



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

Date: Friday, 5 September 2014

Time: 1.30pm

Meeting Room: Local Board Office

Venue: 2 Glen Road

Browns Bay

Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions Committee

OPEN AGENDA

MEMBERSHIP

Chairperson

Julia Parfitt, JP

Deputy Chairperson

Janet Fitzgerald, JP

Members

Gaye Harding-Kirikiri

Lisa Whyte

(Quorum 2 members)

Vivienne Sullivan

Local Board Democracy Advisor

1 September 2014

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ITEM	TABLE OF CONTENTS	PAGE
1	Welcome	5
2	Apologies	5
3	Declaration of Interest	5
4	Confirmation of Minutes	5
5	Leave of Absence	5
6	Acknowledgements	5
7	Petitions	5
8	Deputations	5
9	Public Forum	5
10	Extraordinary Business	5
11	Notices of Motion	6
12	Report Name: Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987	7
13	Consideration of Extraordinary Items	

PUBLIC EXCLUDED

14	Procedural Motion to Exclude the Public	11
12	Report Name: Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987	
A.	21 Garadice Road, Rothesay Bay	11
B.	55 Seaton Road, Murrays Bay	11
C.	48 Penzance Road, Mairangi Bay	11
D.	10 Albatross Road, Red Beach	11
E.	106 Wade River Road, Arkles Bay	11
F.	1458 Whangaparaoa Road, Army Bay	11
G.	49 William Bayes Place, Red Beach	11

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 Confirmation of Minutes

That the Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions Committee:

- a) confirm the ordinary minutes of its meeting, held on Friday, 15 August 2014, including the confidential section, as a true and correct record.

5 Leave of Absence

At the close of the agenda no requests for leave of absence had been received.

6 Acknowledgements

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

7 Petitions

At the close of the agenda no requests to present petitions had been received.

8 Deputations

Standing Order 3.20 provides for deputations. Those applying for deputations are required to give seven working days' notice of subject matter and applications are approved by the Chairperson of the Board. This means that details relating to deputations can be included in the published agenda. Total speaking time per deputation is ten minutes or as resolved by the meeting.

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

9 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.

10 Extraordinary Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

- (a) The local authority by resolution so decides; and
- (b) The presiding member explains at the meeting, at a time when it is open to the public,-
 - (i) The reason why the item is not on the agenda; and
 - (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

- (a) That item may be discussed at that meeting if-
 - (i) That item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

11 Notices of Motion

At the close of the agenda no requests for notices of motion had been received.

Report Name: Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987

File No.: CP2014/18662

Purpose

1. To enable the Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions Committee to conduct a hearing and consider the following applications for special exemption from some of the requirements of the Fencing of Swimming Pools Act 1987.

Executive summary

2. The Fencing of Swimming Pools Act 1987 requires that only local boards can give exemptions to certain parts of the Act.
3. The applicants have asked that the local board grant them an exemption for their spa pools as they comply with the requirements for exemptions from the Act.
4. The local board must resolve to grant, grant subject to conditions or decline the exemptions sought.

Recommendation/s

That the Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions Committee:

- a) receive the applications by:
 - i. Judy Lee – 21 Garadice Road, Rothesay Bay
 - ii. Jenny Draper – 55 Seaton Road, Murrays Bay
 - iii. Lance Newing – 48 Penzance Road, Mairangi Bay
 - iv. Logan Cullen and Mel Lewin, 10 Albatross Road, Red Beach
 - v. Brian Francis Perry, 106 Wade River Road, Arkles Bay
 - vi. Sonya Baldwin, 1458 Whangaparaoa Road, Army Bay
 - vii. G and S Bishop, 49 William Bayes Place, Red Beach
- b) 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. decline the application for special exemption sought

Comments

5. 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 pool fencing does not comply with the Act. The details of the non-compliance are specified in the attachments to this report. Council's pool inspectors have consulted with the applicants in each case. The applicants have been made aware of the council's requirements to ensure

fencing is compliant with the Act and they have chosen to seek a special exemption from the requirements of the Act for individual reasons.

6. The purpose of the Act is “to promote the safety of young children by requiring the fencing of swimming pools”.
7. The Act requires pool owners to fence their pool. Specific detail on this is contained in the schedule to the Act. If a pool does not have complying fence it is an offence under the Act, unless exempt.
8. 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.
9. The definition of the immediate pool area, which is “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”, is a key consideration for granting an exemption.
10. The Act says the fence should be situated to prevent children from 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.
11. Where a building forms part of the pool fence and there are doors opening into the pool area, the local board may grant an exemption from compliance with clauses 8 and 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.
12. When granting a special exemption the local board may impose such other conditions relating to the property or the pool as are reasonable in the circumstances. These may 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?
 - b. Will the exemption be granted for a fixed term and irrespective of changes of ownership?
 - c. Are there any other conditions which should be imposed, repairs to existing fencing or a requirement for a more frequent inspection of the pool?

Strategic Links

13. The council is committed to ensuring that 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.

Legal and Legislative Implications

14. Compliance with the Act is a mandatory requirement for all pool owners unless exemptions are granted by the local board.

Consideration

Local board views and implications

15. The recommendations contained within this report fall within the local board’s delegated authority.
16. 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.

17. The local board may resolve to grant, grant subject to conditions, or decline the application for special exemption.
18. If the application is declined the applicant will be required to fence the pool in accordance with the Act.

Māori impact statement

19. There are no particular impacts on Maori that are different from those of other pool owners.

Implementation

20. The decision must be made by resolution.

Attachments

No.	Title	Page
A	21 Garadice Road, Rothesay Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
B	55 Seaton Road, Murrays Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
C	48 Penzance Road, Mairangi Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
D	10 Albatross Road, Red Beach (<i>Under Separate Cover</i>) - CONFIDENTIAL	
E	106 Wade River Road, Arkles Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
F	1458 Whangaparaoa Road, Army Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
G	49 William Bayes Place, Red Beach (<i>Under Separate Cover</i>) - CONFIDENTIAL	

Signatories

Authors	Phillip Curtis - Senior Swimming Pool Specialist
Authorisers	Barry Smedts - Manager Compliance Lesley Jenkins - Relationship Manager

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

That the Hibiscus and Bays 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.

12 Report Name: Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachments A - G

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.	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.