



Determination 2010/035

Dispute about a notice to fix for safety barriers to a swimming pool area at 529 Linwood Road, Karaka



1. The matters to be determined

- 1.1 This is a Determination under Part 3 Subpart 1 of the Building Act 2004¹ 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 this determination are:
- the building owners, Mr and Mrs Brown (“the applicants”) acting through a barrister (“the applicants’ legal adviser”)
 - the Franklin District Council carrying out its duties and functions as a territorial authority and a building consent authority (“the authority”).
- 1.3 The dispute between the parties relates to the decision of the authority to issue a notice to fix in respect of a house with an adjoining swimming pool. The reason given by the authority for issuing the notice was because the swimming pool barrier was not erected in accordance with the building consent and that there was a failure to comply with Clause F4 “Safety from falling” of the Building Code (First Schedule, Building Regulations 1992).

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Department are all available at www.dbh.govt.nz or by contacting the Department on 0800 242 243

- 1.4 I therefore take the view that the matter for determination² is whether the decision of the authority to issue the notice to fix was correct. In order to determine this matter I must consider whether the pool barriers as constructed and the lack of a barrier at the top of a set of two retaining walls complies with Clause F4 of the Building Code.
- 1.5 In making my decision I have considered the submissions of the parties and the other evidence in this matter. In making my decision I have not considered any other aspects of the Building Acts or of the Building Code.
- 1.6 In this determination, for the purposes of discussing the legislation, compliance documents, and standards relevant to this determination, I will refer to the following:
- The Building Act 2004 (“the current Act”)
 - The Building Act 1991 (“the former Act”)
 - Clause F4 “Safety from Falling” of the Building Code, with its clauses referred to as Clauses
 - The Fencing of Swimming Pools Act 1987 (“the FOSP Act”)
 - The Schedule to the FOSP Act (“the Schedule”)
 - New Zealand Standard NZS 8500: 2006 “Safety Barriers and Fences around Swimming Pools, Spas and Hot Tubs”.
- 1.7 The relevant parts of this legislation and documentation that applies in this determination are included in Appendix A.

2. The background

- 2.1 On 29 April 2003 the authority issued a building consent (number 48266) under the former Act for a house that included a swimming pool, based on a certificate provided by a building certifier.
- 2.2 The building certifier carried out various inspections of the building work, but these did not apparently include the swimming pool area.
- 2.3 On 8 July 2005, the building certifier wrote to the then owners informing them that, as the building certifier was no longer able to continue certifying building work, the inspection records for the building project had been passed onto the authority. The owners were advised to contact the authority and request that further inspections take place.
- 2.4 On 7 January 2009, the authority carried out an inspection regarding the barriers surrounding the swimming pool. I am not aware of why there was such a delay between the advice given by the building certifier regarding inspections and the date when an inspection was actually undertaken by the authority. I note that the applicants were in possession of the property when the inspection was made.
- 2.5 The notes relating to the authority’s inspection stated ‘Fence completely missing not as building consent plans’. There was also a query regarding the secure latching and hinging of the doors in the walls of the building adjoining the pool area. The authority issued a notice to fix dated 12 January 2009 to the applicants. The notice stated:

² In terms of section 177(b)

Particulars of contravention or non-compliance

- Failure to comply with Section 40 of the Building Act 2004 in that the fence to the swimming pool has not been erected in accordance with Building Consent No. 48266.
- Failure to comply with Clause F4 of the NZ Building Code.

To remedy the contravention or non-compliance you must:

- Erect a complying pool fence on the eastern side of the immediate pool area as per the Building Consent drawings.

2.6 The application for a determination was received by the Department on 14 August 2009. However the balance of the relevant information was not received until late October 2009.

