



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, 25 February 2010 **TIME:** 9.30 am

MEETING ROOM: Glen Eden 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.

19 February 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, 25 FEBRUARY 2010
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, 10 December 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, 10 December 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) ten 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. 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 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 as "to promote the safety of young children by requiring the fencing of certain swimming pools" and that is clearly a relevant issue for Members 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.	SJ Mitchell and SF Shefford	45 Opanuku Road, Henderson Valley	A5-A10	<ul style="list-style-type: none"> • Insufficient height of handrail abutting spa pool fence.

	Applicant	Property Address	A Pages	Non Complying items - Exemption is sought for:
2.	TT Turner, PSC Brown, R Neville-Jackson, H Neville- Jackson and Others	573 Scenic Drive, Waiatarua	A11 – A13	<ul style="list-style-type: none"> • To provide a fence to the immediate pool area, so as to prevent direct access from the thoroughfare through the pool area to the squash court and units. • To ensure that the pool gates are self closing and self latching from a stationary measured distance of 150 millimetres. • The obligation to fit a complying latching device to the pool gate. • The obligation to make the gate compliant. • To isolate the landscaped area from the immediate pool area by raising the block wall fence to a height of 1.2metres. • To ensure that any other fences and/or handrails that abut the pool fence are of a minimum height of 1.2metres and un-climbable. • Fee Waiver.
3.	J and G Dephoff	700 West Coast Road, Waiatarua	A14 – A16	<ul style="list-style-type: none"> • To isolate the landscaped area from the immediate pool area.
4.	B and D Lowrie	109 Parker Road, Oratia	A17 – A21	<ul style="list-style-type: none"> • To provide a fence to the immediate pool area, so as to isolate the landscaping from the pool area and the non-complying fence and gate.
5.	KM and ME McAllister	278 Glengarry Road, Glen Eden	A22 – A23	<ul style="list-style-type: none"> • To provide a fence to the immediate pool area, so as to prevent direct access from the house and the thoroughfare through the pool area to the clothes line and the rear yard.

	Applicant	Property Address	A Pages	Non Complying items - Exemption is sought for:
6.	RL and KA Schuler	37 Pleasant Road, Glen Eden	A24 – A27	<ul style="list-style-type: none"> Non-complying doors opening into the pool area.
7.	A Lake	14 Waitaki Street, Henderson	A28 – A37	<ul style="list-style-type: none"> To provide a complying fence to the immediate pool area, so as to prevent direct access from the thoroughfare to the drive.
8.	Walker Gherman Family Trust	27 Welsh Hills Road, Swanson	A38 – A46	<ul style="list-style-type: none"> To isolate the landscaped area from the immediate pool area.
9.	JG and SH Mucalo	5 Bridge Street, Te Atatu South	A47 – A51	<ul style="list-style-type: none"> To provide a fence to the immediate pool area to isolate it from the non-complying fence and gate on the west boundary, the non-complying door in the south-western corner of the pool area, the non-complying gate on the western side leading to the house and the access way through the immediate pool area.
10.	DG Latimer	40 Marguerita Place, West Harbour	A52 – A54	<ul style="list-style-type: none"> To provide a fence to the immediate pool area so as to prevent direct access from the non-complying doors and the thoroughfare through the pool area.

Options Identified

- The Subcommittee may approve, approve (subject to conditions) or decline the applications for special exemption.
- 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

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

Preferred Option

- 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 staff 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.

