NOTICE OF SWIMMING POOL NON-COMPLIANCE

(Clause 22E, Swimming Pools Act 1992)

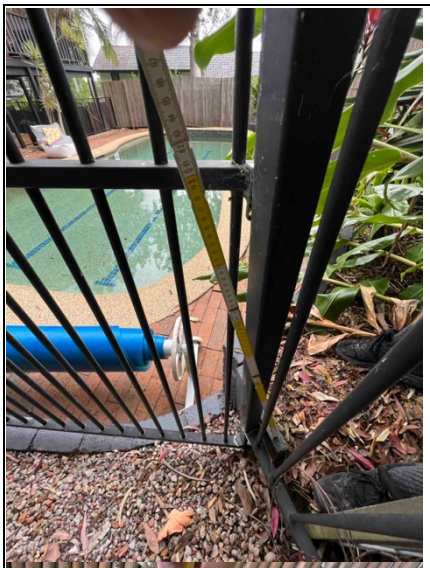
Notice Date: 21 November 2023
Premises to which this notice relates: 2 Berrinda Place Frenchs Forest.
Pool Installation Description: In-ground concrete swimming pool

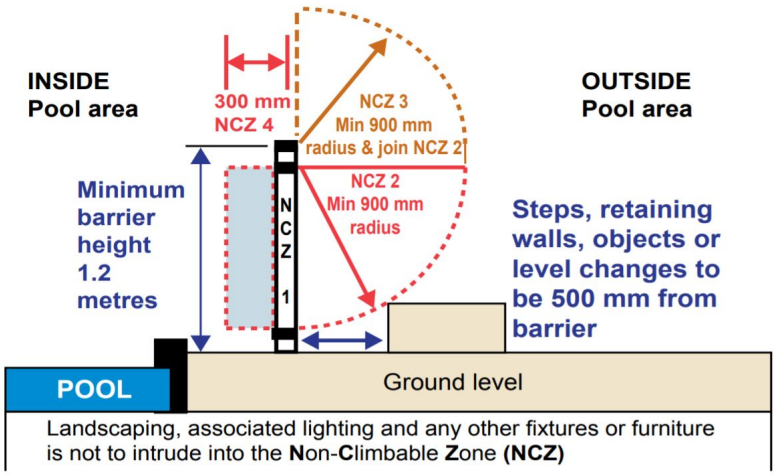
Further to your request for an inspection of the swimming pool barrier installation at the above premises, it is advised that an accredited pool certifier undertook an inspection on 21 November 2023.

Such inspection was undertaken to determine whether the swimming pool's child resistant barrier was in compliance with the provisions of the Swimming Pools Act 1992 and if compliant, to permit the issue of a Certificate of Compliance under Section 22D of that Act.

I inform that the inspection revealed that the swimming pool's barrier installation was, at the time of inspection, not in compliance with the requirements of the Swimming Pool Act 1992. Consequently, the Certificate of Compliance cannot be issued. In this regard, the following table identifies the defect(s) that were evident and the suggested solution(s) for rectification.

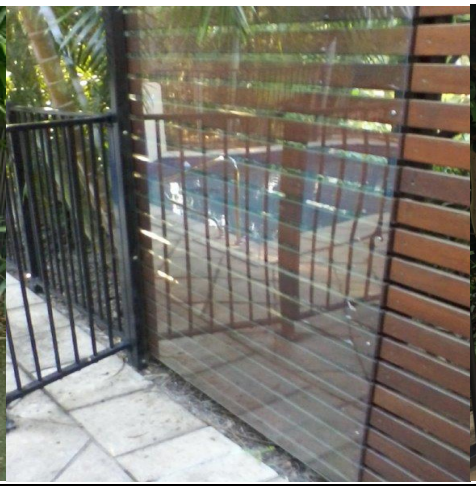
1. **Defect/non-compliance identified** The rails of the internal pool fence were not 900 mm or more apart. **Suggested solution for rectification** Separate the rails so that the distance between the top of the top rail is more than 900 mm from the top of the bottom rail. Alternatively, one of the rails could be shielded to remove the foothold capability of the rail. If the rail or rails are to be shielded, a section of perspex can be attached to the outside of the rail to prevent a foot hold.





Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

Below are some examples of shielding climbable rails with perspex.

