

NORTH SYDNEY COUNCIL

SWIMMING POOL INSPECTION PROGRAM

1. STATEMENT OF INTENT

1.1 The purpose of this program is to:

- a) Implement a swimming pool inspection regime that meets Council's obligations under the *Swimming Pools Act 1992* and *Swimming Pools Regulation 2018*,
- b) Increase pool safety awareness and reduce the number children drowning and near drowning events,
- c) Identify swimming pools that are not protected by a child-resistant barrier in accordance with *Swimming Pools Act 1992*,
- d) Take appropriate action to rectify identified non-compliant child-resistant barriers,
- e) Fulfil swimming pool inspection obligations imposed by the *Swimming Pools Act 1992*.

2. ELIGIBILITY

2.1 This program applies to all swimming pools located within the North Sydney Local Government Area.

3. DEFINITIONS

Term	Meaning
SP Act	<i>Swimming Pools Act 1992</i>
SP Regulation	<i>Swimming Pools Regulation 2018</i>
Swimming pool	Section 3 of the <i>Swimming Pools Act 1992</i> defines a swimming pool to mean <i>an excavation, structure or vessel:</i> <i>(a) that is capable of being filled with water to a depth greater than 300 millimetres, and</i> <i>(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,</i> <i>and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.</i>

Tourist and visitor accommodation	<i>North Sydney Council Local Environmental Plan 2013 defines tourist and visitor accommodation to mean a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—</i> <i>(a) backpackers' accommodation,</i> <i>(b) bed and breakfast accommodation,</i> <i>(c) farm stay accommodation,</i> <i>(d) hotel or motel accommodation,</i> <i>(e) serviced apartments,</i> <i>but does not include—</i> <i>(f) camping grounds, or</i> <i>(g) caravan parks, or</i> <i>(h) eco-tourist facilities.</i>
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4. PROVISIONS

4.1 Background

- 4.1.1 Council must inspect swimming pools within the Local Government Area in accordance with this program to meet the requirements of section 22B(4) of the SP Act.

4.2 Authorised officers

- 4.2.1 Council may appoint any of its employees to be authorised officers in accordance with section 27 of the SP Act. Authorised officers are appointed by the Chief Executive Officer.
- 4.2.2 Council is required to prepare and maintain a list of authorised officers, which is maintained in Council's Delegation's Manual. Council must ensure each authorised officer is issued with a certificate of identification.
- 4.2.3 An authorised officer who is exercising functions conferred by the SP Act must, on demand, produce his or her certificate of identification for inspection by that person in accordance with section 27(6) of the SP Act.

4.3 Investigations of complaints

- 4.3.1 Council will record every complaint alleging a contravention of the SP Act.
- 4.3.2 Council staff must, as far as practical, commence an investigation of a written complaint within 72 hours after it is received in accordance with s 29A of the SP Act.
- 4.3.3 Council staff may investigate the complaint as they think fit in accordance with section 29A(3) of the SP Act.
- 4.3.4 An authorised officer may enter and examine a premises for the purpose of investigating the complaint in accordance with the SP Act. Before entering the premises, Council staff must take reasonable steps to:

