

**AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION COMMITTEE TO BE
HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON FRIDAY, 1 JULY 2005
COMMENCING AT 9.30 AM**

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AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON FRIDAY, 1 JULY 2005 COMMENCING AT 9.30 AM

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 - Wednesday, 1 June 2005

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Wednesday, 1 June 2005 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 (4) applications for exemptions from some of the requirements of the Fencing of Swimming Pools Act 1987.

BACKGROUND

A1 Under Section 6 of the Fencing of Swimming Pools Act 1987, 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 Fencing of Swimming Pools Act 1987, 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 Fencing of Swimming Pools Act 1987, 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 Fencing of Swimming Pools Act 1987, meets the requirements of the Fencing of Swimming Pools Act 1987. 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 Fencing of Swimming Pools Act 1987 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 Fencing of Swimming Pools Act 1987 provides no further guidance for the basis of the exercise of the Council's discretion. The purpose of the Fencing of Swimming Pools Act 1987 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 three (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 Fencing of Swimming Pools Act 1987. 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 Fencing of Swimming Pools Act 1987. 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 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. P T & F C Rackich, 17 Puketitiro Street, Glen Eden

A5-A7 The application and applicant's information is attached at pages A5 and A6. Additional information attached at page A7. The application arises from officers requests to:

- A7
- Ensure that the swinging door (shown at page A7) providing access to the pool area is self closing, self latching from 150mm and swings away from the pool area. The door must also be fitted with a latching device at a minimum height of 1500mm.

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

- Granting exemption for the door under Clause 11 of the schedule to the Fencing of Swimming Pools Act 1987;
- Waiving the \$250 application fee as the applicant feels he was led to believe that the door would comply.

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

2. R & C A Spargo, 286 Titirangi Road, Titirangi

A8-A22

The application and applicant's information is attached at pages A8 to A20. Additional information attached at pages A21 to A22. The application arises from officers requests to:

A21

- Provide a complying fence to the immediate swimming pool area so as to prevent direct access from the South Eastern side of landscaped/garden areas to the pool. Possible options for the position of the fence are shown at page A21, as **ABD** or **ABC**.

Ensure that all swinging doors that provide access to the immediate swimming pool area are made self closing and self latching from a stationary measured distance of 150mm and swing away from the pool area. A latching device must also be fitted to:

- Each door at a minimum height of 1.5m. Sets of doors must operate latch and close independently of each other.

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

- Granting exemption from fencing the landscaped area as they believe this area does not pose a danger to children;
- Waiving the \$250 application fee;
- That if the exemption is granted, it will run with the property.

It is confirmed that there are no matters outstanding in relation to doors. The folding doors to the house have been replaced with new bifold doors as recorded in the application. This work was building work which was exempt from the need for a building consent in accordance with Clause (a) of Schedule 1 of the Building Act 2004, as like for like replacement. The Building Code however, still applies to these doors (but did not apply to the original doors). Accordingly officers believe that the replacement doors come within the exemption in Clause F4.3.5(a) with respect to self closing and self latching devices and therefore comply.

While Council officers are confident in their view of this issue, the applicants may still prefer to have the comfort of a formal exemption in relation to the doors. The Swimming Pool Exemption Committee could therefore, consider entertaining an amendment to the application to this effect, if requested to do so by the applicants at the time of inspection.

This matter aside there are no consequential issues arising from this application.

3. M R & C M Williams, 11 Harding Avenue, Te Atatu South

A23-A30

The application and applicant's information is attached at pages A23 to A28. Additional information is attached at pages A29 to A30. The application arises from officers requests to:

A29

- Provide a complying pool fence to the immediate swimming pool area, this is to be located so as to prevent direct access to the swimming/spa pool and associated decking from the large area of lawn as indicated at page A29;
Note: An alternative pedestrian access-way to the lawns behind the immediate swimming pool area must be demonstrated to the Councils swimming pools inspector at the time of re-inspection, if this alternative access-way cannot be demonstrated a fence must be provided so that the existing access-way is external to the immediate swimming pool area.

- Ensure that the Swimming/Spa pool gate is self closing and self latching from a stationary measured distance of 150mm, and is swinging away from the immediate swimming pool area. A latching device must be fitted at either 1.2m if located on the inside of the gate, and if accessible only by reaching over the gate (not accessible through the gate), or 1.5m if located outside the gate (gate at the rear of the swimming pool area);
- Ensure that any other fences or handrails etc which abut the Swimming/Spa pool fencing are a minimum height of 1.2m and are un-climbable for a minimum distance of 1.2m from the point where they abut the Swimming/Spa pool fencing, i.e. would they themselves comply with the Fencing of Swimming Pools Act 1987;
- A30 • The horizontal rails on the metal gate (shown at page A30) must either be made un-climbable (covered) or the gate replaced;
- Remove any climbable objects (lower than 1.2m) from within 1.2m of the outside of the Swimming/Spa pool fence. If any objects are unable to be removed, the Swimming/Spa pool fence must be raised to a minimum height of 1.2m above, and 1.2m past either side of each object;
- A30 • Ensure that all swinging 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 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. The doors are shown at page A30.

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

- Granting exemption from fencing the lawn area and as they consider the fence unnecessary and contend that the landscaped area is used in conjunction with the pool and is securely fenced by the block boundary wall and that the doors have been provided with latches;
- Granting exemption for the doors under Clause 11 of the Schedule to the Fencing of Swimming Pools Act 1987;
- Waiving the \$250 application fee;
- That if the exemption is granted, that it is granted for the property.

The applicants undertaken to remove the climbable object and make the gate complying.

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

4. **G A Ambrose & J C Campbell, 173 Colwill Road, Massey**

A31-A35 The application and applicant's information is attached at pages A31 to A34. Additional information attached at page A35. The application arises from officers requests to:

- A35 • Provide a fence to the immediate swimming pool area so as to prevent direct access from the laundry door and the area beneath the pergola which is currently being used as a materials storage area for pottery activities. Suggested position for fence is shown as **XX** at page A35;
- Ensure that all gates are self closing and self latching from a stationary measured distance of 150mm swings;

- A35
- As an alternative to providing a fence, the laundry door (shown at page A35) is to be made self closing and self latching, swinging away from the pool area and fitted with a latching device at 1500mm. All materials and equipment not associated with the use of the immediate swimming pool areas must then also be removed from the area.

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

- Granting exemption from providing the fence requested as Graham is a potter and uses the area for his pottery;
- Waiving the \$250 application fee as a previous LIM report showed the pool fencing as compliant.

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

CONCLUSION

Each of the applicants is seeking exemption from the Fencing of Swimming Pools Act 1987 for matters where Council staff considers that remedial action is necessary to achieve compliance with the Fencing of Swimming Pools Act 1987. If an exemption is granted those matters will be deemed to comply with the Fencing of Swimming Pools Act 1987 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: Neville Colling, Team Manager Operational Compliance.

