

(REVIEW)
POLICY NAME: PRIVATE SWIMMING POOL BARRIER FENCING

POLICY REF: P01

MEETING ADOPTED: 24 January 2019
Resolution No. 240119/6

POLICY HISTORY:



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OBJECTIVE

The objectives of this policy are to:

1. identify Council's approach to meeting its legal obligations under the *Swimming Pools Act 1992 (NSW)* ('the Act'), and the associated Regulation; and
2. guide how the associated procedures enable the implementation of the Policy.

POLICY

Overview

This policy outlines how Council manages the monitoring and regulation of private swimming pool barriers in line with the *Swimming Pools Act 1992* ('the Act'), *Swimming Pools Amendment Act 2012*, associated Regulations, *Building Code of Australia* and applicable Australian Standards.

This policy should be read in conjunction with the following Council documents:

- *Swimming Pool Final Inspection Process*
- *Swimming Pool Barrier Inspection Program*
- *Swimming Pool Barrier Inspection Procedure.*

This policy and the associated procedures apply to officers of Ballina Shire Council only. They do not apply to private registered certifiers. A registered certifier in this case refers to a person registered under the *Building and Development Certifiers Act 2018* to assess and certify swimming pool barriers in accordance with the *Swimming Pools Act 1992*.

When acting under this policy and the associated process and procedures, Council's Registered Certifiers, assessment staff and contractors act as an Authorised Officer of Council under delegated authority (note Council's officers act as registered certifiers in instances where approvals are granted for pools in cases where Council is appointed as the certifier in conjunction with a construction certificate or complying development application).

As the Local Authority, Council is required under the Act and associated Regulation to:

1. take appropriate steps to ensure that it is notified of the existence of all swimming pools to which the Act applies, and
2. promote awareness of the requirements of the Act in relation to swimming pools, and
3. investigate complaints about breaches of the Act, and
4. develop and implement a swimming pool barrier inspection program in accordance with Section 22B of the Act, and
5. include information related to swimming pool barriers in its Annual Report.

Under the Act, all swimming pools are required to be registered on the NSW Swimming Pools Register operated by the NSW State Government.

In addition, under the Act, properties sold with a pool must have a 'relevant occupation certificate'; or a 'certificate of compliance'; or a 'certificate of non-compliance' as defined in the Act.

It is a requirement of the Act that a pool must be Registered in order for a Certificate of Compliance to be issued.

In addition to the NSW Register, Council also maintains its own swimming pool register to assist in the management of the tasks and documents necessary to implement the procedures associated with this policy.

Overall, the policy aim is to achieve voluntary compliance with the legislative provisions of the *Swimming Pools Act 1992*.

Policy Elements

1. Ensure Council is notified of the existence of all swimming pools to which this Act applies.

Council systems will be utilised to ensure Council maintains a record of all swimming pools that it becomes aware of that fall under the provisions of the Act.

For further details of how Council becomes aware of swimming pools within the shire, refer to the *Swimming Pool Final Inspection Process* and *Swimming Pool Barrier Inspection Program*.

In addition to the provisions of these documents, where swimming pools are identified during other activities that Council officers conduct (e.g. investigation or other complaints and assessment of unrelated applications) and the swimming pool is not already on Council's register, the pool will be placed on Council's register and the owners of these properties will be required to register the swimming pool on the NSW Register.

Council will also proactively seek to identify pools within the shire that warrant being included in its mandatory pool barrier inspection program where resources permit.

2. Promote awareness.

Council will undertake media campaigns as appropriate and necessary to raise community awareness and understanding about swimming pool safety, the obligations of swimming pool owners, and Council's role and activities in regard of the Act. A variety of media platforms will be used.

This policy requires that, where Council grants approval of a Development Application or Complying Development Certificate that includes a swimming pool, a copy of the approval and conditions is also sent to the swimming pool owner as well as the applicant.

Specific communication with swimming pool owners may be issued if there are novel or special issues that arise that require owners' attention (see Attachment 1 for an example).

3. Investigate complaints about breaches of the Act.

In accordance with Section 29A of the Act, Council will, far as is practicable, commence investigation of a complaint made in writing within 72 hours after it is received and in accordance with Section 29A.

When non-compliance issues are identified by Council, Council will initially seek compliance through the provision of information to the swimming pool owner to provide an opportunity for the owner to voluntarily rectify the issues, unless the matter is deemed to pose a significant risk requiring more immediate action.

Where the authorised officer determines the risk is significant or voluntary compliance is not being achieved within a reasonable time period, Council will proceed to issue a Notice of Direction or a Direction to direct the owner to bring the swimming pool into compliance with the prescribed standards.

Complaints of breaches of the Act will be based on inspection and assessment by Council authorised officers. Inspection and assessment will follow Council's *Swimming Pool Barrier Inspection Procedure*.

4. Develop and implement a swimming pool inspection program

Council has an adopted Swimming Pool Barrier Inspection Program that has been in place since 2014.

The Swimming Pool Barrier Inspection Program will be reviewed in-line with any relevant changes to this Policy.

