



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: Friday, 1 December 2006 **TIME:** 9.30 am

VENUE: Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

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

22 November 2006

Stephen McDaid
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8170

MEMBERSHIP:

Councillors	DQ	Battersby, JP (Chairman)
	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 AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON FRIDAY, 1 DECEMBER 2006 COMMENCING AT 9.30 AM**

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AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION COMMITTEE TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON FRIDAY, 1 DECEMBER 2006 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 Chairman 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, 3 November 2006

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Friday, 3 November 2006, 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 13 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 (s6(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 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 Committee to accept an oral application for any further exemptions that may be necessary. The Committee Secretary will record the application made. If the 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. C R and M T Dillicar, 17 Gloria Avenue, Te Atatu Peninsula

A5-A11

The application and applicant's information is attached at pages A5 to A11. The application arises from officers requests to:

- Provide a fence to the immediate swimming pool area to prevent access, from the following non-complying items:
 - a. the non-complying back door giving access from the house into the immediate swimming pool area.
 - b. the non-complying French double doors opening into immediate Swimming pool area.
 - c. the non-complying window lower than 1.2m opening into immediate Swimming pool area
 - d. the non-complying sliding window in kitchen opening into immediate Swimming pool area.
 - e. the direct access way from the house through the pool area to the gate accessing both the clothes-line, vegetable garden and the rest of the backyard.
 - f. the access way through the pool area to access the current Swimming pool gates on either side of the house accessing the front of the property.
- Ensure that the Swimming pool fence is a minimum height of 1.2m. An indicative position for the fence is shown at page A10.

A10

The applicants have requested that the Committee consider granting an exemption from providing a fence and

- from making the back door self closing;
- for the French doors that swing into the pool area;
- for the sliding window lower than 1.2m with an opening greater than 100mm that opens into the pool area;
- for the access way to through the pool area to the vegetable garden and the clothes line;
- for the access way to gates on either side of the house to the front of the property.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought the consequential issues that arise are that the access ways and non complying opening remain and the and the committee would need to consider whether to grant exemptions for some or all of the issues or propose an amended fence position.

2. C E Bowles & W D Stansell (Previous Owner Marilyn Whitehouse), 3 Cliff View Drive, Green Bay

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

- A14*
- Provide a fence to the immediate swimming pool area so as to prevent direct access from the lawn area. Indicative position of fence shown at page A14.
 - Ensure that the Swimming pool gates are self closing and self latching from a stationary measured distance of 150mm.
 - A latching device must be fitted at either 1.2m if located on the inside of the gate, and if accessible only be reaching over the gate (not accessible through the gate), or 1.5m if located out side the gate.
 - Ensure that the gap beneath the Swimming pool gate is not greater than the maximum 100mm.
 - Provide all lower windows (below 1.2m) which open into the immediate Swimming pool area with permanent stays which restrict the window opening to maximum of 100mm.

The applicants have requested that the Swimming Pool Exemption Committee consider granting an exemption from the requirement to provide a fence to prevent access to the lawn area as:

- The applicant feels that the area is adequately fenced;
- Safety while cleaning the pool will be jeopardised if the area is fenced;
- The grassed area is quite small.

If the Committee is inclined to grant the exemption sought there are a number of consequential issues that arise and the committee would need to consider whether to grant exemptions for some or all of the issues or propose an amended fence position. The consequential issues that arise are:

- There is an access way to the clothes line;
- Existing gates are non compliant (not self closing self latching);
- There is a climbable tree and fence adjacent to existing fence;
- The pool area contains a garden/storage shed;
- Windows opening into pool area not restricted to 100mm maximum opening.

3. S R McKinnon, 2 South Pacific Place, Henderson

A15-A19 The application and applicant's information is attached at pages A15 to A18. Additional information is attached at page A19. The application arises from officers requests to:

- A19*
- Provide a fence to the immediate Swimming pool area so as to prevent direct access from the house and the rear yard. An indicative position is shown at page A19.

The applicants have requested that the Swimming Pool Exemption Committee consider: Granting an exemption from providing a fence as the applicant contends that:

- The pool was built 25 years ago and was given a letter of compliance in 2002;
- The boundary perimeter fencing is 194cm high;
- The youngest person living on the premises is 20 years old;
- The space to erect a fence is very limited.

