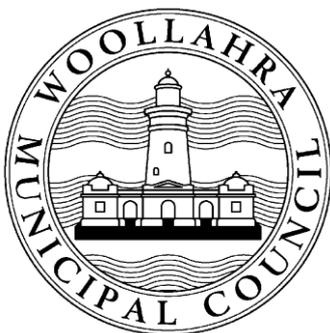




Swimming Pool Barrier Inspection Program



Adopted Date: 28/10/2013

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1. Purpose

This policy document has been developed in response to Section 22B of the *Swimming Pools Act 1992* (the “Act”) and details a program for the inspection of swimming pools¹ (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located.

This document aims to;

1. increase pool safety in the Woollahra Local Government Area; and
2. explain the steps that Council will take to inspect swimming pool safety barriers to ensure compliance with the requirements of ‘Part 2 - Access to Swimming Pools’ of the Act and the relevant Australian Standards.

2. Interpretation

The legislation, regulation and Australian Standards that apply to this program include the following, as amended from time-to-time;

- *Swimming Pools Act 1992* (the “Act”);
- *Swimming Pools Regulation 2008* (the “Regulation”);
- *Swimming Pools Amendment Act 2012*;
- *Swimming Pools Amendment (Consequential Amendments) 2013*;
- *Environmental Planning & Assessment Act 1979* (EP&A Act)
- Building Code of Australia (BCA);
- Australian Standard AS 1926.1 – ‘Swimming pool safety - Safety barriers for swimming pools’; and
- Australian Standard AS 1926.2 – ‘Swimming pool safety - Location of safety barriers for swimming pools’.

All relevant definitions are as per the above documents.

Where there is any inconsistency between this policy document and the Act and Regulation, the Act and Regulation shall prevail.

3. Background

The Division of Local Government (DLG) has undertaken a comprehensive review of swimming pool legislation resulting in amendments to the Act and Regulations aimed at improving child safety in and around swimming pools and reducing the number of preventable child drownings.

¹ Section 3 of the Act states that a “**swimming pool** means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth greater than 300 millimetres, 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 the regulations not to be a swimming pool for the purposes of this Act.”

While it is recognised by the DLG that **the most effective way to prevent drownings is for children to be adequately supervised by a parent or other responsible adult** they have also identified the need for the installation and maintenance of appropriately designed swimming pool safety barriers.

To this end the Act and Regulation requires all councils in New South Wales to develop and implement a program for the inspection of swimming pools in their area to ensure swimming pool safety barriers are being maintained in accordance with the relevant standard. Such a program must be developed in consultation with the local community.

This program has been developed in accordance with the statutory requirements of the Act and Regulation, having regard to Council's existing strategic documents and in particular 'Woollahra 2025 – Our community, our place our plan' (Woollahra 2025), the 'Delivery Program 2013 to 2017' and the 'Operational Plan 2013/14'.

Importantly, the Woollahra 2025 vision statement includes the following;

“Woollahra will be a great place to live, work and visit where places and spaces are safe, clean and well maintained”.

Furthermore, Woollahra 2025 details the things we value and want to see in our community in the future including:

- A safe community.
- Informed residents of Council activities.
- Responsive Council to the community.
- Opportunities for community involvement in Council decision making.

While this program has been developed in response to legislative requirements it also satisfies and responds to the above elements of Council's strategic documents that were identified following extensive community consultation.

4. Inspection Program

4.1 Swimming Pool Register

All owners of a residential premise or tourist and visitor accommodation on which a swimming pool is located must register their pool on the Division of Local Government (DLG) state-wide Swimming Pool Register. An owner's failure to register a swimming pool is an offence that can attract a penalty².

The Swimming Pool Register will also record whether or not a swimming pool has been inspected by an appropriately qualified person and if a current 'Certificate of Compliance' has been issued.

Council will rely on the Swimming Pool Register to determine what swimming pools are required to be inspected from time-to-time.

² At the date of adopting this policy the maximum penalty for this offence is \$2,200. Alternatively a \$220 penalty infringement notice could be issued for the offence.

4.2 Certificate of Compliance

When a swimming pool has been inspected and it is found to comply with the relevant pool safety barrier requirements a satisfactory inspection will be recorded in the Swimming Pool Register and a swimming pool Certificate of Compliance will be issued. A Certificate of Compliance cannot be issued if a swimming pool has not been registered on the state-wide register.

Either the Council or an accredited certifier can issue a Certificate of Compliance, which remains valid for three (3) years from the date of issue as long as the swimming pool safety barrier is maintained and there are no grounds for a formal direction to be issued.

