



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, 10 February 2006 **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.

3 February 2006

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 FRIDAY, 10 FEBRUARY 2006
COMMENCING AT 9.30 AM**

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**AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION COMMITTEE
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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 - Wednesday, 18 January 2006

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Wednesday, 18 January 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 11 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 and doors 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 (Section6(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. A, L.F & J.A. Smith, 532 South Titirangi Road, Titirangi

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

- A6
- Ensure that all swinging doors which provide access to the immediate swimming and spa pool area are made self closing and self latching from a stationary measured distance of 150mm and swing away from the immediate swimming pool and 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. Doors as shown on page **A6**.

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.

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

2. S.D Wilson, 66 Paturoa Road, Titirangi

A7-A9 The application and applicant's information is attached at pages **A7** to **A8**. Additional information is attached at page **A9**. The application arises from officers requests to:

- A9 • Ensure that the climbable fence by the drive is covered up to the point where the retaining wall is 1.2m high. (as shown at page **A9**);
- A9 • Ensure that the climbable gate (marked Gate A at page **A9**) by the drive is covered;
- Ensure that all swinging doors which provide access to the immediate swimming and spa pool area are made self closing and self latching from a stationary measured distance of 150mm, and swing away from the immediate swimming pool and spa pool area. A latching device must also be fitted to each door 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 under Clause 11 of the Schedule to the Act as the doors are Aluminium and can not be modified.

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

3. D.C. Maxwell, 12 Park Road, Titirangi

A10-A18 The application and applicant's information is attached at pages **A10** to **A18**. 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 swing 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.

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 as the property is down a long right of way, is bush clad, has no boundary fencing and the house and pool fencing are many metres from all boundaries on all sides. The spa pool is an on the deck rather than an in the deck variety so one needs to climb into the pool. The pool has a sturdy lockable cover which, except during servicing when the pool is empty is permanently locked. A person under the age of six (6)years would not have the strength to open the lid without assistance. The pool area is on the South side of the house while the outdoor entertainment area is on the north side of the house with the large deck and the BBQ facilities.

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

4. P.W. and M.J. Parker, 18 Havelle Avenue, New Lynn

A19-A28 The application and applicant's information is attached at pages **A19** to **A27**. Additional information is attached at page **A28**. The application arises from officers requests to:

- A28 • Provide a fence to the immediate swimming pool area so as to prevent direct access from the house, lawn and other activities not associated with the pool. The lawn area and an indicative position for the fence are shown at page **A28**.

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

- That the applicants have a letter from Council dated 9 April 2001 saying that the fencing is compliant;
- That the letter was obtained before purchasing the property and the Act has not changed;
- Granting an exemption from the fencing requirements and waiving the application fee;
- That the applicants propose to erect new fencing as per the supporting photos in their application and move the existing washing line;
- That the pump and filter are within the area they intend to fence and that the grass bank is used a de-facto diving board;
- That the applicants "children" are 17 and 19 years old and that they have no friends with small children.

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

5. L. L. Rahui, 14 Matuhi Rise, Henderson

A29-A30

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

- Ensure that both the swimming pool and spa pool gates are self closing and self latching from a stationary measured distance of 150mm. Wooden braces to the wooden front be removed or covered;

A30

- Ensure that all swinging doors which provide access to the immediate swimming and 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 pool and 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 **A30**;
- Ensure that any other fencing and handrails which abut the swimming and 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 and spa pool fencing, i.e. would themselves comply with the Act;
- Front and side panels to pump enclosure to be made a minimum height of 1.2m;
- Corner of brick work where both brick walls abut one another at the front of the property to be covered to a minimum height of 1.2m. (The area behind the brick BBQ flue).

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

- Granting an exemption for the French doors under Clause 11 of the Schedule to the Act as the removal of the doors would be a costly exercise. The doors are now self locking and door handles have been moved;
- The removal of the doors would be a costly exercise.

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

6. L.S. & D.M. Dean, 24 Matuhi Rise, Henderson

A31-A33 The application and applicant's information is attached at pages **A31** to **A32**. Additional information is attached at page **A33**. The application arises from officers requests to:

- A33
- 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. Doors shown on page **A33**.

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 as the house was built in the 1970's and it is impossible to hinge French doors in such a way as they become inward swinging;
- Waiving the \$250 application fee.

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

7. R. J. Smith & P. M. Garner, 77 Te Kanawa Crescent, Henderson

A34-A40 The application and applicant's information is attached at pages **A34** to **A39**. Additional information is attached at page **A40**. The application arises from officers requests to:

- A40
- 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 on page **A40**;
 - Provide a fence to the immediate swimming pool area so as to prevent direct access from the sleep out and access from the house.

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 as the doors are unable to be modified so that they swing inwards;
- New fencing has been erected to eliminate the access way.

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

8. F.S. & S.A. Hitchcock, 34 Ranui Avenue, Ranui

A41-A43 The application and applicant's information is attached at pages **A41** to **A43**. The application arises from a building consent application (ABA20053150):

- Permission is sought to place a spa pool on the deck which has French doors opening into the immediate spa pool area.

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

- Granting an exemption for the French doors which open out into the immediate spa pool area as all other criteria will be met and the doors will have the necessary compliant self closing and self latching devices.

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

9. Sumich Family Trust, 59 Welsh Hills Road, Swanson

A44-A47

The application and applicant's information is attached at pages **A44** to **A46**. Additional information is attached at page **A47**. The application arises from officers requests to:

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

- Granting an exemption for the door under Clause 11 of the Schedule to the Act as the doors are unable to be modified to be inward opening. The door design is such that the water tightness of the building would be compromised if the doors were to open the inwards;
- If the door was to be opened inwards this would inhibit the use of the kitchen and cook top area.

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

10. I.N. & C. Miles, 36 Harbour Lights Close, Hobsonville

A48-A49

The application and applicant's information is attached at pages **A48** to **A49**. The application arises from officers requests to:

- Provide a fence to the immediate swimming pool area so as to prevent direct access from the shell area;
- Ensure that there is a minimum gap of 900mm between either the bottom and middle rails or the top and middle rails of the wooden fencing, or the middle rail must be removed or otherwise made un-climbable;
- 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;
- 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 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 as self closing door catches have been fitted to the French doors. Inside is bolted with a key lock and the windows have stainless steel stays attached.

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.

11. J.C. Honor & C.P. Gallher, 20 Ocklestone Landing, Hobsonville

A50-A51

The application and applicant's information is attached as pages **A50** to **A51**. The application arises from officers requests to:

- Provide a fence to the immediate swimming pool area so as to prevent access from the grassed area;
- 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 applicants have requested that the Swimming Pool Exemption Committee consider:

- Granting an exemption for the doors and windows under Clause 11 of the Schedule to the Act as the doors and windows form the main ventilation requirements for the living room. The handles are 1500mm (1.5m) high from the ground level. The doors open outwards and can not be modified due to the construction of the house. The bi-fold doors are used as a servery to the outside area and restricting the amount they are able to be opened would prevent this happening.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought 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.

