

# Licensing, Exemptions and Objections Committee

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## Notice of Meeting

A meeting of the Licensing, Exemptions and Objections Committee will be held in the Council Chamber, Forum North, Whangarei on:

**Tuesday  
8 November 2011  
9.30am**

**Committee of:**  
Council

**Committee**  
Cr M R Williams (Chairperson)  
His Worship the Mayor (Deputy Chair)  
Cr S J Deeming  
Cr S L Morgan  
Cr J D T Williamson

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**Recommendations contained in this agenda are NOT final decisions.  
Please refer to the minutes for resolutions.**

# 1. Minutes: Licensing, Exemptions and Objections Committee Wednesday 12 October 2011

*Minutes of a meeting of the Licensing, Exemptions and Objections Committee held in the Council Chamber, Forum North, on 12 October 2011 at 1.00 pm*

**Present:**

Cr M R Williams (Chairperson)

Crs S J Deeming, S L Morgan and J D T Williamson

**Apology:**

His Worship the Mayor M C A Cutforth

**Moved: Cr Williams**

**Seconded: Cr Deeming**

“That the apology be sustained.”

**CARRIED**

**In attendance:**

Group Manager District Living (P Dell), Regulatory Services Manager (G Couchman) and Senior Meeting Co-ordinator (C Brindle)

## 1. Confirmation of Minutes of a Meeting of the Licensing, Exemptions and Objections Committee held on 14 and 20 September 2011

**Moved Cr Williamson**

**Seconded Cr Morgan**

“That the minutes of the meeting of the Licensing, Exemptions and Objections Committee held on 14 and 20 September 2011, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting.”

**CARRIED**

## 2. Review of Whangarei Alcohol Accord

**Moved Cr Williams**

**Seconded Cr Deeming**

- “1. That following a review of the role of Council in the Whangarei Alcohol Accord it is recommended that the current funding of an Accord Coordinator cease.
2. That Council continue to participate in the Accord as a member and support the established Host Responsibility Awards and the training of managers of club licenses premises.
3. That staff will work with other Whangarei Alcohol Monitoring Group partners to ensure that a forum is available for licensees to raise and discuss matters.
4. That staff will assess with the District Licensing Agency an appropriate forum for licensees to meet with the Agency.
5. That Council support generally the proposal of the Northland District Health Board to modify the way that the Accord communicates with licensees using newsletters and occasional meetings as needed and that staff discuss with other Accord members how this might be achieved.”

**CARRIED**

**The meeting closed at 1.42pm**

Confirmed this 8<sup>th</sup> day of November 2011

M R Williams (Chairperson)

## 2. Report Decisions of the Licensing, Exemptions and Objections Committee

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**Reporting officer** Carolyne Brindle (Senior Meeting Co-ordinator)

**Date** 18 October 2011

Pursuant to Section 48(1)(d) of the Local Government Official Information and Meetings Act the Committee having deliberated on the attached decision(s) and made available to the public.

A copy of the decisions is received for information.

### Recommendation

That the reports be received.

### Attachments

- 1 KJP & VKB Ltd
- 2 Mr and Mrs G Mackenzie
- 3 Mr and Mrs Slater
- 4 Mr Draffin
- 5 Mr McKenzie Pollock

The attachments are not available online. If you would like copies, please contact the Senior Meeting Co-ordinator on + 64 9 4304 200.

### 3. Rugby World Cup Liquor Licensing

**Reporting officer** Maggie Wan (Senior Specialist-Environmental Health)

**Date** 14 October 2011

***Vision, mission and values***

*This item is in accord with Council's vision, mission and values statement. Council's contribution to the reduction of alcohol related harm in Whangarei District during the Rugby World Cup 2011 Tournament through reporting on and auditing the Special Liquor Licence issued by the Rugby World Cup Authority for Northland Events centre will ensure the creation of a safe environment for RWC 2011 tournament participants, spectators and the local population.*

**Local Government Act 2002 – The four well-beings**

- Cultural:** *The effects of alcohol abuse impacts on all cultures and there are significant benefits to everyone from the minimisation of alcohol abuse.*
- Economic:** *The sale of alcohol in the community, where not properly managed can have a negative impact on the district economy.*
- Environmental:** *No direct link.*
- Social :** *The sale of alcohol in the community, where not properly managed can compromise health and well being.*

Compass Group New Zealand Limited sought a Rugby World Cup (RWC) Liquor Licence under Part 5 of the Rugby World Cup 2011 (Empowering) Act 2011 for Northland Events Centre as the caterer for this tournament venue. The games were held on Wednesday 14 September 2011 (Tonga versus Canada) and Wednesday 21 September 2011 (Tonga versus Japan).

