

**SUTHERLAND SHIRE COUNCIL
SWIMMING POOL INSPECTION
PROGRAM
23 August 2021**

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SUTHERLAND SHIRE

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1. PURPOSE

To document and provide details for the public on swimming pools inspections carried out by Council.
To review Councils 2013 Pool Inspection Program, the program being required under the *Swimming Pools Act 1992*.

2. APPLICATION

A swimming pool inspection program must be in place from the 29 October 2013.
Councils are then required to inspect swimming pools in accordance with the adopted inspection program.

3. PRINCIPLES

3.1 Application of Principles

Under the legislation local government has a regulatory responsibility for swimming pool safety. The inspection program must make provision for inspections every three years of swimming pools associated with tourist and visitor accommodation, as well as other multi-occupancy developments (this includes pools in hotels, motels, serviced apartments, backpacker accommodation and unit complexes)

A three yearly inspection regime is required as pools co-located with these types of activities are perceived as having a higher risk associated with them due to more frequent use by a wider range of people.

Each council area must develop a program and consult the community regarding the frequency of swimming pool inspections on privately owned pools that are associated with a residential building.

3.2 The Importance of Pool Safety

Swimming pools offer a social amenity that is of great benefit to those who have use and have access to it. With this however goes an obligation outlined in legislation to maintain the pool in a safe manner.

The regulatory regime of pools on private property has been the subject of ongoing legislative review and reform since 2008 due to the tragic increase of infant and toddler injury and death in swimming pools.

Children aged 4 years of age and under are the most vulnerable. They are completely dependent on their parents or carers for their safety. The personal and social cost associated with the death of a vulnerable child is enormous and cannot be adequately described. The death of a young child in circumstances that could have been prevented is a tragedy for all.

The NSW State Coroner has made recommendations to the NSW Government on a number of occasions for a pool inspection program requiring an ongoing inspection regime of pool safety barriers. This has been endorsed by organisations such as Royal Life Saving Society, Australian Resuscitation Council, Westmead Children's Hospital - Kids Safe, NSW Commission for Children and Young Adults.

In his commentary the Coroner said *"I have no doubt that the children involved in this inquest, if they were able to have their say, would ask that all efforts be taken to ensure that the numbers of children who follow them be reduced. The loss of even one innocent life is too many."*

3.3 General Requirements and Responsibilities of the Pool Owner

1. 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:
 - (a) That separates the swimming pool 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.

Note: Some older pools have variations (exemptions) under the legislation to the above.

2. Swimming pool owners are required to register their pools on an online register provided by the NSW State Government. Registrations are free online at www.swimmingpoolregister.nsw.gov.au .
3. Swimming pool owners are required to provide
 - a valid swimming pool compliance certificate or non-compliance certificate for the property contract for sale (Conveyancing (Sale of Land) Regulation).
 - a valid swimming pool compliance certificate when entering into any new tenancy agreement (Residential Tenancies Regulation).
4. Hotels, motels, multi-occupancy developments and serviced apartments require to have a current certificate of compliance for their pool.

4. POOL INSPECTIONS

4.1.1 Inspection Program

From October 2013 all councils are required to have in place and to implement a program of swimming pool inspections. The purpose of the inspection program is to identify swimming pool that will be scheduled for inspection under the program.

Inspections under the program are to ensure that the pool barrier effectively restricts access to the swimming pool in accordance with the provisions of the Swimming Pools Act. The inspection results in the issue of a Certificate of Non-Compliance or a Certificate of Compliance from the NSW Swimming Pools Register.

Pool inspections within the Inspection Program include:

- High Risk Pools – inspected once every 3-years (see 4.6),
- Proactive Pools - When staff resources permit, Council Officers may schedule swimming pool owners that do not have a current Certificate of Compliance, that their pool barrier will be the subject of a pool barrier inspection,

The Sutherland Shire Council's Swimming Pool Inspection Program was endorsed 09/09/2013 Report No. EHR031-14 3, and as amended and endorsed by Council on 23 August 2021 reference - PLN031-21 Minute No. 199.

4.1.2 Other Pool Inspections

The Swimming Pools Act and other legislation provides for other pool inspections that are carried out, as required, outside of the Inspection Program schedule.

