

## Review of Local Government Sector: Meeting Legal Obligations for Residential Swimming Pool Inspections.

### Executive Summary.

As a result of some pool-related interactions with our local Tasman District Council (TDC), we sought information from them on the extent to which they had been meeting their legal obligations around pool inspections. The results shown in the TDC information then led us to thinking about what the situation nationwide might be.

This report arises from our review of residential swimming pool inspection data from across the local government (Council) sector.

We both have a huge regard for the competence of the local government sector, and we felt sure that the sector would be meeting the challenge in this important area of child safety.

By way of a very brief background: in 2016, Parliament made an array of legislative changes to amend the Building Act to update and refresh various swimming pool fencing obligations that had been initiated with the revolutionary, and hugely effective, 1987 Fencing of Swimming Pools Act (FOSPA). Among a range of important matters, and because regular inspection was noted as being a crucial tool in ensuring ongoing pool safety, the refreshed 2016 legislation included a legal requirement for Councils to inspect all residential swimming pools within their areas every 3 years starting from 1<sup>st</sup> January 2017.

Our review of how the local government sector is going at meeting its legal obligations for inspecting pools found that:

- Overall, the sector is making a reasonably good fist of things with just over half of Councils meeting their legal obligations.
- Performance of individual Councils ranges from stunningly good to abjectly poor.
- In addition:
  - Around 1 in 6 Councils seem to have made little or no effort to comply with the law.
  - Information is generally patchy at being able to demonstrate legal compliance.
  - Such inconsistency in the degree to which the sector meets their legal obligations makes for a situation wherein, potentially, “post code” law applies.
- There are no inherent reasons why any Council shouldn’t be complying (given that so many are currently doing so).
- Given the importance of legal compliance generally, as well as specifically about pool inspections, we provide some questions that elected members of Council might ask of themselves and of their senior management.

In addition, we have offered some comments and views on the nature of accountability for those Councils currently not meeting their legal obligations. We think this is an area requiring some immediate attention; both from the individual elected Councils themselves, and from the Crown.

We also think efforts should be made to address current inconsistencies across the sector.

After all, this is not just a simple matter about not meeting a statutory legal obligation; ultimately, regular inspections are crucial to ensuring ongoing child safety. In that regard, it’s great to see that the sector lived up to our expectations of being (largely) on top of the issue, notwithstanding the need to make some much-needed improvements.

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### **1. Introduction.**

This report was compiled using information obtained via a Local Government Official Information and Meeting Act (LGOIMA) request to all non-regional Councils nationwide. Accordingly, the data that underpins the report analysis and conclusions can be considered as official.

In this report we offer a view of how the local government sector is actually doing at meeting their legal obligations to conduct regular swimming pool inspections.

We also make some comments as to the implications of current performance for accountability for those Councils who aren't yet meeting their legal obligations, and especially about the gaps in information.

Lastly, we offer some side observations about our experience of the LGOIMA process, and the variable way in which Councils responded.

### **2. Some background on swimming pool fencing: an overview.**

In 1987, parliament enacted the Fencing Of Swimming Pools Act (FOSPA). This revolutionary Act brought in minimum requirements for swimming pool fencing and tied those to Council building consenting and inspection obligations. The Act also legally obliged Councils to take all reasonable steps to ensure FOSPA was complied with, including providing a power of entry to properties for the purposes of inspections.

FOSPA was not without its detractors and issues over the years, but its effectiveness and impact on child safety is simply not in question: estimates put the saving of lives of children as a result of this legislation at over 20 per year. As a major contributor to saving needless deaths, FOSPA really was revolutionary.

Over time, issues and overlaps between FOSPA and the Building Act emerged, both for Councils and for builders/architects; some of which are still in play today. Even so, there was next to no legal precedent set around swimming pool fencing obligations until the noted case of Hickman in 2004 in which the Judge observed the need to address numerous shortcomings in overlaps.

By then, it was well recognised that FOSPA was in need of significant updating and refreshing to improve its effectiveness. The Ministry of Business, Innovation and Employment (MBIE) had instigated the work to renew this legislation which it carried out over an extended period, including extensive consultation with the local government sector in doing so.

As a result, in 2016, the government passed an array of legislation to amend the 2004 Building Act to bring in and refresh the swimming pool fencing obligations that had been initiated with FOSPA. Notably, in recognition of the effectiveness of FOSPA, pool barriers that were compliant under previous requirements were deemed to be compliant under the amendment (ie there was no requirement to retro-fit existing pool barriers to meet the new standards).

