



SWIMMING POOL
INSPECTION
PROGRAM
P2.0238.3

SWIMMING POOL INSPECTION PROGRAM

DIVISION: Planning and Environment

BRANCH: Environment & Regulatory Services

CATEGORY: 1

PART 1 – INTRODUCTION

1. BACKGROUND

- 1.1 This program has been developed to reflect the requirements of the *Swimming Pools Act 1992*, which stipulates that Councils are required to have a Swimming Pools Inspections Program. This program also reflects the provisions of the *Swimming Pool Regulation 2018*.

2. OBJECTIVES

- 2.1 The objectives of this policy are to outline:
- a. The role of Council conducting swimming pool barrier inspections for the purpose of issuing Certificates of Compliance and subsequent fees.
 - b. The role of Registered Certifiers conducting swimming pool barrier inspections for the purpose of issuing Certificates of Compliance and certificates of non-compliance.
 - c. The requirements for properties with a swimming pool that are being sold or leased.
 - d. Definition of a mandatory swimming pool and Council's role in ensuring compliance with the *Swimming Pools Act 1992*.

3. SCOPE

- 3.1 This policy applies to every premise within the Camden Local Government Area (LGA) which contains a swimming pool for private use and pools identified as mandatory under the Act.
- 3.2 The policy provides information for Council staff, Registered Certifiers, pool owners and the wider community.
- 3.3 The policy outlines Council's role and responsibility in ensuring swimming pool barriers are compliant and the issuing of Certificates of Compliance.

4. DEFINITIONS

- 4.1 **Acquisition** of the premises means the date on which the sale of the premises is completed.
- 4.2 **Registered Certifier** means a person registered under the Building and Development Certifiers Act 2018 acting in respect of matters to which the registration applies.
- 4.3 **The Act** means the *NSW Swimming Pools Act 1992*.
- 4.4 **Certificate of Compliance** (in respect of swimming pools) means a certificate issued under section 22D of the *Swimming Pools Act*.
- 4.5 **Multi-occupancy Development** means a building or buildings that is, or are, situated on a premises that consists of more than two dwellings.
- 4.6 **The Regulation** means the *Swimming Pool Regulation 2018*.
- 4.7 **Relevant Occupation Certificate** (in respect of a swimming pool), which means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979* that is less than three years old and that authorises the use of the swimming pool.
- 4.8 **Spa Pool** means any excavation, structure or vessel in the nature of a spa pool, floatation tank, tub or the like. A typical spa pool contains only seating and water jets.
- 4.9 **Swimming Pool** means an excavation, structure or vessel:
- a. That is capable of being filled with water to a depth greater than 300 mm, 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 but does not include a spa bath, anything that is situated within a bathroom or anything declared by regulations not to be a swimming pool for the purposes of this Act.
- 4.10 **Swim Spa** means any excavation, structure or vessel that may include a combination of seating, water jets and an area for swimming and/or water play. Swim spas may include jets designed to swim against, an attachment to aid in swimming or an area that does not contain seating, that may be used for water play. Swim spas may be used in the same manner as a pool and therefore are to be surrounded by a compliant pool fence. *'Attachment' may include but is not limited to swim pole, harness and floatation devices.*
- 4.11 **Tourist and Visitor Accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis and includes backpacker's accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation, and serviced apartments.

PART 2 – POLICY STATEMENT

5. THE INSPECTION PROGRAM

- 5.1 From October 2013, all councils have been required to have in place and implement a program of swimming pool inspections.
- 5.2 Councils are required to inspect swimming pools in accordance with the adopted inspection program.