These inspection include:

- Inspection Requests received by Council,
- Inspections as a result of Council receiving Complaints or information of a non-compliant swimming pool,
- Inspections as a result of a Notice (either under the Swimming Pools Act or Environmental Planning & Assessment Act) being received from a Certifier of a non-compliant swimming pool,
- Reinspections of pool barrier under Notice or Direction issued by Council,
- Inspection for section 22 exemptions and reinspections.

4.2 What is a Pool Certificate of Compliance?

A Pool Certificate of Compliance is issued from the NSW State Government Swimming Pool Register once a pool has been inspected and assessed against the relevant pool safety requirements in accordance with the *Swimming Pool Act 1992*. A pool certificate of compliance is valid for three years. A pool may be inspected more frequently than three years 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.

4.3 The Role of Registered Certifiers (Swimming Pool Inspector)

Pool owners may request either Council or a registered certifier to provide a Pool Certificate of Compliance or Certificate of Non-Compliance. Certifiers are registered and controlled by the State Government. Registered certifiers fees are governed by market forces and set their own fees.

Having conducted an inspection, if the pool does not meet the applicable standard, the registered certifier issues a notice stating the non-compliances and the steps that need to be taken in order to meet those requirements. Under the Registered Certifier Notice the pool owner has a period of 6 weeks to rectify the deficiencies. Upon the expiry of the 6-weeks period a copy of the Notice is forwarded to Council for their action. Where the Registered Certifier considers the non-compliances to be a significant risk to the public safety, the certifier must forward a copy of the Notice to Council immediately.

Upon receipt of the Registered Certifier Notice Council will commence investigation and this may result in compliance action against the Pool Owner.

4.4 What happens if a Pool Certificate of Compliance cannot be issued?

A Pool Certificate of Compliance cannot be issued if the pool is not passed at inspection as meeting the requirement of the Swimming Pools Act and prescribed standards. In such a case either Council or a registered certifier must issue a notice specifying the non-compliance and the works required. If the works are not undertaken and the pool does not pass a Council subsequent inspection then a Penalty Infringement Notice may be issued by Council. Continuing refusal to comply will result in legal action by Council.

Where a pool is inspected under an Owner request (s22C) and the pool barrier is determined as non-compliant the Council or registered certifier must issue a certificate of non-compliance to the owner. In situations where the property is for sale the Certificate of non-compliance can be used in the contract for sale under the Conveyancing (Sale of Land) legislation.

4.5 What is the “Applicable Standard” That Applies?

To determine the applicable standard that applies to a pool there are 2 areas that require to be determined. If an exemption applies to the pool and if the Regulation savings clause applies to the pool. The exemption is based on the type of property and the date the pool was constructed. The savings clause allows the previous standard to be retained where the pool barrier is maintained as compliant.

Where the pool barrier is significantly altered or rebuild the barrier is required to comply with the standard that applied at the time of the work. Where the barrier is assessed as non-compliant with the applicable standard the exemption is lost and the savings clause is not applicable resulting in the pool barrier being required to be upgraded to comply with the current AS1926 version.

4.6 High Risk Pools Inspected Every Three Years

The legislation requires certain properties considered as a high risk to have the pool inspected every 3 years. This includes pools associated with:

- a hotel, motel, tourist/ visitor accommodation and other multi-occupancy developments;
- backpackers, bed and breakfast, hotel, motel, serviced apartments (includes short term rental accommodation) and residence of more than 2 occupancies;
- child care centre/ family day care or premises accessed regularly by children for other than domestic purposes are included in this category under this document.

4.7 Domestic / Residential Pool Inspections

Council will aim to undertake inspection of swimming pools (both outdoor and indoor) that are situated on premises that are associated with a residential building in accordance with the following guidelines to ensure compliance with the relevant legislation:

- **Complaints** – When a complaint is received by Council concerning swimming pool safety and is registered on Council's Customer Request Management System (CRMS).
- **Inspection by Request of Owner** – When an owner requests an inspection under Section 22C of the Swimming Pools Act 1992, and inspection will be conducted as per the requirements of the Act and Regulations. These may include inspections for:
 - the sale of land under the *Conveyancing (Sale of Land) Regulations 2010* which require any contract of sale of land to include either a Certificate of Compliance or Certificate of Non-compliance to be attached to any contract of sale.
 - For rental properties where a Certificate of Compliance is required to be provided to a tenant under the Rental Tenancy legislation.
- **Building Information Certificate (BIC)** – Where Council receives a BIC application which involves a property with a swimming pool, a swimming pool barrier inspection will be conducted where there is no Certificate of Compliance or Occupation Certificate (within 3 years) or a non-compliance is noted in the swimming pool barrier.
- **Notification from Registered Certifiers** – Where a registered certifier is unable to issue a Certificate of Compliance within 6 weeks of their initial inspection, they are required to forward a Notice to Council to undertake further enforcement action. Upon receiving the notice, Council will undertake an inspection.

