

ITEM 11

POST EXHIBITION - SWIMMING POOL BARRIER POLICY AND SWIMMING POOL SAFETY BARRIER INSPECTION PROGRAM PROCEDURE

Council's Swimming Pool Safety Barrier Policy has been updated and has been placed on public exhibition along with a new Swimming Pool Safety Barrier Inspection Program Procedure. The Policy outlines the framework within which Council exercises its powers as an enforcement agency under the Swimming Pools Act. This report seeks Council's resolution to endorse the updated Policy and the new Inspection Program Procedure.

RECOMMENDATION

Council endorse the revised Swimming Pool Safety Barrier Policy and Swimming Pool Safety Barrier Inspection Program Procedure.

REPORT AUTHORISATIONS

Report of: Corey Stoneham, Manager Regulation and Enforcement

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Swimming Pool Safety Barrier Policy
- 2 Swimming Pool Safety Barrier Inspection Program Procedure

BACKGROUND

Significant amendments to the Swimming Pools Act 1992 occurred in late 2012 and Council adopted a Policy response to those changes in 2014. An amendment to the Policy was endorsed by Council in April 2018 to incorporate further legislative changes that related largely to the sale and lease of properties with swimming pools.

The Policy is now due for review, which has been informed by recommendations from a recent audit of Council's Swimming Pool Safety Barrier Program. In addition to the Policy review, the audit recommended the preparation and inclusion of an Inspection Procedure, and publishing of the Policy and Procedure on Council's website.

PROPOSAL

The Swimming Pool Safety Barrier Policy and the related Swimming Pool Safety Barrier Inspection Program Procedure has been amended to incorporate recent legislative changes and adjust how Council investigates or deals with swimming pool barriers across the Local Government Area. 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.
- 5 Formulation of a risk-based Inspection Program.

No changes to the draft Policy and Procedure are proposed following the recent public exhibition.

CONSULTATION AND COMMUNICATION

Legal Counsel was consulted in the development of the Policy and Procedure.

The revised Swimming Pool Safety Barrier Policy and Swimming Pool Safety Barrier Inspection Program Procedure were exhibited from Monday 17 October to Thursday 3 November 2022 via Council's Our Wollongong exhibition webpage.

Council webpage was visited 29 times, and 7 copies of the documents were downloaded.

In response to the exhibition process, Council received no submissions.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 1 "We value and protect our environment". It specifically delivers on the following action "Develop and implement an education and awareness raising program regarding swimming pool barriers".

SUSTAINABILITY IMPLICATIONS

The inspection procedure at Attachment 2 has been designed with a risk-based focus that considers legislative responsibilities, duty of care and resourcing implications.

FINANCIAL IMPLICATIONS

There is no immediate financial implication as Council's process with regard to swimming pool barrier regulation will not significantly change. However, resourcing associated with the implementation of the inspection program will be monitored and reviewed if necessary.

CONCLUSION

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



SWIMMING POOL SAFETY BARRIER POLICY COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

[changes indicated by yellow highlight]

PURPOSE

Drowning in swimming pools is a significant cause of preventable death in children under five years of age.

Council must have a formal, planned, documented, and published program of swimming pool safety barrier inspections across its Local Government Area (LGA). Council has an important regulatory and educational role with respect to these laws which is the purpose of this policy.

Pool owners are required by law to maintain the safety of their pool area and must ensure that children are properly supervised. All pool owners need to be aware of the relevant laws.

POLICY INTENT

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

The main objectives of this policy are to:

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

WOLLONGONG 2028 OBJECTIVES

Swimming Pool Safety Barrier Policy links to the Council's Operational Plan and Community Strategic Plan 2022-2023 which outlines all the actions we are committed to delivering for our City and our community including specifically in relation to this policy:

- Goal 1 - We value and protect our environment
 - How - Undertake regulatory inspections of swimming pool safety barriers.
- Goal 5 - We have a healthy community in a liveable city
 - How - Inspect and register places of shared accommodation (boarding houses), private swimming pools, and mortuaries

SWIMMING POOL SAFETY BARRIER POLICY

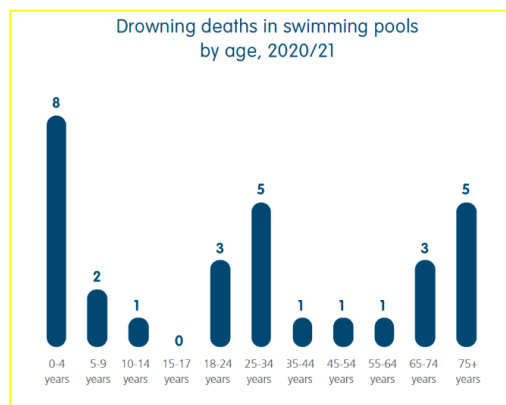
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POLICY

1. Introduction

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

Royal Life Saving National Drowning Report 2021 identified that during the 12-month period from 1 July 2020 to 30 June 2021, 294 people lost their lives to drowning in Australian waterways, from which 30 deaths were reported in swimming pools, one thirds of these deaths were children under the age of ten.



2. Legislative Arrangements

In 1992 the *Swimming Pools Act* (Act) was enacted, to curb the number of child related fatalities in swimming pools.

