

Determination 2024/005

The authority's decision to issue a code compliance certificate for a swimming pool

14-20 Cobblers Lane, Riverhead, Auckland

Summary

This determination considers the decision to issue a code compliance certificate for a swimming pool that required a barrier to restrict access by unsupervised young children. This determination considers the compliance of a pool barrier in relation to clause F4 of the Building Code that was in force at the time the building consent was granted.



Figure 1: View of the immediate pool area from the lower lawn

The legislation discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Fencing of Swimming Pools Act 1987 is referred to as “FOSPA”, with its sections referred to as sections of the FOSPA. The Schedule to FOSPA is referred to as “the Schedule”, with its clauses referred to as clauses of the Schedule.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. R and L Crabb, the owners of the house (“the owners”).
 - 1.2.2. Auckland Council, carrying out its duties as a territorial authority or building consent authority.² The authority applied for this determination.
- 1.3. The determination arises as a result of the authority issuing a code compliance certificate for a swimming pool. The authority believes a code compliance certificate should not have been issued because of:
 - 1.3.1. the size of the immediate pool area
 - 1.3.2. the compliance of the retaining wall with clause F4 Safety from falling insofar as it acts as a barrier to restrict access to the swimming pool
 - 1.3.3. the compliance with clause F4 of the bi-fold and sliding doors in the dwelling that open into the immediate pool area
 - 1.3.4. non-compliance with the approved building consent.
- 1.4. The matter to be determined, under section 177(1)(b) and (2)(d) of the Act, is therefore the authority’s decision to issue the code compliance certificate for the swimming pool.

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² The building consent to construct the swimming pool was issued by Rodney District Council before it was transitioned to Auckland Council. This determination refers to both entities as “the authority”.

- 1.5. In deciding this matter, I must consider the requirements of the legislation that were in force at the time the building consent was granted and how they apply in relation to the immediate pool area and the pool barrier.

Matters outside this determination

- 1.6. Matters outside the scope of this determination include the discretion to grant a waiver or modification under section 67A of the Act³ and compliance with clause F4.3.1 with regard to changes of level within or associated with building.

2. Background and building work

- 2.1. On the 30 March 1999, a building consent application was lodged for a “recreational swimming pool”. The plan for the pool did not detail fencing, but included an annotation that fencing was to comply with regulations and ‘proposed fencing may vary as decks are building [and the] house will form part of fencing’. This plan was stamped as approved on 20 April 1999.
- 2.2. In a letter dated 22 April 1999, the authority requested details of the doors and walls that would form part of the barrier. In response, a new set of plans was submitted showing a ‘ring fence’ completely enclosing the pool with a single gate. This plan was stamped as approved on 5 May 1999.
- 2.3. On the 6 May 1999, the building consent for the construction of the swimming pool was issued (No. ABA 990871). The listed conditions on the consent included ‘fencing to comply with FOSPA’ and ‘Doors opening from building to comply with FOSPA’.
- 2.4. The completed barrier to the pool area is made of several components (see figure 2):
 - 2.4.1. A long retaining wall approximately 1200mm high that runs along the east and north sides of the pool area. This retains the lawn area in which the pool is set and includes a gate leading to the lower lawn and riverbank. There is a garden at the top of the wall along the east section, and a hedge along the north portion of the wall.
 - 2.4.2. A small section of metal fencing and gate between the east side of the house and the end of the retaining wall. Photographs show a small stone wall above the retaining wall at the junction between it and the metal fence where it meets a set of stairs that lead down to the lower lawn (where the small tank is located) – see figure 3.
 - 2.4.3. A wooden fence and gate that run between the west side of the house and the southwest end of the retaining wall.

³ The decision to refuse to grant exemptions under section 67A is not a matter for determination under section 177. Section 188(3)(aa) provides for a determination to incorporate a waiver or modification of sections 162C(1) and (2) along with any conditions that a territorial authority is able to impose, but only if section 188(3A) is satisfied

- 2.4.4. The rest of the barrier to the pool area is made from the walls and doors to the house. There are three ranch slider doors, and one bi-fold door. All the doors have safety stickers and 'top locks'. None of the doors have self-closing or self-locking mechanism or audible alarms.