Among a number of other important matters, and because regular inspection was noted as being a crucial tool in ensuring ongoing pool safety, the refreshed 2016 legislation included a legal requirement for Councils to inspect all residential swimming pools within their areas every 3 years.

Previously, while many Councils had done inspections anyway as part of their duty of care obligations under FOSPA in which they were expected to undertake continued compliance checking, many had equally chosen to undertake some, limited or no inspections (for whatever reasons; perhaps due to

cost pressures or for other reasons unrelated to ensuring child safety). Indeed, during the formulation of the new legislation, both MBIE and Local Government New Zealand (LGNZ) made a point of noting that the pool inspection performance around the country by was variable; some Councils rightly taking the safety aspect arising from regular inspections extremely seriously, whereas other Councils undertook little or no inspection activity.

Accordingly, the 2016 legislation made a point of clearly mandating a regular cycle of 3-yearly pool inspections as a legal obligation that Councils were expected to meet.

The refreshed legislation had a long-lead time (especially given the extended consultation period going back to before 2013 when the first Regulatory Impact Statement had been produced by MBIE), and MBIE provided considerable guidance to Councils on the entirety of the new expectations that were to come into effect on 1<sup>st</sup> January 2017.

At the time of the legislation passing, there was no great “hue and cry” nor general publicity; this may have been due to the long gestation, but probably also largely because of the demonstrable effectiveness of the provisions of FOSPA for child safety, and the local government sector’s long history and obligations under FOSPA.

### **3. Our review process.**

To compile this report, we made some simple assumptions about what it might be reasonable to expect a Council to hold by way of information around meeting a legal obligation to inspect all pools within their territorial boundaries.

The first assumption made was that all Councils would be able to easily identify both the number of pools within their boundaries AND be able to say how many of those they had inspected in the first 3 year inspection period. In effect, this information should readily show whether the Council was meeting its legal obligation. After all, it is reasonable to expect that every Council knows whether it is complying with the law or not.

Secondly, we thought it reasonable that Councils should be able to monitor their progress from one cycle to the next, and to be able to judge to what extent they were being effective in their compliance role. To this end, we sought the same information for the 3 year period prior to the start of the new legislative requirements, and also sought data relating to the number of pools that were passing inspections, and how those outcomes compared to previous inspections.

All the above information was sought individually from all Councils nationwide with a LGOIMA request. The list of our LGOIMA questions is provided at Appendix 1: Swimming Pool Inspection Questions.

It is worth saying that in using this approach, we really hadn’t expected to create any undue burden of work simply because the data we were seeking should have been readily available, even if only so the Council could know itself how it was tracking at complying with the law.

### **4. The results from across local government.**

What we found was most of the questions we posed proved too onerous for most of the Councils to easily provide information for, and even for some of those who were among the very best performers. As a result, we have not attempted to draw conclusions from a lot of the inspection data that was provided as it was just too patchy in terms of completeness across the whole of the sector.

Accordingly, our analysis herein has therefore focused on the overall legal compliance achieved by Councils, and some observations relating to that.

What follows is a summary of the situation across the whole of New Zealand.

*Table 1: Pool inspection situation across the local government sector 1 Jan 2017 to 31 Dec 2019*

Rating	Description	Number of Councils	%
<b>A</b>	Fully compliant with legal obligations	20	30
<b>A*</b>	... as above, but noting that the Council was unable to provide exact information of that compliance	6	8
<b>B+</b>	Oh, so close; within a whisker of fully compliant = 95%+	5	7
<b>B</b>	Well on the way: between 75% and fully compliant	4	6
<b>B*</b>	... as above, but Council unable to provide information of that compliance	1	2
<b>C</b>	Giving it a good crack = between 50% and 75%	8	12
<b>D</b>	A half-hearted attempt = between 20% and 50%	8	12
<b>E</b>	Poor = between 5% and 20%	3	4
<b>E*</b>	... as above but having since lifted to a D, and will be at least a B by end of year	1	2
<b>F</b>	Not even making an effort = less than 5%	3	4
<b>F*</b>	No idea what's happening with pool inspections: ie the Council cannot offer any information to be able tell at all	2	3
<b>DNR</b>	Did not respond to LGOIMA request, even after 42 days, and whether an extension was sought (3) or not (3)	6	10

NB: These ratings were assigned by us and, in doing so, we tried to keep it a bit like an old-fashioned school report. Although, technically of course, this could be far more harshly reported as a binary consideration: either a Council complied with the law or it didn't. Also, like in any good advert, \* means "individual results may vary".