3. The pool barriers

3.1 The relevant parts of the house and the swimming pool as set out in the consented drawings are shown in Figure 1.

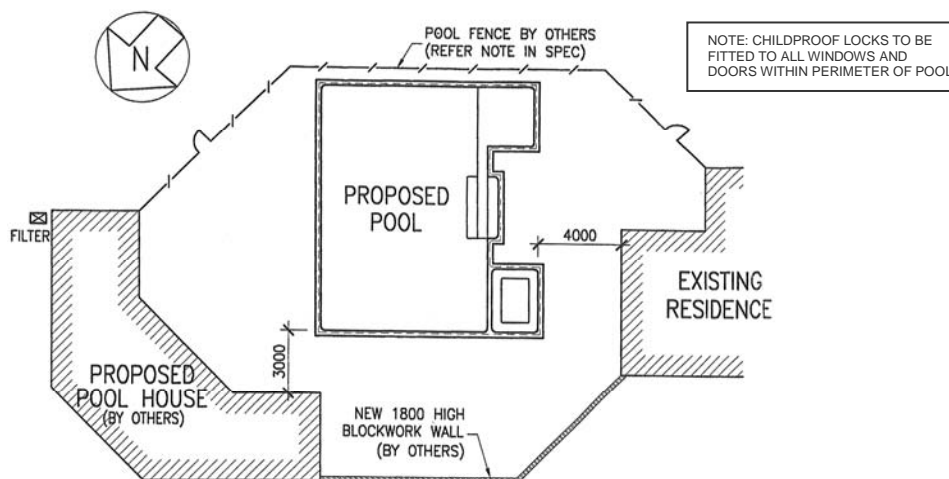


Figure 1: The house and swimming pool as consented.

- 3.2 The pool area as constructed is shown on Figure 2. The pool area has been extended in a northwest direction to form a grassed area extending some 12.5 metres from the edge of the pool. The longitudinal perimeter is 57 metres long and is retained by what is referred to as a 'ha-ha'.
- 3.3 The ha-ha is formed from two timber-framed retaining walls constructed one above the other. The upper wall has an average height of 800mm and a maximum height of 1000mm. The lower wall, which retains a platform 800mm wide, has an average height of 700mm and a maximum height of 1400mm for some 8 metres of its length. The lower wall is also protected by an electrified wire that is supported on metal brackets projecting from the face of the wall. There is no protective barrier constructed at the top of the upper retaining wall and a farm gate adjoins one end of the ha-ha. A section through the retaining walls is shown in Figure 3.