Figure 2: Aerial view showing approximate location of key features

- 2.5. The area encompassed by the barrier extends around the east and west sides of the house. The authority has estimated this area to be approximately 500m², though this is disputed by the owners.⁴ As well as the swimming pool, the area includes the spa pool and deck adjacent to the house, and a concrete or stone patio between the house and pool with outdoor furniture and a barbeque.
- 2.6. Neither the building consent for the swimming pool nor the building consent for the house and deck included the spa pool, though it was constructed at the same time

⁴ The owners have not confirmed the size of the area, but the exact size is not determinative on its own in this determination.

as the pool.⁵ The spa pool is set into the deck, with the surface being approximately 200mm above the deck level.

- 2.7. A photograph shows a tank located outside the pool area, at the end of the east retaining wall.⁶ The tank appears to be approximately the same height as the wall. There are pipes leading to the tank that run along the retaining wall at approximately 200-300mm above ground level, and a hose reel at the junction between the retaining wall and stairs. See figure 3 below.



Figure 3: View of the retaining wall, tank, hose reel and pipes.

- 2.8. Following an inspection on 28 May 2001, the authority sent a letter to the owners dated 31 May 2001 stating that at the time of inspection, the owners' fencing was "deemed to comply" with FOSPA.
- 2.9. On 26 July 2001, a code compliance certificate was issued for the swimming pool.
- 2.10. On 15 July 2009 and 18 June 2012, the swimming pool was inspected as required under FOSPA and the barrier was passed as compliant.
- 2.11. From the information provided to me, a further pool inspection occurred in July 2015, during which the authority reached the view the swimming pool barrier was not compliant.⁷
- 2.12. The owners wrote to the authority on 31 August 2017, noting the authority's decision was 'primarily because the fenced pool area includes a lawn area and in-ground spa' and that this contradicted the earlier decision to grant the building consent and the passed inspections. The owners requested the authority review its

⁵ The house and deck were constructed under a separate building consent (No. 81792). Plans that include the deck are stamped as approved on 20 October 1998.

⁶ Taken during the 2021 site meeting.

⁷ I have not seen a copy of an inspection record for this date.

position and requested a waiver under section 67A8. The owners noted the following features should be taking into account: the property is located in a semi-rural area; there is limited or no visibility of the swimming pool area from the road, the area is minor compared to the significant overall outdoor area available for leisure, the pool area fences off the nearby stream, the owners do not have young children that would play in the area.

2.13. The authority has confirmed that no waiver was granted.

2.14. On 5 May 2021, the authority attended a meeting on site. The authority's record of that meeting notes:

"There are no plans to support this change of layout and the 2 plans in the property file show either a ring fenced pool or a fence that extends from the back corners of the house directly down to the retaining wall and not the large area to the left of the house at the rear.

The existing situation (sic) has resulted in a very large pool area that has numerous out of sight points from the pool and at least 7 access points to the area through doors or gates.

This situation is considered very unsafe for children 5 or under to be allowed in the pool area and should be reviewed to mitigate the hazard this large pool area provides."

2.15. In an email to the owners on 28 July 2021, the authority advised its concern "is not about the doors which [the authority] agree fall under the old provisions of F4 which you have correctly pointed out. My main concern is the size of the immediate pool area ..."

2.16. The matter remained unresolved between the parties and the authority lodged an application for determination on 12 May 2023, requesting the decision to issue the code compliance certificate be reversed.

3. Submissions

The authority

3.1. The authority is of the view that the code compliance certificate was incorrectly issued for the following reasons:

The swimming pool (and fencing) did not comply with the Building Code at the time of issue.

The swimming pool (and fencing) did not comply with the building consent issued.

There is no physical barrier around the pool.

⁸ Section 67A provides a territorial authority may grant a waiver or modification of section 162C(1) or (2) which concern the ongoing compliance requirements for pool barriers.

