



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF EXTRAORDINARY MEETING

SWIMMING POOL EXEMPTION COMMITTEE

I hereby give notice that Pursuant to Standing Order 14.3 an Extraordinary Meeting of the Swimming Pool Exemption Committee will be held on:-

DATE: Friday, 18 November 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.

14 November 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 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 NOVEMBER 2005
COMMENCING AT 9.30 AM**

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**AGENDA FOR AN EXTRAORDINARY MEETING OF THE SWIMMING POOL EXEMPTION
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LINCOLN, WAITAKERE CITY, ON FRIDAY, 18 NOVEMBER 2005
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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 - Thursday, 1 September 2005

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Thursday, 1 September 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 eight (8) 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 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 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. R.F. Metcalfe and D.C. McCarthy, 9 Renata Crescent, Te Atatu Peninsula

A5-A6

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

A6

- Ensure that the swinging door that provides access to the immediate pool area be made self closing and latching and swings away from the pool area, with the latch at 1.5m minimum. The door is shown at page **A6**.

The applicants have requested that the Committee consider:

- Granting exemption for the door under clause 11 of the schedule to the Act as they believe the door does not pose a danger to children as the door has three (3) locking bolts. (Although none at the minimum height of 1.5m);
- Waiving the \$250 application fee as the door has been in place since 1991.

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

2. R & N Knight, 82 Simpson Road, Swanson

A7-A11

The application and applicant's information is attached at pages **A7** to **A10**. Additional information is attached at page **A11**. The application arises from officers requests to:

- A11
- Ensure that all five (5) swinging doors (as shown at page **A11**) 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 an exemption from the requirements as:
 - 1st door swings the wrong way, but other than that, is compliant;
 - 2nd door has been fitted with a closer but the latch is at 1.2m;
 - 3rd door has been fitted with a closer but the latch is set at 0,8m;
 - 4th door has been secured and permanently shut;
 - 5th door is a 100yr old "jail-house door" that has been fitted with a closer and latch but swings the wrong way and cannot be changed without major damage.

- A11
- Granting exemption for the possible access way between the house and warehouse as shown at page **A11** (Please see note).

Note: Council officers did not initially identify this as an access way and discussions with the property owner confirm that this is not used as the access to the warehouse. In addition a second exit is required for the warehouse for fire egress. However, it was recommended to the applicant to apply for an exemption for this access way to eliminate any uncertainty and the applicant has asked for this to be included in the application.

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

3. Rochelle and Stephen Palmer, 26 Mountain Road, Henderson Valley

A12-A13

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

- A13
- 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 shown at page **A13**.

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

- Granting exemption for the outward swinging double doors under Clause 11 of the Schedule to the Act as the as the doors cannot be swung the other way. Dead bolts have been fixed to the top and bottom of these doors.

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

4. Mr Jeremy Coney, 215 Konini Road, Titirangi

A14-A20

The application and applicant's information is attached at pages **A14** to **A20**. The application arises from officers requests to:

- A16
- 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. The doors are shown at page **A16**.

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

- Granting exemption under Clause 11 of the Schedule to the Act for the outward opening double doors that open into the immediate pool area.

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

5. J Courtney, 11c Huia Road, Huia

A21-A24

The application and applicant's information is attached at page **A21**. Additional information is attached at pages **A22** to **A24**. The application arises from officers requests to:

- A22
- Provide a fence (as shown by line **AA** at page **A22**) to the immediate swimming pool area so as to prevent direct access from the laundry to the clothes line;
- A23
- The (ornamental) metal gate (as shown at page **A23**) is deemed climbable and needs to be replaced or covered over with a tight metal mesh;
- A23
- Ensure that the swimming pool fence (as shown at page **A23**) is a minimum height of 1.2m above the window ledge;
 - Ensure that the swimming pool gates are self closing and self latching from a stationary measured distance of 150mm and swing away from the immediate swimming pool area;
- A24
- Ensure that all swinging doors(as shown at page **A24**) 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;
- A24
- Provide all lower windows below 1.2m in the conservatory (as shown at page **A24**) that open into the immediate swimming pool area with permanent stays that restrict the window opening to a maximum of 100mm;
 - Ensure that any other fences or handrails etc., which abut the swimming 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 pool fencing, i.e., would themselves comply with the act, i.e., by the shed.

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

- Granting exemption for the requirements for the doors and windows in the conservatory area.

If the Swimming Pool Exemption Committee is inclined to grant the exemption as sought there are no consequential issues that arise from the exemption, however, the other outstanding items need to be made to comply.

6. D & S Crabb, 528 South Titirangi Road, Titirangi

A25-A28

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

A28

- Provide a fence to the immediate swimming and spa pool area (as shown at page **A28**) so as to prevent direct access from the lawn area and path around the house.

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

- Granting exemption from the requirement to fence the immediate swimming and spa pool area as the 30 year old pool has been securely fenced since 1989 and they believe that the pool is secure and does not significantly increase the danger to children.

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

- Whether to grant exemptions for all windows openings below 1.2m that open into the pool area or whether these openings should be provided with permanent stays to restrict their maximum opening to 100mm.

7. Robert and Linda Dutch, 9A John F Kennedy PI, Glen Eden

A29-A31

The application and applicant's information is attached at pages **A29** to **A30**. Additional information is attached at page **A31**. The application arises from officers' requests to:

A31

- Provide a fence to the immediate swimming pool area so as to prevent a thoroughfare from the side gate to the front entrance to the house shown at page **A31** by **AA** or as an alternative, make the front gate inoperable so that the front of the house is not accessed through the pool area.

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

- Granting exemption from complying with the above requirements. The applicants contends that all visitors access the house via the back door and the gate is only used by them for accessing pool maintenance equipment stored in the garage. In addition the applicants have provided a new latch on the inside of the gate making it more difficult to open the front gate from outside.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought the consequential issue that arises is:

- Whether the non complying front door should be made to comply, i.e. self closing and self latching from a stationary measured distance of 150 mm with a complying latching device fitted at a minimum height of 1.5m, or whether to grant an exemption under clause 11 of the Act.

8. Mr Emile Joseph Francis, 12 Manhattan Heights , Glendene

A32-A34

The application and applicant's information is attached at pages **A32** to **A33**. Additional information attached at page **A34**. The application arises from officers requests to:

A34

- Provide a complying pool fence to the immediate swimming pool area to isolate the pool from other activities not associated with the pool and to stop direct access from the house. As shown by **AA** at page **A34**.

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

- Granting exemption from fencing the immediate swimming pool area as the property is fully fenced at the rear and that the doors and ranch sliders giving access from the house have bolts at the top. The applicants undertakes to negotiate a reduction in sale price with a prospective purchaser should the property be sold so that the fencing can be made to comply.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there are five (5) consequential issues that arise:

- The door in the passage way that leads out to the rear yard swings away from the pool area and is non complying;
- The ranch slider from the bedroom is inoperative at the moment and has no bolt at the top;
- There is a set of the double doors from the basement area that give access to the rear yard. These doors do not comply;
- The timber gate on the south side of the pool is non complying and should be replaced with a complying gate;
- The double metal gates at the garage are non complying.

The Swimming Pool Exemption Committee would need to consider whether exemptions should be granted for some or all the above consequential issues. The applicant has undertaken to provide a new gate to replace the timber gate and a bolt on the bedroom ranch slider if required.

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.