If the Swimming Pool Exemption Committee is inclined to grant the exemption as sought there are a number of consequential issues that arise and the committee would need to consider whether to grant exemptions for some or all of the issues or propose an amended fence position. The consequential issues that arise are:

- There is an access way to the birdcage;
- The swimming pool area will contain planting for landscaping purposes;
- There is a non complying gate;
- Kitchen windows open into pool area;
- French doors open into pool area.

4. C W and E Mears, 35 Vintage Drive, Henderson

A20-A21

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

- Permanently fix the swimming pool gate to prevent an access way through the pool area to the backyard;
- Permanently fix shut the padlocked gate in the immediate Swimming pool area to prevent an access way through the pool area to the reserve next door;
- Ensure that the remaining swimming pool gate is self closing and self latching from a stationary measured distance of 150mm;
- 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 swing 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 on page A21.

NB: Sets of doors must operate (latch and close) independently of each other.

The applicants have attended to all the gates and have requested that the Swimming Pool Exemption Committee consider:

- Granting an exemption for the doors under Clause 11 of the Schedule to the Act. The doors were fitted when the pool was installed and complied at that time. The doors have bolts at the top.

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

5. Omega Estates Limited, 5 Bittern Place, Henderson

A22-A26 The application and applicant's information is attached at pages A22 to A25. Additional information is attached at page A26. The application arises from officers requests to:

A26

- Provide a fence to the immediate swimming pool area so as to prevent direct access to the landscape area. An indicative position for the fence is shown at page A26.

The applicants have requested that the Committee consider granting an exemption from providing a fence as requested as:

- As there are alternate play areas for children;
- The landscape area is not of a significant size.

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

6. S and M A Ellis, 29 Fitzherbert Avenue, West Harbour

A27-A29 The application and applicant's information is attached at pages A27 to A28. Additional information is attached at page A29. The application arises from officers requests to:

- Ensure that all swinging doors which provide access to the immediate Spa pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate Spa 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 bolts to all sliding or sliding-folding doors which provide access to the immediate Spa pool area at a minimum height of 1.5m.

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

- For the French doors as it would be feasible to remove and reverse the doors;
- Waiving the application fee as the pool was given a letter of compliance in 2002.

If the Swimming Pool Exemption Committee is inclined to grant the exemption as sought there are a number of consequential issues that arise and the committee would need to consider whether to grant exemptions for some or all of the issues or propose an amended arrangement. The consequential issues that arise are:

- That an access way through the pool area would remain.

7. TD and JMA Meakin and Kumeu Taxation Trustee Company Limited, 34 Marguerita Place, West Harbour

A30-A35 The application and applicant's information is attached at pages A30 to A34. Additional information is attached at page A35. The application arises from officers requests to:

A35

- Provide a fence to the immediate Swimming pool and Spa pool area so as to prevent direct access from the timber deck area. An indicative position for the fence is shown at page A35.

The applicants have requested that the Swimming Pool Exemption Committee consider granting an exemption from the requirement to provide a fence as:

- The area is being developed and an study/pool changing area is being added that will contain an open outdoor fireplace/barbecue;
- The area was compliant in 2001;
- The applicants believe that the area is compliant with Justice Randerson's decision.

During an onsite meeting a number of consequential issues were identified that would arise if the Committee is inclined to grant the exemption as sought. The applicant mentions in the application that these issues have subsequently been attended to. The consequential issues that arise are:

- Climbable tree on the northern boundary;
- Climbable hose on the eastern boundary;
- Climbable heater switch on the western boundary;
- Northern boundary fence not fully compliant.

8. G J W Rich, 26 Marguerita Place, West Harbour

A36-A38

The application and applicant's information is attached at pages A36 to A37. Additional information is attached at page A38. The application arises from officers requests to:

- Ensure that the swimming pool gates are self closing and self latching from a stationary measured distance of 150mm;
- Remove the pad bolt from the gate;
- 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. ;
- 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 Committee consider:

- Granting an exemption for the doors under Clause 11 of the Schedule to the Act as they have fitted a self closer and raised the lock to the regulation height.

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

9. Fulton Hogan Land Development Limited, 102 Hobsonville Road, Hobsonville

A39-A40

The application and applicant's information is attached at page A39. Additional information is attached at page A40. The application arises from officers requests to:

A40

- 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 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 A40.

The applicant has requested that the Swimming Pool Exemption Committee consider:

- Granting an exemption for the direction the doors swing under Clause 11 of the Schedule to the Act as the doors are French doors and are unable to be hung differently.

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

NOTE: In light of the recent court decisions the landscaping in the pool area is not considered de minimus nor is the immediate pool area fenced. An exemption is sought for this on the applicant's behalf.