[The authority] did not grant an exemption under section 6 or clause 11 of the Schedule of [FOSPA] to allow for the current situation.^{9]}

3.2. The authority acknowledged the background and earlier decisions, but considers it is appropriate for it to undertake regulatory action to ensure compliance, regardless of the history of compliance inspections. The authority advised it has no records, inspections, or other documentation to support how the decision to issue the code compliance certificate was reached, or why the inspector agreed to that decision, or how the barrier was deemed to comply with FOSPA or clause F4 of the Building Code at the time.

3.3. The authority submitted:

The immediate pool area

3.3.1. The immediate pool area is substantial in size. The authority referred to a previous determination in which the Ministry concluded a smaller area was not an “immediate pool area”.

3.3.2. The area contains several matured and large trees or other vegetation.

3.3.3. The area extends around both sides of the house and there are parts of it that cannot be seen from the pool.

3.3.4. There are three gates that provide access to the area in addition to access from the house, and the area serves as a thoroughfare to the riverbank.

The retaining wall

3.3.5. The height of the retaining wall drops below 1200mm in some places.

3.3.6. There are “several climbing points that allow ‘step up’ access to the pool”, and the tank located next to the retaining wall is an example.

The doors

3.3.7. The doors do not comply with clause 10 of the Schedule.

3.3.8. The bi-fold and sliding doors allow access to the pool area, and the fact that they have to be manually closed and locked means there is the prospect one or more of the doors will be left open or unlocked. This increases the risk of unsupervised young children not being restricted from entering the pool area.

The owners

3.4. The owners maintained that swimming pool barrier does, and always has, complied with the regulations that were in force at the time of construction and when the code compliance certificate was issued.¹⁰

⁹ An exemption under FOSPA would have required resolution by a delegated committee.

¹⁰ With reference to section 162C(2)(b)

- 3.5. The barrier had been approved by the authority during its construction and the authority had confirmed that the barrier was compliant for 15 years from date of completion until 2012. The swimming pool barrier has been maintained and has not been altered since it was completed.
- 3.6. The deck and retaining wall were constructed prior to the issue of the code compliance certificate and are “part of [their] code compliance certificate requirement”.
- 3.7. Regarding the variations from plans, the owners submit:
 - 3.7.1. When the building consents were applied for to construct the house and swimming pool, the swimming pool layout was only a proposed plan. Those plans evolved as the house was built, and “after further discussions with the Building Inspector, the actual plan evolved”. The owners also submitted that “at the time of the application, it was common practice that a plan could vary”.
 - 3.7.2. The building consent documents stated that the “pool fence may vary as decks are built” and the swimming pool barrier was constructed “after considerable consultation with building inspectors to ensure that the fence was compliant with FOSPA”, and that the “house will form part of the fence”.
 - 3.7.3. There was no further need for the ring fence around the pool because the swimming pool and spa pool had been confirmed as compliant when the code compliance certificate was issued and was passed in later inspections.
- 3.8. Regarding the other issues raised by the authority, the owners submitted the following

Immediate pool area

- 3.8.1. The size of the area was not raised as a concern at the time the code compliance certificate was issued nor as a result of later inspections.
- 3.8.2. The lawn is only used when the swimming pool is in use.
- 3.8.3. There are no utilities inside the fenced area - the vegetable garden, shed, clotheslines, water tank, pool filter shed, and children’s play area are all outside the swimming pool area and cannot be accessed through the swimming pool area.
- 3.8.4. One of the gates is seldom used, and the owners would agree to permanently lock it if required.
- 3.8.5. The swimming pool area is not used as a thoroughfare. Access to and from the house is by way of the exterior doors.

The retaining wall

- 3.8.6. The issue raised about the height of the retaining wall being less than 1200mm was due to a build-up of garden waste that had accumulated at some points along the base of the retaining wall over time (approximately 100mm). In 2015 the owners cleared the garden waste, bringing the effective height of the retaining wall back to 1200mm.
- 3.8.7. There are no other climbing points along the retaining wall.

