

**Chairperson and Committee Members**  
REGULATORY MANAGEMENT COMMITTEE

26 NOVEMBER 2015

Meeting Status: **Public**

Purpose of Report: For Information

**SUBMISSIONS ON THE BUILDING (POOLS) AMENDMENT  
BILL AND THE PROPOSALS FOR NOTICES UNDER THE  
FOOD ACT 2014**

**PURPOSE OF REPORT**

- 1 This report outlines the Kāpiti Coast District Council officers submissions made in relation to the Building (Pools) Amendment Bill (refer Appendix One) and the Proposals for Notices under the Food Act 2014 (refer Appendix Two).
- 2 The submissions closed on the 5<sup>th</sup> and 6<sup>th</sup> of November 2015, with both submission periods being 5 weeks.

**DELEGATION**

- 3 The Regulatory Management Committee has the delegated authority to consider this paper.

*“7.37 Authority to review and approve any Kāpiti Coast District Council submission on any issue that is being made on behalf of Council, where such review and approval is requested by officers.”*

**BUILDING (POOLS) AMENDMENT BILL**

**BACKGROUND**

- 4 The Building (Pools) Amendment Bill has been with the Local Government and Environment Select Committee for consideration in 2013. The Committee has recently published its interim report and invited public submissions on the Bill. Kāpiti Coast District Council did make a submission to the Ministry of Business, Innovation and Employment on the consultation document on Making Pool Safety Easier, in May 2013 and therefore has been asked to provide feedback.
- 5 The Council has previously made submissions on both this Bill and to the Ministry of Business Innovation and Employment (MBIE) on the development of this Bill.
- 6 The Select Committee have proposed several changes as a result of feedback received through the submission process which include the following:
  - The Building (Pools) Amendment Bill looks to reduce compliance costs for residential pool and spa owners, while ensuring that child safety remains a priority. It would introduce a number of changes, including a mandatory requirement that retailers and manufacturers inform buyers of their obligations under the Act. It would also make Council inspection regimes consistent across the country.

- The Bill would amend the Building Act 2004 and repeal the Fencing of Swimming Pools Act 1987.

### **ISSUES AND OPTIONS**

- 7 The Compliance team have reviewed the proposal and fundamentally agree with the basic proposals; however Council officers believe that although the recommendations address issues going forward, the proposal does not take into account existing problems for pool owners theoretically covered by the Fencing of Swimming Pools Act (FOSPA) 1987. These issues are covered in the appendix. The significant areas of concern for the officers areas are:
- Retrospective considerations;
  - Waiver process to retrospective situations;
  - Boundary fence as a pool fence.
- 8 The submission prepared by Council officers and submitted on behalf of Council, focusses on existing issues encountered daily under the Fencing of Swimming Pools Act 1987 by pool owners and how the officers believe these can be addressed without reducing safety concerns and providing opportunities for officer discretion with tools within the Building Act 2004. These tools include Waiver modifications being suggested and the proposed elimination of an exemption process under FOSPA.

## **PROPOSALS FOR NOTICES UNDER THE FOOD ACT 2014**

### **BACKGROUND**

- 9 The proposed notices are made under the Food Act 2014 and relate to the following issues:
- components of the template food control plans that will be used by the majority of food businesses;
  - notices in relation to food control plans and national programmes;
  - notices in relation to recognised agencies and persons;
  - notices in relation to imported food and importers.

### **ISSUES AND OPTIONS**

- 10 The Environmental Health team reviewed the proposals and had significant concerns in relation to the following areas:
- The complexity of the plans;
  - Recognised agencies and persons;
  - Costs for Councils due to complex audits and increased tasks; and
  - Lack of consistency in naming documents and when referring to similar procedures.

