

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 conditions it imposes under subsection (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.

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
 - (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", on 1 July 1992 by 1991 No 150, s92(1).

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

Public Act 1989 No 117

Date of assent 20 November 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

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) Substituted words in cl.3 of the Schedule to principal Act.
- (2) Inserted words in cl.4 of the Schedule to principal Act.
- (3) Substituted cl.5 & cl.5A for repealed cl.5 of the Schedule to principal Act.

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



Waitakere City Council
Te Taiaro o Waitakere

WAITAKERE CITY COUNCIL

- 8 JUN 2005
CHEQUE FOR
\$ 250 00
TO CASHIERS

EXEMPTION APPLICATION FORM FOR SPA & SWIMMING POOLS 635317

The Operational Compliance Manager
Waitakere City Council
Private Bag 93109
Henderson

WAITAKERE CITY

OFFICE USE ONLY

SITE ADDRESS:

SWP NO:

20747000250

ABA NO:

(IF APPLICABLE)

OWNERS NAME:

Mr/Ms/Miss/Ms

Warren Ryan

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:

Repair the gate so that it is self closing
Put permanent stays on the 2 lower windows
which open onto the ISWPA - locks already done

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

We are a middle aged couple. There are
no children or grand-children - the boundary
fence is at a height that would prevent
children under six accessing the property. The section
is small and I believe the only reason I need to
have part of the backyard is because of the position
of the clothes line.

Strategic Group	
General Services	
Public Services	<input checked="" type="checkbox"/>

ADDRESS FOR

CORRESPONDENCE:

14 New Mars Place, Te Atatu

APPLICATION FEE: \$250.00 (one off)

Signature:

W.P. Ryan

Telephone No:

838-6771

Date:

7.6.05

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

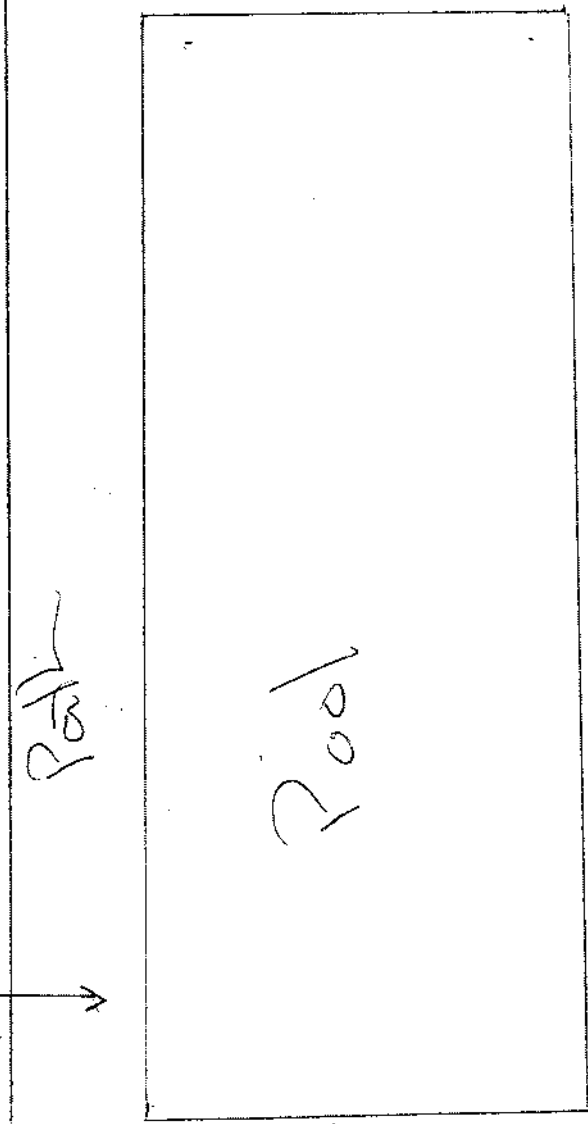
I enclose the fee
but would ask that this
be waived. I have been
through this situation only
because the council
has interpreted the act differently to 1997
W.P. Ryan

