



## Determination 2011/071

# Dispute regarding the compliance of outward opening doors to a pool area at 19 Wright Road, Point Chevalier

### 1. The matter to be determined

- 1.1 This is a Determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department.
- 1.2 The parties to the determination are:
- G Tarrant and D Millar, the owners of the building (“the applicants”)
  - Auckland Council, carrying out its duties and functions as a territorial authority and a building consent authority (“the authority”).
- 1.3 The determination arises from a dispute between the parties about the Building Code compliance of three sets of doors (D04, D05, and D06) (“the doors”) that open to a pool area.
- 1.4 The matter to be determined<sup>2</sup> is whether proposed building work, being the doors which open outward onto the pool area, complies with clause F4 of the Building Code.
- 1.5 In this determination:
- The Building Act 2004 with its sections is referred to as sections of the Act (“the Act”)
  - The Fencing of Swimming Pools Act 1987 with its sections is referred to as sections of the FOSP Act (“the FOSP Act”).

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<sup>1</sup> The Building Act 2004, Building Code, compliance documents, past determinations and guidance documents issued by the Department are all available at [www.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Department on 0800 242 243

<sup>2</sup> Under section 177(1)(a) of the Act

- 1.6 In this determination, I will refer to the following legislation and standards, the relevant parts of which are set out in Appendix A.
- Clause F4: Safety from Falling of the Building Code, referred to as Clause F4.
  - The Schedule to the FOSP Act (“the Schedule”), with its clauses referred to as clauses of the Schedule.
  - NZS 8500: 2006: Safety Barriers and Fences around Swimming Pools, Spas and Hot Tubs, referred to as NZS 8500.

- 1.7 In making my decision, I have considered the submissions of the parties and other evidence in this matter. I have not considered any other aspects of the Act or of the Building Code.

## **2. The background and building work**

- 2.1 The proposed building work is the construction of a new house, garage and swimming pool, with three sets of doors that open outwards to a pool area from a hall and an office.

- 2.2 The applicants lodged an application for a building consent on 10 February 2011.

- 2.3 On 15 February the authority wrote to the applicants identifying matters to be addressed before the consent could be issued. With respect to the pool area, the authority requested the applicants provide the following:

- Highlight the pool area proposed with cross-section through the office to kitchen.
- As per the pool fencing indicated on plans pool edge is forming a barrier with pond area, arrange to provide cross-section to confirm it meets 1200mm high barrier.
- If the pool edge is forming an infinity edge it needs to be 45 degrees and not 35 degrees.
- Details of pool fencing proposed.
- Details of hardware proposed for the doors leading to pool area including D04 (French doors can not operate as self closing and self latching doors).
- Window opening restriction for the kitchen window if sill less than 1200mm high.

- 2.4 It appears that the authority subsequently approved amended plans and a building consent was granted for a revised proposal on 11 March 2011. With respect to the doors, the consented plans show:

- self closing hardware concealed in the top edge of door frame
- self latching door handles at 1500mm above finished floor level.

- 2.5 The authority also annotated the plans to state ‘All doors leading to pool area shall open away from pool. Agent/owner [the applicants] confirms it.’

- 2.6 The applicants considered that the annotation constituted a refusal to issue a building consent for the doors to open outward onto the pool area (as was shown on the amended plan re-submitted with the consent application).

2.7 The application for a determination was received by the Department on 10 May 2011.

### 3. The submissions

3.1 Along with the application for determination, the applicants provided a letter explaining the proposal for an alternative solution that meets the requirements of Building Code Clauses F4.3.4 and F4.3.5.

3.2 The applicants also provided a floor plan of the proposed building and a letter that they had provided to the authority requesting a special exemption under section 6 of the FOSP Act for the doors to open outwards onto the pool area.

3.3 Following a request from the Department, the applicants also provided further drawings and sections of the pool area and the doors.

3.4 The Department requested the authority provide information to support the determination process. The authority provided a response on 2 June 2011, noting that:

The [authority was] concerned about the double doors (D04) from the office that open on to the immediate pool area. Also the number of doors was concerning. As the doors were not readily able to be self closing or latching the applicant was referred to section 2.3.2(f) of NZS 8500 as a solution.

The applicant was reluctant to provide a cover and cited costs as a reason.

It was also indicated that if the applicant wished to retain the double doors without the cover required by the Standard a special exemption would be required.

Subsequently amended plans ... were approved and Consent (2011/489) issued [on 11 March 2011] indicating the doors opening away from the pool with self closing and latching devices.

3.5 On 7 July 2011, I issued a draft determination to the parties for comment. The applicant accepted the draft without comment.