Similarly, a newly constructed swimming pool that is constructed pursuant to a development consent or a complying development certificate should be issued with an Occupation Certificate at the conclusion of the development certifying that the swimming pool safety barrier complies with the Act. An Occupation Certificate certifying compliance with the Act will also remain valid for three (3) years from the date of issue as long as the swimming pool safety barrier is maintained and there are no grounds for a formal direction to be issued.

Premises with a current Certificate of Compliance or a relevant Occupation Certificate will not require a Council inspection unless Council receives a complaint and there is good reason to believe that the swimming pool safety barrier no longer complies.

4.3 Inspection regime

Council will aim to undertake inspections of swimming pools (both outdoor and indoor) that are situated on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located in accordance with the following guidelines to ensure compliance with the Act;

- (a) **In response to complaints** – All complaints received by Council concerning inadequately fenced or unauthorised swimming pools are recorded in Council's Customer Request Management system and will be inspected as a matter of priority within 72 hours as prescribed by the Act. Generally the investigation of complaints will be undertaken in accordance with the requirements of Section 29A of the Act.
- (b) **Assessment of building certificate applications** – All building certificate applications for properties on which there is a swimming pool will include an inspection of the swimming pool safety barrier.
- (c) **Proactive observations** – Where a swimming pool is observed by Council's Building & Compliance Officers and the swimming pool safety barrier appears deficient and/or there is no current Certificate of Compliance or relevant Occupation Certificate the matter will be recorded in Council's Customer Request Management system and inspections will be undertaken as per item (a) above.
- (d) **Notifications from accredited certifiers** – Any accredited certifier who is unable to issue a Certificate of Compliance and issues a notice under Section 22E of the Act is required to provide Council with a copy of the notice. On receipt of the notice Council will undertake an inspection of the swimming pool under this program.

- (e) **Inspection requests by owner** – All inspections requested under Section 22C of the Act by the owner of a premises on which a swimming pool is situated will be carried out in accordance with any timeframes prescribed by the Act and Regulation.
- (f) **Premises with more than two (2) dwellings** – Commencing from 29 April 2014, all premises with more than two (2) dwellings including residential flat buildings and townhouse developments that do not have a current Certificate of Compliance or relevant Occupation Certificate will be inspected by Council at least once every three (3) years.
- (g) **Sale of land inspection requests** – Commencing from 29 April 2014 the *Conveyancing (Sale of Land) Regulation 2010* will require any contract for the sale of land on which there is a swimming pool to include a copy of either a valid Certificate of Compliance or a relevant Occupation Certificate. Inspections requested by the owner of the land to enable the sale of a premises or part of a premises, will be carried out by Council within ten (10) days, as prescribed by the Regulation.
- (h) **Lease of land inspection requests** – Commencing from 29 April 2014 the *Residential Tenancies Regulation 2010* will require landlords of premises on which there is a swimming pool to provide a copy of a valid Certificate of Compliance or a relevant Occupation Certificate at the time a residential tenancy is entered into. Inspections requested by the owner of the land to enable the lease of a premises or part of a premises, will be carried out within ten (10) days, as prescribed by the Regulation.
- (i) **Random checks from state-wide Swimming Pool register** – As resources permit Council may randomly select properties from the state-wide Swimming Pool register that do not have a current Certificate of Compliance (or relevant Occupation Certificate). Priority will be given to inspecting older swimming pools that have never had a Certificate of Compliance (or relevant Occupation Certificate). Once a property has been selected, Council will write to the owner and request that they make arrangements for an inspection either by a Council Officer or an accredited certifier.

Where a Council inspection identifies the existence of a life threatening circumstance, Council will determine an immediate course of action to eliminate or reduce the level of risk. If a matter is not considered life threatening, the matter will be prioritised accordingly.

4.4 Inspection Fees

Any inspection of a swimming pool safety barrier carried out by Council pursuant to this program will be charged an inspection fee in accordance with Clause 18A of the Regulation. The required inspection fees are adopted annually by Council and listed in Council's 'Fees and Charges' schedule³. Any request for an inspection must be accompanied by the prescribed fee.

Council will not issue a Certificate of Compliance until all required inspection fees are paid, as prescribed by Section 22D of the Act.

³ At the date of adopting this policy the maximum inspection fee is \$150 for the first inspection and \$100 for a second inspection. No fee can currently be charged for a third and subsequent inspection.

5. Enforcement

While Council aims to achieve compliance through the effective education and engagement of swimming pool owners, it is likely that the initiation of enforcement action will be required from time-to-time. In this regard the Act details the enforcement action that is available including ‘notices of intention to give a direction’, directions and penalties.

Any enforcement action initiated by Council will be determined in accordance with Council’s Enforcement Policy.

6. Review period

This policy document is to be reviewed within five (5) years of being adopted by Council.