

**Chairperson and Committee Members**  
REGULATORY MANAGEMENT COMMITTEE

5 DECEMBER 2013

Meeting Status: **Public**

Purpose of Report: For Decision

**APPLICATION FOR EXEMPTION UNDER SECTION 6 OF THE  
FENCING OF SWIMMING POOLS ACT 1987 - 19 WAIRERE  
GROVE, PARAPARAUMU**

**PURPOSE OF REPORT**

- 1 The purpose of this report is to consider an application by Bruce and Pamela Manning for an exemption under Section 6 of the Fencing of Swimming Pools Act 1987 (**the Act**), in respect of a portable spa pool at 19 Wairere Grove, 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 a "*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. A letter of non-compliance was issued to the applicant on 30 October 2013, which has resulted in remedial work being undertaken. A new pool fence is being installed around the swimming pool and will exclude the portable spa pool.
- 5 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.
- 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 "*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 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, the pool and 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”.*

## 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 19 Wairere Grove, 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. Non-compliant pool letter**
- 3. Photo**



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

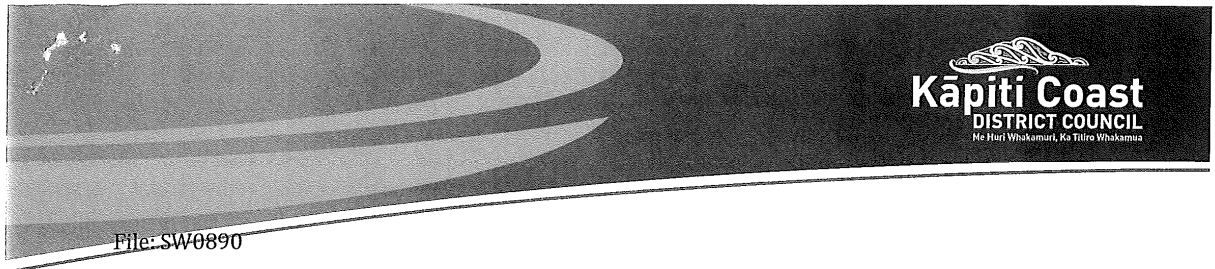
- The pool has a height of 760mm or greater above ground or deck level and no objects are positioned so as to allow a young child to climb onto the cover.
- The property has suitable barriers in place to prevent a child up to the age of six years gaining access from outside the property, and the lockable 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) Pamela Manning 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.

Signed: *P. Manning*  
 Date: 14/11/2013

Witnessed by Name: *Paige Gorwood*  
 Signature: *Paige Gorwood*  
 Date: 14/11/2013

**Attachment 2:**

30 October 2013

B L & P E L Manning  
19 Wairere Grove  
**PARAPARAUMU 5032**

Dear Sir/Madam,

**NON COMPLIANT SWIMMING AND SPA POOL FENCING – 19 WAIRERE GROVE, PARAPARAUMU**

An inspection of the above property by a Council Officer on 29 October 2013, performed for the purposes of determining compliance with the Fencing of Swimming Pools Act 1987 (the Act), identified that the swimming and spa pools were not fenced in accordance with the Act, including the exemption granted to you under section 6 of the Act.

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

- The spaces in the trellis fencing are greater than 10mm at the widest part (climbable), within 1.2m in height above ground level (measured at 90-100mm).
- Both the wire mesh and wooden gates do not self-close and self-latch when released after being held stationary and 150mm from the closed position, and both gates can open inwards into the immediate pool area. The wire mesh gate has no latch mechanism.

Please note that chaining the gate closed with a d-clip or even a padlock is not an acceptable method of compliance. The gate must either comply with the Act, or be permanently fixed shut.

- The spaces in the wire mesh on the gate are greater than 10mm at the widest part (climbable), within 1.2m in height above ground level (measured at 75mm).
- The space between the wire mesh gate and the fence exceeds 100mm within 1.2m in height above ground.
- The fence on the neighbouring side contains rails that are accessible for climbing from the outside of the fence, and are less than 900mm apart.

A potential remedy is to install a 60 degree angled wooden 'fillet' along the length of the middle rail, to render it non-climbable.

- The windows opening into the pool area are less than 1.2m in height above the wooden window frame/sill, and open greater than 100mm. A restrictor will need to be fitted to these windows.
- The sliding door does not self-latch.

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 **27 November 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.

If you have any questions, you may contact me on (04) 296 4706.

Yours faithfully



Rhys Sanson  
Compliance Officer  
**KAPITI COAST DISTRICT COUNCIL**

**Attachment 3:**



The spa pool is measured at a height of 900mm above ground level.