3.6 In a response dated 18 July 2011, the authority did not accept the draft determination, and made the following comments:

- The Schedule previously had guidance from the Government's Department of Internal Affairs – Guidelines to Territorial Authorities, editions dated 1990 and 1999, which stated:

The reason for prohibiting gates and doors from opening towards the pool, is that any gate or door left unlatched cannot be operated by a young child who merely leans against it. It is more difficult for young children, especially those who are unsteady on their feet, to open a gate or door if they have to pull against the required self-closing device.

- The requirement of the Schedule is similar to the requirements for gates and doors in the Australian standard AS1926.1 and AS1926.2 and the Queensland Government's Swimming pool safety guidelines April 2010 4<sup>th</sup> edition.
- In a previous determination, Determination 2005/125, the Department concluded that the doors in question did not comply with Clause F4.3.4(f) because they opened outwards towards the pool.

- NZS 8500 was ‘not a compliance document’ and ‘does not operate as a tool to enable compliance with the building code.’

## 4. Discussion

### 4.1 The relationship between the FOSP Act and the Building Code

4.1.1 The FOSP Act requires<sup>3</sup> pools to be protected by a fence that complies with the requirements of the Building Code<sup>4</sup>. Clause F4 of the Building Code requires that pools<sup>5</sup> have barriers. The barriers are required to achieve the performance requirements of Clause F4.

4.1.2 In order to meet the requirements of the FOSP Act and the Building Code, there are three ways of providing a solution:

#### 1. Propose a solution that meets the requirements of the Schedule.

The Schedule has the status of a compliance document<sup>6</sup> so any solution that meets the requirements of the Schedule is deemed to comply with the Building Code. The Schedule is a prescriptive solution and is one way, but not the only way, of complying with the Building Code.

#### 2. Propose an alternative solution that meets the requirements of Clause F4.

The Building Code is performance based and sets out the minimum performance requirements. It does not specify how to achieve this performance (there are no detailed requirements for design and construction).

The safety measures set out in NZS 8500 could be used to inform an alternative solution. While NZS 8500 is not referenced as a means of compliance in the Building Code, the standard was approved by the Standards Council and as such has significance as a means of providing robust solutions.

An exemption under section 6 of the FOSP Act is not necessary if the solution complies with the Building Code (refer to 3).

#### 3. Propose a solution that requires an application for an exemption under section 6 of the FOSP Act.

Although I do not have jurisdiction under the FOSP Act, I note a territorial authority may grant a special exemption under section 6 of the FOSP Act. In considering an exemption, a territorial authority is required to be satisfied ‘that such an exemption would not significantly increase danger to young children’.

A solution incorporating an exemption would also require a waiver of Clause F4, as the requirements of Clause F4 are not met in full.

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<sup>3</sup> Refer to section 8(1) of the FOSP Act.

<sup>4</sup> Other than those pools exempted under section 5 of the FOSP Act.

<sup>5</sup> With a depth of water exceeding 400mm under Clause F4.3.3 of the Building Code.

<sup>6</sup> Under section 13B of the FOSP Act.

## 4.2 The Building Code compliance of the proposed pool barrier

- 4.2.1 The matter for consideration is whether the three door sets that are proposed to provide part of the pool barrier comply with Building Code Clause F4 as an alternative solution. The Building Code is a performance-based code and any alternative solution to it must comply with, or exceed, the performance requirements set out in its various clauses.
- 4.2.2 The doors in question have the following characteristics:
- self closing and self latching mechanisms
  - 2500mm and 2850mm high and pivot to open
  - lockable door latches above 1500 from the finished floor level
  - predominantly open outward, but also have a 300mm section of each door that opens inwards.
- 4.2.3 The plans showing the proposed pool barrier state:
- Pool fencing to comply with NZS 8500 requirements
  - D04-D06 self-closing to comply with pool fencing requirements
- 4.2.4 Clauses F4.3.4 and F4.3.5 allow solutions with doors forming part of a pool barrier. They provide flexibility for compliance with Clause F4, keeping in mind that the Schedule provides only one possible solution and the Building Code is a performance-based document.
- 4.2.5 I acknowledge the authority's comments about the doors and recognise that the inward opening doors prescribed by the Schedule provide a safeguard if the automatic latch malfunctions.
- 4.2.6 However, in this case, the outward opening doors are tall and therefore heavy, requiring a strong heavy duty door closer to return the door to a latched position. This will make it difficult for a child under the age of six to push the door out far enough to move through it. While this is similar for an inward opening door, I note that an inward opening door would have a pull handle providing a grab point for a child as against a push plate for the outward opening doors. In my view, the heavy closers compensate for this, and the outward opening doors in this case do not increase danger to children under the age of six years old. I note that each determination is conducted on a case by case basis.
- 4.2.7 Accordingly I consider that the characteristics of the doors, as part of the pool barrier, meet the requirements of the relevant clauses of the Building Code (F4.3.4 and F4.3.5).
- 4.2.8 As noted in paragraph 4.1, if the Building Code requirements are met then so too are the requirements of the FOSP Act.
- 4.2.9 At the same time, I consider that the doors also meet the requirements of NZS 8500. Until NZS 8500 is cited in the compliance document for Clause F4, it does not have the legal status of a compliance document. However NZS 8500 has been approved by the Standards Council to be a New Zealand Standard and as such must command

respect. The authority may well compare any solutions proposed by the applicants with those offered in NZS 8500. The above remarks must not be taken to mean that NZS 8500 is an Acceptable Solution for Clause F4. That cannot be the case unless and until F4/AS1 is formally amended in accordance with section 29 of the Building Act.

