of a request from Isla McFadden for an exemption from the Fencing of Swimming Pools Act for the pool on her property at 1463 Great Road, Cheviot. The Application for Exemption is from Clauses 8-10 of the schedule and relates to doors opening from the house into the pool area.

Cr Black advised that the applicant had informed the Council that nobody was available today to attend the meeting, but they wished to make an oral submission. She sought advice from officers and was advised that the correct process would be for the Committee to receive an official letter from the applicant requesting that this item be rescheduled to another time. Cr Black said she talked to the applicant and received an explanation about the non-attendance. She said the Committee had the options of continuing with the hearing without the submitter attending or rescheduling to another date.

The Compliance Officer provided background to the item and a summary of communications with the applicant. Cr Black said it was important for the Committee to have that background to know that appropriate process had been followed. Cr Daly advised that he had communications with Jamie McFadden over this matter and he listened as local councillor, but had nothing to add to the discussion at this stage.

In response to a question from Cr Davison, the Compliance Officer said she had sufficient information to produce the report in the agenda and to proceed with assisting the Committee in its decision making. Cr Black noted that three councillors conducted a site visit but were not accompanied by the Compliance Officer, at the request of the applicant. Cr Black said that normally it was valuable to have the technical officer in attendance on site visits to provide advice. Cr Davison commented that this was a statutory process and Council officers need to have appropriate access. The Manager Regulatory Services said she was satisfied that the Compliance Officer had a sufficient first visit and had provided a report of high quality.

Mayor Dalley said postponing is only an inconvenience to the Council as there was no external interest beyond the property owner. Cr Black noted there would be continued risk as officers consider the pool to be non-compliant, so this risk would continue until the rescheduled date. The Manager Regulatory Services said if there was an incident in the intervening period, then the Council would be part of any coronial enquiry. Mayor Dalley noted that another week was perhaps not significant when the pool was deemed non-compliant some time ago and was so for most of the summer. The Compliance Officer advised that the initial letter to the owner regarding non-compliance makes it clear that the owner has to drain the pool to make it safe and it is their legal obligation. However, once officers were working in dialogue with the owner about a request for exemption, officers do not force the owner to drain the pool.

Cr Fletcher expressed confidence with the Compliance Officer's work on this matter, noting it was sometimes a challenging role.

THAT THE COMMITTEE AGREES TO POSTPONE THE HEARING ON THIS MATTER UNTIL AN EXTRAORDINARY MEETING OF THE REGULATORY COMMITTEE ON 7 MAY 2015.

Dalley/Harris

CARRIED

Mayor Dalley noted there was an issue with Council officers previously giving compliance and then later finding areas of non-compliance. He said the Committee needed to clearly understand this situation and where areas of discretion sit with officers. The Compliance Officers advised that in this case, it was a matter of misunderstanding of where the delegation for approving an exemption sits. She said it was an elected member delegation, not an officer delegation, hence needing to come before the Regulatory Committee.

---

**2 DISCUSSION  
ITEMS**

Nil.

---

**3 INFORMATION  
ITEMS**

Nil.

---

**URGENT  
BUSINESS**

There were no Urgent Business items for this meeting.

---

**MEETING ENDED**

The meeting closed at 12.48pm.

---



# HURUNUI DISTRICT COUNCIL MINUTES



<b>Meeting</b>	Hurunui District Council Regulatory Committee – Extraordinary Meeting
<b>Time and Date</b>	1.00pm, 7 May 2015
<b>Venue</b>	Council Chambers, Carters Road, Amberley

**Members Present** Cr Marie Black (Chairperson), Mayor Winton Dalley, Councillors Gary Cooper, Julie Coster, Vince Daly, Dick Davison (from 1.55pm), Jason Fletcher, Fiona Harris and Judith McKendry.

**In Attendance** Audrey van der Monde (Acting Chief Executive Officer), Judith Batchelor (Manager Regulatory Services), Kerry Walsh (Technical Leader Building Consents), Liz Ashwin (Compliance Officer) and Graham Sutherland (Committee Secretary).

**Apologies** Councillor Davison for lateness. Cr Harré leave of absence.

THAT THE APOLOGY BE ACCEPTED.

McKendry/Harris

CARRIED

**Absent** Nil.

**Conflict of Interest** Nil.

**Declarations**  
**Urgent Business**

Nil.