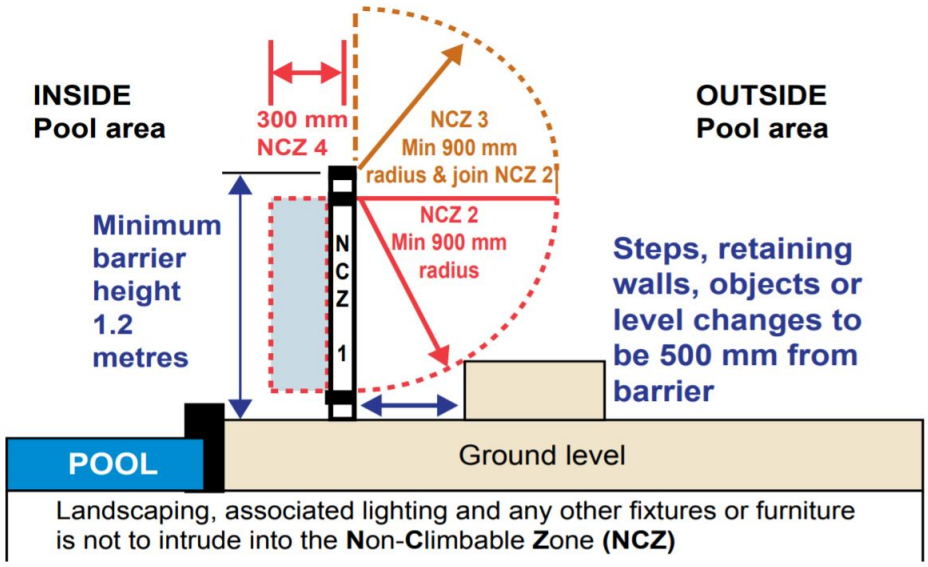


2. **Defect/non-compliance identified**

Vegetation was within the 900 mm Non-Climb Zone (NCZ) on the outside of the pool fence. The 900 mm NCZ is required to be kept clear so that children cannot use any object close to the fence to assist them to climb into the pool enclosure.

Suggested solution for rectification

Prune or remove the vegetation so that no branch, stumps or fork sections are within the 900 mm NCZ. The NCZ is a 900 mm arc measured from the top of the fence and extends upward above the fence (ie the 900 mm NCZ is semi-circular in shape).



Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

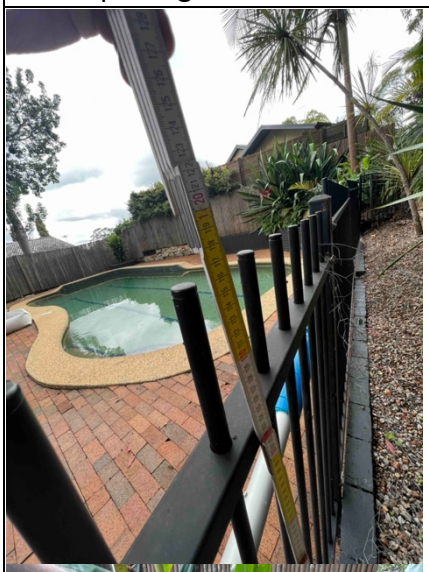
3. **Defect/non-compliance identified**

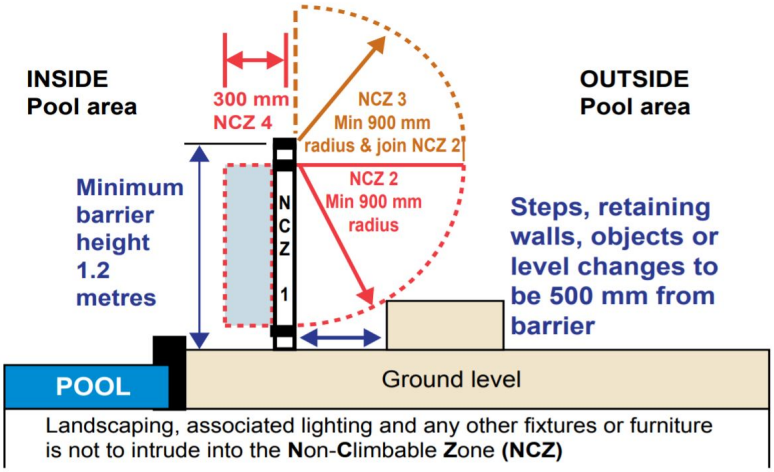
Sections of the internal pool fence were not 1200 mm or more in height.