Where Council has inspected the pool and commenced action under section 23 of the Swimming Pools Act 1992, irrespective of the barrier being inspected by a private Certifier, Council is to carry out a reinspection of the swimming pool to finalise the section 23 action recorded against the property.
- **Internal Notification** – of pool issues referred to Environment, Health and Building Unit.
- **Proactive Inspections** – When staff resources permit, Council Officers may proactively notify swimming pool owners that do not have a current Certificate of Compliance, that their pool barrier will be the subject of a pool barrier inspection, which will be conducted as per the requirements of the Act and Regulations.

4.8 Pool Inspection Fees

Inspection fees are set under the Swimming Pools Regulation and may be charged for inspections under division 5 of the Act. Inspection investigation of complaints being under division 6 of the Act does not incur a fee in assessing the alleged non-compliances. Where the complaint is confirmed as valid the Owner would involve inspection fee for further inspections as set in Council's fees and charges.

No registration fee is payable for those pool owners unable to register their pool themselves on the New South Wales Swimming Pools Register. Nor is a fee required for inclusion on Sutherland Shire Council's own register or seeking pool barrier information from Council that does not involve a site inspection.

Inspection fees are to be charged in accordance with the Regulation. Currently inspection fees are \$150 for the first inspection and \$100 for each subsequent pool barrier inspections. These fees also apply upon a change of ownership and to carry out a new inspection for the purpose of issuing a new certificate of compliance.

It should be noted that a Certificate of Compliance is valid for three years from the date of issue in accordance with the Act. After that time the certificate ceases to be valid,

4.9 Penalties

There are a number of offences under the Act which attracts Penalty Notices (Fines), as follows:

Offence under the Act	Penalty Notice (issued by Council)	Court Maximum Penalty
Section 7 (1): Failure to comply with general requirements for outdoor pools associated with dwelling	\$550	50 penalty units = \$5,500
section 12: Failure to comply with general requirements for outdoor pools associated with movable dwelling and tourist and visitor accommodation	\$550	50 penalty units = \$5,500
section 14: Failure to comply with general requirements for indoor pools	\$550	50 penalty units = \$5,500
section 15 (1): Failure to maintain child-resistant barrier	\$550	50 penalty units = \$5,500
section 16: Failure of Occupier to keep access to pool securely closed	\$550	50 penalty units = \$5,500
section 17 (1): Failure to display or maintain prescribed warning notice near pool	\$110	5 penalty units = \$550
section 23 (3): Failure to comply with direction (pool safety order)	\$550	50 penalty units = \$5,500
section 30B (1): Failure to register a pool	\$220	20 penalty units = \$2,200

This program does not prevent Council from issuing penalty infringement notices for a breach of the Swimming Pools Act and Regulation.

5. ONGOING EDUCATION AND AWARENESS

Drowning incidents mostly involve occupant's children or visitors to the premises. Pool owners have the responsibility and legal obligation to protect children within their premises and ensure that pool barriers are at all times in accordance with the prescribed standards restricting access into the pool area by young children.

In addition to this, *The Royal Life Saving National Drowning Report 2020* stated:

- *That active adult supervision is vital for preventing drowning among young children. However, lapses in supervision continue to be contributory factor in child drowning.*
- *All cases of fatal drowning among children aged 0-4 years from 1 July 2002 and 30 June 2017 were analysed to identify and describe the causes of distraction leading to lapses in supervision. Swimming pools were the leading location for drowning (54%), of which private residential swimming pools were the most common (97% of all swimming pool drowning deaths in this study) Three-quarters of drowning deaths occurred in toddlers aged 1-2 years (67%).*

- *Active supervision means focusing all of your attention on your children all of the time, when they are in, on or around the water. You must be within arms' reach, interacting with your child and be ready to enter the water in case of an emergency.*

Council will provide ongoing and complimentary community education and awareness that will be delivered through community publications, media releases, including social media, website information, owner self-assessment pool fence checklists and public interactions with the Swimming Pool Safety Officers.