**In order to see each Council's pool inspection rating refer to Appendix 2.**

Based on our considerable experience working at the most senior management level in Councils and other organisations, we felt that a simple PASS or FAIL analysis did not give sufficient credit to the complexities of the work involved. Our more graduated "school report" card allows for a more nuanced view and importantly clearly identifies and gives credit to those Councils who are completely effective and successful (or nearly so), and equally identifies those Councils who really aren't meeting their legal obligation. In between these two extremes are a mixture of efforts ranging from attempting to get up-to-speed and working on doing a good job to those that are just muddling along.

So, where should we draw the line on what these actual results say?

If we draw the line at the A's and B's, then **just over half of the local government sector is meeting its legal requirements** (or is close enough given some of the complexities). The middle-of-the-road pack, having already made some attempt and therefore clearly having the wherewithal, really just need to complete the job they have started; just with a bit more urgency.

Whereas, at the other end of the scale (the E's and F's), around 15% of the sector is currently falling well-short of meeting their legal obligations. NB: we do acknowledge the single E\* Council who has certainly changed gear, and who knows with the 2 F\* Councils.

**Overall, then, the data shows that roughly 1 in 6 Councils are failing to meet what is a simple legal obligation when the window on the first 3-year cycle was up at end December 2020.**

The key issue here obviously is where and how is there any accountability for non-performance?

### **5. How is the local government sector doing overall?**

The first thing to note is that any local government sector-wide analysis is probably moot because, in reality, there is no such thing as a single unified "local government sector".

Instead, Councils can be very different in their responses and approaches, even to the same problems. This is both a key strength of the sector in terms of being locally responsive (something we are all in favour of) and, at the same time, one of its biggest weaknesses in terms of being able to act as a single sector or for the purposes of achieving national consistency.

Is national consistency important? In many instances, maybe not. But, where national consistency is crucial, then this can be a problem: for example, any instance where meeting a legally obliged standard is needed, then there ought not to be scope whereby some Councils meet the law, and some not.

It is our view that a legal requirement should not be a "post code" lottery depending on where you live; in short, either the law applies, or it does not. This observation has been made of the "local government sector", in one way or another, across many topic areas including meeting drinking water standards, wastewater treatment, building and planning consents, environmental monitoring, and numerous other examples.

The fact is that there is quite some variability in meeting legal obligations to inspect pools: ranging from stunningly good to poor.

As a result, we wondered whether there were any underlying reasons for such a wide range of performance.

### **6. Is there a sector-wide trend regarding over- or under- performance?**

One of the things that we considered was whether or not there was a pattern to which Councils were doing the job vs those that weren't doing quite so well. Is this some sort of endemic puzzle for some Councils more than others due to the inherent size or complexity of the Council themselves?

This line of thinking was motivated in part by noting the contrasting performance of Tasman District Council and its neighbouring Councils (Buller, Marlborough, and Nelson) who are all doing a much better job in this space compared to the efforts of TDC.

Anyway, the actual data shows that there is no really obvious reason as to what sort of Councils do well vs those that don't.

The data shows all types and mixes of Councils as being able to meet the legal requirement. Really high performing Councils (rated A & B) are a wide mix of types spanning cities and rural, large, small

and medium sized Councils in terms of staffing, and having large and small numbers of pools. The really poor performing Councils (E & F), also encompass a wide array of differing types.

Having said that, the supposedly better resourced middle- and larger-sized Councils generally tend to feature at the better end of the scale; albeit with an array of very notable exceptions including our own local Council, Tasman District. On the other hand, more smaller Councils feature in the lower end of the scale, even though plenty of those smaller Councils also feature at the top of the scale too. In effect, there are a large number of exceptions to these observations thereby making them broad generalisations only.

Even so, what **the data very clearly shows above all else, is that there are no inherent barriers for any Council to be able to meet its legal obligations for pool inspections**, whether a Council is large or small, whether it has a wide-spread rural area or is a self-contained city or is a mix, whether it has many or few staff, whether there were large numbers of pools or not so many.

Ultimately, there are no inherent reasons existing as an excuse for a “post-code” response to not comply with the law.

