

# Swimming pool fencing

## Code of Practice - V 3

The Fencing of Swimming Pools Act 1987 was enacted  
to promote the safety of young children

The purpose of the Swimming pool fencing code of practice for building consent approvals and inspection is to ensure that the immediate pool area is fenced in accordance with the Fencing of Swimming Pools Act 1987 (“FOSPA”).

Section 10 of FOSPA obligates territorial authorities to take all reasonable steps to ensure the Act is complied with.



**Fencing of Swimming Pools Act 1987  
Building Act 2004 and Building Code clauses:  
G13**

**B1, B2, E1, E3, F2, F4, F5, F8, G12,**

**Auckland Council**



<b>Section A.</b>	<b>Policy and Rationale</b>	<b>3</b>
<b>Section B.</b>	<b>Fencing of Swimming Pools Act ("FOSPA") Requirements</b>	<b>5</b>
	1. <b>Application of FOSPA</b>	<b>6</b>
	2. <b>Filled or Partly Filled Pools</b>	<b>7</b>
	3. <b>Exempted Pools</b>	<b>8</b>
	4. <b>Pool Owner</b>	<b>10</b>
	5. <b>Immediate Pool Area</b> (including doors opening from a dwelling to a pool)	<b>11</b>
	6. <b>Pool Fencing</b>	<b>18</b>
	7. <b>Fencing Compliance with Building Code &amp; FOSPA</b>	<b>19</b>
	8. <b>Fencing Requirements – Schedule to FOSPA</b>	<b>20</b>
	9. <b>Gates &amp; Doors Requirements</b>	<b>24</b>
	10. <b>Status of NZS 8500:2006</b>	<b>27</b>
	11. <b>Determinations: Department of Building and Housing</b>	<b>28</b>
	12. <b>Special Exemptions: Committee of Council</b>	<b>29</b>
	13. <b>Inspection Processes: Summary</b>	<b>31</b>
	(See "Pool Fencing Inspection Processes: Flow Diagrams and Guides" document for full details)	
<b>Section C.</b>	<b>Appendices</b>	
	1. <b>Fencing of Swimming Pools Act 1987</b>	<b>34</b>
	2. <b>Building Code: clause F4</b>	<b>39</b>
<b>Section D.</b>	<b>Approved Alternative Solutions (for clause F4, Building Code)</b>	<b>40</b>

**Application of this document:** This document applies to:-

1. Processing and issuing **building consents** for new pools, new pool fencing, or alterations to existing pools or pool fencing.
2. **Code compliance** inspections and issuing.

*Note: Do not issue a Code Compliance Certificate ("CCC") unless the swimming pool fencing complies with this document. If you think the building consent may not comply, seek the advice of your Team Leader. An amendment to the building consent may need to be applied for.*

3. Pool compliance or enforcement inspections where the pool has been identified as not registered with the Council (e.g.; from an aerial survey; pool noted by Council officers during another site visit).
4. Ongoing pool compliance or enforcement inspections of a registered pool as part of any regular Council inspection cycle, or in response to a complaint, or for any other reason.

*Note: the pool may have been built before 1 July 1992 and therefore not have a building consent. All pools must still comply with FOSPA.*

The information in this document refers to and summarises the FOSPA, the Building Act 2004, and the Building Code. Please refer to updated legislation for the complete wording at [www.legislation.co.nz](http://www.legislation.co.nz). A copy of the relevant provisions is attached as Appendix \* but is only up-to-date as at the date of this document.

## A. Policy and Rationale

***Always have regard to the purpose of FOSPA which is to promote the safety of young children.<sup>1</sup>***

1. The drowning of young children in private swimming pools is preventable and pool fencing is the most effective means of achieving this. Reliance on education and adult supervision alone is not enough.<sup>2</sup>
2. Between 1980 and 1987, 72 preschoolers drowned in home swimming pools and spa pools in New Zealand "SAFE Kids" NZ statistics indicate that this averaged a mortality rate of (11.5 children per annum). Since the introduction of the FOSPA, this number has reduced to an average of three per annum the number of home swimming pools increased by approximately 30%.<sup>3</sup> An Australian study found that for every child who drowns, there are at least nine others involved in serious near drowning accidents.<sup>4</sup> Fencing is necessary, therefore, to prevent not only deaths, but also serious injury. Most children who drown in home swimming pools do so when they are able to access swimming pools that are not compliant with the Swimming Pools Act. Typically, non-compliance occurred through the deterioration of pool fences, failing gates and gate latches, illegal modifications to pool fences and gates being propped open. Maintenance and supervision of children around swimming pools is essential and there is an ongoing obligation on pool owners to ensure that this occurs.
3. All new and existing pools must comply with the FOSPA. This is an ongoing obligation on pool owners. **Pool fencing requirements may change over time because of amendments to legislation. Council pool fencing standards will be updated as necessary to reflect these changes.** Ongoing compliance must be assessed each time the pool is inspected regardless of whether it has been built pursuant to a building consent, whether a CCC has been issued for it, or whether there has previously been a complying pool inspection report. The intent however is not to retrospectively require upgrades of what was previously considered to be compliant pool fencing each time there is a further clarification of detail through a judicial clarification or a Determination issued by the Department of Building and Housing. However where there have been oversights of non compliance then these will need to be remedied. At all times we need to ensure that the existing safety requirements that were previously approved are still in place and still meet compliance with the FOSPA and the Building Code. Refer to paragraph 2 for common non compliance issues.
4. All swimming pools, spa pools, and swimming pool fences constructed after 1 July 1992 are required to have a building consent, CCC, or a certificate of acceptance (COA only applies if pool built without a consent after 2004), and must comply with the FOSPA and the Building Act 2004 ("the 2004 Act"). **"On site" amendments are not permitted to pool fencing consents.** All proposed changes must be approved as an amendment to the original consent (together with amended plans) prior to any on-site works commencing. If unauthorised works have been undertaken that do not comply with the building consent issued for the building works or the standards in this document, the file must be referred to a Team Leader (or other approved officer).

<sup>1</sup> The meaning of legislation is to be ascertained from its text and in the light of its purpose; section 5 Interpretation Act 1999. The leading High Court case in regard to swimming pool fencing, *Waitakere City Council v Hickman*, Randerson J, HC Auckland CIV 2003-404-7266, pointed out that this purpose is clear in the Act, both in the long title and also because a special exemption (pursuant to section 6 of FOSPA) may not be granted unless elected Councillors are satisfied that any such exemption would not significantly increase the danger to young children; see paragraphs 23, and 36 to 38 of the case.

<sup>2</sup> From the "Summary of Report of the Local Bills Committee on the Fencing of Private Swimming Pools (1983)"; Appendices to the Journals of the House of Representatives, 1983, 1 10A.

<sup>3</sup> Source: Water Safety New Zealand, Drown Base, 2009.

<sup>4</sup> Health Department of Western Australia; quoted in "Guidelines for Territorial Authorities on the Fencing of Swimming Pools Act 1987, Department of Internal Affairs, pg 6.

5. The FOSPA requires a pool, or some or all of the immediate pool area including all of the pool, to be fenced by a fence that complies with the requirements of the Building Code; see *section 8 FOSPA*.
6. Defining the scope of the "immediate pool area" is very important because it is only that area, along with the pool, which can be within the pool fence. Part of a building, and any doors opening from it, form part of a pool fence if it has been determined that the building is at the edge of the "immediate pool area". There is currently no legislative requirement to have the pool independently fenced from a dwelling. However to provide for consistency in interpretation of the immediate pool area you will need to consult with your team leader. **Only a Team Leader (or other approved officer), with the appropriate delegated authority, is authorised to approve doors opening from a building that give access to the immediate pool area.**
7. The Schedule to the FOSPA is a means of establishing compliance with the Building Code (see section 13B FOSPA and also the reference in Acceptable Solution F4/AS1 at paragraph 1.2.7). The effect of these provisions is that **pool fencing proposals that comply with the Schedule to FOSPA, also comply with the Building Code.**
8. **Therefore, this document is based on the standards set out in the Schedule to FOSPA. Pool fencing officers and building control processing staff may approve fencing proposals that comply with the standards in this document, with an exception for any doors opening from a building that forms part of a pool fence, which will require Team Leader or authorised officer approval.** If officers are unsure about an interpretation or decision, they should consult with their Team Leader.
9. Pool fencing proposals that do not comply with the standards in this document are referred to in this document as "proposed alternative solutions". These proposals must be assessed on a case-by-case basis against the standards of clause F4 of the Building Code. **Only a Team Leader (or other approved officer), with the appropriate delegated authority, is authorised to approve proposals that do not comply with the standards in this document as an alternative solution for swimming pool fencing.**
10. Approved alternative solutions must be clearly documented and include sufficient evidence to show how the performance criteria in clause F4 has been met. All information must be included on the property file so that approved alternative solutions can be inspected correctly in later compliance and enforcement inspections. Alternative solutions may be approved for pools or fencing that do require a building consent, and also for pools or fencing that do not require a building consent.  
*Note: the same rules apply to any amendment to a building consent. Therefore a Team Leader (or other approved officer) would have to approve any amendment which takes the fencing proposal outside of the standards in this document, or where a door opens from a dwelling that is part of the pool fence giving access to the immediate pool area.*
11. As at the date of this document, New Zealand Standard 8500:2006, *Safety Barriers and Fences Around Swimming Pools, Spas and Hot Tubs* ("NZS8500"), has not been incorporated into legislation and has not been referenced by the Department of Building and Housing in the F4 Compliance Document under the Building Act 2004. Therefore, **a pool fencing proposal that meets the standards in NZS8500 cannot be guaranteed as complying with the Building Code.** Each proposal must be assessed as a proposed alternative solution on a case-by-case basis by a Team Leader (or other approved officer) in accordance with clause 9\* above. The proposal may also require a special exemption under FOSPA.
12. Pool owners who do not agree with Council's assessment of their pool fencing proposal may be able to apply to the Department of Building and Housing for a determination; see *sections 176-178, Building Act 2004*.

**Note: Team Leader (or other approved officer) "sign off":**

- **doors accessing the pool from a building, and**
- **fencing proposals that do not comply with the standards in this document including where NZS 8500 has been used (alternative solutions)**

The aim of the Team Leader approval process is to **improve safety and consistency** in pool fencing decisions. *Inspection officers will undertake all inspections, gather evidence, and make recommendations.*

**This 'Code of Practice' is a working document.** Over time, clear alternative solutions will be developed, and processes will be refined and improved.

**Suggestions and feedback are welcomed and important.**

The Building Consent Authority will keep a register listing the Team Leader positions, and any other approved positions, that have the delegated authority to approve doors opening from a building to a pool and alternative solutions for pool fencing.

## B. Fencing of Swimming Pools Act 1987 Requirements

*NB: this is a summary – please see the full Act for complete wording (Appendix \*)*

1. FOSPA applies to **all<sup>5</sup> pools<sup>6</sup>** (includes all spa pools).
2. At any time **when the pool is filled or partly filled with water<sup>7</sup>** -
3. Unless it is an exempted pool under section 5 (*see paragraph 3\*, below*). An exempt pool should still be noted on the pool register so that Council knows it exists (category "exempt").

Section 8(1) FOSPA:

4. Every owner<sup>8</sup> of a pool, shall –

**Ensure that the pool, or "some or all of the immediate pool area** including all of the pool" –

5. Is **fenced by a "fence"<sup>9</sup>** (this includes any part of a building and any gates or doors that form part of the fence) –

That **complies with the requirements of the building code** at all times. The **Schedule to FOSPA is a means of establishing compliance with the Building Code**; *section 13B, FOSPA.*

6. *Person and persons in control of pool, shall –*

*Ensure that the pool is not filled or partly filled with water at any time at time when the person knows or could reasonably be expected to know that any obligation imposed by this section on that or any other person is not being complied with.*

***Always have regard to the purpose of FOSPA which is  
to promote the safety of young children.***

<sup>5</sup> FOSPA applies to any pool constructed, erected or installed before 1.9.87 (section 3) or after 1.9.87 (section 4).