AS

9A Boundary fence 1.57m

Boundary fence Black + Wood 2.8mtrs
Lawn

3.65m



2.74m
Garden
Path

Lawn
6.7m

Path

2.65m

Path

4.06m

Path

Kitchen
Dining Area

Fence

Gate
1.82m
height

Fence 1.57

Black + Wood 1.72m

10m

Boundary Fence Block + Wood 2.8 mtrs

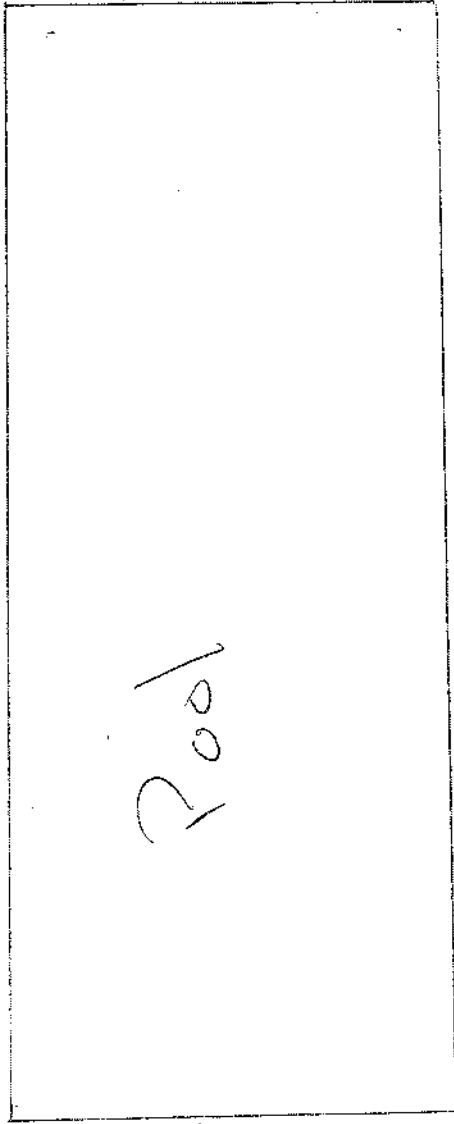
Lawn

Boundary fence Block + Wood 2.1 mtrs

A

A

Path



2.74 mtrs

Garden

Path

Path

Lawn

6.2 mtrs

A7

Boundary fence 1.3 mtrs

2.65 mtrs

Path

House line

Gate 1.82 mtrs
1.92 mtrs

Fence 1.57

Fence 6.7

A

B A

B

A

clothesline

Access to cloth

2.40 mtrs

Gate + Wood Ball 1.92 mtrs

Kitchen

Dining Area

2.51 mtrs



13 JUN 2005

Waitakere City Council
Te Taiāo o Waitākere

CHEQUE FOR
\$250.00
TO CASHIERS

EXEMPTION APPLICATION FORM FOR SPA & SWIMMING POOLS

635735

The Operational Compliance Manager
Waitakere City Council
Private Bag 93109
Henderson

WAITAKERE CITY

OFFICE USE ONLY

SITE ADDRESS:

SWP NO: SWP 3003193

ABA NO:
(IF APPLICABLE)

OWNERS NAME:

Mr/Mrs/Miss/Ms BENDALL

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:

- 1) Pool fencing erected exactly as per plan submitted for permit
- 2) Latches on windows and doors (Photographed by council inspector Friday 3rd June)
- 3) Self closing and lockable gate to pool.

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

- 1) Fencing constructed in accordance with original Council requirements at time of pool construction.
- 2) All bolts and latches in place.
- 3) Pool easily viewed/supervised from deck.
- 4) No large trees providing access from outside of pool area.
- 5) Pool and deck lighting available (at night)

ADDRESS FOR

CORRESPONDENCE: 45 Renair St, West Harbour

Chief Executive	
Corporate Services	
City Services	
Planning	
Community Services	
Environment	
Finance	
Human Resources	
Information Services	
Legal Services	
Operations	
Public Works	
Technical Services	
Transport	
Water Services	
Workforce Development	

* APPLICATION FEE: \$250.00 (one off)

