

I hereby give notice that an ordinary meeting of the Manurewa Local Board Swimming Pool Fencing Exemptions Committee will be held on:

**Date:** Wednesday, 12 February 2014  
**Time:** 2:30pm  
**Meeting Room:** Manurewa Local Board Office  
**Venue:** Meeting Room  
7 Hill Road  
Manurewa

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## **Manurewa Local Board Swimming Pool Fencing Exemptions Committee**

### **OPEN AGENDA**

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#### **MEMBERSHIP**

<b>Chairperson</b>	Danella McCormick
<b>Deputy Chairperson</b>	
<b>Members</b>	Michael Bailey Angela Cunningham-Marino Hon George Hawkins, QSO

(Quorum 2 members)

**Lee Manaia**  
**Local Board Democracy Advisor**

**5 February 2014**

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**1 Welcome**

**2 Apologies**

At the close of the agenda no apologies had been received.

**3 Declaration of Interest**

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

**4 Public Forum**

A period of time (approximately 30 minutes) is set aside for members of the public to address the meeting on matters within its delegated authority. A maximum of 3 minutes per item is allowed, following which there may be questions from members.

At the close of the agenda no requests for public forum had been received.



## Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987

File No.: CP2014/01526

### Purpose

1. The purpose of this report is to present to the Manurewa Local Board 4 applications for special exemptions from some of the requirements of the Fencing of Swimming Pools Act 1987 (The Act).

### Executive Summary

2. The Local Board must conduct a hearing and consider each of the applications for special exemption. The Local Board must resolve to decline, grant or grant subject to conditions, the exemptions sought.

### Recommendation/s

- a) That the report be received.
- b) That the Local Board receive the applications by:
  - i) **Shane Powell & Gillian Rudd – 18 Ranfurly Road, Alfriston**
  - ii) **Daniel Trotman – 18A Saralee Drive, Manurewa**
  - iii) **Gregory Lowe – 21 Paulownia Place, Totara Heights**
  - iv) **Lesley & Dean Beatson – 31 St Annes Cres, Wattle Downs**
- c) That the Local Board determine each application, by way of resolution, to:
  - i) grant the application for special exemption as sought, or
  - ii) grant the application subject to conditions, or
  - iii) declining the application for special exemption sought

### Discussion

3.
  - a) Each property, which is the subject of an application before the Local Board, has been inspected by Auckland Council pool inspectors. In each case, the swimming/spa pool fencing does not comply with that Act. The details of non-compliance in each case vary and are specified in the attachments to this report. Each applicant has chosen to seek a special exemption from the requirements of the Act.
  - b) The purpose of the Act is stated to be **“to promote the safety of young children by requiring the fencing of ... swimming pools”**.
  - c) The Act requires pool owners to fence their pool with a fence. Specific detail on the means of achieving compliance with the Act is contained in the schedule to the Act. If a pool is not fenced with a complying fence it is an offence under the Act, unless exempt.

- d) An exemption can only be granted by the Local Board after a consideration of the particular characteristics of the property and the pool, other relevant circumstances and taking into account any conditions it may impose. Then, only if **“satisfied that an exemption would not significantly increase the danger to young children”**, can an exemption be granted.
- e) Defining the immediate pool area will be relevant to considerations concerning the property and the pool. The immediate pool area means the land in or on which the pool is situated and as much of the surrounding area that is used for activities or purposes related to the use of the pool. The Act provides that the fence should be situated to prevent children moving directly to the pool from the house, other buildings, garden paths and other areas of the property that would normally be available to young children.
- f) Another common consideration for Local Boards in exemption applications will be instances where a building forms part of the pool fence. Where doors from a building open into the pool area, the Territorial Authority may grant an exemption from compliance with clauses 8 to 10 of the schedule to the Act. It may exempt if it is satisfied that compliance with the Act 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**. If the Local Board is satisfied that a door within a wall in a building meets that test, the Local Board must also be satisfied that **an exemption would not significantly increase the danger to young children**.
- g) 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) of the Act). Issues to be considered include:
  - a. 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 been considered as a relevant circumstance and had a bearing on the exercise of the discretion
  - b. Will the exemption be granted for a fixed term and irrespective of changes of ownership so that the exemption runs with the property?
  - c. Are there any other conditions which should be imposed, repairs to existing fencing, or a requirement for more frequent inspection of the pool (currently pools are inspected every three years).
- h) Any exemption granted or condition imposed may be amended or revoked by the swimming pool exemption committee 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.

## Consideration

- 4. The recommendations contained within this report fall within the Local Board’s delegated authority.
- 5. The Act enables an exemption to be granted from clauses 8 to 10 of the Act (doors in walls of buildings) if the Local Board is **satisfied** that compliance with the Act **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**.
- 6. The overarching consideration in terms of the Act is that a resolution to grant an exemption may only be made **after** having regard to the particular characteristics of the property and the pool, any other relevant circumstances and any conditions it may impose, and only if it is

satisfied that such an exemption would not significantly increase the danger to young children.

7. The Local Board may resolve to grant, grant subject to conditions, or decline an application for special exemption.
8. If an application is declined the applicant will be required to fence their pool in accordance with the Act.
9. The exemption hearing process under the Act does not trigger the significance policy but it is an important statutory function.
10. The Council is committed to ensuring the Auckland is a safe place for children to live and play in. Pool fencing issues have a strong relationship with the Council's strategic priorities for community safety.

