

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 may be 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.

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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. Brett & Jenny James

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 boundary of our pool area has a regulation in mesh solid black wall. Between the house & boundary wall is a self-locking gate of a continuation of the black wall. All doors opening to pool area have high locks & all windows have restricting latches. There is no play equipment, sheds, clotheslines etc within this area.

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

Our pool builder suggested marking a fence immediately in front of our pool, when we applied for our pool building consent. Before filling our pool, I telephoned Council who faxed me a copy of the fencing requirements. My assumption from this was that along with our boundary wall being in compliance, I was required to put high locks on doors and latches on windows accessing this area. We then decided not to build the fence immediately in front of the pool as this did not appear to be a legal requirement. We were not aware that we would be required to apply for an amendment to our consent.

Apart from an area of landscaped garden, our pool area only contains items that we use in conjunction with the pool being outdoor seating, BBQ and a change room area. This area can be completely locked from the house. We have a separate lawn/play area on the opposite side of our home with access to the area completely separate from the pool area. Children are able to enter/exit our home from the lawn area without the need to be anywhere near the pool area.

As our pool area is not large, is solely used for use with the pool and does not encumber any play area, sheds, clotheslines etc, we wish to apply for an exemption to fence immediate in front of the pool as per our consent. The landscaped garden behind the pool is not a pedestrian area. We therefore would like to apply for an exemption for this also, in case in the future gardens surrounding pools are not allowed.

ADDRESS FOR

CORRESPONDENCE: 7 Courtney Place, Hobsonville

APPLICATION FEE: \$250.00 (one off)