The RWC Act provides a streamlined procedure for licensing the sale and supply of liquor to the public during the period of the Rugby World Cup 2011, as an alternative to the process under the Sale of Liquor Act 1989. The Act sets up the Authority and, to support it, requires each territorial authority to provide an Administrative Secretariat ("AdSec") for applications from within its district.

Compass Group proposed 8 public zones and 4 corporate zones in its application for Northland Events Centre. The venue was managed in accordance with the Match Venue Alcohol Management Plan (MVAMP), Compass Alcohol Management Plan. The MVAMP was a comprehensive instrument which had been agreed by relevant stakeholders and would ensure a nationally consistent approach to the management of alcohol at the match venues. The MVAMP covered the footprints and time period of any RWC licence required to serve alcohol at RWC matches, e.g. provision of food, provision of free water and the requirement of one certificated duty manager for each operational zone.

The application was publicly notified by Council in the Northern Advocate on 14 July 2011 as required by the RWC Act. The Alcohol Advisory Council of New Zealand (ALAC) lodged an objection to each of the RWC venue Liquor Licence applications. Its sole concern related to the sale of alcohol in cans and the number of serves per sale.

I have reported on the applications prepared for members of the Rugby World Cup Authority. Reporting agencies (The New Zealand Police, the Medical Officer of Health, the NZ Fire Service and the Liquor Licensing Inspectors) supported the granting of the licence.

The hearing for all the opposed applications was held in Auckland. I attended the hearing to answer any questions about the Whangarei application and to assist the RWC Authority. The Compass Group's application was subsequently granted on the basis that the licence holder must comply with all of the requirements as set out in the approved RWC 2011 MVAMP.

Staff met regularly with the Police and other enforcement agencies. Liquor compliance checks were undertaken on both game days in public zones and hospitality zones. There were no major breaches of the conditions required by the Authority.

In addition, a Controlled Purchase Operation was carried out on both game nights by the New Zealand Police.

The operation used persons under the age of 18 who attempted to purchase alcohol from liquor outlets within the licensed areas. On two different occasions these persons purchased alcohol from the liquor outlets in public area without being asked for identification. A decision was made by the Whangarei Police to formally caution the licensee and duty managers.

Finally, staff have been working closely with Ministry of Agriculture and Forestry (MAF), Rugby New Zealand 2011 and with the hospitality industry to ensure the operational hotels namely the Kingsgate Hotel and Settlers Hotel, and the food operations at the stadium have good food safety systems and recording procedures in place equivalent to the template Food Safety Programme. Compass Group was licensed for the supply of corporate food and the operation of food and beverage vendors on site. Audit of the food operations were carried out during the games and it was found to be in conformance with the food safety plans.

### **Recommendation**

That the report be received.

## 4 Special Exemption from Compliance with Fencing of Swimming Pools Act 1987 – Mrs J I Hooker

**Reporting officer** Gary Barnsley (Team Leader Compliance)

**Date** 29 September 2011

Time	Hearing	Name
9.30am	Licensing Exemptions and Objections Committee	Mrs Judith Isobel Hooker

### Hearing Procedure

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

- Informal as possible – no cross examination. Only Committee members can ask questions
- Staff report taken as read
- Questions of clarification – staff report
- Pool owner presents their case
- Question of clarification of pool owner
- Any final questions of clarification
- Adjourn hearing.

That following the hearing of the matters before the committee, the public be excluded from the meeting pursuant to Section 48 (1) (d) of the Local Government Official Information and Meetings Act to enable the committee to deliberate in private on the decisions made.

Written decision will be issued.

# Report to Licensing, Exemptions and Objections Committee

## Special Exemption from Compliance with Fencing of Swimming Pools Act 1987– Mrs Judith Isobel Hooker

### Summary

Mrs Judith Isobel Hooker, the owner of a property at Rotomate Road, Kamo, Whangarei, has requested a special exemption from full compliance with the requirements of the Fencing of Swimming Pools Act 1987 in terms of a swimming pool located on her property.

