

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

**Date:** Tuesday, 5 April 2016  
**Time:** 12.00pm  
**Meeting Room:** Council Chamber  
**Venue:** Civic Building  
Level 2  
6 Henderson Valley Road  
Henderson

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**Henderson-Massey Local Board Swimming Pool  
Fencing Exemptions Committee  
OPEN AGENDA**

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**MEMBERSHIP**

<b>Chairperson</b>	Warren Flaunty, QSM
<b>Deputy Chairperson</b>	Shane Henderson
<b>Members</b>	Peter Chan, JP Tracy Kirkley

(Quorum 2 members)

**Busola Martins**  
Local Board Democracy Advisor

**31 March 2016**

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



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**1 Welcome**

**2 Apologies**

Apologies for absence has been received from Member Shane Henderson.

**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.

<b>BOARD MEMBER</b>	<b>ORGANISATION</b>	<b>POSITION</b>
Shane Henderson (Deputy Chairman)	Waitemata Community Law Centre	Employee
Peter Chan, JP	Cantonese Opera Society of NZ Asian Leaders Forum NZ-Hong Kong Business Ass. NZ-China Business Ass. Auckland Chinese Environment Protection Association (ACEPA)	Member Member Member Member Advisor
Warren Flaunty, QSM	Westgate Pharmacy NorSGA Properties Westgate Pharmacy Ltd The Trusts Community Foundation Ltd Life North West Pharmacy Rodney Local Board Waitemata District Health Board Waitakere Licensing Trust Massey Birdwood Settlers Ass. Taupaki Residents & Ratepayers Ass.	Contractor Director Director Director Director Elected Member Elected Member Elected Member Member Member
Tracy Kirkley	District Licensing Committee Churches Education Commission	Member Contractor

**4 Confirmation of Minutes**

That the Henderson-Massey Local Board Swimming Pool Fencing Exemptions Committee:

- a) confirm the ordinary minutes of its meeting, held on Friday, 5 May 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**6 Item withdrawn**

**7 Item withdrawn**

**8 Item withdrawn**

**9 Item withdrawn**

**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.: CP2016/02549

### Purpose

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

### Executive Summary

2. An application for an exemption for swimming or spa pools has been received from the owner of:
  - 53 Woodford Avenue, Henderson
3. The application does not comply with the Act. Pool inspectors have inspected the property 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 Henderson-Massey Local Board Swimming Pool Fencing Exemptions Committee:

- a) grant the application for special exemption as sought for 53 Woodford Avenue, Henderson with the following conditions:
  - i. that NZS 8500-2006 clause (a –k) is met at all times
  - ii. 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	53 Woodford Avenue, Henderson ( <i>Under Separate Cover</i> ) - <b>CONFIDENTIAL</b>	



## Signatories

Authors	Phillip Curtis - Senior Swimming Pool Specialist
Authorisers	Wolfgang Nethe - 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 Henderson-Massey 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 - Attachment A - 53 Woodford Avenue, Henderson

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.