The purpose of the Act was to ensure that swimming pools and spa pools were adequately fenced with compliant safety barriers and to prevent further drownings. Some other safety requirements are prescribed, including the requirement for a warning notice to be displayed near the swimming pool.

On 29 October 2012, additional amendments were made to the Act. The following key responsibilities for Council's were introduced:

- Develop and implement a Swimming Pool Safety Barrier Inspection Program in consultation with the community
- Inspect swimming pool safety barriers at three (3) year intervals associated with tourist and visitor accommodation and multi-occupancy residential developments with swimming pools in communal areas
- Inspect swimming pool safety barriers at the request of a pool owner, prior to sale or lease of the property
- Issue Compliance Certificates after an inspection which finds a pool safety barrier compliant with the requirements of the legislation. Compliance Certificates are valid for three (3) years.
- Report annually on the number of pool safety barrier inspections undertaken and the level of compliance with the requirements including signage

From 29 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.

In addition to the Act, a number of legislative instruments also exist in NSW to guide backyard swimming pool safety, such as the Swimming Pools Regulation 2018, Conveyancing (Sale of Land) Regulation 2010, Residential Tenancies Act 2013, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Australian Standard 1926.1 (Fencing for Swimming Pools), National Construction Code of Australia and the Cardiopulmonary Resuscitation (CPR) Guideline.

From 1 January 2018 the NSW Government transferred the swimming pool regulatory scheme from the office of Local Government (OLG) to the Department of Finance, Service & Innovation (DFSI). Therefore, the administrative responsibility for the *Swimming Pool Act 1992* and *Swimming Pool Regulation 2018*, has been transferred to a wider Government program.

2.1. Swimming Pool Laws

The *Swimming Pools Act 1992* applies to swimming pools and spa pools that are located (or being built) on sites with a residential building, movable dwelling or tourist and visitor accommodation.

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These laws apply to the owner of a property with a swimming pool or spa pool.

In a strata or community scheme, all of the lot owners jointly own any swimming pool or spa pool that is on common property. The owner's corporation (or body corporate) is responsible for ensuring such pools are compliant with the Swimming Pools Act 1992.

The law applies to any excavation, structure or vessel including swimming pools and spa pools that are:

- capable of being filled with water to a depth greater than 30cm, and
- used, designed, manufactured or adapted for swimming, wading, paddling or any other human aquatic activity.

2.2. Owner Responsibilities

2.2.1. Swimming Pool Registration

Importantly, pool owners must register their pools online on the NSW Swimming Pool Register. Owners may pay a fee to Council to do this on their behalf.

A certificate of registration will be issued to the pool owner. Owners can go to the NSW Swimming Pool Register website to check that their pool has been registered.

2.2.2. Swimming Pool Safety Barrier Fencing

Owners of properties with swimming pools must at all times:

- ensure that pools are surrounded with a child-resistant safety barrier that separates the swimming pool(s) from any residential building and any place adjoining the property
- keep closed the doors and gates that provide access to the swimming pool
- ensure that fences surrounding pools are designed, constructed, installed and maintained to comply with the relevant Australian Standards.

Visit the pool safety checklists page on the NSW Government's Swimming Pool Register for more information.

Note that portable and inflatable pools that are capable of being filled to a depth of 30cm (300mm) or more must also be surrounded by a swimming pool safety barrier and meet the requirements listed above.

2.2.3. Swimming Pool CPR Signage

In case of an emergency the law requires that a cardiopulmonary resuscitation (CPR) sign is displayed near the pool.

From 1 September 2019, new CPR signs came into effect. From this time, all new pools must use the updated signage.

Owners of existing pools aren't required to update their signage unless the pool barrier is substantially altered or rebuilt.

CPR signs are available from local pool shops or community organisations such as St John Ambulance, the Australian Red Cross or Royal Life Saving.

The sign must be in good condition and able to be read easily from 3 metres.

2.2.4. Signage for pools under construction or renovation

For pools under construction a sign must be displayed that states:

"This swimming pool isn't to be occupied or used".

The sign must be displayed at all times while the pool is under construction and only removed once a *Certificate of Compliance* or *Occupation Certificate* has been issued.

2.3. Council responsibilities

According to NSW Government's swimming pool register (NSW register), there are more than 10,000 swimming pools registered within Wollongong City Council Local Government Area (LGA).

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Wollongong City Council is required to:

- develop and implement a swimming pool safety barrier inspection program in consultation with their communities
- investigate complaints about breaches of the Swimming Pools Act 1992
- inspect pools associated with tourist and visitor accommodation at three-year intervals
- at the request of a pool owner prior to the sale or lease of the property, inspect a swimming pool or spa pool for compliance
- issue either a Certificate of Compliance or Non-compliance after an inspection
- where necessary, direct pool owners to take action to ensure that legislated pool barrier requirements are met
- make publicly available a relevant extract of the National Construction Code of Australia, Cardiopulmonary Resuscitation Guideline, and applicable Australian Standards
- report annually on the number of pool inspections undertaken and the level of compliance with the requirements.

2.4. NSW Fair Trading - Private Certifier responsibilities

NSW Fair Trading registers professionals to inspect and certify private swimming pools under NSW swimming pool laws.