Though the swimming pool is fully enclosed within a 'secure' pool house which is adjacent to the dwelling, this does not fully meet the compliance schedule of the Act. The swimming pool and pool house are located in close proximity to the dwelling and access to the pool house is restricted by lockable windows, which are all compliant. However, in terms of the door to the pool house, though fitted with a lock, the lock is fitted at a height of less than 1.50m from ground level, being only 1.04m from ground level; therefore this can not meet the compliance requirements of the Act.

The property in question is a large farming property on the rural fringes of the city accessed from Three Mile Bush Road, and comprises just over 17 hectares in land area, and is bordered by other large rural properties. The dwelling and pool house are located approximately 700m from the access and road boundary and the nearest residential property on a neighbouring site is some 300m away.

The applicant works on the farm, so is at the property the majority of the time and would have full view of the pool house from the dwelling and immediate surrounds. Therefore any unauthorised intrusion onto the property and particularly onto the pool house would be extremely unlikely. Access to the pool house is negated by window limiters, and the door is kept locked at all times when not in use, though as stated, this lock is not at a compliant height. However the only occupants of the dwelling is the applicant, and there are no children under 6 years who visit, or have cause to visit the dwelling on a regular basis.

Being satisfied that in the circumstances, the situation at this property in terms of this swimming pool and pool house, and with the application of appropriate conditions to a special exemption, this would not significantly increase the danger from drowning to young children, and the recommendation is that this application for special exemption from the requirements of the Act is granted.

### Requirement of the Act

The Fencing of Swimming Pools Act 1987 is an Act to promote the safety of young children by requiring fencing of certain swimming pools and spa pools, and requires that all pool or spa pool owners must ensure that the pool or spa pool is fenced in compliance with the building code to prevent access to the pool or spa pool area by young children. Section 8 of the Act, "*Obligations of owner and persons in control of pool*" states that every owner of a pool to which this Act applies shall ensure that, except as provided in any exemption granted under section 6 of this Act, the pool, or some or all of the immediate pool area including all of the pool, is fenced by a fence that complies with the requirements of the building code in force under the Building Act 2004 in respect of swimming pools subject to this Act at all times when this Act applies in respect of the pool.

### Section 6 - Exemption

Section 6 of the Act provides for special exemption from this requirement, and states:

- 1 *"A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2) of this section, that such an exemption would not significantly increase danger to young children.*
- 2 *In granting an exemption under subsection (1) of this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.*
- 3 *Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution."*

## The Application

In August 2011, a swimming pool compliance check was undertaken at the subject property. This was undertaken as part of a 'historic pool' inspection programme. This programme was instigated as we became aware that a number of Building Consents granted in the recent past with an association to a swimming pool, had for various reasons, not necessarily resulted in the establishment of a swimming pool licence and inclusion on the schedule pool inspection programme. Accordingly, it was decided that ALL such consents would be checked to establish whether compliance with the Fencing of Swimming Pools Act 1987 had been achieved.

The inspection revealed that though the swimming pool is fully enclosed within a 'secure' pool house which is adjacent to the dwelling, full compliance with the Act could not be achieved due to the height of the lock fitted to the door to the pool house. Though access to the pool house is restricted by lockable windows, which are all compliant, the door lock height of less than 1.50m from ground level, determines that this can not meet the compliance requirements of the Act.

There are certain provisions under section 5(e) of the Act in terms of pools wholly enclosed within a building, the use of which is not solely to accommodate the use of the pool. Were the pool to be located within the dwelling, and under the same roof and with access from the dwelling, this may well be exempt under the provisions of s.5 (e). However as the pool house is a totally separate building from the dwelling, this provision can not be applied in this instance, and it is for this reason that an application for special exemption pursuant to s.6 of the Act is required.

The issue was discussed with the applicant and it was agreed that on the basis of the compliant nature of the pool house, other than the door lock height, the remoteness of the property, the inaccessibility to the property, the absence of young children living at, near to or visiting the property, then an application for special exemption from the compliance requirements of the Act may be appropriate. The owners of the property have now made such application, and a copy of the application is attached hereto.

## Assessment of the Application for Exemption

Under Section 6 of the Act Council may, by resolution, grant an exemption from some or all of the requirements of the Act, with such conditions as may be necessary, after appropriate consideration of the particular characteristics of the property and the swimming pool, and any other relevant circumstances. In granting an exemption, Council must be satisfied that any such exemption would not significantly increase danger to young children.