Under the program, Council must inspect any swimming pools identified in the Act as requiring mandatory inspection at least every 3 years, unless they have a current Certificate of Compliance or relevant Occupation Certificate.

5. Include information related to swimming pool barriers in the Ballina Shire Council Annual Report.

Council will include information related to swimming pool barriers in its Annual Report in accordance with Section 22F of the Act and Clause 23 of the Regulation.

BACKGROUND

Context and legislative requirements

As there are more than 4200 approved private swimming pools within the Ballina Shire, pool safety is an important community issue particularly as drowning, especially in the case of young children, can happen quickly and silently.

While fencing and barriers may reduce drowning of young children in swimming pools, there is no protection or safety equipment that can completely replace adequate, active supervision of children by a responsible adult.

Research on child drownings in backyard swimming pools indicates that the most common contributing factors are inadequately fenced pools (for example, gates not self-closing and self-latching, or fences not being maintained in good condition), human error (deliberately causing a gate to remain open) or the lack of adequate adult supervision.

It is the responsibility of the property owner and occupants to keep the pool fence in a state of good repair, and ensure all gates providing access to the swimming area are maintained so they are self-closing and self-latching.

In 2013 the NSW government introduced new laws affecting swimming pools which aimed to improve pool safety. The new laws resulted in a number of changes to the *Swimming Pools Act 1992* including:

- the creation of a state-wide web-based swimming pool register; and
- requiring post construction swimming pool barrier inspections and the issue of compliance certificates.

Rhodes Coronial Inquest

Following the drowning death of a child at Wardell, the 2018 Rhodes Coronial Inquest made recommendations as follows:

1. Correspondence relating to the granting of development consent for a swimming pool, including the conditions, is sent directly to the swimming pool owners.
2. Pool builders include explicit written instructions within their Client Acknowledgement that a pool is not to be used until a Final Occupation Certificate has been issued.
3. The Swimming Pools Act and Regulation 2008 be amended to require warning notices to be erected and maintained during the construction of a swimming pool, which stipulate that a swimming pool is not to be occupied or used until an Occupation Certificate is issued.

Prior to the Wardell drowning, Council had already commenced sending all relevant documents to pool owners. This process is formalised by Section 2 of this policy.

Recommendation Two is applicable to pool builders. Council also includes this as a standard condition of consent where Council grants approval for a Development Application that includes the construction of a swimming pool.

The Regulation has been amended to include the provisions that address Recommendation Three. Where councils issue an approval for a Development Application that includes a swimming pool, a specific condition of consent is included that requires the warning notice to be erected during construction of the pool.

DEFINITIONS

Terms used in this policy are the same as those used in the Related Documents.

A reference to a swimming pool in this policy also include a *spa pool*, as defined in the Act, where the reference is relevant to a spa pool.

SCOPE OF POLICY

This policy applies to the post-construction inspection, monitoring and regulation of private swimming pool barrier fencing and associated potential unlawful activity or failure to comply with the required standards.

Where a swimming pool, or swimming pool safety barrier, is in breach of development consent conditions, separate action may be taken in accordance with Council's Enforcement Policy.

This policy does not apply to the issuing of the development approval to construct a swimming pool or the construction phase for the pool other than in relation to the timing for the issue of an Occupation Certificate. The development approval process for development applications is addressed by Council's development assessment officers.

For Complying Development Certificate applications, the approval process is done by Council's Registered Certifiers or privately Registered Certifiers.

This Policy applies to all private swimming pools within the Ballina Shire Local Government area but does not apply to swimming pools and spas that are situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority.

RELATED DOCUMENTATION

This policy should be read in conjunction with:

- *Environmental Planning and Assessment Act 1979 (NSW).*
- *Environmental Planning and Assessment Regulation 2000 (NSW).*
- *Ballina Shire Council Enforcement Policy.*
- *Swimming Pools Act 1992 (NSW).*
- *Swimming Pools Regulation 2018 (NSW).*
- *Ballina Shire Council Swimming Pool Final Inspection Process.*
- *Ballina Shire Council Swimming Pool Barrier Inspection Program.*

8.12 Policy (Review) - Swimming Pool Barrier Fencing

Ballina Shire Council

(REVIEW) Private Swimming Pool Barrier Fencing Policy

- *Ballina Shire Council Swimming Pool Barrier Inspection Procedure.*

REVIEW

The Private Swimming Pool Barrier Fencing Policy is to be reviewed every four years.

Attachment 1 – Special Awareness Measures

Measure Applied	Reason	Measure Details
Temporary fencing requirements during pool construction information letter	Reinforcement of the need to consider installation of temporary fencing as part of the construction of a pool. The letter includes particular reference to fibreglass pools and pools within areas with a high-water table where pools need to be filled to prevent deformation of the fibreglass pool or to prevent the pool from being forced from the ground.	Letter to landowners providing information about temporary fencing and safety barrier requirements including the management of fibreglass pools and pools in areas of high water table.

Document Control

1.0	Development of new policy			Adopted 24 Jan 2019
2.0	Substantial revision in line with 4 yearly review and consultation with staff	Jan – April 2021	Matthew Wood	In review