

ITEM 6 SWIMMING POOL BARRIER POLICY

The purpose of this report is to submit to Council a revised Swimming Pool Barrier Policy for adoption, following the review of this Policy in accordance with the Policy rolling review schedule.

RECOMMENDATION

The updated Draft Swimming Pool Barrier Policy be adopted by Council.

REPORT AUTHORISATIONS

Report of: Danny Madigan, Manager Regulation and Enforcement

Authorised by: Andrew Carfield, Director Planning and Environment - Future City and Neighbourhoods

ATTACHMENTS

- 1 Draft Swimming Pool Barrier Policy (with changes shown in mark-up format)

BACKGROUND

Significant amendments to the Swimming Pools Act 1992 occurred in late 2012. Council adopted a Policy response to those changes in 2014 that included community consultation. Further legislative changes occurred in late 2016 that related largely to the sale and lease of properties with swimming pools. The current Policy review before Council incorporates these changes. No other change to Council's existing Policy or procedures have been made and as such further community consultation has not been recommended.

PROPOSAL

The Swimming Pool Barrier Policy has been amended to incorporate the recent legislative changes. In summary the changes provide for the following:

- 1 The requirement for a Swimming Pool Compliance Certificate to be included in every Contract of Sale, Lease or Rent of a property with a swimming pool;
- 2 The ability for the sale of a property with a non-complying barrier on the basis that a Certificate of Non Compliance is issued;
- 3 Definitions of "Significant" and "Non-Significant Public Risk";
- 4 Updates to website addresses and some minor wording changes.

No other changes have been made to the Policy. The required legislative changes have been tracked in red in the attached proposed Policy.

CONSULTATION AND COMMUNICATION

The changes to the Policy relate specifically to legislative amendments and do not alter how Council investigates or deals with swimming pool barriers across the LGA. Further consultation is not considered necessary prior to Council considering adoption of the proposed Policy.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal 5 – 5.3.1 "Develop and implement public health amenity and safety regulatory programs that assist in improving compliance with legislative requirements".

It specifically delivers on core business activities as detailed in the Regulatory Control Service Plan 2017-18.

FINANCIAL IMPLICATIONS

There are no financial implications as Council's process with regard to swimming pool barrier regulation will not change.

CONCLUSION

This review of the Swimming Pool Barrier Policy incorporates all recent legislative amendments and satisfies Council's responsibilities in regularly reviewing adopted Policies.



ADOPTED BY COUNCIL: [TO BE COMPLETED BY CORP SUPPORT]

BACKGROUND

Drowning is one (1) of the major causes of death for NSW children under the age of five (5). On average, ten (10) children under five (5) drown in backyard swimming pools and many more suffer brain damage and other serious injuries associated with near-drowning experiences each year in Australia.

There are more than 300,000 backyard swimming pools in New South Wales, some 14,000 of which are located within the Wollongong Local Government Area. It is estimated that over 80% of backyard swimming pools currently do not comply with the Swimming Pools Act 1992-

In 1992, as a result of a number of child drownings in residential swimming pools, and subsequent Coronial Investigations, the Swimming Pools Act (Act) was created. The purpose of the Act was to ensure that swimming pools were adequately fenced and protected to prevent further drownings.

In 2012 a comprehensive review of the Act was undertaken by the Office of Local Government to include more onerous requirements upon Councils and pool owners in regards to swimming pool barriers which includes the creation of a locally approved Swimming Pool Barrier Inspection Program.

OBJECTIVE

The objective of the Swimming Pool Barrier Policy is to:

- 1 Provide Council, the community and stakeholders with a strategic, consistent and comprehensive approach to managing swimming pool barriers across the Wollongong LGA;
- 2 Provide a functional and transparent framework to direct Council's response in the management of swimming pool barriers (registration, certification and complaints);
- 3 Raise community awareness of the importance of swimming pool safety and complying swimming pool barriers;
- 4 Ensure Council satisfies its legal obligations under the Swimming Pool Act 1992;
- 5 Ensure consistency in the application and enforcement of the Swimming Pool Act 1992;
- 6 Increase pool safety awareness;
- 7 Aim to reduce infant drowning and near drowning events within the Wollongong Local Government Area.

POLICY STATEMENT

This Policy aims to provide a holistic approach to how Council will undertake its Swimming Pool Barrier Inspection Program and associated activities across the Wollongong LGA.

POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

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STATEMENT OF PROCEDURES

1.0 Legislative Amendments

On 29 October 2012, a number of amendments were made to the Swimming Pools Act 1992. These amendments were aimed at increasing the safety of young children around swimming pools and reducing associated drowning and near-drowning incidents and introduced the following key elements.

The Swimming Pools (Amendment) Act 2012 made the following specific amendments to the Swimming Pools Act 1992:

1 — Councils are required to:

- (a) Develop and implement a Swimming Pool Barrier Inspection Program in consultation with their communities;
- (b) Report annually on the number of pool inspections undertaken and the level of compliance with the requirements;
- (c) Inspect pools associated with tourist and visitor accommodation and multi-occupancy developments at three (3) year intervals;
- (d) At the request of a pool owner, inspect pools prior to sale or lease of the property;
- (e) Issue Compliance Certificates after an inspection which finds a pool barrier compliant with the requirements of the legislation. Compliance Certificates are valid for three (3) years.

2 — A swimming pool subject to an Occupation Certificate is exempt from an Inspection Program for three (3) years from the date of issue of the Occupation Certificate.

3 — Councils may inspect any swimming pool that is subject to a complaint to the Council.

4 — Council powers of entry will be consistent with the Local Government Act 1993.

5 — Councils may charge a fee for each inspection undertaken (up to a maximum of \$150 for the first inspection and \$100 for one (1) re-inspection resulting from the first inspection).

In April 2016 further amendments were made which required all premises that are to be sold, leased or rented to have a valid Swimming Pool Certificate of Compliance within the contract. The issuing of a Certificate of Non Compliance would allow a property with a swimming pool to be sold without the barrier being compliant.

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2.0 Staged Implementation

The Swimming Pools (Amendment) Act 2012 includes a stage implementation process to facilitate:

- 1 The development and implementation of the Swimming Pools Register by no later than 29 April 2013;
- 2 Registration by pool owners of pools (after the register commences and by no later than 29 October 2013);
- 3 Council's Inspection Programs (to be developed in consultation with the community) adopted and commenced by no later than 29 October 2013;
- 4 Mandatory Council inspections of tourist, visitor and multi-occupancy developments and pools associated with property sale or lease must be commenced by no later than 29 April 2014. (Accredited Certifiers are not permitted to be involved in the mandatory inspection regime.)

5 Valid Swimming Pool Certificate of Compliance or Certificate of Non-compliance (where applicable) to be contained within the contract for all premises that are to be sold, leased or rented as of the 29 April 2016.

3.0 Swimming Pool Owners Responsibilities

Swimming pool owners are required to register their swimming pools on an on-line register provided by the NSW State Government. Swimming pool owners are encouraged to self-assess their pool and state in the register that to the best of their knowledge, their swimming pool complies with the applicable standard when registering their pool. There are Penalty Notice provisions for owners who fail to register their swimming pool.

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Swimming pool owners will be required to provide a valid Swimming Pool Certificate of Compliance Certificate or a Certificate of Non Compliance before being able to sell ~~or lease~~ their real property with a pool. In order to lease or rent a real property with a pool, a valid Certificate of Compliance must be obtained.

Under section 22C of the Swimming Pools (Amendment) Act 2012, a pool owner may, at any time, request Council or an Accredited Certifier under the Building Professional Act 2005 to conduct an inspection of the swimming pool. However, Council must carry out the inspection within a "reasonable time" if the request is in writing and states that the inspection is required for the purposes of selling or leasing the real property on which the swimming pool is situated. A "reasonable time" would be within ten (10) working days.

4.0 Mandatory Inspections

~~As of the 29 April 2014,~~ Council must shall inspect pools associated with tourist and visitor accommodation and multi-occupancy developments at a maximum of three (3) year intervals. These premises include:

- Backpackers' accommodation
- Bed and breakfast accommodation
- Farm stay accommodation
- Hotel or motel accommodation
- Serviced apartments

5.0 High Risk Premises

Whilst not defined as mandatory within the swimming pool legislation, Council has identified the following premises which have swimming pools as 'high risk' and as such will inspect at three (3) year intervals:

- Child Care Centre's/Foster carers
- Caravan Parks and moveable dwelling parks
- Boarding Houses
- Short term accommodation premises
- Commercial swimming pools

6.0 Inspection Fees

The Swimming Pools Act provides that Council may charge a fee for an inspection conducted by an authorised officer, being a fee that is not greater than the maximum fee prescribed by the Swimming Pool Regulation. In such cases Council cannot charge a separate fee for the issuing of the Swimming Pool Compliance Certificate.

