

## DRAFT Policy

# Swimming Pool Barrier Inspection Program

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# Swimming Pool Barrier Inspection Program

## Policy Objective

The purpose of this Policy is:

- To ensure that Council complies with its legal obligations under the Swimming Pools Act
- To ensure swimming pools within the Tweed 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 Tweed Shire Council area of the requirements of the Swimming Pools Act

## Definitions

**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.

**Dual occupancy** means a dual occupancy (attached) or a dual occupancy (detached). *Note.* Dual occupancies are a type of **residential accommodation**—see the definition of that term in this Dictionary.

**Dual occupancy (attached)** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling. *Note.* Dual occupancies (attached) are a type of **dual occupancy**—see the definition of that term in this Dictionary.

**Dual occupancy (detached)** means 2 detached dwellings on one lot of land, but does not include a secondary dwelling. *Note.* Dual occupancies (detached) are a type of **dual occupancy**—see the definition of that term in this Dictionary.

**Dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

**Dwelling house** means a building containing only one dwelling. *Note.* Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

**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.

**Moveable dwelling** has the same meaning as in the Local Government Act 1993.

Note. The term is defined as follows:

**Moveable dwelling** means:

- (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or
- (b) a manufactured home, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations (under the Local Government Act 1993) for the purposes of this definition.

**Multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Note. Multi dwelling housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

**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 accommodation** means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

**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.

**Tourist and visitor accommodation** 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.

## Policy Background

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 make provision for the inspection of swimming pools in accordance with this program.

Recent amendments to the Swimming Pools Act require pool owners to register their swimming pools. The amendments also require Council to undertake community consultation and to develop and adopt a Swimming pools inspection program for swimming pool barriers. To achieve this officers assessed the legislation and developed a three option approach to present to the community for consultation. The options were developed to best cover the range of requirements that that could be derived from the legislation.

Those options were presented to the community for consultation in the form of a survey with supplementary information in the Tweed Link and Council's website. From those survey results and an analysis of legislative and financial implications this swimming pool barrier inspection program has been developed.

## Policy

### Policy Statement

Tweed Shire Council:

- Will be proactive in terms of pool safety and follow up complaints about non compliance in a timely manner.
- Will co-operate with the Office of Local Government in meeting its obligations under the Swimming Pools Act.
- 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 there under then the Act and regulations shall prevail.

### To what properties does this policy apply?

This 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.

### Development and initial implementation of a pool safety barrier audit program will be as follows:

#### Staff resources

Ensuring employment of suitably qualified staff to oversee the program and ensure Council complies with its legal obligations. Specialist staff will also provide high level safety advice to the organisation and the community.

## Program components

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

## **Pool registration and awareness**

### 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 Office 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.

### Promoting awareness of the requirements of the Swimming Pools Act 1992

Council will continually promote the awareness of the Requirements of the Swimming Pools Act 1992, in particular registration of pools and maintenance of compliant fencing. When considered appropriate promotion by articles in the Tweed link or other media forms will be undertaken.

## **Identification of pools to be inspected**

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

- i. Where the pool barrier is the subject of a complaint (Council is required to commence investigation within 3 working days).
- ii. 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 (an inspection is required to be carried out within 10 working days of a written request).
- iii. Where an inspection by Council's accredited certifiers (other than that required by this clause) reveals an inadequately fenced pool at the subject premises or at a neighbouring premise.
- iv. Where the premises is subject to a Building Certificate application.
- v. At three year intervals where a pool is situated on premises on which there is tourist and visitor accommodation or more than two dwellings, this includes caravan parks and the like.
- vi. Inspections referred to Council by private accredited certifiers who are unable to issue a compliance certificate for a pool they have inspected.
- vii. Council is informed that a swimming pool has been removed from state register.
- viii. Council receives information that a pool barrier is non compliant.
- ix. Where a swimming pool exists on premises subject to a Development Application or a Complying Development Certificate application lodged with Council.

- x. A property is targeted, based on available resources and level of risk. Council will compare its records with the public register held by the Office of Local Government to identify swimming pools which have not been registered. Council will then utilise its entry powers under the Swimming Pools Act and Local Government Act to randomly inspect these swimming pools and the surrounding child resistant barrier and take any necessary action to enforce compliance. Notwithstanding any property with a swimming pool may be inspected at any time. If a particular suburb/village/area is targeted then it is assumed that unregistered pools will be inspected firstly.

