



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

SWIMMING POOL EXEMPTION SUBCOMMITTEE

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

DATE: Thursday, 21 February 2008 **REVISED TIME:** 9.00 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.

14 February 2008

Emma Joyce
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8950

MEMBERSHIP:

Councillors	WW	Flaunty, QSM JP, (Chairman)
	DQ	Battersby, JP (Deputy Chairman)
	LA	Cooper, JP
	PA	Hulse
	MM	Jolley
	PG	Mitchell

(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 SUBCOMMITTEE
TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,
HENDERSON, WAITAKERE, ON THURSDAY, 21 FEBRUARY 2008
COMMENCING AT 9.00 AM**

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1	APOLOGIES	1
2	URGENT BUSINESS	1
3	CONFLICTS OF INTEREST	1
4	PRESENTATION	1
5	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 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 PRESENTATION

The Legal Services Manager will give a presentation on the legal issues surrounding applications for exemption from the Fencing of Swimming Pools Act 1987.



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

GLOSSARY

Fencing of Swimming Pools Act 1987 (the Act)

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 Subcommittee 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 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 Subcommittee 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 Subcommittee to accept an oral application for any further exemptions that may be necessary. The Committee Secretary will record the application made. If the Subcommittee 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	John & Judy Williams	12 Chablis Place, Henderson	A5-A6	<ul style="list-style-type: none"> • Door opening into pool area. • Fee waiver.
2	S J Bosman	5 Khaleel Place, Henderson	A7-A10	<ul style="list-style-type: none"> • Aluminium doors opening into pool area. • Doors not self-closing.
3	Greg Sneddon	1 Blythe Place, Glendene	A11-A14	<ul style="list-style-type: none"> • Fencing off french-door opening into pool area. • Gate accessing spa area.
4	Peter Law	6 May Ave, Te Atatu South	A15-A16	<ul style="list-style-type: none"> • Fencing of immediate pool area (from landscaped garden area).

	Applicant	Property Address	A Pages	Non Complying items - Exemption is sought for:
5	Barry & Deborah McCullough	20 Taikata Rd, Te Atatu Peninsula	A17-A18	<ul style="list-style-type: none"> Fencing off landscaped area. Fee waiver.
6	JR & KM Evans	741B Swanson Road, Swanson	A19-A21	<ul style="list-style-type: none"> 2 aluminium French doors opening into pool area (not self closing). Fee waiver.
7	Christopher & Linda Muller	41 Woodglen Road, Glen Eden	A22-A25	<ul style="list-style-type: none"> French door not self latching and opening into pool area. Fee waiver.
8	MA Stack & WR Trustees Ltd	51 Kay Road, Swanson	A26-A29	<ul style="list-style-type: none"> Provide pool fence to the immediate swimming pool area, so as to prevent direct access to the landscaped area.
9	M Kumerich	201 Forest Hill Road, Waiatarua	A30-A34	<ul style="list-style-type: none"> Provide a fence to the immediate pool area so as to isolate the pool and stop direct access from the house, games room and garage.
10	Andrew Higgs	47 Te Ahuahu Road, Piha	A35-A37	<ul style="list-style-type: none"> Bi-fold door opening into pool area, not self closing.

The Swimming Pool Exemption Subcommittee has the discretion to waive the fee for the Swimming Pool exemption applications but the criteria for waiving the fee is to be considered at this meeting.

CONCLUSION

Each of the applicants is seeking exemption from the Act for matters where Council staff consider 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 Subcommittee 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.