<sup>6</sup> A "swimming pool" and "pool" means an excavation, structure, or product that is used or is capable of being used for the purpose of swimming, wading, paddling, or bathing; and includes any such excavation, structure, or product that is a spa pool; section 2, FOSPA.

<sup>7</sup> Section 3 and section 4, FOSPA..

<sup>8</sup> "owner" is the owner of the pool, not a tenant. The owner includes the purchaser of a pool under a hire purchase agreement, and the lessee (not under a residential tenancy) of premises with a pool; section 2, FOSPA. However, there are obligations on tenants under FOSPA (see Note above).

<sup>9</sup> "fence" (a) 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 (b) includes any part of a building and any gates or doors that form part of the fence; section 2, FOSPA.

# 1. FOSPA applies to all pools -

## 1.1 Definition – “all”

FOSPA applies to any pool constructed, erected, or installed:-

- i) before 1 September 1987; *section 3 FOSPA*; or
- ii) after 1 September 1987; *section 4 FOSPA*.

That is, FOSPA applies to existing pools and to new pools.

## 1.2 Definition – “swimming pool” and “pool”

A pool is defined as “any excavation, structure, or product that is used or is capable of being used for swimming, wading, paddling, or bathing” and includes a spa pool; *section 2 FOSPA*.

## 1.3 Guide Notes

1.3.1 A “pool” can be an excavation, or a structure, or a product.

1.3.2 A “pool” does not have to be intended to be used as a pool. The definition includes something that “is capable of being used” for swimming, wading, or paddling.

1.3.3 Portable, above-ground, spa pools must be fenced – all spa pools require fencing (unless the sides inhibit climbing and are 1.2m high; see *section 5(a) FOSPA*) i.e. pools with sides 1.200m in height and with removable ladders (refer 3.1). A proposed alternative solution may be considered and approved where spa pools are fitted with lockable covers and where the pool is no less than 760mm in height meeting compliance with NZS8500. However, and more importantly, such approval requires a special exemption, which must come from a territorial authority committee as discussed later in section 12 of this document. Where the Spa pool is provided with an exemption these shall be clearly recorded on the property file and swimming pool register.

1.3.4 “Blow-up” and kitset temporary pools – if these are deeper than 400mm, and their sides are less than 1.2m high or able to be climbed, then they require fencing; see *section 5(a) FOSPA*.

1.3.5 Ponds, and the like – if deeper than 400mm, and used in association with any sort of dwelling, or with a school, hospital, hotel, motel, camping ground, or similar premises, then these should be fenced (even if they are not intended for wading or paddling).

1.3.6 If the excavation, structure, or product is not used in association with a dwelling, or one of the other premises listed in section 5(c), and if it is not intended to be used for swimming, wading, paddling, or bathing, then it does not need fencing; see *section 5(c) FOSPA*.

<p><b>If you are unsure whether an excavation, structure, or product, is a “pool”, or whether a pool or pond is exempt under section 5, do not proceed. Consult your Team Leader.</b></p>
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## 2. At any time that the pool is filled or partly filled with water

An empty pool does not need to comply with FOSPA. An empty pool should still be noted on the pool register so that Council knows that it exists (category "exempt empty") and so that it can be re-inspected from time to time to make sure that it is still empty.

### 2.1 Guide Notes

- 2.1.1 Pool owners are primarily responsible for compliance with FOSPA. If you are dealing with the owner, you can advise them that one way of making a pool immediately comply is to empty the pool.

*Important: Council recommends that owners/tenants consult the pool manufacturer or other expert before emptying a pool to ensure damage does not occur.*

- 2.1.2 If a pool owner or tenant is considering emptying a pool, and if the empty pool is deeper than 1.0 metre, (clause F4.3.1), an assessment of safety from falling needs to be undertaken (as a barrier may be required) (*also see clause F5, Building Code*).
- 2.1.3 If you are dealing with a tenant, advise them that the Council will contact the owner as soon as possible. Recommend that the tenant does the same. If a tenant is un-cooperative and making it difficult for the owner, then consult with your team leader. Tenants and other people who have control of a pool also have obligations to ensure that pool fencing complies.<sup>10</sup>
- 2.1.4 If an owner is unable to be contacted (e.g.; they are overseas owners), then consult with your Team Leader (as other possibilities may need to be explored e.g.; the tenant may need to take steps to consult an expert and empty the pool (*but see 2.1.1 and 2.1.2 above*); e.g.; Issuing a dangerous building notice (*section 124 of the 2004 Act*) or CEO warrant where there is immediate danger to the safety of people (*section 129 of the 2004 Act*) to enable temporary fencing to be erected).

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<sup>10</sup> See section 8(3), FOSPA which states that a person in possession of the property on which the pool is located, should ensure that the pool is not filled or partly filled with water when they could reasonably be expected to know that the pool does not comply with the Act. It may encourage tenants to co-operate if they are told this. They may also be warned that they may be prosecuted under FOSPA. However, if possible, it is better if the owner makes decisions about emptying the pool, or fencing, as they incur the cost of this.

### 3. Exempted pools (section 5 FOSPA)

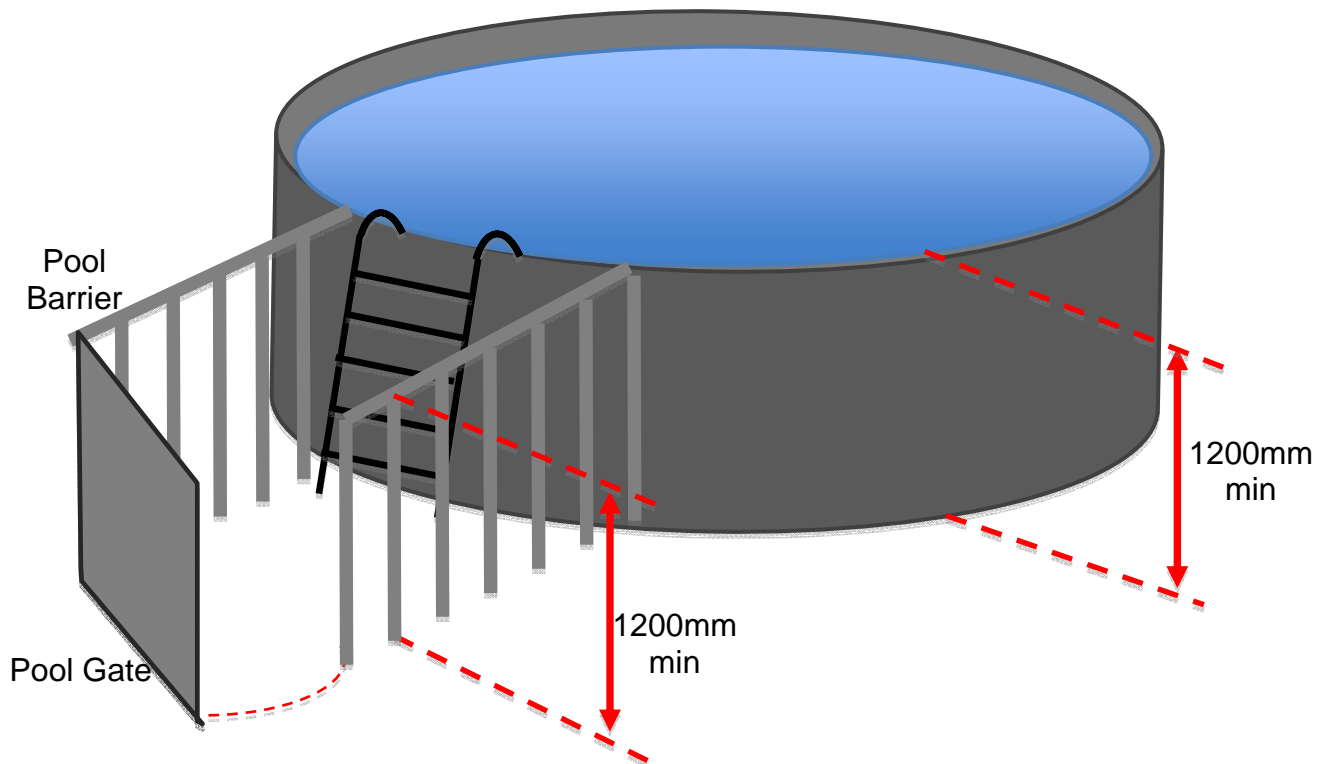
Note: These are different from "special exemptions" (section 6 of FOSPA, and clause 11 of the Schedule to FOSPA). "Special exemptions" may only be granted by a committee consisting only of Councillors (section 12 of FOSPA). Refer to paragraph 12\* of this document.

#### 3.1 Definition – exempted pools

Certain pools are exempt from the FOSPA; see section 5 FOSPA, at Appendix \*. The pools listed in section 5 are not required to comply with FOSPA however an owner may choose to voluntarily comply. See 3.1.5 and 3.2.1\*, below.

3.1.1 Pools with sides of 1.2m or higher that inhibit climbing; however the area surrounding the steps or ladder may require a complying fence, or the steps or ladder must be able to be readily removed whenever the pool is not in use. There must not be any permanent structures, (e.g.; a deck), within 1.2m of the sides of the pool; see section 5(a) FOSPA;

**Diagram NZS 8500: fig 3.10 (awaiting copyright licence from Standards NZ)**



3.1.2 An excavation, structure or product holding 400mm or less of water (e.g.; ornamental ponds); see section 5(b) FOSPA;

3.1.3 An excavation, structure or product that is not used in association with a dwelling, or school, hospital, hotel, motel, camping ground, or similar premises, and is not intended to be used for swimming, wading, paddling, or bathing (e.g.; a fountain in a park); see section 5(c) FOSPA;

3.1.4 Wading or paddling pools under the administration of the local authority; see section 5(d) FOSPA;

- 3.1.5 Indoor, residential pools are technically exempt from FOSPA requirements, however, whilst it is not a legal requirement the Auckland Council strongly encourages owners with indoor pools to attach restrictors to windows, and locking devices to doors that in accordance with the building code that when properly operated, prevents the door from being readily opened by children under the age of six or alternatively voluntarily comply with clauses 8 to 10 of the Schedule to FOSPA<sup>11</sup>; see section 5(e) FOSPA.

*Note: Voluntary compliance is sought as indoor pools without the same safeguards as outdoor pools pose the same risk of drowning to young children.*

*Note: If an owner claims that an indoor pool is exempt from FOSPA because it is wholly enclosed within a building, refer the file to your Team Leader for them to explain that Auckland Council policy is to encourage a voluntary higher level of safety.*

- 3.1.6 Pools where people are employed to provide supervision while the pool is available for use, and the pool is either fenced in accordance with this Act, or access is prevented by locked gates or doors at other times; see section 5(f) FOSPA;

## **3.2 Guide Notes**

- 3.2.1 Even if a pool qualifies as exempt under section 5, it may often be appropriate to encourage an owner of an exempt pool, pond, or other excavation or product, to voluntarily provide barriers for safety reasons. E.g.; locking mechanisms on doors and restrictors for windows to indoor pools, or mesh or other covers over ponds.
- 3.2.2 An exempt pool should still be noted on the pool register so that Council knows it exists (category "s5 exempt") and so that it can be re-inspected from time to time to make sure that it is still exempt.
- 3.2.3 The definition of "wholly enclosed within a building" (section 5(e)) can be difficult. However, the rule of thumb is that this exemption only applies where the pool is surrounded by permanent walls and a permanent roof, as in the natural, ordinary meaning of the phrase. The building must be one not principally related to the use of the pool.

*Note: Even if an indoor pool is exempt, see 3.1.5 above. Auckland Council strongly encourages voluntary compliance with clauses 8 to 10 of the Schedule to FOSPA and will require compliance with section F4 of the NZ Building code.*

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<sup>11</sup> This recommendation accords with what is recommended in New Zealand Standard 8500:2006 at paragraph 2.7 in regard to indoor, or partly indoor, pools.

