

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

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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.



Fresh Doors

Pool

5892 South Milwaukie Road

Dispensation Application

Introduction

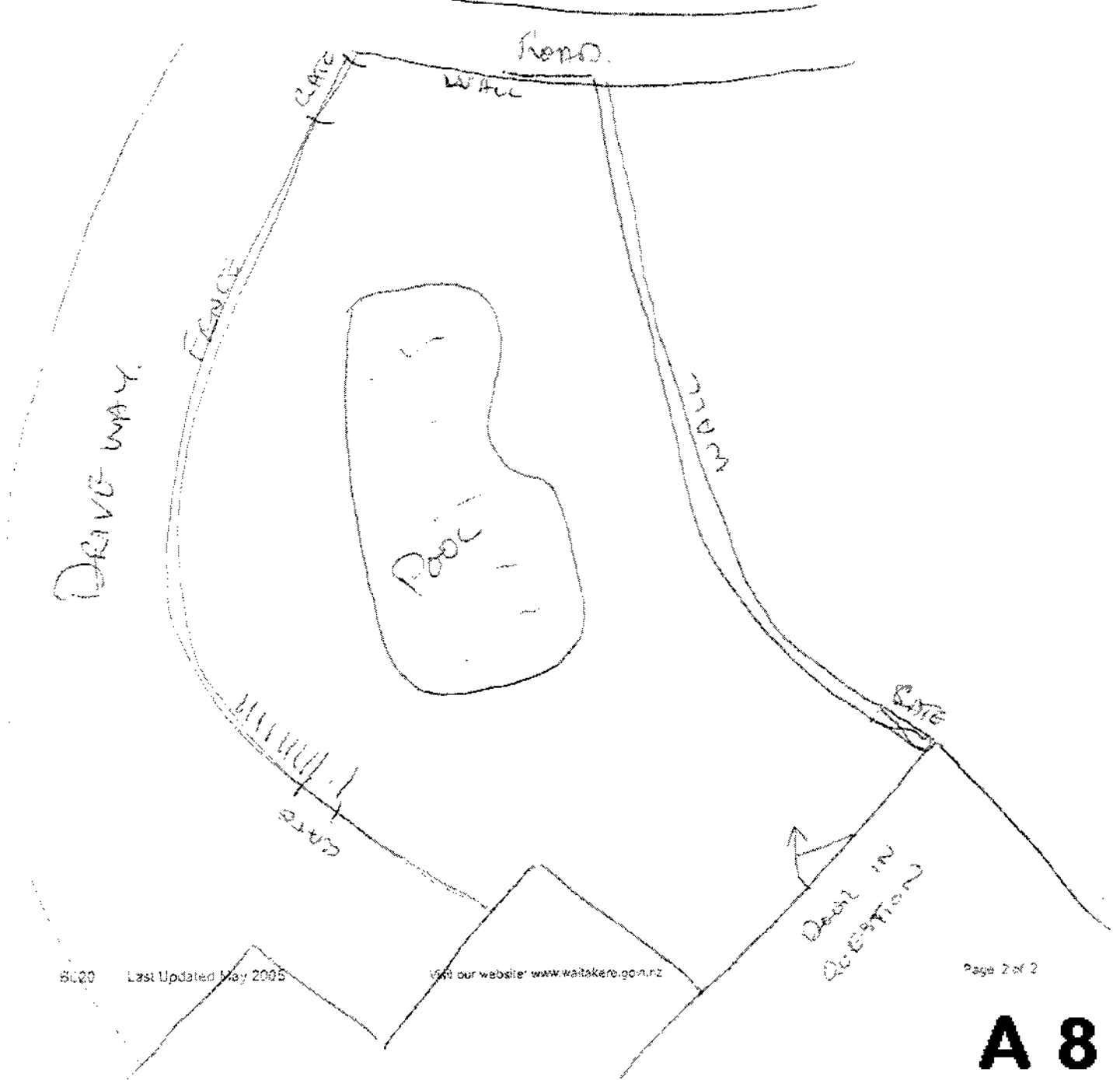
An exemption is a discretionary power conferred on Council by Section 6 of the Fencing of Swimming Pools Act 1987, to allow in certain circumstances exemptions from the requirements of the Schedule of the said Act.