6. PROPERTIES BEING SOLD OR RENTED/LEASED

- 6.1 From 29 April 2016, new laws were introduced applying to properties for sale or lease within NSW.
- 6.2 Properties to be leased with a pool must be Registered (certificate of registration); and have a Certificate of Compliance, or a relevant occupation certificate.
- 6.3 Properties to be sold with a pool must have: a Certificate of Compliance, or a relevant occupation certificate and certificate of registration, or a certificate of non-compliance.
- 6.4 A property may be sold with a non-compliance certificate attached to the contract of sale. The Regulation allows the new owner a period of 90 days from the date of acquisition of the premises to rectify the barrier (unless the certificate states that the swimming pool poses a significant risk to public safety).
- 6.5 The 90-day grace period does not apply to the new owner if the contract for sale contained a certificate of non-compliance that stated the pool 'poses a significant risk'.
- 6.6 The owner of the premises on which a swimming pool is situated must ensure that the swimming pool is at all times surrounded by a child-resistant barrier in accordance with the Act.
- 6.7 Council may issue an Order / Direction requiring the pool to be brought into compliance at any time, regardless of whether the premises are for sale. The decision to issue an order shall be determined by; whether the pool poses a significant risk, any representation received by Council in response to a Notice of Proposed Order and the safety risks to the public.

7. MANDATORY AND HIGH RISK POOLS INSPECTED EVERY THREE YEARS

- 7.1 The Act requires premises on which there is tourist and visitor accommodation or more than two dwellings to have their pool inspected at least once every three years.

This includes:

- Tourist/visitor accommodation, serviced apartments, hotels, motels, backpackers accommodation, bed and breakfasts, farm stay accommodation, Airbnb and any other accommodation of this nature.

- Multi-occupancy Developments, serviced apartments and premises with more than two dwellings.
- 7.2 The approved provider of a family day care service must ensure that any swimming pool at a family day care residence or approved family day care venue is fenced in accordance with the requirements for fencing a new swimming pool under the Act. Operators of family day care in the Camden Council Local Government Area are required to ensure that any pool or spa on their premise is assessed every three years to ensure compliance with the Act.
- 7.3 In accordance with the Act, premises with a valid Certificate of Compliance or a Relevant Occupation Certificate are considered compliant and will not be inspected by Council.
- 7.4 Council will keep a register of the pools within its area that require mandatory inspection.
- 7.5 Premises with mandatory pools will be required to engage Council or a Registered Certifier for the purpose of an inspection and obtaining a Certificate of Compliance.
- 7.6 For a Certificate of Compliance to be issued by Council, the relevant application form and fee will need to be lodged engaging Council to complete the certification work.
- 7.7 Council will take appropriate steps to inform owners of premises requiring mandatory inspections of their responsibility under the Act and the process for obtaining a Certificate of Compliance.

8. WHAT IS A POOL CERTIFICATE OF COMPLIANCE?

- 8.1 A Certificate of Compliance is issued from the NSW Government Swimming Pool Register once the pool has been inspected and assessed by Council or a Registered Certifier in accordance with the requirements of The Act.
- 8.2 The swimming pool must be registered on the NSW Swimming Pool Register prior to the inspection.
- 8.3 The Pool must fully comply with the Act, including Part 2 – Access to Swimming Pools.
- 8.4 A Certificate of Compliance remains valid for a period of 3 years from the date on which it is issued. The certificate becomes invalid if an order is issued under section 23 of the Act in respect of the swimming pool.
- 8.5 A pool may be inspected by Council if a complaint has been received with respect to pool safety, or there is good reason to suspect the pool no longer complies with the pool safety requirements, even if a Certificate of Compliance has been previously issued.

9. WHAT HAPPENS IF A POOL CERTIFICATE OF COMPLIANCE CANNOT BE ISSUED?

- 9.1 A Certificate of Compliance cannot be issued if the pool does not meet the requirements of the Act. In such a case, either Council or the Registered Certifier must issue a Certificate of Non-Compliance and a notice in accordance with the Act and Regulations, including specifying the non-compliance/s and works required.
- 9.2 If the works are not undertaken within the required timeframe, Council may take regulatory action for the pool to be brought into compliance. Regulatory action may include serving a formal order under section 23 of the Act, issuing a penalty notice or, where appropriate, take legal action.
- 9.3 Under section 23A of the Act, where there is non-compliance with an order or if the Council considers that the requirements of the order need to be carried out urgently as there is a significant risk to public safety, Council or persons engaged by the Council may enter the land and carry out some or all of the requirements of the order. The reasonable costs of carrying out the work may be recovered as a debt by Council.