## 1. DECISION ITEMS

### 1 1 Application for exemption from the Swimming Pool Act 1987 – Isla McFadden – 1463 Greta Road, Cheviot

The Building & Swimming Pools Compliance Officer reported that Isla McFadden requested an exemption from the Fencing of Swimming Pools Act for the pool on her property at 1463 Greta Road. The exemption application is from clauses 8-10 of the schedule and relates to doors opening from the house into the pool area. The pool fencing at 1463 Greta Road was inspected as part of the 2014 swimming pool audit programme. One set of double French doors, one single door and four sliding doors opening from the house to the pool area were deemed to be non-compliant, as they did not meet the Fencing of Swimming Pools Act requirements to be self-closing, self-latching, opening away from the pool (in the case of the hinged doors) and have a latch at a height of 1.50m above the ground. The doors are fitted with bolts at a height exceeding 1.50m.

It was noted from Council records that these doors had been previously inspected and deemed to comply with the requirements of the Act by Council officers in 2009, 2007 and 2001.

One window opening from the house into the immediate pool area was found to be non-compliant because it was not fitted with a permanent restrictor that reduces the maximum opening distance to 100mm. It was understood by officers that this had since been rectified and a restrictor is in place.

The Building & Swimming Pools Compliance Officer noted that the property owner had provided further information in a letter and this had been circulated to councillors. She proceeded to provide a background discussion to the matter and an explanation of the areas of non-compliance. She explained that the doors opening to the pool were non-compliant as they were not self-closing and noted that they had been passed in previous years on the basis of there being lockable high-level locks in place, however these were not compliant with the Act. An exemption was requested by the owner for the non-compliant doors and a site visit was carried out on 30 March 2015 by Councillors Black, Coster and Harris.

With respect to door D1 on the attached plan, the Building & Swimming Pools Compliance Officer said it was possible to fit a latching device at the required height but the window would open to the pool area and would still need an exemption. She noted the property owner had indicated a willingness to permanently shut this door. Door D2 is sliding so an exemption from clause 9 and 10 requiring self closing latches, was required, similarly for doors D3 and D6, which require exemptions for self-closing latches.

With respect to door D4, the double French doors, the Building & Swimming Pools Compliance Officer noted there was a mistake in the report about which was the master and secondary doors and this would be corrected when the final decision was released. She noted that the letter from the property owner advised that the width of the double opening doors is needed for access purposes, so a padlock fixing was suggested rather than permanent fixing. With respect to door D5, the sliding double doors, there was a requirement for a self-closing device and this cannot currently meet the requirement for self-latching. The Building & Swimming Pools Compliance Officer recommended that compliance needs to be obtained by fencing or permanently fixing the doors.

In summary, the Building & Swimming Pools Compliance Officer said her recommendations were set out on agenda page 4. She acknowledged the property owner's point about difficulties of fencing and the complicated configuration of the doors, but said there were a large number of doors opening into the pool area and she could not recommend an appropriate solution to ensure safety to young children, without addressing the doors as identified in her report.

#### **Oral Submission from Property Owner**

Isla McFadden and Jamie McFadden were in attendance to speak to this item. Isla McFadden said that fire safety was an important consideration in noting that the double French doors provided the best wheelchair access due to the small height of lift on the frame. She said the ranch sliders have a greater height to negotiate and were more challenging. In response to the officer comment that door D1 could be permanently secured, Isla McFadden said it was already fixed with a locking device at the top.

Cr Black said the Council would normally expect permanent to mean fixing that would require a tool kit to undo, not a key lock. She said the Council needed to be confident to accept a willingness to permanently fix shut door 1 and feel certain that the keys were not on the property. She noted the keys would be held in another house on the property.

Jamie McFadden noted that the Council had provided earlier exemptions for all doors and the property owner could have continued to ask for exemptions as all doors have 2 metre high locking devices. He said they were able to offer a solution to door D1 easily and the padlock for door D4 was also a relatively easy solution, but his reading of the relevant documents suggested that exemptions can be provided for all the doors due to the existing high locking devices. He noted that all the doors had been approved by Council officers as compliant in the past, so they must have been meeting the relevant tests. He said it was unreasonable for the Council to now be imposing restrictions given the earlier compliance.

The Building & Swimming Pools Compliance Officer said that nothing had changed in the Act since the previous inspections but in previous years officers had approved exemptions that were not actually a delegated decision, noting it was only elected members that can make a decision on exemption. Therefore those exemptions had no formal status. The Manager Regulatory Services said that in the past officers had made their interpretations, but now another officer has deemed the doors at this property to be non-compliant and the Council must address this on its merits.