*Make no mistake: this is a crucial point arising from the data and it relates squarely back to the question of Council accountability.*

### **7. Council accountability for non-performance?**

The fact remains that some Councils are obviously not performing; so let’s consider why that might be?

Whatever the reason is, it is very clearly not universal across all Councils; after all the majority are either already doing a good job, or making some effort. The fact that many can, and are, doing such a good job *irrespective of their inherent characteristics* demonstrates that meeting those legal obligations is not only possible, but readily so.

Given that the data shows that there are no particular distinguishing features of Councils that are not performing (ie there are no obvious inherent systemic or generic reasons for non-compliance) then, logically, whatever the shortcomings are in those non-performing Councils, then these can only be specific to the individual Councils themselves.

Furthermore, the only conclusion that can be drawn about those specific circumstances that might be applying, is that those Councils do not have a governance or senior management leadership focus on statutory compliance (otherwise, logically, they’d already be complying if that focus was present).

We think there might be a few valid theories or conclusions as to how that might occur. None are particularly flattering, and all go straight back to questions of elected Council governance and/or senior management oversight/leadership. Based on our considerable senior management experience across a number of sectors including local government, we postulate that it can really only be for one of a very few primary reasons, or a combination thereof.

Those reasons might encompass one or more of:

- “lax” organisational attitudes toward meeting legal obligations, perhaps stemming from an organisational culture and/or leadership who do not have statutory compliance as a key performance indicator/driver (KPI).

- lack of knowledge of the legal obligation, which of itself sadly just further illustrates the question over the governance and/or management focus on legal compliance.
- lack of resources, training, support, and/or systems needed for staff to be able to meet the legal requirements, in which case (again) that can only arise from senior management and/or a governance failure to prioritise legal obligations.
- a deliberate decision by either the elected Council or by senior management to ignore a legal obligation.

Of these, the very last possibility (a deliberate decision not to comply) would be an absolutely horrendous reflection on a Council's lack of leadership (at whatever level). Let's face it, in the best\* case under those circumstances, if it was senior manager(s) who decided not to meet the law then the elected Council simply cannot have provided their Chief Executive with a clear direction about legal compliance. With a deliberate decision to ignore a legal obligation, then there would need to be some severe level of visible accountability; either from the elected Council holding their Chief Executive to account for blatant breaches of legal obligations; or from the Minister of Local Government holding the elected Council to account for the same thing.

The other situations under which non-compliance might arise are potentially a lot less dramatic than a deliberate breaking/flouting of the law but, in our view, should bring with them some equal level of accountability. After all, if a Council can fail to meet its legal compliance obligations as a supposedly public body, then can any of the rest of us choose which laws we do or don't comply with?

In the case of a Council, we think they should set a high (moral) standard in respect to meeting their own legal obligations, not least because they are supposedly enforcers of legal obligations themselves when wearing their regulatory hats. Is it a good moral standard to set by saying, in effect, "you must meet the law, but we will choose which ones we do or don't comply with"?

Of course, each Council who isn't meeting their legal obligations will be different; that's simply the nature of local government.

In the case of residential swimming pool inspections, though, the fact remains that quite a number of Councils simply aren't meeting their legal obligations.

So, where is any actual accountability for that? Currently, the current complete absence of any accountability does need addressing in our view; whether by the individual non-complying Councils, or by the Government through the two Ministers responsible (Local Government & Building and Construction), and/or supported by commentary from the Auditor-General when signing off the annual reports of those Councils.

There is, in addition, a very real (wider) governance issue here for the local government sector: simply put, do elected Councils deliberately put a strong enough emphasis on their own legal compliance?

### **8. Some governance questions for elected Council members to ask.**

1. Pool inspection related:

- How do we know how many pools there are in our area?
- Can we prove that we have inspected all pools, every 3 years?
- What information do we need to assess the effectiveness and quality of our inspections?

These questions are made bearing in mind that the objective isn't just to inspect pools, but that regular inspection is a crucial tool in ensuring pool safety for children.

### 2. General legal compliance related:

- Have we clearly directed our Chief Executive (perhaps through a specific and measurable KPI, say) to ensure legal compliance across all Council activities?
- Has the Chief Executive put in place the systems and processes to ensure an organisational culture of meeting our legal compliance obligations?
- Do we get regular reporting against the achievement of legal compliance?
- How do we know that we are meeting our obligations?

These questions are intended to provide the appropriate governance oversight and leadership on meeting legal compliance obligations, and to ensure the organisational culture aligns with that focus.

