

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

**Date:** Tuesday, 28 July 2015  
**Time:** 1.00pm  
**Meeting Room:** Howick Local Board Meeting Room  
**Venue:** Pakuranga Library Complex  
7 Aylesbury Street  
Pakuranga

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## **Howick Local Board Swimming Pool Fencing Exemptions Committee OPEN AGENDA**

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### **MEMBERSHIP**

|                           |                            |
|---------------------------|----------------------------|
| <b>Chairperson</b>        | David Collings             |
| <b>Deputy Chairperson</b> | Garry Boles                |
| <b>Members</b>            | Jim Donald<br>John Spiller |

(Quorum 2 members)

**Lynda Pearson**  
**Local Board Democracy Advisor**

**21 July 2015**

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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, 14 April 2015, as a true and correct record.



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

File No.: CP2015/14673

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### Purpose

1. This report seeks a decision on the following application/s for special exemption from some of the requirements of the Fencing of Swimming Pools Act 1987 (the Act).

### Executive Summary

2. Applications for an exemption for swimming or spa pools has/have been received from the owners of:
  - 66 Fordyce Avenue, Sunnyhills
  - 6 Isaac Place, Howick
  - 47 Finnerty Avenue, Howick
3. The applications do not comply with the Act. Pool inspectors have inspected the properties and consulted with the applicants. Full assessment reports are attached to this report.
4. The local board must now resolve to grant, grant subject to conditions or decline the exemptions sought.

### Recommendation/s

That the Howick Local Board Swimming Pool Fencing Exemptions Committee determine each application, by way of resolution, to:

- a) grant the application for special exemption as sought, or
- b) grant the application subject to conditions, or
- c) decline the application for special exemption sought.

### Comments

#### Background

5. Auckland Council pool inspectors have inspected each property for which an application for special exemption from the Act has been received. 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.
6. The 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 those requirements.

#### Legislative implications

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

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8. The Act requires pool owners to fence their pool, or all or some of the immediate pool area including the pool itself. Specific detail on this is contained in the schedule to the Act. If a pool does not have a complying fence it is an offence under the Act, unless exempt.
9. 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.
10. 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.
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 six years.
12. When granting a special exemption the local board may impose reasonable conditions relating to the property or the pool or reflecting other relevant circumstances. These may include:
  - a) Making the exemption personal to the applicant so that on a sale of the property a new owner will need to apply for a new exemption
  - b) Granting the exemption for a fixed term irrespective of changes of ownership
13. Any exemption granted or condition imposed may be amended or revoked by the local board by resolution. The rules of natural justice would however dictate that this action should not be taken without informing the pool owner and giving them the opportunity to be heard.

## Consideration

### Local board views and implications

14. Local boards have delegated authority to approve exemptions to the Fencing of Swimming Pools Act.

Before making an exemption, the local board must consider:

- the particular characteristics of the property and the pool
  - any other relevant circumstances
  - conditions it may be necessary to impose.
15. The local board must also be satisfied that the exemption would not significantly increase the danger to young children.
  16. The local board may resolve to grant, grant subject to conditions, or decline the application for special exemption.
  17. If the application is declined the applicant will be required to fence the pool in accordance with the Act.

### Maori impact statement

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

## Implementation

19. The decision must be made by resolution.



## Attachments

| No. | Title  | Page |
|-----|--|------|
| A   | Application 66 Fordyce Avenue, Sunnyhills, Pakuranga ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b> |      |
| B   | 6 Isaac Place, Howick ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b>                                |      |
| C   | 47 Finnerty Avenue, Howick ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b>                           |      |

## Signatories

|             |   |
|-------------|---|
| Authors     | Stuart Airs - Senior Swimming Pool Specialist, Building Control   |
| Authorisers | Barry Smedts - Manager Compliance Inspections, Building Control<br>Teresa Turner – Relationship Manager, Howick Local Board |



