



GLEN INNES SEVERN COUNCIL

Swimming Pools Policy

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| RESOLUTION NUMBER: | 29.08/20 | MEETING: | 27 August 2020 |
| | 30.07/13 | | 25 July 2013 |

INTRODUCTION

The *Swimming Pools Act 1992* (the Act), as amended, requires Glen Innes Severn Council to develop and implement a mandatory swimming pool inspection program in consultation with the community. Council has resolved as a matter of Policy to adopt such a program and must inspect swimming pools and check compliance in accordance with this Swimming Pools Policy.

SCOPE

The provisions of the Policy are applicable to all above and below ground swimming pools (both outdoor and indoor) including spa pools and both portable and inflatable pools that are situated on premises on which a residential building, a moveable dwelling, tourist or visitor accommodation is located within the Glen Innes Severn Council Local Government Area. This Policy does not apply to swimming pools that are situated on any premises occupied by the Crown or by a public authority.

DEFINITIONS

In addition to the below Council refers to and relies on the definitions contained in the Act.

Accredited Certifier

An Accredited Certifier is an individual who is registered with the NSW Building Professionals Board for the purposes of performing swimming pool inspections.

Certificate of Compliance

A Certificate of Compliance is evidence that a swimming pool meets the requirements of the *Swimming Pools Act 1992* and the *Swimming Pools Regulation 2008*. A Certificate of Compliance is valid for three years.

Certificate of Non-Compliance

A Certificate of Non-Compliance is evidence that a swimming pool does not meet the requirements of the *Swimming Pools Act 1992* and the *Swimming Pools Regulation 2008*. A Certificate of Non-Compliance, issued at the owners' request, is valid for one year.

Certificate of Registration

A certificate of evidence that a swimming pool is registered on the NSW Swimming Pool Register; either the owner of the premises or Council can register a swimming pool.

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Direction

An authorised person acting under the direction of a local authority may issue a Direction against the owner of the premises with a swimming pool under Section 23A of the *Swimming Pools Act 1992*. The terms of the Direction must be completed with within 28 days.

Notice of Direction

An authorised person acting under the direction of a local authority may issue a Notice of Direction to the owner of a premises with a swimming pool under Section 22E of the *Swimming Pools Act 1992*. The Notice is a warning letter explaining that a Direction will be issued against the owner within 14 days unless the terms of the Notice are complied with.

Local Authority

Means a local authority constituted by or under an Act, being a local council, a government department or a statutory body representing the Crown.

Potable or Inflatable Pool

Means a structure that is designed as a swimming pool but is not a permanent structure.

Relevant Australian Standards

Are documents that set out specifications, procedures and guidelines that aim to ensure products, services and systems are safe, consistent and reliable. A copy of the Relevant Australian Standards can be requested from Council's Church Street office.

Spa Pool

Is defined by the Act as:

"Includes any excavation, structure or vessel on the nature of a spa pool, flotation tank, tub or the like."

Swimming Pool

Is defined by the Act as:

"an excavation, structure or vessel that is capable of being filled with water to a depth greater than 300 millimetres 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 any declared by the swimming pool for the purposes of this Act."

PURPOSE AND OBJECTIVES

Swimming pools offer social amenities that are of great benefit to those who have access to them. With this however comes an obligation to ensure they are maintained in a safe manner as required under legislation.

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Drowning is one of the major causes of death for children in NSW under the age of five (5). Each year on average 10 children under five (5) years of age drown in backyard swimming pools and many more suffer brain damage and other serious injuries associated with near-drowning accidents. In answer to this, legislation has been the subject of ongoing review and reform since 2008 in answer to the tragic increase of infant and toddler injury and death. This Policy aims to increase the level of swimming pool compliance through inspections and education of requirements.

RESPONSIBILITY

Glen Innes Severn Council as the Local Authority has responsibilities under the Act to inspect pools as to maintain compliance in accordance with the requirements of the Act. This role is undertaken by Council's Accredited Certifiers or by an Authorised Officer of Council as set out by Section 27 of the *Swimming Pools Act 1992*.

LEGISLATION AND REFERENCED DOCUMENTS

Relevant legislation is:

- Swimming Pools Act 1992,
- Swimming Pools Regulation 2008,
- Local Government Act 1993,
- Local Government (General) Regulation 2005,
- Environmental Planning and Assessment Act 1979,
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Code SEPP).

Australian Standards are:

- AS 1926.1: Swimming Pool Safety – Safety barriers for swimming pools,
- AS 1926.2: Swimming Pool Safety – Location of safety barriers for swimming pools.

