

**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, 22 JULY 2005
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 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 - Friday, 1 July 2005

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Friday, 1 July 2005, 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 six (6) 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 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. Mr Warren Ryan, 14 Nui Mana Place, Te Atatu

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

- A7
- Provide a complying pool fence to the immediate swimming pool area; this is to be located so as to prevent direct access to the swimming pool and it's associated paving from the lawn (Line **A-A** on page A7);
 - Ensure that the Swimming Spa pool gate is self closing and self latching from a stationary distance of 150mm and is swinging away from the immediate swimming pool area;
 - Provide bolts to all sliding-folding doors which provide access to the immediate swimming pool area at a minimum height of 1.5m;
 - Provide all lower windows (below 1.2m) which open into the immediate swimming pool area with permanent stays which restrict the windows opening to a maximum of 100mm.

A7 Note: An alternative pedestrian access-way to the lawn adjacent to the immediate swimming pool area must be demonstrated to the Council's swimming pool inspector at the time of re inspection, if this alternative access-way cannot be demonstrated a fence must be provided so that the existing access-way is external to the immediate swimming pool area (Line **B-B** on page A7).

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

- Granting exemption from fencing the immediate pool area and consequently exemption from the requirement to demonstrate an alternative pedestrian access way to the lawn adjacent to the immediate swimming pool area;
- Waiving the \$250 application fee as the applicant feels that he has only been put in this situation because Council is interpreting the Act differently to 1997.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there is one consequential issue that arises. The clothesline will need to be relocated outside of the area for which the exemption is being sought or the Swimming Pool Exemption Committee will need to grant an exemption for the clothesline to remain in its current location.

The applicant has undertaken to address the remaining outstanding items in relation to the gate, sliding-folding doors and windows.

2. **Mr & Mrs Bendall, 45 Renoir Street, West Harbour**

A8-A12 The application and applicant's information is attached at pages A8 to A11. Additional information attached at page A12. The application arises from officers requests to:

- A12*
- Provide a complying fence to the immediate swimming pool area. This should be positioned along the line of the existing paving and deck so as to prevent direct access from the landscaped gardens (line **A-A** on page A12).

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

- Granting exemption from fencing the landscaped area as they believe this area does not pose a danger to children;
- Waiving the \$250 application fee due to the prolonged period of the dispute and associated time and stress incurred by their family.

There are no consequential issues arising from this application.

3. **Ngaire Reid & William Wilkinson, 123 Golf Road, Titirangi**

A13-A22 The application and applicant's information is attached at pages A13 to A22. The application arises from officers requests to:

- A21*
- Provide a complying swimming pool fence between the northern corner of the dwelling and the adjacent boundary fence, a fence or gate is required at the corner of the garage immediately next to the spa pool; possibly relocate the existing gate which is currently located at the opposite corner (at line **A-A** and **B-B** on page A21);
 - 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;

- Provide bolts to all sliding or slide-folding doors which provide access to the immediate swimming pool area at a minimum height of 1.5m;
- Provide all lower windows (below 1200mm) which open into the immediate swimming pool area with permanent stays which restrict the window opening to a maximum of 100mm.

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

- A21
- Granting exemption from fencing the immediate pool area (at line **A-A** and **B-B** on page A21) as they consider the fence unnecessary and contend that the property is securely fenced by the block boundary wall and that all doors that could provide access to the pool have been provided with latches;
 - Granting exemption for the doors opening into the immediate pool area under Clause 11 of the schedule to the Act;
 - Waiving the \$250 application fee.