6. RESPONSIBILITIES

6.1 Responsible Officer

The Manager Environment, Health and Building is the Responsible Officer for this program and is responsible for ensuring swimming pools are inspected in accordance with this program.

6.2 Council

In accordance with the Swimming Pools Act 1992, Council is responsible for developing and adopting a program for the inspection of swimming pools in its area to ensure compliance with the requirements of *Section 22B Mandatory pool inspection program by local authority*.

The Council must inspect swimming pools in its area in accordance with its program.

Under the Swimming Pools Act 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.*

6.3 Chief Executive Officer

Council has delegated the Chief Executive Officer the authority to delegate Council Officers to undertake inspections in accordance with the *Swimming Pools Act 1992*

6.4 Directors

Directors are responsible for ensuring their Division adheres to the requirements of this program and provide guidance in respect of achievement of the strategic objectives of the program within their division and the organisation.

6.5 Staff

Staff must adhere to the requirements of this program and operate within the authorities of their delegations

7. MONITORING

Compliance with this program will be monitored by the Manager Environment, Health and Building and the Building Regulation Supervisor.

Council will review this program within 5 years or at the request of Council or in response to legislative and statutory requirements.

8. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the NSW State Records Act 1998 and Privacy and Personal Information Protection Act 1998 through its Enterprise Content Management Policy and Privacy Policy.

9. BREACHES OF POLICY

Breaches of this program will be dealt with in accordance with normal disciplinary procedures and will be advised to the Chief Executive Officer and / or Director Shire Planning, via the Manager Environment, Health and Building.

10. RELEVANT LEGISLATION, REGULATIONS AND GUIDELINES

- Local Government Act 1993 (NSW).
- State Records Act 1998 (NSW).
- Privacy and Personal Information Protection Act 1998 (NSW).
- Government Information (Public Access) Act 2009 (NSW).
- Swimming Pools Act 1992.
- Swimming Pools Regulation 2018.
- Swimming Pools Amendments Act 2012.
- Swimming Pools Amendment (Consequential Amendments) Regulations 2013.
- National Construction Code – Building Code of Australia.
- Australian Standards AS1926-1. Safety barriers for Swimming Pools.
- Australian Standards AS1926-2. Swimming Pool Location of Safety barriers for swimming.
- Building and Development Certifiers Act 2018

11. DEFINITION OF TERMS

Term	Meaning
Australian Standards	Is documents that set out specifications, procedures and guidelines that aim to ensure products, services, and systems are safe, consistent, and reliable.
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 of thing declared by the regulations to be a barrier for the purposes of the <i>Swimming Pools Act 1992</i> .
Certificate of Compliance	In respect of swimming pools means a certificate issued under the Section 22D of the <i>Swimming Pools Act 1992</i>
Direction	The local authority may, by order in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such reasonable time as specified in the direction, such measures as are so specified to ensure that the swimming pool or premises comply with the requirements of Part 2 of the <i>Swimming Pools Act 1992</i>
Emergency Direction	A direction given where there is a serious risk to safety. An emergency direction can require immediate action without services of a notice of intention beforehand
Multi-occupancy Development	A building or buildings that is, or are situated on premises that consists of more than 2 dwellings.

Notice of Intention	Before giving a direction, the local authority who gives the direction must give notice to the person to whom the direction is proposed to be given of the intention to give the direction.
Relevant Occupation Certificate	In respect of a swimming pool, which means an occupation certificate issued under the <i>Environmental Planning and Assessment Act 1979</i> that is less than 3 years old and that authorises the use of the swimming pool.
Swimming Pool	Means an excavation, structure or vessel: (a) That is capable of being filled with water to a depth greater than 300mm; 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.
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: (a) backpackers' accommodation, (b) bed and breakfast accommodation, (c) farm stay accommodation, (d) hotel or motel accommodation, (e) serviced apartments, but does not include: (f) camping grounds, or (g) caravan parks, or (h) eco-tourist facilities.

End of Document

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