

**AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION COMMITTEE TO BE
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON WEDNESDAY, 1 JUNE 2005 COMMENCING AT 12.30 PM**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFIRMATION OF MINUTES

Meeting Minutes - 6 May 2005

RECOMMENDATION

That the minutes of the Meetings of the Swimming Pool Exemption Committee held on Friday, 6 May 2005, as circulated, be taken as read and now be confirmed.



4 APPLICATIONS FOR SPECIAL EXEMPTIONS - FENCING OF SWIMMING POOLS ACT 1987

PURPOSE OF THE REPORT

The purpose of this report is to present four applications for exemptions from some of the requirements of the Fencing of Swimming Pools Act 1987 (the Act).

BACKGROUND

A1 Under Section 6 of the Act, copy attached at page A1, a Council may only grant exemption if, after having regard to the characteristics of the property and the pool and any conditions that may be imposed, it is satisfied that "*such an exemption would not significantly increase danger to young children*". The sort of issues that will usually arise for consideration under a s6 exemption include matters such as the location of fences in relation to the boundaries of the "*immediate pool area*", the construction of the pool fence and the operation of gates providing access to the fenced area.

A2-A4 The details for a complying fence are set out in the Schedule to the Act, a copy of which is attached at pages A2 to A4. Of particular note are the provisions of Clauses 8 to 10, relating to gates and doors, and Clause 11. Where a building is part of the pool fence and a door from that building opens into the pool area the Council may grant an exemption from compliance with Clauses 8 to 10 if it 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*".

A pool fence which complies with the Act, with or without an exemption, also complies with the requirements of the building code. A fence which complies with the building code, with or without an exemption granted under the Act, meets the requirements of the Act. Under the building code "*sliding and sliding-folding doors that give access to the immediate pool (area) from a building that forms part of the*" pool fence does not need to be self closing and self latching. To comply with the Act, however, such doors need to have a latch mounted at least 1.5 metres above the ground. The requirements for sliding and sliding-folding doors under the code will be relevant to the exercise of the Council's discretion in relation to an application for an exemption under Clause 11 of the Schedule in respect of doors opening from a building into a pool area.

Apart from these matters the Act provides no further guidance for the basis of the exercise of the Council's discretion. The purpose of the Act is stated to be "*to promote the safety of young children by requiring the fencing of certain swimming pools*" and that is clearly a relevant issue for Councillors to bear in mind in relation to any exemption application.

When granting a special exemption the Swimming Pool Exemption Committee may impose such other conditions relating to the property or the pool as are reasonable in the circumstances (Section 6(2)). Issues to be considered include:

- will the exemption be personal to the applicant so that on a sale of the property a new owner will need to apply for a new exemption? This might be appropriate where the personal circumstances of the applicant have had a bearing on the exercise of discretion;
- will the exemption be granted for a fixed term and irrespective of changes of ownership so that the exemption runs with the property?
- will the exemption be granted for an indefinite term, irrespective of changes of ownership so that the exemption runs with the property?

- are there any other conditions which should be imposed, such as the replacement of pool covers after use (particularly in relation to spa pools) or a requirement for more frequent inspection of the pool (currently pools in the City are re inspected on a 3-yearly cycle).

Any exemption granted or condition imposed may be amended or revoked by the Council, by resolution. The rules of natural justice would however dictate that this action should not be taken without prior notice to the pool owner and allowing the pool owner an opportunity to be heard.

Finally it is noted that there is a view in some quarters that an exemption can only be granted on the application of the pool owner. While there are doubts about the validity of that view, circumstances will arise where the Swimming Pool Exemption Committee may wish to grant an exemption, but there are matters in relation to the extant pool fence where a further exemption may need to be granted to enable the exempted arrangements to fully comply with the Act. The most common examples will arise where the fence, following exemption, will include a door which opens into the pool area from a building or there is a gate in the extended fence which does not comply with the Act. In such cases it is considered appropriate for the Swimming Pool Exemption Committee to accept an oral application for any further exemptions that may be necessary. The Swimming Pool Exemption Committee Secretary will record the application made. If the Swimming Pool Exemption Committee does not consider it appropriate to grant an exemption for such matters, but it would be happy if some work is done, then it is recommended that the appropriate course of action is to grant the exemption sought conditional upon specified work being completed within a reasonable period.

