



COUNCIL POLICY

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| Council Policy Title | Municipal Pool and Spa Enforcement The Administration and Enforcement of Part 7 Division 1 of the Building Regulations 2006 |
| Council Policy ref. no: | 19.2 |
| Responsible Department: | Sustainable Planning and Development |
| Date of adoption/review: | 23 October 2013 |

ADMINISTRATION AND ENFORCEMENT

1. Purpose

The purpose of this policy is to guide Council's activities in meeting its responsibilities with administration and enforcement of provisions under the Building Act 1993 ("the Act"), and in particular regulation Part 7 Division 1 of the Building Regulations 2006 which requires the erection of barriers around swimming pools and spas.

The use of policies by Councils has long been recognised by the courts as a means of Councils determining how (due to the many responsibilities held) limited resources are to be allocated. By having an appropriate policy in place Council will both reduce its exposure to risk and provide guidance to Council officers on how the regulation is to be administered.

2. Background

Council is required by section 212 of the Building Act 1993 ("the Act") to administer and enforce specified parts of that Act and the whole of the Building Regulations 2006 ("the Regulations") within its municipal boundaries. As with many other responsibilities, Council has the ability to determine how it will carry out these functions having regard to competing obligations and limited resources.

Regulation Part 7 Division 1 of the Building Regulations deals with the erection of swimming pool/spa barriers in respect of pools/spas constructed prior to 1991. Pools/spas constructed after that date were required, as part of the building permit, to include as part of the construction, barriers in accordance with the relevant Australian Standard. Prior to 1991 there was no such requirement.

The underlying obligations contained in regulation Part 7 Division 1 (to provide suitable pool/spa barriers) have been in force for a number of years. The State Government and some Councils have advertised the requirements of regulation Part 7 Division 1 on many occasions. Despite this advertising, Council audits reveal that only a relatively small number of swimming pools/spas fully comply with barrier requirements, and that compliance does not occur until Council actively enforces the regulation.

The administration and enforcement of the Regulation has generally been on an ad hoc basis in most Councils and the degree of administration and enforcement has varied greatly between municipal districts. Most Councils have adopted in recent years a policy that deals with how the administration and enforcement is to take place.

A reactive policy is one where Council only enforces the regulatory requirements when it becomes aware of a specific (or potential) non-compliance. The Court has determined in numerous cases (including the well known case of *Pyrenees Shire Council v Day*) that in circumstances where a Council becomes aware of a danger to persons or property and Council has the statutory ability to cause the danger to be abated, the community expects Councils to take such action. A failure to take action in those circumstances could result in a finding of negligence against the Council.

A proactive policy is one where Council actively seeks out non-compliance and takes appropriate enforcement action. The degree of 'proactiveness' may vary. To be proactive it is necessary to:

- (a) Identify the location of swimming pools/spas in the municipality
- (b) Have a programme of inspections of those swimming pools/spas
- (c) Publicise that Council has a proactive policy and will be conducting inspections
- (d) Determine whether those inspections are to be selective or be systematic
- (e) Have a subsequent follow up programme
- (f) Have suitable staff to conduct those inspections

An education policy is one where Council makes available to the community sufficient information for persons to understand the legal requirements and the reasons for those requirements. An education policy may be passive or active. A passive education policy is one where material is made available as handouts etc at Council offices whereas an active education policy will use the media and other resources to educate as many members of the community as possible. An education policy however must be used in combination with either a reactive or proactive enforcement policy.

All Councils should, as part of their risk management process, have in place a policy that identifies the processes to be followed upon becoming aware of a non-compliant (or potentially non-compliant) swimming pool/spa barrier.

The adoption of this policy will provide specific guidance to the Council's Building Department concerning how it will implement administration and enforcement of these requirements, and give assurance to the community that the responsibility given by that Act is being administered in a responsible manner.

Council's Approach to Enforcement of Swimming Pool/Spa Barrier Requirements

Colac Otway Shire does not have the staff resources which would enable it to proactively enforce swimming pool/spa barrier requirements for all land owners on annual basis. It does acknowledge the need however for a proactive approach to administration and enforcement in respect of these regulations, in addition to on-going response to known non-compliance when this becomes evident, and education of building owners. This policy will therefore adopt the following approach to enforcement of the requirements as a means of best managing risk to human life and safety within its resource capacity, with the aim of ensuring that eventually all swimming pool/spa barriers in the municipality are compliant with the regulation.

Reactive Approach

Council officers, upon becoming aware of any swimming pool/spa within the municipal district that does not have a barrier compliant with the Regulations, will utilise the procedure set out below to bring about compliance.

