

# 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:

**Wednesday  
12 June 2013  
11.00am**

**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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CONFIDENTIAL – not for publication

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**OPEN MEETING**

**APOLOGIES**

**CONFLICTS OF INTEREST**

Members are reminded to indicate any items in which they might have a conflict of interest.

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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 8 May 2013

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*Minutes of a meeting of the Licensing, Exemptions and Objections Committee held in the Council Chamber, Forum North, on Wednesday 8 May 2013 at 1.00pm*

**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 Morgan**

“That the apology be sustained.”

**CARRIED**

**Also present:**

Cr J S Jongejans (1.05pm)

**In attendance:**

Group Manager District Living (P Dell), Team Leader Environmental Health (R Mussle) and Senior Meeting Co-ordinator (C Brindle)

## 1. Confirmation of Minutes of a Meeting of the Licensing, Exemptions and Objections Committee held on 8 August 2012

**Moved Cr Williams**

**Seconded Cr Morgan**

“That the minutes of the meeting of the Licensing, Exemptions and Objections Committee held on 8 August 2012 having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting.”

**CARRIED**

## Exclusion of the public

**Moved Cr Williams**

**Seconded Cr Deeming**

“That the public be excluded from the following part(s) of this meeting namely:

Item C.1 Report on Operations

Reason To protect information which is subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied.

Grounds Section 7(2)(c)(i).”

**CARRIED**

**The meeting closed at 1.33pm**

Confirmed this 12<sup>th</sup> day of June 2013

M R Williams (Chairperson)

## 2. Special Exemption from Compliance with Fencing of Swimming Pools Act 1987– Darren and Tracey McKenzie

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**Reporting officer** Kirsty Howie (Compliance officer)

**Date** 14 May 2013

Time	Hearing	Name
11.00am	Licensing, Exemptions and Objections Committee	Mr Darren and Mrs Tracey McKenzie

### 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– McKenzie.

## Summary

Darren and Tracey McKenzie, the owners of a property at 401 Taiharuru Road, Whangarei, have 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. There is currently no compliant fencing surrounding the immediate pool area. Though the pool area is screened from view by the dwelling on three sides and a planted earth bund, approx 2-3 m in height, this is not compliant with the compliance schedule of the Act. The pool is located in close proximity to the dwelling and access to this area is readily achieved via the dwelling. However, access to the dwelling and to the property in general is not readily available. The property in question comprises approx. 6.7377 hectares of pasture land and is located in a rural environment, bordered by other similar large acreage pastoral properties and the Taiharuru Estuary. The nearest boundary (some 50m from the pool) consists of an inlet to the Taiharuru estuary. The dwelling and therefore the swimming pool is located approximately 400 m from the access and road boundary. The pool area is not visible from the access or the front of the property as the house surrounds the pool on three sides. Any unauthorised intrusion onto the property and particularly onto the pool area would be extremely unlikely. Access to the pool area from the dwelling itself is restricted as there are top locks and window limiters fitted. The occupants of the dwelling are the applicants and their children are aged 14, 16 and 18. Should any children under the age of 6 years have cause to visit the property, such children will be supervised at all times, and parents/caregivers' will be made aware that there is a swimming pool on the property which is unfenced. Being satisfied that in all of the circumstances, the situation at this property and in terms of this 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 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 November 2012, Council compliance staff undertook a swimming pool inspection at the property, and noted that whilst the swimming pool on the property was located in an area immediately adjacent to the dwelling, this area was not 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 Mrs McKenzie and it was agreed that a special exemption may be sought. On the basis of the remoteness of the property, the inaccessibility to the property, the absence of young children living at, near to or regularly visiting the property, it was agreed that an application for special exemption from the compliance requirements of the Act may be appropriate. Mrs McKenzie has now made such application for a special exemption from the compliance requirements of the Act, 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 open, does not have a lockable cover or the like and is located within an area immediately adjacent to the dwelling; access to the pool area is unrestricted by fencing to a compliant standard. The applicant is of the view that given the remoteness of the property, being in a rural environment and given the inaccessibility to the pool and pool area, then this provides sufficient means of ensuring protection from the likelihood of small children drowning in the pool and the applicants 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 Mr and Mrs McKenzie is in pasture, is approx 6.7377 hectares in area, and is located in a wholly rural environment, bordered by other similar large rural properties to all boundaries, with one boundary 'protected' by an inlet to the Taiharuru estuary. All of the other dwellings in the immediate vicinity are only occupied by persons over 14 years of age, as is the subject property. The swimming pool is located in a pool area surrounded on three sides by the dwelling, 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 is located on the property some 400m from the access and road boundary, and over 50m from the nearest boundary. (See aerial views attached hereto). Additionally, there is no ready access to the property and/or the pool from any public place. As such, it would be extremely unlikely that any unauthorised access to the dwelling and therefore the pool area would go unnoticed by the owner. The immediate pool area could only be accessed by children under 6 years who may be visiting the property, however the applicant and other adults would no doubt be in attendance to monitor such situations.

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 applicants in terms of young children on the property, then there would be no significant increase in danger to young children presented by exempting this particular swimming pool and with appropriate conditions attached to a special exemption, 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(s)/ occupant(s).
- 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 exempting 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(s) and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant(s).
- 2 That the applicant(s) 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(s) must inform any visitors to the property with young children under 6 years of age, 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(s) of the property, Council is satisfied that there would be no significant increase in danger posed to young children by exempting the swimming pool located at 401 Taiharuru Rd, Whangarei, 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 Mr and Mrs McKenzie, the owners and occupants of the property under the following conditions:

1. That the exemption is personal to the applicant(s) and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant(s).
2. That the applicant(s) 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(s) must inform any visitors to the property with young children under 6 years of age, 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 Darren and Tracey McKenzie.
2. Aerial View of Property at 401 Taiharuru Rd, Whangarei.
3. Photographs of Property & Swimming Pool.