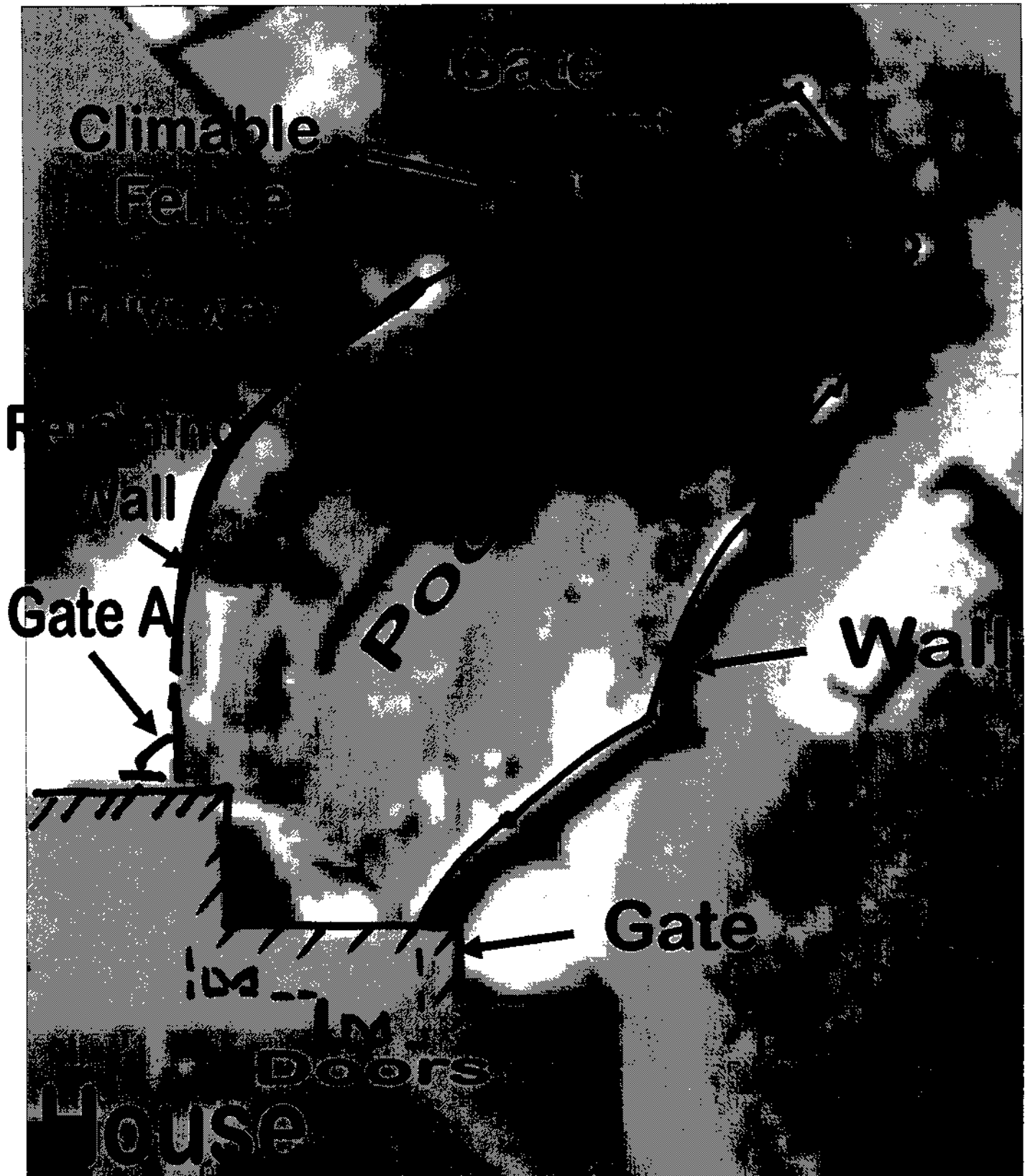
Information to be Provided

To avoid delay in the processing of your application the following information **must** be provided.