Suggested solution for rectification

Increase the height of the fence so that the effective height is 1200 mm or more measured on the outside of the fence. The height of the fence is measured from the top of the fence

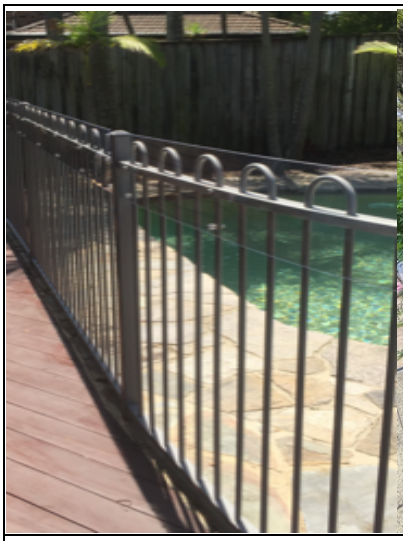
to the ground level on the outside of the fence. Where there is an object within 500 mm of the pool fence, the 1200 mm height is measured to that object and not the ground. Alternatively, any object on the outside of the fence that is within 500 mm of the fence can be lowered or removed so the 1200 mm can be measured to the ground. If raising the fence is the option used, the gap under the fence must not exceed 100 mm. In most cases, the fence will need to be raised to a height that will create a gap greater than 100 mm under the fence. In such cases, it is more effective to raise the fence and then close the gap (that is created) by using permanent and secure construction under the pool fence panels rather than replacing the entire fence with higher fence panel.





Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

Below are some examples of extending the height of internal barriers to 1200mm.



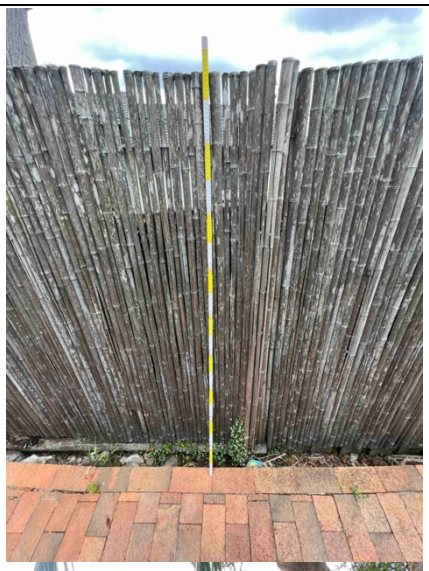
4. **Defect/non-compliance identified**

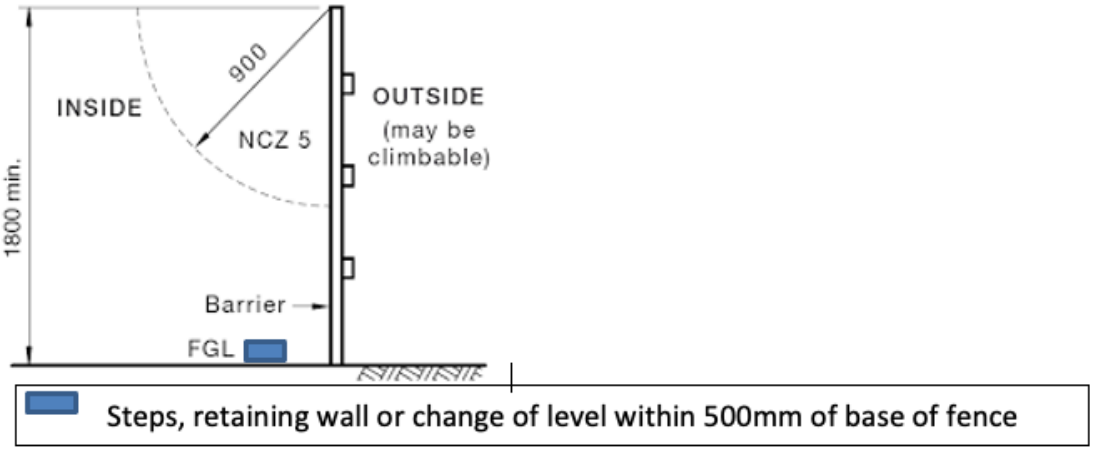
The effective height of the boundary fences was not 1800 mm or more. The height of the fences was measured from the top of the fence to the ground level on the pool side of the fence.