## 4. Every owner of a pool, shall –

### 4.1 Definition – "owner"

4.1.1 An "owner" is the owner of a pool; except where the pool is:

- (a) Subject to a hire purchase agreement, in which case it means the purchaser of the pool;
- (b) Part of premises that are subject to a lease (not a tenancy under the Residential Tenancies Act 1986), in which case it means the lessee of the pool or the premises;

*see section 2, FOSPA.*

4.1.2 Tenants also have obligations under FOSPA (*see 2.1.3\* and footnote 10\* above*).

## 5. Ensure that “the pool” or some or all of the “immediate pool area” including all of the pool -

Defining the scope of the “immediate pool area” is important because it is only that area, along with the pool, which can be within the pool fence. If you are unsure, consult your Team Leader.

### 5.1 Definition – “the pool” or the “immediate pool area including all of the pool”

5.1.1 The pool owner has the option<sup>12</sup> to fence either:-

- i) the pool, or
- ii) some or all<sup>13</sup> of the “immediate pool area including all of the pool”.  
See section 8 FOSPA.

5.1.2 The “immediate pool area” is defined as “**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**”; section 2, FOSPA.

5.1.3 The pool owner may indicate on the plans for building consent purposes where they consider the “immediate pool area” to be. However, the location of the fence and the scope of the “immediate pool area” must be assessed on a case by case basis by the Council.<sup>14</sup> You may need to explain the relevant factors to the pool owner however, the Council’s role is to provide an independent check on the owner’s proposals and make a decision as to compliance. It is the use of the area between the pool and the side of the dwelling that will determine whether this can be determined to be the immediate pool area i.e. is the use associated with the activities carried out in conjunction with the use of the pool.

5.1.4 You are encouraged to discuss any uncertainties or issues regarding the scope of the “immediate pool area” with other team members and your Team Leader.

5.1.5 Part of a building, and any doors opening from it, may form part of a pool fence **only if it has been determined that the building is at the edge of “the immediate pool area”**. Only a Team Leader (or other approved officer) is authorised to approve doors opening from a building at the edge of the immediate pool area that give access to the immediate pool area. See 5.3\* below.

5.1.6 The leading authority in defining the “immediate pool area” is a High Court case from 2004, *Waitakere City Council v Hickman*.<sup>15</sup> The key factors to consider are:-

- i) **immediacy** – it should be a limited area;
- ii) its actual **use** – only activities and purposes properly regarded as taking place in conjunction with swimming, wading, paddling, or bathing; and
- iii) whether those proper uses are sufficiently enough **connected** with the use of the pool.

<sup>12</sup> See *Waitakere City Council v Hickman*, Randerson J, HC Auckland CIV 2003-404-7266, at paragraphs 27(b), (c) and 52.

<sup>13</sup> Section 8 says “some or all” of the immediate pool area must be fenced. *Hickman* clarified that this means that the fence can be located either at the outer edge of the immediate pool area, or at some intermediate point between the edge of the pool and the outer edge of the immediate pool area; at paragraph 27(d). That is, decide where the immediate pool area is, then the owner can choose to put the fence anywhere inside that area (as long as the whole pool is fenced).

<sup>14</sup> *Hickman* at paragraph 35 where Justice Randerson rejects a suggestion that pool owners should be free to determine where they locate the pool fence. It is an assessment to be made taking the relevant factors into account. If the pool owner disagrees with the Council as to that location, then they are able to apply to the Department of Building and Housing for a determination; see Section 12\* in this document.

<sup>15</sup> See *Hickman* at paragraphs 29, and 52-54, for a list of Justice Randerson’s conclusions.

## 5.2 Guide Notes: "Immediate pool area" - Three factors to consider

A case-by-case assessment is required. For each situation, consider:-

- A Immediacy:** Is the fenced area confined enough to be 'immediate' to the pool?
- B Use:** Is the fenced area used only for activities connected with swimming, wading, paddling, or bathing?
- C Close connection with the pool:** Are those activities closely connected with the use of the pool?

And

**Always have regard to the purpose of FOSP which is to promote the safety of young children.**

- A Immediacy:** Is the fenced area confined enough to be 'immediate' to the pool?

5.2.1 The term "immediate" indicates that Parliament intended a limited area. The size of the area will depend on the circumstances of each case. The area should be sufficiently confined so that it may properly be described as "immediate". e.g.; a fence around the perimeter of the property, or the entire backyard, is unlikely to comply; however, this will be entirely dependent on the size of the backyard.<sup>16</sup>

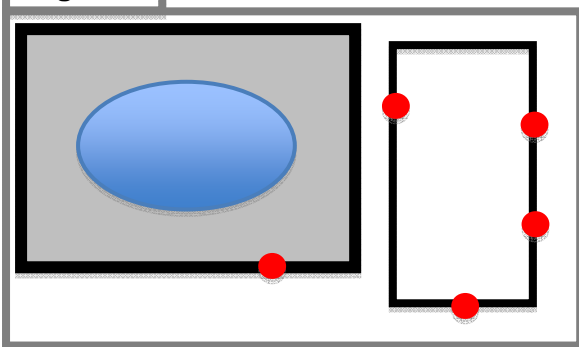
*"The further away one moves from the edge of the pool, the less likely it will be that an associated activity or purpose can be properly said to be carried on "in conjunction with" the use of the pool and the less likely it is that the activity will be in sufficient proximity to the pool to be properly regarded as within the "immediate" pool area."*

*Waitakere City Council v Hickman, Randerson J, HC Auckland CIV 2003-404-7266, at paragraph 34.*

- i) New pools: building consent applications which separate the pool from the dwelling with a fence that complies with the standards in this document may be approved immediately. New pools which do not comply with the standard set in this document will need to be considered as a proposed alternative solution.
- ii) Existing pools: where the owner of an existing pool proposes or agrees to voluntarily construct a new or altered fence in order to separate a pool from a dwelling, the building consent fees will be waived.

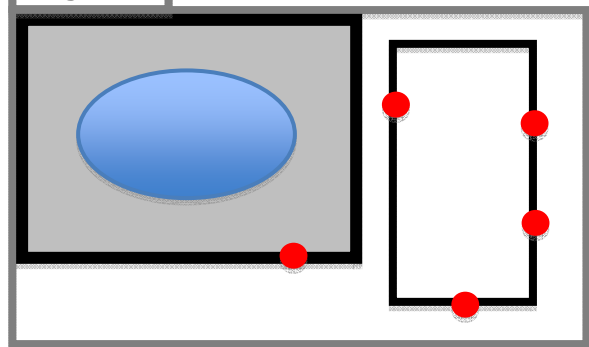
See paragraph 5.3\* below for more guidance as to buildings forming part of a pool fence.

Diagram 1



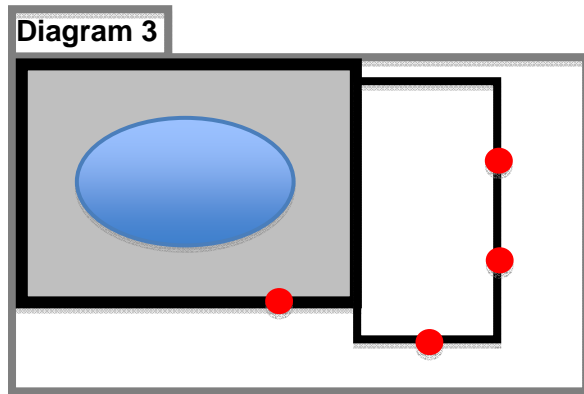
**Pool isolated with complying pool fence and gate**

Diagram 2

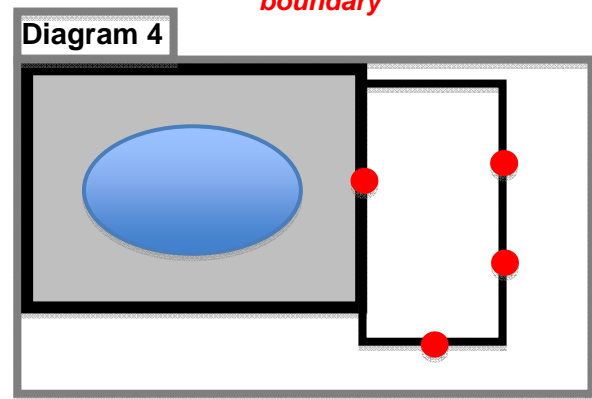


**Pool isolated with complying pool fence, gate &**

<sup>16</sup> See *Hickman* at paragraphs 29(a), 34, and 54. Also see Determinations 2006/16, 2006/22 and 2007/76.



Pool isolated with complying pool fence, dwelling and complying gate



Pool isolated with complying pool fence and door using of wall of house

**B Use: Is the fenced area used only for activities connected with the pool?**

- 5.2.2 Only activities or purposes connected with (used in conjunction with) swimming, wading, paddling, or bathing may take place inside the immediate pool area.<sup>17</sup>
- 5.2.3 Activities that **would** ordinarily qualify as being carried on in conjunction with the use of the pool include use of pool furniture, changing sheds, pumps or pool maintenance equipment, sunbathing areas, and diving boards or other pool equipment;<sup>18</sup>
- 5.2.4 Changing sheds are an example of a building “used for a purpose connected with the pool” and which can legitimately form part of the immediate pool area.<sup>19</sup>

**See paragraph 5\* below for more guidance as to buildings forming part of a pool fence.**

- 5.2.5 Examples of activities which **would not** usually be regarded as being carried on in conjunction with the use of the pool include clothes lines, vegetable gardens, vehicle or pedestrian access ways or thoroughfares (e.g.; from the street, or from a garage/carport).<sup>20</sup>
- 5.2.6 Entertainment areas, barbeque areas, and outdoor seating areas, may be located inside the immediate pool area as long as these are used in conjunction with the use of the pool from time to time. (Also see 5.2.\* below).

However, these entertainment areas must still be within the area “immediate” to the pool. That is, relatively close to the pool. See 5.2.1.\* above.

<sup>17</sup> See *Hickman* at paragraphs 29(d), and 52.

<sup>18</sup> *Waitakere City Council v Hickman*, Randerson J, HC Auckland CIV 2003-404-7266, at paragraph 29(g).

<sup>19</sup> Determination 2005/125 at paragraphs 5.1.5 to 5.1.7. A changing room (including a bathroom and toilet) was part of the immediate pool area and therefore the door from the changing room to the pool area did not have to comply with FOSPA and the building code. The rest of the changing room was secure with no access from the house or from outside the pool area. See the diagram at page 2 of the Determination.

<sup>20</sup> *Hickman*, at paragraph 29(f).

If an entertainment / barbeque area is assessed as legitimately being within the immediate pool area, it will usually mean that it (and the pool) are separated from the dwelling, other buildings, garden paths, and other areas of the property, by a complying fence,(refer to the definition of complying fence ) so that children are not able to enter the area except in the presence or supervision of an adult. See 5.2.2\* and the below 'Note'.

*Note: Justice Randerson in the Hickman case considered that to allow barbeques and entertaining to take place in the immediate pool area would not compromise the safety of children where there was a complying fence which restricted their access unless they were in the presence of an adult.<sup>21</sup>*

5.2.7 Children's play areas and amenities should also be excluded.<sup>22</sup>

5.2.8 Thoroughfares: The pool area should not be used as a main thoroughfare to other parts of the property. Where areas on the property are only intermittently accessed and are separated out from the pool area than these may be condoned.<sup>23</sup> The main access way to the house from outside the property should not pass through the pool area.<sup>24</sup> Take care that the location of a pool fence does not unintentionally create a thoroughfare. E.g. if a pool fence blocked access from the house to other parts of the property. Where thoroughfares are unavoidable or impractical, these may be considered on a case by case bases.

5.2.9 Large areas of garden and landscaping will usually mean that the area can not be defined to be immediate to the pool and will usually not be acceptable these will need to be assessed on a case by case basis. Small areas of garden, landscaping or grass will be acceptable. Relevant factors to consider include :

- i) Is more than minimal maintenance required so that there might be a danger that gates or doors would be propped open to gain access for equipment not associated with the use of the pool?<sup>25</sup>
- ii) Is the size of any landscaped area so large that an adult who was working on that area might not be aware that a child had fallen into the pool?<sup>26</sup>

Consideration will be based on the immediacy to the pool. It is not the intent to totally exclude landscaping or to reduce the immediate pool area to such a size that this becomes impractical in terms of use and enjoyment.