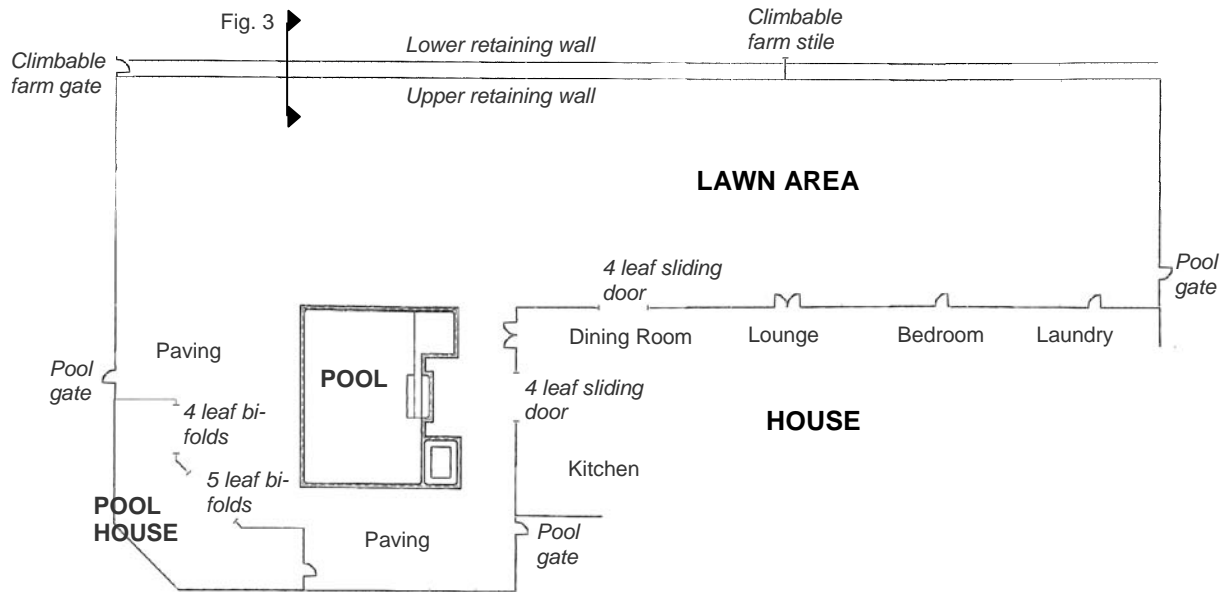


Figure 2: The house and swimming pool as constructed

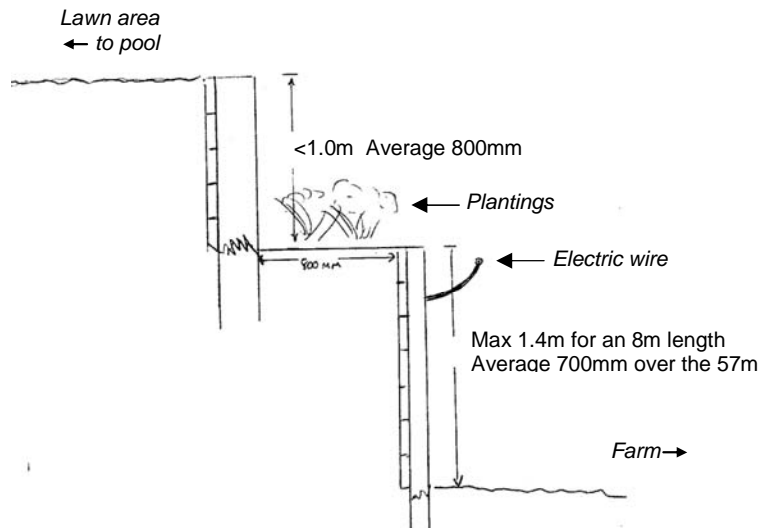


Figure 3: Section through the ha-ha

- 3.4 The remaining boundaries of the pool area are enclosed by three sets of proprietary vertical metal rail pool fencing, each containing a matching pool gate, and I note that one of these gates is no longer self-closing. There is no dispute that these particular barriers, with the exception of the one gate, comply with Clause F4.
- 3.5 The external walls of the house, which form part of the pool barriers, include two single hinged doors, two pairs of hinged doors, and two sets of four-leaf sliding/folding doors. The doors are lockable but none are self closing. In addition, some of the door locks are situated less than 1500mm above the finished floor level.

4. The submissions

- 4.1 In its application to the Department, the applicants noted that the determination related to the two matters set out in the notice to fix.
- 4.2 The applicants supplied copies of the notice to fix and a photograph showing the ha-ha elevation.

4.3 In an email to the Department dated 8 October 2009, the authority noted that the only issue was ‘the interpretation of F4/AS1 Fencing and Swimming Pools or safety from falling over [1 metre]’. As the building consent was for the pool and other work, and as the inspections had been undertaken by the building certifier, the authority did not wish to issue a code compliance certificate or a certificate of acceptance.

4.4 The authority supplied copies of:

- the plans and consent documentation relating to the pool
- the notice to fix
- the building certifier’s documentation and the authority’s inspection documents
- a set of photographs showing aspects of the pool area.

4.5 The draft determination was sent to the parties for comment on 26 January 2010. The authority accepted the draft without comment. The applicants declined to comment despite being given an extended period in which to do so.

5. The on-site verification

5.1 I engaged an independent person to visit the site to verify the configuration of the pool barriers that are subject to this determination, including the description of the construction of the various barriers, gates, and the ha-ha. With regard to the barriers, it was noted that:

- one pool gate was no longer self-closing
- the doors from the house opening onto the pool area did not have self closers, and though all the doors were lockable, some of the door locks were less than 1500mm above the finished floor level
- a farm gate adjoining one end of the ha-ha could allow climbing access to the pool area from the bottom of the retaining walls, providing a means to circumnavigate the ha-ha
- although the electric fence to the ha-ha provided some deterrence it could be switched off.

5.2 It was also observed that the property was a large one set in a rural environment that had electronic gates for access, and plenty of areas beyond the pool that children could frequent.