In considering the issues raised in such an application, one must refer to the Act in terms of what it seeks to achieve, and the Department of Internal Affairs publication, 'The Fencing of Swimming Pools Act 1987 Guidelines for Territorial Authorities' (the Guidelines). The Act states that it is "*An Act to promote the safety of young children by requiring the fencing of certain swimming pools*". The Guidelines offer practical evaluations in terms of certain aspects which may not strictly comply with the Act, yet offer some degree of protection or a means to safeguard access to the pool.

## Swimming Pool

The swimming pool on the property is fully enclosed within a purpose built pool house which is located immediately adjacent to the dwelling. Access to the pool house is restricted by lockable windows, however the door to the pool house, though fitted with a lock, fails to meet compliance requirements as the lock height is less than the required 1.50m from ground level, being only 1.04m from ground level. However, along with other circumstances this may be deemed a basis for special exemption. The applicant is of the view that along with the pool house enclosure, the remoteness and seclusion of the property and general inaccessibility to the swimming pool area provide sufficient means of ensuring protection from the likelihood of small children drowning in the swimming pool and accept full responsibility for ensuring the safety of any young children who may visit the property.

## Characteristics of the Property

The property in question is a large farming property located on the rural fringes of the city accessed from Three Mile Bush Road, and comprising just over 17 hectares in land area. It is bordered by other large rural properties and the dwelling and therefore the pool house are located approximately 700m from the access and road boundary, and some 300m from the nearest residential property on a neighbouring site. (See aerial views attached hereto).

The applicant works on the farm, so is at the property the majority of the time and would have full view of the pool house from the dwelling and immediate surrounds. Therefore any unauthorised intrusion onto the property and particularly onto the pool house would be extremely unlikely. Access to the pool house is negated by window limiters, and the door is kept locked at all times when not in use, though as stated, this lock is not at a compliant height. However the only occupants of the dwelling is the applicant, and there are no children under 6 years who visit, or have cause to visit the property on a regular basis.

There is no view of, nor ready access to, the dwelling and/or the pool house neither from any public place nor from any other property, and as such it would be extremely unlikely that any unauthorised access to the pool house would go unnoticed by the applicant. The immediate pool area could only reasonably be accessed by children under 6 years of age who may be visiting the property which is not a regular occurrence; however this would only be under the supervision of the applicant and other adults who would no doubt be in attendance to monitor such situations should they arise. As such, there would seem to be no foreseeable circumstances where any child under 6 years of age would be on the property, in the dwelling or in the pool house whilst unsupervised.

For the reasons outlined above, it is considered that the special and extenuating circumstances offered by the applicant in terms of the lockable pool house, the remoteness and seclusion of the property from public places or public access, the inaccessibility of the property, the diligence of the applicants in terms of any young children who may have cause to visit the property, then there would be no significant increase in danger to young children presented by this particular swimming pool and by appropriate conditions attached to a special exemption and the decision should be taken to grant a special exemption in this matter.

## Conclusion

This report considers the particular characteristics of the swimming pool, the property itself and the owner/occupant of the property and the relevant legal matters which must be taken into account in considering the application for exemption and the report establishes the following:

- a. The swimming pool is located on the property in such a way that it is not exposed to view or to ready access from a public place. As such, unauthorised access to pool area would be extremely unlikely.
- b. Access to the property itself is not readily available, and access to the pool and pool house can only be readily attained by the owners or their visitors, as such access to the pool by the children of any visitors to the property would be supervised by an adult at all times.
- c. Whilst this situation does not strictly meet the criteria for compliance with the Act, there are sufficient grounds to consider that the purpose of the Act will be met and the pool area and the property generally meet the criteria for special exemption as discussed in the Department of Internal Affairs publication, 'The Fencing of Swimming Pools Act 1987 Guidelines for Territorial Authorities'

In these circumstances, it is considered that there would be no significant increase in danger posed to young children by this particular swimming pool on this particular property, and with the application of appropriate conditions to any special exemption granted in this matter, then consequently this application for special exemption pursuant to Section 6 of the Act should be granted with certain conditions.

It is recommended that the following conditions be applied should the exemption be granted:

- 1 That the exemption is personal to the applicant and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant.
- 2 That the applicant must inform any prospective purchaser of the property that the exemption is personal to them and will expire immediately upon completion of the sale.
- 3 That the applicant must inform any visitors to the property with young children under 6 years, that security of the pool house is not fully compliant with the requirements of the Act and as such those children must be supervised at all times whilst on the property.