- 4.2.10 I do not accept the authority's contention that NZS 8500 cannot be used as a tool to determine compliance with the Building Code. The authority's stance, in effect, means that only the means of compliance are provided for in the Compliance Documents, and that any solutions outside this will not be accepted. This is contrary to the performance-based Building Code.

## **5. Decision**

- 5.1 In accordance with section 188 of the Act, I determine that proposed building work, being the doors which open outward onto the pool area, complies with Clause F4 of the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 21 July 2011.

John Gardiner  
**Manager Determinations**

## Appendix A: The legislation, the Acceptable Solution, and NZS 8500

### A1. Clause F4

The Building Code requires:

F4.3.3 Swimming pools having a depth of water exceeding 400mm, shall have barriers provided.

F4.3.4 Barriers shall:

- (a) Be continuous and extend for the full height of the hazard,
- (b) Be of appropriate height,
- (c) Be constructed with adequate rigidity
- (d) Be of adequate strength to withstand the foreseeable impact of people and, where appropriate, the static pressure of people pressing against them,
- (e) Be constructed to prevent people from falling through them, and
- (f) In the case of a swimming pool, restrict the access of children under the age of 6 years to the pool or the immediate pool area,
- (g) Restrict the passage of children under the age of 6 years of age when provided to guard a change of level in areas likely to be frequented by them

...

F4.3.5 Barriers to swimming pools shall have in addition to performance F4.3.4:

- (a) All gates and doors fitted with latching devices not readily operated by children, and constructed to automatically close and latch when released from any stationary position 150mm or more from the closed and secured position, but excluding sliding and sliding-folding doors that give access to the immediate pool surround from a building that forms part of the barrier, and
- (b) No permanent objects on the outside of the barrier that could provide a climbing step.

### A2. The Schedule requires

#### 8 Gates and doors

Every gate or door shall be so constructed as to comply with the relevant requirements of clauses 1 to 7 of this Schedule, and shall be so mounted that—

- (a) It cannot open inwards towards the immediate pool area:
- (b) It is clear of any obstruction that could hold the gate or door open and no other means of holding the gate or door open is provided:
- (c) When lifted up or pulled down the gate or door does not release the latching device, come off its hinges, or provide a ground clearance greater than 100 mm.

### A3. NZS 8500 requires:

the pool shall be enclosed by a isolation barrier where a wall of a house contains a child resistant window and/or child resistant doorset or doorsets, regardless of the direction of door swing.

Under NZS 8500, child-resistant doorsets are required to meet a number of requirements.

#### A5.1 The NZS 8500 requirements for child resistant doorsets are:

### 3.7 Child-resistant doorsets

3.7.1 Child-resistant doorsets shall comply with all of the following requirements.

- (a) Doors shall be fitted with a self-latching device that will automatically operate on the closing of the door and will prevent the door from being re-opened without manually releasing of the device;
- (b) Every door shall be fitted with a device that will automatically return the door to the closed and latched position when the door is stationary and 150mm from the closed and secured position;
- (c) The release for the latching device on the internal (house) side of the door shall be located not less than 1500mm above the floor;
- (d) There shall be no footholds wider than 10mm on the door or its frame between the floor and 1000mm above the floor;
- (e) The closing and latching of the door shall comply with 4.6
- (f) Horizontal members, vertical members, perforated materials or mesh, and finish shall comply with this Standard;
- (g) The doorset shall comply with the performance requirements for a gate for strength and rigidity of openings and strength of gate ...;
- (h) Doors from the house may swing in either direction; and
- (i) Pet doors to the immediate pool area are prohibited.

### 4.6 Closing and latching of doors

Every door shall be fitted with a device that will automatically return the door to the closed position and operate the latching device.

In addition to 3.7 each door shall:

- (a) Close and latch from a stationary point 150mm from the closed and secured position under the natural weight of the door; and
- (b) Have the latching device, door jamb and striker plate to which the door is attached capable of retaining a door in the closed position.

**Appendices C, D, and E of NZS 8500** set out the methodology for testing for strength and rigidity of barrier/fencing openings, posts and footings and barrier fencing components