



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

SWIMMING POOL EXEMPTION COMMITTEE

I hereby give notice that pursuant to Standing Order 15.4 an Extraordinary Meeting of the Swimming Pool Exemption Committee will be held on:-

DATE: **Friday** **18 March 2005** **TIME:** **9.30 am**

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

to consider applications for exemption from certain Sections of the fencing of Swimming Pools Act 1987 and to take any necessary action connected therewith.

11 March 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	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 AN EXTRAORDINARY MEETING OF THE SWIMMING POOL EXEMPTION
COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE,
LINCOLN, WAITAKERE CITY, ON FRIDAY, 18 MARCH 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 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-A6 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 A6. 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 (s6(2)). Issues to be considered include:

- Will the exemption be personal to 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 sought. 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. **Brett & Jenny James, 7 Courtney Place, Hobsonville**

A7-A10

The application, supporting information and photographs are attached at pages A7 to A10 and are self explanatory. The notation "current fencing requirement" on the plan at page A11 indicates the officer's view of where the immediate pool area finishes in relation to this pool.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought, it will first need to consider the consequential issues that arise in relation to the additional area:

- There is a door from the house which is not self closing or self latching from 150mm. The Swimming Pool Exemption Committee will need to consider whether an exemption should be granted under clause 11 of the Schedule to the Act or the door should be made to comply;
- The gate in the fence at the end of the additional area is not self closing and self latching from 150mm. The Swimming Pool Exemption Committee will need to consider whether an exemption should be granted under s6 of the Act or the gate should be made to comply

2. **D & C Marriot, 7 Bannings Way, Hobsonville.**

A12-A16

The application and supporting information are attached at pages A12 to A16 and are self explanatory. Officers believe that the immediate pool area for this pool finishes at the line marked A - A on the plan at page A16.

If an exemption is granted, it is accepted that the fence and gate marked E - D on the plan at page A16 complies with the Act.

The Applicants have also requested that the Swimming Pool Exemption Committee consider waiving the \$250 application fee. The pool was previously assessed as complying with the Act on 30 April 2001 when the property was owned by T. Wickmann. A LIM was sought and issued on 4 April 2003 advising that Council's records identified the pool fence as complying at that time. The pool fence was next inspected and judged to be non complying on 13 April 2004 and this is still Council's current position.

3. **Dr John & Mrs Barbara Lusk, 554 South Titirangi Road, Titirangi.**

A17-A22

The application and supporting information are attached at pages A17 to A22 and are reasonably self explanatory. The application arises from officers requests:

A18

- To provide a fence to the immediate pool area so as to exclude the large area of lawn shown on the plan at page A18. If the Swimming Pool Exemption Committee is inclined to grant the exemption sought it will first need to consider the additional matters which arise in relation to this lawn area:

- There is a door from the house which opens into the lawn area. The Swimming Pool Exemption Committee will need to consider whether an exemption should be granted under clause 11 of the Schedule or the door should be made to comply;
 - There are a pair of gates which provide access into the lawn area that do not independently self close or self latch from 150mm. The Swimming Pool Exemption Committee will need to consider whether an exemption should be granted under s6 of the Act or the gates should be made to comply.
- A21
- To ensure that the gates shown in the photographs on page A21 are self closing and self latching from a stationary measured distance of 150mm, swing away from the immediate pool area, and each gate operates (i.e. latches and closes) independently of the other;
- A22
- To ensure that there is a minimum height of 1200mm above finished ground level. This relates to the height of the deck above ground level in one small area only, as depicted in the photographs on page A22, the matter of non-compliance arising because the deck provides a "step up" with only 780mm remaining to be scaled.

4. Alison Mayson, 14 Kopiko Road, Titirangi

A23-A27

The application and supporting information are attached at pages A23 to A26 and are self explanatory. Attached at page A27 is an aerial photograph of the property, marked up to show what officers consider in this case to be the limit of the immediate pool area. The dotted line indicates an expanded pool area which officers believe could also be considered to be part of the immediate pool area. The application seeks an exemption, in the alternative. The first alternative is for the fencing of a larger area, with the wall of the house operating as part of the fence. The second alternative is for fencing the larger area but with a new fence along the edge of the deck. No issues arise in relation to the second alternative provided that the fence that is installed complies with the Act, including any gates.

In relation to the first alternative, if the Swimming Pool Exemption Committee is inclined to grant an exemption it will then need to consider the position of the three (3) swinging doors which open onto the deck and into the enlarged pool area. The Swimming Pool Exemption Committee will need to consider whether an exemption under clause 11 of the Schedule is appropriate or whether the doors should be made to comply.

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.