The doors

- 3.8.8. All the doors leading to the pool are compliant with Clause F4 of the Building Code.
- 3.8.9. The doors had top locking mechanisms and safety stickers from the date of completion of the pool; at the time of construction, this was considered compliant.
- 3.8.10. The authority's email dated 28 July 2021 confirmed that the doors were not an issue.
- 3.9. Regarding the spa pool, the owners submit it is within the fenced area of the swimming pool and therefore, did not need a separate fence.
- 3.10. The owners advised the cost to make extensive changes would be significant, it would be impossible to fence the spa pool and "near impossible" to ring fence the swimming pool. The owners set out several factors about the property that they considered were relevant to the matter, including those raised with the authority in their request for a waiver (refer paragraph 2.12).

4. Discussion

Legislation

- 4.1. The matter to be determined is the authority's decision to issue the code compliance certificate under the Building Act 1991 ("the former Act").
- 4.2. The relevant provision for issuing a code compliance certificate under the former Act is section 43:

43 (3) Except where a code compliance certificate has already been provided pursuant to subsection (2) of this section, the territorial authority shall issue to the applicant in the prescribed form, on payment of any charge fixed by the territorial authority, a code compliance certificate, if it satisfied on reasonable grounds that-

- (a) the building work to which the certificate relates complies with the building code or
- (b) the building work to which the certificate relates complies with the building code to the extent authorised in terms of any previously approved waiver or

modification of the building code contained in the building consent which relates to that work.

- 4.3. Section 34(4) of the former Act provided for territorial authorities to grant building consents subject to a waiver or modification of the Building Code:

34(4) The territorial authority may grant a building consent subject to –
(a) Such waivers or modifications of the building code, or any document for use in establishing compliance with the building code, subject to such conditions as the territorial authority considers appropriate; and
(b) Such conditions as the territorial authority is authorised to impose under this Act of the regulations in force under this Act.

- 4.4. The authority has confirmed that no waiver or modification of the Building Code was granted in relation to the swimming pool barrier.

- 4.5. The relevant clause of the Building Code that was current at the time the building consent was granted and the code compliance certificate was issued was Clause F4. This applied to both the spa pool and swimming pool:

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

F4.3.4 Barriers shall:

...

(f) In the case of a swimming pool, restrict the access of children under 6 years of age to the pool or immediate pool area.

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.

Compliance of the pool barrier

Immediate pool area

- 4.6. What constitutes an ‘immediate pool area’ and what may be included within such an area was previously considered by the High Court in *Waitakere District Council v Hickman* (“*Hickman*”).¹¹

¹¹ *Waitakere City Council v Hickman* [2005] NZRMA 204.

- 4.7. Following *Hickman*, an immediate pool area is determined firstly by the use, that being the activities carried out in relation to or involving the pool. It is a matter of degree whether an activity is sufficiently related to or involves the pool.
- 4.8. The High Court in *Hickman* acknowledged that the extent of the immediate pool area is not solely governed by use but is limited to an area that can be considered 'immediate'. The decision goes on to say that the area must be sufficiently confined so that it may properly be described as being in the 'immediate' area of the pool:
- [34] ... 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 in sufficient proximity to the pool to be properly regarded as within the "immediate" pool area.
- 4.9. In summary, while the immediate pool area is determined by identifying the area surrounding the pool that is used for pool related activities, that area is 'subject to the issue of immediacy' and must not extend further than can properly be considered as being 'immediate' to the pool.
- 4.10. In this case, the area enclosed by the barrier incorporates areas where the swimming pool and spa pool are not visible. This includes the area to the east of the house, and a larger area of lawn and gardens along the west side of the house.
- 4.11. There may also be poor visibility where steps drop down to the gate to the north of the pool (leading to the creek) due to the change in elevation.
- 4.12. I am of the view that the swimming pool and spa pool should be visible from all parts of the immediate pool area to ensure any young children in and around the swimming pool can be supervised. An adult around either the east or west sides of the house may not be aware of the presence of a child in or in close proximity to the swimming pool or spa pool.
- 4.13. I consider this to be particularly important given the purpose of the regulations for swimming pool barriers is to prevent injury or death to young children by restricting unsupervised access to swimming pools.
- 4.14. Because of the total area of the immediate pool, I also consider it more likely than not that the area currently encompassed by the barrier will be used for activities other than those in conjunction with the use of the pool.
- 4.15. Based on the information provided to me, I conclude that the area currently enclosed by the swimming pool barrier is not the "immediate pool area" and therefore the barrier does not comply with the Building Code.
- 4.16. Although the determination could be made on that ground alone, I have also considered the other features raised by the authority as contributing to the non-

