



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

SWIMMING POOL EXEMPTION COMMITTEE

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

DATE: Tuesday, 15 August 2006 **TIME:** 9.30 am

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.

Pp

10 August 2006

Stephen McDaid
COMMITTEE SECRETARY
(INTERN)

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 TUESDAY, 15 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 TUESDAY, 15 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 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 2 May 2006

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Tuesday, 2 May 2006, 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 ten 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 s6 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 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 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. GM and DR Duncan, 9 Frank Evans Place, Henderson

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
- Provide a fence to the immediate swimming pool area so as to eliminate the access way between the front door and the front gate. Access is shown at page A7.

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 pool has been in existence for a number of years and the improvements which have been made to the property make it difficult for a child to access the pool area unsupervised.

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

- Whether to grant an exemption for the door and gates that open into the immediate swimming pool area or whether they are to be made fully complying, i.e. ensure that all swinging doors that provide access to the immediate swimming and spa pool area are made self closing and self latching from a stationary measured distance of 150mm and are swinging away from the immediate swimming and spa 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.

2. PC and DM Loveday, 11 Riesling Place, Henderson

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

- Ensure that there is a minimum gap of 900mm between either the bottom and middle rails, or the top and middle rails of the wooden fencing, or the middle rail must be removed or made otherwise un-climbable at the gate;
- Ensure that all swinging doors that provide access to the immediate swimming and spa pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate swimming and spa 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;
- Provide all lower windows (below 1.2m) which open into the immediate swimming pool area with permanent stays which restrict the opening of the windows to a maximum of 100mm;
- Remove all items not associated with the use of the swimming pool from within the immediate swimming pool area. I.e. the clothes line, gardening equipment, general storage etc.

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

- A9
- Granting an exemption for the doors under Clause 11 of the Schedule to the Act. The doors have been in place for 10 years. There is a standard lock for the doors as well as locks at the top and bottom (secured by a key lock). The French doors are shown at page A9.

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

3. HL Currell and AK Fennell, 82 Daffodil Street, Titirangi

A10-A12 The application and applicant's information is attached at pages A10 to A11. Additional information is attached at page A12. The application arises from officers requests to:

- 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;
- Ensure that the swimming pool gates are self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate swimming pool area.

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

- A12
- Granting an exemption for the outward swinging door under Clause 11 of the Schedule to the Act as the doors are constructed in such a manner to open outwards and can not be changed. The door has a built in lock and bolt. The adjacent sliding door opens onto into the swimming pool area. Outward opening door shown at page A12;
 - Waiving the \$250 fee.

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

4. SM Russell and R Russell Family Trust, 59A Konini Road, Titirangi

A13-A16 The application and applicant's information is attached at pages A13 to A15. Additional information is attached at page A16. The application arises from a building consent application to construct a pool and pool fence. The building consent has been granted on the basis of a complying fence shown as shown at page A16.

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

- A16*
- Granting an exemption for the requirement to fence the immediate pool area as per the consent (fence line shown dotted) and instead allow the fencing as per exemption proposal (shown dashed) as shown at page A16.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there are a number of consequential issues that arise and the 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 proposed area does not constitute immediate pool area;
- Access ways are created through the pool area;
- Landscaping is included in the proposed pool area;
- Doors and windows open into the proposed area.

5. BE Singleton, 52 Arawa Street, New Lynn

A17 The application and applicant's information is attached at page A17, additional information attached at page A18. The application arises from officers requests to:

- A18*
- Provide a fence to the immediate spa pool area so as to isolate the spa from activities not associated with the spa and to stop direct access from the house and other areas of the property. Spa as shown at page A18.

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

- Granting an exemption from the requirement to fence the immediate spa pool area because the spa pool has a lockable cover which is locked. The key is kept in the house at a height that no child can reach. The spa pool is above ground and is away from the street out of sight at the back of the house.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought the consequential issue that arises is that the spa pool would not be fenced and is accessible from the street via the Right of Way.

NOTE: Property is now owned by A & M Puranik who wish the application to proceed.

6. Peilu Yang & Yunhui Chen, 2/38 Lavelle Road, Henderson

A19-A20 The application and applicant's information is attached at pages A19 to A20. The application arises from officers requests to:

- A21*
- Ensure that all swinging doors which provide access to the immediate swimming and spa 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 and spa 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. Door is shown at page A21;

- Springs on the gate are to be in a vertical position to work effectively;
- Ensure that all swimming pool gates which provide access to the immediate swimming and spa pool area are made self closing and self latching from a stationary measured distance of 150mm;
- Provide all lower windows (below 1.2m) that open into the immediate swimming pool area with permanent stays that restrict the opening of the windows to a maximum of 100mm;
- Thoroughly clean the swimming pool so as to prevent the breeding of mosquitoes;
- Ensure that any other fences or hand rails that abut the swimming pool fencing are a minimum height of 1.2m from the point where they abut the swimming pool fencing, i.e. the neighbour's fence.