Cr Black said that the Council has taken a strong position that exemptions come to councillors for that level of decision making and this was to ensure that children have the necessary protection in place and the young and vulnerable were as safe as possible. She said the Regulatory Committee was trying to get consistency across the district and that in granting exemptions, the Committee needs to be satisfied that owners are aware of the requirement for compliance and securing doors around pools.

Isla McFadden said there was also a consideration of the particular people who live at a property and their personal judgement of the risks and appropriate protections required. Cr Black commented that in similar cases there was indeed benefit in having a discussion around the table with property owners, that increases the Council's understanding of a property owner's commitment to being a responsible swimming pool owner.

Cr Black asked where the main access to the pools area was from and Isla McFadden said it was from inside the house, but she commented that it has never been a playing area for children but was an area for swimming. She further noted that as property owners they were water conscious because of dams and a river close by, as well as there being an unfenced pond at the front of the property.

Cr Black asked if councillors were willing to accept the assurance that door D1 would be fixed. Cr Fletcher said the Committee needed to be clear on this to ensure consistency with other applications.

Cr Fletcher noted that previous exemptions were granted on the basis of locked patio bolts with keys removed and not easily accessible. He said he did not see a difference between finding a key or finding a toolbox to un-fix a door. With respect to door D4, Cr Fletcher said he appreciated the importance of egress for fire safety considerations but also the need for appropriate safety around pools for young children. He said as long as the door that acts as the mainstay is fixed, and a self-closing latch was on the other door, that would be satisfactory to him.

Cr Fletcher said he was not convinced that there were no realistic options for self-closing devices for ranch sliders and something that works on a heavy door. The Building and Swimming Pools Compliance Officer said there were some available, but reliability was uncertain when retrofitted, as it was relying on other parts of the doors and performance can be compromised by those older parts. She said this can lead to a false sense of security if performance is affected. She said all sliding doors should have spring loaded bolts that lock into place when closed. Jamie McFadden said having a manual operation is preferable as it was more reliable to make sure all were in place.

*Cr Davison arrived at the meeting at 1.55pm but did not participate in the deliberations on this matter.*

Isla McFadden extended an invitation to all councillors to visit and look for themselves at the doors and arrangements in place. Cr Black thanked her for the offer and agreed that it does provide a clear sense of what the issues are. She noted that three councillors had attended a site visit.

Mayor Dalley asked the property owner if there was anything else fair and reasonable that they could do to improve safety for the house and pool area. Isla McFadden said the basic driver is the owners being responsible for safety and Jamie McFadden said he believed the offers to secure doors D1 and D4 were fair and reasonable responses.

Cr Black thanked Isla and Jamie McFadden for their attendance and for sharing their thoughts on this matter. She reiterated that it is helpful to have the owners in attendance and get a sense of swimming pool safety being important to them. Cr Black noted that the Committee would begin its deliberations and inform the owners of its decision in due course.

Cr Fletcher said that if the Committee agrees to requiring self-latching devices, the owner be advised that it could be separate and additional to existing devices, rather than replacement necessarily.

Cr Daly said he did not support a requirement for self-closing sliding doors as it was impractical. Cr Black said there was a level of confidence that the owner could leave the sliding doors as they are, except for the fitting and operation of a high level latch bolt. This would require an exemption to clauses 9 & 10. Cr Fletcher said the Committee could insist that each of the sliding doors be locked at all times when the pool is not in use and accept that a high patio bolt be key-locked. The Building and Swimming Pool Compliance Officer advised that locking is not considered fixing under the Act, so would require an exemption to clause 11.

The Manager Regulatory Services said that if the Committee agrees as was being indicated, this was not the officer's recommendations. Cr Black said it was a difficult decision to make as to where to draw a line in the sand and still achieve consistency and fairness to property owners. She noted that officers recommended the Council require full protection.

Cr McKendry said the Committee had been firm in the past with respect to meeting the requirements of the Act and did not support lowering the standards. She acknowledged that the property owner in question had no children living at the property and displayed a responsible approach, however the Council needed to think about visitors and future owners and it has a responsibility in terms of safety.

Cr Daly said that it would be a major imposition for Isla McFadden to be required to be fully compliant, therefore the Committee would have to weigh this up and find some middle ground.

Cr Black said she had some discomfort that some doors would be safer and some remaining unsafe, but the Committee needed to take into account the description of the area, consistency with previous examples and exemptions and fairness to the property owner. Cr Daly said that an exemption must not increase the level of danger and he believed this would not occur by granting exemptions as discussed.

THAT THE COMMITTEE GRANTS THE EXEMPTION FROM CLAUSE 8 ONLY OF THE SCHEDULE FOR DOOR D1 AND DOOR D4, UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987, SUBJECT TO ALL OF THE CONDITIONS CONTAINED IN THE TABLE BELOW.

