

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

27 OCTOBER 2011

Meeting Status: **Public**

Purpose of Report: **For Decision**

**APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE
FENCING OF SWIMMING POOLS ACT 1987 - 9 LEINSTER AVE,
RAUMATI SOUTH.**

PURPOSE OF REPORT

- 1 The purpose of this report is to consider an application by Helena Winter for an exemption under Section 6 of the Fencing of Swimming Pools Act 1987 (**the Act**), in respect of a portable spa pool at 9 Leinster Ave, Raumati South.

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 the 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 spa pool has been inspected by a Council officer who has confirmed the applicant meets all the criteria for an exemption as 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 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

- 7 There are no financial considerations.

Legal Considerations

- 8 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, the pool and any other relevant circumstances, that such an exemption would not significantly increase the danger to young children.
- 9 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.
- 10 Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.

Delegation

- 11 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”.

RECOMMENDATIONS

- 12 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 9 Leinster Ave Raumati South, subject to the following conditions 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**

**Ken Smith
GROUP MANAGER
COMMUNITY SERVICES**

ATTACHMENTS:

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

Attachment 1:



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:

1. Physical address of property where spa pool is sited..... *9 Leinster Ave Raunaki South*
2. Full name and address of property owner *Garrick Fraser / Helena Wren*
..... *9 Leinster Ave, Raunaki South*
3. The property is occupied by owner/tenant
4. Contact details of owner *04 9022606* Day time phone contact number
..... " After hours phone contact number
..... " Fax number
..... " Email address
5. This application for exemption relates to a portable spa pool (see overleaf)
..... *See attached letter*
6. I believe my portable spa pool meets all the conditions specified by Council: Yes/No
7. If no, specify any points that you believe may not comply:
.....
.....

Application is made by *[Signature]* *21.8.11*
(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	
Date Received <i>24/08/2011</i>	Hearing Date <i>27/10/2011</i>
Receipt Number <i>393115</i>	Exemption Granted/Decline
	Applicant Notified
	Pool Register updated

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) H. WINTER 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 21.8.11

Witnessed by: Name S. DORGAN

Signature [Signature]

Date 21.8.11

#225473

EP/05/02/10/09



21 August 2011

9 Leinster Ave
Raumati SouthKapiti Coast District Council
Private Bag 60 601
PARAPARAUMU 5254

Dear Sir

In reply to your letter dated 28 July 2011 in relation to non-compliance of our portable spa pool at the rear of our property, I would like to apply for an exemption for the following reasons:

1. The spa pool area is fully fenced with a gate either side of the area, one measuring 1 metre 250 and the other measuring 1 metre 800. Both gates have bolts and locks. These gates are kept shut and bolted at all times as we have a dog on the property. There is no way a child under six could open either of the gates as the bolts are all on the inside of the gates.
2. There are no fences in the spa pool area which are less than 1 metre 800. The top garden is also fully fenced. There is no other access to the spa pool area.
3. The height of the spa is 850mm high and there are no objects near it to allow a child to climb onto it.
4. The spa pool cover is lockable and cannot be opened at all when locked. Also because of high wind factors it is always kept locked. The locks are in excellent state of repair as is also the cover which is constructed to a high standard and indeed very heavy. As an adult I find it very difficult to lift so a child I believe would have great difficulty lifting it.
5. I have myself stood on the cover to paint the bedroom window and I weigh more than 60 kgs. Water cannot pool and does not pool on top of it.

For these these reasons I believe we should be exempt, mainly because a child could never get through our gates, an adult even has trouble opening them, and even if they were able to gain access to the pool would have great difficulty lifting the lid because of its weight. I look forward to your favourable consideration of these factors.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Helena Winter".

Helena Winter

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 ■

28 July 2011

Fraser Garrick, Winter Helena Jane
9 Leinster Avenue
Paraparaumu 5032

File: SW1077

Dear Sir/Madam

NON COMPLIANT POOL FENCING AT 9 LEINSTER AVE, RAUMATI SOUTH

I wish to confirm that following a site inspection on 28 July 2011, it was established that the pool fencing on your property does not comply with the Fencing of Swimming Pools Act 1987 (the Act):

Spa pools fall under the Fencing of Swimming Pools Act they must be fenced to the requirements of the Act or an exemption applied for, enclosed is a exemption application and a list of the conditions that need to be met for it to be approved.

To comply with the Act you are required to correct the defective items immediately, or install a temporary compliant barrier, or empty the pool, until such time as the defective items are corrected.

The defective items should be corrected and inspected by a Compliance Officer prior to dismantling the temporary barrier or re-filling the pool.

The Fencing of Swimming Pools Act exists to prevent the accidental drowning of young children because of the dangers of unfenced swimming pools.

The Act places a duty on pool owners to fence their pools to a certain standard. Any person who uses an unfenced pool commits an offence under the Act, and could be liable to criminal proceedings should there be a drowning attributable to an inadequately fenced pool which you had been made aware of.

If you have any questions please contact me on 04 2964642 or if necessary, I can meet with you on site to discuss solutions to the non complying items.

If I have not heard from you within **28 days** of the date of this letter I will contact you again.

Your assistance in resolving this matter is appreciated.

Yours sincerely

Simon Amos
COMPLIANCE OFFICER

delivering on the community's plan



Attachment 3:



Portable spa pool – 800mm above ground level.