

**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, 31 MARCH 2006,
COMMENCING AT 9.30 AM.**

TABLE OF CONTENTS

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

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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, 10 February 2006

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Friday, 10 February 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 12 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 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. A & L F & J A Smith, 532 South Titirangi Road, Titirangi

A5-A6 The application and applicant's information is attached at page **A5**, additional information attached at page **A6**. The application arises from officers requests to:

- A6
- 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 swing 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. Doors as shown at page **A6**.

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.

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

2. D Stewart, 26 Valley Road, French Bay, Titirangi

A7-A9 The application and applicant's information is attached at pages **A7** and **A8**, additional information attached at page **A9**. The application arises from officers requests to:

- A9
- 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. Spa as shown at page **A9**.

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

- Granting an exemption for the requirement to fence the immediate spa pool area because the spa pool has a lockable cover which is very heavy and can not be lifted by a child. The pool is 90cm above ground. There are dead bolts on all ranch slider doors leading to the outside area. The spa is surrounded by a rock wall and fencing deck area. The house and deck is located in dense bush. The applicants state that they contacted for the council for details prior to purchasing the spa and were instructed that they should buy the pool first as the decision to fence lockable spa pools above ground was still under review and was not final.

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

3. S Pryor, 50a West Lynn Road, Titirangi

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

- 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.

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

- A12
- Granting an exemption for the outward swinging tri fold 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. The doors have built in locks and a deadlock at the top. Doors are shown on page **A12**.

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

4. L J and S R Williams, 120b Konini Road, Titirangi

A13-A20 The application and applicant's information is attached at pages **A13 - A19**. Additional information is attached at page **A20**. The application arises from officers requests to:

- A20
- 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. An indicative position for a fence is shown on page **A20**.

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 all external gates are self locking. The two sliding doors from the house have lockable deadbolts; the windows associated with the sliding doors have been secured to ensure that they can not be opened. The pool area is fenced to a height of 1.2m. The pool is situated approx 200m from Konini Road and is surrounded by bush sections. The grass area is part of the pool use all year round and when the owners are not at home the burglar alarm is activated and the neighbours are informed;
- Waiving the \$250 application fee.

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

5. N and L Petrie, 7 Kopiko Road, Titirangi

A21-A26

The application and applicant's information is attached at pages **A21 - A25**. Additional information is attached at page **A26**. The application arises from officers requests to:

- Ensure that the swimming pool gates are self closing and self latching from a stationary measured distance of 150mm and swing away from the immediate swimming pool area;
- 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 all lower windows (below 1.2m) which open into the immediate swimming pool area with permanent stays which restrict window opening to a maximum of 100mm.

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

A26

- Granting an exemption for the direction the door and gate swing under Clause 11 of the Schedule to the Act as the house is approximately 15 years old and the construction of the doors was done under a permit granted in compliance with the regulations that existed at the time. Door and gate is shown at page **A26**.

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

6. L S and D M Dean, 24 Matuhi Rise, Henderson

A27-A29

The application and applicant's information is attached at pages **A27 - A28**. Additional information is attached at page **A29**. The application arises from officers requests to:

A29

- 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. Doors shown at page **A29**.

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 house was built in the 1970's and it is impossible to hinge French doors in such a way as they become inward swinging;
- Waiving the \$250 application fee.

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

7. J Dart, 50 Te Atatu Road, Te Atatu

A30-A32

The application and applicant's information is attached at pages **A30 - A31**. Additional information is attached at page **A32**. The application arises from officers requests to:

- Provide a fence to the immediate spa pool area so as to prevent direct access from other activities not associated with the spa pool and direct access from the house and the lawn.

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

- Granting an exemption for the requirement to fence the immediate spa pool area, as the swimming pool is fully fenced and meets the regulations and there are deadlocks on the ranch sliders to the back garden. The spa pool has a hinged lid which is locked at all times and the pool is 900mm above ground. The spa pool is situated in a position to allow access and use for the owners son who has cerebral palsy and is in a wheel chair. If the spa pool area was fenced he would be unable to access this area to make use of the spa pool which is a part of his therapy. The spa pool is unable to be repositioned as it is under an enclosed gazebo and is positioned between the posts so it can not be moved. The back garden is also fully fenced.

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

8. W Smith, 7 Mansion Place, West Harbour

A33-A37

The application and applicant's information is attached at pages **A33 - A37**. The application arises from officers requests to:

- A36
- 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 on page **A36**.

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

- Granting an exemption for the inward swinging bi fold doors under Clause 11 of the schedule to the Act. The lounge doors are pre existing as part of the original house and form a significant part of the architecture of the home. The pool was constructed 3-4 years after the house was built. Due to the sewer pipe which runs across the front of the section the pool had to be situated against the house. The doors are the only point of direct access to the pool from the house. These doors are always locked except when the pool is in use, as there is an alternative outdoor living area. The door panels each have a lock top and bottom. The top locks are at the top of the panels which are over 2m high. The bottom locks add security and hold the doors flush. All the panels must be secure in order for the central door to be locked (creating a situation where the doors can not be left unsecured). The central hinged door opens independently and has a key lock 1.6m above floor level. The central door lock secures all the panels. All top and bottom locks must then be released in order to open the doors. The set up of the locks means that the doors are more secure than a ranch slider and the central key lock is more difficult to operate than a ranch slider lever. The handle of the door must also be depressed with force in order to release the doors once they are all unlocked.

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

9. J C Honnor, 20 Ocklestone Landing, Hobsonville

The application and applicant's information is attached at pages **A38 - A39**. The application 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 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.

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 doors are used as a servery to the outside area and restricting the amount they are able to be opened would prevent this happening.

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

10. C. & J. Paterson, 6 Waimarie Road, Whenuapai

A40-A42

The application and applicant's information is attached at pages **A40 - A41**. Additional information is attached at page **A42**. The application arises from officers requests to:

- 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.

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

- Granting an exemption for the French doors that swing into the pool area and the requirement that they be self closing and self latching. The doors are lockable and have child safety barriers fitted in the doorways when the doors are open;
- Waiving the \$250 application fee.

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

11. M G Thompson, 52 Swanson Road, Henderson

A43

A verbal application and application fee has been received from the applicant. Additional information is attached at page **A43**. The application arises from officers requests to:

- 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.

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

- Granting an exemption for the doors, that swing into the pool and spa area, under Clause 11 of the Schedule to the Act as the doors are constructed in such a manner to open outwards.

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

12. C M Jamieson, 3 Pippen Court, Henderson

A44-A45

The application and applicant's information is attached at page **A44**. Additional information is attached at page **A45**. The application arises from officers requests to:

- 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;

- Provide all lower windows (below 1.2m) which open into the immediate swimming and spa 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:

- Granting an exemption for the direction the doors swing under Clause 11 of the Schedule to the Act as the doors are constructed in such a manner to open outwards. The French doors can not be modified to be self closing and self latching.

Note: Council officers consider the area of landscaping in the south eastern corner to be marginal and would therefore ask the Swimming Pool Exemption Committee to consider the landscaping and grant exemption for the landscaping.

If the Swimming Pool Exemption Committee is inclined to grant the exemptions as 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.