Signature: James

Telephone No: 011 64003 0212503695

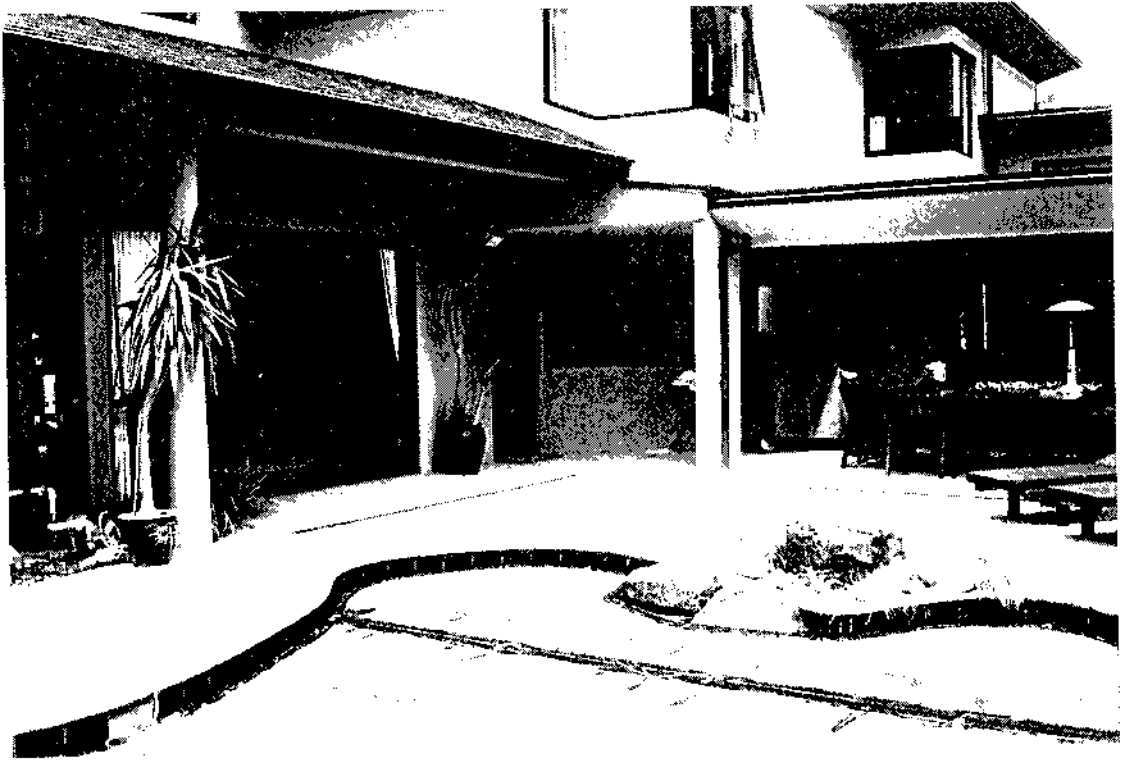
Date: 27/1/05

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

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ALL BY TH.
 G.M. DOWNEY.
 RESPONSIBILITY
 OF THE SITE IF
 THE POOL COI
 G.M. DOWNEY C
 DISCREPANCY
 SHOWN AND A

COURTNEY'S PLACE

ELIER
 BACKWASH TO
 NEAREST GT

By 21.38m

SSMH

SSMH

Connection
 for pool
 backwash

EXIST SANITARY SEWER

DP

Pool
 approx 35sqm
 (1x5)

PROPOSED
 POOL

EXIST STORMWATER

Pump

213sqm coverage

7 Courtney Place

EXISTING
 RESIDENCE

Pool Fencing (Building consent)

By 32.67m

current fencing
 requirement

Proposed Block Fencing 1.8m High

27-88
 3-81

DP

DP

By 34.56m

SITE PLAN
 Scale 1:100

LEGAL DESCRIPTION LOT 11



Proposed Block Fencing 1.8m High

By 23.00m

Existing fence

All



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... DAVID J. CHERRY MARRIAGE

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 AREA IS ALREADY BOUNDED BY FENCES WHICH
COMPLY WITH THE FENCING OF SWIMMING POOLS ACT 1987
PLEASE REFER LETTER DATED 26/1/05

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

PLEASE REFER TO LETTER DATED 26/1/05

ADDRESS FOR

CORRESPONDENCE: 7 BARRAGES WAY, HENDERSON

APPLICATION FEE: \$250.00 (one off)

Signature: D. Cherry

Telephone No: HOME 09-8204704, MOBILE 027 2444266

Date: 26/1/05 HOME 4160123

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

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28 JAN 2005

Dave & Cherryl Marriott

7 Bannings Way, Hobsonville, AUCKLAND
Email: dcmariott@xtra.co.nz. Ph 09 4160123

The Operational Compliance Manager
Waitakere City Council
Private Bag 93109
Henderson

26 January 2005

Ref:- Pool at 7 Bannings Way, Hobsonville
Application for exemption from the standard fencing controls relating to pools

Dear Sir,

Following the determination by Randerson J of various aspects of the Fencing of Swimming Pools Act 1987, and a letter of guidance received from Mr Max Wilde, Field Services Manager, Waitakere City Council, I wish to apply for an exemption from the standard fencing controls relating to pools.

Background

My wife and I purchased the property in June 2003, and as part of the purchase process obtained various documentation from the Council. These included a compliance certificate issued to the previous owner in respect of the pool fencing, and other documentation that indicated that the fencing satisfied the Council's requirements. In April 04 following a Council inspection, the Council issued proceedings against us alleging that the fence was non-compliant. Much of this issue has now been cleared up by the recent Randerson J. High Court judgment. Mr Wilde's letter of 18 January, raises concerns over the size of the "immediate pool area" and consistent with the Randerson J determination, suggested that way forward would be to seek a specific exemption to cover the revised interpretation of the Act.

Differences between previous and new Council interpretation of pool area.

Please refer to the attached drawing. When the pool was first installed the pool area was determined by the area a-b-c-d-e-f-g-h-i-j-k. In approx 2000, the Council redefined the area and required a gate to be installed at g. Thus for the past 5 years the pool area has been the area a-b-c-d-e-f-g.

In the letter from Mr Wilde dated 18 January, the Council proposes to further isolate the grass area from the pool area -- reducing the pool area to a-b-c-A-A-f-g.

Current arrangements for security of the pool

The pool is currently bounded by a perimeter fence, comprising the property boundary fence (timber, brick, and wrought iron 1500 - 2000 mm high) and 2 walls of the house. Door and window openings through the house wall comply with the recent Randerson J

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