- a) notify the owner or occupier of the premises about the complaint, and
 - b) arrange to carry out an examination at a time that is convenient to the owner or occupier.
- 4.3.5 Provisions relating to powers of entry and search warrants are contained in section 27A to section 29 of the SP Act.
- 4.3.6 Declining to investigate a complaint
Council staff may decline to investigate a complaint if they consider it to be vexatious, misconceived, frivolous or lacking substance in accordance with section 29A(6) of the SP Act.
- 4.3.7 Council staff must notify the person who made the complaint, in writing, if they decline to investigate the complaint and provide the reasons for doing so in accordance with section 29A(7) of the SP Act.
- 4.4 Mandatory inspection of certain premises**
 - 4.4.1 All swimming pools situated on a premises where there is a *tourist and visitor accommodation*, or more than 2 dwellings, must be inspected by an authorised officer at least once every 3 years in accordance with section 22B(2) of the SP Act. Refer to Part 3 of this program for the definition of *tourist and visitor accommodation*.
 - 4.4.2 An inspection is not required to be conducted if a certificate of compliance or a relevant occupation certificate for the swimming pool has been issued within the previous 3 years in accordance with section 22B(3) of the SP Act.
- 4.5 Certificate of Compliance**
 - 4.5.1 When a property is sold or leased, a Registered Certifier or Council must conduct an assessment for compliance with the SP Act, unless a certificate of compliance or relevant occupation certificate has been issued within the previous 3 years.
 - 4.5.2 Sale of premises
Clause 15 of Schedule 1 of the *Conveyancing (Sale of Land) Regulation 2022* requires a contract for the sale of land, on which there is a swimming pool to include a certificate of compliance, certificate of non-compliance or a relevant occupation certificate.
 - 4.5.3 Lease of premises
The Standard Form Agreement under Schedule 1 of the *Residential Tenancies Regulation 2019* requires the swimming pool to be registered and a certificate of compliance or a relevant occupation certificate to be obtained prior to leasing a residential property.
 - 4.5.4 Certificate of compliance
A certificate of compliance confirms a swimming pool is registered under Part 3A of the SP Act and it complies with the requirements of Part 2 of the SP Act. A certificate of compliance can be issued by a Registered Certifier or Council. A certificate of compliance is valid for 3 years but ceases to be valid if a Direction is issued by Council under section 23 of the SP Act.

4.5.5 Relevant occupation certificate

An occupation certificate is required to be obtained when a swimming pool is constructed or altered in accordance with section 6.9 of the *Environmental Planning and Assessment Act 1979*. An occupation certificate can only be issued by the Principal Certifier for the development. An occupation certificate remains relevant for 3 years under the SP Act and acts in lieu of a certificate of compliance.

4.5.6 Certificate of non-compliance

A certificate of non-compliance confirms a swimming pool is non-compliant. The certificate must be issued by a Registered Certifier or Council within 7 days of inspecting a non-compliant pool in accordance with clause 21 of the SP Regulation.

4.5.7 A certificate of non-compliance is unable to be issued for a swimming pool situation on common property in a strata scheme or associated within a community scheme, if that strata or community scheme comprises of more than 2 lots in accordance with clause 21(6) of the SP Regulation.

4.6 Request for a certificate of compliance

4.6.1 The owner of a premises may request a Registered Certifier or Council carry out an inspection to enable the sale or lease of the premises by issuing a certificate of compliance or certificate of non-compliance in accordance with section 22C of the SP Act.

4.6.2 If requested, Council staff must carry out an inspection within 10 business days in accordance with cl 17 of the SP Regulation.

4.6.3 Following the inspection, Council staff must enter the results of the inspection into the NSW Swimming Pool Register within 3 business days in accordance with clause 18(1) of the SP Regulation.

4.6.4 Compliant swimming pool inspection

If the swimming pool is registered and complies with the requirements of the SP Act, Council must issue a certificate of compliance within 3 business days of the inspection. However, Council may refuse to issue a certificate of compliance until any outstanding inspection fee has been paid in accordance with section 22D(4) of the SP Act.

4.6.5 Non-compliant swimming pool inspection

If the swimming pool does not comply, Council must issue a notice to the owner in accordance with clause 20 of the SP Regulation. The notice must include the following information:

- a) date of the notice,
- b) address of the premises,
- c) date of the inspection,
- d) reasons why the certificate of compliance cannot be issued and what steps need to be taken to meet the requirements for it to be issued,
- e) details if the swimming pool poses a significant risk to public safety.

4.6.6 If the swimming pool does not comply, Council must also issue a certificate of non-compliance within 7 days of the inspection in accordance with clause 21 of the SP Regulation.

- 4.6.7 If the owner of the premises fails to complete the required works within 6 weeks of the inspection, Council staff will issue a Notice of intention to give a Direction. Refer to Part 4.7 of this program regarding enforcement of non-compliant barriers.