Registered swimming pool inspectors (certifiers) are required to:

- at the request of a pool owner, inspect a swimming pool or spa pool prior to the sale or lease of the property
- issue either a Certificate of Compliance or Non-compliance after an inspection
- provide written Notice to owners and council when a pool does not comply.
- Registered swimming pool inspectors may only certify existing (not new) pools and cannot certify any pool that achieves compliance with the National Construction Code of Australia by means of a 'performance solution'.

Minor Repairs by Registered Certifiers

Some certifiers may do minor repairs (up to \$1,000 including materials and labour) to enable them to issue a Certificate of Compliance.

To do so, those Certifiers must have an endorsed contractor's licence or qualified supervisor's certificate under the Home Building Act, authorising them to build a swimming pool or structural landscaping. However, the pool owner is free to hire another tradesperson to do the work.

2.5. Certification

2.5.1. Certificate of Compliance

Council pool inspectors and registered swimming pool inspectors (certifiers) can inspect swimming pool and spa pool safety barriers and issue a *Certificate of Compliance* if the barrier meets requirements.

Pool owners should contact Council or a private certifier early, to allow time to organise an inspection before renting or selling a property.

A certificate of compliance is valid for three (3) years.

Pool owners can visit the NSW Swimming Pool Register website to check if a certificate of compliance has been issued for their particular property.

2.5.2. Selling a property with a swimming pool or spa pool

Owners who are selling a property with a swimming pool or spa pool must ensure the contract for sale includes a registration certificate issued from the Swimming Pool Register, and one of the following:

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- a valid swimming pool certificate of compliance, or
- a relevant occupation certificate issued within the last 3 years, or
- a certificate of non-compliance.

If one of the above isn't included, the purchaser may rescind the contract within 14 days of exchange, unless settlement has already occurred.

If a certificate of non-compliance is attached to the contract, the purchaser takes on the obligation to obtain a certificate of compliance. They will have 90 days from settlement to rectify defects listed in the certificate of non-compliance and obtain a certificate of compliance.

This requirement does not apply to a lot in a strata scheme or in a community scheme if that strata or community scheme has more than two lots, or if the sales contract is for an off-the-plan property.

2.5.3. Renting a property with a swimming pool or spa pool

When a residential tenancy agreement is entered into for a property with a swimming pool or spa pool, the landlord or real estate agent must provide the tenant with a copy of the certificate of compliance or Occupation Certificate.

A certificate of non-compliance cannot be used to rent a property.

If a certificate of non-compliance is issued, Council is obligated to issue a written directions notice to remedy the non-compliance before the premises may be rented.

If you have any concerns about the actions of a real estate agent, contact Fair Trading.

3. Education and Awareness Program

Council has over the years implemented swimming pool safety barrier education campaigns aimed at increasing the awareness of the community regarding pool safety and legislative requirements. Swimming pool safety and awareness continues to be part of Council Swimming Pool Safety Barrier Inspection Program.

Education materials, information brochures, multimedia advertisements and website information will continue to be developed

and used by Council, the State government and the Royal Lifesaving Society.

Section 5 of the Act requires Council to promote awareness of the requirements of Swimming Pools Act and associated Australian Standards.

Clause 21 of the Regulation requires Council to ensure that certain swimming pool related documents are made available and accessible to the community.

These include the following:

- Australian Standard AS1926.1-2007 "Swimming pool safety – Location of safety barriers for swimming pools" (Hardcopy only)
- The National Construction Code of Australia (Hardcopy Only)
- Cardiopulmonary Resuscitation Guideline (Hardcopy and electronic on Council's website at www.wollongong.nsw.gov.au).

These documents are available for free public viewing at Council administration offices during normal business hours. Due to copyright laws, Council will not allow these documents to be taken away from the building, printed or copied. The Australian Standards are available for purchase from SAI Global at www.saiglobal.com.

The Building Code of Australia is available for purchase from the Australian Building Codes Board at www.abcb.gov.au

The Australian Resuscitation Council have the Cardiopulmonary Resuscitation Guideline (Guideline 8) available for viewing at www.resus.org.au. By registering at the website visitors can access and print the guideline free of charge.

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4. More information

Owners can search the NSW Swimming Pool Register to check if a pool has been registered and whether a Certificate of Compliance (valid for three years) has been issued.

Visit the Royal Life Saving NSW website or contact council for more information, fact sheets and water safety requirements.

5. Other resources

- [Royal Life Saving NSW website](#) - Information on swimming pool/spa and water safety requirements.
- [Swimming Pool and Spa Association of Australia](#)
- [Spa Pools](#) - Safety guidelines for spa pools.
- [Inflatable Swimming Pools](#) - Safety guidelines for inflatable or portable pools.
- [Office Of Local Government Website](#) - Search for your local council contact details.
- [Find A Private Certifier](#) - NSW Swimming Pool Register authorised swimming pool inspectors

REPORTING

It is a requirement of Section 22F of the Act that Council includes in its annual report under Section 428 of the Local Government Act 1993 information in relation to swimming pool inspections undertaken by Council.

ROLES AND RESPONSIBILITIES

Wollongong City Council first developed the "Swimming Pool Safety Barrier Policy" in April 2018.

Swimming pool compliance activities at WCC are administered by specially trained Development Compliance Officers trained as Pool Safety Barrier Specialists, who are appointed on a full-time basis.

NSW Fair Trading registers professionals to inspect and certify private swimming pools under NSW swimming pool laws.