## Recommendation

That having considered the particular characteristics of the property, the pool house and the swimming pool situated thereon and the occupant of the property, Council is satisfied that there would be no significant increase in danger posed to young children by the swimming pool located at Rotomate Road, Kamo, Whangarei, which is owned by the applicant, or by the granting of a special exemption with appropriate conditions, and therefore **GRANTS** such special exemption from the compliance requirements of the Fencing of Swimming Pools Act 1987. This special exemption is granted pursuant to section 6 of the Act and is granted to Mrs Judith Isobel Hooker, the owner and occupant of the property under the following conditions:

- 1 That the exemption is personal to the applicant and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant.
- 2 That the applicant must inform any prospective purchaser of the property that the exemption is personal to them and will expire immediately upon completion of the sale.
- 3 That the applicant must inform any visitors to the property with young children under 6 years, that security of the pool house is not fully compliant with the requirements of the Act and as such those children must be supervised at all times whilst on the property.

### Attachments:

- 1 Letter of Application from Mrs J I Hooker.
- 2 Aerial View of Property at Rotomate Road, Kamo, Whangarei
- 3 Close-up Aerial view of property at Rotomate Road, Kamo , Whangarei
- 4 Photographs of Property and Pool House.
- 5 Department of Building & Housing Guidelines for Territorial Authorities.

The attachments are not available online. If you would like copies, please contact the Senior Meeting Co-ordinator on + 64 9 4304 200.

## 5. Special Exemption from Compliance with Fencing of Swimming Pools Act 1987 – Jackwell Estates Limited

**Reporting officer** Alex Soderling (Compliance Officer)

**Date** 13 October 2011

Time	Hearing	Name
9.30am	Licensing Exemptions and Objections Committee	Jackwell Estates Limited

### Hearing Procedure

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

- Informal as possible – no cross examination. Only Committee members can ask questions
- Staff report taken as read
- Questions of clarification – staff report
- Pool owner presents their case
- Question of clarification of pool owner
- Any final questions of clarification
- Adjourn hearing.

That following the hearing of the matters before the committee, the public be excluded from the meeting pursuant to Section 48 (1) (d) of the Local Government Official Information and Meetings Act to enable the committee to deliberate in private on the decisions made.

Written decision will be issued.

# Report to Licensing, Exemptions and Objections Committee - Special Exemption from Compliance with Fencing of Swimming Pools Act 1987– Jackwell Estates Limited

## Summary

Kathryn J McIntyre for Jackwell Estates Limited, the owner of a property at 79 Langman Lane (Pvt), Matapouri, Whangarei, has requested a special exemption from full compliance with the requirements of the Fencing of Swimming Pools Act 1987 in terms of a swimming pool located on the property.

Though the majority of the immediate pool area is fenced, the fencing is not compliant with the compliance schedule of the Act due to the fact the style of the pool is an 'infinity' pool.

An infinity edge pool is a swimming pool which produces a visual effect of water extending to the horizon, vanishing, or extending to "infinity". One type of location in which the effect is particularly impressive is where the infinity edge appears to merge with a larger body of water such as the ocean.

To create this effect, a small overflow of water at the edge of the pool is caught by a catch basin constructed below the edge of the pool on the outer side. The water spills into the catch basin, from where it is then pumped back into the pool.

The swimming pool is located in close proximity to the dwelling and access to this area is readily achieved either from the dwelling itself or via the outside of the dwelling. The windows and doors from the dwelling to the pool area are fitted with complying window stays and top locks; there are also two compliant gates that access the pool area from the lawn. The 'infinity' side of the pool however, has a catch basin which is less than 900mm from ground level and could potentially be used as a foothold to access the pool from this side and therefore does not comply in terms of the compliance schedule of the Act.

Access to the dwelling and to the property in general is not readily available. The property in question is a lifestyle property on the Tutukaka Coast, comprising just over 22 hectares in land area and is located in a rural lifestyle environment, bordered by other large rolling pastoral properties. The area surrounding the dwelling itself is approximately 3 hectares which is fully fenced with 2.0m high deer fencing on all sides with the exception of the area that boundary the cliff face leading down to the ocean. All around the inside of the deer fencing is planted with thick vegetation reducing any visibility of the pool area. Access to the property is made through remote operated electric security gates which are 1.8m in height.

The dwelling and therefore the pool area are located approximately 1.7km from the main access road being Matapouri Road. Langman Lane itself is a private road for approximately 800m and then follows a private right of way for the additional 900m. It is unlikely to be utilised by the general public unless they are a guest of a resident in this area.

