

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

24 MARCH 2011

Meeting Status : Public

Purpose of Report: For Decision

**APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE
FENCING OF SWIMMING POOLS ACT 1987 - 24 ARCUS ROAD,
TE HORO.**

PURPOSE OF REPORT

- 1 The purpose of this report is to consider an application lodged by Ross Crowe, for an exemption under Section 6 of the Fencing of Swimming Pools Act 1987 (the Act) in respect to clause 11 of the Act (Doors in Walls of buildings), for a swimming pool at 24 Arcus Road Te Horo, postal address 101 School Road, Te Horo.

SIGNIFICANCE OF DECISION

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

BACKGROUND

- 3 This application is the result of an inspection by a Compliance Officer on 16 August 2010 in relation to pool fencing at 24 Arcus Road, Te Horo and compliance with the Fencing of Swimming Pools Act 1987. The inspection revealed that the pool fencing was non-compliant. There are two sets of French doors that open inwards towards the swimming pool. Clause 8 of the Schedule to the Fencing of Swimming Pools Act 1987 specifically request that gates or doors "cannot open inwards towards the immediate pool area".

The specific exemption requested is for "*two sets of French doors from the bedroom opening inwards to the immediate swimming pool area*".

This application is similar to other applications this Committee has considered relating to either French Doors, Sliding Doors (Ranch Sliders) and Sliding / Folding Doors (Bi-fold doors).

The following sections outline details of the application and relevant sections of the Act.

CONSIDERATIONS

Issues

- 4 This is not an "Exempted Pool" under Section 5(b) of the Act. Pursuant to Section 4 of the Act the pool is required to comply with the Act at any time when the pool is filled or partly filled with water.
- 5 The relevant parts of the Act are:

Doors in walls of buildings: Schedule, Clause 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”.

Fence: Section 2:

Means a fence that complies with the requirements of the Building Code in force under the Building Act 2004 in respect of swimming pools subject to this Act; and includes any part of a building and any gates or doors forming part of the fence; and ‘fenced’ has a corresponding meaning.

Immediate pool area: Section 2

Means the land in or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried on in conjunction with the use of the pool.

- 6 Clause F4.3.5 of the Building Code requires that barriers to swimming pools shall have “all gates and doors fitted with latching devices not readily operated by children, and constructed to automatically close and latch”.
- 7 The two sets of French doors fail to comply with the Act as they do not open away from the immediate pool area.
- 8 The following is a summary of the key points made by the applicants in support of their application:
 - A self-closing, self-latching device has been installed to the latching doors.
 - The self-latching device has been installed at a height of 1.5 metres above floor level.
 - An additional high level bolt has been fitted to doors
- 9 It is the opinion of the reporting officer that this application could be approved, subject to the conditions listed in the “Recommendations” being met, as what is proposed will not significantly increase danger to young children. The application is similar to others that the Committee has previously considered and granted, subject to conditions.

Financial Considerations

- 10 There are no financial considerations.

Legal Considerations

- 11 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 such an exemption would not significantly increase the danger to young children.

- 12 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.
- 13 Any exemption granted or condition imposed under this section may be amended or revoked by a Territorial Authority, by resolution.

Delegation

- 14 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

- 15 There are no consultation implications.

Policy Implications

- 16 There are no policy implications.

Publicity Considerations

- 17 There are no publicity considerations.

RECOMMENDATIONS

- 18 That the Committee approve the application for exemption under Section 6 of the Fencing of Swimming Pools Act 1987 for a Swimming Pool at 24 Arcus Road Te Horo, in respect to clause 11 of the Schedule to the Act, subject to the following conditions remaining compliant with, to the satisfaction of Council staff:
 - (a) That self-closing, self-latching devices be installed to the latching door (doors with handles) of the two sets of French doors;
 - (b) The non-latching doors (doors without handles) of the two sets of French doors are permanently secured;
 - (c) No hold open devices to be fitted to the door;
 - (d) Additional high level bolt to be fitted to the door;
 - (e) The self-latching device in (a) be installed at a minimum height of 1.5 metres above floor level.
- 19 That the Committee notes that the items as listed in the “Recommendations” above have already been complied with to the satisfaction of Council Officers. A re-inspection will be completed by a Council Officer to ensure the other non-compliant issues listed in the letter dated 16 August 2010 have been complied with.

Report prepared by:

Approved for submission by:

Bryan Edwards

Tamsin Evans

SENIOR COMPLIANCE OFFICER

**GROUP MANAGER
COMMUNITY SERVICES**

ATTACHMENTS:

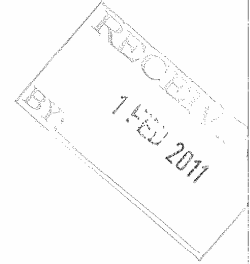
- 1. The application**
- 2. Site plan**
- 3. Copy of the non-compliance letter**
- 4. Photo**

Attachment 1:

X

**APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE
FENCING OF SWIMMING POOLS ACT 1987**

The Regulatory Manager,
Kapiti Coast District Council
Private Bag 601
PARAPARAUMU



Dear Sir

I hereby apply to have my ~~spa~~ swimming pool exempted from the following requirements of the Fencing of Swimming Pools Act 1987, for the stated reasons.

EXEMPTION REQUESTED: (cite sections of the Act)

Two French Doors opening out to Pool area

REASON: * Hint* Provide supporting statements which

establishes that any exemption to any requirement of the Act will not significantly increase danger to young children; be sure to discuss specific property characteristics or relevant circumstances that the Committee should consider.