RELATED PROCEDURES

- Wollongong City Council - Compliance and Enforcement Policy
- Swimming Pool Safety Barrier – Inspection Program Procedure
- Swimming Pool Safety Barrier– Education Program Procedure

APPROVAL AND REVIEW		
Responsible Division	Regulation and Enforcement Division	
Date/s adopted:	<i>Executive Management Committee</i> April 2018	<i>Council</i> April 2018
Date/s of previous adoptions	[Dates of previous adoptions]	
Date of next review	[Two years from last adoption]	



SWIMMING POOL SAFETY BARRIER INSPECTION PROGRAM PROCEDURE

APPROVED BY: [DIVISIONAL MANAGER] DATE: [DATE ADOPTED]

CONTEXT

These procedures are intended to outline how the Swimming Pool Safety Barrier Inspection Program operates in conjunction with Council's Compliance and Enforcement Policy and the Swimming Pool Safety Barrier Policy 2022 to meet the requirements for Council to have an inspection program under Section 22B of the *Swimming Pools Act 1992*, it should be noted that the owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child resistant barrier or otherwise fully complies with any exemptions granted under historical swimming pool safety standards.

SWIMMING POOL SAFETY BARRIER INSPECTION PROGRAM PROCEDURE

1. PURPOSE

The need to implement a Swimming Pool Safety Barrier Inspection Program is found within *Our Wollongong Our Future 2032 Community Strategic Plan* and the associated *Delivery Program 2022-2026* and *Operational Plan* at Goal 1 - *We value and protect our environment*, and Goal 5 - *We have a healthy community in a liveable city*, both of which include the requirement to:

- Undertake regulatory inspections of swimming pool safety barriers; and
- Inspect and register places of shared accommodation (boarding houses), private swimming pools, and mortuaries.

The purpose of these procedures is to document and to increase compliance and improve swimming pool safety through the safety barrier inspections carried out by Council. This program also reflects the provisions of the Swimming Pool Regulation 2018 and has a risk management focus in prioritising the inspections in the context of available resources.

These Procedures are to be read in conjunction with the Swimming Pool Safety Barrier Policy 2022 (the parent policy).

2. BACKGROUND

Councils in New South Wales must develop and adopt a swimming pool safety barrier inspection program in consultation with their local communities.

This document outlines Council's Swimming Pool Safety Barrier Inspection Program procedure, which aims to lower the risk of drowning in swimming pools in the Wollongong City Council local government area (particularly children), by improving the level of compliance with pool safety barriers and other design features.

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

Research on child drownings in backyard swimming pools shows that the most common contributing factors are inadequately fenced pools and human error (for example, people leaving the gate open, or fences not being kept in good condition).

It is the responsibility of the owner/occupier 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.

Early in 2013 the NSW government introduced new laws affecting swimming pools which emphasize owners' responsibilities to improve safety. The new laws resulted in several changes to the Act including the creation of a state-wide web-based swimming pool register and increasing the roles and responsibilities of Council in relation to swimming pool inspections and the issue of Compliance Certificates.

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Pool users and owners should be aware that if there is a death or injury in a pool, legal liability may fall on the person responsible for the pool, even if a safety fence is installed.

Under the legislation local government has a regulatory responsibility for swimming pool safety.

3. SWIMMING POOL SAFETY

Swimming pools offer a social amenity that is of great benefit to those who have use and access to them. With this, however, goes an obligation outlined in legislation for the owner/occupier of the premises to maintain the pool in a safe manner.

A local council swimming pool safety barrier inspection program aims to increase the level of swimming pool safety barrier compliance with standards and the design of pools and pool barriers. Of course, along with an effective pool barrier, the most critical element in reducing the incidence of young children drowning in backyard swimming pools is constant adult supervision when at properties with swimming pools.

Each council area must develop a program and consult the community on the development of the swimming pool safety barrier inspection program.

3.1. The Importance of Pool Safety

Children aged 4 years of age and under are the most vulnerable. They are completely dependent on their parents or carers for their safety. The personal and social cost associated with the death of a vulnerable child is enormous and cannot be described. The death of a young child in circumstances that could have been prevented is a tragedy for all.

The New South Wales State Coroner has made recommendations to the government on several occasions about a pool inspection program requiring an ongoing inspection regime of pool safety barriers. This has been endorsed by organisations such as Royal Life Saving Society, Australian Resuscitation Council, Westmead Children's Hospital - Kids Safe, NSW Commission for Children and Young Adults.

In his commentary the coroner said:

"I have no doubt that the children involved in this inquest, if they were able to have their say, would ask that all efforts be taken to ensure that the numbers of children who follow them be reduced. The loss of even one innocent life is too many."

3.2. State-wide Swimming Pool Register

The New South Wales Division of Local Government, in accordance with the Act, has introduced an "on-line" State-wide Swimming Pool Register.

All swimming pool owners must register their swimming pool on the NSW state-wide web-based swimming pool register (www.swimmingpoolregister.nsw.gov.au).

Swimming pool owners are required to register, free of charge, their pools on the register.

A swimming pool compliance self-assessment forms part of the on-line registration process completed by the pool owner. Councils are provided with access to the register which will be used to help with the administration of councils' swimming pool inspection programs.