~~The fees charged for the initial inspection and~~ subsequent one (1) reinspection(s) are contained within Council's fees and charges.

7.0 Compliance Certificates for Premises that are for Sale/Lease or Rent

~~As of April 2016,~~ aAll premises that are to be sold, leased or rented must contain a valid Swimming Pool Compliance Certificate within the contract. ~~The Swimming Pool Compliance Certificate can be issued by Council or by an Accredited Certifier (appointed under the Building Professional Act 2005). Council must carry out the inspection within a 'reasonable time' if the request is in writing and states that the inspection is required for the purposes of selling or leasing the real property on which the swimming pool is situated. A 'reasonable time' is considered to be within ten (10) working days of the application being received in full.~~

~~From the 29 April 2016,~~ pProperties sold with a pool must have either:

- A certificate of compliance;
- A relevant occupation certificate and a certificate of registration; or
- A certificate of non-compliance.

~~From the 29 April 2016,~~ pProperties newly leased with a pool must have either:

- A certificate of compliance; or
- A relevant occupation certificate and a certificate of registration.

Councils conducting swimming pool barrier inspections at the request of the owner must issue a notice (in the form of a report) when a pool barrier does not pass its compliance inspection.

- The notice (in the form of a report) and certificate of non-compliance make it clear to the pool owner and any prospective purchaser through the contract of sale that the pool barrier was non-compliant at the time of inspection.

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8.0 Significant and non-Significant Public Risk

The Office of Local Government (OLG) states that upon issuing of a certificate of non-compliance, (which is included in the contract of sale) the application is deemed to be finalised and there is no obligation upon Council to pursue the rectification of the defective pool barrier. The only caveat is where the defective pool barrier is deemed to be a "significant public risk" enforcement action may be taken including the issuing of Notices/Directions.

The current legislation does not include a definition of "significant public risk" or "not significant public risk" nor has the Office of Local Government provided any direction in this regard. As such, Council has developed the following definitions:

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Not significant public risk-

Includes: non-compliant gates, barriers, vegetation, windows, doors, lack of CPR sign etc. as these defects are contained within the premises and access is controlled by resident/owner/tenant and not accessible by "members of the public"

Significant public risk-

A fence (most likely boundary) that forms part of the pool barrier has been removed or damaged whereby unimpeded access is possible by members of the public from a public place or from an adjoining residence. (i.e. where a person can walk unimpeded from a street/park/footpath or from an adjoining property into a pool area that does not have a barrier at all, but does not include a non-compliant barrier or any of the defects listed as "Not significant public risk".

9.0 Swimming Pool Exemption Certificate

Under ~~s~~Section 22 of the Swimming Pools Act 1992 the owner of any premises in or on which a swimming pool is situated, or proposed to be constructed, may apply to Council for an exemption for the subject pool from all or any of the requirements of the Swimming Pools Act 1992.

For an exemption to be granted, the Council must be satisfied in the particular circumstances of the case:

- 1 That it is impracticable or unreasonable for the swimming pool to comply with those requirements:
 - because of the physical nature of the premises; or
 - because of the design or construction of the swimming pool; or
 - because of special circumstances of a kind recognised by the regulations as justifying the granting of an exemption.
- 2 That an alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

An exemption may be granted unconditionally or subject to such conditions as the Council considers appropriate to ensure that effective provision is made for restricting access to the swimming pool.

The application fee associated with a Swimming Pool Barrier Exemption Certificate is contained within Council's Fees and Charges.

109.0 Swimming Pool Register

Swimming pool owners are required to register their swimming pools on an on-line register provided and maintained by the NSW State Government <http://www.swimmingpoolregister.nsw.gov.au/> ~~by the 29 October 2013~~. Pool owners can register themselves or alternatively provide Council with the relevant Application Form so that Council can register them on the database. Council will register swimming pools upon the request of an owner or as a result of an investigation following a complaint.

110.0 Enforcement

Whilst Council aims to achieve compliance through effective education and engagement of pool owners and the community, where a non-complying swimming pool barrier is observed, Council will proceed to the issuing of a Notice or Direction (depending upon the seriousness of the non-compliance) under the provisions of the Swimming Pools Act.

The Act also has provisions for the issuing of Penalty Notices and further legal action (Court proceedings and entering premises) and these actions will be utilised where ongoing non-compliance is observed in accordance with Council's Enforcement Policy.