STRATEGIC CONTEXT

Council is committed to ensuring that Waitakere City is a safe place to live and play in. Swimming pool fencing issues have a strong relationship with Council's strategic priorities of first call for children and safe city.

APPLICATIONS

1. M J and Y E Bristow, 28 Connemara Court, West Harbour

A5-A9 The application and applicant's information is attached as pages A5 to A8. Additional information is attached as page A9. The application arises from officers requests to:

- A7-A9
- ensure that all the swinging doors, along the line marked **X Y** at page A9, (and shown on pages A7 to A8) that provide access to the pool area are self closing, self latching from 150mm and swing away from the pool area;
 - provide all lower windows below 1.2m, that open into the immediate swimming pool area, with permanent stays that restrict the window opening to a maximum of 100mm.

The applicants have undertaken to provide stays to all the windows that open into the immediate swimming pool area and bolts to the doors and seek exemption under Clause 11 of the Schedule to the Act for the doors along **XY**.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there are no consequential issues that arise.

2. J G and E A Hochwimmer, 147 Scenic Drive, Titirangi

A10-13 The application and applicant's information is attached as pages A10 to A11. Additional information is attached at pages A12 to A13. The application arises from officers requests to:

A12-A13

- ensure that the gate and adjacent fence at the western end of the swimming pool is a minimum height of 1200mm (currently 1130mm) above ground level and that the gate latch is at 1500mm (currently 1470mm). Fence and gate shown on page A12 and A13;

A12

- ensure that all swinging doors and windows that provide access to the immediate swimming pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate swimming pool area. A latching device must also be fitted to each door at a minimum height of 1.5m. NOTE: sets of doors must operate (latch and close) independently of each other. Doors and windows as shown on page A12.along the line **XY** to comply.

The applicants seek exemption from the requirements as they have fitted bolts to the doors and contend that the fence and latch is only marginally less than the required height.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought, there are no consequential issues that arise.

3. Michael and Ann Pepper, 174 Candia Road, Henderson Valley

A14-A30 The application and applicant's information is attached as pages A14 to A29. Additional information is attached at page A30. The application arises from officer's requests to:

A21

- ensure that all swinging doors and windows that provide access to the immediate swimming pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate swimming pool area. A latching device must also be fitted to each door at a minimum height of 1.5m. NOTE: sets of doors must operate (latch and close) independently of each other. Doors are as indicated on page A21;

A30

- to provide a fence to the immediate pool area so as to exclude the area of landscaping as shown on page A30.

The applicants have requested that the Swimming Pool Exemption Committee consider:

A19

- granting exemption from fencing off the landscape area and for the doors under Clause 11 of the Schedule to the Act;
- granting a property related and indefinite exemption unless any future structural alterations are made. (This request is motivated by applicant on page A19);
- waiving the \$250 application fee as the pool was assessed as complying in Aug 2000.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought, there are no consequential issues that arise.

4. L G and LC Galbraith, 69 Tiroroa Ave, Te Atatu South.

A31-A32 The application is attached as page A31. Additional information is attached at page A32. The application arises from officer's requests to:

- A32
- ensure that the swinging doors (French doors) which provide access to the immediate swimming pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the swimming pool area. A latching device must also be fitted to each door at a minimum height of 1.5m. NOTE: sets of doors must operate (latch and close) independently of each other. Doors are shown on page A32.
 - ensure that the swimming pool gates (wooden) are self closing and self latching from a stationary measured distance of 150mm;
 - a latching device must be fitted at either 1.2m if positioned on the inside of the gate, and is accessible only by reaching over the gate (not accessible through the gate below 1.2m), or at 1.5m if positioned outside the gate;
 - either one half of the double gates (metal) are to be permanently disabled, or alternatively each gate is to operate independently of the other.

The applicants have requested that the Swimming Pool Exemption Committee consider:

- granting exemption from making the French doors comply under Clause 11 of the Schedule to the Act. The other outstanding work needs to be completed.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought for the French doors there are no consequential issues that arise.

