



Waitakere City Council  
*Te Taiao o Waitakere*

## NOTICE OF MEETING

# SWIMMING POOL EXEMPTION SUBCOMMITTEE

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

**DATE:** Thursday, 10 December 2009      **TIME:** 9.30 am

**MEETING ROOM:** New Lynn Room

**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.

4 December 2009

Emma Joyce  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8114

### MEMBERSHIP:

Councillors	WW	Flaunty, QSM, JP (Chairman)
	DQ	Battersby, QSM, JP (Deputy Chairman)
	MF	Chan, JP
	LA	Cooper, JP
	PA	Hulse
	MM	Jolley
	PG	Mitchell
	VS	Neeson, JP

(Quorum 3 members)

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(Meeting Room could be subject to change)

(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 SUBCOMMITTEE  
TO BE HELD IN THE GLEN EDEN ROOM AT WAITAKERE CENTRAL, 6 HENDERSON  
VALLEY ROAD, HENDERSON, WAITAKERE, ON THURSDAY, 10 DECEMBER 2009,  
COMMENCING AT 9.30 AM**

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**AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION SUBCOMMITTEE TO  
BE HELD IN THE NEW LYNN ROOM AT WAITAKERE CENTRAL,  
6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,  
ON THURSDAY, 10 DECEMBER 2009, 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 Subcommittee 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 Subcommittee 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 CONFLICTS OF INTEREST**

The Council has acknowledged in its Code of Conduct that Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a Member of the Council and any private or other external interest they might have. This note is provided as a reminder to Members to check that no such conflicts arise in relation to any items on this agenda.



**4 CONFIRMATION OF MINUTES**

Meeting Minutes – Thursday, 29 October 2009

**RECOMMENDATION**

It is recommended that the Swimming Pool Exemption Subcommittee resolve to:

**Receive** the minutes of the meeting of the Swimming Pool Exemption Subcommittee held on Thursday, 29 October 2009, as circulated, and that they be taken as read and now be confirmed.



## 5 APPLICATIONS FOR SPECIAL EXEMPTIONS – FENCING OF SWIMMING POOLS ACT 1987

### GLOSSARY

Fencing of Swimming Pools Act 1987	(the Act)
Swimming Pool Exemption Subcommittee	(the Subcommittee)
Swimming pool	(pool)

### EXECUTIVE SUMMARY

The purpose of this report is to present to the Swimming Pool Exemption Subcommittee (the Subcommittee) seven applications for special exemptions from some of the requirements of the Fencing of Swimming Pools Act 1987 (the Act).

The Subcommittee must consider each of the applications for special exemption and either decline, approve or approve (subject to conditions) the exemptions sought.

### RECOMMENDATIONS

It is recommended that the Swimming Pool Exemption Subcommittee resolve to:

1. **Receive** the Applications for Special Exemptions – Fencing of Swimming Pools Act 1987 report.
2. **Either:**
  - (a) Agree to approve (subject to conditions) the application for special exemptions sought; OR
  - (b) Agree to decline the application for special exemptions sought.

### BACKGROUND

- A1
1. 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 swimming pool (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
2. 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.”*
  3. 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. However, to comply with the Act 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 Building 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 of the Act in respect of doors opening from a building into a pool area.

4. 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.
5. When granting a special exemption the Subcommittee may impose such other conditions relating to the property or the pool as are reasonable in the circumstances (section 6(2) of the Act). 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 three yearly cycle).
6. 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.
7. Circumstances will arise where the Subcommittee 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 Subcommittee to accept an oral application for any further exemptions that may be necessary. The Committee Secretary will record the application made. If the Subcommittee 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.

## DECISION MAKING

### Issues

	Applicant	Property Address	A Pages	Non Complying items - Exemption is sought for:
1	DB Holden	27 Coey Place, Glen Eden	A5 - A8	• To provide a fence to the immediate pool area.
2	KR Davidson	539 South Titirangi Road, Titirangi	A9 - A11	• Non complying doors providing access from the house to the pool area.

	<b>Applicant</b>	<b>Property Address</b>	<b>A Pages</b>	<b>Non Complying items - Exemption is sought for:</b>
3	RW Smith and VJ Smith	54 Daffodil Street, Titirangi	A12 - A16	<ul style="list-style-type: none"> <li>• Non complying doors opening into the pool area from the house and non complying height of fence abutting the pool fence.</li> </ul>
4	J Reay and S Cummings	439 Titirangi Road, Titirangi	A17 - 20	<ul style="list-style-type: none"> <li>• To provide a fence to the immediate pool area, so as to prevent direct access from a) the thoroughfare to the rear yard through the pool area, b) the upper deck and c) the non-complying doors.</li> <li>• Non complying latch on upper gate.</li> </ul>
5	AR Shaw and SW Moore	14 Woolley Avenue, New Lynn	A21 - A24	<ul style="list-style-type: none"> <li>• To provide a fence to the immediate pool and spa area so as to isolate the landscaping from the pool area.</li> </ul>
6	TS Boys and GD Woolford and WG Johnston	170 Te Atatu Road, Te Atatu South	A25 - A32	<ul style="list-style-type: none"> <li>• To provide a fence to the immediate pool area, so as to prevent direct access from the house and the access way to the tennis court.</li> <li>• Isolate the landscaped area from the immediate pool area.</li> </ul>
7	DN Third	125 Ferry Parade, Herald Island	A33 - A34	<ul style="list-style-type: none"> <li>• To provide a fence to the immediate pool area as per building consent COM 2008-1174.</li> </ul>

### Options Identified

8. The Subcommittee may approve, approve (subject to conditions) or decline the applications for special exemption.
9. If an application is declined this equates to the “do nothing option” resulting in the applicant being required to fence their pool in accordance with the Act.

### Consideration of Community Views

10. Compliance with the Act is a mandatory requirement for pool owners.

### Preferred Option

11. The special exemption options open to the Subcommittee under the Act are not open to Council officers. Therefore, it is considered inappropriate for Council officers to identify a preferred option.

### STRATEGIC CONTEXT

12. The Council is committed to ensuring that Waitakere is a safe place to live and play in. Pool fencing issues have a strong relationship with the Council’s strategic priorities of First Call for Children and Safe City.

## CONSULTATION

13. Each special exemption application has been discussed with the pool fencing inspector involved in the initial inspection. As special exemptions cannot be considered by Council officers, their opinions are not included in the report.

## RESOURCES

14. There are no additional resources required to implement the decisions of the Subcommittee.
15. The Subcommittee has the discretion to waive the fee for the special exemption application.

## IMPLEMENTATION ISSUES

16. Each of the applicants is seeking exemption from the Act for matters where Council officers consider that remedial action is necessary to achieve compliance with the Act. If an exemption is granted those items 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).

## AUCKLAND COUNCIL TRANSITION ISSUES

17. The decision making proposed in this report is not constrained by section 31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, as it does not directly or because of its consequences: significantly prejudice the reorganisation, significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation, or have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.

**Report prepared by:** Wolfgang Nethe, Team Manager: Operational Compliance.

