

Fencing of Swimming Pools Act 1987 (the Act)

Section 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 condition it imposes under subject (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
- (3) Any exemption granted or condition imposed under this section maybe amended or revoked by a territorial authority, by resolution.

establishing compliance with the building code for the purposes of section 49 of that Act, and the requirements of this Act:

- (b) Buildings and premises not subject to the Building Act 1991, be deemed to be a reasonable and adequate provision for the purposes of this Act.]

[Hist. s13B inserted on 1 July 1992 by 1991 No 150, s92(1).

[13C. AMENDMENT AND REPLACEMENT OF SCHEDULE--

The Governor-General may from time to time, by Order in Council made on the advice of the Minister of Internal Affairs, amend the Schedule to this Act or repeal that Schedule and substitute a new Schedule.]

[Hist. s13C inserted on 1 July 1992 by 1991 No 150, s92(1).

14 AMENDMENT TO FENCING ACT 1978--

The Fencing Act 1978 is hereby amended by inserting, after section 9, the following section:

"9A. CONTRIBUTIONS WHERE FENCE REQUIRED BY FENCING OF SWIMMING POOLS ACT 1987--

"Where any person is required to provide a fence in order to comply with the Fencing of Swimming Pools Act 1987--

"(a) All work on that fence that is required because of the application of that Act and would not otherwise be required shall be the responsibility of the owner of the swimming pool; and

"(b) No person, other than the owner of the swimming pool, shall be required to make any contribution under this Act to the work on a fence greater than the contribution that the person would be required to make to the work on a fence (whether of the same type or not) if the swimming pool did not exist."

SCHEDULE

[Sections 13B, 13C]

[MEANS OF COMPLIANCE] FOR FENCES UNDER THIS ACT

HEIGHT

1. (1) The fence shall extend--

- (a) At least 1.2 metres above the ground on the outside of the fence; and

Status Local Government Legislation
Annotated to 2000, No. 7 - 3 April 2000

Query: Page 8

(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.

(2) Notwithstanding subclause (1) of this clause, where the fence is constructed of perforated material, netting, or mesh and any opening in the material, netting, or mesh has a dimension (other than the circumference or perimeter) greater than 10 mm, the fence shall extend at least 1.8 metres above the ground or the projection or object.

GROUND CLEARANCE

2. Any clearance between the bottom of the fence and ground level shall not exceed 100 mm.

MATERIALS

3. All materials and components shall be of a durable nature and shall be erected so as to inhibit [any child under the age of 6 years] from climbing over or crawling under the fence from the outside.

4. Except where the fence is horizontally close-boarded [or is made of perforated material, netting, or mesh], the spacing between adjacent vertical pales, panels, or other posts shall not exceed 100 mm at any point.

[5. All fencing supports, rails, rods, and wires, that are not vertical, and all bracing that is not vertical, shall be inaccessible for use for climbing from the outside.]

[5A. Notwithstanding clause 5 of this Schedule, a fence may have horizontal supports, rails, rods, or wires, that are accessible for use for climbing from the outside, and horizontal bracing that is accessible for such use, if--

(a) The distance between any 2 of them at any point is at least 900 mm; and

(b) There is no other support, rail, rod, wire, or bracing (other than a vertical rail) between the same 2 at any point.]

6. Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.

7. All perforated material, netting, or mesh material shall be firmly attached at both top and bottom to a rail, pipe, or similar firm structure, or otherwise be of such a nature that the fence cannot readily be crossed by children under the age of 6 years.

GATES AND DOORS

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

(a) It cannot open inwards towards the immediate pool area;

(b) It is clear of any obstruction that could hold the gate or door open and no other means of holding the gate or door open is provided;

(c) When lifted up or pulled down the gate or door does not release the latching device, come off its hinges, or provide a ground clearance greater than 100 mm.

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 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.