6. The FOSP Act considerations

The relationship between the FOSP Act and the Building Code

6.1 I accept that I have no jurisdiction under the FOSP Act, but I note that it does not specifically require that fencing (including gates and doors) must comply with the Schedule. What is required under section 8(1) of the FOSP Act is that fencing must comply with the Building Code subject to any exemption granted under section 6 of the FOSP Act. The FOSP Act also provides in effect that fencing complying with the Schedule is deemed to comply with the Building Code. Exemptions granted under section 6 of the FOSP Act are exemptions ‘from some or all of the requirements’ of the FOSP Act.

6.2 In a case considered by the High Court³, the Court held:

Under the Schedule to the [FOSP] Act for gates and doors in buildings forming part of the fence, the requirements of clauses 8 to 10 apply unless and to the extent they are exempted and the required locking device is fitted. There is no specific exemption under the Schedule for sliding doors. All doors are treated alike and may be subject to exemption under clause 11.

6.3 Sections 22 and 23 of the Building Act provide, in effect, that building work complying with a compliance document must be accepted as complying with the relevant provision of the Building Code; however that is not the only means of establishing compliance. Accordingly, if pool fencing complies with the Building Code, then it complies with the requirements of the FOSP Act even if it does not comply with the Schedule. In that case there would be no need for an exemption under section 6 of the FOSP Act.

Exemption under the FOSP Act

6.4 An exemption from clause 11 of the Schedule can be granted if the authority is satisfied that compliance with clauses 8 to 10 of the Schedule is ‘impossible, unreasonable, or in breach of any other Act...’. The FOSP Act provides that an authority has a general power of exemption under section 6, provided that such an exemption ‘would not significantly increase danger to young children’ and section 6(2) allows the authority to impose conditions.

6.5 I repeat that, as I have no jurisdiction under the FOSP Act, the above remarks are not binding.

7. Discussion

Safety from falling

7.1 The various barriers, including the doors forming a part of the pool barrier, are new building work and must comply with Clause F4 of the Building Code. In this respect, the ha-ha construction must also be code-compliant as to protection from falling as well as affording protection to children under 6 years of age who may otherwise enter the pool area unaccompanied.

7.2 Ignoring the platform that is formed at the top of the lower of the two retaining walls, the total fall height from the lawn level to the foot of the lower wall would be in the region of some 2 metres. The maximum fall height from the platform to the foot of the lower wall is a maximum of 1400mm. So both this height and the total fall height exceed the 1000mm requirement of Clause F4. However, the upper wall has a fall height onto the landing within the limits set out in that clause.

7.3 In Determination 2008/81, I referred to a court case⁴ that concerned a platform that was built adjacent to cliffs that were in the order of 30 metres high and with a slope variously described as either 42 degrees or between 45 and 50 degrees. As described in the judgment:

Subsequently, [the Defendant] built two further retaining walls in front of the platform and has built up the soil level immediately below the front of the platform to 0.8 metres in the hope that it now complies with the minimum fall requirements.

³ Waitakere City Council v Hickman 1/10/2004, Randerson J, HC Auckland CIV 2003-404-7266

⁴ Gisborne District Council v Neil Weatherhead and Sharon Margaret Dunn 29/5/98, Judge Frater DC Gisborne CRN7016006603

The District Court held the view that this did not nor never did comply and went on to say:

. . . Secondly, it seems to me that the slope of the cliff face is such that if anyone fell from the platform or the handrail level they would be unlikely to fall neatly and directly into the small space of less than 1 metre between the edge of the platform and the outer retaining wall. The more likely scenario is that they would fall down the hillside onto the rocks below.

- 7.4 In Determination 2008/81, I accepted that the 600 to 800mm dimension from the edge of a deck to the top of a 45 degree retaining wall was insufficient for the deck to comply with Clause F4.3.1, unless it was provided with an adequate barrier.
- 7.5 In the current situation the landing space is 800mm wide and the wall faces are vertical. Therefore, in accordance with my findings in Determination 2008/81, I consider that the landing width is not adequate to arrest a fall from the lawn level to the base of the lower retaining wall. Accordingly, I am of the opinion that an adequate barrier must be constructed at the lawn level for the requirements of Clause F4.3.1 to be met.

