



Waitakere City Council
Te Taiao o Waitakere

AMENDED NOTICE OF MEETING

SWIMMING POOL EXEMPTION COMMITTEE

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

REVISED Thursday, 31 August 2006 **TIME:** 9.30 am
DATE:

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.

18 August 2006

S 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 THURSDAY, 31 AUGUST 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 THURSDAY, 31 AUGUST 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 APPLICATIONS FOR SPECIAL EXEMPTIONS - FENCING OF SWIMMING POOLS ACT 1987

PURPOSE OF THE REPORT

The purpose of this report is to present eight 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 Swimming Pool Exemption 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 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. M A Shanahan, 18 Sinton Road, Hobsonville

A5-A7 The application and applicant's information is attached at pages A5 to A6. Additional information is attached at page A7. The application arises from officers requests to:

- A7
- 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 on page A7.

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. The issue was not raised at the inspection three to four 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 the 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.

2. G A Barclay, 49 Picasso Drive, West Harbour

A8-A10 The application and applicant's information is attached at pages A8 to A9. Additional information is attached at page A10. The application arises from officers requests to:

- A10
- Ensure that the double swimming pool gates, self close and self latch independently of each other from a stationary measured distance of 150mm, or one of the gates should be permanently fixed shut;
 - 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 kitchen sliding windows opening into the immediate swimming pool area are to be restricted from opening greater than 100mm. Bi-fold windows shown at page A10.

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

- Granting an exemption for the kitchen windows because when the applicants are entertaining they pass food through the windows and interact with their guests through the open windows.

If the Swimming Pool Exemption Committee is inclined to grant the exemption for the windows there are no consequential issues that arise from that, however, the gates remain as an outstanding issue that needs to be rectified.

3. S and T Lolesi, 15 Wickstead Drive, Massey

A11-A13 The application and applicant's information is attached at pages A11 to A12. Additional information is 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 the door at a minimum height of 1.5m. The French doors are shown at page A13.

The applicants have 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. The applicants can not afford to replace the doors and there is a chain and lock on each of the doors.

If the Swimming Pool Exemption Committee is inclined to grant the exemption for the doors there are no consequential issues that arise from that, however, the other outstanding issues need to be rectified.

4. C R Woodcott, 121A Colwill Road, Massey

A14-A15 The application and applicant's information is attached at page A14. Additional information is attached at page A15. The application arises from officers requests to:

- A15*
- Ensure that the swinging door that provides access to the immediate swimming pool area is made self closing and self latching from a stationary measured distance of 150mm, and swings away from the pool area. A latching device must also be fitted to the door at a minimum height of 1.5m. The door is shown at page A15.

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. The door has two locks;
- Waiving the application fee.

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

5. D R Murray and D E Devery, 29 Realm Place, Massey

A16-A17 The application and applicant's information is attached at page A16. Additional information is attached at page A17. 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 the 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. The applicants are unable to afford the expense of replacing the doors;
- Waiving the application fee.

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

6. E W and K Wilson, 31 Kohekohe Street, New Lynn

A18-A20

The application and applicant's information is attached at pages A18 to A20. The application arises from officers requests to:

- Provide a fence to the immediate spa pool area so as to isolate the pool from activities not associated with the pool. The fence is to follow the line of the decking.

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

- Granting an exemption for the requirement to fence the immediate swimming pool area because the applicant is in receipt of a complying letter dated in 2001. The applicant believes the pool environment remains safe as there are high (minimum of 1.69m) fences which are the boundary fences for the property. The applicant believes that it would be unsightly and impractical to have a fence between the existing fence and the swimming pool;
- Waiving the application fee as both applicants are super annuitants and this is a considerable outlay for them. The life of the pool is also limited and the applicants do not consider the amount of use the pool receives enough to justify the fee charged.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there are a number of consequential issues that arise and the Swimming Pool Exemption 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:

- The pool area is accessible from the house via a non-complying ranch slider and a roller garage door;
- The whole of the rear yard would be pool area, where other activities can be carried out that are not in conjunction or associated with the use of the pool, e.g. such as the clothesline;
- The gates do not close and self latch;
- The pool area would be used as an access way.

7. R A and G J Galloway, 4a Park Road, Titirangi

A21-A23

The application and applicant's information is attached at pages A21 to A22. Additional information is attached at page A23. The application arises from officers requests to:

- 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;
- Remove all items not associated with the use of the swimming/spa pool from within the immediate swimming/spa pool area, e.g. the clothes line.

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 have two locks on them, one at 1.04m from the floor and one at 1.85m from the floor. The doors have been in place since the house was built
- Granting an exemption for the clothes line as the property has no other lawn area and the only other area available to out a clothes line is down a number of stairs. This would be difficult for the owners of the property to access due to their age.

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

8. A R and S H Nogueira, 26 Wallace Road, Ranui

A24-A26

The application and applicant's information is attached at pages A24 to A25. Additional information is attached at page A26. 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;
- Provide 10mm mesh over the pump housing to make it un-climbable.

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

- Granting an exemption for the tri fold doors that swing into the pool area and the requirement that they be self closing and self latching. The doors are lockable at the top and the bottom. The pool area is surrounded by a 1.8m wooden fence, the only external entry to the pool area is through the wooden gate which is 1.8m high with a lock on the inside.

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