APPLICATIONS FOR SWIMMING POOLS

Prior to the construction or installation of any pool, an applicant must obtain either:

- a Development Consent and associated Construction Certificate, or;
- a Complying Development Certificate,

And;

- a BASIX Certificate must be provided with an application for the installation of any swimming pool where the capacity is 40,000 litres or more. The details provided on this BASIX Certificate are to be reflected on the plans and checked by Council at the Final Inspection.

NSW SWIMMING POOL REGISTER

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

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- promptly register their swimming pools on the statewide on-line register at www.swimmingpoolregister.nsw.gov.au,
- self-assess their pool using a checklist for the date of installation, available on the website, and state in the register that to the best of their knowledge, their swimming pool complies with the applicable standard when registering their pool.
- ensure a valid swimming pool compliance certificate is issued before selling or leasing a property with a pool.

INSPECTION PROGRAM

Swimming pools and spas requiring mandatory inspections are:

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| For sale or lease properties (As requested) | - | All swimming pools that are part of properties to be sold, leased or tenanted must have an inspection prior to sale or occupation and a certificate issued. A swimming pool compliance certificate can be either: <ul style="list-style-type: none"> • A Certificate of Compliance, • A Certificate of Non-Compliance, or • A relevant Occupation Certificate and a Certificate of Registration. |
| Tourist & visitor premises (Every 3 years) | - | All visitor and tourist accommodation are required to have a current swimming pool compliance certificate at all times. |
| Multiple occupancies (Every 3 years) | - | All properties with a pool and having more than two occupancies are required to have a current swimming pool compliance certificate at all times. |

Council is also required to operate a compliance program for all domestic swimming pools. These are the private pools that are part of a dwelling that is owned by the occupant. Council will inspect these pools as follows:

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| Non-compliant pools | - | Where Council becomes aware of a swimming pool that is not compliant or that it believes is not compliant, Council will undertake an inspection of that pool in accordance with this Policy as well as any regulatory enforcement as required. |
| Unregistered pool | - | When Council becomes aware of a swimming pool that is not registered, Council will undertake a compliance inspection in accordance with this program as well as any regulatory enforcement as required. |
| Registered pools | - | Council will inspect any registered swimming pool when requested by the owner or occupant and prior to a residential property being sold or leased. |

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INSPECTION PROCEDURE

Where Council is required to undertake inspections under this Policy, the following procedure will be followed;

Notification

The pool owner will be notified, by either phone or in writing, a minimum of 48 hours before the inspection is to take place. It is the responsibility of the property owner to ensure that if the property is tenanted, they they have notified the tenant or made alternative arrangements with Council regarding access for Councils inspectors to the subject swimming pool.

Inspection

Council's authorised officers will conduct inspections of swimming pool safety barriers in accordance with Section 22B of the Act at the time notified. The owner does not have to be present for the inspection, but it is preferred where possible.

Spa and swimming pool safety barriers will be inspected to the performance standard as set out per the install date applicable Australian Standard AS 1926.1 & 1926.2.

Outcomes

Council will notify the owner of the property where the pool safety barrier is installed of the results and outcome of the inspection. These outcomes are as follows:

- Issue a compliance of certificate
Where Council inspectors have assessed the pool and/or spa safety barrier and found it to comply with the provisions of the *Swimming Pools Act 1992* and applicable Australian Standards, Council will issue a Compliance of Certificate in accordance with Section 22D of the Act.
- Compliance works required
Where it is found that works are required to be undertaken for the swimming pool and/or spa to achieve compliance, Council will issue a Notice under Clause 18B of the *Swimming Pool Regulation 2008* requiring that the works be completed and then re-inspected. If compliance is not found to have been met within the specified time, Council may issue a Penalty Infringement Notice or take further legal action.
- Issue a certificate of non-compliance
Where the inspection has been requested by the owner and the pool does not meet the minimum requirements under the Act, Council may issue a certificate of non-compliance under Clause 18BA of the *Swimming Pools Regulation 2008*. This certificate will allow for the sale of the property to proceed but compliance will still be required, and the responsibility will transfer to the new owner.

NON-COMPLIANCE

Swimming pools are regulated through various legislation in NSW. Compliance with these laws is mandatory and there are many offences that carry Penalty Infringement Notices under the appropriate Regulations. These include, but are not limited to:

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- Failure to comply with an Order issued under the *Swimming Pools Act 1992*.
- Failure to register a swimming pool under the *Swimming Pools Act 1992*.
- Failure to adequately fence a swimming pool under the *Swimming Pools Act 1992*.
- Failure to receive Development Consent for a swimming pool prior to installation under the *Environmental Planning and Assessment Act 1979*.