The applicant is retired and lives by herself in the house and is unlikely to have people turning up unless invited to the property and there are no children under 6 years who visit, or would have cause to visit the dwelling. Being satisfied that in all of the circumstances, the situation at this property and in terms of this swimming pool, and with the application of appropriate conditions to a special exemption, would not significantly increase the danger from drowning to young children, the recommendation is that this application for special exemption from the requirements of the Act is granted.

## Requirement of the Act

The Fencing of Swimming Pools Act 1987 is an Act to promote the safety of young children by requiring fencing of certain swimming pools and spa pools, and requires that all pool or spa pool owners must ensure that the pool or spa pool is fenced in compliance with the building code to prevent access to the pool or spa pool area by young children. Section 8 of the Act, "*Obligations of owner and persons in control of pool*" states that every owner of a pool to which this Act applies shall ensure that, except as provided in any exemption granted under section 6 of this Act, the pool, or some or all of the immediate pool area including all of the pool, is fenced by a fence that complies with the requirements of the building code in force under the Building Act 2004 in respect of swimming pools subject to this Act at all times when this Act applies in respect of the pool.

## Section 6 - Exemption

Section 6 of the Act provides for special exemption from this requirement, and states:

- 1 *“A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2) of this section, that such an exemption would not significantly increase danger to young children.*
- 2 *In granting an exemption under subsection (1) of this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.*
- 3 *Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.”*

## The Application

Although this swimming pool has been in existence since the Building Consent was applied for in 2000, a recent review of swimming pools was undertaken by Regulatory Compliance Staff, to capture any pools that did not have licences attached to them. As this pool did not have a licence, an inspection was undertaken by Council Compliance Staff in July 2011 in the company of Ms McIntyre for Jackwell Estates, and it was noted that whilst the swimming pool on the property was located in an area immediately adjacent to the dwelling, this area was not fully enclosed by compliant pool fencing at that time and for that reason the swimming pool failed to achieve compliance. The issue was discussed on site with Ms McIntyre and it was agreed that a special exemption be sought on the basis of the remoteness of the property, the inaccessibility to the property and the absence of children living at, near to or visiting the property. It was agreed that an application for special exemption from the compliance requirements of the Act may be appropriate. Ms McIntyre has now made such application for a special exemption from the compliance requirements of the Act, and a copy of the application is attached here to.

## Assessment of the Application for Exemption

Under Section 6 of the Act Council may, by resolution, grant an exemption from some or all of the requirements of the Act, with such conditions as may be necessary, after appropriate consideration of the particular characteristics of the property and the swimming pool, and any other relevant circumstances. In granting an exemption, Council must be satisfied that any such exemption would not significantly increase danger to young children.

In considering the issues raised in such an application, one must refer to the Act in terms of what it seeks to achieve, and the Department of Internal Affairs publication, ‘The Fencing of Swimming Pools Act 1987 Guidelines for Territorial Authorities’ (the Guidelines). The Act states that it is “*An Act to promote the safety of young children by requiring the fencing of certain swimming pools*”. The Guidelines offer practical evaluations in terms of certain aspects which may not strictly comply with the Act, yet offer some degree of protection or a means to safeguard access to the pool.

## Swimming Pool

The swimming pool on the property is partially fenced with compliant pool fencing surrounding the immediate pool area, the pool itself does not have a lockable cover and it is immediately adjacent to the dwelling. However, the catch basin that forms part of the infinity effect for the swimming pool does not comply with the Act. The applicant is of the view that the remoteness of the property and inaccessibility to the pool and pool area provides sufficient means of ensuring protection from the likelihood of small children drowning in the pool and accept full responsibility for ensuring the safety of any young children who may visit the property.

## Characteristics of the Property

The location of the swimming pool and the property itself provides extenuating circumstances which may warrant special exemption from compliance requirements. The property owned by Ms McIntyre for Jackwell Estates is mainly in rolling pasture by the Tutukaka Coastline and is over 22 hectares in area. It is located in a wholly coastal rural lifestyle environment, bordered by other similar large coastal lifestyle properties to all boundaries, with one boundary bordering the coast. All of the other dwellings in the immediate vicinity are mainly holiday homes.

