

**APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE
FENCING OF SWIMMING POOLS ACT 1987 - 141 FIELD WAY,
WAIKANAEBEACH**

PURPOSE OF REPORT

- 1 The purpose of this report is to consider an application by Michael and Vicky Russell for an exemption under Section 6 of the Fencing of Swimming Pools Act 1987 (the Act), in respect of a portable spa pool at 141 Field Way, Waikanae Beach.

SIGNIFICANCE OF DECISION

- 2 The recommendations in this report do not trigger the Council's significance policy.

BACKGROUND

- 3 The specific exemption requested is for "*portable spa pool*". This application (**Attachment 1**) is the result of a recent inspection by Council's monitoring staff and a request by the property owner to seek an exemption from some of the requirements of the Act. The following sections outline details of the application and relevant sections of the Act.

CONSIDERATIONS

Issues

- 4 Section 4 of the Act states that all pools are required to comply with the Act at any time when the pool is filled or partly filled with water. The spa pool is currently full which has resulted in it failing to meet the requirements of the Act as it does not have a compliant pool fence.
- 5 The applicant meets all the criteria set down in the agreed "*Application for Special Exemption for Portable Spa Pool*", as adopted by this Committee on 27 April 2006 with the exception of the warning sticker which Council will supply. The application also meets the requirements of "*New Zealand Standard 8500:2006 Safety Barriers and Fences Around Swimming Pools, Spas and Hot Tubs*". The applicant has also signed the "Statement of Undertaking".
- 6 The spa pool has been inspected by a Council officer who has confirmed the criteria in paragraph 5 above, have been met.
- 7 It is the opinion of the reporting officer that this application could be approved subject to the conditions listed in the "Recommendations" being met because the applicant's proposal would not significantly increase danger to young children. The application is similar to others that the Committee has previously considered and granted, subject to similar conditions.

Financial Considerations

8 There are no financial considerations.

Legal Considerations

9 The Committee is required to address the matters as set out in the Act and if it were to grant an exemption the Committee must be satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances that such an exemption would not significantly increase the danger to young children.

10 If the Committee was to grant an exemption under section 6(1) of the Act, then it may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.

11 Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.

Delegation

12 Under the Governance Structure 2010-2013 Triennium, the Regulatory Management Committee has the delegated authority under Section B.2 7.4.3 to:

“exercise all of the Council’s functions, duties and powers under the Fencing of Swimming Pools Act 1987”.

Consultation

13 There are no consultation implications.

Policy Implications

14 There are no policy implications.

Publicity Considerations

15 There are no publicity considerations.

RECOMMENDATIONS

16 That the Committee approve the application for exemption under Section 6 of the Fencing of Swimming Pools Act 1987 and not require a fence to be placed around a portable spa pool at 141 Field Way Waikanae Beach, subject to the following conditions (as agreed) being complied with:

- The pool has a height of 760mm or greater above ground or deck level and no objects are positioned so as to allow a young child to climb onto the cover; and
- The property has suitable barriers in place to prevent a child up to the age of six years gaining access from outside the property, and the lockable spa cover meets the set criteria as stated below:
 - the cover is lockable and able to be kept locked when the pool is not being used or supervised;

- the locks cannot be opened or released by a child up to the age of six years;
- the cover cannot be lifted more than 100mm above the top of the spa, when locked in place;
- the cover must be made of material that can withstand the weight of at least 60 kgs to ensure that it would withstand the weight of a child up to six years;
- the cover must be constructed of a suitable material and not allow water to pond on top of it;
- the cover and locks must be maintained in a good state of repair; and
- suitable warning stickers/signs be placed on the cover to advise that it must be locked in place when the pool is not being used or supervised.

Report prepared by:

Approved for submission by:

**Peter Ropata
COMPLIANCE OFFICER**

**Tamsin Evans
GROUP MANAGER
COMMUNITY SERVICES**

ATTACHMENTS:

- 1. The application**
- 2. Non compliant pool fencing letter**
- 3. Photo**

Attachment 1:

CS11-096

24 DEC 2010



Application Form - Special Exemption for Portable Spa Pool under Section 6 of the Fencing of Swimming Pools Act 1987

Application for an exemption for spa pool is made in accordance with the details set out below:

- Physical address of property where spa pool is sited... 141 FIELD WAY, WAIKAWAE BEACH
- Full name and address of property owner... M. RUSSELL, V. RUSSELL
G. CALENDER, P O BOX 13407, JOHNSONVILLE 6440
- The property is occupied by owner/tenant
- Contact details of owner...
 - 0274 482233 Day time phone contact number
 - (04) 478 3376 After hours phone contact number
 - (04) 478 6428 Fax number
 - m.v.russellextra.co.nz Email address
- This application for exemption relates to a portable spa pool (see overleaf)
- I believe my portable spa pool meets all the conditions specified by Council: Yes/~~No~~
- If no, specify any points that you believe may not comply:

Application is made by [Signature] 21/12/10
(signature of owner) (date)

All the relevant information on this form is required to be provided under the Fencing of Swimming Pools Act for Kapiti Coast District Council to process your application. Under this Act, this information has to be made available to members of the public including business organisations. The information contained in this application may be available to other departments of Council. You have the right to access the personnel information held about you by the Council which can be readily retrieved. You can also request that the Council correct any personal information it holds about you.