In what circumstances will Council not inspect a swimming pool barrier?

Targeted 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.

What type of pool structures are subject to this program?

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

**Fees**

In what circumstances will Council charge inspection fees

- When an application is made for a compliance certificate (swimming pool), and
  - for the first required reinspection, and
  - for any subsequent reinspections as may be permitted to be charged by the Act or regulations.
- For the initial inspection of a swimming pool the subject of a complaint if it is found that the fence is non compliant, and
  - for the first required reinspection of a pool the subject of a complaint, and
  - for any subsequent reinspections as may be permitted to be charged by the Act or regulations.
- For the initial inspection of a swimming pool the subject of a Council random inspection; and
  - for the first required reinspection and for any subsequent reinspections as may be permitted to be charged by the Act or regulations.
- When provided for in the Swimming Pools Act and Regulation.

What fees will be charged?

Council will not charge a fee higher than that prescribed by the Swimming Pools Act and Regulations.

There will also be a fee charged for an application for a swimming pool Compliance Certificate in accordance with this Policy.



## **What are the relevant standards for pool barriers?**

Generally this means that all swimming pools are at all times to be surrounded by a child resistant barrier 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 that is designed, constructed, installed and maintained in accordance with the standards prescribed by the Swimming Pools Regulations.

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.

## **Methodology and procedures**

### What is the methodology of investigating complaints?

An authorised officer will firstly check whether a life threatening circumstance exists, and if so determine an immediate course of action. In the event the incident is not considered immediately life threatening, the matter will be prioritised as determined by the authorised officer.

### What is the methodology of undertaking random inspections?

Council will compare its records with the public register held by the Office of Local Government to identify swimming pools which have not been registered. Council will then contact the owners of unregistered pools in writing to arrange a suitable time for an inspection. If no contact is made Council will then utilise its entry powers under the Swimming Pools Act and Local Government Act to inspect these swimming pools and the surrounding child resistant barrier.

In addition to the above and where resources permit, Council will undertake targeted inspections of child resistant barriers surrounding swimming pools.

### 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:

- i. Whether there is an immediate threat to life safety.
- ii. Accessibility from public land.
- iii. The year the pool was constructed.
- iv. Conditions of approval relating to the pool and barrier.
- v. The condition of the existing pool barrier.
- vi. The location of the swimming pool and the barrier.
- vii. Any special characteristics or uses of the pool eg. a physiotherapy pool.
- viii. The type and use of building on the site where the pool is constructed.
- ix. Previously issued compliance certificates, occupation certificates and building certificates.
- x. The relevant legislation and Australian Standards.

The rules of evidence collection apply and are critical in the event that an immediate threat to life safety is present and/or if enforcement action is required to rectify a breach.

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:

- i. Generally, owners of swimming pool will be contacted by Council to arrange a time for an inspection of the premises.
- ii. Swimming pools and barriers will be inspected by Council's officer in the presence of owners or their representatives (if preferred).
- iii. Photos and/or videos may be taken of the pool fence for record purposes.
- iv. 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.
- v. 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.
- vi. An owner who is the recipient of a Direction has a right of appeal to the Land & Environment Court.
- vii. 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 Councils Direction.
- viii. 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.

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.

### **Compliance Certificates**

#### When will Council issue a Certificate of Compliance (Section 22 D 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 Office 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.

### 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.

### 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.

### **Amendments**

This is a new program. There are no existing programs to be amended.

### **Who is responsible for implementing this program?**

Primary responsibility rests with the Manager Building and Environmental Health. Operational responsibilities will also be implemented by authorised staff with relevant delegation, including Building Surveyors and Compliance Officers.

### **Related Legislation**

*Swimming Pools Act 1992 and Regulations*

*Building Code of Australia*

*Local Government Act 1993 and Regulations*

*Relevant Australian Standards (in particular AS 1926)*

### **Compliance**

Not Applicable.

### **Forms**

Tweed Shire Council - Application for a Certificate of Compliance (Swimming Pool)

NSW Government - NSW Swimming Pool Register - Registration Form

### **Review Period**

This Policy will be reviewed by Council yearly.

### **Useful Links**

[Tweed Shire Council website](#)

