

Mayor and Councillors
COUNCIL

03 OCTOBER 2013

Meeting Status: **Public**

Purpose of Report: For Decision

APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE FENCING OF SWIMMING POOLS ACT 1987 - 48 MAHAKI ROAD, PARAPARAUMU

PURPOSE OF REPORT

- 1 The purpose of this report is to consider an application by Neil Williams for an exemption under Section 6 of the Fencing of Swimming Pools Act 1987 (**the Act**), in respect of a portable spa pool at 48 Mahaki Road, Paraparaumu.

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 The spa pool is currently full and fails to comply with the Act as there is no compliant 1.2m fence surrounding the immediate spa pool area.
- 5 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.
- 6 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 proposed ***"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". The property meets restricted access requirements.

- 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 Council has previously considered and granted, subject to similar conditions.

Financial Considerations

- 8 There are no financial considerations.

Legal Considerations

- 9 The Council 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.
- 10 If the Council 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 The Council has the authority to make this decision.

RECOMMENDATIONS

- 13 That the Council 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 48 Mahaki Road Paraparaumu, 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**

**Tamsin Evans
GROUP MANAGER
COMMUNITY SERVICES**

ATTACHMENTS:

- 1. The application**
- 2. Letter of non-compliance**
- 3. Photo**

Attachment 1:



Compliance
EPI/05/09/10/02
SCANNED
Edoc# 395646.

**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... H.B. MAHAKI ROAD, NIKAU VLY, PARAPARAUMU
 - Full name and address of property owner Neil Williams
..... H.B. MAHAKI ROAD
 - The property is occupied by owner/tenant
 - Contact details of owner (027) 203 2821 Day time phone contact number
(04) 297 0665 After hours phone contact number
..... Fax number
Neil.Williams@KTCN.CO.NZ Email address
 - This application for exemption relates to a portable spa pool (see overleaf)
..... Yes
 - 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:
.....
..... N/A
- Application is made by [Signature] 14/06/13
(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 \$242**
- 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	Hearing Date
Receipt Number	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), Nick Williams 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 times that the spa pool is filled.

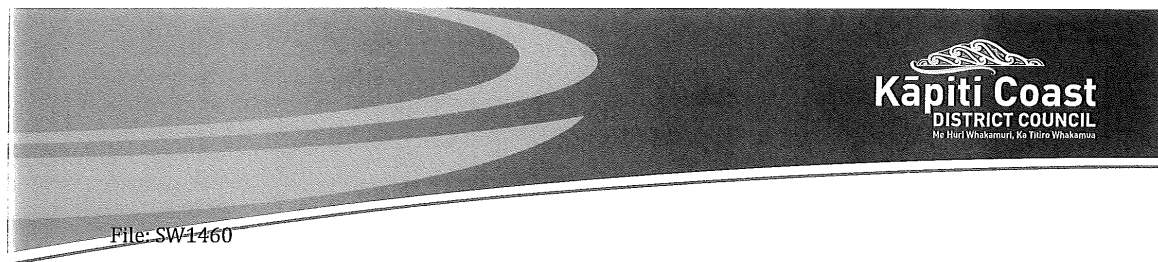
SignedNick Williams.....

Date.....14/06/13.....

Witnessed by: Name.....Greg Sme.....

Signature.....[Signature].....

Date.....14/6/13.....

Attachment 2:

File: SW1460

04 June 2013

N D Williams
48 Mahaki Road
PARAPARAUMU 5032

Dear Sir,

NON COMPLIANT POOL FENCING – 48 MAHAKI ROAD, PARAPARAUMU

An inspection of the above property by Council officers on 30 May 2013, performed for the purposes of determining compliance with the Fencing of Swimming Pools Act 1987 (the Act), identified that the swimming pool was fenced in accordance with the Act.

The spa pool however, was not fenced in accordance with the Act.

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

- There is no compliant 1.2m fence surrounding the immediate spa pool area.

I have enclosed a copy of the Schedule to the Act, which specifies the technical requirements for compliance, for your reference.

Please ensure the compliance work is undertaken by **02 July 2013**. Please contact me before this date to arrange a re-inspection.

Alternatively, the pool may be made exempt from the requirements of the Act by being emptied to below 400mm in depth.

It may be possible for you to obtain an exemption from the requirements of the Act for the spa pool; however, specific conditions will have to be met before an exemption can be granted. I have enclosed some information for you regarding this. The fee for an exemption application is currently \$242, but this is likely to increase on 01 July 2013.

If you have any questions, particularly about the exemption process, you may contact me on (04) 296 4706.

Yours faithfully

Rhys Sanson
Compliance Officer
KAPITI COAST DISTRICT COUNCIL

Attachment 3:



The top of the portable spa pool (excluding lid) is 900mm above ground level.