Self-registration of your swimming pool is free via the internet. Council will also register swimming pools for the statutory limited fee of \$10 on behalf of owners who do not have access to the internet. A swimming pool registration application form is available from Council's website (www.wollonong.nsw.gov.au) or Council's administration building.

When registering a swimming pool, the property owner must identify the address of the property where the pool is located, the type of premises (e.g. residential or tourist accommodation etc) and the type of pool (e.g. inground or aboveground).

It is an offence under the Act to have an unregistered swimming pool, and there are provisions in the legislation to fine owners who do not register their swimming pool (Penalty Notice of \$220).

3.3. General Requirements and Responsibilities of the Pool Owner

The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child resistant barrier:

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- a) That separates the swimming pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises; and
- b) That is designed, constructed, installed, and maintained in accordance with the standards prescribed by the regulations.

Note: Some older pools have variations (exemptions) under the legislation below.

3.4. Relevant Legislation and Standards

The legislation, regulation and standards that apply to this Swimming Pool Inspection Program include

- Swimming Pools Act 1992
- Swimming Pools Regulation 1998 (repealed)
- Swimming Pools Regulations 2008
- Swimming Pools Amendment Act 2012
- Swimming Pools Amendment (Consequential Amendments) Regulation 2013
- Australian Standards AS1926.1
- Australian Standards AS1926.2
- National Construction Code of Australia

3.4.1. Swimming Pools Act 1992

The *Swimming Pools Act 1992*, Section 22B requires the development and adoption by Councils of a program for the inspection of swimming pools in its local government area to ensure compliance with the requirements of Part 2 – Access to swimming pools of the *Swimming Pools Act 1992*.

The amendments to the Act also introduced staged commencement provisions including a state-wide on-line register of all private swimming pools in New South Wales and the requirement that all pool owners register, free of charge, and certify to the best of their knowledge that their pool complies with the relevant requirements.

This program applies to all swimming pools within the Wollongong City Local Government Area.

Under Section 22B of the Act, Council must develop and implement a swimming pool inspection program in consultation with the community.

Under section 5 of the Act Council must also promote the registration of swimming pools within its area; and to promote awareness of the Act in relation to swimming pools; and to investigate complaints about breaches.

Importantly, portable and/or inflatable swimming pools or children wading pools that are capable of being filled with water to a depth greater than 300 millimetres meet the definition of "swimming pool" under the Act and therefore temporary pool owners are subject to the same legislative requirements and obligations as those who have permanently installed pools.

3.4.2. Relevant Date of Standards

Each legislative article and standard specifically relate to a swimming pool dependant on when the pool was installed or constructed. It is important to note the relevant standard is when the swimming pool was constructed.

The following table shows what standard applies to which pools:

Date Constructed	Legislative Reference	Aspect Controlled	Applicable Standard
Prior to 1 August 1990	Act: s8(1)(a) and 8(2) Reg: cl 22 and 6	Child Resistant Barrier <u>not required</u> to separate pool from residential building (restricted access applies)	AS1926-1986

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Date Constructed	Legislative Reference	Aspect Controlled	Applicable Standard
1 August 1990 to 31 August 2008	Act: s7(1)(a) and (b)	Child Resistant Barrier <u>not required</u> to separate pool from residential building (restricted access applies)	AS1926-1986
1 September 2008 to 30 April 2013	Act: s7(1)(a) and (b)	Child Resistant Barrier required to separate pool from residential building	AS1926.1-2007
1 May 2013 to date	Act: s7(1)(a) and (b) Reg: cl 5	Child Resistant Barrier required to separate pool from residential building	National Construction Code

It is also important to note that the Act provides exemptions in certain circumstances for existing swimming pools situated on small or large rural properties.

These exemptions continue to apply unless the relevant pool safety standards are not continuously maintained from when the exception was granted to the present, or the swimming pool has undergone significant alteration or rebuilding. Council, however, can still require the upgrading of these pools if the requirements of the Act are not being followed.

3.4.3. Definitions

To help with the interpretation of this procedure, the following definitions apply:

Accredited Certifier means an accredited certifier within the meaning of the Building Professionals Act 2005 holding:

- Category A1, category A2 or category A3 accredited under that Act, or
- If the regulations prescribe alternative qualifications, those alternative qualifications.

The Act means the NSW Swimming Pools Act 1992.

Certificate of Compliance (in respect of swimming pools) means a certificate issued under section 22D of the Swimming Pools Act.

Multi-occupancy Development means a building or buildings that is, or are, situated on a premises that consists of more than two dwellings with a shared swimming pool located within the common property.

The Regulation means the Swimming Pool Regulation 2018.

Relevant Occupation Certificate (in respect of a swimming pool), which means an Occupation Certificate issued under the Environmental Planning and Assessment Act 1979 that is less than three years old and that authorises the use of the swimming pool.

Relevant Standard is the standards applying to the swimming pool at the time it was constructed

Spa Pool means any excavation, structure or vessel in the nature of a spa pool, floatation tank, tub or the like. A typical spa pool has only seating and water jets.

Swimming Pool means an excavation, structure or vessel:

- That is capable of being filled with water to a depth greater than 300 mm, and
- 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 spa bath, anything that is situated within a bathroom, or anything declared by regulations not to be a swimming pool for the purposes of this Act.

