



WEDDIN SHIRE COUNCIL

POLICY NUMBER: 10.6.2

POLICY FOR SWIMMING POOL BARRIER INSPECTION

Adopted: 15 June 2017

POLICY FOR SWIMMING POOL BARRIER INSPECTION (NO. 10.6.2)

1. **Title:** Policy for Swimming Pool Barrier Inspection

2. **Number:** 10.6.2

3. **Purpose:**

The purpose of this policy is to:

- To ensure that Council complies with its legal obligations under the Swimming Pools Act.
- To ensure swimming pools within the Weddin Shire Council area are adequately surrounded by a child resistant barrier.
- To set guidelines for the inspection program to ensure pools and pool owners comply with relevant legislation.
- To promote awareness within the Weddin Shire Council area of the requirements of the Swimming Pools Act.

4. **Application (scope):**

The policy applies to swimming pools (both outdoor and indoor) and spas that are situated or installed, on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located, 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.

5. **Associated legislation and other references**

Swimming Pools Act 1992 and Regulations
Building Code of Australia
Local Government Act 1993 and Regulations
Relevant Australian Standards (in particular AS 1926)

6. **Definitions/Acronyms**

Barrier: 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 the Swimming Pools Act.

Certificate of compliance: means a certificate issued under section 22D of the Swimming Pools Act.

Direction- The local authority may, by order in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such reasonable time as is specified in the direction, such measures as are so specified to ensure that the swimming pool or premises comply with the requirements of Part 2 of the Swimming Pools Act.

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Emergency Direction - A direction given where there is serious risk to safety. An emergency direction can require immediate action without service of a notice of intention beforehand.

Notice of intention – Before giving a direction, the local authority who gives the direction must give notice to the person to whom the direction is proposed to be given of the intention to give the direction.

relevant occupation certificate in respect of a swimming pool means an occupation certificate issued under the [Environmental Planning and Assessment Act 1979](#) that is less than 3 years old and that authorises the use of the swimming pool.

Residential building means a building (such as a dwelling-house, residential flat building or boarding-house) that is solely or principally used for residential purposes, and includes any structure (such as a garage or shed) that is ancillary to any such building, but does not include:

- (a) a building that merely forms part of a complex of buildings (such as a school or recreational centre) that is principally used for non-residential purposes, or
- (b) a [moveable dwelling](#), or
- (c) [tourist and visitor accommodation](#), or
- (d) a shed that is ancillary to a [swimming pool](#) and the primary purpose of which is to store equipment that is used in connection with the [swimming pool](#) (but not a shed of a kind prescribed by the regulations), or
- (e) a building or structure of a kind prescribed by the regulations.

spa pool includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

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 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.

7. Policy:

7.1 Introduction:

The Swimming Pools Act 1992 requires Council to develop and adopt a program for the inspection of swimming pools in its area. To fulfil its legal obligations Council is then required to inspect swimming pools in accordance with this program.

7.2 Policy Statement:

Weddin Shire Council

- Will be proactive in terms of pool safety and follow up complaints about non-compliance in a timely manner.
- Will implement a swimming pool barrier inspection program.
- Acknowledges that where this policy is inconsistent with any of the provisions of the Swimming Pools Act and regulations thereunder then the Act and regulations shall prevail.

7.3 Development and Initial Implementation of a Pool Safety Barrier Audit Program Will be as follows:

Program components

- Council will promote awareness on the need to register swimming pools.
- Identification of pools to be inspected.
- Child resistant barriers identified as requiring upgrading will be required to undertake specified upgrading work within a prescribed time frame.
- Identifying methods of investigation and procedures.
- Council will issue compliance certificates where appropriate.

7.4 Pool Registration and Awareness:

7.4.1 Is registration of a swimming pool compulsory?

The owner of the premises on which a swimming pool is situated must register their pools on an online register provided by the Division of Local Government. The owner is also required to self-assess, and state in the register that, to the best of their knowledge, their swimming pool barrier complies with the applicable standard when registering their pool.

7.4.2 Promoting awareness of swimming pool registration:

Council will be informing residents of its intention to introduce a Swimming Pool Barrier Inspection Policy.

Advertisements will be placed in the Weddin Advocate, advice will be provided on Council's website and letters will also be sent out to local real estate agencies and other property management bodies advising of the need to register a swimming pool and of Council's intention to carry out the inspection program on child resistant barriers surrounding swimming pools.

Failure to register a swimming pool within the required time frames is an offence under the Swimming Pools Act 1992. However, given that a register has not been

previously in place prior to this policy and associated program, the following compliance and enforcement elements are considered reasonable given the importance of the matter:

- Initially a breach will be brought to the attention of the owner in writing with a strict time frame for rectification. It is considered that 5 working days is an adequate timeframe to comply with registration requirements – noting that this 5 working day extension will be provided in addition to the statutory compliance period.
- Failure to comply will result in penalty infringements being issued in accordance with the requirements of the Swimming Pools Act 1992.