- 11 The complexity and sheer volume of information in the proposed food control plans has changed significantly from what has been acceptable under voluntary implementation period and what we have been recently training our operators on. The concerns raised included:
- Potential issues for operators who have English as a second language and for those with reading or sometimes writing difficulties;
  - The increase in time it might take to undertake a realistic audit, given the new requirements and reminding MPI that a lot of these businesses are small mum and dad run businesses who do not necessarily employ many staff and will not cope with the time it will take for an audit;
  - Increased complexity for operators trying to decide which pages of the many plans apply to them;
  - The increased costs to the business, the ratepayer or both; and the potential for businesses to fail in the transition; and
  - The need for MPI to look at the fundamental basis of the food control plans, work to simplify them and support businesses with education and training.
- 12 In relation to Recognised Persons and Agencies, the notices have clarified that TA auditors that are currently approved will be the sole auditors for businesses on food control plans until at least 2019. However they have proposed that TA auditors will have to gain extra competencies to be approved to inspect or audit the lower risk national programme premises. The concerns raised included:
- MPI have previously advised that national programme premises will be subject to less regulation and lower costs and a requirement for auditors to gain extra competencies flies in the face of that;
  - National programme business account for approximately 60 of the 260 businesses in the district;
  - It would not make sense from a financial perspective for our officers to gain competencies to a higher level to inspect or audit our lower risk national programme premises. If other TA's feel the same way, there may not be enough private auditors to deliver the service; and
  - From March any one of these businesses changing hands would have to hire private auditors; and with private auditors there is likely to be a significant increase in costs; and
  - That the proposed system may have been over complicated.
- 13 It was submitted that it seemed that some tasks previously funded by MPI were now going to be devolved down to local government without any real consultation on the subject, and without any extra funding.
- 14 The rest of the submission related to consistency of naming documents and procedures in the various plans, and some technical errors in the documents.

## CONSIDERATIONS

### Policy considerations

15 There are no policy considerations with respect to these reports.

### Legal considerations

16 There are no legal considerations with respect to these reports.

### Financial considerations

17 There are no legal considerations with respect to these reports.

### Tāngata whenua considerations

18 There are no Tāngata whenua considerations with respect to these reports.

## SIGNIFICANCE AND ENGAGEMENT

### Degree of significance

19 There are no significant issues with respect to these reports.

### Publicity

20 There are no publicity issues with respect to these reports.

## RECOMMENDATIONS

21 That the Regulatory Management Committee notes and endorses the submission on the Building (Pools) Amendment Bill attached as Appendix One to Report-15-1762.

22 That the Regulatory Management Committee notes and endorses the submission on the Proposals for Notices under the Food Act 2014 attached as Appendix Two to Report-15-1762.

<b>Report prepared by</b>	<b>Approved for submission</b>	<b>Approved for submission</b>
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<b>Environmental Standards Manager</b>	<b>Group Manager Corporate Services</b>	<b>Group Manager Regulatory Services</b>

## ATTACHMENTS

Appendix 1 Kapiti Coast District Council submission on the Building (Pools) Amendment Bill.

Appendix 2 Kapiti Coast District Council submission on the Proposals for Notices under the Food Act 2014.

Appendix 1:



05 November 2015

Committee Secretariat  
Local Government and Environment  
Parliament Buildings  
**WELLINGTON**

Dear Sir/Madam

Thank you for the opportunity to make a submission on the Building (Pools) Amendment Bill.

Our Compliance team have reviewed the proposal and fundamentally agree with the basic proposals; however we believe that although the recommendations address issues going forward, the proposal does not take into account existing problems for pool owners theoretically covered by the Fencing of Swimming Pools Act (FOSPA) 1987.

Our submission focusses on existing issues encountered daily under FOSPA by pool owners and how we believe these can be addressed without reducing safety concerns and providing opportunities for officer discretion with tools within the Building Act 2004. These tools include Waiver modifications being suggested and the proposed elimination of an exemption process under FOSPA.

We acknowledge the LGNZ submission currently being prepared as well and also the submission being put forward by Wellington City Council.

Thank you again.

Yours sincerely

A handwritten signature in black ink, appearing to read "Kevin Currie", is written over a horizontal line. The signature is fluid and somewhat abstract, with some loops and a long tail extending to the right.

Kevin Currie  
**Group Manager, Regulatory Services**

### Submission for pools Building Act amendment proposals

Staff involved with swimming pool fence inspections at Kapiti Coast District Council, fundamentally agree with the proposed principals regarding the changes being suggested with swimming pool barrier requirements. However, they note that the proposed changes only address concerns going forward and do not consider pools that have been built prior to and after the implementation of the Fencing of Swimming Pools Act 1987 (FOSPA) (the Act). We believe that the original interpretation and understanding of FOSPA has changed due to subsequent case law and Determinations and that existing pools may not necessarily be capable of being signed off without major redesign and/or construction work for a pool owner. If these issues were to be addressed during this legislation review problems for pool owners can be avoided.

It is acknowledged that the suggestions below are high level, but also consider actual working elements of day to day compliance and we believe these need to be addressed within this review.

The following points are intended to highlight the opportunities staff believe exist with the proposed Building Act pools Bill.