5.2.10 Decorative features which do not require any maintenance (and which would not cause other activities not relating to the use of the pool to take place) may be acceptable in the immediate pool area.<sup>27</sup>

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<sup>21</sup> See *Hickman* at paragraph 33 and 36 to 38. The Addendum to "Guidelines for Territorial Authorities on The Fencing of Swimming Pools Act 1987" published by the Department of Internal Affairs also confirms that although barbeques and entertainment furniture etc can legitimately be in the immediate pool area, that the most important factor is the location of the fence and that it prevent young children from moving directly to the pool from the house and other areas of the property normally open to them; at paragraph 7, page 6. Also see footnote 1\*.

<sup>22</sup> Addendum to "Guidelines for Territorial Authorities on The Fencing of Swimming Pools Act 1987" published by the Department of Internal Affairs; at paragraph 7, page 6.

<sup>23</sup> Determination 2007/79.

<sup>24</sup> Determination 2008/113.

<sup>25</sup> Determination 2007/95. A 0.5m wide planting strip in front of rock walls was allowed.

<sup>26</sup> Determination 2007/95, at paragraph 4.3, discusses a possible danger for more extensive planting.

<sup>27</sup> Determination 2007/95 allowed river-stone filled mesh baskets and walls inside an immediate pool area because they did not require any maintenance and were not used for any activities; paragraphs 4.6 and 4.7.



**C Close connection with the pool: Are those activities closely connected with the use of the pool?**

5.2.11 The activities or purposes taking place in the immediate pool area must not only be activities related to swimming, wading, paddling, or bathing, but must also be closely connected to those uses. There cannot be only a remote or indirect link between the activity and the use of the pool.<sup>28</sup>

5.2.12 The activities must be closely connected to the use of the pool, but do not have to be carried on exclusively, or only, with the use of the pool. The immediate pool area may be used for recreational or entertainment activities (e.g.; barbecues or entertaining) if the owner can show that, from time to time, the area is used for this purpose in conjunction with using the pool. It does not matter that these activities may also occur independently of, or without using, the pool.<sup>29</sup> Supervision by adults is an important component where such activities including swimming occur.

5.2.13 The pool does not have to be within view from the dwelling, or from doors from a dwelling.<sup>30</sup>

Note: It is recommended that visual supervision of the activities in the immediate pool area from a dwelling or other part of a property should be encouraged. It is the owners (in the full context includes tenant leaseholder occupier) responsibility that adequate supervision is provided for in all instances.

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<sup>28</sup> See *Hickman* at paragraphs 29(e) and (f), and 54.

<sup>29</sup> *Hickman*, at paragraphs 30-32. Also see Determination 2008/103 at paragraph 7.5.

<sup>30</sup> Determination 2008/103.

### 5.3 Guide Notes: Buildings (and gates or doors) forming part of a pool fence<sup>31</sup>

**Always have regard to the purpose of FOSPA which is to promote the safety of young children.**

- 5.3.1 Part of any building that does not contain doors that gives access to the pool, may form part of a pool fence. However, the building wall must still be "immediate" to the pool and any windows opening to the pool must have restrictors attached and doors shall have locking devices (see paragraph 9E\* below). A Team Leader does not have to approve a part of a building forming part of a pool fence where there are no doors or windows opening to the pool.
- 5.3.2 Although this is not a legal requirement Auckland Council policy is to encourage separation of a pool from a dwelling (house) with a complying fence, wherever possible except where wall of house is deemed to be at edge of immediate pool area and door/s and windows meet the requirements of clauses 8 -10 of FOSPA.
- 5.3.3 Part of a building, which has a door or doors opening from it that give access to a pool, may form part of a pool fence only if it has been determined by a Team Leader (or other approved officer) that the building is at the edge of "the immediate pool area".

**Only a Team Leader (or other approved officer), with the appropriate delegated authority, is authorised to approve doors opening from a building and giving access to the pool area, where it has been determined that the building is at the edge of the immediate pool area and forms part of the pool fence.**

- 5.3.4 Door(s) in walls of a dwelling that give direct access to the immediate pool area reduce the effectiveness of a continuous barrier and can provide an opportunity for other activities that are not associated with the use of the pool.<sup>32</sup>

<sup>31</sup> See the definition of "fence" in section 2 of FOSPA. Also see paragraph 6\* of this document below.

<sup>32</sup> Determinations 2003/6, 2005/124, 2005/125, 2006/81, 2007/95.

5.3.6 Your Team Leader will be concerned with what each door is to be used for, whether it is serving the immediate pool area and whether it has complying locking and latching devices in place. If one or more of the doors could well be opened for various purposes other than just providing access to the immediate pool area,<sup>33</sup> (e.g. for access to other parts of the property, then the proposal may be rejected on the basis that the number of the doors proposed reduces the effectiveness of the barrier to the extent that the barrier cannot be considered as continuous **and does not fence the immediate pool area**).

5.3.7 In practice, this will mean that the number of doors providing access to the immediate pool area should be minimised as far as possible. It will be important that there are other doors opening elsewhere providing access to the property not deemed to be the immediate pool area and where children can exit the house to play.<sup>34</sup> It does not mean that one door only can be considered. Consideration needs to be given to the location of the doors and the immediacy to the pool.

*Note: Pool owners who do not agree with the Council's assessment of their pool fencing proposal may be able to apply to the Department of Building and Housing for a determination; see sections 176-178, the 2004 Act. See paragraph 11\*, below.*

**See paragraph 9\* below for more guidance as to locking, latching, and other compliance requirements for gates, doors and windows.**

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<sup>33</sup> See Determination 2003/6, at paragraph 6.3.4(a). In that case, four doors (from two living rooms, the kitchen, and a bedroom) opened onto a terrace (11mx14m) on which the pool was sited (3mx10m). Two gates from the terrace led to other parts of the grounds. No plans are included in the determination.

<sup>34</sup> Addendum to "Guidelines for Territorial Authorities on The Fencing of Swimming Pools Act 1987" published by the Department of Internal Affairs; at paragraph 6, page 5.

## 6. Is fenced by a “fence” –

The pool fence must surround only the “immediate pool area”. A building with a door or doors opening from it which give access to a pool may only be approved for use as a “fence”, if a Team Leader (or other approved officer) has approved the building as being at the edge of the immediate pool area.

**See paragraph 5.3\* above for more guidance as to buildings forming part of a pool fence.**

### 6.1 Definition – “fence”

- (a) 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
- (b) includes any part of a building and any gates or doors that form part of the fence;

*section 2, FOSPA.*

### 6.2 Guide Notes

6.2.1 Part of a building, and any doors opening from it that give access to the pool, may form part of a pool fence only if it has been determined by a Team Leader (or other approved officer) that the building is at the edge of “the immediate pool area”. *See section 5.3\* above. This requirement has been initiated to provide for consistency in application and interpretation of immediacy and use.*

6.2.2 Pool covers, pool alarms, door alarms: if a pool owner is proposing a barrier that is not a “fence” (e.g.; a pool cover, pool alarm, door alarms) it is important to advise them that these will almost always require a “special exemption” to be granted by a committee of Councillors pursuant to section 6 of FOSPA, and if the special exemption is granted, will also require approval by a Team Leader (or other approved officer) as an alternative solution. This is because the wording of FOSPA is that the pool must be fenced “by a fence”. A barrier that is not a fence therefore requires a special exemption from FOSPA by a committee of Councillors.<sup>35</sup> *Also, see section 12\* below.*

***Always have regard to the purpose of the FOSPA which is to promote the safety of young children.***



<sup>35</sup> This has been confirmed in several determinations. When a pool cover is not in place, there is no barrier and therefore it does not comply with clause F4; Determination 2007/87, and Determination 2002/10 (spa pool with a rigid, lockable cover and no other barrier) and a special exemption pursuant to section 6 of FOSPA is required.

**7. The fence must comply with the requirements of the Building Code. The Schedule to FOSPA establishes compliance with the Building Code:**

**FOSPA requires a fence that complies with the Building Code; clause F4.**

**A fence that complies with the Schedule to FOSPA also complies with the Building Code.**

**7.1 Definitions**

- 7.1.1 A fence that fully complies with the Schedule to FOSPA also complies with the Building Code; *section 13B, FOSPA*.
- 7.1.2 The Schedule to FOSPA is referenced as a means of establishing compliance (an 'acceptable solution') with the Building Code in the F4 Compliance Document F4/AS1 at paragraph 1.2.7.

## 8 Fence Requirements

The pool fence must surround only the "immediate pool area". A building with a door or doors opening from it which give access to a pool may only be approved for use as a "fence", if a Team Leader (or other approved officer) has approved the building as being at the edge of the immediate pool area and these doors will need to comply with clauses 8 to 10 of the schedule of FOSPA and section F4 of the NZ Building code.

**See paragraph 5.3\* above for more guidance as to buildings forming part of a pool fence.**

**Pool fencing proposals that do not comply with the standards in this document must be assessed on a case-by-case basis against the standards of clause F4 of the Building Code as proposed alternative solutions. Only a Team Leader (or other approved officer), with the appropriate delegated authority, is authorised to approve these proposals as an alternative solution for swimming pool fencing.**

### 8A Fences - Height and Ground Clearance

Schedule to FOSPA: Means of compliance for fences under this Act

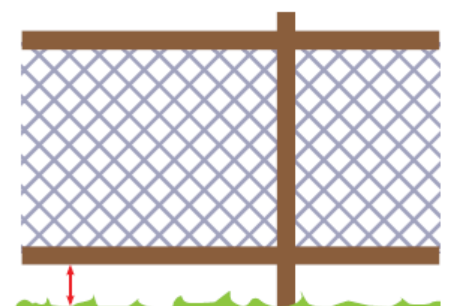
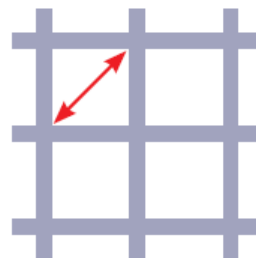
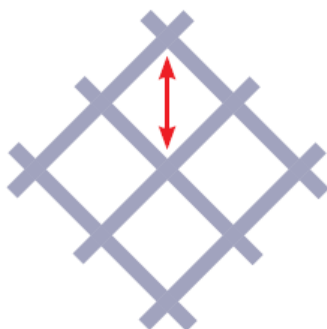
<b>Clause 1 Height</b>	(1) The fence shall extend— (a) At least 1.2 metres above the ground on the outside of the fence; and (b) At least 1.2 metres above any permanent projection from or object permanently placed on the ground outside and within 1.2 metres of the fence. (2) If fence is made of perforated material, netting or mesh, and any opening is more than 10mm: then fence must be 1.8m high.
<b>Clause 2 Ground clearance</b>	Between the bottom of the fence and ground level shall not exceed 100mm.

#### Guide Notes

8A.1 Pool fencing height must be 1.2 metres above the ground on outside of the fence.

8A.2 Pool fencing made of trellis, netting, mesh or other perforated material with gaps of more than 10mm must be 1.8 metres in height.

*Note: This measurement is on the diagonal, or widest part, of the gap.*



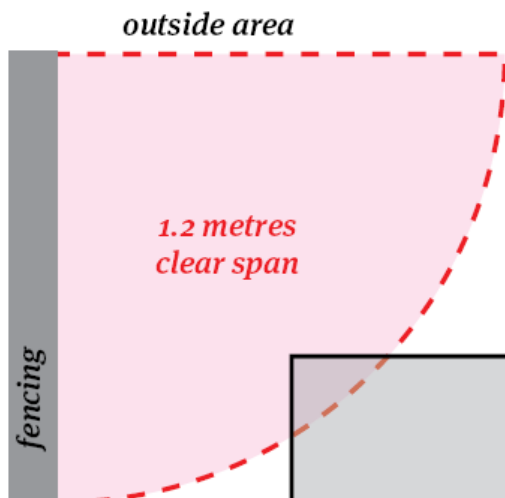
Ground clearance must be less than 100mm

For a fence up to 1.2m high, the gaps are to be no more than 10mm.