7.5 Identification of Pools to be Inspected

7.5.1 In what circumstances will Council inspect swimming pools as part of the swimming pool inspection program?

- a) Where a swimming pool exists on premises subject to a Development Application.
- b) Where a swimming pool exists on premises subject to a Complying Development Certificate application lodged to Council.
- c) Where a swimming pool exists on premises subject to a Complying Development Certificate issued by a private accredited certifier where no works are proposed to the child resistant barrier.
- d) Where the pool barrier is the subject of a complaint (Council is required to Commence investigation within 10 working days).
- e) Where a request to inspect the pool barrier is made by the owner whether required for pool registration or prior to sale or lease of a premises.
- f) Where an inspection by Council's authorised officers (other than that required by this clause) reveals an inadequately fenced pool at the subject premises or at neighbouring premises.
- g) Where the premises is subject to a Building Certificate application.
- h) At three (3) year intervals where the pool is associated with tourist, visitor accommodation and multi-unit developments.
- i) Inspections referred to Council by private accredited certifiers who are unable to issue a compliance certificate.
- j) Where Council is informed that a swimming pool has been removed from the state register.
- k) Where Council is provided with information that reveals a pool barrier is non-compliant.

7.5.2 In what circumstances will Council NOT inspect a swimming pool barrier?

Random inspections will not be undertaken of a swimming pool in respect of which there is a valid certificate of compliance or a relevant occupation certificate. A relevant occupation certificate is an occupation certificate issued under the Environmental Planning and Assessment Act 1979 that is less than 3 years old and that authorises the use of the swimming pool.

7.5.3 What type of pool structures are subject to this program?

- a) Swimming pools including inflatable pools which are capable of being filled to a depth of water greater than 300 mm.
- b) Spa pools.

7.5.4 What fees will be charged?

Council will not charge a fee higher than that prescribed by the Swimming Pools Act and Regulations thereunder, being \$150.00 for an initial swimming pool barrier inspection and \$100.00 for a second inspection.

7.6 What are the relevant standards for pool barriers?

All swimming pools are at all times to be surrounded by a child resistant barrier

- 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 Swimming Pools Regulations.

Generally this means that a child resistant barrier is required to comply with the Swimming pools Act 1992 and the relevant Australian Standard 1926.

Access to spa pools is to be restricted in accordance with the Swimming Pools Act 1992 which includes being fitted with a lockable lid.

7.7 What are the Standard Investigation Procedures?

In determining the extent of the upgrade and the period of compliance, the following factors will be taken into consideration:

- a) Whether there is an immediate threat to life safety.
- b) Accessibility from public land.
- c) The year the pool was constructed.
- d) Conditions of approval relating to the pool and barrier.

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- e) The condition of the existing pool barrier.
- f) The location of the swimming pool and the barrier.

- g) The type and use of building on the site where the pool is constructed.

- h) Previously issued compliance certificates, occupation certificates and building Certificates.

- i) The relevant legislation and Australian Standards.

The Swimming Pools Act 1992 has very specific provisions in terms of pool safety compliance. Specifically for taking action after investigations, the Notices, Directions, Penalty Infringement Notices and Offences provisions under the Act are applicable.

In addition, the following procedures will generally apply:

- a) Photos and/or videos may be taken of the pool fence for record purposes

- b) Where it is identified there are outstanding pool safety matters, Council will issue a Notice of Intention, followed by a Direction under Section 23 of the Swimming Pools Act. Where there is an immediate safety threat a Direction will be served without a preceding Notice of Intention.

- c) The Direction will outline what works are required and give a prescribed period of time for the works to be completed. Council may review the time period for completion where it is considered reasonable to do so. All requests for extension in time are to be in writing and must provide reasons for such a request, including a schedule for completion of the works if appropriate.

- d) An owner who is the recipient of a Direction has a right of appeal to the Land & Environment Court.

- e) Failure to carry out the works within the prescribed period may result in the issue of penalty infringement notices and/or the instigation of legal proceedings to enforce Council's Direction.

- f) Inspection fees will be charged in accordance with Council's Schedule of Fees and Charges and the requirements of the Swimming Pools Act and Regulations thereunder.

Council will view pool safety offences as serious and issue Notices and Directions as standard procedure. Penalty notices will be issued at the discretion of the authorised officer. Prosecution may also be considered where deemed to be appropriate. A minimal tolerance approach is considered appropriate and is consistent with other enforcement policies by Council.

7.8 Compliance Certificates

7.8.1 When will Council issue a certificate of compliance (section 22D of the Swimming Pools Act 1992)

A Certificate of Compliance is issued where a swimming pool has been registered on the Register of Swimming Pools maintained by the Director General of the Division of Local Government and the pool has been inspected by a Council Officer and found to comply with the requirements of the Swimming Pools Act 1992. A Certificate of Compliance will be issued to the owner of the property.

7.8.2 For how long is a compliance certificate valid?

A Certificate of Compliance remains valid for 3 years from the date on which it is issued but ceases to be valid if a direction is issued under Section 23 of the Swimming Pools Act 1992.

7.8.3 What fees will be charged for compliance certificates?

Council will not charge a fee higher than that prescribed by the Swimming Pools Act and Regulations thereunder (Refer to Clause 5.2.4)

8. Review and Amendment

- This policy shall be reviewed by September 2021 and thereafter at three (3) yearly intervals, to ensure it meets all statutory requirements and the needs of Council.
- This policy may be amended or cancelled by Council at any time without prior notice or obligation to any employee.

9. Adoption

- This policy commences as from the date of adoption by Council, being 15 June 2017
- This policy is new. There are no existing policies to be amended.

10. History

Version	Details
10.6.1	Adopted 17 October 2013
10.6.2	Adopted 15 June 2017