The fenced-in pool area

- 7.6 The Building Code refers to ‘the immediate pool area’, in clause F4.3.4(f), and ‘the immediate pool surround’, in clause F4.3.5(a), but does not give definitions of those terms. In addition, section 2 of the FSOP Act defines ‘the immediate pool area’ as meaning ‘the land in or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried out in conjunction with the use of the pool’. That term was considered in a previous court case⁵ and I consider that the following extracts from that decision are relevant to this determination:

[29]

- e) . . . There must be sufficiently close nexus between the activity or purpose and the use of the pool.
- f) Whether an activity or association is sufficiently connected with the use of the pool is a matter of degree. Activities which are carried on independently of the use of the pool or which have only a remote or indirect association with the use of the pool are to be excluded from the immediate pool area which must be fenced. Examples of activities which would not usually be regarded as being carried on in conjunction with the use of the pool include clothes lines, vegetable gardens, vehicle or pedestrian access ways, and planting for landscape purposes.
- g) On the other hand, there are activities which would ordinarily qualify as being carried on in conjunction with the use of the pool. Examples include the use of pool furniture, changing sheds, pumps or pool maintenance equipment, sunbathing areas, and diving boards or other pool equipment.

[34]

. . . It is not possible to define with precision the width (say in metres) of the immediate pool area. The width will depend upon the circumstances of each case. The further away one moves from the edge of the pool, the less likely it will be that an associated activity or purpose can be properly be said to be carried on “in conjunction with” the use of the pool and the less likely it is that the activity will be

⁵ Waitakere City Council v Hickman 1/10/2004, Randerson J, HC Auckland CIV 2003-404-7266

in sufficient proximity to the pool to be properly regarded as within the “immediate” pool area.

- 7.7 In Determination 2003/6, the Building Industry Authority (the predecessor to the Department) took the view that:
- ...the term “immediate pool surround” in the building code means an area around the pool into which it would be unsafe for young children to go unless someone able to protect them is also in the same area.
- 7.8 I consider it appropriate to apply this approach to this case.
- 7.9 From the dimensions provided by the expert, and making a comparison with the original consented plans, I note that there is approximately 765m² of additional grassed areas within the pool area. This lawn comprises a relatively large level surface that can accommodate a variety of activities that would not be considered as being carried on ‘in conjunction with the use of the pool’. Based on this factor, the size of the area, and the distance of the perimeter from the pool edge, I am of the opinion that the tests for compliance as set out in the Hickman decision and the previous relevant determination decisions regarding the “immediate pool surround” requirements, have not been met.
- 7.10 In addition, there are two external access ways leading to the external doors of the property that pass through the pool area. Again, this situation does not qualify as an ‘immediate pool area’ as defined in the Hickman decision. Also, as set out in section 2.9 of NZS 8500, ‘access to the house from outside the property shall not be through the pool area’. These are further considerations that confirm my opinion that the pool area does not meet the necessary compliance requirements in this case.
- 7.11 Based on these observations, I am of the opinion that the pool area as constructed at present does not meet the requirements of the Building Code.
- The code-compliance of the house doors accessing the pool area**
- 7.12 The access doors from the house to the pool area, which lack self closers and in some cases have door locks less than 1500mm above finished floor level, are required to comply with Clause F4.3.4(f) and ‘restrict the access of children under six years of age’.
- 7.13 To comply with this clause, the hinged doors can be provided with self-latching and self-closing systems, but that does not prevent the use of other means to achieve compliance.
- 7.14 While the sliding folding doors come within the exemption of clause F4.3.5(a) and therefore are not required to be self-closing and self-latching, they are still required to comply with clause F4.3.4(f).
- 7.15 I note that compliance with an Acceptable Solution is not the only means of complying with the corresponding provision of the Building Code. Because F4/AS1 does not consider how sliding doors can be made compliant, any system must be considered as a proposed alternative solution.
- 7.16 In this case, there are four situations where the hinged doors that open onto the immediate pool area do not have automatic closers. With regard to the two sets of sliding/folding access doors, none of the additional protective requirements of NZS 8500 appear to have been provided. The unlocking, opening, or leaving open of any one of the doors in question would be a breach of the pool barrier.

