



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, 4 December 2015
Time: 1:05pm
Meeting Room: Council Chamber
Venue: Orewa Service Centre
50 Centreway Road
Orewa

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

30 November 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 Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions Committee:

- a) confirm the ordinary minutes of its meeting, held on Friday, 20 November 2015, 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 Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions 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 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.

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

File No.: CP2015/25241

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 have been received from the owners of:
 - 903 Beach Road, Torbay
 - 39 Sharon Road, Browns Bay
 - 12 Seaton Road, Mairangi Bay
 - 11 Waru Nui Court, Orewa
 - 5 Reynolds Place, Torbay
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 Hibiscus and Bays Local Board Swimming Pool Fencing Exemptions Committee:

- a) grant the application for special exemption as sought for 903 Beach Road, Torbay with the following conditions:
 - i. all doors leading to the pool area have an additional latch fitted at least 1.5m above ground level (as required for swimming pools)
 - ii. any windows opening into the pool area be fitted with restrictors to prevent them 100mm
 - iii. two side gates to be self-closing and self-latching with latches at 1.5m
 - iv. that the spa pool cover remain in place and locked when the pool is not in use
 - v. the exemption is granted to the current owners.
- b) grant the application for special exemption as sought for 39 Sharon Road, Browns Bay with the following conditions:
 - i. that children are supervised when using the pool
 - ii. the clothesline not be used when the pool is being used
 - ii. the exemption be granted to the current owners.
- c) grant the application for special exemption as sought for 12 Seaton Road, Mairangi Bay with the following conditions:
 - i. that NZS 8500-2006 clause (a –k) is met at all times
 - ii. that the pot plants be moved 1.2m away from the spa
 - iii. the spa pool remain in this location.

- d) grant the application for special exemption as sought for 11 Waru Nui Court, Orewa with the following conditions:
 - i. that the top bolts remain in good condition
 - ii. that the exemption is granted to the property.
- e) grant the application for special exemption as sought for 5 Reynolds Place, Torbay with the following conditions:
 - i. that NZS8500-2006 clause (a –k) is met at all times
 - ii. that the spa pool be 1.2m away from the retaining wall or fencing installed on the retaining wall to prevent climbing onto the cover
 - iii. that the spa remain in this location.

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.
- 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	903 Beach Road, Torbay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
B	39 Sharon Road, Browns Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
C	12 Seaton Road, Murrays Bay (<i>Under Separate Cover</i>) - CONFIDENTIAL	
D	11 Waru Nui Court, Orewa (<i>Under Separate Cover</i>) - CONFIDENTIAL	
E	5 Reynolds Place, Torbay (<i>Under Separate Cover</i>) - CONFIDENTIAL	

Signatories

Authors	Phillip Curtis - Senior Swimming Pool Specialist
Authorisers	Wolfgang Nethe - Team Leader, Compliance & Enforcement 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 Special Exemption (Section 6) Fencing of Swimming Pools Act 1987 - Attachments A-E

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 personal information.	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.