Signature: A Bendall

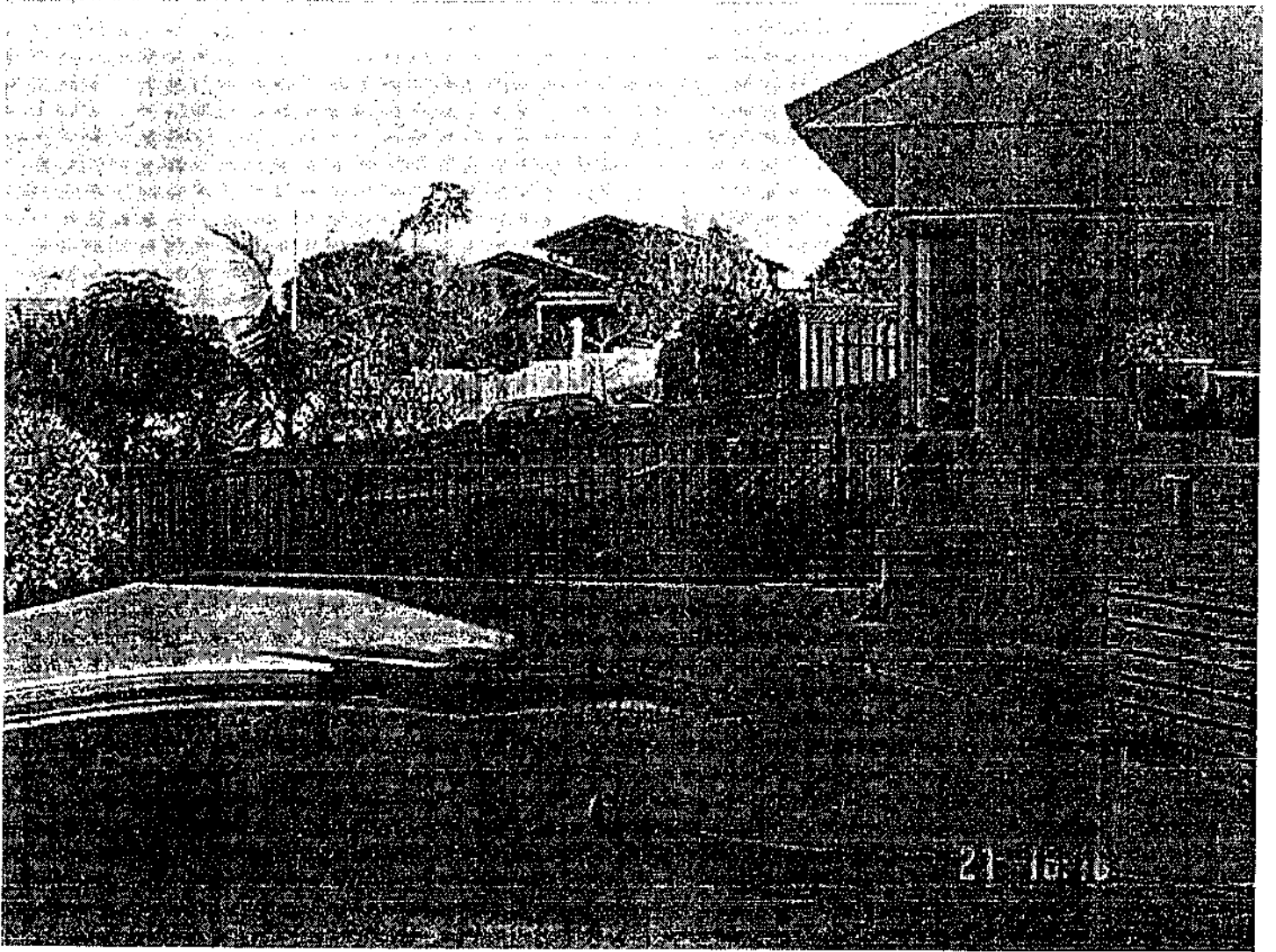
Telephone No: (09) 416 2014

Date: 11th June 2005

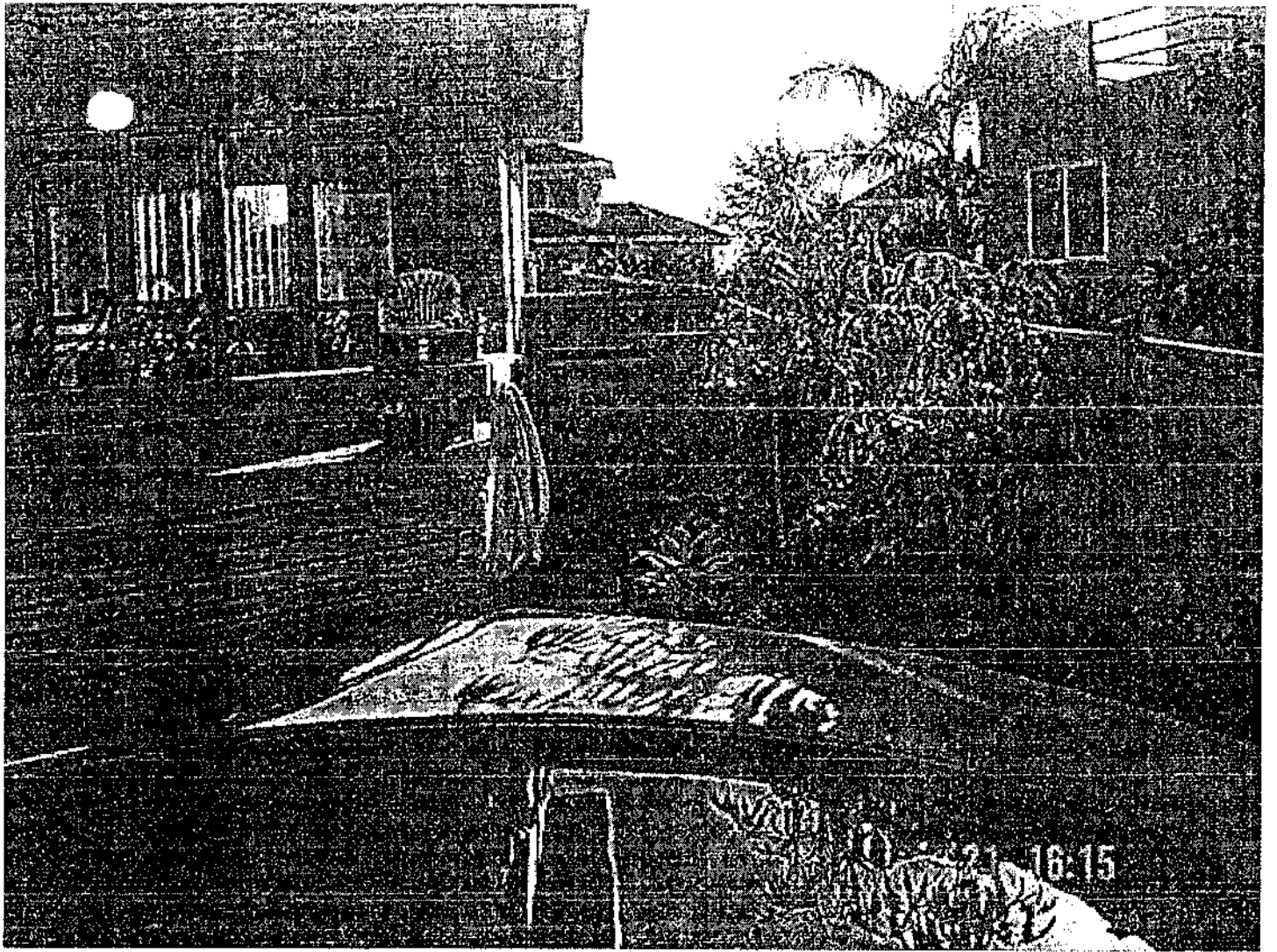
Note the explanation and requirements on the reverse of this form.

A8

* We request a waiver of the \$250 application fee due to the prolonged period of this dispute and the significant time, stress and commitment incurred by our family in dealing with these issues.



