

**AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION COMMITTEE TO BE
HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON THURSDAY, 4 OCTOBER 2007
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 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 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected 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, 30 August 2007

RECOMMENDATION

That the minutes of the Meeting of the Swimming Pool Exemption Committee held on Thursday, 30 August 2007, as circulated, be taken as read and now be confirmed.



5 APPLICATIONS FOR SPECIAL EXEMPTIONS - FENCING OF SWIMMING POOLS ACT 1987

PURPOSE OF THE REPORT

The purpose of this report is to present nine 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 (Schedule 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 three 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 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 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 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

	Applicant	Property Address	A Pages	Non Complying items - Exemption is sought for:
1	Frank McDonald	54 Roy Maloney Drive	A5-A11	Outward opening French door Refund of exemption fee.
2	John C Tik	58 Kirby Street	A12-A17	Provide a fence to the immediate SWP area, so as to prevent direct access from the deck area and the thoroughfare around the pool to the double gates from the drive.
3	Philip and Pauline Renall	78 Opanuku Road	A18-A25	Provide a fence to the immediate SWP area so as to prevent direct access from the deck area.
4	P McCarthy and S Selwood	68 Anzac Valley Road	A26-A30	Provide a fence to the immediate SWP area so as to prevent direct access from the non-complying doors to the house.
5	J McGregor	98 Bethells Road	A41-A43	Provide a fence to the immediate SWP area to prevent direct access from the non-complying French doors.
6	L G Maskell	93 Totara Road	A44-A48	To keep therapeutic pool unfenced and keep equipment shed and sunbathing area as marked on plan.

	Applicant	Property Address	A Pages	Non Complying items - Exemption is sought for:
7	Gary Wilson	2A Wendy Road	A31-A40	<p>Provide a fence to the immediate Swimming pool area, so as to prevent direct access from the non-complying doors from the house and the landscaping.</p> <p>Ensure that the Swimming fence is a minimum height of 1.2m, by the timber steps in the bank.</p> <p>Ensure that the Swimming pool gates are self closing and self latching from a stationary measured distance of 150mm.</p> <p>Ensure all lower windows (below 1.2m) which open into the immediate Swimming pool area with permanent stays which restrict the window opening to a maximum of 100mm.</p>
8	T and N Mason	210 Royal Road	A49-A51	<p>Ensure that all swinging doors which provide access to the immediate SWP area are made self closing and self latching from a stationary measured distance of 150mm, and are swinging away from the immediate SWP area. Set of doors to latch and close independently of each other.</p>
9	D G Jerard and R N Cavet	56 Makora Road	A52-A53	<p>Exemption for gate providing pedestrian access via pool area.</p>

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: Wolfgang Nethe, Team Manager Operational Compliance.

