

I hereby give notice that an ordinary meeting of the Waitematā Local Board Hearings Committee will be held on:

Date: Thursday, 9 April 2015
Time: 11.00 am
Meeting Room: Waitematā Local Board Room
Venue: Level 2
35 Graham Street

Waitematā Local Board Hearings Committee OPEN AGENDA

MEMBERSHIP

Chairperson	Christopher Dempsey
Deputy Chairperson	Vernon Tava
Members	Greg Moyle Deborah Yates

(Quorum 2 members)

**Desiree Tukutama
Democracy Advisor**

2 April 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	Acknowledgements	5
7	Petitions	5
8	Deputations	5
9	Public Forum	5
10	Extraordinary Business	5
11	Notices of Motion	6
12	Applications for Special Exemptions under Section 6 of the Fencing of Swimming Pools Act 1987	7
13	Consideration of Extraordinary Items	
PUBLIC EXCLUDED		
14	Procedural Motion to Exclude the Public	11
12	Applications for Special Exemptions under Section 6 of the Fencing of Swimming Pools Act 1987	
	A. 85 Wellpark Avenue, Grey Lynn	11
	B. 5 Masefield Avenue, Herne Bay	11
	C. 29 Masons Avenue, Herne Bay	11

1 Welcome

2 Apologies

An apology from Member DA Yates has 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 Waitematā Local Board Hearings Committee:

- a) Confirm the ordinary minutes of its meeting, held on Wednesday, 10 September 2014, including the confidential section, as a true and correct record.

5 Leave of Absence

That an apology from Chairperson CP Dempsey for leave of absence, be 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 Waitematā Local Board Hearings Committee. 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 www 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.

Applications for Special Exemptions under Section 6 of the Fencing of Swimming Pools Act 1987

File No.: CP2015/04064

Purpose

1. The purpose of this report is to present the Local Board with 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 the applications for special exemption. The Local Board must resolve to decline, grant or grant subject to conditions, the exemptions sought.

Recommendations

- a) That the Waitematā Local Board Hearings Committee:
 - I) receive the applications by the owners of:
 - i) 85 Wellpark Avenue, Grey Lynn;
 - ii) 5 Masefield Avenue, Herne Bay;
 - iii) 29 Masons Avenue, Herne Bay.
 - II) determine the applications, 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

3. Auckland Council pool inspectors have inspected the properties, which are the subject of an application before the Local Board. In each case, the swimming pool fencing does not comply with that Act. The details of non-compliance are specified in the attachments to this report. The applicants have 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.
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. If an application is declined the applicant will be required to fence their pool in accordance with the Act.
15. The exemption hearing process under the Act does not trigger the significance policy but it is an important statutory function.
16. 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.

Consideration

Local board views and implications

17. The Local Board is the decision maker in relation to exemption applications under the Act.
18. Compliance with the Act is a mandatory requirement for all pool owners unless exempt.
19. Council's pool inspectors have consulted with the applicants. The 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.

Māori impact statement

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

Implementation

21. The decision must be made by resolution.

Attachments

No.	Title	Page
A	85 Wellpark Avenue, Grey Lynn (<i>Under Separate Cover</i>) - CONFIDENTIAL	
B	5 Masefield Avenue, Herne Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
C	29 Masons Avenue, Herne Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	

Signatories

Authors	Phillip Curtis - Senior Swimming Pool Specialist
Authorisers	Barry Smedts - Manager Compliance Judith Webster - Relationship Manager

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

That the Waitematā Local Board Hearings 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 Applications for Special Exemptions under Section 6 of the Fencing of Swimming Pools Act 1987 - Attachment A - 85 Wellpark Avenue, Grey 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.

12 Applications for Special Exemptions under Section 6 of the Fencing of Swimming Pools Act 1987 - Attachment B - 5 Masefield Avenue, Herne 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.

12 Applications for Special Exemptions under Section 6 of the Fencing of Swimming Pools Act 1987 - Attachment C - 29 Masons Avenue, Herne 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.