compliance of the barrier, namely the walls and doors of the house and the retaining wall.

Doors to the immediate pool area

- 4.17. First, I have considered whether the doors comply by way of the Schedule to FOSPA, which was cited in the Acceptable Solution F4/AS1.¹² Clauses 8 to 10 of the Schedule provided compliant solutions for doors and gates that form part of a pool barrier (see Appendix A). This included the requirement to “automatically return to the closed position and operate the latching device when the gate or door is stationary and 150 mm from the closed and secured position”. The ranch slider and bi-fold doors do not comply with clause 10 of the Schedule because they are not self-closing and do not automatically latch.
- 4.18. Clause 11 of the schedule to FOSPA provided an exemption for doors in walls of buildings from meeting the requirements of clauses 8 to 10. However, that exemption was only able to be granted by a delegated committee of elected authority members¹³, and “to the extent (if any) that the [authority] is satisfied that such compliance is impossible, unreasonable ..., 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.” The authority confirmed there is no record of any such exemption.
- 4.19. That being the case, I have assessed the compliance of the doors against the relevant performance criteria in clause F4 of the Building Code.
- 4.20. As the doors that form part of the pool barrier are sliding and bi-fold doors, they were excluded from the requirement in clause F4.3.5(a) to automatically close and latch. However, they were still required under clause F4.3.4(f) to ‘restrict the access of children under 6 years of age’ to the pool or immediate pool area.
- 4.21. There is no information provided to suggest the doors, when closed but unlocked, would in some way restrict access of young children – for example, by mechanical means of opening beyond the abilities of a young child to operate or force required to move them. Meaning that any of these doors, if either left open or unlocked, would no longer restrict access of young children to the pool area.
- 4.22. Compliance of the barrier then requires a person to always take positive steps to close and lock the doors and depends on the vigilance of those using the doors to ensure that they are closed and locked.
- 4.23. For the reasons set out above, I am of the view the sliding and bi-fold doors do not comply with clause F4.3.4(f) of the Building Code.

¹² A person who complies with an Acceptable Solution must, for the purposes of the Act, be treated as having complied with the provisions of the Building Code to which that Acceptable Solution relates.

¹³ Refer section 12 of FOSPA.

The retaining wall

4.24. Clause 1(1) of the Schedule of FOSPA provided a height for pool fences:

Height

1(1) The fence shall extend—

- (a) at least 1.2 metres above the ground on the outside of the fence; and
- (b) at least 1.2 metres above any permanent projection from or object permanently placed on the ground outside and within 1.2 metres of the fence

4.25. The owners submit the reduction of the height of the retaining wall to less than 1200mm was due to the build-up of garden waste on the base of certain points along the retaining wall, but the built-up has been addressed and cleared.

4.26. Ordinarily, I would leave this as a matter for the authority to confirm by inspection. However, I am of the view there are other issues that impact on the compliance of the retaining wall as a barrier to the pool (in addition to the area currently enclosed by the barrier).

4.27. A photograph taken from the 2021 site meeting, reproduced in Figure 3, shows several horizontal pipes immediately next to the retaining wall, a hose reel adjacent to the wall, and a tank nearby. The pipes, tank and hose reel are permanent objects outside the barrier, and the tank appears to be closer than 1.2m from the wall. I am of the view that, in respect of these features, the retaining wall does not comply with clause 1(1)(b) of the Schedule.