Suggested solution for rectification

Raise the boundary fences so they are 1800 mm or more in height (measured on the pool side of the fence). The height of a boundary fence is measured from the top of the fence to the ground level on the pool side of the fence. Where there is an object such as pavers, raised garden bed or decking etc within 500 mm of the boundary fence, the 1800 mm in height is measured to that object and not the ground. Alternatively, any ground or surface object on the pool side of the fence could be lowered or removed (500 mm or more away from the fence) so that the 1800 mm effective height of the fence is achieved. If the fence height is increased, the required 900 mm NCZ 5 is required to be measured from the top of the fence so that any fence extension construction provided on top of the existing fence must not have footholds greater than 10 mm wide within 900 mm of the top of the extended fence.







Above is a diagram showing the NCZ5 requirements for an 1800mm boundary fence.

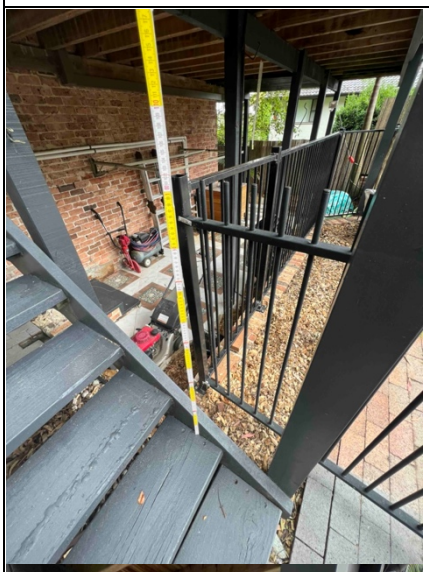
5. **Defect/non-compliance identified**

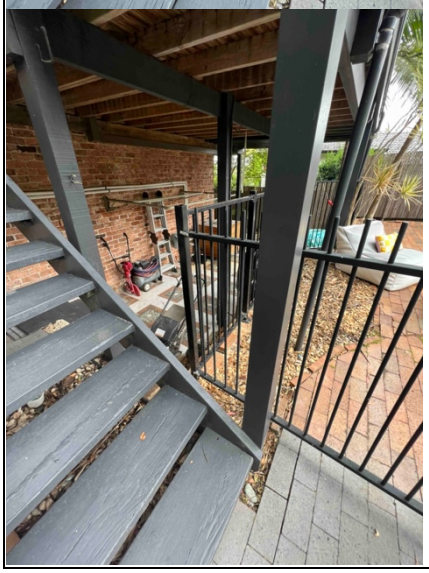
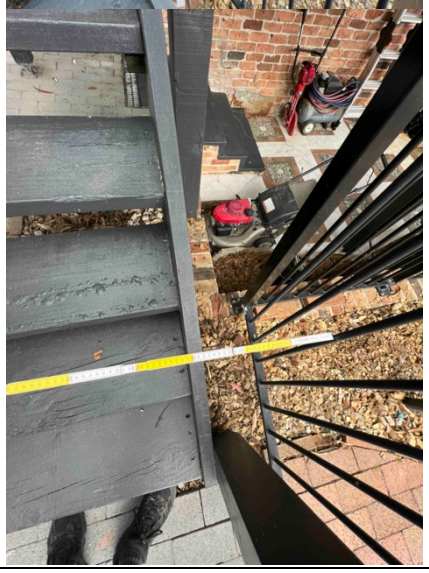
The internal pool fence was not 1200 mm or more in height as the stairs at the base of the fence has reduced the effective height of the fence.