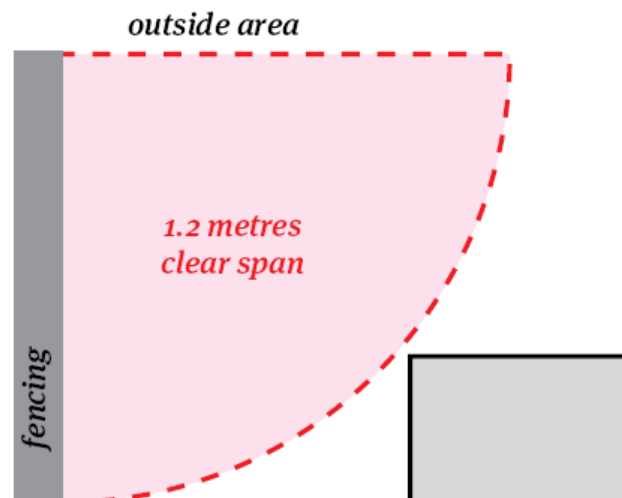
For a fence 1.8m high or higher, the gaps can be up to 50mm.

8A.3 There must be no permanent objects within 1.2 metres of the outside of the fence. Be aware of trees, hedges, stacks of wood, and the like, which may be climbed.

### *Not Acceptable*



### *Acceptable*



8A.4 Balconies: above the immediate pool area. See Section D\*: Alternative solutions. Balconies above and protruding into the immediate pool area are able to be signed off as an alternative solution by a Team Leader (or other approved officer) where they meet the specifications set out in Section D\*, or as assessed as not providing an additional risk.

*Other diagrams from NZS8500 required*

## 8B Fences – Materials, Durability and Inaccessible for climbing

### Schedule to FOSPA: Means of compliance for fences under this Act

Clause 3 Materials	All materials and components shall be of a durable nature and erected so as to inhibit any child under the age of 6 years from climbing over or crawling under the fence.	
Clause 4	Spacing between adjacent vertical pales, panels or posts not to exceed 100mm at any point	Exception: Horizontally close boarded fences; or if Made of: perforated material, netting or mesh
Clause 5	All fencing supports, rails, rods, wires and bracing that is not vertical shall be inaccessible for use for climbing from the outside.	Exception: Clause 5A: Can be accessible for climbing if: (a) The distance between any 2 of them at any point is at least 900mm; and (b) There is no other support, rail, rod, wire or bracing (other than a vertical rail) between the same 2 at any point.
Clause 6	Any perforated material, netting or mesh shall not have an opening that is greater than 50mm	
Clause 7	All perforated material, netting or mesh shall be firmly attached at both top and bottom to a rail, pipe, or similar firm structure, or otherwise be of such a nature that the fence cannot readily be crossed by children under the age of 6 years.	

### Guide Notes

- 8B.1 There shall be no gaps between vertical components greater than 100mm (unless fence is horizontally close boarded or made of perforated material, netting or mesh).
- 8B.2 "Horizontally close boarded" means there are no gaps between horizontal palings (ie; they are touching each other at the edges).  
*Note: oriental trellis is not generally acceptable even if the gaps are 10mm or less. See 8B.4\* below.*
- 8B.3 Standard square or diagonal trellis fencing is generally acceptable for pool fencing (provided that it is durable, and the trellis gaps and horizontal railing comply).
- 8B.4 Oriental trellis is not generally accepted for use in pool fencing because of durability concerns. That is, the trellis rails could break and thereby leave a climbable gap.
- 8B.5 All support rails, rods, wires, and bracing, shall be covered or close boarded so that they are not accessible for climbing. However, non-vertical components need not be covered if they are at least 900mm apart.
- 8B.6 Boundary fences can be used as part of a pool fence as long as the above specifications are met. The most common issue is horizontal rails on the neighbour's side being climbable (see 8B.5 above, and also 8B.7 below). However, be aware that a pool owner has no control over any object placed against the neighbour's side which may allow a child to climb into the pool area from next door. If it is not possible to make a boundary fence complying, or if a neighbour is not co-operative, then a second fence needs to be constructed a minimum of 1.2 metres inside the boundary fence and be non climbable.  
*Note: it is not the adjoining property owner's responsibility to maintain a boundary fence that is also a pool fence; it is the pool owner's. Please refer to the Fencing Act 1978.*
- 8B.7 Triangular or angled fillets are accepted by the Council as a method for making fences inaccessible for climbing (e.g.; where there are horizontal rails less than 900mm apart) the angle of these fillets is to be no less than an angle of 60 degrees. Consideration will be provided on a case by case basis where the angle is less and it can be shown that the angle fillet is of such a size where it would not provide a toe hold or climbing point.



*Note: A pool owner may submit a proposed alternative solution to the Council, which may only be approved by a Team Leader (or other approved officer), if the owner considers that their pool fencing proposal would comply with the Building Code. See section D\*.*

*Note: A pool owner who does not agree with the Council's decision on their proposed alternative solution can apply to the Department of Building and Housing for a determination on the matter; see sections 176-178, the 2004 Act. See paragraph 11\*, below.*

## 9. Gates, doors and windows

The pool fence must surround only the "immediate pool area". A building with a door, doors or windows opening from it which give access to a pool may only be approved for use as a "fence", if a Team Leader (or other approved officer) has approved the building as being at the edge of the immediate pool area.

**See paragraph 5.3\* above for more guidance as to buildings forming part of a pool fence.**

### Schedule to FOSPA: Means of compliance for fences under this Act

<p><b>Clause 8</b> Gates and doors</p>	<p>Every gate or door shall be constructed so as to comply with the relevant requirements of clauses 1 to 7 of this Schedule.</p> <p>Every gate or door shall be mounted so that:- a) it cannot open inwards towards the immediate pool area; and b) there is no means of holding the gate or door open; and c) when lifted up or pulled down, it does not release the latching device, come off its hinges, or give ground clearance of more than 100mm.</p>	<p><b>Exception: Clause 11: doors in buildings forming part of a fence.</b></p> <p>Exemption can only be granted by a committee of Council (all members must be elected members); section 12.</p>
<p><b>Clause 9</b> Operation of gates and doors</p>	<p>(1) Every gate or door to be fitted with a latching device. (2) Where the latching device is accessible from the outside of the fence only by reaching over the fence, gate, or door, the latching device and the lowest point of any hole giving access to it shall be at least 1.2m above the ground on the outside of the fence. (3) Where the latching device is otherwise accessible from the outside of the fence, gate, or door, the latching device shall be at least 1.5m above the ground on the outside of the fence.</p>	<p><b>Exception: Clause 11: doors in buildings forming part of a fence.</b></p> <p>Exemption can only be granted by a committee of Council (all members must be elected members); section 12.</p>
<p><b>Clause 10</b></p>	<p>Every gate or door shall be fitted with a device that will automatically return the gate or door to the closed position and operate the latching device when the gate or door is stationary and 150mm from the closed and secured position.</p>	<p><b>Exception: Clause 11: doors in buildings forming part of a fence. Refer Sections 6 &amp; 12 FOSPA</b></p> <p>Exemption can only be granted by a committee of Council (all members must be elected members); section 6 FOSPA.</p>

### 9A Gates must:

- Be determined to be at the edge of the immediate pool area by Council.
- Not open inwards towards the immediate pool area.
- Be fitted with a self-latching device and a self-closing device capable of closing the gate if it is opened 150mm or more.
- If a latch is on the inside of the gate, the latch must only be accessible by reaching over the top of the fence, gate, or through a hole at least 1.2 metres above the ground from the outside.
- If a latch is on this outside of the gate, it must be at least 1.5 meters off the ground.
- Be clear of anything that could hold them open.
- Not lift off their hinges or unlatch if pulled down or lifted up.
- Hinges that could be used as a foot hold must be 900mm apart or fitted with a cap, or other solution rendering the hinge unable to be climbed.
- Double gates must both independently self-close and self-latch at 1.5m or have one side of the gate permanently fixed shut. Where a padlock is used to secure the fixed side of the gate it is the owners responsibility to ensure that the padlock remains in place.
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- Automatic sliding gates to the pool area are acceptable, providing:-
  - the operating switch or swipe card device is located near the automatic sliding gate and positioned 1.5m above the ground or floor;
  - the gate or door shall automatically close and latch shut, following access to and from the pool;
  - the construction of the automatic sliding gate or door complies with the requirements of the FOSPA;
  - a device (pressure switch) that will fail gate to a safe position (to avoid crushing) should an object not permit closing and latching of gate. Such device shall sound an alarm of no less than 85 decibels when activated.

*Note: It is recommended that a sign be attached indicating that the gate is an automatic sliding gate to prevent the likelihood of accidentally being caught in the gate.*

### **9B Hinged doors must:**

- Be determined to be at the edge of the immediate pool area by a Team Leader (or other approved officer).
- Not open inwards towards the immediate pool area.
- Be fitted with a self-closing device capable of closing the door if it is opened 150mm or more.
- Be fitted with a self-latching device at least 1.5 meters off floor level.
- Be clear of anything that could hold them open.
- Double doors (e.g.; French doors) must both independently self-close and self-latch at 1.5m or have one side of the door permanently fixed shut. Padlocks, keyed tower bolts and tower bolts are acceptable to secure the fixed door. It is the owners responsibility to ensure that these bolts and or padlocks are maintained and remain locked.

*Note: Casement and French doors have been allowed to open inwards towards the pool in the past. These doors will require keyed tower bolts to be fitted. French doors will not be approved without self closers, latching devices and tower bolts for all new building consent applications.<sup>36</sup>*

*Note: Other options are to isolate the pool from the door/s, or to install a self-closing, security screen door.*

### **9C Ranch sliders and sliding doors must:**

(E.g. doors that slide within their own plane, such as stacker sliders)

- Be determined to be at the edge of the immediate pool area by a Team Leader (or other approved officer).
- Be fitted with a locking device that when properly operated prevents the door from being readily opened by children under the age of 6 years.
- Be fitted with a locking device at least 1.5 meters off floor level.
- Remain closed and locked at all times (except when being opened to access the immediate pool area). It is the owners responsibility to ensure that these doors are maintained and managed to provide for the safety of children under the age of six.

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<sup>36</sup> *Hickman*, confirms this specific requirement at paragraph 46 and 49(c). Also, see Determination 2005/125 at paragraph 5.2.4 where it is stated "the importance of clause 8(a) is that if the automatic latch malfunctions, a gate or door opening inwards towards a pool does not restrict the access of children as required by clause F3.4.4(f) of the building code. In the absence of other safeguards I consider that doors need to open outwards from the pool in order to comply with the building code."

**9D Sliding-folding doors (bi fold doors) must:**

- Be determined to be at the edge of the immediate pool area by a Team Leader (or other approved officer).
- Not open inwards towards the immediate pool area.
- Be fitted with a locking device that when properly operated prevents the door from being readily opened by a child under the age of six years.
- Be fitted with a locking device at least 1.5 meters off floor level.
- Remain closed and locked at all times (except when being opened to access the immediate pool area).

**9E Windows:**

- Any opening windows with the bottom sill lower than 1.2 metres from the inside floor level must have permanent restrictors attached to open no more than 100mm.
- Restrictors must also be attached if any climbing aids are against the window (e.g.; furniture, kitchen cabinets).
- Pet doors to the immediate pool area are prohibited.