- 1) **Retrospective considerations** - Staff agree with the basic proposals, however believe that although the proposed suggestions address future anomalies, it is unclear whether the proposals consider historical issues which are known to exist nationwide. Interpretations and rulings over the years, has changed views and decisions made by officers and continue to impact what officers "sign off" now, as to what they may have signed off when the Act commenced. The proposed Bill should take into consideration the impact of retrospective issues, which the current proposal does not seem to do.
- 2) **Waiver process for retrospective situations** – The Building Act waiver process will enable officers to apply a sensible approach to address instances of minor non-compliance under the new provisions of the proposed Act changes. By providing a waiver process retrospectively for pools prior to 1 January 2017, simple non-compliances could be easily addressed. We believe some mechanism to address historical anomalies is imperative to avoid potential significant cost to pool owners. If the waiver process does not work retrospectively, without the requirement for a Building Consent, then the current exemption process or something similar may be the only sensible way to address anomalies.
- 3) **Height/distance anomalies under FOSPA** – FOSPA provides for various distances between items or structures which create difficulties for pool owners seeking compliance. An example is a fence acceptable under FOSPA where horizontal rails are more than 900mm apart. Yet a structure or item that can be deemed as being capable of supporting a child needs to be 1200mm clear distance away. Hence it is possible to sign off a "non-climbable fence" with 900mm spaced rails; yet not sign off the same fence where adjacent to the barrier there is an item providing a foothold at the same height as the bottom rail without a clear 1200mm clear height/distance around it. Similarly an opening latch for a gate or door has a 1500mm requirement. Similarly a balcony or first floor/mezzanine overlooking a pool area requires a 1200mm high fence to comply with FOSPA, yet the barrier only needs to be 1100mm to protect from falling without a pool below?



- 4) **Boundary fences** – A boundary fence is perfectly acceptable under FOSPA and the Building Act. However, the moment a neighbour places something against the fence it can become non-compliant and an alternative method of preventing entering the pool area is required. There is an opportunity to address in the Bill by either eliminating boundary fences as a means of an acceptable barrier solution or some other way where the pool owner has some direct control over what occurs.
- 5) **Animal access (dog and cat flaps)** – Under FOSPA a cat flap with a dimension of 100mm x 100mm arguably does not comply as the opening across the diagonal now exceeds the 100mm set by the Act. Either such openings should be excluded when opening into a pool area or the dimension needs to be reconsidered for these types of instances and/or allowed for in a waiver opportunity as suggested above.
- 6) **Travel distance to easy pool access** – Often the design of buildings is such that the pool area immediately adjacent to the pool has a complying barrier with 1200mm fence height. However, it is sometimes possible to climb up onto a wall or structure and move along it until the access over the 1200mm complying barrier is easily circumvented. TA's are approaching this in various ways, for example; we currently look to create a 1200mm minimum non climbable zone around the access point created by the adjoining structure; but we believe this should be addressed under the proposed changes.
- 7) **Drop distance before requiring a complying barrier** – House balconies overlooking pool areas have complying barriers under the current Building Act at 1000mm or 1100mm in height however the FOSPA has a requirement of 1200mm. The drop from a balcony (or similar) may be prohibitive and be enough to deter a child from seeking access to the pool area. This is particularly the case with retrospective pool scenarios and either a requirement for a complying barrier should be established or the overall drop to the pool area should be considered as a means for a waiver?
- 8) **Status of pool inspectors** – A number of TA's have specific swimming pool inspectors trained under FOSPA requirements. However, if the Bill is introduced as currently proposed, it is possible that only qualified Building Officers will be able to sign off pool areas. This could create resourcing issues for TA's and add significant training requirements. It seems logical that the Bill/amendment should provide for "pool inspector" without the requirement for training on Building Code and other technical areas of BCA work.
- 9) **Existing pool Policies** – A number of TA's have existing or proposed "Pool Policies" that address options for considering solutions to existing pool situations, such as; allowing high level bolts to sliding doors onto immediate pool areas. These Policies provide pragmatic solutions that TA's have considered as sensible solutions to buildings designed around pool areas. We believe the proposed changes should acknowledge these policies and/or provide for them via a waiver and policy acknowledgement section within the proposed Bill.

We acknowledge that the items above at a very practical level as stated earlier; but believe that they are very relevant and arguably more pertinent with respect to the review, in that

they relate to 'day to day' realities of pool compliance and although the changes being proposed will assist in many ways going forward; they do not acknowledge the fundamental issues pool officers face every day.

The Pool Compliance team at Kapiti Coast District Council also wish to acknowledge the submission by Wellington City Council, which aligns with our views on the proposed Bill.