THAT THE COMMITTEE GRANTS THE EXEMPTION FROM CLAUSE 9 & 10 ONLY OF THE SCHEDULE FOR DOORS D2, D3, D4 (PANEL B), D5 & D6, UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987, SUBJECT TO ALL OF THE CONDITIONS CONTAINED IN THE TABLE BELOW.

THAT KEY OPERATED LOCKING DEVICES ARE FIXED TO ALL DOOR PANELS AT HIGH LEVEL TO SATISFY THE REQUIREMENTS OF CLAUSE 11 OF THE SCHEDULE.

THAT THE DOORS REMAIN LOCKED AT ALL TIMES WHEN NOT IN USE; THE KEYS TO THE LOCKABLE DEVICE ON DOOR D1 ARE TO BE STORED IN A LOCKED CABINET IN A DIFFERENT DWELLING ON THE PROPERTY AS PROPOSED BY THE OWNER.

Fletcher/Coster

CARRIED

Door reference	Exemption sought	Granted / Declined	Work required/ Specific Condition attached (see below for full wording of the conditions)
D1 – hinged door	Clause 8	Granted	Key to the high level locking device to be stored in a locked cabinet in another dwelling located on the property
	Clause 9	Granted	
	Clause 10	Granted	
D2 – sliding door	Clause 9	Granted	Existing high level lockable device
	Clause 10	Granted	
D3 – sliding door	Clause 9	Granted	Existing high level lockable device
	Clause 10	Granted	
D4 – hinged door panel A (master panel)	Clause 8	Granted	None
	Clause 9	Declined	Self-latching device to be installed at the required min height
	Clause 10	Declined	Self-closing device to be installed
D4 – hinged door panel B (slave panel)	Clause 8	Granted	Existing high level lockable device
	Clause 9	Granted	
	Clause 10	Granted	
D5 – Double sliding doors	Clause 9	Granted	Existing high level lockable device
	Clause 10	Granted	
D6 – sliding door	Clause 9	Granted	Existing high level lockable device
	Clause 10	Granted	

\* Door references detailed in Appendix A to these minutes.

THAT APPROVED STICKERS BE AFFIXED TO THE DOORS.

Harris/McKendry

CARRIED  
(Cr Fletcher against)

THAT DOORS COMPLYING WITH THE REQUIREMENTS OF THE FENCING OF SWIMMING POOLS ACT 1987 ARE INSTALLED IN PLACE OF THE NON-COMPLIANT DOORS SHOULD THEY BE REMOVED IN THE FUTURE.

Cooper/McKendry

CARRIED

(Cr Davison abstained from voting on the above resolutions.)

Cr Black noted the advice from the Manager Regulatory Services that the above resolutions of the Committee were not the officer's recommendations.

**2. DISCUSSION  
ITEMS**Nil.

---

**3.  
INFORMATION  
ITEMS**Nil.

---

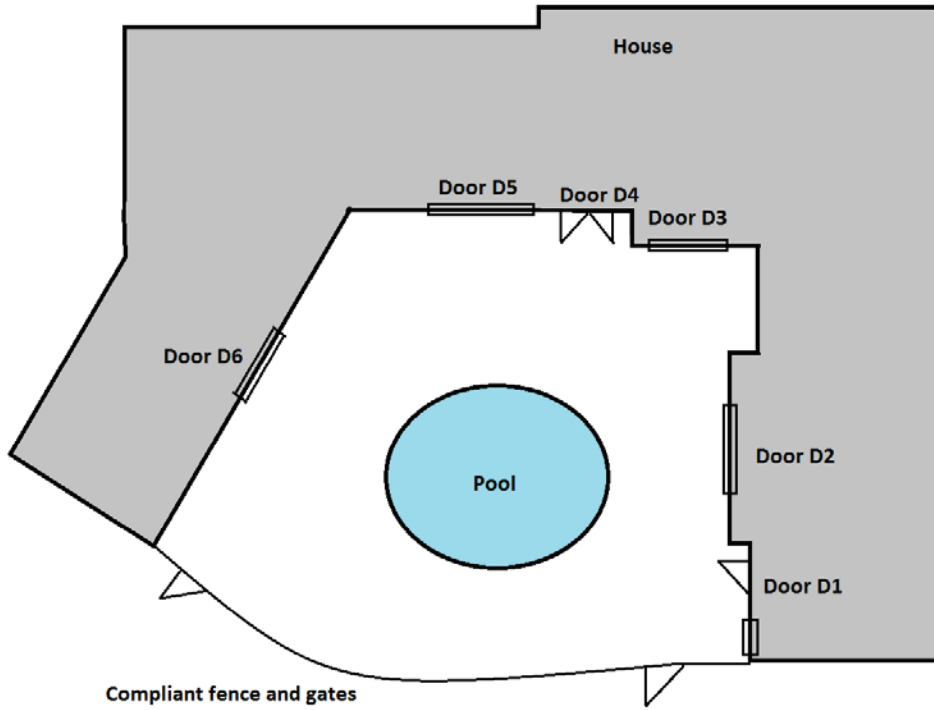
**URGENT  
BUSINESS**There were no Urgent Business items for this meeting.