Where the owner of a swimming pool has failed to register their pool on the Office of Local Government (OLG) website, <http://www.swimmingpoolregister.nsw.gov.au/www.olg.nsw.gov.au>, following receipt of a (fourteen) (14) day reminder letter from Council, a Penalty Notice may be issued in accordance with the penalty provisions of the Swimming Pools Act and Council's [Compliance and Enforcement Policy](#).

121.0 Investigating Complaints

- 1 Council will inspect any swimming pool within a reasonable time that is the subject of a customer, staff or owners request to ensure that the pool barrier is installed and maintained in accordance with the Swimming Pools Act.

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- 2 Council shall inspect and take appropriate regulatory action in respect of swimming pools that have been constructed without Development Consent, or, that are being used in contravention of conditions of Development Consent or other legislative requirements.
- 3 Council may choose to charge the relevant inspection fees for the above investigations and take enforcement action in accordance with Council's Enforcement Policy.

132.0 Upgrading Works or Maintenance Works

Council may require either maintenance works or upgrading works to be undertaken to a non-complying swimming pool barrier depending upon the significance of the non-compliance.

- 1 Maintenance works - may include the re-tensioning of a swimming pool gate, pruning and removal of vegetation, replacement/repair of a lock or latch.
- 2 Upgrading works – Council may require the upgrading of a swimming pool barrier, including those which had previously complied with an earlier standard where:
 - a illegal or non-complying works have been undertaken; or
 - b construction of additional structures; or
 - c changes to the configuration of the pool area have been undertaken; or
 - d the swimming pool fence has been removed/relocated; or
 - e the replacement of doors or windows; or
 - f latches or locks which were not previously installed; or
 - g any devices/mechanisms which had previously formed part of the barrier have been removed, replaced or no longer comply; or
 - h Council is satisfied that the barrier did not comply with the previous standard.
- 3 Where significant/costly/prefabricated works are required and/or where Council deems appropriate, Council may require the owner to erect a temporary complying swimming pool barrier until such time as a permanent barrier is installed or rectification/upgrading measures are completed.

143.0 Proactive Swimming Pool Barrier Inspection Program

The Swimming Pool Act provides for Councils to develop their own Swimming Pool Barrier Inspection Program to incorporate pools in addition to 'mandatory pools' in consultation with its community. Following community consultation, Council has developed the following community inspection based Program:

As resources and funding are made available, Council may choose to:

- 1 Promote swimming pool barrier awareness through education and media. Pool owner education and awareness is essential in contributing to the success of the Barrier Inspection Program. With the support of Council's media and engagement team, ongoing and complimentary education and awareness will be conducted through community publications, media releases, web site information, newsletters, rates notices, owner self-assessment checklists and pool officer interaction with the public.
- 2 Identify swimming pools and non-compliant barriers when undertaking inspections as part of Council's broader regulatory role.
- 3 Monitor and compare the Office of Local Government (OLG) database with Council's records including the use of aerial photography to identify non-registered swimming pools.
- 4 Implement an inspection regime either by random selection, by street or by suburb to actively identify swimming pools and ensure compliance with the Swimming Pools Act.

154.0 Definitions

swimming pool

means an excavation, structure or vessel:

- a that is capable of being filled with water to a depth greater than 300 millimetres; and
- b that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity, and includes a spa pool, but does not include a

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	spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of the Swimming Pools Act.
<i>barrier</i>	means a fence or a wall, and includes: a any gate or door set in the fence or wall; and b any other structure or thing declared by the regulations to be a barrier for the purposes of this Act.
<i>tourist and visitor accommodation</i>	means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following: a backpackers' accommodation; b bed and breakfast accommodation; c farm stay accommodation; d hotel or motel accommodation; e serviced apartments; but does not include: f camping grounds; or g caravan parks; or h eco-tourist facilities.
<i>relevant Occupation Certificate in respect of a swimming pool</i>	means an Occupation Certificate issued under the Environmental Planning and Assessment Act 1979 that is less than three (3) years old and that authorises the use of the swimming pool.
<i>Certificate of Compliance</i>	means a Certificate issued under section 22D of the Swimming Pools Act.
<i>Register</i>	means the Register of Swimming Pools under section 30A of the Swimming Pools Act.

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SUMMARY SHEET	
Responsible Division	Regulation Enforcement
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	10 March 2014
Date of next review	[List date - Not more than 4 years from adoption]
Legislative or other requirement for review DELETE THIS WHOLE ROW IF NOT APPLICABLE	[List review timeframe and Act, policy or review requirement]
Responsible Manager	Environment Development Compliance Manager
Authorised by	Manager Regulation and Enforcement