If Councils (and individual elected members) are able to answer these questions, then they will be well-placed to answer those very same questions to the Crown, to their auditors, and to their ratepayers.

So, how does the state of that governance information currently look?

### **9. Information and reporting around compliance.**

One thing that became starkly apparent from our little exercise was the general paucity of information around Council compliance regarding swimming pool inspections.

A good portion of Councils were superb in their information and what they were able to provide. And, we also acknowledge that some of the questions we posed assumed a far more rigorous approach to the management of compliance information relating to pools.

Even so, we were also bemused by the fact that even some of the Councils doing a great job couldn't easily and quickly provide the most basic information to demonstrate their performance. A number of those used systems that recorded only the most recent interactions with a given pool/property and, thus, prior information could not be accessed at all. In quite a few of those situations, those Councils could not provide simple information to demonstrate that they had, in fact, inspected every pool within the past 3-year period.

Likewise, many Councils had very basic reporting systems that only allowed them to count the number of inspections completed *including repeat inspections*; and, thus, they were in no position to say whether every pool had been inspected at least once. As a good "for example", a number of Councils reported more inspections than there were pools in their area.

The last information gap that exists is the question over just how many pools there are within a Council's boundaries. Notably, the Councils doing well had, by and large, got a good accurate count on the number of pools within their boundaries. (In that regard, we note that FOSPA required all pools to be notified to their local Council). Even accepting that it is a fairly difficult issue to address, some Councils still had no good measure of how many pools they even had within their area or had only recorded those pools that had been formally registered with them during building consents. Some Councils additionally relied on spotting pools on aerial photographs. And then there is the question about *how* a Council might even go about finding just how pools there were in their area anyway.

Again, while not down-playing all of the complexities involved, it's not unreasonable to expect that all these information related issues could, and should, have been well ironed out by now, some 4 years after the new legislation and obligations came into effect. It is, after all, some **34** years after FOSPA and the legal obligations it had placed on Councils.

So, given the similarities of the issues across the sector, could this have been approached in a different, and more coordinated, fashion?

### **10. A coordinated "local government sector" response?**

It seems obvious with the addition of 20-20 hindsight that, if there was such a thing as a "local government sector", then the whole sector might well have resolved this issue many years ago at the advent of the legislation at or around the time it was enacted in 2016, or even at some point in the 34 years beforehand.

If the sector had collaborated (then, or since), it would have been an easy job to have compiled a check-list for obligations under the, then, new legislation. The sector might even have worked alongside MBIE to have come up with a regular reporting regime and standardised policies, processes, and systems that could have been used nationwide across all Councils.

The questions raised around the information and systems for tracking this across the country, let alone the extremely variable performance at meeting legal obligations, means that there is still a very real opportunity for Councils to cooperate and put something in place.

Let's face it, some Councils are doing an extraordinarily good job and are above any sort of criticism for their efforts. Those Councils (listed as A and B in Appendix 2) are doing a pretty good job and have a great deal to offer their less stellar colleagues.

Ultimately, however, this is not just a question of meeting a fairly straightforward legal obligation; it should always be top of mind that the obligation was put there because regular inspections are a crucial part of ensuring child safety around pools.

### **11. LGOIMA responses from Councils: our experience.**

Finally, our observations about LGOIMA while not the subject of our study is nonetheless a by-product of the process we undertook. In this, we offer nothing more than an illustration of the varying approaches to LGOIMA across the sector. The variability alone is interesting; which offers perhaps another opportunity for some sector-wide learning?

Here's how it played out:

- Of 67 requests sent out, all but 4 Councils provided an (automated) acknowledgement of receipt of those requests.
- Of the 4 that didn't acknowledge the LGOIMA request, 3 were small Councils who had received the request and delivered the answers well within the statutory timeframes (1 replied within 1 working day!). The other Council, a larger and, by its own claims, having a supposedly sophisticated customer orientation had "lost" the request altogether.