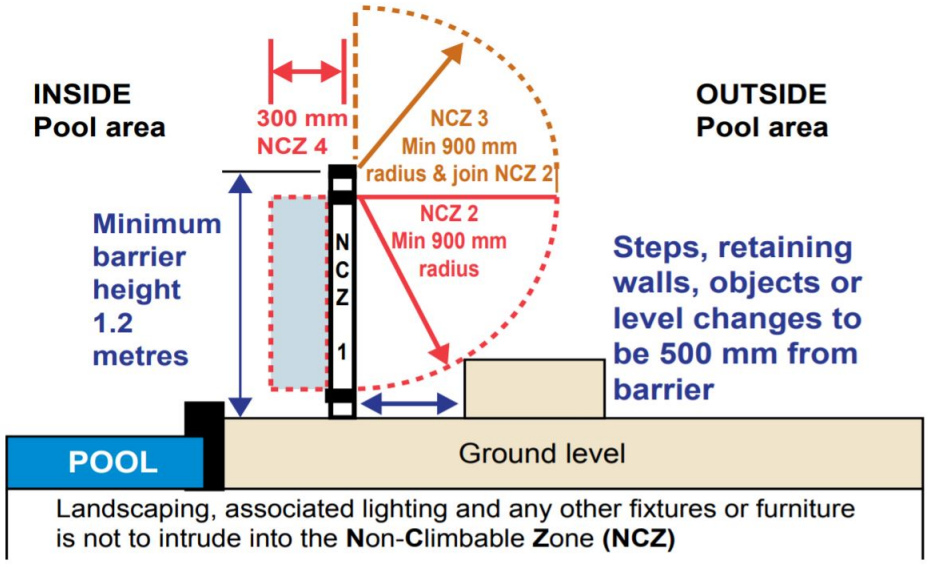
Suggested solution for rectification

Increase the height of the fence so that the effective height is 1200 mm or more measured

on the outside of the fence. The height of the fence is measured from the top of the fence to the ground level on the outside of the fence. Where there is an object within 500 mm of the pool fence such as garden beds etc, the 1200 mm height is measured to the surface of the garden and/or garden bed edging boards etc and not the base of the fence. If raising the fence is the option used, the gap under the fence must not exceed 100 mm. In most cases, the fence will need to be raised to a height that will create a gap greater than 100 mm under the fence. In such cases, it is more effective to raise the fence and then close the gap (that is created) by using permanent and secure construction under the pool fence panels rather than replacing the entire fence with higher fence panel. Alternatively the internal barrier can be re positioned so the stairs are no longer within the 500mm exclusion zone.





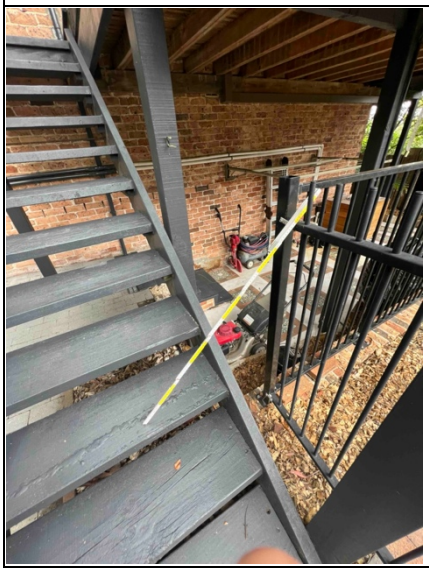
Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