5. N and J Plummer, 35 Huia Road, Huia.

A33-A35 The application and applicant's information is attached as page A33. Additional information attached as pages A33 and A35. The application arises from officers requests to:

- A34
- provide a fence (along Line **A-A** as shown on page A34) to the immediate pool area so as to exclude the area of lawn/landscaping;
- A34-A35
- ensure that all the French doors (along the line marked **D D** on page A34, and shown on page A35) that provide access to the pool area are self closing, self latching from 150mm and swing away from the pool area and provide all windows below 1.2m, that open into the immediate swimming pool area, with permanent stays that restrict the window opening to a maximum of 100mm.

The applicants have requested that the Swimming Pool Exemption Committee consider granting exemption:

- from fencing off the landscape area;
- for the French the doors under Clause 11 of the schedule to the Act.

The applicants contend that the landscaped area is small and purely for decorative purposes and that the doors have been provided with latches at 1.5m.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there are no consequential issues that arise.

6. Anne O’Kane, 163 A Glengarry Road, Glen Eden.

A36-A44 The application and applicant’s information is attached as pages A36 to A39. Additional information is attached at pages A40 to A44. The application arises from officers requests to:

A40-A41 • eliminate Access Way **1** between the laundry and clothesline as shown on page A40 and A41;

A40-A42 • eliminate Access Way **2** between the upper storey of dwelling and driveway through the wooden side door as shown on pages A40 and A42.

A40-A43 By providing a complying fence and gate to the immediate swimming pool area as shown on pages A40 and A43).

or

By disabling the gate **A** and door **B** (shown on pages A45 and A46) by permanent fixing and removal of the hinges.

The applicant has requested that the Committee consider granting exemption from these requirements as the applicant proposes to:

A44 • erect a fence **FF** as shown on page A44 (and page A38) between the house and pool shed, which could include a gate, to eliminate Access Way **1** (Laundry - Clothesline);

A40-A42 • install a key operated Lockwood style lock in the wooden door B (shown on pages A40 and A42) which cannot be operated from outside without a key to eliminate the Access Way **2** (Upper storey - Drive).

If the Swimming Pool Exemption Committee is inclined to grant the exemption, as sought, the consequential issues that arise are:

1. An access way to the clothes line would still remain if a gate were included in the proposed fence **FF**. The Swimming Pool Exemption Committee would need to consider whether to grant an exemption for the access way to the clothesline.
2. The access way to drive would still remain if a lock were installed. The committee would need to consider whether to grant an exemption for the access way to the drive.
3. The wooden door is not self closing self latching from 150mm and the committee will need to consider whether an exemption should be granted under Section 6 of the Act or the door should be made to comply.

7. K and S Storr, 16 Courtneys, West Harbour

A45-A52 The application and supporting information are attached at pages A45 to A52. The application arises from officers requests to:

A53 • provide a complying swimming pool fence between both the Southern and South Eastern corners of the dwelling and the adjacent boundary fence marked by the lines **A-A** and **B-B** at page A53;

A53 • ensure that the two swinging doors, marked **X** and **Y** at page A53, which provide access to the pool area are self closing, self latching from 150mm and swing away from the pool area.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought for both of the above items, there are two consequential issues that arises:

- A53 • the door from the laundry into the exempted pool area being sought, shown at page A53 is not self closing, self latching from 150mm;
- A53 • the clothesline, shown at page A53 would lie within the exempted pool area being sought.

The Swimming Pool Exemption Committee would need to consider whether an exemption should be granted under clause 11 of the schedule to the Act or the whether the laundry door should be made to comply.

Similarly the Swimming Pool Exemption Committee would need to consider whether an exemption under Section 6 of the Act should be granted in relation to the clothesline or whether the clothesline should be relocated outside of the exempted area being sought.

The applicant has undertaken to make all sliding doors leading into the immediate pool area comply with the Act.

CONCLUSION

Each of the applicants is seeking exemption from the Act for matters where Council staff considers that remedial action is necessary to achieve compliance with the Act. If an exemption is granted those matters will be deemed to comply with the Act so that no remedial action is required (other than for any action that may be required by a condition attaching to the granting of the exemption).

RECOMMENDATIONS

1. That the Applications for Special Exemptions - Fencing of Swimming Pools Act 1987 report be received.
2. That the Swimming Pool Exemption Committee consider each of the applications and either decline or approve (subject to conditions) the exemptions sought.

Report prepared by: Max Wilde, Manager Field Services.