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- Of the 63 that sent (automated) acknowledgements, 2 Councils (1 large and 1 small) had instigated a very clunky on-line query lodging process in the name of “customer service” that we found was anything-but easy to use, and most certainly was not customer friendly. (You know who you are 😊); and, if you don’t believe us, then just have a try at using the process yourself with a customer-eye lens).
- Of the 63 who provided an acknowledgment, a majority even provided 2 or more (automated) responses often from multiple departments within Councils. Three Councils provided 3 automated acknowledgements, from different parts of Council. And one stand-out Council provided 4 separate acknowledgements! As an observation, this implies that there isn’t necessarily a coordinated approach within many Councils as to how their internal systems approach the process of acknowledging and responding.
- Even so, the automated response systems in place show that the vast majority of Councils have good systems in place to log and acknowledge LGOIMA requests.
- A full 63 out of the 64 Councils providing an acknowledgment also identified when the 20-day LGOIMA statutory timeframe expired. Only one Council got that date wrong but, admittedly, they were only a single day out .
- Only 5 of the 67 Councils said that a charge would be involved to extract the requested information because of the work needed due to information needing to be extracted from individual property files. Estimated costs for doing so ranged from \$300 to \$3,600 even though the Councils were of roughly equivalent sizes (2 smaller, 3 medium) thereby hinting at some disparate internal information storage and retrieval processes.
- Of the final responses provided, 36 out of 67 Councils provided their responses well ahead of the statutory timeframe, with 6 of those providing responses within just 5 working days.
- In total, 11 Councils didn’t meet the statutory timeframe; with only 4 of the 11 seeking an extension of time, and with 2 of those 4 only advising that there would be a delay after the statutory deadline had passed.
- Having heard nothing at all from 7 Councils by the statutory timeframe, 5 of these were “reminded” by way of us replying to their acknowledgement emails a week after the deadline that they hadn’t responded. Of those 5 sent a reminder, 2 took a further 3 weeks to respond. The 2 others supplied a response a week after the statutory deadline but with no communication offered about the delay whatsoever. Of these 7 “miscreant” Councils not meeting their statutory obligations for LGOIMA responses, interestingly, 3 of those were rated A, A\* or B for their swimming pool inspection compliance; the other 4 did not respond at all.
- Lastly, and even by the time of writing, some 22 days after the 20-day LGOIMA statutory deadline had expired, 6 Councils (nearly 10%) had provided no information at all; 3 of those having sought an extension (of a fortnight) and 3 simply not responding at all.

Now, to be perfectly clear, none of the above should be construed as anything other than observational based on interacting with all 67 Councils. What it did showcase was a huge variety of efficacy, ranging from stunningly good to abjectly average (or worse).

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And, bottom line, the processes however individually varied, did give a good response overall; albeit much of the information could not be supplied (as commented on in the sections on Results and on Information and Reporting).

**Appendix 1: Our LGOIMA questions about swimming pool inspections.**

The following email was sent to all Councils:

“tēnā koe,

Under the provisions of the Local Government Official Information and Meetings Act we request the following information:

1. The number of residential swimming pools within Council boundaries as at 1<sup>st</sup> January 2014.
2. The number of residential swimming pools within Council boundaries as at 1<sup>st</sup> January 2017.
3. The number of residential swimming pools within Council boundaries as at 1<sup>st</sup> January 2020.
4. The number of residential swimming pools within Council boundaries that had a pool inspection conducted on them between 1<sup>st</sup> January 2014 and 31<sup>st</sup> December 2016.
5. The number of residential swimming pools within Council boundaries that did not have a pool inspection conducted on them between 1<sup>st</sup> January 2014 and 31<sup>st</sup> December 2016.
6. The number of residential swimming pools within Council boundaries that failed a pool inspection conducted on them between 1<sup>st</sup> January 2014 and 31<sup>st</sup> December 2016.
7. The number of residential swimming pools within Council boundaries that had a pool inspection conducted on them between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2019.
8. The number of residential swimming pools within Council boundaries that did not have a pool inspection conducted on them between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2019.
9. The number of residential swimming pools within Council boundaries that failed a pool inspection conducted on them between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2019.
10. The number of residential swimming pools within Council boundaries that failed a pool inspection conducted on them between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2019 that had passed the most recent previous pool inspection conducted prior to 2017.
11. For the residential swimming pools within Council boundaries that failed a pool inspection conducted on them between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2019 that had passed a previous pool inspection conducted before 2017, provide the following additional information:
  - a. Number that had made consented changes to the circumstances of the pool
  - b. Number that had made unconsented changes to the circumstances of the pool
  - c. Number that had no changes to the circumstances of the pool

For the purposes of providing information to meet this request, the expression “pool inspection” means any inspection, audit or other review of a residential swimming pool that would meet the statutory obligations required of Council under the legislation that came into effect from January 2017.