4.7 Enforcement of non-compliant barriers

- 4.7.1 Council aims to achieve compliance through effective education and awareness. The ultimate effectiveness of any child-resistant barrier relies upon awareness of the property owner and their willingness to ensure compliance and ongoing maintenance.

4.7.2 Notification of non-compliant barrier

If a Registered Certifier conducts an inspection of a swimming pool and a certificate of compliance cannot be issued, they must provide a written notice to the owner of the premises in accordance with section 22E of the SP Act. The notice must detail the non-compliances and what steps need to be taken to comply with the SP Act.

- 4.7.3 If the swimming pool poses a significant risk to public safety, the Registered Certifier must immediately provide a copy of the notice to Council.

- 4.7.4 If the swimming pool does not pose a significant risk to public safety, the owner is provided with 6 weeks to rectify the non-compliances. If the owner fails to complete the required works within 6 weeks, the Registered Certifier must provide a copy of the notice to Council within 5 days.

4.7.5 Notice of intention and directions

Where notification of a non-compliant child-resistant barrier has been received from a Registered Certifier, or the owner has failed to complete the required works following an inspection by Council staff, a Notice of intention to give a Direction will be issued.

- 4.7.6 A Direction requires the owner of the premises to take specified measures within a reasonable time to ensure the swimming pool or premises complies with Part 2 of the SP Act.

- 4.7.7 Council staff may not issue a Direction unless the owner has been provided with a Notice of intention to serve a Direction at least 14 days before the Direction is served in accordance with section 23(5) of the SP Act. However, Council staff may serve a Direction without notice if they consider the safety of a person would be at risk if the requirements of the Direction were not carried out as soon as possible.

- 4.7.8 A Direction does not cease to have effect because there is a change in the ownership of the premises in accordance with section 23(4) of the SP Act. The Direction applies to the new owner in the same way it applied to the old owner.

4.7.9 Further enforcement action

If the owner fails to comply with the requirements of a Direction, a penalty notice may be issued and/ or legal action commenced in accordance with the SP Act.

4.8 Exemptions

4.8.1 In specific circumstances, Council may grant an exemption from the child-resistant barrier requirements that are impractical or unreasonable in accordance with section 22 of the SP Act. The exemption may be granted if Council is satisfied:

- a) that it is impracticable or unreasonable (because of the physical nature of the premises, because of the design or construction of the swimming pool or because of the special circumstances of a kind recognised by the regulations as justifying the granting of an exemption) for the swimming pool to comply with those requirements, or
- b) that an alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

4.8.2 Application

An application can only be considered by Council if it is made by the owner of the premises on the approved form in accordance with clause 12 of the SP Regulation. A copy of the approved form is available on Council's website.

4.8.3 Assessment

The merit assessment of an application will be carried out by Council staff based upon the specific circumstances of the premises and swimming pool in accordance with the requirements of the SP Act.

4.8.4 An exemption may be granted unconditionally or subject to conditions that Council staff consider appropriate to ensure effective provision is made for restricting access to the swimming pool in accordance with section 22(2) of the SP Act.

4.8.5 Appeal

The owner of a premises is entitled to appeal to the Land and Environment Court if Council refuses the application or imposes a condition on the exemption. Appeals must be made within 28 days after the date on which the decision is made or taken to have been made in accordance with section 26(2) of the SP Act.

4.8.6 The application is taken to be refused, for the purpose of any appeal proceedings, if the application has not been determined within 6 weeks in accordance with section 22(4) of the SP Act.

4.9 Swimming pool education and awareness

4.9.1 Council has a general duty to promote awareness of the swimming pool requirements of the SP Act within the North Sydney Local Government Area in accordance with section 5(b) of the SP Act.

4.9.2 Swimming pool safety and awareness forms part of Council's Swimming Pool Inspection Program.

4.9.3 Campaigns

Education materials, brochures and electronic information will continue to be used by Council to promote swimming pool safety awareness. Council will also participate in state-wide swimming pool safety campaigns co-ordinated by Local Government NSW or the Royal Life Saving Society from time to time.