Swim Spa means any excavation, structure or vessel that may include a combination of seating, water jets and an area for swimming and/or water play. Swim spas may include jets designed to swim against, an attachment to aid in swimming or an area that does not have seating, that may be used for water play. Swim spas may be used in the same manner as a pool and therefore are to be surrounded by a

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compliant pool fence. 'Attachment' may include but is not limited to swim pole, harness, and floatation devices.

Tourist and Visitor Accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis and includes backpacker's accommodation, bed and breakfast accommodation, farm stay accommodation and serviced apartments.

3.4.4. Penalties and enforcement

The Act provides that failing to comply with the swimming pool safety requirements may constitute an offence under the Act.

There are several offences under the Act which attract fines, as follows:

Offence under the Act	Penalty Notice (issued by Council)	Court Maximum penalty
Section 7 (1): Failure to comply with general requirements for outdoor pools associated with dwelling	\$550	50 penalty units = \$5,500
Section 12: Failure to comply with general requirements for outdoor pools associated with movable dwelling and tourist and visitor accommodation	\$550	50 penalty units = \$5,500
Section 14: Failure to comply with general requirements for indoor pools	\$550	50 penalty units = \$5,500
Section 15 (1): Failure to maintain child-resistant barrier	\$550	50 penalty units = \$5,500
Section 16: Failure of Occupier to keep access to pool securely closed	\$550	50 penalty units = \$5,500

4. THE INSPECTION PROGRAM

Councils must have in place and to implement a program of swimming pool inspections.

It is estimated that there are more than 10,000 swimming pools located within the boundaries of the Wollongong City local government area. . Given the high number of pools in the Local Government Area, a risk-based inspection program is required to make effective use of available resources.

The purpose of the inspections is to ensure that pool barriers are in place and comply with pool safety requirements.

4.1. Swimming Pool Inspection Program - Community Engagement

Clause 16 of the Swimming Pool Regulation requires Council to set up and implement a strategy for engagement with the local community when developing a program for the inspection of swimming pools in its area.

This has been and will continue to be done on an ongoing basis as part of the integrated Wollongong City community strategic planning process which is based on social justice principles of equity, access, participation, and rights.

Additionally, the associated Swimming Pool Barrier Policy and the Inspection Program and Procedure documents have been publicly exhibited, with consideration of submissions prior to their adoption by Council.

4.2. Primary Objectives

The primary aims of the Wollongong City Council Swimming Pool Inspection Program are:

- 1 In accordance with Section 22B of the Act, to develop an inspection program based on statutory obligations, Council affordability, community consultation and risk.
- 2 The inspection program shall include mandatory, reactive, and pro-active components.

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- 3 Council swimming pool inspections will be carried out by trained Council Development Compliance Officers that are specialised in swimming pool barrier assessment duly authorised by the General Manager in accordance with the Swimming Pools Act and Regulation.
- 4 Council must promptly investigate any complaint made to it in writing that alleges a contravention of the Swimming Pools Act 1992.
- 5 Council must carry out an inspections of swimming pool safety barriers in its area under Section 22C of the Swimming Pools Act 1992 and must carry out that inspection within a reasonable time, if the request to Council is in writing, and states that the inspection is required to enable the sale or lease of the premises or part of the premises on which the swimming pool is situated.
- 6 Council will carry out an inspection of a swimming pool under Section 22C of the Swimming Pools Act 1992 where the owner of the premises on which a swimming pool is situated in Council's area requests Council to inspect the swimming pool.
- 7 Council must determine applications for any Swimming Pool Safety Barrier Certificate of Compliance under the provisions of the section 22D. Swimming Pool Compliance Certificates are compulsory for all pools associated with property for sale and lease.
- 8 Where a swimming pool complies with relevant pool safety requirements, a Certificate of Compliance will be issued which remains valid for a period of three (3) years. The re-inspection of a swimming pool, with a compliance certificate, is not required within 3 years from the date of issue of a valid Certificate of Compliance in respect of the swimming pool or a relevant Occupation Certificate that authorises the use of the swimming pool.
- 9 The inspection program must make provision for inspections every three years of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments (this includes pools in hotels, motels, serviced apartments, backpacker accommodation and unit complexes where a pool exists in communal property within developments having more than 2 dwellings). A three yearly inspection regime is required as pools co-located with these types of activities are perceived as having a higher risk associated with them due to more frequent use by a wider range of people.
- 10 Council shall make provision for the pro-active inspection of other swimming pool safety barriers where Council reasonably suspects that the risks warrant their inspection having regard to resource capacity when compared with the demand for higher risk programmed inspections.

4.3. Risk Management of the Inspection Program

A risk-based implementation of the inspection program is set out below to reduce the incidence of non-compliant swimming pools within the limits of resourcing swimming pool barrier inspections.