1. Upon becoming aware of a potential non complaint barrier the designated Council officer will write to the property owner and occupier advising that there is concern that the building at the property may not comply with the Building Regulations and that an inspection will take place at a set date. A copy of the relevant information sheets will be sent with that letter. This will take place within 7 days of being notified of the potential non compliance.
2. The designated Council Officer will inspect the subject property within 7 days of the letter.
3. Upon inspection, in the event there is no barrier or the barrier in place does not comply with regulation Part 7 Division 1, a Building Order for Minor Work [on the basis that the Municipal Building Surveyor is of the opinion that the barrier is minor work] will be issued pursuant to section 113 of the Building Act. The building order will (generally) allow the owner 30 days in which to erect a compliant barrier.
4. In the event as determined by the Municipal Building Surveyor, the individual circumstances warrant the erection of a barrier in a period of time less than 30 days, an Emergency Order under section 102 of the Building Act will be issued.
5. Any order issued will be accompanied by a copy of regulation Part 7 Division 1 and associated educational handouts providing information on how to comply with the order and advising as to when the next inspection will take place.
6. The time for compliance under the order may be extended provided proper grounds for doing so are provided.
7. At the end of the time for compliance, the swimming pool/spa will again be inspected. If no genuine action has been taken by the homeowner to comply with the order, the matter will be referred to Council's solicitor for prosecution (for breaches of regulation Part 7 Division 1 and section 118 of the Building Act) and enforcement through section 253 of the Building Act, being an order of the court requiring compliance. A letter will be sent to the owner advising of the referral to Council's solicitor and providing a final opportunity to comply. Officers may elect to send up to two warning letters prior to referral to Council's solicitor with the aim of seeking co-operative compliance with an order.
8. If at the time of that inspection the owner has attempted to comply with the building order but there are minor matters still outstanding, the owner will be advised of a time at which a further inspection will be carried out and if there is still non compliance at that time enforcement action may be taken.
9. If a further inspection is required as a result of the barrier not being fully compliant, following that further inspection, the relevant Council officer may determine to refer the matter at that time to Council's solicitor for enforcement action.

Proactive Approach

In addition to responding to non-compliance as it becomes known, Council will take a proactive approach to administration and enforcement of swimming pool/spa barrier requirements within its resource capacity, and taking a risk management approach. This is aimed at ensuring that eventually all swimming pool/spa barriers in the municipality are compliant with the regulations. Officers will follow the following procedure:

1. Council officers will maintain a database of all swimming pools and spas in the municipality. The database will be updated by 30 June **every four years** by analysing existing records and/or by the use of aerial photography (acknowledging that aerial photography may not identify all pools and spas and existing records will also not include all existing pools and spas). It will also be updated as officers become aware of a swimming pool or outdoor spa through the course of their day to day work. The database, even if not complete, is essential for:
 - a. Determining the number of pools and spas in the municipality, which is required so as to enable the level of risk to be assessed
 - b. Determining the level of resources required
 - c. Identifying swimming pools and spas constructed both before and after 1991 so as to enable if necessary an enforcement program with respect to regulation Part 7 Division 1.
 - d. Identifying addresses for 'direct mailing' campaigns
2. Every four years, all properties known to have a swimming pool or outdoor spa will be inspected.
3. Upon inspecting a property and identifying a non compliant barrier the procedure set out in the "Reactive Approach" will be utilised to bring about compliance.

Education

The following is not a detailed procedure in respect of educational steps. Rather the following sets out a variety of measures that may be taken to increase community awareness:

1. Council's policies with respect of regulation Part 7 Division 1 will be printed and made available in pamphlet form to the public
2. A series of articles on pool safety and owner responsibilities will be prepared for the local newspapers at the start of each summer period.
3. Pool Shops, Childcare Centres, libraries and other public buildings to be asked to distribute (via the counter) pamphlets and other public awareness material
4. The use of telephone recordings to be investigated
5. Advertisements in local newspapers
6. Information and appropriate links on Council's website

Reporting

A report will be prepared by Council officers every four years at the conclusion of the four yearly audit detailing all actions taken under this policy, identifying:

- a) The number of pools/spas inspected

- b) The number of pools/spas that at 1st inspection required no further action
- c) The number of Minor Works Orders or Building Orders issued
- d) The number of orders complied with in the specified period
- e) The number of Building Orders referred for legal proceedings
- f) The number of Emergency Orders issued
- g) The number of Emergency Orders referred for legal proceedings
- h) The number of matters outstanding
- i) Details of education methods employed under the policy

This report will be forwarded to the Shire's Risk Management Committee for consideration.

Conclusion

This policy will provide Council with a clear and transparent framework for directing resources to enforcement of swimming pool/spa barrier requirements. It will ensure that Council is taking a responsible approach to this legislative responsibility within its financial capacity.

ADOPTED/AMENDMENT OF POLICY

| Policy Review Date | Reason for Amendment |
|---------------------------|-----------------------------|
| 23 November 2005 | Adopted by Council |
| 24 May 2006 | Review |
| 23 October 2013 | Review |