



LEETON SHIRE COUNCIL

Preserving the Past, Enhancing the Future

LEETON SHIRE COUNCIL POLICY

SWIMMING POOL POLICY

Council disclaimer

This policy was formulated to be consistent with council's legislative obligations and within the scope of council's powers. This policy should be read in conjunction with relevant legislation, guidelines and codes of practice. In the case of any discrepancies, the most recent legislation should prevail.

This policy does not constitute legal advice. Legal advice should be sought in relation to particular circumstances and liability will not be accepted for losses incurred as a result of reliance on this policy.

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1. Introduction

Child safety around private swimming pools has been a major concern of Australians for many years, the main issue being the dangers presented to children under the age of five years. As a result New South Wales has seen a constant evolution in its legislation and standards to try and curb the trend of child drowning.

Although these changes have ensured a level of awareness for pool owner's, statistics show that most cases of child drowning occur in private backyard pools, the Royal Lifesaving Society has this figure at 70% of all drownings. Evidence from inspections conducted by Leeton Shire Council indicate that many owners are either unaware of the requirements, choose not to comply with the requirements, or are oblivious to the potential for tragedy or legal ramifications resulting from non-compliance.

1.1 Background

In 2012, a comprehensive review of the Swimming Pool Act 1992 was finalised. This review identified a number of amendments designed to enhance the safety of children under the age of five years around private swimming pools in NSW.

The Swimming Pools (Amendment) Act 2012 commenced on 29 October 2012 and makes a number of amendments to the Swimming Pools Act 1992: This policy captures the impact of these legislative amendments for pool owners and ensures that council meets all of its required legislative requirements.

1.2 Policy Objectives

The objectives of this policy are to ensure Leeton Shire Council:

- Meets its legislative responsibilities.
- Provides pool owners with the appropriate information relating to their own responsibilities.
- Provides the opportunity for children to enjoy safe leisure environments.

1.3 Scope

This policy applies to all swimming pools (both indoor and outdoor) and spas that are situated, or are proposed to be constructed or installed, on premises on which a residential building, a movable 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.

2. Definitions

Act relates to the Swimming Pool Act 1992.

AGL means 'Above Ground Level'.

Authorised officer means an authorised officer appointed under section 27.

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 this Act.

Certificate of compliance means a certificate issued under section 22D.

Existing pool means a swimming pool whose construction had commenced prior to August 1, 1990.

New pool means a swimming pool whose construction or installation had commenced after August 1, 1990.

PIN means 'Penalty Infringement Notice'.

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 or tub but does not include a spa bath situated in a bathroom.

Register means the Register of Swimming Pools under section 30A.

3. Legislation

This policy has been created to promote compliance with:

- *Swimming Pool Act 1992 & Swimming Pools (Amendment) Act 2012*
- *Swimming Pools Regulation 1990, 1992, 1998 and 2008*
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Australian Standard 1926 -1986
- Australian Standard 1926.1 – 2007 & 2012
- Australian Standard 2783 – 1992
- Australian Standard/NZS 1838 – 1994
- Australian Standard/NZS 1839-1994
- Local Government Act 1993
- Environmental Planning and Assessment Act 1979.

4. Installation of New Swimming Pools

4.1 Approvals in general

- a. Prior to constructing or installing a pool, an applicant must obtain either:
 - A development consent and associated construction certificate, or
 - A complying development certificate.
- b. A complying development certificate can be issued where the proposed pool complies with the criteria listed within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- c. A BASIX Certificate must be provided with any application for the installation of any pool where the capacity is 40,000 litres or more. The details provided on this BASIX Certificate are to be reflected on the plans. These details are to be carried out for the pool, for example: BASIX Certificate reflects that the pool is to have a pool cover; this is then checked prior to Council issuing a Final Compliance Certificate.
- d. Applications for swimming pools must generally be accompanied by:
 - A site plan showing measurements of where the location of the pool is in relation to all other buildings and all boundaries on the property.

- A plan clearly showing the location and height of the required child-resistant barrier and gate, complying with AS 1926.1- 2012.
- Location of the proposed pool pump.
- A section through the pool indicating the height of any coping or decking in relation to the ground level or dividing fences to ascertain any privacy issues that may exist.
- All plans are to be legible and to a suitable scale e.g. 1:100.

4.2 Structural

- a. A pool construction site or pre-fabricated pool shall comply with the relevant Australian Standard including:
 - AS 2783 – 1992 – use of concrete for swimming pools.
 - AS/NZS 1838 – 1994 Swimming Pools – pre-moulded fibre-reinforced plastics – design and fabrication.
 - AS/NZS 1839-1994 Swimming Pools – pre-moulded fibre-reinforced plastics – installations.
- b. Where a pool is constructed of reinforced concrete it shall be finished with a suitable surface and shall be designed by a practising structural engineer.