A9



A10

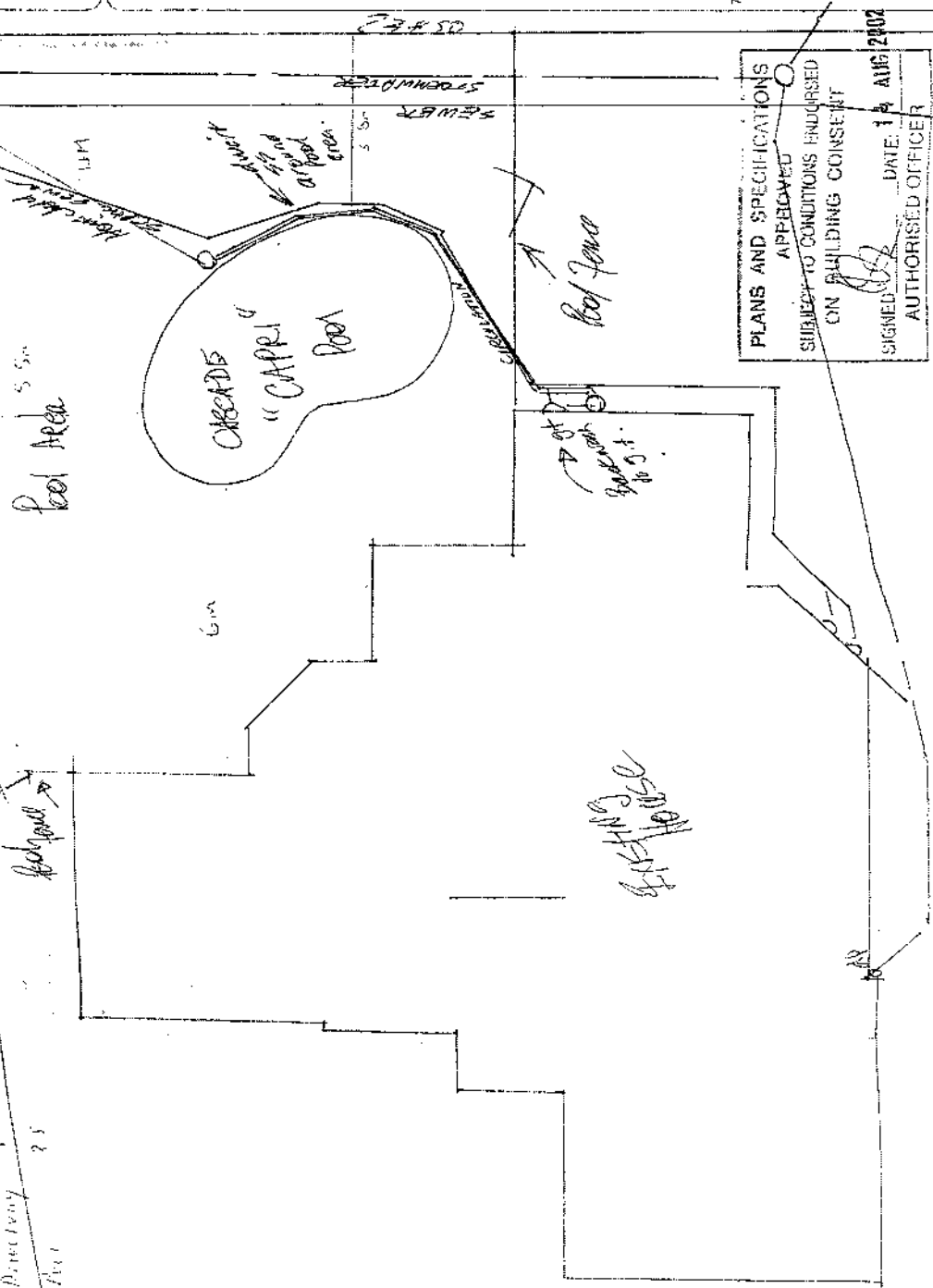


Building coverage 34.9
 Impervious Surface 34.9
 Area 26.56
 Driveway 3.1
 Area 3.5

Site Plan in support of Application for Building Approvals

IMPORTANT NOTICE

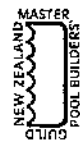
All building coverage and impervious surface on this site during construction shall be certified by a registered professional engineer to the satisfaction of the Council. Any payments are to be lodged to the satisfaction of the Council. The Council may be taken as the agent for the Council of all neighbours.



PLANS AND SPECIFICATIONS APPROVED
 SUBJECT TO CONDITIONS ENLARGED ON BUILDING CONSENT
 SIGNED: [Signature]
 DATE: 19 AUG 2002
 AUTHORISED OFFICER

Scale 1 : 100 unless otherwise noted

PLANS DRAWN BY:
 Michael V Coghlan
 Laurence E Ojden
CASCADE SWIMMING POOLS
 Cascade Industries Limited
 PO Box 17969, Greenlane
 Auckland 1109 NZ
 Tel: (09) 524 0578 Fax: (09) 524 2431
 Email: admin@cascade.co.nz
 Master Pool Builder/Guild Members