---

**MEETING ENDED**The meeting closed at 2.30pm

---

Door numbers relate to the floor plan below:





# HURUNUI DISTRICT COUNCIL MEETING REPORT



**To:** Regulatory Committee  
**Date:** 18 June 2015  
**Significant Decision:** No

## Application for a special exemption under section 6 of the Fencing of Swimming Pools Act 1987 by C & D Rutherford

---

**Recommendation** THAT THE COMMITTEE GRANTS THE EXEMPTION UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987 WITH THE FOLLOWING CONDITIONS:

- THAT THE FENCE AND PLANTING BE MAINTAINED IN ITS PRESENT CONDITION
- THAT FENCING COMPLYING WITH THE REQUIREMENTS OF THE FENCING OF SWIMMING POOLS ACT 1987 IS ERECTED IN PLACE OF THE MESH FENCE SHOULD IT BE REMOVED IN THE FUTURE

---

**Executive Summary** Craig and Donna Rutherford have requested an exemption from the Fencing of Swimming Pools Act for the pool on their property at 303 Leslie Hills Road. The exemption application relates to a 1.40 metre high fence to one side of the pool enclosure constructed of mesh with openings which exceed 50mm when measured diagonally.

The exemption will be from clause 6 of the schedule only, which states that where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.

---

**Background** The pool fencing at 303 Leslie Hills Road was inspected as part of the 2014 swimming pool audit programme. The use of the mesh with openings which exceed 50mm was identified as not complying with the Fencing of Swimming Pools Act.

The size of the openings to the mesh has previously been inspected and deemed to comply with the Act in 2000 and 2007, 2009, relying on assessments by Council Officers that the combination of the 1.40 metre height of the fence, the planting that has grown over the mesh and the relatively small opening size of the mesh together form an effective barrier to restrict entry by children under the age of six. We now know that approval can only be granted by a committee of elected members.

---

**Description of pool fencing** The pool at 303 Leslie Hills Road is an in-ground pool. The immediate pool area is enclosed on three sides by compliant timber paling type fencing, timber trellis and concrete block walls. There are two compliant gates.

The pool is enclosed on the fourth side by a chain link mesh fence 1.40 metres high. The fence comprises 50mm square steel mesh supported on steel pipes at the top and bottom. When measured diagonally the openings to the fence measure 70mm. The mesh has climbing plants growing through it which reduce the amount of mesh visible.

---

	<p>The pool fence is 20m from the house at its closest point.</p>
<p><b>Fencing of Swimming Pool Act Requirements</b></p>	<p>Clause 6 of the Schedule of the Fencing of Swimming Pools Act states:</p> <p>Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.</p>
<p><b>A resolution is needed in order to grant an exemption</b></p>	<p>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.</p> <p>Section 6 states that the territorial authority may grant an exemption. The use of 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.</p>
<p><b>An exemption may be for some or all of the requirements of the Act</b></p>	<p>In this case the exemption is required for a 1.40 metre high chain link fence which forms part of the enclosure of the immediate pool area.</p> <p>The exemption will be from the requirements of clause 6 of the Schedule to the Fencing of Swimming Pools Act, which requires that “Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.”</p>
<p><b>Each exemption application must be considered in relation to the particular pool</b></p>	<p>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.</p> <p>The committee has previously considered an exemption from clause 6 for a 1.80m high mesh fence with openings which exceed 50mm, for Mr and Mrs McKnight of 169 Broxton Road. On this occasion the exemption was granted as it was felt that the height of the fence together with the deterrent to climbing posed by the roses planted against the mesh provided an effective means of restricting access by young children.</p>
<p><b>Grounds for an exemption to be made in relation to each particular application</b></p>	<p>The committee must be satisfied that grounds for an exemption have been made in relation to each particular application.</p> <p>To be made compliant the immediate pool area would have to be enclosed on the fourth side by a fence which, if constructed of mesh and exceeding 1.20 metres in height, should have no opening with a dimension greater than 10mm (other than the circumference or perimeter). This is possible, as additional mesh could be fixed to the required minimum height over the existing non-compliant mesh; however the openings in the mesh only exceed the required dimension when measured diagonally across the square opening and the climbing plants that are growing through the mesh would have to be removed in order for this to be carried out; at present the climbing plants are acting as an visual screen and also as a deterrent to climbing, and the removal of these and the fixing of 10mm mesh or windbreak to the existing mesh will not significantly increase the safety of the mesh fence.</p> <p>The grounds for an exemption under clause 1(1) are made if the committee is satisfied that requiring the installation of a new fence, would be unreasonable.</p>