5. Existing Swimming Pool Fencing Requirements

All swimming pool are assessed against the regulations in place at the time of construction, this includes exemptions applied to small properties less than 230 m², large properties 2 hectares or greater in size and waterfront properties. Any alterations made to a child-resistant barrier will however require the proposed works to be completed in accordance with the most current regulation.

6. Private Swimming Pool Requirements

6.1 Water Quality

- a. The pool must be provided with filtration equipment that will maintain the water in a clean and hygienic condition and compliant with the installation requirements of AS 1926.3-2010 Water recirculation systems.
- b. Water quality for spa pools shall be in accordance with AS 2610.2-2007 Spa Pools – water quality.
- c. Water quality for swimming pools must be in accordance with AS 3633 – 1989 Private swimming pools – water quality.

6.2 Backwash/Used Water Disposal

All backwash, used water or waste pool water must be discharged to the sewer or where sewer is not available, these waste waters must be disposed of on-site in accordance with the relevant provisions of AS 3500 Plumbing and drainage, provided they do not enter a water course or an adjoining property.

Note: A Section 68 Activity Approval is required for all sewerage works in accordance with the Local Government Act 1993.

6.3 Position of New Swimming Pools

- a. A pool is to be located a minimum of 1 metre from its vertical water line to a side and/or rear boundary (this must be a clear space).

- b. A minimum 1.5 metre clear space must be provided from the vertical water line to at least one internal side boundary.

6.4 Exemptions

- a. An application may be made by the owner of the land under Section 22 of the *Swimming Pool Act 1992* and *Swimming Pools (Amendment) Act 2012* for an exemption from complying with the requirements of the Act if:
 - It is impractical or unreasonable for the swimming pool to comply with those requirements, or
 - An alternative provision, no less effective than those requirements, exists for restricting access to the pool.
- b. Any such application must be in writing and accompanied by the prescribed fee (refer to section 13 of the Regulations).

Note:

1. Exemption sought to allow access to the pool to be gained via a doorway *will not* generally be considered.
2. The automatic exemptions for new pools on very small, large and water front properties ceased on 1 July 2010.

7. Pool Decks, Privacy Screens, Shade Structures and Pump Sheds

7.1 Required Approvals

Prior to constructing any deck, privacy screen, shade structure, or pump shed (other than those deemed “exempt”) an applicant shall ensure that a Development Approval and a Construction Certificate approval or a Complying Development Certificate approval is obtained. Approval for such may be obtained with the application for the pool installation.

7.2 Design Requirements

Privacy screening should generally be designed with the following features:

- It may be trellis, fence or panel. Dividing fences may be used with agreement of the adjoining neighbour,
- It should be behind the building line, and
- It must be structurally adequate.

Note: No part of any privacy screen shall be constructed within the 900mm climbable free zone of any child resistant barrier.

7.3 Access to Pool Pump Sheds

Access is not permitted to a pool pump shed from inside the child resistant barrier.

8. General Information

8.1 Above Ground Swimming Pools

Above ground pools must be provided with an effective child-resistant barrier in accordance with AS 1926.1-2012. The walls of the pool will not be considered by council as forming part of an effective barrier.

8.2 Spa Pools

Spa pools may either be surrounded by a child-resistant barrier, or covered or secured by a child-safe structure (such as a lockable door, lid, grille or mesh) that is fastened to the spa by a child resistant device/lock at all times when the spa is not in use.

8.3 Indoor Swimming Pools

The access doorways to indoor pools must be kept securely closed at all times, and are to be fitted with approved closers and latching devices, as outlined in the *Swimming Pools Act 1992*, the Regulations under the Act, and AS 1926.1-2012.

9. General Safety, Health and Amenity Requirements

9.1 Safety Requirements

- a. During construction, and prior to the erection of the child-resistant barrier, the pool must be surrounded by a temporary fence to the dimensions provided in AS 1926.1-2012.
- b. Adequate means of egress from the pool must be provided (ladder/steps).
- c. A resuscitation sign depicting resuscitation methods must be displayed and maintained in a prominent position adjacent to the pool. Such posters can be obtained from the Royal Life Saving Society or pool installation companies.
- d. Any pool chemicals shall be stored and handled in accordance with manufacturer's instructions.
- e. The pool area within the child-resistant barrier shall be design so that users can be easily viewed at all time from outside the enclosed space.
- f. No enclosed or semi-enclosed structures are permitted in the pool area.

Note: Should any inconsistency occur between this guideline and AS 1926.1, the Australian Standard shall prevail.

9.2 Noise Control

Any potential noise generating equipment must be located or treated so as to not cause a noise nuisance to neighbours.

10. Fencing of New Swimming Pools

10.1 Compliance with AS 1926.1-2012

- a. A child-resistant barrier, complying with the requirements of the *Swimming Pool Act 1992*, *Swimming Pools (Amendment) Act 2012* and AS 1926.1-2012 must be installed and maintained whilst the pool remains on site.