**Any proposals involving doors, gates or windows opening inwards towards the pool, or doors, gate or windows that do not self-close and self-latch would not comply with 8 – 10 of FOSPA and require a special exemption (see sec 6 & 12 FOSPA).**

**Self-closing and self-latching, sliding or hinged security (robust) screen doors may be a cost effective solution. These may be able to be fitted on the inside of existing French, sliding, or sliding-folding doors.**

## 10. Status of New Zealand Standard 8500:2006

**NZS 8500 has not been incorporated into FOSPA or the Building Code, and has not been adopted by the Department of Building and Housing as an acceptable solution or compliance document for the Building Code.**

**Pool fencing proposals that do not comply with the standards in this document must be assessed on a case-by-case basis against the standards of clause F4 of the Building Code. Only a Team Leader (or other approved officer) with the appropriate delegated authority is authorised to approve these as an alternative solution for swimming pool fencing.**

### **Guide Notes**

- 10.1** A number of Determination decisions from the DBH state that NZS 8500 "must command respect as representing the consensus of the major national bodies concerned, arrived at after a process of public consultation".
- 10.2** *NZS 8500 was approved by the Standards Council on 3 November 2006 under the Standards Act 1988. It was intended that the Standard would replace the Schedule to FOSPA. (further work is to be undertaken on this standard).*
- 10.3** *As at the date of this document, NZS 8500 has not been incorporated into legislation and has not been referenced by the Department of Building and Housing in the F4 Compliance Document. Therefore, a proposed alternative solution for pool fencing that meets the standards in NZS 8500 cannot be guaranteed as complying with the Building Code.*
- 10.4** *Each proposed alternative solution must be assessed on a case-by-case basis by a Team Leader (or other approved officer), in accordance with Section A, 9 \* and Section D\*.*
- 10.5** *Alternative solutions that utilise door alarms, pool alarms or pool covers will require a special exemption, as they are not a fence prescribed by FOSPA.*

## 11. Determinations from the Department of Building and Housing

### **Guide Notes**

- 11.1 The FOSPA requires that a pool or the immediate pool area must be fenced by a fence that complies with the Building Code; *section 8, FOSPA*.
- 11.2 The Building Code is set out as Schedule One to the Building Regulations 1992. The clause relating to swimming pool fencing is clause F4; see *Appendix D\* of this document*.
- 11.3 The Schedule to FOSPA must be treated as a compliance document establishing compliance with the Building Code. Therefore, swimming pool fencing that is in accordance with the Schedule to FOSPA, complies with the Building Code; see *section 13B, FOSPA*.
- 11.4 A Team Leader (or other approved officer) with the appropriate delegated authority may consider proposed alternative solutions where a pool fencing proposal does not meet the standards set out in this document. NZS 8500 could be used as a guide for proposed alternative solutions but cannot be guaranteed as complying with the Building Code; see *section 10\* of this document, above*.

Where a proposed alternative solution is not accepted by the Council, and the pool owner disagrees with this decision, the pool owner may apply to the Department of Building and Housing for a determination (section 176-178, the 2004 Act) on the matter.

- 11.5 A "determination" is a decision by the Chief Executive of the Department of Building and Housing about whether particular building work does or does not comply with the Building Code. A determination may also be made about any power of decision of a building consent authority about a building consent, a code compliance certificate, a notice to fix, a certificate of acceptance under section 96, decisions about dangerous buildings, and other matters; see *section 177 the 2004 Act*.
- 11.6 Determinations are binding and must be accepted by all parties; *section 19 the 2004 Act*.

## 12. "Special Exemptions" from FOSPA

**"Special exemptions" pursuant to section 6, or clause 11 of the Schedule to FOSPA, may be granted by a committee made up only of elected councillors. Section 12 of FOSPA prohibits this power from being delegated to officers.**

### 12.1 Definitions – "special exemptions" (section 6, and clause 11 of Schedule, FOSPA)

12.1.1 A territorial authority may, by resolution, grant an exemption from some or all of the requirements of FOSPA in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, and any other relevant circumstances, and any conditions it imposes, that such an exemption would not significantly increase the danger to young children.

*See section 6 FOSPA.*

12.1.2 Where any building forms part of a fence and the pool is not contained within the building, any door in the wall of that building 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.

*See clause 11 of the Schedule to FOSPA.*

12.1.3 The territorial authority may delegate its **powers and functions under section 6 and clause 11 of the Schedule** to any committee of the territorial authority appointed under clause 30 of Schedule 7 of the Local Government Act 2002 that comprises only members of the territorial authority; but **may not delegate** those powers and functions to any committee that has any members who are not members of the territorial authority or **to any officer** of the authority.

*See section 12 FOSPA.*

### 12.2 Guide Notes

12.2.1 Exemption applications should be relatively rare. The very nature of an exemption is that there should be good reason why the usual requirements should not apply e.g. a person lives at the property who uses a wheelchair and requires a gate to a pool to open inwards towards the pool so that they can open it unaided.

12.2.2 The fact that a pool may have been unfenced, or has not complied with FOSPA, for very many years, is not a good reason to apply for a special exemption. The obligation to comply with FOSPA is an ongoing obligation.

12.2.3 Exemptions from the requirements of FOSPA may only be granted on a case-by-case basis, for one pool at a time, by a Committee made up only of Councillors; section 12, FOSPA.

*Note: it is ultra vires (outside of the law) for any officer of Council to agree to an exemption from FOSPA, or from the Schedule to FOSPA.*

#### 12.2.4 **Proposals that do not involve a "fence".**

Pool covers, pool alarms, door alarms: if a pool owner is proposing a barrier that is not a "fence" (e.g.; a pool cover, pool alarm, door alarms) it is important to advise them that these will almost always require a "special exemption" to be granted by a committee of Councillors pursuant to section 6 of FOSPA, and, if the special exemption is granted, will also require approval by a Team Leader (or other approved officer) as an alternative solution. This is because the wording of FOSPA is that the pool must be fenced "by a fence". A barrier that is not a fence therefore requires a special exemption from FOSPA by a committee of Councillors.

#### *Notes for consideration for Special Exemptions*

12.2.5 The Committee must be satisfied that the granting of a special exemption "would not significantly increase the danger to young children" and may impose conditions; *section 6 FOSPA*.

12.2.6 If the exemption relates to clause 8-10 of the Schedule to FOSPA (gates and doors) the Committee must also be satisfied as to the matters in clause 11 of the Schedule. Full compliance with those clauses must be impossible, unreasonable, or against any other legal requirement. A locking device which prevents the door from being readily opened by children under six must still be fitted: clause 11 of the Schedule to FOSPA.

12.2.7 Irrelevant considerations: the Department of Internal Affairs<sup>37</sup> has given some guidance on inappropriate matters or criteria for exemptions. It is inappropriate to take into account :

- i) that there are no young children living at the property at present (because one third of drowning's are of invited guests, and children may well live on the property in the future. Pool fencing should be a permanent feature of a property and not something dependent on the occupants from time to time);
- ii) the presence of other water hazards eg; rivers, the sea (because a much higher standard of supervision is likely on an outing to water whereas constant supervision in the home is impossible);
- iii) other means of protection such as pool covers and alarms (because these rely on manual, human intervention to always replace them or turn them on after the pool has been used);
- iv) distance of the property from other residents e.g.; rural properties (because the biggest danger is to children living at, or visiting, the property);
- v) effects on appearance of the property (because the value of aesthetics cannot be placed above the value of human lives);
- vi) The trustworthy and reliable nature of the current owners eg; to always replace covers, or lock sliding doors, or never prop doors open (because compliant fencing should be a permanent feature of a property and not something dependent on the occupants from time to time).

## **13. Building Consenting Processes: Summary**

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<sup>37</sup> "Guidelines for Territorial Authorities on The Fencing of Swimming Pools Act 1987" published by the Department of Internal Affairs; commentary to section 6, pages 19-22.



**Important note: The decisions you make may have a fatal outcome. Council may be held liable if a pool has been incorrectly approved and a child later drowns or is injured, or for any financial loss caused.**

Type	Processing requirements –Building Code: B1, B2, E3, F2, F4, F5, F8, G12, G13
<p><b>Consents COA's</b></p>	<p><b>All pools:</b></p> <ul style="list-style-type: none"> <li>• Plans are to an approved scale.</li> <li>• Defines the proposed immediate pool area.</li> <li>• Is IPA confined enough to be "immediate" to the pool.</li> <li>• Does IPA contain activities not used in conjunction with the pool i.e. Children's play equipment, through fares to other parts of property, vegetable gardens, clotheslines etc.</li> <li>• Identifies the type, style and height of fence/ barrier.</li> <li>• Are there cross sections through fencing that identifies rails and distances apart.</li> <li>• Plans identify any walls of dwelling making up part of pool fencing and IPA.</li> <li>• Plans identify any doors/ windows opening into immediate pool area</li> <li>• Identifies any climbable projections (i.e. trees, intersecting fences, wood stacks etc) to out side of boundary/ swimming pool fences.</li> <li>• Is it a proposed alternative solution using NZS 8500.</li> </ul> <p>• depth of excavation in relation to datum clearly identified and proximity of other buildings and silt protection measures in place</p> <p>• all drains must be accurately located</p> <p>• if weak ground or fill is identified, has a registered geotechnical engineer confirmed ground conditions are suitable for the proposed building work</p> <p><b>Reinforced concrete pools:</b></p> <ul style="list-style-type: none"> <li>• Check all construction details specifications</li> <li>• check concrete strength requirements</li> </ul> <p>Has engineer provided a producer statement construction design (PS1) for pool construction.</p> <p><b>Plumbing</b></p> <ul style="list-style-type: none"> <li>• all taps used for filling pools should be identified for back flow prevention of potable water supply</li> <li>• backwash should discharge into a gully trap</li> </ul>

***Always have regard to the purpose of FOSPA, which is to promote the safety of young children.***

## **Building Consent Inspection Processes: Summary**

**Important note: The decisions you make may have a fatal outcome. If you see an unfenced pool or non-complying pool fence when undertaking inspections of any nature on behalf of Council, you have a duty of care to do something about it. Children’s lives are at stake. Council may be held liable if a pool has been incorrectly inspected and a child later drowns or is injured, or for any financial loss caused.**

Type	Inspection requirements –Building Code: B1, B2, E3, F2, F5, F8, G12, G13
<p><b>Consents CCC’s COA’s</b></p> <p><b>Site work - pool foundation and excavation</b></p>	<p><b>All pools:</b></p> <ul style="list-style-type: none"> <li>• depth of excavation in relation to datum clearly identified and proximity of other buildings and silt protection measures in place</li> <li>• excavations must be clean and level, unless stepped to accommodate variations in pool depth</li> <li>• drains must be accurately located and flagged prior to any foundation or excavation work</li> <li>• if weak ground or fill is identified, a registered geotechnical engineer must confirm that the ground conditions are suitable for the proposed building work</li> </ul> <p><b>Reinforced concrete pools:</b></p> <ul style="list-style-type: none"> <li>• height pegs must be in place</li> <li>• all reinforcing steel must be tied and supported with correct clearances</li> <li>• check concrete strength requirements</li> </ul> <p>The engineer must provide a producer statement construction review (PS4) on completion of the work, if required by conditions of consent or weak ground encountered.</p> <p><b>Filling Pools Prior to Pool Fencing Installation</b></p> <ul style="list-style-type: none"> <li>• Where a pool is filled with water prior to its pool safety fencing being installed a site fence must be installed in accordance with F5 AS1</li> </ul> <p><b>Plumbing</b></p> <ul style="list-style-type: none"> <li>• all taps used for filling pools should be fitted with a fitting including a vacuum break to ensure water does not backflow into the potable water supply</li> <li>• backwash should discharge into a gully trap</li> </ul> <p>A follow up inspection should be booked 6 month after the date of the last pool foundation/excavation inspection in order to check the compliance of the pool fencing.</p>

***Always have regard to the purpose of FOSPA, which is to promote the safety of young children.***

## Pool Fencing Inspection Processes: Summary

<b>Type</b>	<b>Inspection requirements – Pool fencing Fencing of Swimming Pools Act 1987 and Building Code: F4</b>
<b>Consents CCC's COA's</b>  <b>Unregistered pools</b>  <b>Ongoing Enforcement and compliance inspections</b>	<p>FOSPA requires that a pool or the immediate pool area be fenced by a fence that complies with the Building Code: clause F4 applies to swimming pool fencing.</p> <p>The Schedule to FOSPA gives detailed specifications for pool fencing and is the only compliance document establishing compliance with F4.</p> <p><b>Summary requirements:</b> (see Section B of this document for full details)</p> <ol style="list-style-type: none"> <li>1. All pools must be fenced: Fencing requirements apply to in-ground and portable spa pools, temporary pools, and ponds, as well as swimming pools.</li> <li>2. Except if the pool is exempt under section 5 of FOSPA.</li> <li>3. Pool fencing must comply at all times that the pool is filled or partly filled with water. This is an ongoing requirement and applies to all existing pools and new pools (whether or not there is a building consent or CCC).</li> <li>4. The pool or immediate pool area must be fenced: fence location must be in accordance with plans approved in the building consent.</li> <li>5. Fencing requirements:             <ol style="list-style-type: none"> <li>a) a fence; not other barriers (i.e. no covers, alarms) unless exempted by Council committee pursuant to s.6 of FOSPA</li> <li>b) height and ground clearance</li> <li>c) materials, durability, inaccessible for climbing.</li> </ol> </li> <li>6. Gates and doors: must all self-close and self-latch (this includes all French doors, sliding doors, and sliding-folding doors unless exempted by Council committee pursuant to s.6 or cl.11 FOSPA)</li> <li>7. Photos must be taken of the pool, its fencing, non-complying areas and IPA.</li> </ol> <p><b><i>Do NOT issue a consent, CCC, or inspection report (*), if you are unsure about any issue. Consult your team leader.</i></b></p>

***Always have regard to the purpose of FOSPA which is to promote the safety of young children.***

## C. Appendices:

### Fencing of Swimming Pools Act 1987

An Act to promote the safety of young children by requiring the fencing of certain swimming pools

BE IT ENACTED by the Parliament of New Zealand as follows:

#### 1 Short Title

This Act may be cited as the Fencing of Swimming Pools Act 1987.