- 7.17 The effectiveness of the pool barrier relies on the behaviour of the people using the doors from the various rooms in the house. I am therefore of the view that none of these doors meets the requirement of Clause F4 to restrict the access of children under six years of age.

The issuing of the notice to fix

- 7.18 The authority has issued a notice to fix that noted that there was a failure to comply with Clause F4 and that the swimming pool fence was not built in accordance with the building consent.
- 7.19 I note that the building consent was issued on 29 April 2003 under the former Building Act. Therefore, in accordance with section 436 of the current Act, any code compliance certificate issued in relation to that consent must be considered by the authority in terms of compliance with the Building Code and not in terms of the building consent. In addition, while the authority notes that there is a failure to comply with Clause F4, there is no requirement on the notice to fix to provide any protection to the top of the ha-ha. I am therefore of the opinion that the wording of the notice to fix was incorrect and that the authority should modify it accordingly.

8. What is to be done now?

- 8.1 It is not for me to say how the pool barriers or the lack of a fence above the ha-ha are to be brought to compliance with the Building Code. That is for the owner to propose and for the authority to accept or reject.
- 8.2 Clause F4.3.5 allows solutions to maintaining a pool barrier for doors, other than doors that are self-closing and self-latching. It provides 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. It is for the authority to consider and accept an appropriate solution, with the Schedule setting the safety standard.
- 8.3 As discussed in Determination 2009/76, 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 was approved by the Standards Council on 3 November 2006 to be a New Zealand Standard and as such must command respect as representing the consensus of the major national bodies represented, arrived at after a process of public consultation. I note that NZS 8500 had not been issued at the time the first building consent was issued; however, 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.

9. The decision

9.1 In accordance with section 188 of the Act, I hereby determine that:

- neither the pool barriers, including the hinged and sliding doors from the house, nor the lack of a barrier to the top of the two sets of retaining walls, comply with Clause F4 of the Building Code
- the authority was correct to issue a notice to fix, however the content of the notice to fix should be modified to take account of the findings of this determination.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 27 April 2010.

John Gardiner
Manager Determinations

Appendix A

The legislation, the Acceptable Solution, and NZS 8500

The provisions of the relevant documents are:

The current Building Act:

- 436 Transitional provision for code compliance certificates in respect of building work carried out under building consent granted under former Act**
- (1) This section applies to building work carried out under a building consent granted under section 34 of the former Act.
 - (2) An application for a code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed.
 - (3) For the purposes of subsection (2), section 43 of the former Act—
 - (a) remains in force as if this Act had not been passed; but
 - (b) must be read as if—
 - (i) a code compliance certificate may be issued only if the territorial authority is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted; and
 - (ii) section 43(4) were omitted.

The Building Code:

CLAUSE F4—SAFETY FROM FALLING

OBJECTIVE

F4.1 The objective of this provision is to safeguard people from injury caused by falling.

FUNCTIONAL REQUIREMENT

F4.2 Buildings shall be constructed to reduce the likelihood of accidental fall.

PERFORMANCE

F4.3.1 Where people could fall 1 metre or more from an opening in the external envelope or floor of a building, or from a sudden change in level within or associated with a building, a barrier shall be provided.

F4.3.4 Barriers shall:

- (a) Be continuous and extend for the full extent 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
- (g) Restrict the passage of children under 6 years of age when provided to guard a change of level in areas likely to be frequented by them.

Provisions	Limits on application
F4.3.3 Swimming pools having a depth of water exceeding 400 mm, shall have barriers provided.	Performance F4.3.3 shall not apply to any pool exempted under section 5 of the Fencing of Swimming Pools Act 1987.