10. INSPECTIONS CARRIED OUT BY REGISTERED CERTIFIERS

- 10.1 A Registered Certifier may inspect a swimming pool to issue a Certificate of Compliance. If the pool has not met all the requirements, the certifier must provide a written notice to the owner of the pool.
- 10.2 The written notice must set out why the pool has not met the requirements, the steps that need to be taken in order to meet those requirements and whether the pool poses a significant risk to public safety.
- 10.3 The Registered Certifier must forward a copy of the notice to Council:
 - a. Immediately, if the Registered Certifier is of the opinion that the swimming pool poses a significant risk to public safety, or
 - b. Six weeks after the date of inspection, if a Certificate of Compliance is not issued for the swimming pool before that time.

11. SECTION 22E NOTICES RECEIVED BY COUNCIL

- 11.1 Pools will be prioritised and actioned based on whether the pool has been deemed to pose a significant risk or non-significant risk and the non-compliances noted within the report received by Council.
- 11.2 Pools identified as a significant risk shall be inspected by Council's authorised officer. The officer may issue an order under section 23 of the Act to address the significant safety risks.
- 11.3 When Council's authorised officer inspects the pool, it is for the purpose of addressing the significant safety risks. A Certificate of Compliance will not be issued.

11.4 For a Certificate of Compliance to be issued by Council, the relevant application form and fee will need to be lodged, engaging Council to complete the certification work.

11.5 Any inspection carried out by Council's authorised officer is independent of any other inspections undertaken by a Registered Certifier.

12. INSPECTIONS CARRIED OUT BY COUNCIL

12.1 Council will undertake the inspection of swimming pools in compliance with the Act. Swimming pools which will be inspected by Council as follows:

- Mandatory pools in compliance with section 22B of the Act where an appropriate application is lodged with Council (noting, that Registered Certifiers may also inspect Mandatory or High Risk Pools and issue Certificates of Compliance where the requirements of the Act are met).
- Notices received by from Registered Certifiers where the pool is identified as a significant risk to public safety.
- Complaint received alleging contravention of the Act.
- Applications for Swimming Pool Certificate of Compliance received by Council.

13. FEES

13.1 The Act provides that Council may charge a fee for the inspections carried out, being a fee that is no greater than the maximum fee prescribed by the Regulation. Council's fees and charges for pool inspections are set out in the annual Fees and Charges Schedule, available on Council's website.

14. EDUCATION AND AWARENESS

14.1 Pool owner education and awareness is essential in contributing to the success of the program.

14.2 An ongoing community education and awareness program will be delivered through community publications, media releases, website information, owner self-assessment pool fence checklists and pool safety officer interaction with the public.

15. GENERAL POOL OWNER RESPONSIBILITIES

15.1 The owner of the premises on which a swimming pool or swim spa is situated must ensure that the swimming pool or swim spa is at all times surrounded by a child-resistant barrier:

- a) that separates the swimming pool or swim spa from any residential building situated on the premises and from any place (whether public or private) adjoining the premises, and
 - b) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.
- 15.2 The occupier of a premises with a swimming pool, swim spa, or spa, must maintain a child resistant barrier to the pool or spa in a good state of repair as an effective and safe child-resistant barrier.
- 15.3 Owners of swimming pools, swim spas, and spa are required to register them on the online NSW State Government Register. This can be accessed and completed by owners free at www.swimmingpoolregister.nsw.gov.au

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**RELEVANT LEGISLATIVE
INSTRUMENTS:**

Swimming Pools Act 1992
Swimming Pools Regulations 2018
Building Code of Australia

**RELATED POLICIES, PLANS AND
PROCEDURES:**

Compliance and Enforcement Policy
Education and Care Services National
Regulations

RESPONSIBLE DIRECTOR:

Director Planning and Environment

APPROVAL:

Council

HISTORY:

Version	Approved by	Changes made	Date	EDMS Number
1	Council	New	14/07/2015	15/165459
2	Council	Minor amendments	14/05/2019	19/141099
3	ELG	Minor updates and amendments	28/07/2022	19/141099