



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

SWIMMING POOL EXEMPTION COMMITTEE

I hereby give notice that a Meeting of the Swimming Pool Exemption Committee will be held on:-

DATE: Thursday, 1 September 2005 **TIME:** 9.30 am

VENUE: Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City

to consider the business as set out herein and to take any necessary action connected therewith.

26 August 2005

Ray Day
**PROJECTS MANAGER
DEMOCRACY**

Telephone (09) 836 8000 extn 8328

MEMBERSHIP:

Councillors	DQ	Battersby, JP (Chairperson)
	WW	Flaunty, QSM, JP
	VS	Neeson, JP

Alternate Representatives

Councillors	LA	Cooper
	PA	Hulse
	JP	Lawley
	CA	Stone

(Quorum 3 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

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

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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 - Friday, 22 July 2005

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Friday, 22 July 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 nine (9) 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 Section 6 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 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 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

The 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 the Council's strategic priorities of first call for children and safe city.

APPLICATIONS

1. Phil Brent, 16 Westergrove Place, West Harbour

- A5-A7 The application and applicant's information is attached at pages A5 to A6. Additional information attached at page A7. The application arises from officers' requests to:
- A7
- Provide a complying swimming pool fence between the north-western corner of the dwelling and the adjacent boundary fencing. Shown as **X-X** at attached at page A7;
- A7
- 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 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. Position of doors as attached at page A7;
 - 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 requested that the Swimming Pool Exemption Committee consider:

- Granting exemption from fencing as requested and retaining the existing gate in the present position as this provides access to the sauna, tap and cleaning gear;
- Granting exemption for the doors that open into the immediate pool area under Clause 11 of the schedule to the Act;
- Waiving the \$250 application fee as the house was inspected and passed in 1990.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought the consequential issue that arises is that the existing gate needs to be made fully complying (self closing and self latching from a stationary distance of 150mm with the latch at the correct height).

The applicant has provided stays to the windows and the doors have latches at the top.

2. **K.J. & D.C. Hopkins, 15 Seacrest Drive, West Harbour**

A8-A9

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

A9

- Provide a fence at the northern side of the house shown as **X-X** and **Y-Y** as attached at page A9;
- 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 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;
- Provide all lower windows (below 1.2m) which open into the immediate swimming pool area with permanent stays which restrict the window opening to a maximum of 100mm.

(NOTE: Where the swimming pool fence abuts or continues past the existing retaining walls care must be taken to ensure that the fence is a minimum of 1200mm both above and past the retaining wall).

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

A9

- Granting exemption from fencing as per Council officer's requests and instead propose to erect a complying fence between the house and the pool shed on the Eastern side of the house (shown as **P-P** attached at page A9) instead of **X-X** and retain the existing fence and gate on the eastern side (shown as **E-E** attached at page A9). The applicants believe it is impractical to fence in any other way.

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

- Whether to grant exemptions for outward swinging doors or whether these doors should be made to comply;
- Whether to grant exemptions for all lower window openings (below 1.2m) that open into the immediate pool area or whether these openings should be provided with permanent stays to restrict their maximum opening to 100mm.

3. Paul & Linda Beck, 39 Renoir Street, West Harbour.

A10-A11

The application and applicant's information is attached at page A10. Additional information is attached at page A11. The application arises from officers requests to:

- A11*
- Provide a complying fence to the immediate swimming pool area. This is to be positioned so that one end abuts the south-eastern corner of the garage/changing rooms and follows the line of the existing swimming pool paving to the steps, the fence is to then continue along the line of the steps to a point where it abuts the dwelling. Whilst the location of the fence may be either atop the paving and steps or below at ground level, the small area of landscaping at the base of the steps and nearest to the dwelling must remain outside of the immediate swimming pool area. Required fence line shown as line **1-1** attached at page A11;
- A11*
- A second complying fence is also required between the garage and the dwelling so as to ensure that the pedestrian access-way to and from the garage is external to the immediate swimming pool area. Shown as line **2-2** attached at page A11.
 - Provide all lower windows (below 1.2m) which open into the immediate swimming pool area with permanent stays which restrict the window opening to a maximum of 100mm;
 - 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 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 applicants have requested that the Swimming Pool Exemption Committee consider:

- Granting exemption from fencing required by Councils' officers as they believe the property complies with the Fencing and Swimming Pool Act 1987 and contend that all possible safety measures have been met and that the doors have top bolts, the planted area is small and the overall area not excessively large and is used in conjunction with the pool;
- Waiving the \$250 application fee as the present fence position was based on advice received from Council officers;
- That any exemption granted be reflected on a LIM report.

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

- Whether to grant an exemption for the access way;
- Whether to grant exemptions for all the outward swinging doors that open into the pool area or whether they should be made to comply;
- That all sliding or sliding bi-fold doors are to be provided with bolts at a minimum height of 1,5m or whether to grant an exemption;
- Whether to grant an exemption for all lower windows (below 1.2m) which open into the immediate swimming pool area or whether the windows should be made to comply. (i.e. openings permanently restricted to a maximum of 100mm.

4. A.T. & R.E. Keir, 20 McClintock Road, Massey

A12-A14

The application and applicant's information is attached at pages A12 to A13. Additional information attached at page A14. The application arises from officers requests to:

- 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 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);
- Remove all items not associated with the use of the pool and spa from the immediate swimming pool/spa area i.e. clothesline.