#### 2 Interpretation

In this Act, unless the context otherwise requires,—  
fence—

- (a) 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
- (b) includes any part of a building and any gates or doors that form part of the fence

Fence: this definition was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by substituting the words "building code in force under the Building Act 1991 in respect of swimming pools subject to this Act;" for the words "Schedule to this Act".

fence: this definition was substituted, as from 31 March 2005, by section [414](#) Building Act 2004 (2004 No 72). See subpart [4](#) of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Gates or doors does not include any door to which clause 11 of the Schedule to this Act applies

Immediate pool area 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

Judicial officer means any District Court Judge, justice, Community Magistrate, or Registrar of a District Court (other than a constable); but does not include any person who is a member or employee of the territorial authority

Judicial Officer: this definition was amended, as from 30 June 1998, by section [7](#) District Courts Amendment Act 1998 (1998 No 76), by inserting the words "Community Magistrate,".

Owner means the owner of a pool; except—

- (a) Where the pool is subject to a hire purchase agreement within the meaning of the Income Tax Act 2007, in which case it means the purchaser of the pool:
- (b) Where the pool is on premises that are not subject to a tenancy under the [Residential Tenancies Act 1986](#) and the pool is subject to a lease or is part of premises subject to a lease, in which case it means the lessee of the pool or the premises:

Swimming pool and pool mean an excavation, structure, or product that is used or is capable of being used for the purpose of swimming, wading, paddling, or bathing; and includes any such excavation, structure, or product, that is a spa pool

territorial authority has the same meaning as in the [Local Government Act 2002](#)

Section 2 owner paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Owner: paragraph (a) of this definition was amended, as from 1 April 2005, by section [139](#) Credit Contracts and Consumer Finance Act 2003 (2003 No 52) by substituting the words "Income Tax Act 1994" for the words "Hire Purchase Act 1971". See sections [141 to 143](#) of that Act as to the transitional provisions.

Owner: paragraph (a) of this definition was amended, as from 1 April 2005, by section [YA 2](#) Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Territorial authority: this definition was substituted, as from 1 July 2003, by section [262](#) Local Government Act 2002 (2002 No 84). See sections [273 to 314](#) of that Act as to the savings and transitional provisions.

#### 3 Application to existing pools

This Act shall apply in respect of any swimming pool constructed, erected, or installed before the 1st day of September 1987 at any time on or after the 1st day of May 1988 when the pool is filled or partly filled with water.

#### 4 Application to new pools

This Act shall apply in respect of any swimming pool constructed, erected, or installed on or after the 1st day of September 1987 at any time when the pool is filled or partly filled with water.

#### 5 Exempted pools

Nothing in this Act shall apply in respect of—

- (a) Any pool that has no part of the top of its side walls less than 1.2 metres above the adjacent ground level or any permanent projection from or object standing on the ground outside and within 1.2 metres of the walls, where the outside surface of the side walls is constructed so as to inhibit climbing and any ladder or other means of access to the interior of the swimming pool can

be readily removed or rendered inoperable and is removed or rendered inoperable whenever it is intended that the pool not be used:

- (b) Any excavation, structure, or product, in which the maximum depth of water does not exceed 400 mm:
- (c) Any excavation, structure, or product,—
  - (i) That is not used in association with any house, home unit, apartment building, school, hospital, hotel, motel, camping ground, or other similar premises; and
  - (ii) That is not modified for use, or intended to be used, for swimming, wading, paddling, or bathing:
- (d) Any pool intended to be used for wading or paddling in any place that is under the administration of a local authority:
- (e) Any pool that is wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool:
- (f) Any pool where—
  - (i) Persons are employed and present to provide supervision of the pool whenever the pool is available for use; and
  - (ii) Access to the pool is effectively prevented by a fence that complies with this Act or by locked gates or doors whenever the pool is not intended to be available for use.

## 6 Special exemptions

(1) A territorial authority may, by resolution, grant an exemption from some or all of the requirements of this Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subsection (2) of this section, that such an exemption would not significantly increase danger to young children.

(2) In granting an exemption under subsection (1) of this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.

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

## 7 Notification of existence of pool to territorial authority

(1) Every owner of a pool to which this Act applies when the pool is filled or partly filled with water or to which this Act will apply on or after the 1st day of May 1988 when the pool is filled or partly filled with water shall comply with any reasonable requirement of the territorial authority to advise the territorial authority of the existence of the pool.

(2) Every person who proposes to construct or install a pool to which this Act will apply when the pool is filled or partly filled with water shall notify the territorial authority of the intention to construct or install the pool before the construction or installation commences.

(3) An application for a building consent under the [Building Act 2004](#) in respect of the construction or installation of a pool shall be deemed to be notification under this section.

## 8 Obligations of owner and persons in control of pool

(1) Every owner of a pool to which this Act applies shall ensure that, except as provided in any exemption granted under section 6 of this Act, the pool, or some or all of the immediate pool area including all of the pool, is fenced by 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 at all times when this Act applies in respect of the pool.

(2) Every owner of a pool to which this Act applies shall comply or ensure that there is compliance with every condition imposed under section 6(2) of this Act.

(3) Every person who has possession of the property on which any pool to which this Act applies is situated shall ensure that the pool is not filled or partly filled with water at any time when the person knows or could reasonably be expected to know that any obligation imposed by this section on that or any other person is not being complied with.

(4) The fact that a person complies with any obligation imposed by this section shall not excuse that person from any other duty imposed by law.

## 9 Offence

(1) Every person who, without reasonable cause, fails to comply with any obligation imposed by section 7 or section 8 of this Act commits an offence and is liable on summary conviction to a fine not exceeding \$500 and, where the failure is a continuing one, to a further fine not exceeding \$50 for every day on which the failure has continued.

(2) Where the owner or person entitled to possession or control of a pool to which this Act applies is not entitled to possession of the property on which the pool is situated or the immediate pool area (whether because of any tenancy agreement, agreement to occupy a hotel room, motel, or camping ground, or otherwise) it shall be a defence to any proceedings for any offence described in subsection (1) of this section in relation to section 8 of this Act if the Court is satisfied that the owner took all reasonable steps—

- (a) To ensure that the obligation was complied with; and

- o (b) To ensure that the persons in possession of the property or entitled or likely to be in the immediate pool area are made aware of the existence of the pool.

(3) Where any person is convicted of the offence described in subsection (1) of this section in relation to section 8 of this Act the Court may order that the pool be drained of water and be kept empty until the pool is fenced in a manner that complies with this Act or any condition imposed under section 6(2) of this Act is met, as the case may require.

#### 10 Obligation of territorial authorities

Every territorial authority shall take all reasonable steps to ensure that this Act is complied with within its district.

#### 11 Power of entry for territorial authority officers

(1) Without limiting any other powers of any territorial authority, any officer of a territorial authority who has reasonable grounds to believe—

- (a) That there is on any land within the district of the territorial authority a swimming pool to which this Act applies; and
- (b) That the pool is not fenced as required by this Act, or any condition imposed under section 6(2) of this Act is not being complied with,—

may at any reasonable time enter on the land and carry out an inspection to determine whether or not there is on the land such a pool that is not fenced as required by this Act, or whether or not the condition is being complied with.

(2) Nothing in subsection (1) of this section shall confer on any person the power to enter any house, home unit, or apartment building unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(3) Every warrant issued under subsection (2) of this section shall be directed to a named officer of the territorial authority and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.

(4) Every person exercising the power of entry conferred by subsection (1) of this section shall carry a warrant of authority issued by the territorial authority and specifying—

- (a) The name and the office or offices held by the person;
- (b) That the person is authorised by the territorial authority to exercise the power conferred by subsection (1) of this section to enter the land and carry out the inspection.

(5) Every person exercising the power of entry conferred by subsection (1) of this section shall produce the warrant of authority and evidence of identity—

- (a) If practicable on first entering the land or premises; and
- (b) Whenever subsequently reasonably required to do so.

#### 12 Delegation of powers to committees of councillors

The territorial authority may delegate its powers and functions under section 6 and clause 11 of the Schedule to any committee of the territorial authority appointed under clause 30 of Schedule 7 of the [Local Government Act 2002](#) that comprises only members of the territorial authority; but may not delegate those powers and functions to any committee that has any members who are not members of the territorial authority or to any officer of the authority.

#### 13 Effect of Act on bylaws and other laws

(1) [Repealed]

(2) [Repealed]

(3) Nothing in this Act shall in any way restrict the power of any territorial authority to make and enforce bylaws relating to the fencing of pools to which this Act does not apply.

(4) Nothing in this Act shall in any way restrict the power of the Crown or any territorial authority or other person to enforce any other law relating to the fencing of pools to which this Act applies or any other pools.

#### 13A Effect of [Building Act 2004](#) on bylaws

(1) A territorial authority may not make any bylaw under this Act that purports to have the effect of requiring any pool subject to this Act to achieve performance criteria additional to or more restrictive than those specified in the [Building Act 2004](#) or the building code in force under that Act.

(2) A territorial authority may not make any bylaw purporting to have the effect of allowing a pool subject to this Act to be fenced to a standard that would provide less protection against young children gaining access to the pool than the performance standard set by the said building code.

#### 13B Fencing in accordance with Schedule must be treated as means of compliance

Any provision that is made for the fencing of swimming pools that is in accordance with the Schedule must, in respect of—

- (a) matters subject to the [Building Act 2004](#), be treated as a compliance document establishing compliance with the building code for the purposes of section 19 of that Act, and the requirements of this Act;
- (b) building and premises not subject to the [Building Act 2004](#), be treated as a reasonable and adequate provision for the purposes of this Act.

### 13C Amendment and replacement of Schedule

The Governor-General may, by Order in Council,—

- (a) amend the Schedule; or
- (b) repeal the Schedule and substitute a new schedule.

### 14 Amendment to [Fencing Act 1978](#)

The [Fencing Act 1978](#) is hereby amended by inserting, after section 9, the following section:

"9A Contributions where fence required by Fencing of Swimming Pools Act 1987

Where any person is required to provide a fence in order to comply with the Fencing of Swimming Pools Act 1987—

- "(a) All work on that fence that is required because of the application of that Act and would not otherwise be required shall be the responsibility of the owner of the swimming pool; and
- "(b) No person, other than the owner of the swimming pool, shall be required to make any contribution under this Act to the work on a fence greater than the contribution that the person would be required to make to the work on a fence (whether of the same type or not) if the swimming pool did not exist."

## Schedule

### Means of compliance for fences under this Act

#### Height

1

- (1) The fence shall extend—
  - (a) At least 1.2 metres above the ground on the outside of the fence; and
  - (b) At least 1.2 metres above any permanent projection from or object permanently placed on the ground outside and within 1.2 metres of the fence.
- (2) Notwithstanding sub clause (1) of this clause, where the fence is constructed of perforated material, netting, or mesh and any opening in the material, netting, or mesh has a dimension (other than the circumference or perimeter) greater than 10 mm, the fence shall extend at least 1.8 metres above the ground or the projection or object.