This application must be accompanied by:

- Fee of \$225
- A site plan showing the subject of this application (if considered necessary)
- Photographs showing the spa pool relating to this application

FOR OFFICE USE ONLY GL Code		Hearing Date	<u>10/02/11</u>
Date Received	<u>24/12/10</u>	Exemption Granted/Decline	
Receipt Number	<u>364913</u>	Applicant Notified	
		Pool Register updated	

CS-11-096

Special Exemption for Spa Pool under Section 6 of the Fencing of Swimming Pools Act 1987 can be considered for portable spa pools, where:

- The pool has a height of 760mm or greater above ground or deck level and no objects are positioned so as to allow a young child to climb onto the cover. ✓
- The property has suitable barriers in place to prevent a child up to the age of six years gaining access from outside the property, and the lockable spa cover meets the set criteria as stated below: ✓
 - The cover is lockable and able to be kept locked when the pool is not being used or supervised. ✓
 - The locks cannot be opened or released by a child up to the age of six years. ✓
 - The cover cannot be lifted more than 100mm above the top of the spa, when locked in place. ✓
 - The cover must be made of material that can withstand the weight of at least 60kgs to ensure that it will more than take the weight of a child up to six years. ✓
 - The cover must be constructed of suitable material so the water will not pond on top of it. ✓
 - The cover and locks must be maintained in a good state of repair. ✓
 - That suitable warning stickers/signs be placed on the cover to advise that it must be locked in place when the pool is not being used or supervised. ✓
 - That the property owner/tenant sign a statement of undertaking, taking full responsibility to ensure the above requirements are adhered to. ✓

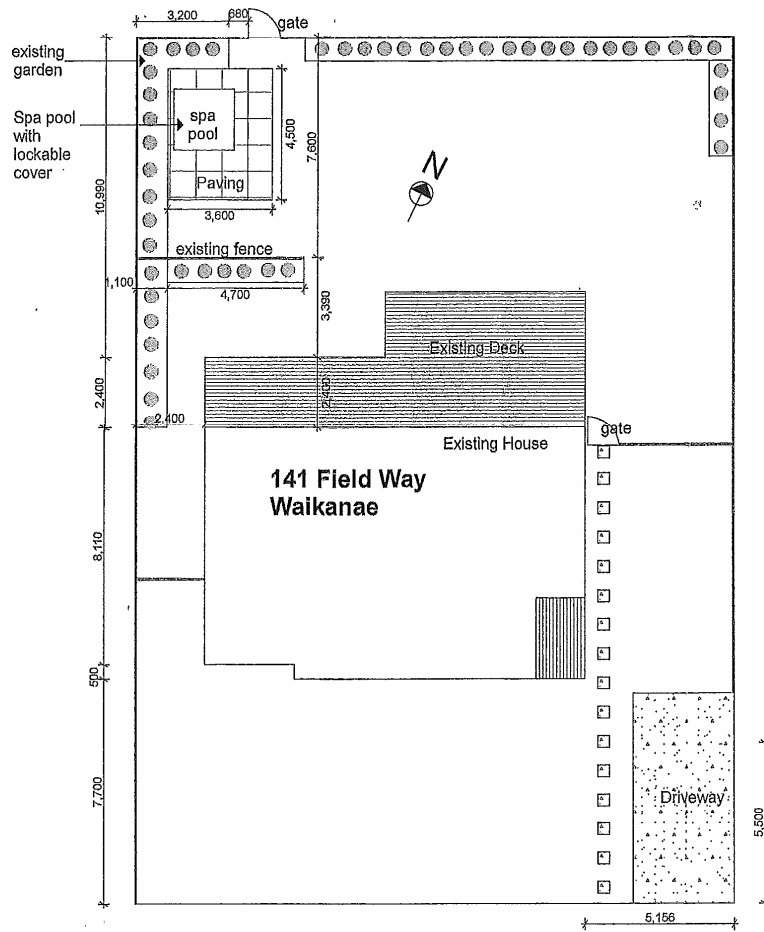
Statement of Undertaking

I (insert name) M. RUSSELL being the owner/tenant of the property detailed in the above application do hereby give my undertaking accepting full responsibility to ensure that the condition attached to my application for exemption under the Fencing of Swimming Pools Act 1987 will be adhered to at all time that the spa pool is filled.

Signed [Signature]
Date 21/12/10

Witnessed by: Name Tiana Sarginson
Signature [Signature]
Date 22/12/10

Site Plan of 141 Field Way, Waikanae Beach



Site Plan
1:200

Attachment 2:



Kāpiti Coast District Council

Private Bag 60 601
Paraparaumu 5254
New Zealand

Tel (04) 296 4700
or 0800 486 486

Fax (04) 296 4830 ■
kapiti.council@kapiticoast.govt.nz ■
www.kapiticoast.govt.nz ■

File: SW1505

11 January 2011

Michael & Vicky Russell
Nigel Hughes
PO Box 13407
Johnsonville
WELLINGTON

Dear Sir / Madam

NON COMPLIANT POOL FENCING AT 141 FIELD WAY, WAIKANAE BEACH

An inspection of the above property on 10 January 2011 for the purposes of determining compliance with the Fencing of Swimming Pools Act 1987 (**the Act**), revealed the pool was not fenced in accordance with the Act.

The Act requires that the pool is **not** filled or partly filled with water until such time as the pool or the immediate pool area complies with the Act and compliance has been confirmed by a further visit from a Council officer. (Note: an empty pool does not breach the Act).

The pool fencing fails to comply with the Act in the following areas:

Portable Spa Pool

- Has been filled with more than 400mm depth of water and therefore requires a pool fence that complies with the requirements of the Act.

A follow up inspection will be carried out after 28 days from the date of this letter to confirm the required work has been completed and / or the pool has been emptied.

Your assistance in resolving this matter is appreciated.

Yours sincerely

Peter Ropata
COMPLIANCE OFFICER

Attachment 3:

Portable Spa Pool – 860mm above ground level.