4.9.4 Public access to Australian Standards, BCA and CPR Guideline

Council is required to ensure certain swimming pool related documents are made available and accessible to the community in accordance with clause 29 of the SP Regulation. An electronic version of the following documents are made available for free public inspection at the Council office during normal business hours:

- a) AS 1926—1986, published by Standards Australia on 4 August 1986,
- b) AS 1926.1—2007,
- c) AS 1926.1—2012, published by Standards Australia on 6 November 2012, including any subsequent editions,
- d) AS 1926.2—2007, published by Standards Australia on 12 July 2007, including any subsequent editions,
- e) Building Code of Australia,
- f) Cardiopulmonary Resuscitation Guideline entitled ANZCOR Guideline 8: Cardiopulmonary Resuscitation, published by the Australian Resuscitation Council in January 2016.

4.9.5 Due to copyright laws, Council will not allow these documents to be taken away from the building, printed or copied. Links to the Building Code of Australia and a copy of the Cardiopulmonary Resuscitation Guideline is also available for viewing on Council's website.

4.9.6 Public access to the Swimming Pool Inspection Program

The Swimming Pool Inspection Program is available for viewing on Council's website to promote transparency and awareness of the swimming pool requirements of the SP Act.

4.10 Fees and charges

4.10.1 All fees and charges associated with the swimming pool inspection program are in Council's adopted Schedule of Fees and Charges. Some fees are prescribed under the detailed SP Act and SP Regulation.

4.11 Annual reporting

4.11.1 Council must include in the annual report, issued under section 428 of the *Local Government Act 1993*, information relating to swimming pool inspections in accordance with s 22F(2) of the SP Act.

4.11.2 In accordance with clause 23 of the SP Regulation, the annual report must include the number of inspections carried out under Division 5 of Part 2 of the SP Act that:

- a) were of *tourist and visitor accommodation*; or
- b) were of premises on which there were more than 2 dwellings, or
- c) resulted in the council issuing the following—
 - i. a certificate of compliance under s 22D of the SP Act,
 - ii. a certificate of non-compliance under cl 21 of this SP Regulation.

5. RESPONSIBILITY/ ACCOUNTABILITY

- 5.1 Implementation of this Policy applies to all authorised officers, where authorised to enforce legislation in accordance with Council's Delegations Manual and/ or Implementation of Delegated Authority.
- 5.2 Council's Manager People & Culture and Manager Environment and Building Compliance will ensure relevant staff are provided with access to training to ensure this Policy is implemented, maintain a list of authorised officers and ensure each authorised officer is issued with a certificate of identification.
- 5.3 Council's Manager Environment & Building Compliance will review this Policy within 12 months after the declaration of the poll of a Council election, or as required by Council or the Chief Executive Officer.
- 5.4 Council's Manager Environment & Building Compliance will prepare educational information regarding this Policy on Council's website and authorise participation in swimming pool safety campaigns from time to time.

6. RELATED POLICIES/ LEGISLATION

6.1 Related policies

- 6.1.1 This Policy should be read in consultation with the following Council policies and documents:
 - a) Complaints Handling Policy
 - b) Compliance and Enforcement Policy
 - c) Customer Service Policy
 - d) Delegations Manual
 - e) Managing Unreasonable Complaint Conduct Policy
 - f) Planning and Development Services Division Procedures (Internal)

6.2 Legislation

- 6.2.1 The Policy should be read in conjunction with the following legislation:
 - a) Building and Development Certifiers Act, 2018
 - b) Conveyancing (Sale of Land) Regulation 2022
 - c) Environmental Planning and Assessment Act, 1979
 - d) Local Government Act, 1993
 - e) Residential Tenancies Regulation, 2019
 - f) Swimming Pool Act, 1992
 - g) Swimming Pool Regulation 2018

6.3 Approval

Version	Date Approved	Approved by	Review Date
1	2013	Council	-
2	DRAFT		