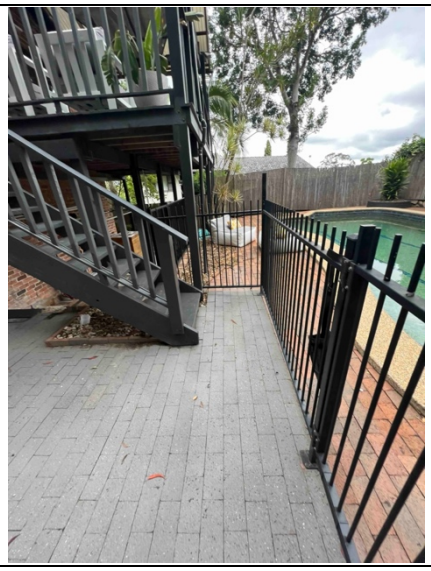
6. **Defect/non-compliance identified**

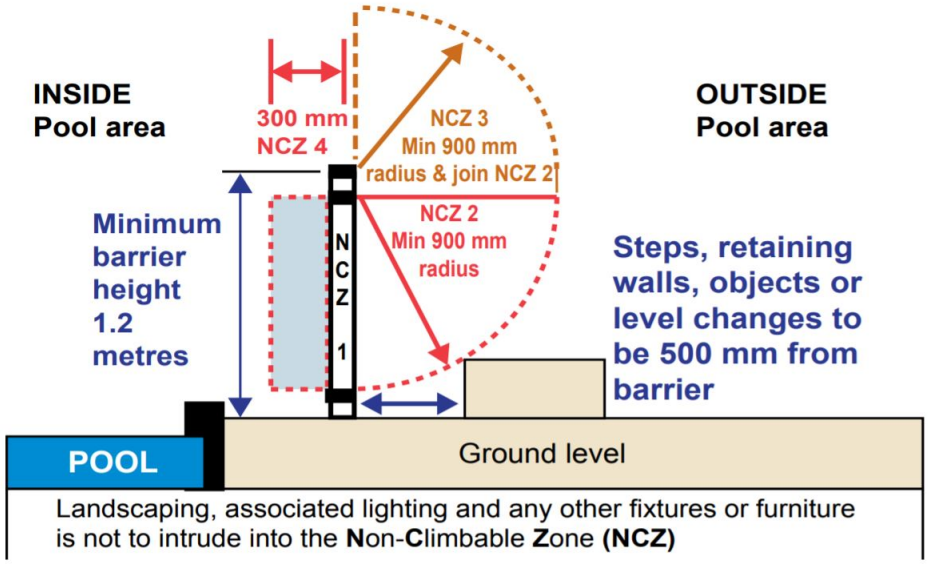
Stairs were within the 900 mm Non-Climb Zone (NCZ) outside the pool fence. The 900 mm NCZ is required to be kept clear so that children cannot use any object close to the fence to assist them to climb into the pool enclosure.

Suggested solution for rectification

Raise the internal barriers height upwards to the point where the climbable stairs are no longer within the 900mm NCZ. The NCZ is a 900 mm arc measured from the top of the fence and extends upward above the fence (ie the 900 mm NCZ is semicircular in shape). Alternatively, the internal barrier can be re positioned so the stairs are no longer within the 900mm NCZ.







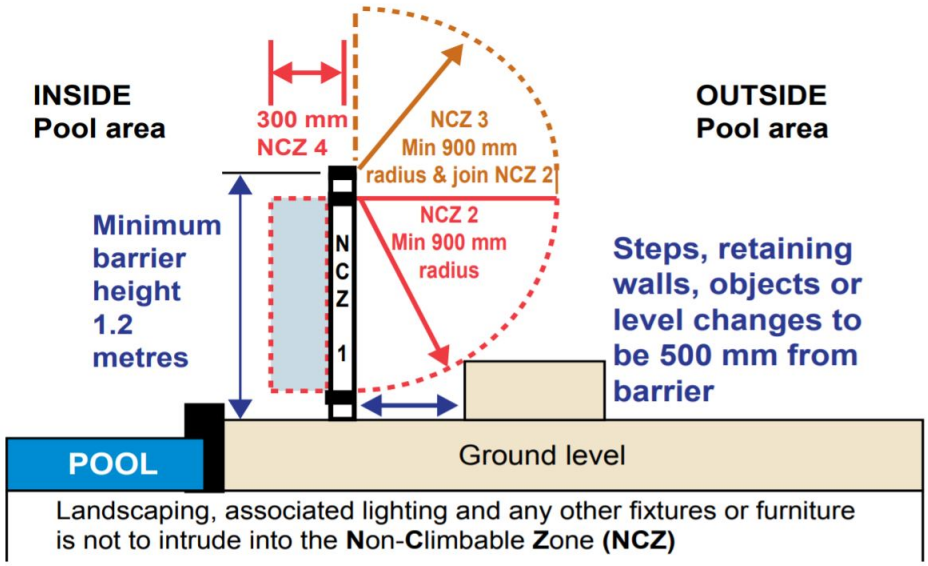
Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

7. **Defect/non-compliance identified**

A Rock was within the 900 mm Non-Climb Zone (NCZ) on the outside of the pool fence. The 900 mm NCZ is required to be kept clear so that children cannot use any object close to the fence to assist them to climb into the pool enclosure.

Suggested solution for rectification

Remove or relocate the rock outside the 900 mm NCZ so it cannot be used to assist children to climb over the fence and into the pool enclosure. The NCZ is a 900 mm arc measured outward from the top most rail on the fence (if there is an upper rail) or the top of the fence and also extends upward above the top of the fence. The NCZ is semi-circular in shape. Alternatively, the internal barrier can be raised so the rock is no longer within the 900mm NCZ.



