

Guidance information about residential and small heated pools

Transitional provisions

As of January 1st, 2017, the Fencing of Swimming Pools Act 1987 was repealed by the Building (Pools) Amendment Act, which inserted provisions relating to pool barriers (fencing) into the Building Act 2004. This guidance information is based on these changes and the supporting regulations that have been confirmed to date. Please refer to the [Ministry of Business, Innovation and Employment \(MBIE\) website](#) for further details.

If your pool barrier was constructed, erected, or installed after 1987 and it complied, then it may still comply under the new legislation, however, there are *some* exceptions. An existing pool is deemed to have barriers that comply with section 162C of the Building Act 2004 (the Act) if the barriers complied with the Schedule of the Fencing of Swimming Pools Act 1987 (as that schedule was in force) immediately before 1 January 2017.

Legislative requirements

All applications for building consent involving residential swimming or small heated pools must comply with the Building Act 2004 and Clause F9 of the NZ Building Code.

Every residential swimming or small heated pool that is filled or partly filled with water must have physical barriers that restrict access to the pool by unsupervised children under 5 years of age.

- The Act applies to pools which can contain water 400mm deep or greater.

The term **residential pool** refers to a pool associated with an abode i.e. a place where people sleep and includes a:

- dwelling, hotel, motel, inn, hostel, or boarding house
- convalescent home, nursing home, or hospice
- rest home or retirement village
- camping ground; and
- any similar place

A swimming pool is defined as

- any excavation or structure of a kind normally used for swimming, paddling, or bathing; or
- any product (other than an ordinary home bath) that is designed or modified to be used for swimming, wading, paddling, or bathing but does not include an artificial lake.

What does the term small heated pool mean?

A **small heated pool** refers to heated pools such as spa pools or hot tubs. The amount of surface water area dictates whether a building consent is required for the barrier that restricts access to the small heated pool e.g. whether a safety cover (lockable lid) or physical barrier is permissible.

Under exemption 21A of Schedule 1 of the Building Act 2004, a building consent is not required for the means of restricting access where a safety cover is used on a small heated pool, such as a spa pool with a water surface area of 5 square metres or less. Furthermore, the top surface of every wall of the pool must be, at all points, at least 760mm above the adjacent floor or ground, and, the walls of the pool are non-climbable. There must be no feature that could assist a young child climbing into the pool within a 760mm arc from the top of the pool wall.

If the cover used does not comply with Building Code clause F9.3.5, it is not considered to be a safety cover.

For a safety cover to comply with F9.3.5 it must satisfy all the following:

- restrict the entry of children when closed
- be able to withstand a reasonably foreseeable load
- be able to be readily returned to the closed position
- have signage indicating its child safety features.

[\(Guidance on what these points mean, and how you can comply with them, can be found inside the acceptable solution for F9\)](#)

Where a small heated pool has a safety cover, it is not required to be inspected every three years, as fencing to other residential pools are (section 162D of the Building Act 2004 refers).

If the surface water area of a spa pool or hot tub exceeds 5m² a building consent and a barrier, such as a fence, is required.

If the small heated pool is not in use (e.g. is empty), the means of restricting access does not apply.

Who is responsible for ensuring a pool barrier complies?

The following persons must ensure compliance of the pool barrier:

- the owner of the pool
- the pool operator
- the owner of the land on which the pool is situated
- the occupier of the property in or on which the pool is situated
- if the pool is subject to a hire purchase agreement (as defined in the Income Tax Act 2007), the purchaser of the pool
- if the pool is on premises that are not subject to a tenancy under the Residential Tenancies Act 1986 but the pool is subject to a lease or is part of premises subject to a lease, the lessee of the pool or the premises

Why do I have to put a barrier around my pool?

We are often asked this question, particularly where swimming pools are located near rivers, streams, ponds, and the sea. The requirement for fencing of swimming pools was first established by Government in 1987, when many young children were drowning in unfenced swimming pools. The intention of both the previous and current legislation is to promote the safety of young children by restricting access to certain pools.

Note: the number of young children drowning has reduced significantly since this legislation was enacted

A barrier (e.g. fence, a wall of building, etc) is required to restrict the movement of young children (5 years and under) moving directly to the pool from the house, other buildings, vehicle or pedestrian access ways and other areas of the property that would normally be available to young children.

The immediate pool area is defined as the land in or on which the pool is situated and as much of the surrounding area as is used for activities carried out in relation to or involving the pool.

Swimming pools – above ground

An above ground swimming pool is a pool which sits on the ground surface. An above ground pool may not require a barrier if the following conditions are met: -

- The walls of the pool are at least 1.2m above the ground; and
- The walls of the pool are not located within 1.2m of any permanent projection or object placed on the ground outside of the pool (includes trees and plants that may be used to gain access to the pool); and
- Any steps or ladder providing access to the pool is removed when the pool is not in use

Note: Council is required to maintain a register of all swimming pools to ensure ongoing compliance with the legislation. As a courtesy, the existence of the above ground pool should be registered with Council.