FEES AND CHARGES

Council's fees and charges for pool inspections and certificates are set out in the Fees and Charges schedule of Council's annual Operational Plan and Budget which is available on Council's website.

GUIDELINES:

Pools under construction

Council requires that all swimming pools under construction must:

1. **If the pool contains water to a depth greater than 300m** – have a child restraint barrier that complies with the requirements of the Building Code of Australian and relevant Australian Standards.
2. **If the pool does not contain water during the construction phase** – be managed to allow for weather and site conditions not to contain water to a depth greater than 300mm. A safety fall protection barrier must also be installed if the depth of the pool is greater than one (1) metre.
3. Display a sign in a prominent position in the immediate vicinity of the swimming pool that identifies that the swimming pool is not to be occupied or used until a relevant Occupation Certificate has been issued.

Portable and Inflatable Pools

A **Small portable pool** is a pool that is not capable of holding water to a depth greater than 300mm and is not capable of holding greater than 2000 litres of water. These pools do not require a child restraint barrier, and do not require Council development approval if it meets the exempt requirements under the Code SEPP.

A **Medium portable pool** is a pool that can hold water to a depth greater than 300mm but is not capable of holding more than 2000 litres of water. These pools:

- Must be protected by a child restraint barrier,
- Must be registered on NSW swimming pool register,
- Must have a compliant resuscitation sign, and
- Do not require Council development approval if it meets the exempt under the Code SEPP.

A **large portable pool** is a pool that is capable of holding water to a depth greater than 300mm and is capable of holding more than 2000 litres of water. These pools:

- Must be protected by a child restraint barrier,
- Must be registered on NSW swimming pool register,
- Must have a compliant resuscitation sign,

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- Council development approval is required, and
- Must comply with the requirements of the Building Code of Australia and relevant Australian Standards.

Structures permitted inside a pool enclosure

Young children should be actively supervised within the pool enclosure when using a swimming pool. Therefore, structures that aren't wholly ancillary to the swimming pool, and that may result in insufficient supervision, are not permitted within the pool enclosure, including:

- BBQ's
- Clothes lines
- Saunas
- Gymnasiums
- Wet Bars
- Food preparation and consumption areas
- Digital entertainment (i.e. Television or the like)
- Animal/Pet enclosures
- Garden/tool sheds
- Garages

Approved structures that are ancillary to the swimming pool, and are located wholly within the swimming pool enclosure include:

- Shade structures
- Chairs
- Pool filtration plant
- Pool equipment shed/s
- Diving board or slides
- Change room and toilet facilities

Complaints

Council will inspect and take appropriate legal action in respect of swimming pools that have been constructed without Development Consent, or, that are being used in contravention of any conditions of a Development Consent or other legislative requirements.

Upgrade and Maintenance works

Council may require upgrade works and/or maintenance works to be undertaken to non-complying swimming pool barriers, this could include items that previously complied with earlier Australian Standards such as:

- illegal or non-complying works have been undertaken,
- additional structures have been constructed,
- there have been changes to the configuration of the pool area,
- the swimming pool barrier has been changed in any way or removed, or
- latches or locks have been installed or altered.

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Maintenance works may include the re-tensioning of a swimming pool gate, pruning and removal of vegetation and the replacement/repair of a lock or latch that has ceased to operate as required.

An extension may be granted for works that are unable to be completed by the required date set out in the direction. The applicant must apply to Council in writing stating the reasons for not being able to comply, Council will undertake an assessment and make a determination to issue an approval or extension or not.

Location of Barriers

The distance of the swimming pool barrier to the edge of the water is to be a minimum distance of one (1) metre to discourage diving and jumping from the barrier into the water, a distance of one (1) metre also enables adult supervision from anywhere within the pool enclosure and also leaves a suitable area to perform resuscitation if required.

The type of barrier and location of the swimming pool within the property should permit viewing through or over the barrier so that the pool area may be directly viewed from commonly used areas of the building or yard.

REVOCAION OF THE POLICY

The Glen Innes Severn Council Swimming Pools Policy (except in the case where the Policy has been adopted since the last general election) will be automatically revoked at the expiration of 12 months after the declaration of the poll for the next general Local Government election, unless Council revokes it sooner.

VARIATION AND REVIEW

This Swimming Pool Policy shall be reviewed every three (3) years, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The term of this Policy does not expire on the review date, but shall continue in force until superseded, rescinded or varied either by legislation or a new resolution of Council.



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General Manager

7/9/20
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Date

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