

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

Date: Wednesday, 18 March 2015
Time: 9.30am
Meeting Room: Whau Local Board Office
Venue: 31 Totara Avenue
New Lynn

Whau Local Board Swimming Pool Fencing Exemptions Committee

OPEN AGENDA

MEMBERSHIP

Chairperson Susan Zhu
Members Duncan Macdonald, JP
Simon Matafai
Ruby Manukia-Schaumkel

(Quorum 2 members)

Glenn Boyd
(Relationship Manager)
Local Board Services (West)

Riya Seth
Democracy Advisor

12 March 2015

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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	Submissions from applicants	5
7	Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987	7
PUBLIC EXCLUDED		
8	Procedural Motion to Exclude the Public	11
7	Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987	
A.	1 Links Road, New Lynn	11
B.	58 McFadzean Drive, Blockhouse Bay	11
C.	43 Tahi Terrace, New Lynn	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 Whau Local Board Swimming Pool Fencing Exemptions Committee:

- a) Confirms the ordinary minutes of its meeting, held on Thursday, 28 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 Submissions from applicants

At the meeting applicants will be given the chance to explain their application to the committee, should they wish to do so.

You will have the chance to present additional information that supports your application. The committee might ask you questions about your application.

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

File No.: CP2015/02025

Purpose

1. The purpose of this report is to present to the Whau Local Board three applications for special exemption 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 exemption sought.

Recommendations

That the Whau Local Board Swimming Pool Fencing Exemptions Committee:

- a) Receives the applications by:
 - i) Brian & Lynda Chase – 1 Links Road, New Lynn
 - ii) Geoff Hamer – 58 McFadzean Drive, Blockhouse Bay
 - iii) Trudy Wyatt – 43 Tahi Terrace, New Lynn
- b) Determines the 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

Discussion

3. 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.
4. The purpose of the Act is stated to be “to promote the safety of young children by requiring the fencing of ... swimming pools”.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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).
10. 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

11. The recommendations contained within this report fall within the Local Board's delegated authority.
12. 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.
13. 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.
14. The Local Board may resolve to grant, grant subject to conditions, or decline an application for special exemption.
15. If an application is declined the applicant will be required to fence their pool in accordance with the Act.

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

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

Maori impact statement

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

General

20. Compliance with the Act is a mandatory requirement for all pool owners unless exempt.
21. 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

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

Attachments

No.	Title	Page
A	1 Links Road, New Lynn (<i>Under Separate Cover</i>) - CONFIDENTIAL	
B	58 McFadzean Drive, Blockhouse Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
C	43 Tahi Terrace, New Lynn (<i>Under Separate Cover</i>) - CONFIDENTIAL	

Signatories

Author	Phillip Curtis - Senior Swimming Pool Specialist
Authorisers	Barry Smedts - Manager Compliance Glenn Boyd - Relationship Manager Henderson-Massey, Waitakere Ranges, Whau

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

That the Whau Local Board Swimming Pool Fencing Exemptions Committee:

- a) Excludes 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.

7 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment A - 1 Links Road, New Lynn

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.

7 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment B - 58 McFadzean Drive, Blockhouse Bay

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.

7 Swimming Pool Fencing Exemption – Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachment C - 43 Tahi Terrace, New Lynn

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.