The different inspection prompts and the frequency of inspection (calendar days) are set out below in descending order based on statutory requirements and risk:

Risk	Inspection Requirement	Inspection Timeframe
1	Complaints received about pools or spas with non-compliant barriers	Within 3 days of complaint (Risk-based timeframe)
2	Notice of Failed Pool Inspection – Compliance Certificate failed by Registered Certifier and referred – considered significant risk by Council	Within 7 days of referral (Risk-based timeframe)
3	Pool Barrier Compliance Certificate Application – Mandatory with Sale or Lease of premises with swimming pool or spa	Within 10 days of application (Statutory timeframe)
4	Pool Barrier Compliance Certificate Application – Voluntary application by owner to have barriers checked	Within 21 days of application (Risk-based timeframe)
5	Notice of Failed Pool Inspection – Compliance Certificate failed by Registered Certifier and referred – otherwise considered non-significant or lower risk by Council	Within 28 days of referral (Risk-based timeframe)

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Risk	Inspection Requirement	Inspection Timeframe
6	Re-inspections of pool barrier under Notice or Direction issued by Council N.B. Council letter immediately issued to owner with 28 day time frame for rectification	Timeframe on Notice or Direction (i.e. 90 days) (Statutory timeframe)
7	Tourist and Visitor Accommodation and multi-unit developments with pools in common areas – High Risk Pools	Every 3 years (Statutory timeframe)
Risk	Non-statutory Inspection Requirement	Inspection Timeframe
8	Pools with no record of Certificate of Compliance or Occupation Certificate	As resources permit (Risk-based timeframe)
9	Pools found using Council's GIS (Geographical Information System) as <u>not</u> registered or approved	As resources permit (Risk-based timeframe)
10	Pools with development consent granted but are <u>not</u> listed on the NSW pool register	As resources permit (Risk-based timeframe)
11	Historical Pools that have <u>not</u> been inspected or that have variations (exemptions) under earlier pool legislation	As resources permit (Risk-based timeframe)
12	Pools listed on the NSW Swimming Pool Register with self-assessment compliance check <u>not</u> completed	As resources permit (Risk-based timeframe)

The circumstances and risk assessment of each of the above inspections are discussed further below:

4.3.1. Swimming Pool Complaints

Pools the subject of a complaint made, verbally or in writing, are considered the highest risk to the Council and the community and necessitate that an investigation must ideally commence within 72 hours (or 3 days) as specified in Section 29A of the Act.

Under Section 29A of the Act, Council must respond to complaints. All complaints received in writing must be actioned within 3 days of the complaint being received.

All complaints received verbally are investigated based on the information available.

This requirement for swimming pool complaint investigation is a continuation of Council's current functions under the Act and Council's current Swimming Pool Safety Barrier Policy and the current Compliance and Enforcement Policy.

4.3.2. Notice of Failed Pool Inspections – considered significant risk

Inspection of swimming pool barriers on properties when a notice is received from a registered certifier who has inspected the pool and is not satisfied that the requirements of the Act have been met (Section 22E of the Act). Pools the subject of a Notice of Failed Pool Inspection, are considered the second highest risk to the Council and the community.

Council will investigate all rectification notices for swimming pool compliance matters that pose a significant risk to public safety. Rectification notices for matters comprising a significant risk to public safety will be investigated following Council's current compliance policy within 5 days of it being received.

4.3.3. Compliance Certificate Applications

Inspection of swimming pool barriers on properties that are being sold or leased and the pool owner lodges an application with the Council for the issue of a pool Certificate of Compliance. The inspection must be carried out within 10 business days of receipt of the request – see Section 17 of the *Swimming Pools Regulation 2012*), subject to suitable access being provided.

A certificate of compliance issued by Council certifies that the pool is registered and complies with the requirements of the Act, Regulations and relevant Australian Standard.

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A certificate of compliance is valid for 3 years. It is important to note, however, that the swimming pool owner can be subject to Council inspection and legal action where the swimming pool safety barrier is not maintained during the 3-year validity period.

What happens if a pool Certificate of Compliance cannot be issued?

A swimming pool Certificate of Compliance cannot be issued if the pool is not assessed at the inspection as meeting the various requirements under the applicable standards. In such a case either the Council or an accredited certifier must issue a notice specifying the works required to be completed.

If the works are not undertaken, or the pool cannot pass a subsequent inspection, then a Penalty Infringement Notice will likely be issued. Continuing refusal to comply will result in further enforcement action comprising commencement or proceedings in a court of proper jurisdiction.

Application forms for a certificate of compliance are available from Council's website (www.wollonong.nsw.gov.au) or administration office.

A completed application form is submitted to Council and the required fee paid (statutory limited fee of \$150).

Council officers will undertake an inspection of the swimming pool and supply a written notice as to the result of the inspection. In the case of defective matters requiring a reinspection, a fee applies (statutory limited fee of \$100).

4.3.4. Notice of Failed Pool Inspections – considered lower risk

Inspection of swimming pool barriers on properties when a notice is received from a registered certifier who has inspected the pool and is not satisfied that the requirements of the Act have been met (Section 22E of the Act), but not identified the failure as a significant risk will also be inspected.

However, Council will investigate pools with a Notice of Failed Pool Inspections that pose a lower risk to public safety will be investigated within 90 days due to limited resource capacity. However, Council will immediately issue a letter to the owner with 28 day time frame for rectification of the identified non-compliances.

4.3.5. Re-inspections of pool barrier under Notice or Direction issued by Council

Inspection of swimming pool barriers on properties when a pool barrier is under Notice or Direction issued by Council will occur in the time frame specified for completion of the rectification works.

