



POLICY NO.	CPPH5
POLICY TITLE	Swimming Pool Safety Program Policy
STATUS	Council
SERVICE	Public Health and Safety
DOCUMENT ID	741582

## PURPOSE

This policy has been developed in response to Section 22B of the Swimming Pools Act 1992 (the 'Act') and outlines the inspection program relevant to all swimming pools (both indoor and outdoor) that are situated, or proposed to be constructed, on premises where a residential building, a moveable dwelling, or tourist accommodation is located. For the purposes of this document, any reference to swimming pools also includes spa pools. In essence, this policy will:

- Ensure that pool owners comply with the relevant Acts, Regulations and Australian Standards for swimming pools
- Assist the community with regards to its responsibilities to the NSW Governments Swimming Pool Register
- Meet Council's obligations under the Act
- Outline the program structure and method of operation

The inspection program is designed to provide measures to identify non-compliant swimming pools and ensure upgrade works are carried out. In so doing, it raises swimming pool safety awareness.

## SCOPE

The Policy applies to Hunter's Hill Council and LGA property and business owners, and applies to:

- Swimming pools, including inflatable pools that are capable of being filled with water to a depth greater than 300 millimetres
- An outdoor spa-pool and
- Swimming pools converted into fish ponds

## LEGISLATION AND REFERENCED DOCUMENTS

The legislation, Regulation and Standards that apply to this Swimming Pool Safety program include:

- Swimming Pool Act 1992
- Swimming Pools Regulation 2008
- Swimming Pools Amendment Act 2012
- Swimming Pools Amendment (Consequential Amendments) Regulation 2013
- Building Code of Australia

- Australian Standards AS1926.1
- Australian Standards AS1926.2

## POLICY STATEMENT

### Current swimming pool safety standards

Since 1992 the general requirement for child resistant barriers on residential properties is for the pool to be separated from the house, adjoining properties and public space at all times.

The requirement for child resistant barriers on premises where there is a residential building varies according to when the pool was constructed and where the pool was located. These requirements are determined by the Act as follows:

**Pools built before 1 August 1990** must have a separate pool fence or use house walls, windows, doors, side gates and/ or boundary fences. The requirement for restricting access to the pool area through a door or window are set out in the Regulations applicable at the time the pool was built.

**Pools built after 1 August 1990 but before 1 September 2008** must have a separate pool fence that separates the pool from the house and any place adjoining the premises, but can use the walls of the house in accordance with Australian Standard 126.1 – 1986 (Fences and Gates for Private Swimming Pools)

**Pools built after 1 September 2008** must have a pool fence that separates the pool from the house and any adjoining premises in accordance with Australian Standard 1926-2007 Swimming Pool Safety, Part 1: (Safety Barriers for Swimming Pools)

**New swimming pools** require development consent before they are constructed. Further, an accredited building certifier is required to inspect and certify by issuing an Occupation Certificate that the pool fencing is satisfactory before it can be used.

Hunter's Hill Council's Swimming Pool Safety Program's methodology is set out as follows:

#### 1. Applications for Swimming Pools

Prior to constructing or installing any pool, an applicant must obtain the following:

- Development consent or
- Complying Development Certificate and
- BASIX Certificate where the swimming pool capacity is 40,000 litres or more. These details are to be reflected on the plans checked by Council at the final inspection.

#### 2. NSW Swimming Pool Register

Under Section 30B of the Swimming Pools Act 1992, all swimming pool owners in NSW are required to:

- Register their swimming pools on the online register at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au)
- Provide a Compliance Certificate before selling or leasing a property with a pool.

#### 3. Inspection Program

Council has a responsibility under the Act to inspect certain pools to ensure compliance in accordance with the requirements of the Act, and to maintain a register of all swimming pools in the Hunter's Hill LGA. The swimming pools requiring consideration are:

- **Sold or leased properties** - All properties to be sold, leased or tenanted that have a swimming pool must have a current Compliance Certificate.

- **Tourist and visitor premises** – All visitor and tourist accommodations are required to have a current Compliance Certificate at all times. (*Hunters Hill does not have any of these currently*)
- **Multiple dwellings** – All properties with a swimming pool that have two (2) or more occupancies, are required to have a current Compliance Certificate.

Council is also required to operate a compliance program for all the other swimming pools in the LGA that do not fall into the above categories. These are private pools that are part of a dwelling that is occupant owned.

### **Unregistered pools**

When Council becomes aware of a swimming pool that is not registered, Council will take action to ensure that the owner registers the pool on the NSW Swimming Pool Register.

### **Non-Compliant pools**

Where Council becomes aware of a swimming pool that is non-compliant, Council will take action to ensure that the owner undertakes the necessary works to meet the requirements for Compliance.

## **4. Customer Requests/ Complaints**

All complaints and concerns received by Council from a member of the public or other authority concerning allegedly defective swimming pool barriers, are recorded in Council's Customer Request Management System and assigned to the relevant officer who would prioritise the inspection in accordance with the requirements of Section 29A of the Act.

Should the inspection confirm that the swimming pool barrier does not comply, then a Direction is issued to the owner which will outline works required to make the barrier compliant. Subsequent enforcement action is taken if the swimming pool owner does not adhere to the outlined Direction and timeline.

## **5. Certificate of Compliance Applications**

Section 22D of the Act provides for a swimming pool owner to make application to Council or an Accredited Certifier for a Certificate of Compliance. Where a defective barrier is identified, a Direction is issued to the swimming pool owner.

Where required, a re-inspection will be undertaken and a Certificate of Compliance will be issued to swimming pools already in the NSW Swimming Pool Register, that comply with the requirements of Part 2 of the Act.