Barrier requirements- inside the boundary

Some examples from F9/AS1:

Barriers must: -

- Extend around the immediate pool area
- Be at least 1.2m in height above any permanent projection or object permanently placed on the ground outside and within 1.2m arc of the barrier top that could assist climbing.
- Have no horizontal rails on the outside of the barrier (or adjoining barrier), which could be used for climbing unless the rails are spaced at least 900mm apart
- Any gaps under the barrier should not exceed 100mm
- Any gaps between vertical rails should not exceed 100mm
- Gates into the pool area must open away from the pool area
- Gates into the pool area must self-close and self-latch unaided from any distance
- The gate latch must be located a minimum of
 - 1.5m above the ground if the latch is accessed from the outer face of the pool barrier, or
 - 1.2m above the ground if the latch is located on the inside face of the pool barrier and only accessible by reaching over the gate

[\(Full details are available within the acceptable solution for F9\)](#)

Can I use my building to form part the pool fencing?

You can obtain guidance on how you to use your dwelling wall as part of a pool barrier within the acceptable solution for F9 – F9/AS1.

Can I use a boundary fence as part of the pool fencing?

You can obtain guidance on how you to use your boundary fence as part of a pool barrier within the acceptable solution for F9 – F9/AS1.

Can I apply for an exemption from the requirements of having a pool barrier?

Exemptions are no longer available as they were described in the Fencing of Swimming Pools Act 1987, and Schedule 1 of the Building Act 2004, only deals with the exemption from requiring building consent for a small heated pool and not an exemption from the requirements to have a barrier per se.

Exemptions under the previous Act have been replaced by the waivers and modifications provisions of the Building Act as part of the consenting application and approval process.

When seeking a waiver or modification of a Building Code Clause, or more likely one of the performance sub-clauses, you will need to demonstrate how the objectives, functional requirements are still going to be met, as well as demonstrating compliance with any of the remaining performance requirements of NZ Building Code Clause F9.

Do I need a building consent to remove or demolish a swimming pool or spa pool?

No, under Schedule 1 of the Building Act a building consent is not required; however, all work must be carried out in accordance with the Building Code regardless of whether a building consent is required or not.

If an in-ground swimming pool is demolished, the owner will need to ensure that any backfill is properly compacted. To prevent potential future issues (particularly if an owner wishes to build on this land later), we recommend that a professional engineer certify the compacted fill. Compaction certificates may be placed on Councils property file at no charge. If the pool remains but is to be backfilled, we recommend that a hole be punched in the base before compaction to allow water to dissipate.

As a courtesy, please advise Council when the swimming or spa pool is removed / demolished. This will mean Council will not need to contact you about the pool in the future. You can do this online [here](#).

What if my pool was installed without a building consent?

If a swimming pool has been installed without a building consent, and the pool is a type which would have required one, the Council cannot issue a building consent retrospectively. If you wish to rectify the matter it may be possible, (depending on the age of the pool), to apply for a Certificate of Acceptance, and provide a third-party report verifying that the pool is structurally sound, as well as a report on the barrier compliance. Council will also carry out an inspection on the barrier to determine compliance on this aspect. Please refer to the document [AC1805 'How unauthorised building work is assessed'](#) (available on our website) for further information about this process.

Can I propose to use an alternative solution and not F9/AS1 or F9/AS2?

Yes, you can. The acceptable solutions are not mandatory; however, you must clearly demonstrate compliance with the building code clause F9 by having a barrier, and you may wish to use comparison to the acceptable solution details as a starting point.

Whatever you decide to use we look at the proposals objectively on a case by case basis, and the approvals are discretionary based on the context in which the proposals are sought to be used in. This could mean that on one project an alternative solution may be acceptable, but the same detail on another project may not be deemed compliant owing to changes in that context.

Some guidance is available in the following links, and your building consent application form should clearly state any proposals for alternative solutions in the section where you tell us what your 'means of compliance' is to be.

Auckland Council website: <https://www.aucklandcouncil.govt.nz/pages/search.aspx?k=AC2210>

MBIE Guidance:

<https://www.building.govt.nz/building-code-compliance/how-the-building-code-works/different-ways-to-comply/alternative-solutions/>

3 yearly inspections of pool barriers

The legislation requires that an inspection of the pool barrier must occur at least once every three years. The legislation allows both Council officers and independently qualified pool inspectors (IQPI) to carry out this function. IQPI's can be identified by visiting the Ministry of Business Innovation and Employment's website at: <https://poolinspectors.tradingstandards.govt.nz/pool-inspector-public-register/>

If you choose to continue using Council for inspection services, the inspection does incur a charge, and if remedial work is required subsequent inspections also incur a fee.

If you choose to use an IQPI please advise Council so that we may update our register; please phone 09 301 0101 and ask for the Pool Fencing team.