Tourist/Visitor accommodation and multi-unit developments

The inspection program must make provision for inspections every three (3) years of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments (this includes pools in hotels, motels, serviced apartments, backpacker accommodation and unit complexes)

This includes inspection of swimming pool barriers on properties with pools associated with hotels, motels, serviced apartments, bed and breakfast accommodation, and backpackers' accommodation, and other tourist/visitor accommodation such as caravan parks and eco-tourist facilities.

Alternatively, premises that have a current swimming pool compliance certificate will not require an additional inspection but will remain subject to an inspection if complaint is received about a potential non-compliance.

4.3.6. Swimming Pool Barrier Exemptions Inspections

In certain, very limited circumstances an older pool may be exempted from the current pool safety standards. The rules around exemptions are many and can be quite complex. An exemption may apply to a swimming pool provided the owner can prove that the pool has continuously complied with the swimming pool standard at the time the pool was installed.

The exemption is lost if the pool has not continuously been maintained to the standard at the time of installation or if significant building works have taken place elsewhere on the site. In such cases the pool must be upgraded to the current standard which would require the installation of a swimming pool safety barrier around the pool.

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The inspection of these pools will occur as resources permit, or if Council has information that would reasonably indicate the pool may no longer comply with the exemptions.

4.3.7. Other Swimming Pool Barrier Inspections

This program also makes provision for the inspection of other swimming pool barriers where Council reasonably suspects that the risks warrant inspection and resourcing of the program allows inspection at the time in consideration of the risk context when compared with higher risk inspection demands.

This includes the inspection of historical swimming pools where it is reasonably considered that legislative requirements may no longer be met such as with pools constructed prior to 1990 that may benefit from exemptions to comply with current standards provided certain other precautions are continually maintained in lieu of a pool safety barrier such locks on windows, self-closing doors, and doors with non-climbable screens designed to prevent a child accessing the pool unsupervised, and pools constructed prior to 2013 when the installation of pool safety barriers became a mandatory requirement.

Site specific exemptions issued by Council under Section 22 of the *Swimming Pools Act 1992* may have conditions requiring more frequent inspections.

These inspections are not mandated under the Act and will therefore be implemented subject to available resources.

These inspections include:

- When the Council reasonably suspects a pool contravenes the Act (for example, pools constructed without approval or pools which are not registered on the government's pool register).
- Childcare centre/ family day care or premises with swimming pools accessed regularly by children for other than domestic purposes.
- Pools with no record of Certificate of Compliance or Occupation Certificate
- Pools listed on the NSW Swimming Pool Register with self-assessment compliance check not completed
- Pools found using Council's GIS (Geographical Information System) as not registered or approved
- Historical Pools that have not been inspected and have variations (exemptions) under earlier pool legislation
- Pools with development consent granted but are not listed on the NSW pool register

The following criteria may be relevant in deciding that a pool contravenes the Act and requires inspection:

- Pools that have been found by Council staff during another inspection as having non-compliant barriers
- Pools that have been assessed as "high risk" by Council staff.
- Pools with no record of having a valid Certificate of Compliance or Occupation Certificate
- Pools that have an exemption under Section 22 of the *Swimming Pools Act 1992*.
- When the Council reasonably suspects a pool contravenes the Act (for example, pools constructed without approval or pools which are not registered on the government's pool register).

5. FEES

A registration fee is payable for those pool owners unable to register their pool themselves on the New South Wales Swimming Pools Register and who request help from the Council to do so.

A pool inspection fee applies in the conducting of inspections under the pool inspection program. The fee is limited under the legislation. The first fee is payable within twenty-one (21) days of the inspection with a subsequent inspection fee (one fee covers all later inspections) payable at the time of booking the first reinspection.

14.1 Registration Fee

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The *Swimming Pool Regulation* prescribes a maximum fee of \$10 is payable where a pool owner requests a council to update the register on their behalf.

The Wollongong City Council sets out and updates the fees payable for pool registration in its annual Schedule of Fees and Charges.

14.2 Inspection Fee

The *Swimming Pool Regulation* prescribes a maximum initial inspection fee of \$150, with a second inspection fee of \$100 payable should a re-inspection of the pool be necessary. No fee may be charged for further inspections, however continuing non-compliance with the required standards may result in the issuing of a Penalty Infringement Notice in appropriate circumstances.

Wollongong City Council sets out and updates the fee payable for pool inspections in its annual Schedule of Fees and Charges.

6. EDUCATION AND AWARENESS

Pool owner education and awareness is an important contributing factor in lifting swimming pool compliance rates.

An on-going community education and awareness program will be delivered through community publications, media releases, Web-based information, owner self-assessment checklists and interaction with Council officers during the inspection cycle. The importance of pool barrier maintenance and adult supervision are the core pool safety messages.

The overall rate of pool barrier compliance is expected to progressively rise because of the inspection program and because of greater community awareness of swimming pool safety requirements.

7. PROGRAM REVIEW

These Procedures will be reviewed every two years or in-line with the review of the parent policy and at other times as needed. Changes to the Procedure that are consistent with the parent policy can be approved by the Manager Regulation and Enforcement.

APPROVAL AND REVIEW	
Responsible Division	Regulation and Enforcement Division
Date adopted	[#Adopted Date#]
Date of previous adoptions	Nil
Date of next review	[#Review Date#]
Responsible Manager	Environment and Development Compliance Manager
Parent Policy	Swimming Pool Safety Barrier Policy