<b>Characteristics of the property and the pool</b>	The committee must consider the particular characteristics of the property and the pool. These are described above in the section 'Description of pool fencing'. A photo showing the pool area is attached as an appendix.
<b>Conditions may be imposed</b>	<p>Section 6(2) allows the committee to impose conditions when it grants an exemption application</p> <p>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.</p> <p>A suggested condition for this property is: "That the fence and planting be maintained in its present condition" and "That fencing complying with the requirements of the Fencing of Swimming Pools Act 1987 is erected in place of the mesh fence should it be removed in the future"</p>
<b>Exemption must not increase danger to young children.</b>	<p>Although the committee may give an exemption for a pool which is not to the Fencing of Swimming Pools Act/Building Code standard, it must be satisfied that there is no increased risk of danger to young children if it does grant that exemption.</p> <p>If the conditions suggested above are adopted then the combination of the height of the fence and the difficulty in using diagonal openings as climbing footholds will be effective in restricting access by children less than 6 years of age to the immediate pool area.</p>
<b>Legal Considerations</b>	The committee needs to ensure that they are fulfilling their obligations by taking all reasonable steps to ensure that the Fencing of Swimming Pools Act is complied with within the district.
<b>Policy and Plan Implications</b>	This is consistent with the Swimming and Spa Pool Fencing policy
<b>Options</b>	<p><b>Option 1: Do Nothing</b></p> <p>As an exemption application has been made, a reply is required, and therefore to do nothing is not an option.</p> <p><b>Option 2: Grant the exemption</b></p> <p>The exemption is only from the requirement that there should be no opening in the mesh with a dimension greater than 50mm, other than the circumference or perimeter, and the pool enclosure will still be required to comply with every other requirement of the Fencing of Swimming Pools Act. The committee can choose to grant the exemption with conditions. It is suggested that the committee impose the following conditions:</p> <ul style="list-style-type: none"> <li>• That the fence and planting be maintained in its present condition</li> <li>• That fencing complying with the requirements of the Fencing of Swimming Pools Act 1987 is erected in place of the mesh fence should it be removed in the future</li> </ul> <p>This option would place an obligation on the pool owner to maintain the fence in its current condition, and to replace it with a fully compliant pool fence should it be removed in the future.</p>

---

**Option 3: Grant the exemption without conditions**

This option would allow the existing mesh to remain as part of the pool barrier.

**Option 4: Decline the exemption**

This option would mean the enclosure has to be made compliant with the Fencing of Swimming Pools Act, by erecting compliant fencing in the place of the non-compliant mesh.

