

**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, 1 APRIL 2005,
COMMENCING AT 9.30 AM.**

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1	APOLOGIES	1
2	URGENT BUSINESS	1
3	APPLICATIONS FOR SPECIAL EXEMPTIONS - FENCING OF SWIMMING POOLS ACT 1987	1

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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 APPLICATIONS FOR SPECIAL EXEMPTIONS - FENCING OF SWIMMING POOLS ACT 1987

PURPOSE OF THE REPORT

The purpose of this report is to present four (4) 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-A6 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 A6. 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 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 Swimming Pool Exemption 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. **PJM & HJ MacLean, 27 Taitua Drive, Te Atatu South**

A7-A9

The application and supporting information are attached at pages A7 to A8. Officers believe that the immediate pool area for this pool finishes at the line of the existing small retaining wall that separates the upper lawn from the swimming pool area shown on the plan at page A9.

If the Committee is inclined to grant the exemption sought, there are no consequential issues that arise in relation to the additional area as it is accepted that the door in the garage wall has been fastened in a permanently closed position.

2. **GE & I Robinson, 524 South Titirangi Road, Titirangi**

A10-A11

The application and supporting information is attached at page A10. Officers believe that the immediate pool area for this pool finishes at the line marked A - A on the plan at page A11. The exemption sought by the Robinson's is for the additional vegetated area enclosed by an existing fence line marked B - B.

If the Committee is inclined to grant the exemption sought it will need to consider the consequential issue that arises in relation to the existing fence. The gaps in the existing brick fence exceed 50mm diagonally and do not comply with the Act. The Committee will need to consider whether an exemption should be granted under s6 of the Act or whether the gaps in the brick fence are made to comply (e.g. cover with 10mm (max.) mesh).

In addition to the fencing requirements the two swinging doors opening from the dwelling into the pool area are not self closing, self latching from 150mm and swing into the pool area. The Swimming Pool Exemption Committee will need to consider whether an exemption should be granted under Clause 11 of the schedule to the Act or the doors should be made to comply.

3. **Mrs Lan Hua Zou, 13 Burgundy Park Avenue, Henderson Heights**

A12-A18

The application and supporting information are attached at pages A12 to A18 and are reasonably self explanatory. The application arises from officers requests to provide a complying pool fence to the swimming pool and BBQ areas.

A19

Officers believe that the immediate pool area that is required to be fenced is depicted along the line marked A - A at page A19. This alignment separates the pedestrian access way from the laundry to clothesline, from the immediate pool area and also excludes the areas of landscape planting within the existing fencing.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought, it will first need to consider the consequential issues that arise in relation to the additional area:

- The swinging doors from the house, laundry and garage leading into the pool area need to be self closing, self latching from 150mm. The Swimming Pool Exemption Committee will need to consider whether an exemption should be granted under Clause 11 of the Schedule to the Act or the doors should be made to comply;
- In the opinion of Officers the clothesline attached to the back of the garage would need to be moved outside of the fenced area. The Swimming Pool Exemption Committee would need to consider whether an exemption should be granted to allow the clothesline to remain inside of the exempted pool area being considered or be relocated outside of this area.

4. Peter & Deborah Gill, 11 Burgundy Park Avenue, Henderson Heights

A20-A23

The application and supporting information are attached at pages A20 to A23 and are self explanatory. The application arises from officers requests to:

- Ensure that the swimming/spa pool fence is a minimum height of 1200mm; this applies only to the handrail on the deck. Also ensure that the gaps in this hand rail are not greater than 100mm;
- Provide a complying fence to the immediate swimming pool area. This is to follow the line of the existing paving so as to prevent direct access from the lawns and garden.

A23

The applicants advise that the hand rail on the deck will be altered to comply with the Act and consequently the exemption sought only relates to the second item, the lawn and garden areas depicted on the plan at page A23 as "Grassed Area".

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

The applicants have also requested that the Swimming Pool Exemption Committee consider waiving the \$250 exemption application fee as it has always been their intention to have a very safe pool.

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: Max Wilde Manager Field Services.