The swimming pool is located in a pool area immediately adjacent to the dwelling, and whilst this area is not fenced to a compliant standard, the area is in full view from the living areas of the dwelling. The dwelling and therefore the pool area are located on the property some 1.7 kilometres from the access and road, and over 300.0m from the nearest residential unit on a private right of way. (See aerial views attached hereto). Additionally, there is no ready access to the property and/or the pool from any public place and should a member of the public find they have driven to the applicants property by mistake, the immediate area surrounding the house is fully fenced and accessible only by electronic security gates, with the pool not being visible from this side of the property. The immediate pool area could only be accessed by children under 6 years who may be visiting the property which is unlikely as the applicants family reside overseas, however the applicant and other adults would no doubt be in attendance to monitor such situations.

The positioning of the dwelling on the point means one of the boundaries of the property is bordered only by the coast. The dwelling is situated on the point and access from the seaward side of the property is dangerous as it would involve scaling quite a rugged, rocky and very steep terrain. Due to this, access from the seaward side of the property would be considered difficult and very unlikely.

As such, there would seem to be no foreseeable circumstances where any child under 6 years of age would be on the property, in the dwelling or in the pool area whilst unsupervised. For the reasons outlined above, it is considered that the special and extenuating circumstances offered by the applicant in terms of the remoteness of the property from public places or public access, the inaccessibility of the property, the diligence of the applicant in terms of young children on the property, then there would be no significant increase in danger to young children presented by this particular swimming pool and by appropriate conditions attached to a special exemption and the decision should be taken to grant a special exemption.

## Conclusion

This report considers the particular characteristics of the swimming pool, the property and the owners/occupants of the property and the relevant legal matters which must be taken into account in considering the application for exemption and the report establishes the following:

- a The swimming pool is located on the property in such a way that it is not exposed to view or to ready access from a public place. As such, unauthorised access to the property and pool area would be extremely unlikely.
- b Access to the property itself is not readily available, and access to the pool area can only be readily attained by the owner and/or her invitees. Access to the pool area by the children of any visitors to the property would be unlikely and would be supervised by an adult at all times.
- c Whilst this situation does not strictly meet the criteria for compliance with the Act, there are sufficient grounds to consider that the purpose of the Act will be met and the pool and the property generally meet the criteria for special exemption as discussed in the Department of Internal Affairs publication, 'The Fencing of Swimming Pools Act 1987 Guidelines for Territorial Authorities'

In these circumstances, it is considered that there would be no significant increase in danger posed to young children by this particular swimming pool on this particular property, and with the application of appropriate conditions to any special exemption in this matter, then consequently this application for special exemption pursuant to Section 6 of the Act should be granted with certain conditions.

It is recommended that the following conditions be applied should the exemption be granted:

- 1 That the exemption is personal to the applicant and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant.
- 2 That the applicant must inform any prospective purchaser of the property that the exemption is personal to her and will expire immediately upon completion of the sale.
- 3 That the applicant must inform any visitors to the property with young children under 6 years, that the immediate pool area is not fully compliant with the Act and as such children must be supervised at all times whilst on the property.

## Recommendation

That having considered the particular characteristics of the property, the swimming pool situated thereon and the occupant of the property, Council is satisfied that there would be no significant increase in danger posed to young children by the swimming pool located at 79 Langman Lane (Pvt), Matapouri, Whangarei, or by the granting of a special exemption with appropriate conditions, and therefore **GRANTS** a special exemption from the compliance requirements of the Fencing of Swimming Pools Act 1987. This special exemption is granted pursuant to s.6 of the Act and is granted to Ms Kathryn J McIntyre for Jackwell Estates Limited, the owner and occupant of the property under the following conditions:

- 1 That the exemption is personal to the applicant and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant.
- 2 That the applicant must inform any prospective purchaser of the property that the exemption is personal to her and will expire immediately upon completion of the sale.
- 3 That the applicant must inform any visitors to the property with young children under 6 years, that the immediate pool area is not fully compliant with the Act and as such children must be supervised at all times whilst on the property.

### Attachments:

- 1 Letter of Application from Kathryn J McIntyre on behalf of Jackwell Estates Limited.
- 2 Aerial View of Property at 79 Langman Lane (Pvt), Matapouri, Whangarei.
- 3 Photographs of Property & Swimming Pool.
- 4 Department of Building & Housing Guidelines for Territorial Authorities (refer agenda page 25)

The attachments are not available online. If you would like copies, please contact the Senior Meeting Coordinator on + 64 9 4304 200.