---

**Appendices**

Site plan and photo of mesh fence

---



**Report Prepared by:**

Liz Ashwin

Building & Swimming Pools Compliance Officer

---



**Report Reviewed by:**

Judith Batchelor  
Manager Environmental Services

---

**Officer in Attendance:**

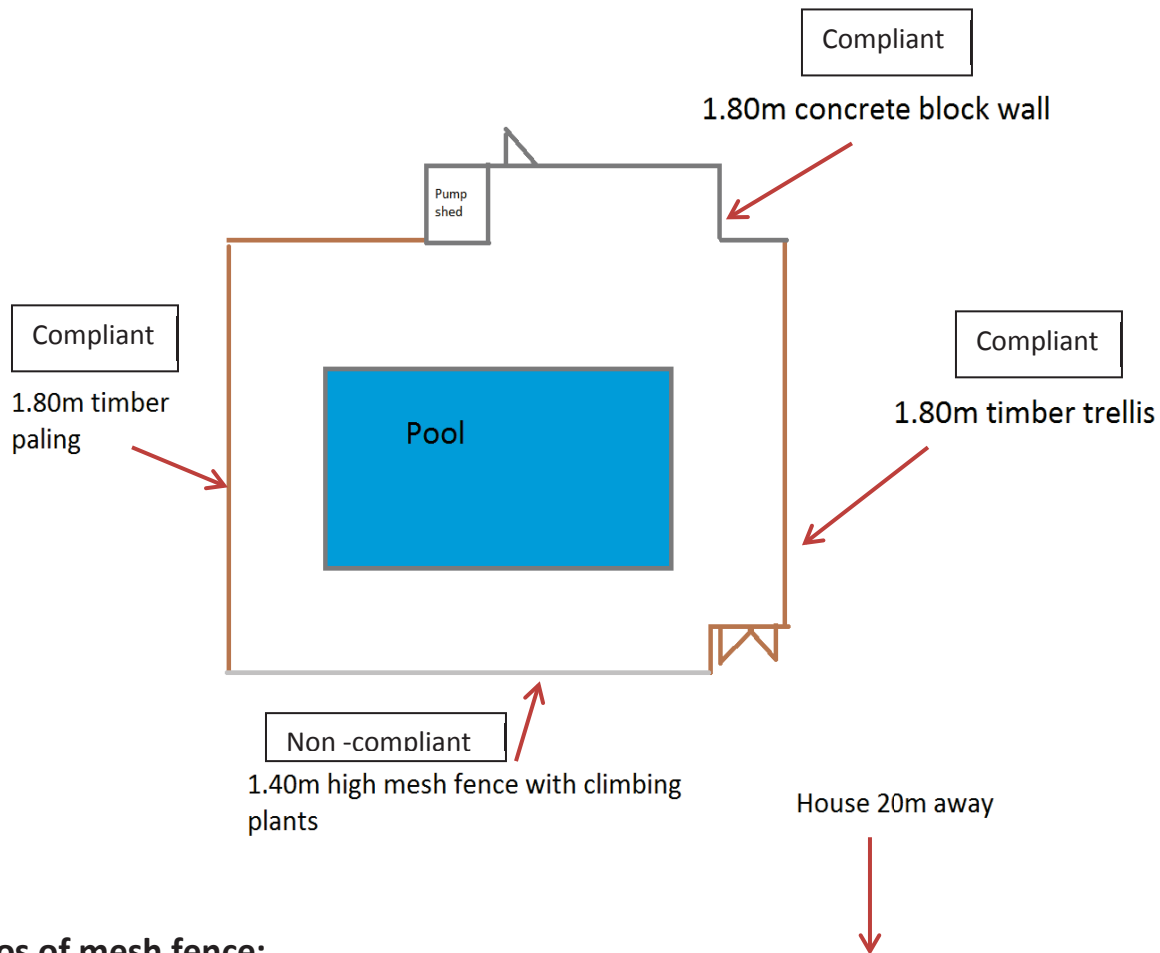
The Building & Swimming Pools Compliance Officer will be in attendance to speak to their report.

---

# Application for a special exemption under section 6 of the Fencing of Swimming Pools Act 1987 by C & D Rutherford

## Appendix 1

### Site Plan:



### Photos of mesh fence:



# HURUNUI DISTRICT COUNCIL MEETING REPORT



**To:** Regulatory Committee

**Date:** 18 June 2015

**Significant Decision:** No

## **RC150025 & RC150026 – Dickson – Appointment of a Hearing Commissioner**

### **Recommendation**

THAT THE COUNCIL APPOINT MR DEAN CHRYSTAL AS AN INDEPENDENT HEARING COMMISSIONER PURSUANT TO SECTION 34A(1) OF THE RESOURCE MANAGEMENT ACT 1991, TO HEAR AND DETERMINE RESOURCE CONSENT APPLICATIONS RC150025 & RC150026.

### **Executive Summary**

The Council has received a subdivision consent to subdivide into four lots at 698 Gore Bay Road, Gore Bay. The site is located within the Coastal Environment Management Area and an Outstanding Landscape Area. Land use consent is also sought to establish one dwelling and one residential accessory building on each of the four lots.

The application was publicly notified on 25 March 2015 with submissions closing on 24 April 2015. Ten submissions were received on the application. Six submissions were opposed to the application, three were in support and one was neutral.

This report seeks the appointment of a hearing commissioner acting alone to hear and determine the application.

### **Background**

The Council has received a subdivision consent from Mr A Dickson to subdivide into four lots at 698 Gore Bay Road, Gore Bay. The site is located within the Coastal Environment Management Area and the General Management Area. The site is also located within an Outstanding Landscape Area. Building platforms have been identified on each of the proposed lots with access to the lots being via a right of way off Gore Bay Road.