Hist. Schedule; omitted expression "Section 8" and substituted expression "Sections 13B, 13C", 1st July 1992 by s92(1) of 1991 No 150

Hist. Heading; omitted word "REQUIREMENTS" and substituted words "MEANS OF COMPLIANCE" on 1 July 1992 by 1991 No 150, s92(1).
{ Editorial Note: 1991 No 150 substitutes for the word "REQUIREMENT" whereas the original schedule heading actually contained the word "REQUIREMENTS". }

Hist. Cl.3 omitted words "any person" and substituted words "any child under the age of 6 years" on 20 November 1989 by 1989 No 117, s2(1).

Hist. Cl.4 inserted words "or is made of perforated material, netting, or mesh" on 20 November 1989 by 1989 No 117, s2(2).

Hist. Cl.5 repealed and Cl.5 & Cl.5A substituted on 20 November 1989 by 1989 No 117, s2(3). The repealed CL.5 is listed below for reference.

"5. All fencing supports, rails, rods, wires, bracing, or other similar posts shall be on the inside of the fencing and shall be inaccessible for use for climbing from the outside."

FENCING OF SWIMMING POOLS AMENDMENT ACT 1989



CONTENTS

- Title
1 Short Title
2 Schedule amended
-

FENCING OF SWIMMING POOLS AMENDMENT ACT 1989

Public Act 1989 No 117

An Act to amend the Fencing of Swimming Pools Act 1987

120 November 1989

BE IT ENACTED by the Parliament of New Zealand as follows:

1 SHORT TITLE -

This Act may be cited as the Fencing of Swimming Pools Amendment Act 1989, and shall be read together with and deemed part of the Fencing of Swimming Pools Act 1987 (hereinafter referred to as the principal Act).

2 SCHEDULE AMENDED -

(1) The Schedule to the principal Act is hereby amended by omitting from clause 3 the words "any person", and substituting the words "any child under the age of 6 years".

(2) The Schedule to the principal Act is hereby further amended by inserting in clause 4, after the words "close-boarded", the words "or is made of perforated material, netting, or mesh".

(3) The Schedule to the principal Act is hereby further amended by repealing clause 5, and substituting the following clauses.

"5. All fencing supports, rails, rods, and wires, that are not vertical, and all bracing that is not vertical, shall be inaccessible for use for climbing from the outside.

"5A. Notwithstanding clause 5 of this Schedule, a fence may have horizontal supports, rails, rods, or wires, that are accessible for use for climbing from the outside, and

horizontal bracing that is accessible for such use, if--

"(a) The distance between any 2 of them at any point is at least 900 mm; and

"(b) There is no other support, rail, rod, wire, or bracing (other than a vertical rail) between the same 2 at any point."

The Fencing of Swimming Pools Act 1987 is administered in the Department of Internal Affairs.

© 1992 - 2000 STATUS PUBLISHING



Waitakere City Council
Te Taiaro o Waitakere

EXEMPTION APPLICATION FORM FOR SPA & SWIMMING POOLS

The Operational Compliance Manager
Waitakere City Council
Private Bag 93109
Henderson

WAITAKERE CITY

OWNERS NAME:

Mr/Mrs/Miss/Ms... JOHN & JANE MACKENZIE

OFFICE USE ONLY

SITE ADDRESS:

SWP NO:

ABA NO:
(IF APPLICABLE)

Hereby make application for an exemption from the standard fencing controls relating to pools.

I propose to make or have already made the following arrangements for the security of my pool:

THE POOL IS PRESENTLY SECURELY FENCED TO EXCLUDE CHILDREN TO THE SWIMMING POOL. THE INTERPRETATION OF THE WORDS "SECURELY FENCED" IS AS FOLLOWS:

Reasons why proposal should be granted: (See reverse):

SEE ATTACHED LETTER.

ADDRESS FOR

CORRESPONDENCE: 23 TAIARO DR, THE PLAINS, HENDON

APPLICATION FEE: \$250.00 (one off)

Signature: [Handwritten Signature]

Telephone No: 833 2426

Date: 17/3/05

Note the explanation and requirements on the reverse of this form.