If the Swimming Pool Exemption Committee is inclined to grant the exemption, as sought, there are five consequential issues that arise. These are:

- The gate at the south east corner of the property needs to be self closing, self latching from 150mm and swing away from the pool area. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the gate or whether the gate should be made to comply;
- The doors opening from the lounge need to be self closing, self latching and open outwards. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the lounge doors or whether the lounge doors should be made to comply;
- The door giving access to the garage needs to be self closing or self latching from a distance of 150mm. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the door or whether the door should be made to comply;
- The bedroom, laundry and garage windows need to be fixed with permanent stays which restrict the window opening to a maximum of 100mm. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the windows or whether the windows should be made to comply;
- The clothesline located on the west boundary wall needs to be relocated outside of the exempted pool area. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the clothesline or whether the clothesline should be made to comply.

4. **Raymond & Colleen Kemp, 9 Tawa Road, Te Atatu**

A23-24 The application and applicant's information is attached at page A23. Additional information attached at page A24. The application arises from officers requests to:

- A24
- Provide a fence to the immediate swimming pool area, this should be positioned along the line of the existing paving so that the fence abuts the dwelling on either side.(line **A-A** on page A24);
 - Provide bolts to all sliding or sliding-folding doors which provide access to the immediate swimming pool area at a height of 1.5m;

- Provide all lower windows (below 1200mm) which open into the immediate swimming pool area with permanent stays which restrict the window opening to a maximum of 100mm.

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

- A24
- Granting exemption from the fencing requirement as they consider the whole of their backyard to be their entertainment area, which is not overly large and totally surrounded by fencing (line **B-B** on page A24).

The Kemps have placed security locks on the windows and sliding doors and these items are now complying.

If the Swimming Pool Exemption Committee is inclined to grant the exemptions sought there are two consequential issues that arise:

- Both gates need to be made self closing, self latching from a distance of 150mm. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the gates or whether the gates should be made to comply;
- Gaps underneath the existing boundary fence need to be made less than 100mm. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for gaps in excess of 100mm or whether the fence should be made to comply.

5. **Darryl & Amanda Harvey, 18 Courtneys, Hobsonville**

A25-A31

The application and applicant's information is attached at pages A25 to A30. Additional information attached at page A31. The application arises from officers requests to:

- A31
- Install a complying swimming pool fence so as to provide a pedestrian access way between the street/driveway and the main entrance to the dwelling (front door) which is external to the immediate swimming pool area (at line **A-A** on page A31);
 - 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.

In this case the swimming pool is located adjacent to the main entrance to the property. There is a pedestrian access way from the street/driveway to the front door of the dwelling that does not form part of the immediate swimming pool area.

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

- Granting exemption from the fencing requirement due to the security measures put in place by the applicants;
- Granting exemption from the requirements of the Act for the doors in the dwelling that allow access to the immediate pool area.

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

6. Rodney Wilson & Jill Poulston, 11 Havelle Ave, Green Bay

A32-A33

The application and applicants information is attached at page A32. Additional information is attached at page A33. The application arises from officers requests to:

A33

- Provide a complying swimming pool fence along the line of the existing swimming pool decking. This should be positioned so that one end abuts the existing fence between the driveway and swimming pool, the other should abut the dwelling so as to prevent direct access from the lawns/garden areas (line **A-A** on page A33);
- Ensure that all swinging doors that provide direct access into the immediate swimming pool area are made self-closing and self latching from 150mm and swing away from the swimming pool area.

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

A33

- Granting exemption from the requirement to fence the immediate swimming pool area as the pool is enclosed by the boundary fence (line **B-B** on A33). Granting exemption from the requirement to make all swinging doors providing access into the immediate swimming pool area self closing, self latching from 150mm and swing away from the swimming pool area;
- Waiving the \$250 application fee.

If the Swimming Pool Exemption Committee is inclined to grant the exemptions there are two consequential issues that arise:

- The mid level rail on the timber fence that runs along the northern boundary needs to be removed. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the timber fence or whether the timber fence should be made to comply;
- The gate in the eastern boundary fence needs to be made self closing, self latching from 150mm and swing away from the pool area. The Swimming Pool Exemption Committee will need to consider whether to grant an exemption for the gate or whether the gate should be made to comply.

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 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.