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

- Granting exemption from making the French doors comply as the doors have dead bolts and have always been there;
- Granting exemption from removing the clothesline as they contend they have no other place for the clothesline;
- Waiving the \$250 application fee as the area has previously been inspected by Council officers.

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

5. B.J. & C.A Keach, 17 Burgundy Park Avenue, Henderson.

A15-A20

The application and applicant's information is attached at pages A15 to A19. Additional information attached at page A20. The application arises from officers requests to:

- A20* • Provide a fence to the immediate swimming Pool area so as to prevent direct access from the dwelling, utility areas and any thoroughfares. Fence shown as line **A-A-A** attached at page A20;
- A20* • Provide a fence to the immediate Spa pool area so as to prevent direct access from the dwelling, utility areas and any thoroughfares (by placing the spa pool inside the immediate pool area depicted by line **A-A** attached at page A20).

(NOTE: The above requirements were in place before Judge Randerson's decision and the property had not been reassessed in light of that decision. Reassessment of the property requires the doors and windows to be made comply).

The applicants have requested the Committee consider granting exemption from the standard fencing controls as:

- The pool was inspected by council on 3.11.99 and all pool fencing and gates were regulation and accepted;
- The inspector asked for key locks or bolts to be fitted to the doors opening onto the pool area and this was completed;
- The applicants contend that the pool has perimeter fencing on three (3) sides and is enclosed by the house on the other side. That the doors opening into the pool area all have keys locks and that the windows are double latched;
- To have all the doors changed would require extensive re-construction of the windows and doors.

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

- Whether to grant exemptions for the outward swinging doors or whether to request the doors to be made complying;
- Whether to grant an exemption for all windows below 1.2m that open into the area or whether they should be made to comply and have permanent stays that restrict the window opening to a maximum of 100mm.

6. Paul & Louise Kidd, 5 Sapperton Drive, Henderson

A21-A24

The application and applicant's information as attached at pages A21 to A23. Additional information is attached at page A24. The application arises from officers requests to:

- Ensure that the swinging doors that provide direct access into the immediate swimming pool area are made self-closing and self latching from 150mm and swing away from the swimming pool area.

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

- Granting exemption from the requirement to make the swinging doors self closing, self latching from 150mm and swinging away from the swimming pool area as this door is in a bedroom and has a deadbolt fitted;
- Granting exemption from fencing the landscaped area. (Please see note)

(NOTE: Council officers are confident that the small area of landscaping on the northern border of the pool is presently complying. However further development of this area and maturity of the planting may bring this area into dispute in the future. It has therefore been recommended to the applicant to apply for an exemption for this area to eliminate any uncertainty about this area. The applicant asked to include an exemption for this area into the exemption application).

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

7. D.B. Holden, 27 Coey Place, Glendene

A25-A28

The application and applicant's information as attached at pages A25 to A27. Additional information is attached at page A28. The application arises from officers requests to:

A28

- Provide a complying swimming pool fence from the north-western corner of the dwelling, along the line of the decking and is then to abut the adjacent boundary fencing. (Shown as line **A - A** attached at page A28);
- Provide all lower windows (below 1.2m) which open into the immediate swimming pool area with permanent stays which restrict the window opening to a maximum of 100mm;
- Provide bolts to all sliding or sliding-folding doors which provide access to the immediate swimming pool area at a minimum height of 1.5m;
- 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 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 applicants have requested that the Swimming Pool Exemption Committee consider:

- Granting exemption from the requirement to make the swinging doors self closing, self latching from 150mm and swinging away from the swimming pool area. The door has a deadbolt;
- That the applicants have erected the complying fence as requested by Council officers;
- Waiving the \$250 application fee on the basis of hardship.

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

8. P.H. Andersson, 7 Laingfield Terrace, Laingholm.

A29-A30

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

A30

- Provide a fence to the immediate swimming pool area so as to prevent direct access from the laundry to the clothesline and back lawn as shown by line **A - A** attached at page A30.

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

- Granting exemption for the standard fencing requirements;
- That clothesline was only temporary and has been removed;
- That the doors leading into immediate swimming pool area are double locked.

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

- A30
- There are two (2) sets of french doors and two (2) other doors that swing into the pool area;
 - The possible access way between laundry and the back lawn as shown attached at page A30.

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 doors should be made to comply and whether to grant an exemption for the access ways.

8. B.M. Tissi & M. Tissi-Muller, (Tissi Family Trust), 415 Titirangi Road, Titirangi

A31-A32 The application and applicant's information is attached at pages A31. Additional information is attached at page A32. The application arises from officers requests to:

- A32
- Ensure that the Swimming pool gate (Marked **A** attached at page A32) is self closing and self latching from a stationary measured distance of 150mm, and is swinging away from the immediate swimming pool area;
 - Ensure that the gap beneath the Swimming/Spa pool gate is not greater than the maximum 100mm;
 - Provide all lower windows (below 1200mm) that open into the immediate swimming pool area with permanent stays that restrict the window opening to a maximum of 100mm;
 - Provide bolts at a minimum height of 1.5m, to all sliding or sliding-folding doors that provide access to the immediate swimming pool area;
 - 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 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 applicants have requested that the committee consider granting exemption from the standard fencing requirements as:

- The house forms part of the fence and all doors/windows opening to the pool area are secured with top and bottom locks/bolts;
- The inward opening gate has been welded shut.

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

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: Neville Colling, Team Manager: Operational Compliance.