## **6. Exemption Applications**

Section 22 of the Act provides for a swimming pool owner to make an application to Council for an Exemption from all or any of the requirements of Part 2 of the Act, in certain circumstances. Once an application is received and the appropriate fee is paid, Council will undertake an inspection of the swimming pool.

## **7. Other inspections at request of owner**

Section 22C of the Act provides for a swimming pool owner to make application to Council for an inspection, which includes advice regarding swimming pool compliance. Where possible, as recourses allow, an application and appropriate fee will be received by Council and the inspection will be undertaken. A Direction will be issued to the swimming pool owner, where a defective barrier is identified.

## **8. Notices issued by an Accredited Certifier**

Section 22E of the Act requires that an Accredited Certifier must provide a Notice to the owner of the swimming pool after an inspection, should the requirements for compliance not be met. A copy of the Notice is provided to Council and is included with the subject premises' file. Once the Notice has been received by Council, a written request is issued to the swimming pool owner to arrange access for an inspection by Council's Building Surveyor. Once payment is received, the inspection is carried out. Should a defective barrier be identified, a Direction is issued to the swimming pool owner.

## **9. Sale of land inspection requests**

Any contract for the sale of land on which there is a swimming pool must include a copy of either a valid Certificate of Compliance, a Certificate of Non-Compliance, or a relevant Occupation Certificate. Accredited Certifiers engaged for this purpose will provide Council with the relevant Certificate and inspections will be carried out in accordance with the time frame stipulated in the Regulation.

## **10. Building Certificate applications**

All building certificate applications for properties on which there is a swimming pool, will include an inspection of the swimming pool safety barrier. As resources allow, an application and appropriate fee will be received by Council and the inspection will be undertaken. A Direction will be issued to the swimming pool owner, where a defective barrier is identified.

## **11. Multi-dwelling premises**

Commencing 29 April 2014 all premises with more than two dwellings, including residential flat buildings and townhouse developments that do not have a current Certificate of Compliance or relevant Occupation Certificate, will be inspected by Council at least once every three years.

## **12. Lease of land inspection requests**

From 29 April 2014 the Residential Tenancies Regulation 2010 stipulates that landlords of premises on which there is a swimming pool, have to provide a copy of the Certificate of Compliance or a relevant Occupation Certificate at the time that a residential tenancy is entered into. Inspections are carried out once relevant fees are paid. Should a defective barrier be identified, a Direction is issued to the swimming pool owner.

## **13. Random checks from Council's Swimming Pool Register**

As recourses allow, Council may randomly select between 5 and 15 swimming pools from the Swimming Pool Register that do not have a current Certificate of Compliance (or relevant Occupation Certificate). Priority is given to older swimming pools that have never had a Certificate of Compliance (or relevant Occupation Certificate). Once a property is identified for inspection, Council will write to the owner to make the necessary arrangements for this to be actioned by either a Council Officer, or an accredited certifier.

The owner does not need to be present for the inspection, but it is always preferred where possible.

*Council's risk management protocols inform the urgency and subsequent timelines of all inspections and resulting actions required.*

## **14. The Role of Private Certifiers**

Owners may request an accredited certifier to provide a Certificate of Compliance. Accredited certifiers may set their own fees. If the pool does not meet the required standards, the certifier may allow the pool owner six (6) weeks to rectify the deficiencies before advising Council. If the pool is considered to be a significant public hazard, the certifier may notify Council immediately. In these

instances, Council becomes responsible for undertaking action to enforce compliance with the Act and Regulation.

### **15. Inspection Fees**

Any inspection carried out by Council's Building Surveyor is charged an inspection fee in accordance with Clause 18A of the Regulation. Council will not issue a Certificate of Compliance until all required inspection fees are paid. A list of the fees and charges are set out on Council's website.

### **16. Penalties and enforcement**

The Act provides that failing to comply with the swimming pool requirements may constitute an offence under the Act. The rules of collection apply and are critical in the event that an immediate threat to life safety is present. 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.

### **17. Enforcement policy**

While Council endeavors to achieve compliance through effective education and engagement with swimming pool owners, at times, the initiation of enforcement action is required. In these instances, the process is as follows:

- **Notice of Intention to serve an order/ Direction**

Where it is found that works are required to be undertaken for the swimming pool to be compliant, Council will issue a Notice of Intention, followed by a Direction under Section 23 of the Swimming Pool Act, requiring that the works be completed and re-inspected. If compliance is not achieved within the stipulated time frame, Council may issue an Infringement Notice or take further action. Where there is an immediate safety threat, a Direction will be served without a preceding Notice of Intention.

- **Penalties**

Failure to carry out the required works within the prescribed period may result in the issue of a Penalty Infringement Notice and/ or instigation of legal proceedings to enforce Council's Direction.

### **18. Ongoing education and awareness**

Pool owner education and awareness is essential in contributing to the success of the Swimming Pool Safety Program. Community education and awareness will be delivered through media releases, community publications, website information, owner self-assessment pool fence checklists and public interaction with the pool safety inspection officers.

## RELATED POLICIES/PROCEDURES

Nil

## POLICY AUTHORITY

Director – Town Planning

## GETTING HELP

For interpretations, resolutions of problems and special situations, please contact Council’s Health and Building Surveyor.

## REVIEW

This policy to be reviewed once per term of Council.

**Next review date is:** December 2028

## ADOPTED BY COUNCIL/EXECUTIVE:

DATE: 16 December 2024

RESOLUTION NO: 115/24

## VERSION CONTROL TABLE

DATE	VERSION	RES. NO.	KEY CHANGES	AUTHOR
19/07/2024	1.0			Town Planning
4/12/2024	1.1	115/24	Minor typographical edits	Town Planning