1. PLANS showing position of swimming pool in relation to house and boundaries, and position of existing and/or proposed fencing. Also the height of the fences, and material of which they are constructed must be stated. Photographs may be provided for clarification.
2. REASONS justifying the proposal. Council may only grant an application where there are circumstances warranting a dispensation from the standard requirements for fencing. The guidelines for fencing of pools are available at the Building counter. It must be shown that such an exemption would not significantly increase danger to young children.

The Council may impose other conditions relating to the property or the pool as are reasonable in the circumstances.





66 Paturoa Road

A 9

D C Maxwell
P O Box 3326
Auckland 1015

16 December 2005

Chief Executive
Waitakere City Council
Private bag 93109
Henderson
Waitakere City 1231

Dear Sir,

Fencing of swimming pools act 1987
SWP95000332

I am in receipt of Council letter dated 23 November regarding a recent swimming pool fencing inspection resulting notification of non compliance. I understand the only non compliant feature is that the house access doors open out into the pool area and are not self closing and latching.

Under clause 11 of the Fencing Guidelines fencing of swimming pool Act 1987, I wish to make application to Council for an exemption from this aspect due to unreasonableness.

" Where a building forms part of a fence, a door in the building wall does not have to comply with clauses 8 to 10 if the territorial authority is satisfied that:

- (a) compliance with these clauses is impossible, unreasonable, or in breach of another Act, regulation, or bylaw; and
- (b) the door is fitted with a lock that, when properly operated, prevents the door from being readily opened by children under the age of 6 years."

I submit photographs and a plan of the pool area.

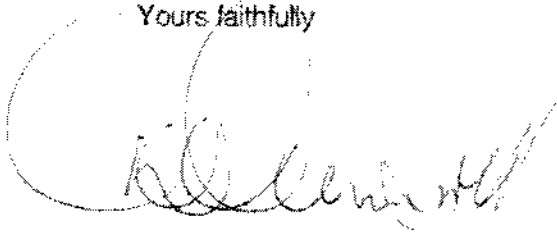
1. The property is down a long ROW, is bush clad, has no boundary fencing, and the house and pool fence are many metres from all boundaries on all sides.
2. There is only a Spa Pool, it is an 'ON deck' rather than 'IN deck' variety, so one needs to climb into the pool.
3. Pool access can only be made from the south or west side.
4. The pool has a sturdy lockable cover which, except during servicing when the pool would be empty, is permanently locked on the North side. The lid opens folding up against the house, it is very awkward to open and close the lid from outside the pool so in practice there are either people in the pool or the lid is closed.

(2)

5. An under 6 year old would not have the strength to open the lid without assistance from an older person.
6. The pool courtyard is like any room within the house and occupants have full control to keep youngsters away from the danger with the existing locking and safety devices.
7. The pool area is on the South East side of the house whilst the outdoor entertainment area is on the North side of the house with large deck and barbeque facilities. A spa pool is only suitable for 4 or 5 people at the most, so on its own is a domestic facility, not entertaining.

I do not believe the Act was passed to be unreasonable to pool owners who have endeavoured at every step to comply. The area was designed by an architect, the plans submitted and passed by council, signed off by your inspector 10 years ago, and the area remains unaltered since that time. The fact that the Act allows for exemption to be granted on this aspect of non compliance, and that the area is really very secure, I hope that you will be in a position to grant this exemption.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D C Maxwell', written over a large, faint circular stamp or watermark.

D C Maxwell