### Local Board Views

11. The Local Board is the decision maker in relation to exemption applications under the Act.

### Maori Impact Statement

12. This report does not raise issues of particular significance for Maori.

### General

13. Compliance with the Act is a mandatory requirement for all pool owners unless exempt.
14. Council's pools inspectors have consulted with the applicants in each case. Applicants have been made aware of the Council's requirements to ensure fencing is compliant with the Act. The applicants have elected to seek a special exemption for individual reasons.

### Implementation Issues

15. The decision must be made by resolution and contain conditions (if any).

### Attachments

No.	Title	Page
A	18 Ranfurly Rd Application - <b>CONFIDENTIAL</b>	
B	18 Ranfurly Rd evaluation sheet	11
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### Signatories

Authors	Chant'e Bellve - Swimming Pool Inspector
Authorisers	Ian McCormick - Manager Building Control Rex Hewitt - Relationship Manager



## SWP Exemption Evaluation Sheet

<b>Address:</b> 18 Ranfurly Road, Manurewa	<b>Date:</b> 17 April 2013
<b>Item(s) requested in accordance with SWP Act 1987 at last inspection:</b>  Swimming pool fencing fully complies, Spa pool not fenced.	
<b>Item(s) exemption is applied for:</b>  Spa pool to use lockable cover as acceptable means of compliance as set out in NZ8500 3.10.	
<b>Comments:</b>  The spa pool is not compliant with the schedule of FOSPA 1987 but compliant with NZS 8500-2006. Compliance with the standard is regarded to provide a child safe alternative to a fence that complies with the schedule of FOSPA 1987. It is therefore recommended that the special exemption be granted under the condition that ongoing compliance with NZS8500-2006 is maintained at all times.	

### Committee Member Comments:

Item 5

Attachment B

**A**

## SWP Exemption Evaluation Sheet

<b>Address:</b> 18A Saralee Drive, Manurewa	<b>Date:</b> 23 August 2013
<b>Item(s) requested in accordance with SWP Act 1987 at last inspection:</b>  Spa pool is empty, applying for a special exemption.	
<b>Item(s) exemption is applied for:</b>  Spa pool to use lockable cover as acceptable means of compliance as set out in NZ8500 3.10.	
<b>Comments:</b>  The pool fence is not complying with FOSPA 1987 and not complying with NZS8500-2006 in that there is a metal horizontal wire fence and a small retaining wall within 1200mm of the spa pool. Compliance with NZS8500-2006 is regarded to be a child safe alternative to compliance with the schedule of FOSPA. It is therefore recommended either to decline the application or to grant the application with the condition that the spa pool be moved or climbable objects are made non-climbable.	

### Committee Member Comments:

Item 5

Attachment D

**A**

## SWP Exemption Evaluation Sheet

<b>Address:</b> 21 Paulownia Place, Manurewa	<b>Date:</b> 15 January 2014
<b>Item(s) requested in accordance with SWP Act 1987 at last inspection:</b>  Spa pool needs to be fenced as per the Fencing of Swimming Pools Act 1987.	
<b>Item(s) exemption is applied for:</b>  Spa pool to use lockable cover as acceptable means of compliance as set out in NZ8500 3.10.	
<b>Comments:</b>  The pool fence is not complying with FOSPA 1987 and not complying with NZS8500-2006 in that the spa is not 760mm from the deck level. Compliance with NZS8500-2006 is regarded to be a child safe alternative to compliance with the schedule of FOSPA. It is recommended that the application is declined unless the elected members are satisfied, having regard to the particular characteristics of the property and pool and any other relevant circumstances, that the granting of exemption will not significantly increase the danger to young children.	

### Committee Member Comments:

Item 5

Attachment F

**A**

## SWP Exemption Evaluation Sheet

<b>Address:</b> 31 St Annes Cres, Manurewa	<b>Date:</b> 17 December 2013
<b>Item(s) requested in accordance with SWP Act 1987 at last inspection:</b>  Please fence the spa pool as per the Fencing of Swimming Pools Act 1987.	
<b>Item(s) exemption is applied for:</b>  Spa pool to use lockable cover as acceptable means of compliance as set out in NZ8500 3.10.	
<b>Comments:</b>  The spa pool is not compliant with the schedule of FOSPA 1987 but compliant with NZS 8500-2006. Compliance with the standard is regarded to provide a child safe alternative to a fence that complies with the schedule of FOSPA 1987. The photo's/plans provided with this application are recent and clearly show the position of the pool and provide all information to determine that the pool is compliant with the standard. It is therefore recommended that the special exemption be granted under the condition that ongoing compliance with NZS8500-2006 is maintained at all times.	

### Committee Member Comments:



## Exclusion of the Public: Local Government Official Information and Meetings Act 1987

That the Manurewa Local Board Swimming Pool Fencing Exemptions Committee:

- a) exclude the public from the following part(s) of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

### 5 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment A - 18 Ranfurly Rd Application

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.  In particular, the report contains details about access to the property that should remain confidential to protect the privacy of the applicant..	s48(1)(a)  The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

### 5 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment C - 18A Saralee Dr Application

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.  In particular, the report contains details about access to the property that should remain confidential to protect the privacy of the applicant..	s48(1)(a)  The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

### 5 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment E - 21 Paulownia Pl Application

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.  In particular, the report contains details about access to the property that should remain confidential to protect the privacy of the applicant..	s48(1)(a)  The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

**5 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment G - 31 St Annes Cres Application**

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
<p>The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.</p>	<p>s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.</p> <p>In particular, the report contains details about access to the property that should remain confidential to protect the privacy of the applicant..</p>	<p>s48(1)(a)</p> <p>The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.</p>