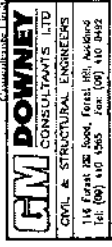


web page: www.cascade.co.nz

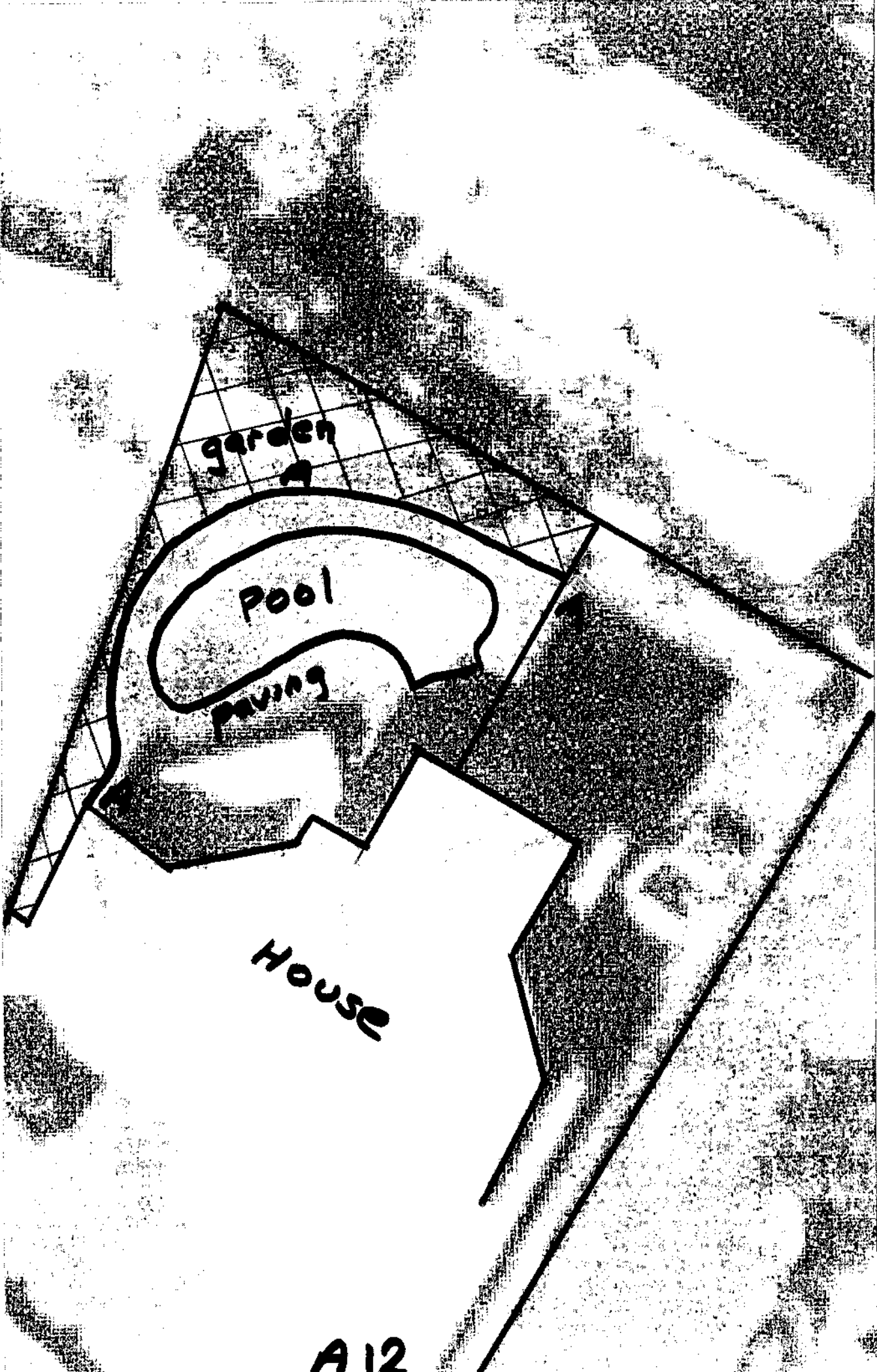
DATE: 5 Aug 2002
 CLIENT: SHILL BONDAL
 ADDRESS: 45 Renoir Street
 WEST HARBOUR
 LOT 107 SITE DETAILS:
 DP 102862
 AREA 679 COVER

- NOTES:
- Scale 1 : 100 (Unless otherwise noted)
 - The pool area will be fenced in accordance with the Pool Fencing Act 1997. Fencing Detail is shown on Engineer's Drawings supplied with this site plan. Fencing to be installed by others.
 - All dimensions to boundaries have been supplied and verified by the property owner.
 - The area where the pool is to be constructed is flat and level for a minimum of 1.0m from the pool sides.
 - The plan was originally drawn on A3 size paper. Reduction or photocopying may alter the scale shown.
 - PS4 (Consultation Review) may be supplied by suitably qualified Staff Members and will comply with Code of Practice NZS 3604 and Local Body Bylaws.