Self closers fitted also self closers.
Latches fitted 1.5m off ground and also high bolts fitted
to both doors.
All as per council photos (contact Simon Amos)

- Please attach plans (or use the back of this page to draw a diagram) showing features of the fencing and/or pool area that relate to this application.
- Application will need to be accompanied by the application fee of \$225
- If you would like information to help you complete this application, please phone the Compliance Monitoring Team, Ph (04) 2964-700.

SIGNED _____

DATE 31/1/11

Please PRINT your name and address:

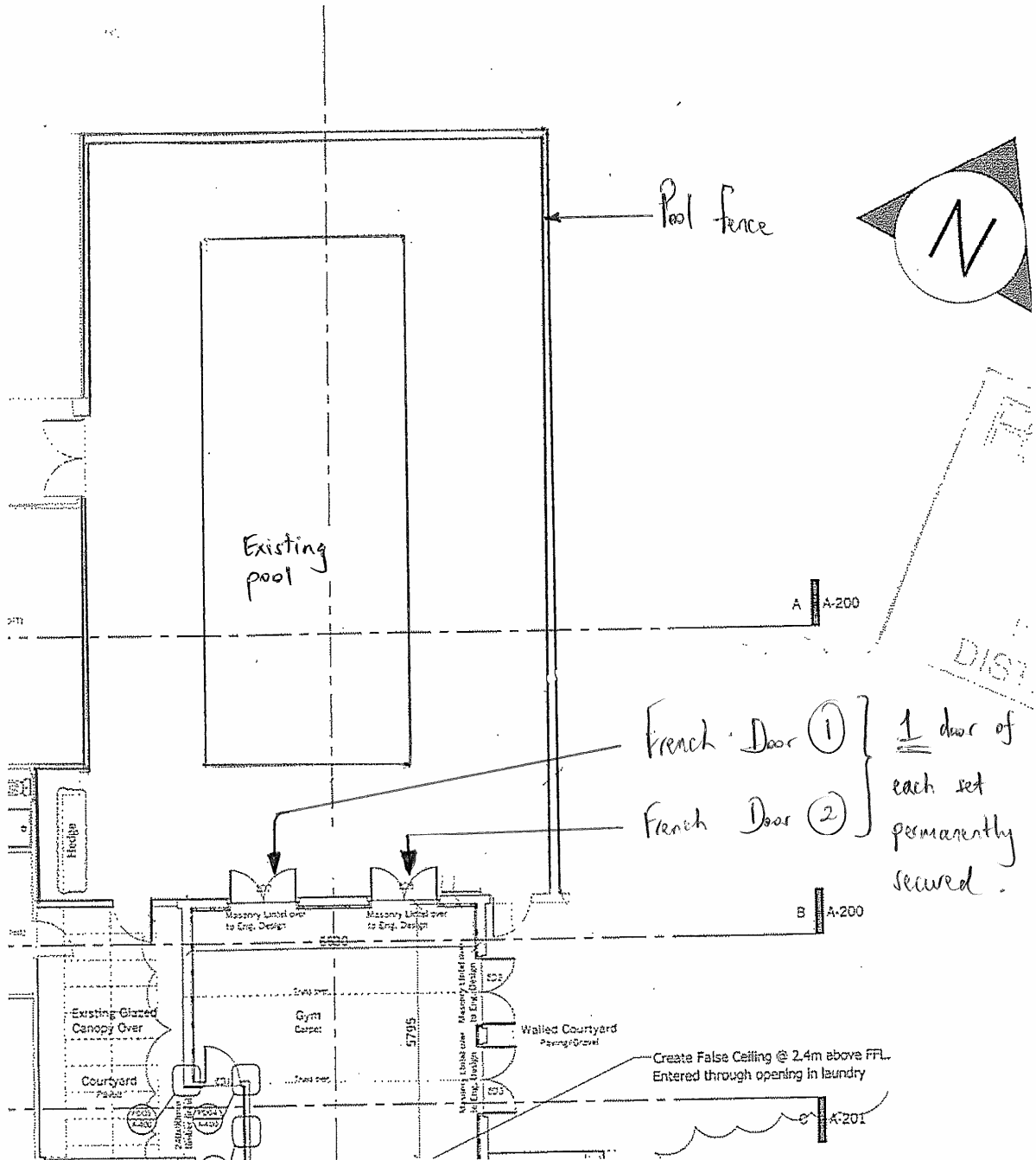
NAME: Ross Crowe

ADDRESS: 101 School Road, Levin

POOL ADDRESS (if different): _____

Attachment 2:

24 Arcus Road, Te Haro



Attachment 3**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 ■

17 August 2010

Richard Print & Thomas Montague
101 School Road
Te Horo
RD 2 OTAKI 5582

File: SW1535

Dear Sir

NON COMPLIANT POOL FENCING AT 101 SCHOOL RD, TE HORO

I wish to confirm that following a site inspection on 16 August 2010, it was established that the pool fencing on your property does not comply with the Fencing of Swimming Pools Act 1987 (the Act) in the following areas:

- Pool heating system & bolts on western end of pool fence can be used to gain access to pool area.
- The two windows on the main house will need restrictors fitted to prevent access to pool area.
- The two sets of French doors giving access to pool area, as they open into the pool area, you will need to apply for an exemption I have enclosed an application form.

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 4

Photo of 1 set of French doors



The two French doors