The gate must latch from any open position without the need for manual assistance. The gates must be kept closed at all times. The self-latching mechanism must be either located a minimum of 1.5 m AGL OR a minimum 150 mm below the top of the fence on the inside and shielded so that no opening greater than 10 mm occurs within an area bounded by an effective radius of 450 mm from the latch release.

- b. Gates incorporated in a child-resistant barrier must:
 - Open away from the pool area.
 - Be fitted with a self-latching mechanism located a minimum of 1.5 m AGL OR a minimum 150 mm below the top of the fence on the inside and shielded so that no opening greater than 10 mm occurs within an area bounded by an effective radius of 450 mm from the latch release.

- Close from any open position and engage the latch without use of manual force from any position.
- c. Each child-resistant barrier must be approved by Council's Building Surveyor or a Private Certifier prior to the use of the pool.
- d. Boundary fences may be used as effective child resistant barriers provided they comply with AS 1926.1-2012. In essence the boundary fence must be a minimum 1800mm high with a non-climbable zone on the inside at a distance of 900 mm from the top of the fence.
- e. Windows may open to a pool area provided:
- The window is fitted with a permanently fitted security screen preventing access from the window, or
 - The window is installed so that it is only able to be opened to a maximum of 100mm, or
 - The sill of the lowest openable portion is greater than 1800 mm above ground level in the pool area.
- f. The rails to any fence intersecting with the child resistant barrier must be shielded from the bottom of that fence to a height of 1200mm, for a distance of 1200mm on the outside of the pool area and 300mm inside the pool area, to maintain the non-climbable zone.

11. Additional Information

The following clause is from *State Environmental Planning Policy (Infrastructure) 2007* and determines the circumstances requiring Council to notify Essential Energy of the construction or installation of a swimming pool.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 Determination of development applications—other development

- (1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:*
- (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out:*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*
 - (c) *installation of a swimming pool any part of which is:*
 - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
 - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of consent) for development to which this clause applies, the consent authority must:*
- (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*

- (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

12. Swimming Pool Registration Requirements

All Swimming pool owners in NSW are required to:

- a. Register their swimming pool on the state-wide on-line register at www.swimmingpoolregister.nsw.gov.au.
- b. Self-assess and state in the register that, to the best of their knowledge, their swimming pool complies with the applicable standard when registering their pool. A copy of a self-assessment checklist applicable to the time the pool was built can be downloaded from the website.

Any owners of an un-registered swimming pools will be notified and given 60 days by council to complete the registration. Failure to complete this will result in council registering the swimming pool on their behalf and issuing a Penalty Infringement Notice.

13. Sale and Lease for Properties with Swimming Pools

From **29 April 2016**, properties sold with a swimming pool must now have either a relevant occupation certificate, 'certificate of compliance' or a 'certificate of non-compliance', issued from the NSW Swimming Pool Register. This means that from **29 April 2016**:

- a. The vendor of a property (with a swimming pool) is able to transfer the requirement to make a pool barrier compliant, to the purchaser. The transfer will be realised through the attachment of a 'certificate of non-compliance' to the contract for sale. Sales of properties with compliant pools will continue to require a 'certificate of compliance'.
- b. The purchaser of a property (with a swimming pool) has 90 days from the date of ownership transfer to address any issues of non-compliance in relation to the swimming pool barrier or be subject to current penalties.
- c. Properties with more than two (2) dwellings **are exempt** from the requirement to provide a compliant pool barrier on sale or lease as they are already regulated by mandatory three (3) year inspection programs.
- d. Properties with two (2) dwellings or less are required to have a certificate of compliance before entering into a lease.

14. Mandatory Swimming Pool Inspection Program

- a. Council will undertake swimming pool compliance inspections on all tourist and visitor accommodation as well as premises with more than 2 dwellings, on a once in every three (3) year basis.
- b. For all private swimming pools, subject to resources council will undertake 50 compliance inspections per calendar year.
 - Priority of inspections will be made to those pools older than 10 years as well as any without a final certificates.
- c. Council will issue a compliance certificate after an inspection which finds a pool barrier compliant with the requirements of the legislation. Swimming pool compliance certificates are valid for three years.
- d. As a result of audit inspections, properties identified as having pool safety issues (fencing, etc) are:
 - Firstly, issued a 30 day outstanding works rectification letter.

- Following this, a reinspection occurs and if compliance is not achieved the owner is then served with notices to ensure that they comply with the applicable swimming pool legislation.
 - Penalty Infringement Notices can also be issued and/or Court action taken.
- e. An appropriate fee in accordance with the Council's adopted Operational Plan in force at the time will be charged for the inspection and for any first and second subsequent re-inspections with all invoices being issue to the owner.