Ngā mihi nui nā,

Louise Buchanan

Keith Marshall”

**Appendix 2: Individual Council Ratings.**

Rating	Number	Councils
<b>A</b>	20	Ashburton, Auckland, Carterton, Central Hawkes Bay, Chatham Island, Christchurch, Grey, Hamilton, Hastings, Kaikoura, Kawerau, Napier, New Plymouth, Palmerston North, Porirua, Selwyn, Tauranga, Timaru, Waitaki, Western Bay of Plenty
<b>A*</b>	6	Clutha, Horowhenua, Nelson, Otorohanga, Waimakariri, Wellington
<b>B+</b>	5	Hutt, Kapiti, Marlborough, Stratford, Westland
<b>B</b>	4	Buller, Masterton, Rotorua, Waikato
<b>B*</b>	1	Far North
<b>C</b>	8	Manawatu, Rangitikei, South Waikato, South Wairarapa, Taupo, Thames-Coromandel, Waitomo, Whangarei
<b>D</b>	8	Dunedin, Gisborne, Kaipara, Mackenzie, Southland, Tararua, Waipa, Whanganui
<b>E</b>	3	Central Otago, Tasman, Wairoa
<b>E*</b>	1	Invercargill
<b>F</b>	3	South Taranaki, Upper Hutt, Waimate
<b>F*</b>	2	Gore, Matamata-Piako
<b>DNR</b>	6	Hauraki, Hurunui, Opotiki, Queenstown-Lakes, Ruapehu, Whakatane

### **Appendix 3: Our local Tasman District Council; and a personal “caveat”.**

You may note that the Tasman District Council has been occasionally named in this report by way of examples and discussion.

In the interests of transparency, we advise that this is because we are currently engaged in what has become, for us, a rather unpleasant pool-related dispute with TDC as a result of an inspection of our pool by them. As a result of our lengthy ongoing interaction with TDC, we wished to better understand their wider pool inspection efforts.

In doing so, we initially sought specific information (via LGOIMA) from TDC regarding the number of pool inspections they had completed across the Tasman Region, for the purpose of understanding the wider efficacy of their inspection regime. That TDC data showed what we thought was a considerable shortfall in meeting their legal obligation for pool inspections.

This was very much about us, as concerned ratepayers, wanting to ensure our Council was doing a good job.

While we can't be entirely sure why the TDC shortfall arises, what we have determined is that Tasman District Council senior management formally identified the requirement to inspect all pools every three years in a report to their Council in November 2016. In addition, TDC also formally changed their fees and charges schedule to include a charge for swimming pool inspection fees from July 2018. This replaced a previous fee under FOSPA. On the basis of that evidence, we can conclude that TDC did know about the changed obligations facing them.

Following the receipt of information obtained from TDC, we subsequently got to wondering what pool inspection performance was like in other Councils around the rest of the country. In part that was driven by wanting to see what comparable efforts looked like.

But, just as much a driver for us was that we both have a huge regard for the competence of the local government sector, and we felt sure that TDC's level of effort couldn't be the norm.

And, even if this did in fact turn out to be a widespread issue, we also thought that it might then be helpful to the sector to better understand the nature of any issues identified. Thus, and because there was no readily available sector-wide information, we initiated our LGOIMA request to Councils nationwide; the results from which led us to feel obliged to compile this report.

We're pleased to see that the sector lived up to our expectations of being (largely) on top of the issue, notwithstanding the need to make some much-needed improvements.

In summary, then, while wanting to better understand TDC's pool inspection regime was one of the initial drivers for seeking nationwide information, none of that has any relevance whatsoever to the content or findings illustrated by this report.

**This is very much a data-driven report; the actual results speak for themselves.**

### **Appendix 4: The authors: who are we?**

Keith Marshall has been a Chief Executive of a number of Councils (large and small, spanning rural, provincial and city) over a period of nearly 30 years as well as having wide-ranging central government experience at a senior level. Keith was also a party to the initiation of, and having chaired, the Safeguarding Children Initiative Trust.

Louise Buchanan, BSocSc, BA (Hons) Industrial and Organisational Psychology, Grad Dip Bus, has a career in organisational development roles, including having been a senior manager in a notable NZ corporate.

We are grandparents to 4 grandchildren, and grand-uncle and grand-aunt to many more.

In that regard then, we believe we have a sufficiently close personal interest in child safety and also have the senior management experience and sector knowledge to be able to make a reasoned assessment of the current situation relating to Council efforts around pool safety.