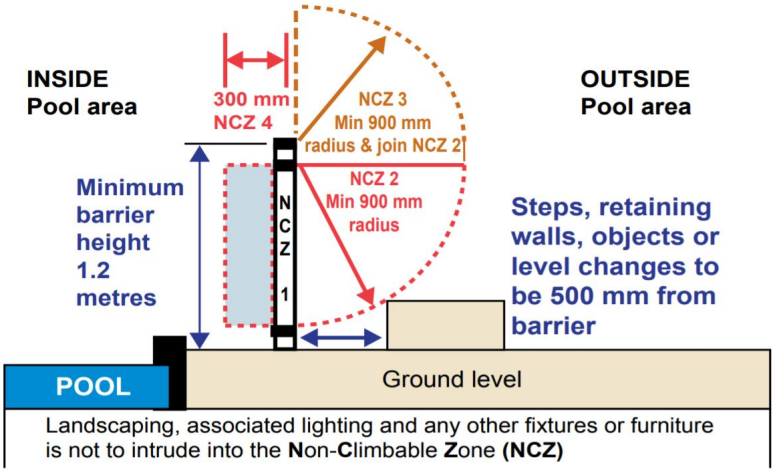
Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

8. **Defect/non-compliance identified**

A Brick ledge was within the 300 mm Non-Climb Zone (NCZ) inside the pool fence. The 300 mm NCZ is required to be kept clear so that children cannot put their feet through the fence and onto any object that may assist them to climb into the pool enclosure.

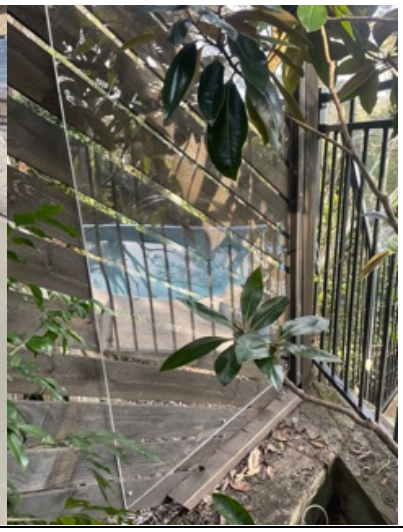
Suggested solution for rectification

Remove or relocate the Brick ledge from within the 300 mm NCZ. Alternatively, the fence can be shielded on the outside so children are unable to put their feet through the pool fence. If the fence is to be shielded, the shielding must be a permanent, durable and structurally adequate material. If steel mesh is to be used as the shielding material, the mesh must have apertures of not greater than 13 mm. The shielding material must be the full height of the fence so that the upper surface of the mesh is not capable of being used as a foothold that could assist children to climb over the fence.



Above is a diagram showing the NCZ requirements for an internal barrier less than 1800mm high.

Below are some examples of perspex shielding attached to the outside of barriers.



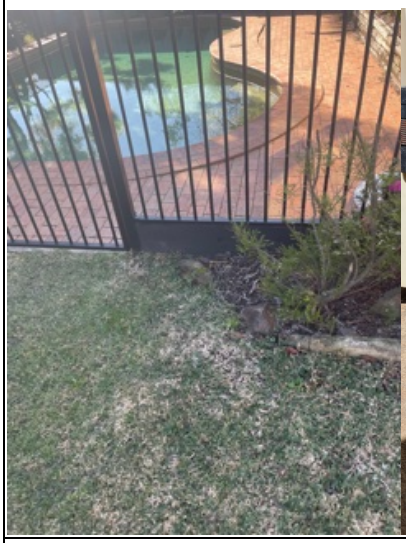
9. **Defect/non-compliance identified**

There were gaps in the internal pool fence greater than 100 mm. Gaps greater than 100 mm are not permitted in or under the pool fence.

Suggested solution for rectification

Reduce all gaps to less than 100 mm using permanent and structurally adequate construction. Eg timber or perspex.


Below are some examples of ways to reduce gaps to less than 100mm.



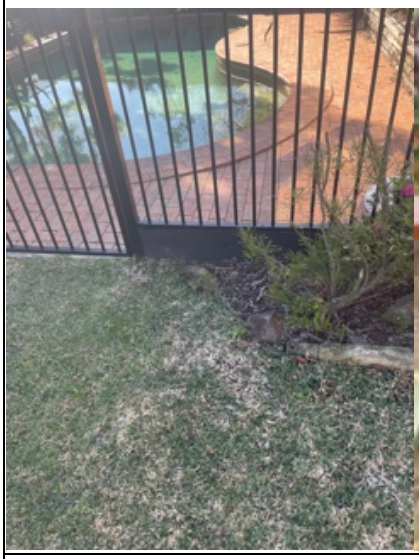

10. **Defect/non-compliance identified**

There was a gap under the boundary fence greater than 100 mm. Gaps greater than 100 mm are not permitted in or under the pool fence.