4.28. I have also considered the performance criteria in clause F4.3.5(b) of the Building Code. The pipes appear to be approximately 300mm above ground level (at the uppermost surface of the top pipe), and I am of the view they would provide a “climbing step” because they offer a toehold or step-up that would enable a child to negotiate the barrier.

4.29. For this reason, I conclude the retaining wall at the east end does not comply with clause F4.3.5(b) of the Building Code.

Reversing the code compliance certificate

4.30. I have reached the conclusion that the barrier to restrict access by unsupervised young children to the swimming pool and spa pool does not comply with clause F4 of the Building Code that was current at the time the building consent and code compliance certificate were issued.

- 4.31. The authority is able to issue a notice to fix for non-compliance with section 162C(1)¹⁴ regardless of whether there is a code compliance certificate in place. This was discussed in detail in Determinations 2022/024 and 2022/025.^{15 16}
- 4.32. However, the authority has requested that I reverse the decision to issue the code compliance certificate, as provided for under section 188 of the Act.
- 4.33. In deciding whether to reverse the authority's decision to issue the code compliance certificate, I have taken the following into consideration:
- 4.33.1. The barrier is not in accordance with plan that was lodged and approved in the building consent for which the code compliance certificate was issued.
- 4.33.2. The barrier does not comply with the Building Code that was in force at that time.
- 4.33.3. The area enclosed by the current pool barrier is not the "immediate pool area" and so would not meet the requirements of section 162C(2)(a) or section 162C(2)(b) or section 450B.
- 4.33.4. The spa pool was not included in the building consent, despite being installed at the same time as the swimming pool.
- 4.33.5. The swimming pool is the only building work for which the building consent was issued, and so reversing the code compliance certificate will not affect the status of the building work carried out under the building consent to construct the house.
- 4.34. Taking those factors into account, I consider the reversal of the authority's decision to issue the code compliance certificate is appropriate in this instance. I emphasise that each determination is considered on a case-by-case basis, and the fact that I have elected to reverse the authority's decision in this case does not necessarily mean that the outcome would be the same in another case.
- 4.35. The consequences of this decision will fall to the owner to remedy. The owner has ongoing obligations under the special provisions for residential pools in the Act to ensure the pool has a barrier that restricts access by unsupervised young children.
- 4.36. It is for the owners to propose to the authority how the barrier will be made compliant, whether by way of an Acceptable Solution or an alternative solution. Any proposal should take into account the findings in this determination.
- 4.37. As the building consent concerns the construction of the swimming pool, and this is now some 24 years old, the owners may apply for a modification of clause B2.3.1 in

¹⁴ Every residential pool that is filled or partly filled with water must have physical barriers that restrict access to the pool by unsupervised children under 5 years of age.

¹⁵ Paragraphs 5.1 to 5.5 and 5.12.

¹⁶ Paragraphs 5.38 to 5.43.

respect of the building work to construct the pool before applying for a new code compliance certificate once the barrier is made compliant.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine that the barrier to restrict access by young children to the swimming pool and spa pool does not comply with Clause F4, and I reverse the authority's decision to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 February 2024.

Peta Hird

Principal Advisor Determinations

Appendix A:

Schedule to the Fencing of Swimming Pools Act 1987

Means of compliance for fences under this Act

Gates and doors

8 Every gate or door shall be so constructed as to comply with the relevant requirements of clauses 1 to 7, 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.

Operation of gates and doors

9(1) Every gate or door shall be fitted with a latching device.

(2) Where the latching device is accessible from the outside of the fence only by reaching over the fence, gate, or door or through a hole in the fence, gate, or door, the latching device and the lowest point of any hole giving access to it shall be at least 1.2 metres above the ground on the outside of the fence.

(3) Where the latching device is otherwise accessible from the outside of the fence, gate, or door, the latching device shall be at least 1.5 metres above the ground on the outside of the fence.

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 the latching device when the gate or door is stationary and 150 mm 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 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.