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

- Granting an exemption for the outward swinging doors under Clause 11 of the Schedule to the Act as the doors are constructed in such a manner to open outwards and can not be changed. Three locks have been added to the top of the doors;
- Granting an exemption from making the fence un-climbable (from neighbours side).

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought the consequential issue that arises is in relation to the climbable fence is that:

- The fencing is still non compliant in relation to the height at the point where it abuts the swimming pool fencing and is climbable from the neighbour's side.

7. PW and DM Archer, 6 River Road, Te Atatu Peninsula

A22-A25

The application and applicant's information is attached at pages A22 to A24, additional information attached at page A25. 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 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.

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. The French doors were approved by Council under a building consent application (ABA 20031051) that was granted on 26/3/2003.

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

8. SR and KJ Wills, 153A Colwill Road, Massey

A26-A28

The application and applicant's information is attached at pages A26 to A27. Additional information is attached at page A28. The application arises from officers requests to:

- Ensure that all swinging doors that provide access to the immediate spa pool area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate spa 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. Door is shown at page A28.

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 as the spa pool is completely enclosed by four walls. It has a lockable spa pool cover. The internal door to the spa pool from the garage is always locked unless it is in use. The external door is padlocked and is not opened. It is also self closing and self latching from the inside. The whole property is fully fenced to a minimum height of 1.8m.

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

9. PL and SJ Hogg, 4 Rata Road, Whenuapai

A29-A33 The application and applicant's information is attached at pages A29 to A32. Additional information is attached at page A33. The application arises from officers requests to:

- A33
- Provide a fence to the immediate swimming pool area so as to prevent direct access to the pool from the house, lawn and other activities not associated with the pool. Indicative position of required fence shown at page A33.

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 Act has not changed and the applicant is in receipt of a complying letter dated in 2002. There is now a Z lock on each door.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought there are a number of consequential issues that arise and the committee would need to consider whether to grant exemptions for some or all of the issues or whether to seek compliance. The consequential issues that arise are:

- Immediate swimming pool area not fenced;
- Landscaping contained within the pool area;
- Activities not associated with the pool contained within the pool area (Petanque);
- Access ways contained within the pool area;
- Doors that open into the pool area are not complying;
- Windows lower than 1200mm that open into the pool area have openings greater than 100mm.

10. JC Honor, 20 Ockleston Landing, Hobsonville

A34-A36 The application and applicant's information is attached at pages A34 to A35. Additional information is attached at page A36. The exemption application is in support of a building consent application and arises from officers requests to:

- Provide a fence to the immediate swimming pool area so as to prevent access from the grassed area;
- 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 all lower windows (below 1.2m) that open into the immediate swimming pool area with permanent stays that restrict the opening of the windows to a maximum of 100mm.

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

- Granting an exemption for the doors and windows under Clause 11 of the Schedule to the Act as the doors and windows form the main ventilation requirements for the living room. The handles are 1500mm (1.5m) above ground level. The doors open outwards and can not be modified due to the construction of the house. The bi-fold windows are used as a servery to the outside area and restricting the amount that the windows open to 100mm would prevent the windows being used as a servery.

If the Swimming Pool Exemption Committee is inclined to grant the exemption sought 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 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: Neville Colling, Team Manager Operational Compliance.



5 EXEMPTION FEE REFUND APPLICATIONS

PURPOSE OF THE REPORT

The purpose of this report is to recommend the refunds of two swimming pool exemption fees where consideration of the exemptions has already been effected.

BACKGROUND

On 3 March 2006 an exemption was granted to the occupiers of 6 Waimarie Road, Whenuapai, C and J Paterson, and subsequently a refund of the fee was verbally granted at the time the exemption was granted. This was not recorded as part of the resolution in the minutes (490/2006) and as such no record exists for Council officers to follow through and refund the fee.

A37 On 11 May 2006, a letter was received by Executive Manager, written by Pauline Garner who had an exemption granted for her property at 77 Te Kanawa Crescent, Henderson, requesting a refund of her exemption fee. The letter is attached at page A37 and was received after the exemption had been granted.

ISSUES

The policy of the Swimming Pool Exemption Committee is to recommend refunds of the exemption fee, if the exemption is granted, pursuant to a request to Council officers. In this case refunds have been requested by parties who have had exemptions granted. There is no reason apparent to Council officers to refuse the requests by these two parties.

RESOURCES

The exemption fee is \$250, meaning that Council will need to refund \$500 in total for the two parties.

CONCLUSION

A refund of the \$250 exemption fee should be granted to C and J Paterson and Pauline Garner.

RECOMMENDATIONS

1. That the Exemption Fee Refund Applications report be received.
2. That minute number 490/2006 be amended to include the refund of the \$250 exemption fee to be paid to C and J Paterson, occupiers of 6 Waimarie Road, Whenuapai, which was verbally granted at the time.
3. That the \$250 exemption fee paid by Pauline Garner, occupier of 77 Te Kanawa Crescent, Henderson, for an exemption granted for her pool be refunded.

Report prepared by: Stephen McDaid, Committee Secretary (Intern).

