

# Swimming Pool Inspection Program

November 2016

## 1.0 Purpose

Under the *Swimming Pools Act 1992* (the Act) Council has a regulatory responsibility to ensure that swimming pool barrier fencing for privately owned swimming pools and spas is installed and maintained in accordance with relevant legislative requirements.

The purpose of this program is:-

- To ensure that Council complies with its legal obligations under the *Swimming Pools Act 1992*.
- To ensure that privately owned swimming pools and spas in the Northern Beaches Local Government area are adequately surrounded by a child resistant barrier.
- To set guidelines for the inspection program to ensure pools and pool owners comply with the relevant legislation.
- To promote awareness within the Northern Beaches Local Government area of the requirements of the *Swimming Pools Act*.

## 2.0 Principles

This inspection program is relevant to all swimming pools regulated under the *Swimming Pools Act 1992*. A reference to a swimming pool in this document also includes a spa pool.

The inspection program is designed to assist Council staff to provide measure to identify non-compliance swimming pools, ensure upgrade works are carried out and in the process raise swimming pool safety awareness.

## 3.0 Scope

### 3.1 What Properties does this program apply?

This program applies to swimming pools (both indoor and outdoor) and spas that are situated or installed, on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located, but does not apply to swimming pools and spas situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority.

### 4.0 Responsibilities

Building Compliance Officers, Environmental Health Officers and Rangers are responsible for ensuring compliance with this program and related legislation and procedures.

The Manager Regulatory Services is the responsible officer for this program.

### 5.0 Definitions

#### **Barrier**

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.

#### **Register**

Register means the Register of Swimming Pools under section 30A. The Director-General is responsible for the keeping and administration of the Register.

#### **Tourist and Visitor Accommodation**

Tourist and visitor accommodation means a building or place that provides temporary or short term accommodation on a commercial basis and includes any of the following:- backpacker's accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation, service departments, but does not include camping grounds, caravan parks or eco tourist facilities.

#### **Dwelling**

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile. Premises containing more than two dwellings would include a residential flat building, town houses, villas or the like.

## **6.0 Implementation**

### **6.1 Legislative Requirement**

Under the *Swimming Pools Act 1992* Council is required:-

- a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area, and
- b) to promote awareness within its area of the requirements of this Act in relation to swimming pools, and
- c) to investigate complaints about breaches of this Act in accordance with section 29A.

### **6.2 Mandatory Inspections Required by Council**

Under section 22B of the *Swimming Pools Act 1992* Council is required to inspect, at least once every 3 years, any swimming pool situated on premises on which there is tourist and visitor accommodation or more than 2 dwellings.

### **6.3 Inspections at the Request of Owner**

The owner of any premises on which a swimming pool is situated may, at any time, request Council to inspect the swimming pool barrier fencing for compliance. A request must be made by submitting the relevant application form and appropriate fee.

### **6.4 Compliant Investigation**

Council may receive a complaint that alleges that a swimming pool barrier fence is defective and does not comply with the relevant legislative requirements. A complaint received by Council must be submitted in writing. Upon receipt of the complaint Council will send a written request to the owner of the swimming pool to arrange access for an inspection.

Council may decline to investigate a complaint that it considers to be vexatious, misconceived, frivolous or lacking in substance. Council will notify the complainant in writing if it declines to investigate the complaint.

### 6.5 Certificates of Compliance

Under section 22D of the Act, a swimming pool owner may make an application to Council for a Certificate of Compliance. The Certificate of Compliance certifies that the swimming pool barrier fencing is compliant with the Act at the time of the inspection undertaken by a Council Officer.

Upon receipt of an application and payment of the relevant application fee, Council will undertake an inspection of the swimming pool within ten (10) working days after receiving the application and application fee. Where a defective barrier has been identified, a Notice of Proposed Direction will be issued to the swimming pool owner.