27 Taitua Drive
Te Atatu South
17th February 2005

Dear Sir/Madam

Re: FENCING OF SWIMMING POOLS ACT 1987.
SITE ADDRESS: 27 TAITUA DRIVE, TE ATATU SOUTH. WAITAKERE CITY.

APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE ACT.

The property owner/occupants are strongly of the view that to change the fenceline as demanded by the council is simply not practical and will not add to safety in any way.

The gate would not be able to be opened outwards (as the legislation requires) if it were sited as the council diagram shows, at the base of the stairway

In each of the three previous meetings with Council inspectors we have been advised that additional fencing would be required in three differing locations. We therefore have little confidence that building the fence where presently demanded would be the end of the matter.

Helen Maclean has qualifications and job experience as a primary school swim instructor and long term connections with Surf lifesaving. Jim Maclean has extensive experience in the emergency services as a firefighter, ambulance assistant and first aid instructor, including experience pumping out pools where fatalities have occurred, giving CPR to infants and children following accidents and observing over more than three decades the facets of human nature which lead to accidents occurring in the first place. We are therefore both highly motivated to ensure the safety of our pool and would have no hesitation in making changes where some safety benefit would result.

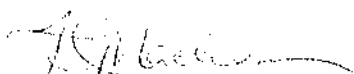

We believe strongly that previous interpretations of fencing requirements would have significantly increased the danger to young children and this formed the basis of our opposition to previously demanded changes. The fact that the present fencing demands appear to accept our arguments in this regard implies a measure of support for our past position and note that your letter dated 11th of February states "... it is the view of officers that your particular case may qualify for a special exemption under section 6 of the Act...".

We understand this process involves a site visit by three city councillors and look forward to the opportunity for a fresh and independent view on the matter.

Yours faithfully

PJ (Jim) Maclean

H J Maclean



A8

A9



27 Taiiua Drive (Maclean)

A 4



Waitakere City Council
Te Taiāwhiri o Waitākere

02 FEB 2005

EXEMPTION APPLICATION FORM FOR SPA & SWIMMING POOLS

CHEQUE FOR \$250.00 TO CASHIERS

The Operational Compliance Manager
Waitakere City Council
Private Bag 93109
Henderson

WAITAKERE CITY

OFFICE USE ONLY

SITE ADDRESS:

SWP NO:

ABA NO:
(IF APPLICABLE)

OWNERS NAME:

Mr/Mrs/Miss/Ms GEORGE ROBINSON

Hereby make application for an exemption from the standard fencing controls relating to pools.

I propose to make or have already made the following arrangements for the security of my pool:

WITH ACP CONTRACT SERVICES
P.O BOX 20469.

Reasons why proposal should be granted: (See reverse):

WE HAVE A BRICK WALL 1500 HIGH
JUST 3 1/2 TO 5 1/2 METRES FROM THIS
PROPOSED FENCE IT SEEMS VERY STRONG
THAT THIS FENCE SHOULD BE REQUIRED.
AS THE GROUND IS ORIGINAL BUSH AND
STILL AT ITS NATURAL LEVEL.
IT WAS SUGGESTED IN OUR LETTER THAT WE
HAVE A GOOD CASE FOR EXEMPTION.

ADDRESS FOR

CORRESPONDENCE: 524 SOUTH TITIANWAI RD.

APPLICATION FEE: \$250.00 (one off)

Signature: [Signature]

Telephone No: 817 5971

Date: JAN 28th

Note the explanation and requirements on the reverse of this form.

Chief Executive	
Corporate Services	
City Services Moealo	
Consultancy Services	
ECO - WATER	
Strategic Group	
Consent Services	<input checked="" type="checkbox"/>
Field Services	<input checked="" type="checkbox"/>

A10

Chg. Planning
2/2/05