Suggested solution for rectification

Reduce all gaps to less than 100 mm using permanent and structurally adequate construction. Eg Timber or perspex.

Below are some examples of ways to reduce gaps underneath a barrier.



11. **Defect/non-compliance identified**

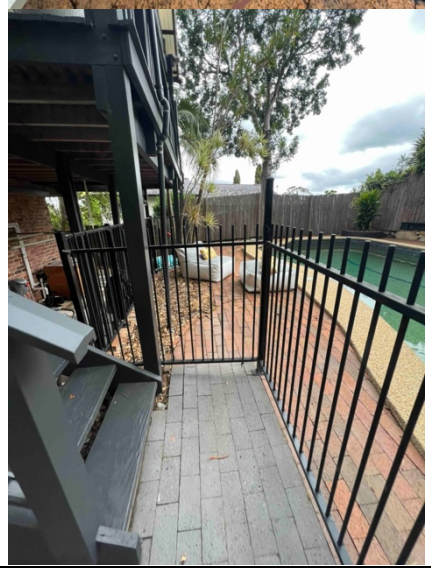
There were gaps under the internal pool fence greater than 100 mm. Gaps greater than 100 mm are not permitted in or under the pool fence.

Suggested solution for rectification

Reduce all gaps under the pool fence to less than 100 mm using permanent and structurally adequate construction.





12. **Defect/non-compliance identified**

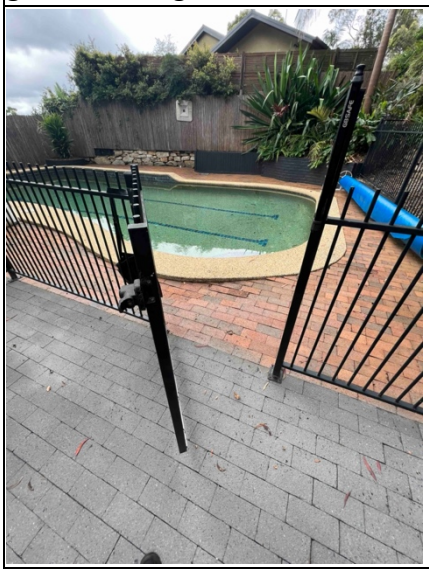
There was a gap greater than 100 mm under the pool gate. Gaps greater than 100 mm are not permitted in or under the pool barrier.

Suggested solution for rectification
Reduce the gap under the gate so it is less than 100 mm by using permanent and structurally adequate construction. Eg timber or perspex.

13. **Defect/non-compliance identified**
The pool gate did not self-close and self-latch.

Suggested solution for rectification
The reason the gate did not self-close and self-latch was because the gate had one or more of the following defects:
- The latch on the gate post was not correctly aligned with the strike on the gate;
- The gate post was not stable enough to hold the gate in the correct position;
- The gate hinges or return spring did not have enough tension to close the gate;
- The gate jammed on the ground during its full open swing;
- The gate was being caught on the vegetation adjacent the gate; and/or
- The gate jammed on an object during its full open swing.

The pool gate must self-close and self-latch from any open position, including when the gate is resting on the latch.



Further, it is advised that with respect to the above matter(s), it is the certifier's opinion that the swimming pool constitutes a significant risk to public safety. In this regard, Council is required to be advised of this significant public risk and a copy of the defect notice will be forwarded to council immediately as required by Clause 22E (f) of the Swimming Pools Act 1992.

Pursuant to clause 18BA of the Swimming Pools Regulation, a Certificate of Non-compliance has also been issued by the certifier from the NSW Register of Swimming Pools, as a consequence of the inspection revealing the requirements for the issue of a Certificate of Compliance had not been met. Such Certificate of Non-compliance is enclosed.

NOTE: The swimming pool barrier was assessed using the following legislation and criteria: The Swimming Pools Regulation 2018, the Building Code of Australia and AS 1926.1 – 2012.

Should you have any further enquiries in relation to this matter, please do not hesitate to contact the certifier, Matthew Wheeler, during normal office hours Monday to Friday.

Yours faithfully,

Matthew Wheeler

Jenny Wren Pool Certification
0416 517 577