A Certificate of Compliance will only be issued in respect of a swimming pool barrier fence that is found to be compliant with the requirements of Part 2 of the Act and that has been registered on the Department of Local Government Swimming Pool Register.

A Certificate of Compliance remains valid for a period of 3 years from the date on which it is issued but ceases to be valid if a direction is issued under section 23 of the Act.

Once a swimming pool compliance certificate has been issued, Council will ensure that the details of the certificate are entered on the Department of Local Government Swimming Pool Register within a period of within 3 business days after the Certificate of Compliance is issued.

### 6.6 Exemption Applications

Under section 22 of the Act, a swimming pool owner may make an application to Council for an Exemption from all or any of the requirements of Part 2 of the Act, in certain circumstances. On receipt of an application and the appropriate fee, Council will undertake an inspection of the swimming pool. After determination of the Exemption Application, where further works are necessary to make the swimming pool barrier compliant, Council will issue a Notice of Proposed Direction to the swimming pool owner.

### 6.7 Random Inspections

Where inspection resources permit, the swimming pool register will be reviewed to identify swimming pools where there is no valid Certificate of Compliance or a relevant Occupation Certificate in existence and Council has not carried out an inspection of the swimming pool in the past 5 years. A written request will be forward to the owner of the swimming pool to arrange access for an inspection to be undertaken and payment of the inspection fee in accordance with Section 22F of the Act.

### **6.8 Building Certificate Applications**

Where Council has received a Building Certificate application for a property which has a swimming pool, arrangements will be made with the swimming pool owner for an inspection to be undertaken of the swimming pool.

### **6.9 Notices Issued by an Accredited Certifier**

Under section 22E of the Act, an Accredited Certifier who issues a Notice on a owner of a swimming pool, must forward a copy of the Notice to Council. Upon receipt of the Notice from the Accredited Certifier, Council will send a written request to the owner of the swimming pool to arrange access for an inspection and payment of the appropriate inspection fee in accordance with section 22F of the Act.

### **6.10 Enforcement**

#### **6.10.1 Notice of Proposed Direction and Directions**

Where a defective swimming pool barrier has been identified during an inspection undertaken by Council, the non-compliant aspects will be notified to the swimming pool owner as a Notice in accordance with section 23(5) of the Act. The purpose of the Notice is to encourage the swimming pool owner to bring the swimming pool into compliance with the Act before a formal Direction is subsequently issued.

Should a formal Direction be issued by Council on the swimming pool owner, failure to comply with the Direction within the specified time frame may result in Council seeking legal enforcement of the Direction through an application to the Land and Environment Court.

#### **6.10.2 Penalty Infringement Notices**

There are a range of Penalty Infringement Notices (on the spot fines) that may be issued by Council for non-compliance with the requirements of the Act. Such penalties will not be used as an initial response by Council but rather as a deterrent for continued failure to comply.

### 6.11 Inspection and Re-inspection Fees

Section 22F of the Act allows Council to charge an inspection fee for all inspections carried out under Division 5 of the Act.

An initial inspection fee will be payable by the swimming pool owner at the time of making an application or request to Council for an inspection of a swimming pool. An application will not be taken as being lodged until payment of the application fee has been received by Council.

Where Council has initiated the need for an inspection in accordance with this program, other than for a complaint, an invoice will be forwarded to the owner to the swimming pool.

Where a re-inspection is necessary, a once only re-inspection fee will be payable by the swimming pool owner. In such cases, Council will issue an invoice to the swimming pool owner.

All inspection fees will be charged in accordance with Council's schedule of fees and charges.

### 7.0 Relevant References & Legislation

The relevant legislation, regulation and standards that apply to this Swimming Pool Inspection Program include:-

- Swimming Pools Act 1992
- Swimming Pools Regulation 2008
- Swimming Pools Amendment Act 2012
- Swimming Pools Amendment (consequential Amendments) regulation 2013
- Building Code of Australia
- Australian Standards AS1926.1
- Australian Standards AS1926.2