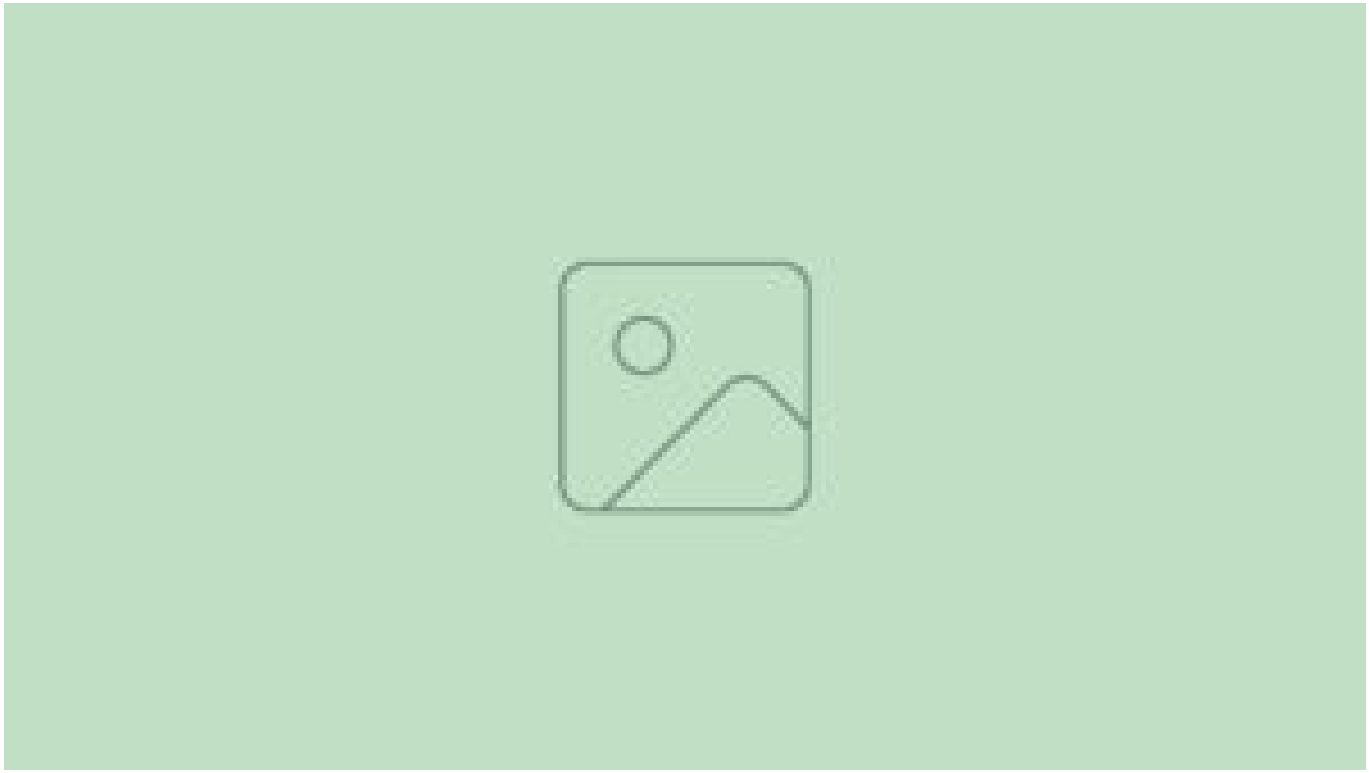


Legal Duty for Pool Inspections

Posted on: February 16, 2023

Background to the case

Tasman District Council ("Council") inspected a residential pool area in 2006 and issued Code Compliance Certification ("CCC").
In 2009 and 2012, Council inspectors examined the locking and latching mechanisms on the doors surrounding the pool, and decided that they were compliant.

When the owners decided to sell the property in 2019, a Council inspector observed that the pool doors were not self-closing or alarmed, and decided the pool did not comply with legal requirements (contrary to Council's previous decisions in 2006, 2009 and 2012).

The owners brought proceedings against Council arguing that they had relied on the CCC when buying the property in 2006, and subsequently relied on the pool inspections of 2009 and 2012 as authority that the CCC from 2006 was correctly issued.

The owners were prevented from claiming against Council with respect to the 2006 issue of CCC and the 2009 inspection (because of time restrictions). So the issue at hand was whether the 2012 pool inspection breached Council's standard of care. This was New Zealand's first case that assessed whether Local Authorities owe a duty of care to use reasonable skill and care for pool inspections.

Result

The High Court found that:

- It was reasonably foreseeable that a negligent pool inspection would cause loss to the owners.
- The relationship between Local Authorities and pool owners is a sufficiently proximate relationship for a duty of care to be imposed.
- It was fair, just, and reasonable to impose the duty on Council.

The Court decided that Council owed a duty of care when inspecting in 2012. The Court also observed that Council owed duties of care when issuing the CCC in 2006 and when inspecting the pool in 2009. On the facts, Council had breached their duty of care.

The Court decided that the Council was responsible to pay the owners damages of $270,000. That figure comprised the difference between the amount originally paid for the property and its actual value, plus the costs for rectifying the issues, plus general damages for the distress and humiliation, plus interest and costs.

Key takeaways

This case confirms that Local Authorities have a duty to take reasonable care and skill when issuing pool inspections. It also illustrates the possibility of duties of care that may exist, but are yet to be canvassed in law.

Local authorities now have a better understanding of their obligations when conducting pool

inspections. The judge rejected argument that his ruling may disincentivise Local Authorities from conducting pool inspections. Those entities are already statutorily required to undertake inspections every three years.

The case also serves as a reminder to any service-providing person where a duty of care exists. If loss or damage is a reasonably foreseeable consequence of the service-provider's conduct, and such loss is proximate to the relationship between the parties, the service-provider may face serious consequences if it fails the legal duty to observe reasonable care and skill in your service.