<p>F4.3.4 Barriers shall:</p> <p>(a) Be continuous and extend for the full height of the hazard,</p> <p>(b) Be of appropriate height,</p> <p>(c) Be constructed with adequate rigidity,</p> <p>(d) Be of adequate strength to withstand the foreseeable impact of people and, where appropriate, the static pressure of people pressing against them,</p> <p>(e) Be constructed to prevent people from falling through them, and</p> <p>(f) In the case of a swimming pool, restrict the access of children under 6 years of age to the pool or the immediate pool area,</p> <p>(g) Restrict the passage of children under 6 years of age when provided to guard a change of level in areas likely to be frequented by them.</p>	<p>Performance F4.3.4(f) shall not apply to any pool exempted under section 5 of the Fencing of Swimming Pools Act 1987.</p>
<p>F4.3.5 Barriers to swimming pools shall have in addition to performance F4.3.4:</p> <p>(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 150 mm 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</p>	

The Acceptable Solution, F4/AS1 (second edition) states:

3.0 Swimming pool barriers

3.1 Fencing

3.1.1 Fencing for swimming pools shall be constructed to no lesser standard than is required by the Schedule to the Fencing of Swimming Pools Act 1987, to restrict the access of children.

The FOSP Act:

6 Special exemptions

- (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.

8 Obligations of owner and persons in control of pool

- (1) 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.

12 Delegation of powers to committees of councillors

The territorial authority may delegate its powers and functions under section 6 and clause 11 of the Schedule to any committee of the territorial authority appointed under clause 30 of Schedule 7 of the Local Government Act 2002 that comprises only members of the territorial authority; but may not delegate those powers and functions to any committee that has any members who are not members of the territorial authority or to any officer of the authority.

13B Fencing in accordance with Schedule must be treated as means of compliance

Any provision that is made for the fencing of swimming pools that is in accordance with the Schedule must, in respect of –

- (a) matters subject to the Building Act 2004, be treated as a compliance document establishing compliance with the building code for the purposes of section 19 of that Act, and the requirements of this Act

The Schedule to the FOSP Act:

Operations of gates and doors

- 9** Every gate or door shall be fitted with a latching device.
- 10** Every gate or door shall be fitted with a device that will automatically return the gate or door to the closed position and operate that latching device when the gate or door is stationary and 150mm from the closed and secured position.

Doors in walls of buildings

- 11** Where any building forms part of a fence and the pool is not contained within the building, any door that gives access to the immediate pool area need not comply with the requirements for gates or doors set out in clauses 8 to 10 of this Schedule to the extent (if any) that the territorial authority is satisfied that such compliance is impossible, unreasonable, or in breach of any other Act, regulation, or bylaw, and the door is fitted with a locking device that, when properly operated prevents the door from being readily opened by children under the age of 6 years.

NZS 8500

IMMEDIATE POOL AREA. The land in, or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried out in conjunction with the use of the pool. . . .

2.3.2 Specific requirements for pools

For new . . . pools at least one of the following requirements shall be met:

- (f) The pool shall be enclosed by an isolation barrier where a wall of a house contains doors opening from the house to the immediate pool area (regardless of direction of door swing). Should the doors not be self-closing and self-latching, then a lockable door latch 1500 mm above finished floor level shall be provided on every opening door-set. In addition there shall also be:
 - (i) An automatic pool cover that complies with ASTM F1346-91⁶, and
 - (ii) An alarm complying with UL 2017⁷ capable of detecting unauthorised access from the house into the immediate pool area, and that when activated emits a sound of 85 decibels or more to be heard from the house.

⁶ American Society for Testing and Materials Standard F13646-91(2003) *Standard performance specification for safety covers and labelling requirements for all covers to swimming pools, spas, and hot tubs.*

⁷ provisions that would restrict the access of children given that the doors were not self-closing and self-latching.

2.9 Access to the house through the pool area

Access to the house from outside the property shall not be through the pool area.

Where compliance is impossible, unreasonable or in breach of any other Act, regulation or bylaw, then a special exemption or determination may be sought from the TA or the DBH. Considerations may include additional layers of protection incorporating at least one of the following:

- (a) Automatic pool covers that comply with ASTM F1346-91;
- (b) Alarms complying with ASTM F2208, with warning signage required in accordance with section 5; or
- (c) Any barrier/fence approved by the TA or the DBH through the special exemption/determination process.