#### Ground clearance

2

- Any clearance between the bottom of the fence and ground level shall not exceed 100 mm.

#### Materials

3

- All materials and components shall be of a durable nature and shall be erected so as to inhibit any child under the age of 6 years from climbing over or crawling under the fence from the outside.

Clause 3 was amended, as from 20 November 1989, by section 2(1) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117) by substituting the words "child under the age of 6 years" for the word "person".

4

- Except where the fence is horizontally close-boarded or is made of perforated material, netting, or mesh, the spacing between adjacent vertical pales, panels, or other posts shall not exceed 100 mm at any point.

Clause 4 was amended, as from 20 November 1989, by section 2(2) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117) by inserting the words "or is made of perforated material, netting, or mesh".

5

- All fencing supports, rails, rods, and wires, that are not vertical, and all bracing that is not vertical, shall be inaccessible for use for climbing from the outside.

Clauses 5 was substituted, as from 20 November 1989, by section 2(3) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).



5A

- Notwithstanding clause [5](#) of this Schedule, a fence may have horizontal supports, rails, rods, or wires, that are accessible for use for climbing from the outside, and horizontal bracing that is accessible for such use, if—
  - (a) The distance between any 2 of them at any point is at least 900 mm; and
  - (b) There is no other support, rail, rod, wire, or bracing (other than a vertical rail) between the same 2 at any point.

Clause 5A was inserted, as from 20 November 1989, by section 2(3) Fencing of Swimming Pools Amendment Act 1989 (1989 No 117).

6

- Where any perforated material, netting, or mesh is used, no opening in that material, netting, or mesh shall have any dimension (other than the circumference or perimeter) greater than 50 mm.

7

- All perforated material, netting, or mesh material shall be firmly attached at both top and bottom to a rail, pipe, or similar firm structure, or otherwise be of such a nature that the fence cannot readily be crossed by children under the age of 6 years.

#### Gates and doors

8

- Every gate or door shall be so constructed as to comply with the relevant requirements of clauses [1 to 7](#) of this Schedule, and shall be so mounted that—
  - (a) It cannot open inwards towards the immediate pool area;
  - (b) It is clear of any obstruction that could hold the gate or door open and no other means of holding the gate or door open is provided;
  - (c) When lifted up or pulled down the gate or door does not release the latching device, come off its hinges, or provide a ground clearance greater than 100 mm.

#### Operation of gates and doors

9

- (1) Every gate or door shall be fitted with a latching device.  
(2) Where the latching device is accessible from the outside of the fence only by reaching over the fence, gate, or door or through a hole in the fence, gate, or door, the latching device and the lowest point of any hole giving access to it shall be at least 1.2 metres above the ground on the outside of the fence.  
(3) Where the latching device is otherwise accessible from the outside of the fence, gate, or door, the latching device shall be at least 1.5 metres above the ground on the outside of the fence.

10

- Every gate or door shall be fitted with a device that will automatically return the gate or door to the closed position and operate the latching device when the gate or door is stationary and 150 mm from the closed and secured position.

#### Doors in walls of buildings

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.



## Section 5 Exempted pools

Nothing in this Act shall apply in respect of:

- (a) Any pool where no part of its side walls are less than 1.2m above the adjacent ground level, or any object on the ground outside and within 1.2m of the walls; and the walls are constructed to inhibit climbing; and any ladder or other means of access can be, and is, removed or rendered inoperable when pool is not in use;
- (b) Any excavation, structure, or product in which the maximum depth of water does not exceed 400mm;
- (c) Any excavation, structure, or product -
  - (i) that is not used in association with any house, home unit, apartment building, school, hospital, hotel, motel, camping ground, or other similar premises; and
  - (ii) that is not modified for use, or intended to be used, for swimming, wading, paddling or bathing;
- (d) Wading or paddling pools under administration of a local authority;
- (e) A pool wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool;
- (f) Any pool where -
  - (i) people are employed to supervise the pool; and
  - (ii) access to the pool is prevented by fence that complies with this Act or by locked gates or doors when pool is not available for use.

## Building Code: F4

**F4.3.3** Swimming pools having a depth of water exceeding 400mm, shall have barriers provided. (except if pool is exempt under section 5, FOSPA).

**F4.3.4** Barriers shall:

- (a) Be continuous and extend for the full extent of the hazard,
- (b) Be of appropriate height,
- (c) Be constructed with *adequate* rigidity,
- (d) Be of *adequate* strength to withstand the foreseeable impact of people and, where appropriate, the static pressure of people pressing against them,
- (e) Be constructed to prevent people from falling through them, and
- (f) In the case of a swimming pool, restrict the access of children under 6 years of age to the pool or the immediate pool area.
- (g) Restrict the passage of children under 6 years of age when provided to guard a change of level in areas likely to be frequented by them.
- (h) Be constructed so that they are not readily able to be used as seats. (does not apply to Housing)

**F4.3.5** Barriers to swimming pools shall have in addition to performance F4.3.4:

- (a) All gates and doors fitted with latching devices not readily operated by children, and constructed to automatically close and latch when released from any stationary position 150mm or more from the closed and secured position, but excluding sliding and sliding-folding doors that give access to the immediate pool surround from a building that forms part of the barrier, and
- (b) No permanent objects on the outside of the barrier that could provide a climbing step.

## D. Alternative Solutions:

An application for a proposed alternative solution can be made by a pool owner where they consider that their pool fencing proposal meets the performance criteria in clause F4 of the Building Code, **however** where it does not meet the specifications set out in this document (which are based on the Schedule to FOSPA) **a special exemption will be required**.

Applications regarding proposed alternative solutions are considered by a Team Leader on a case-by-case basis.

All proposed alternative solutions must contain clearly documentation and sufficient evidence to show that the performance criteria in clause F4 will be met.

Any approved alternative solutions must be clearly referenced on the property file so that it is clear for later enforcement inspections exactly what has been approved by the Council as an alternative solution.

***Always have regard to the purpose of FOSPA which is to promote the safety of young children.***

Approved Alternative Solution – approved on [date] by building consent authority ... (decide a method of documenting and approving these) – **(This section allows for a series alternative solutions to be developed)**.

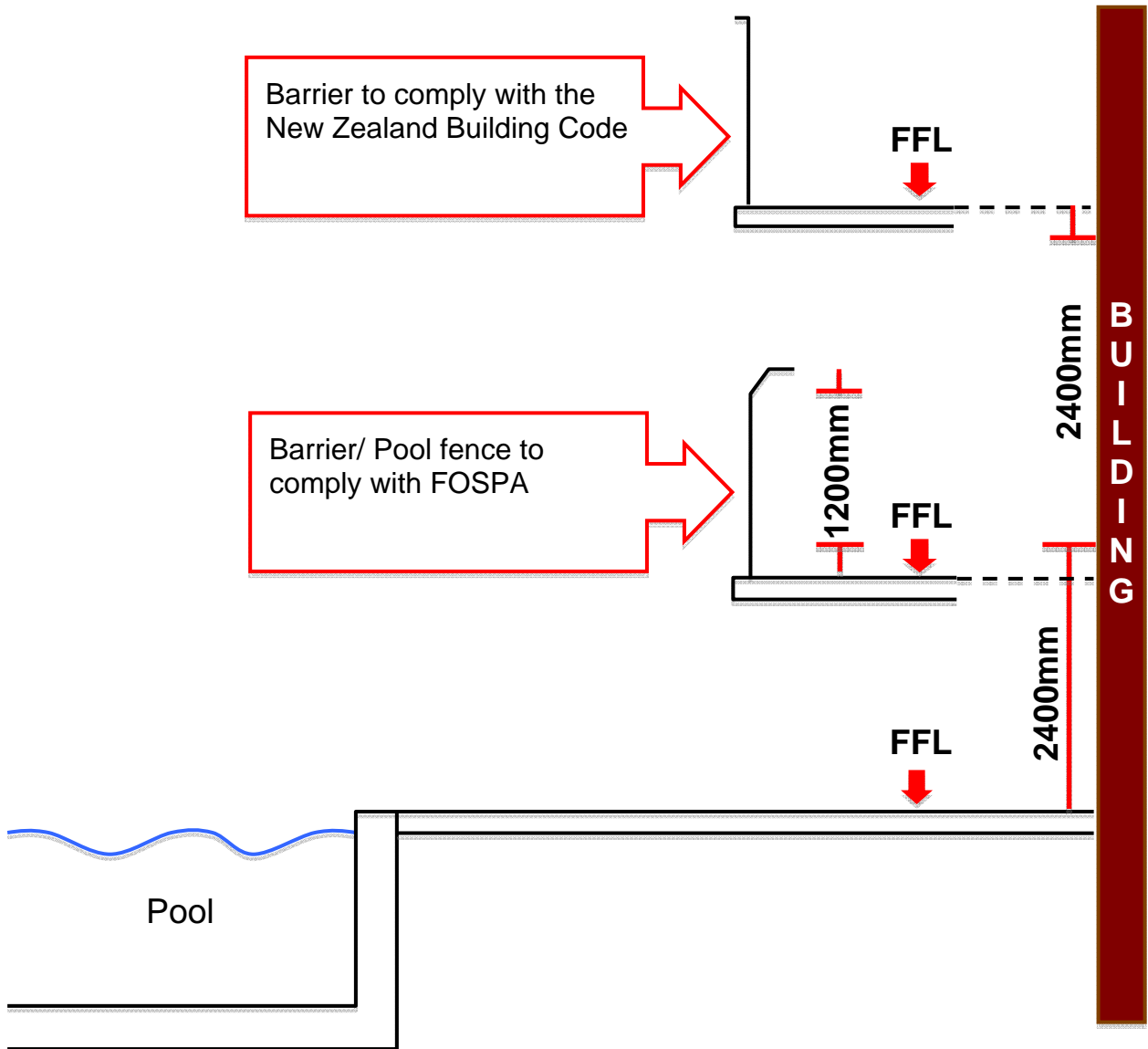
### **8A.2 Balconies:** above the immediate pool area.

Balconies above and protruding into the immediate pool area are able to be signed off by a Team Leader where they meet the specifications set out in Section E.

Where a balcony projects into the immediate pool area the following shall apply:

- a) Where the vertical distance from the floor level of the balcony to the pool surround level is less than 2400mm and where windows and doors to the balcony do not comply with clauses 8, 9, & 10 of the Schedule to FOSPA, the balcony barrier shall comply with the **NZS 8500 section 3.8** (refer diagram (A) below). A lower height may be permitted in accordance with section F4 of the building code where the barrier has been constructed to prevent a child under the age of six climbing over it. An example being glass sheet without a top rail. Such situations shall be considered to be an alternative solution to be considered by a team leader (or other approved officer) and require a special exemption in accordance with s.6 FOSPA.
- b) Where the vertical distance from the floor level of the balcony to the pool surround level is greater than 2400mm and where windows and doors to the balcony do not comply with clauses 8, 9, & 10 of the Schedule to FOSPA, the balcony barrier may be constructed to the requirements of the New Zealand Building Code B1, B2, B1 (refer diagram (A) below);
- c) Where there is a climbable object below and the distance from the floor of the balcony to the pool surround level is greater than 2400mm, and where windows and doors to the balcony do not comply with 8, 9, & 10 of the Schedule to FOSPA, and there is a clear arch of 1200mm from the floor of the balcony, the balcony barrier may be constructed to the requirements of the New Zealand Building Code (refer diagram (B) below);
- d) Where a balcony gives direct access to the Immediate Pool Area via stairs or other means, and where windows and doors to the balcony do not comply with clauses 8, 9, & 10 of the Schedule to FOSPA, the balcony barrier shall comply with the Schedule to FOSPA to restrict access from the balcony to the pool. Any gate from the balcony shall be constructed to ensure compliance with 8, 9 & 10 of the Schedule to FOSPA with particular attention to there being no climbable projections within 1.2m of the gate;

**Balcony Compliance Diagrams (A)**



**Balcony Compliance Diagrames (B)**