7. Engineering Plans, Specification & Producer's Statement were prepared by G.M Downey



AN



A12



Waitakere City Council
Te Tatao o Waitakere

EXEMPTION APPLICATION FORM FOR SPA & SWIMMING POOLS CHECK FOR
\$250.00
TO CASHIERS

The Operational Compliance Manager
Waitakere City Council
Private Bag 93109
Henderson

WAITAKERE CITY

OFFICE USE ONLY

SITE ADDRESS:

OWNERS NAME:

Mr/Mrs/Miss/Ms...

NAKIRE REID - WILLIAM WILKINSON

SWP NO:

123 GOLF RD.
TITIRANGI

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:

SEE ATTACHED

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

SEE ATTACHED.

ADDRESS FOR

CORRESPONDENCE:

123 GOLF RD. TITIRANGI.

APPLICATION FEE: \$250.00 (one off)

Signature:

Telephone No:

Date:

Ngane L Reid
815 0320 (Bus) 816 8585 (Rte)
13.6.05

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

originals
delivered to John
I copy with bus
system
- 13/6/85

A13

Exemption Application for Spa Pool at 123 Golf Rd.

We purchased the property above in January 2000, from John and Linda Campbell. As it wasn't completely finished, a condition of the Sale and Purchase Agreement was that a Code of Compliance must be obtained from the Council, and all costs of achieving this were to be covered by the Campbells. This was done – *copy of Certificate attached.*

It can be noted from the original plan, that the Campbells intention was to build a plunge pool in the area bordered by the family room, walkway and garage. At the time of purchase, and sign off from the Council this was incomplete – just a large hole in the ground containing rain water. *See attached photo A with painter on trestles in pool, painting soffits.*

We decided that a plunge pool would not be of any interest to us, and chose, instead, to install a spa pool. The "plunge pool" was filled in with supporting construction, the spa pool installed with planting at one end, and a river stone water feature at the other end (bounded by the family room, walkway and garage walls). A cover was designed which winches up above the pool. *See photo B, for closed and open views.*

This cover is operated by a removable handle, which is stored away from the spa pool, and is of such heavy construction that it is barely moveable by two strong men.

The entire property is ringed with at least 2.5 metre concrete block walls, with the exception of the south wall, which is of concrete block construction, with trellis on top.

Gates

There is a self-closing and lockable door at the south-eastern corner of the house, and a self closing pool gate at the north-eastern corner.

Council has requested that the north-eastern gate be moved to the other edge of the garage ie north-western corner of the garage *see aerial photo "C"*. We contend this is not sensible as

- The existing gate is on top of a step, making it even more difficult for a child to open
- There is a covered manhole containing pool equipment, outside the back door of the garage – this would be accessible by any child coming down the driveway and on to the property.

Doors

Refer to house plan.

The front of the house (north facing) consists predominantly of glass doors. Contrary to the plan, the doors opening out from the dining and family rooms, each consist of a single door and a bifold. As required by Council these doors were fitted with high, child-proof locks. The garage door has also been fitted with a high lock.

The doors opening out from the lounge, are as detailed on the plan, and are fitted with high locks and deadlocks. The door opening out from Bedroom 2, has a ranch slider which is fitted with a deadlock. The laundry door is also fitted with a deadlock.

The doors on the north wall of the house open into the pool area and do not have self-closers fitted. We contend that this would be totally impractical, as these doors provide the ventilation for a very warm, north facing house, as there is only one very small opening window on this wall.

We contend that the property as currently fenced and controlled, could provide no danger to any child wandering unsupervised onto the property. The only situation where a child could be in danger, would be that the child was with us, on the property, and that the spa pool cover had been left raised. This would be a most unlikely event, as being a heated pool, leaving the cover raised just increases heating costs, for no benefit. As the front of the house is virtually all glass, it would be most likely that any child would be seen from inside the living area of the house.

A14

Based on the following comments and the advice given by James Nolen of Kensington Swan, we ask that you grant the property an exemption, and this exemption to run with the title of the property.

We also ask that the Exemption Fee be waived.

As we are going to be away from 28 July until 17 September, we hope that this matter can be resolved promptly.

AIS