



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: Monday, 30 August 2010 **TIME:** 9.30 am

MEETING ROOM: Waitemata Room

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.

25 August 2010

Emma Joyce
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8114

MEMBERSHIP:

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

(Quorum 3 members)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

(Meeting Room could be subject to change)

(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 IN THE WAITEMATA ROOM AT WAITAKERE CENTRAL, 6 HENDERSON
VALLEY ROAD, HENDERSON, WAITAKERE, ON MONDAY, 30 AUGUST 2010,
COMMENCING AT 9.30 AM**

TABLE OF CONTENTS

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

**AGENDA FOR A MEETING OF THE SWIMMING POOL EXEMPTION SUBCOMMITTEE TO
BE HELD IN THE WAITEMATA ROOM AT WAITAKERE CENTRAL, 6 HENDERSON
VALLEY ROAD, HENDERSON, WAITAKERE, ON MONDAY, 30 AUGUST 2010,
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 Subcommittee 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 Subcommittee 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 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 – Monday, 21 June 2010

RECOMMENDATION

It is recommended that the Swimming Pool Exemption Subcommittee resolve to:

Receive the minutes of the meeting of the Swimming Pool Exemption Subcommittee held on Monday, 21 June 2010, as circulated, and that they be taken as read and now be confirmed.



5 **APPLICATIONS FOR SPECIAL EXEMPTIONS – FENCING OF SWIMMING POOLS ACT 1987**

GLOSSARY

Fencing of Swimming Pools Act 1987	(the Act)
Swimming Pool Exemption Subcommittee	(the Subcommittee)
Swimming pool	(pool)

EXECUTIVE SUMMARY

The purpose of this report is to present to the Swimming Pool Exemption Subcommittee (the Subcommittee) seven applications for special exemptions from some of the requirements of the Fencing of Swimming Pools Act 1987 (the Act).

The Subcommittee must consider each of the applications for special exemption and either decline, approve or approve (subject to conditions) the exemptions sought.

RECOMMENDATIONS

It is recommended that the Swimming Pool Exemption Subcommittee resolve to:

1. **Receive** the Applications for Special Exemptions – Fencing of Swimming Pools Act 1987 report.
2. **Either**
 - (a) Agree to approve (subject to conditions) the application for special exemptions sought; OR
 - (b) Agree to decline the application for special exemptions sought.

BACKGROUND

- A1
1. 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 swimming pool (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
2. 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.”*
 3. 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 Building 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 of the Act in respect of doors opening from a building into a pool area.

4. 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.
5. 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 (section 6(2) of the Act). 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?; and
 - 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 pool in the City are re inspected on a, approximate three yearly cycle).
6. 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.
7. 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.

DECISION MAKING

Issues

	Applicant	Property Address	A Pages	Non Complying Items - Exemption is Sought for:
1	CJ Carney	206 Carter Road, Oratia	A5 - A7	<ul style="list-style-type: none"> • Non-complying single door opening out into the pool area.
2	JA MacDonald and MP MacDonald and Clive Jackson Trustee Limited	54 Tainui Road, Titirangi	A8 – A12	<ul style="list-style-type: none"> • To permanently secure the gate on the north side of the house. • To remove the clothes line from the immediate pool area.

	Applicant	Property Address	A Pages	Non Complying Items - Exemption is Sought for:
3	P Malone	146 Takahe Road, Titirangi	A13 – A16	<ul style="list-style-type: none"> To ensure that the pool fence is a minimum height of 1.2 metres. To ensure that the pool gates are self closing and self latching from a stationary measured distance of 150 millimetres. The requirement to fit a latching device at either 1.2 metres if located on the inside and accessible from the outside only by reaching over the gate (not accessible by reaching through the gate) or at 1.5 metres on the outside of the gate. To provide all lower windows (below 1.2 metres) which open into the immediate pool area with permanent stays to restrict the windows opening width to max 100 millimetres. To ensure that any other fences or handrails etc., which abut the pool fencing are of a minimum height of 1.2 metres and are unclimbable for a minimum distance of 1.2 metres from the point where they abut the pool fencing, i.e., handrail on stairs and step in glass fence. Fee waiver.
4	V Kovach and J Fitzpatrick	720 West Coast Road, Oratia	A17 – A19	<ul style="list-style-type: none"> Non-complying double doors opening into the pool area.
5	SJ Sedgley and PJ Sedgley	180 Mountain Road, Henderson Valley	A20 – A22	<ul style="list-style-type: none"> To provide a fence to the immediate pool area.
6	Sunnyvale School Board of Trustees	34 Ribblesdale Road, Sunnyvale	A23 – A26	<ul style="list-style-type: none"> Non complying door opening into the pool area from the toilet block.
7	CE Draper	6 Bayside Avenue, Te Atatu Peninsula	A27 – A30	<ul style="list-style-type: none"> To ensure that the gap beneath the swimming and spa pool fence and gate is not greater than the maximum allowable 100 millimetres. The requirement to remove all items not associated with the use of the pools from the immediate pool area (pool shed), e.g. gym equipment and piano.

Options Identified

- The Subcommittee may approve, approve (subject to conditions) or decline the applications for special exemption.
- If an application is declined this equates to the “do nothing option” resulting in the applicant being required to fence their pool in accordance with the Act.

Consideration of Community Views

10. Compliance with the Act is a mandatory requirement for pool owners.

Preferred Option

11. The special exemption options open to the Subcommittee under the Act are not open to Council officers therefore it is considered inappropriate for Council officers to identify a preferred option. It is recommended that the application for the fee waiver be declined.

STRATEGIC CONTEXT

12. The Council is committed to ensuring that Waitakere is a safe place to live and play in. Pool fencing issues have a strong relationship with the Council's strategic priorities of First Call for Children and Safe City.

CONSULTATION

13. Each special exemption application has been discussed with the pool fencing inspector involved in the initial inspection. As special exemptions cannot be considered by Council officers their opinions are not included in the report.

RESOURCES

14. There are no additional resources required to implement the decisions of the Subcommittee.
15. The Subcommittee has the discretion to waive the fee for the special exemption application.

IMPLEMENTATION ISSUES

16. Each of the applicants is seeking exemption from the Act for matters where Council officers consider that remedial action is necessary to achieve compliance with the Act. If an exemption is granted those items 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).

AUCKLAND COUNCIL TRANSITION ISSUES

17. The decision making proposed in this report is not constrained by section 31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, as it does not directly or because of its consequences: significantly prejudice the reorganisation, significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation, or have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.

Report prepared by: Wolfgang Nethe, Team Manager: Operational Compliance.