Land use consent is also sought to establish one dwelling and one residential accessory building on each of the four lots. The proposed dwellings would be subject to specific design standards as per the Buxton Valley Management Area.

The application was publicly notified on 25 March 2015 with submissions closing on 24 April 2015. Ten submissions were received on the application. Six submissions were opposed to the application, three were in support and one was neutral.

After the close of submissions the Council requested further information in relation to a number of issues raised in submissions. The further information was received on 5 June 2015.

Section 101 of the Resource Management Act 1991 (the RMA) requires that the date of the hearing must be within 25 working days after the closing date for submissions on the application. As such a hearing is due to be held by 8 July 2015.

---

**Discussion**

The Council's Delegation Manual requires that the composition of a hearing panel with respect to resource consent applications must be comprised of a commissioner or commissioners with suitable expertise from the "Approved Commissioners List" acting alone or together with at least 2 Councillors one of which is from the relevant ward. Over half the panel must be accredited.

---

**Financial Considerations**

The costs of hearing the resource consent application are borne by the applicant.

---

**Policy and Plan Implications**

There are no inconsistencies with policies and plans associated with this decision.

---

**Risks**

There are no risks associated with the proposed recommendation.

---

**Options****Option 1: Do Nothing**

This is not an option as it will not meet the statutory requirements of the Resource Management Act 1991. In addition, Council Officers do not have delegated authority to make a decision on the application.

**Option 2: Appoint an independent hearings commissioner to hear and determine the application**

This option is to appoint an independent hearings commissioner alone to hear and determine the application.

Previous Council practise has involved independent hearings commissioners being appointed to hear and determine fully notified or limited notified resource consent applications. The benefit of using a hearings commissioner is that they have extensive experience in resource management processes and decisions. Mr Dean Chrystal is on the approved commissioners list and is familiar with the Council's District Plan having heard a number of resource consents for this Council previously.

**Option 3: Appoint an independent hearings commissioner and two Councillors to hear and determine the application.**

This option involves the Council appointing a panel to consider the application, comprising an independent commissioner and at least two elected members.

**If this option is chosen, in accordance with the Council's delegation for the appointment of a hearing panel, at least one Councillor must be from the relevant ward (Cheviot) and at least half of the panel members must be accredited under the Resource Management Act 1991.****The benefit of elected members being involved in the application is that they have local knowledge, and often their involvement increases the perceived accountability of the Council.****This option is in accordance with the appointment of a hearings panel policy. The cost of the hearings panel is borne by the applicant.**

---

**Report Prepared by:**

---



Helga Bennett  
Senior Planner

**Report Reviewed by:**

---



Judith Batchelor  
Manager Environmental Services

**Officer in Attendance:**

The report author will be in attendance to speak to their report.

---



**The Regulatory Committee has delegated authority to act in the following areas:**

- Resource Management:
  - Resource Management Act 1991
  - Relevant sections of part xxi Local Government Act 1974 relating to private roads and private ways (*roading parts of the 1974 Act are still in force*)
- Dog and Stock Control:
  - Dog Control 1996
  - Impounding Act 1955
- Health:
  - The Health Act 1956
  - Food Act 1981
  - Auctioneers Act 1928
- Sale of liquor:
  - Sale of Liquor Act 1989
  - Winemakers Act 1981
- Swimming pools:
  - Fencing of Swimming Pools Act 1987
- Building:
  - Building Act 1991/ Building Act 2004
- Litter:
  - Litter Act 1979, including waivers of fees and charges in accordance with council policy

To determine the Council's policy, planning and strategic direction with regard to the District Plan including Council initiated and private plan changes.

To make decisions on District Plan changes exclusive of making them operative.

To approve commissioners and/or panels of elected members for resource management hearings.

To conduct statutory hearings on regulatory matters including

- Dog and Stock Control
- Health
- Sale of Liquor
- Swimming Pools
- Building
- Litter

Policy, planning and strategic direction with regard to:

- Dog and Stock Control
- Health
- Sale of Liquor
- Swimming Pools
- Building
- Litter
- Resource Management advocacy (external to the organisation)

Approval of submissions to relevant bills, discussion and policy documents relating to the responsibilities of the committee.

Matters that must be processed by way of recommendations to the Council include:

- Special Consultative Procedures, part 6, Section 83, Local Government Act 2002
- Bylaws, part 12, Section 293 Local Government Act 2002
- Making operative District Plan changes
- Decision to notify Reviewed District Plan and make operative
- Amendment to fees and charges relating to all activities