

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

Date: Tuesday, 25 November 2014
Time: 11.30am
Meeting Room: Howick Local Board Meeting Room
Venue: Pakuranga Library Complex
7 Aylesbury Street
Pakuranga

Howick Local Board Swimming Pool Fencing Exemptions Committee OPEN AGENDA

MEMBERSHIP

Chairperson	David Collings
Deputy Chairperson	Garry Boles
Members	Jim Donald John Spiller

(Quorum 2 members)

Lynda Pearson
Local Board Democracy Advisor

18 November 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 Confirmation of Minutes

That the Howick Local Board Swimming Pool Fencing Exemptions Committee:

- a) confirm the ordinary minutes of its meeting, held on Tuesday, 29 July 2014, as a true and correct record.

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

File No.: CP2014/26533

Purpose

1. The purpose of this report is to present to the Howick 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

That the Howick Local Board Swimming Pool Fencing Exemptions Committee:

- a) That the report be received.
- b) That the Local Board receive the applications by:
 - i) PD & AM Goodwin – 269B Bleakhouse Road, Howick
 - ii) Warren & Margaret Long – 509 Whitford Road, RD, Howick
 - iii) MS & SA Downs – 5 Dell Way, Bucklands Beach
 - iv) Murray Kee- 20A The Parade, Bucklands Beach
- 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) decline 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:
 - i) 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.
 - ii) Will the exemption be granted for a fixed term and irrespective of changes of ownership so that the exemption runs with the property?
 - iii) 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

The recommendations contained within this report fall within the Local Board’s delegated authority.

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.

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.

The Local Board may resolve to grant, grant subject to conditions, or decline an application for special exemption.

If an application is declined the applicant will be required to fence their pool in accordance with the Act.

The exemption hearing process under the Act does not trigger the significance policy but it is an important statutory function.

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

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

Maori Impact Statement

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

General

6. Compliance with the Act is a mandatory requirement for all pool owners unless exempt. 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

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

Attachments

No.	Title	Page
A	269B Bleakhouse Road, Mellons Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
B	509 Whitford Road, RD, Howick (<i>Under Separate Cover</i>) - CONFIDENTIAL	
C	5 Dell Way, Bucklands Beach (<i>Under Separate Cover</i>) - CONFIDENTIAL	
D	20A The Parade, Bucklands Beach (<i>Under Separate Cover</i>) - CONFIDENTIAL	

Signatories

Authors	Phillip Curtis - Senior Swimming Pool Specialist
Authorisers	Barry Smedts - Manager Compliance Teresa Turner - Relationship Manager