10. M A Shanahan and P Gribble, 18 Sinton Road, Hobsonville

A41-A43

The application and applicant's information is attached at pages A41 to A42. Additional information is attached at page A43. The application arises from officers requests to:

A43

- Ensure that the 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 the doors at a minimum height of 1.5m. Doors shown at page A43.

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

- Granting an exemption for the doors under Clause 11 of the Schedule to the Act. The doors are only able to be hung one way and therefore it is impractical to alter the doors. The applicants note that the Council issued a Code Compliance Certificate when the house and swimming pool was constructed 10 years ago. This issue was not raised at the inspection 3-4 years ago. The changes to the swimming pool fencing have improved the fencing as the doors from the family room no longer open onto the swimming pool area;
- Granting an exemption for the landscaping in the pool area (please see note).

NOTE: In light of court decisions, the landscaping in the pool area is not considered de minimus. It has, therefore, been recommended to the applicant to apply for an exemption for the landscaping. The applicant has asked that an exemption is sought for the landscaping.

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

11. L G and J E Smith, 11 Dale Road, Whenuapai

A44-A45

The application and applicant's information is attached at page A44. Additional information attached at page A45. The application arises from officers requests to:

A45

- Ensure that all swinging doors which provide access to the immediate Swimming/Spa pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate Swimming/Spa 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 A45, **NOTE:** Sets of doors must operate (latch and close) independently of each other;
- Ensure that the Swimming/Spa pool gates are self closing and self latching from a stationary measured distance of 150mm and swing away from the immediate Swimming/Spa 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;
- Provide bolts to all sliding or sliding-folding doors which provide access to the immediate Swimming/Spa pool area at a minimum height of 1.5m;
- Ensure all lower windows (below 1.5m) which open in the immediate Swimming/Spa pool area with permanent stays which restrict the window opening to a maximum of 100mm;
- The large gap trellis, greater than the maximum 50mm, is to be replaced or covered with an approved material (shade cloth etc).

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

- Granting an exemption for the doors under Clause 11 of the Schedule to the Act. The dwelling and pool is 20+ years of age and to have the doors made compliant would be unreasonable.

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

12. P M and M S Mead, 16 Meadow Crescent, Te Atatu South

A46-A50

The application and applicant's information is attached at pages A46 to A49. Additional information is attached as page **A50**. The application arises from officers requests to:

A50

- Provide a fence to the immediate swimming/spa pool area to isolate the pool from any landscaping (including trees) or grassed areas within the current pool area and to prevent the access way through the pool area to the side gate accessing the eastern side of the property. Page A50 shows an indicative position for the required fence;
- Ensure that the swimming/spa pool fence is a minimum height of 1.2m;
- Ensure that the gaps in the swimming/spa pool fence are not greater than the maximum allowable 100mm. Gap in the north western swimming pool fence to be repaired;
- Ensure that double wrought iron swimming/spa pool gates operate (latch and close) independently of each other or one of the gates must be fixed permanently shut, padlocked gates are non compliant. The swimming/spa pool gates are to be self closing and self latching from a stationary measured distance of 150mm, and swing away from the immediate swimming/spa pool area;
- Ensure that the upper patio accessing the pool area has a complying fence and gate at a minimum height of 1.2m;
- Remove the clothes-line from the immediate swimming and spa pool area.

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

- That of the above items only the fencing requirement to the patio area and fencing to prevent the access way have not been complied with;
- Granting an exemption from providing a fence as requested as they contend that they approached the Council 2 years ago when they bought the house to ascertain if pool was compliant and there was no clear information on the status of the fencing;
- That the applicants would like to maintain the access way to mangroves and the rear of the river as it provides easy access if a child needs help as the water is a drowning hazard;
- Waiving the \$250.00 exemption application fee.

If the Swimming Pool Exemption Committee is inclined to grant the exemption as sought there are a number of consequential issues that arise. The committee would need to consider whether to grant exemptions for some or all of the issues or propose an amended arrangement. The consequential issues that arise are:

- The access way would remain.

13. E F Fabain and D N Jury, 6 Spedding Road, Whenuapai

A51-A55

The application and applicant's information is attached at pages A51 to A55. The application arises from officers requests to:

- Provide a fence to the immediate spa pool area so as to prevent direct access from both the house and the backyard area. Ensure that the spa pool fence is a minimum height of 1.2m

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

- Granting an exemption from fencing the spa pool as they have purchased a lockable cover.

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

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, therefore no remedial action will be 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.

