

# Swimming Pool Barrier Inspection Program

## Purpose

The Swimming Pools Act 1992 (the Act), Section 22B, requires the development and adoption by each Council of a program for the inspection of swimming pools in its area to ensure compliance with the requirements of Part 2 – access to swimming pools – of the Swimming Pools Act 1992.

The initial program was created to meet legislative timetables and commenced on 29 October 2013.

## Objectives

To ensure that Council complies with its legal obligations under the Swimming Pools Act.

To ensure swimming pools within the Ku-ring-gai 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 relevant legislation.

To promote awareness of the requirements of the Swimming Pools Act.

## Scope

This program applies to swimming pools (both outdoor and indoor) 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 that are situated, or proposed to be constructed or installed on any premises occupied by the Crown or by a public authority.

## Responsibilities

The Director Development & Regulation is responsible for the implementation of this program. Council's Building and Compliance Officers will undertake all required site inspections and address legislated non-compliances. Property owners have a duty of care to ensure their swimming pool barriers are compliant at all times.

## General Principles

Council's inspection program will provide measures to identify and address non-compliant swimming pools and raise awareness within the community of the ongoing responsibilities of pool owners to ensure fully compliant child resistant barriers at all times.

Council will implement its program via an inspection regime requiring that inspections be undertaken as follows:

- a) Duty of care

At the time of visiting any property for any reason, an officer of Council may take into account the condition of any swimming pool safety barrier.

- b) Complaint investigation

On receipt of a complaint to Council concerning an alleged defective swimming pool barrier.

- c) Request for certificate of compliance

On receipt of an application for the supply of a certificate of compliance for the swimming pool.

- d) Request for an exemption

On receipt of an application from a swimming pool owner making application for an exemption from all or any of the requirements of Part 2 of the Swimming Pools Act, in certain circumstances.

- e) Other inspections at the request of the property owner

Section 22C of the Swimming Pools Act provides for a swimming pool owner to make application to Council for an inspection, which includes advice about swimming pool compliances.

- f) Following up on notices issued by an accredited certifier

Section 22E of the Swimming Pools Act provides for an accredited certifier to inform Council if it is not satisfied that a swimming pool is compliant. Council must follow up on orders and notices to comply as issued by any certifier.

- g) Mandatory inspection of all tourist and visitor accommodations and multi occupancy units. All tourist, visitor and multi occupancy units are required to be inspected at least once every three years.
- h) Random inspections

Where inspectorial resources permit, the NSW Swimming Pool Register will be reviewed to identify those properties where there is not a current certificate of compliance or a relevant occupation certificate.

### Pool Inspection Program

Given that Ku-ring-gai has over 18, 000 pools in its local area, our program is designed to respond to a hierarchy of need, whilst balancing a finite number of resources to support the program.

The following tables set out Council's proposed course of inspections. **Table 1** includes all mandatory inspections (required under the Swimming Pools Act Act and associated legislation) effective from 29 October 2013, unless noted otherwise.

**Table 1. Pool Inspection Program – Stage 1.**

Hierarchy of inspections	Types of pool inspections
1.	<p>When Council is made aware of pool barriers that do not comply with the standards enforced when they were built;</p> <ul style="list-style-type: none"> <li>a) During inspections of other works (not associated with swimming pools)</li> <li>b) When complaints are made in writing to Council (investigations to commence by Council within 3 days, as specified in Section 29A of the Act)</li> <li>c) When a notice is received from an accredited certifier who inspected the pool and is not satisfied that the requirements of the Act have been met (Section 22E of the Act)</li> <li>d) When complaints are made verbally to Council staff</li> <li>e) When Council suspects a pool contravenes the Act (for example, pools constructed without approval and pools that are not registered).</li> </ul>

2.	When an inspection request is received: a) Prior to the sale / lease of properties with pools, <b>mandatory after 29 April 2014</b> (Schedule 2 of the Swimming Pools Amendment Act 2012) b) Voluntarily from pool owners (Section 22C of the Act) c) Council must carry out these inspections <b>within 10 business days</b> of receiving the inspection requests (Section 17 of the Swimming Pools Regulation 2008).
3.	Tourist and visitor accommodation <b>every 3 years, mandatory after 29 April 2014</b> (Section 22B(2) of the Swimming Pools Act) consisting of: a) hotels b) motels c) serviced apartments d) bed and breakfast accommodation e) backpackers accommodation,  But does not include: f) camping grounds g) caravan grounds h) eco tourist facilities.
4.	Multi- residential dwellings with more than two dwellings, <b>every 3 years, mandatory after 29 April 2014</b> (Section 22B(2) of the Swimming Pools Act).

Table 2 includes a listing of non-mandatory inspections, which however may be carried out where resources permit.

**Table 2. Pool Inspection Program – Stage 2**

Hierarchy of inspections	Types of pool inspections
1.	Child care facilities / family day care centres
2.	Properties of pool owners who registered their pools on the NSW Swimming Pool Register but who did not signal that their pool complied with the relevant safety standards
3.	Pools not inspected during the past 10 years
4.	Pools not inspected during the last 5 years
5.	Pools with an exemption under the Swimming Pools Act
6.	Other pools, without a valid Certificate of Compliance or Occupation Certificate.

### Charging of fees

Council will charge a fee for service for inspection of swimming pools. The fee will not be higher than that prescribed by the Swimming Pools Act and Regulations thereunder.

**Note:** Fees will also be charged where Council becomes responsible for Notices or Orders initiated by private certifiers.

### Inspection services

Inspections may be undertaken by Council's authorised officers or a qualified accredited certifier (Section 22A of the Swimming Pools Act). Council's power of entry is consistent with the Local Government Act 1993.

## **Certificate of compliance**

In order to obtain a certificate of compliance, under Section 22D of the Swimming Pools Act, the swimming pool must:

- be registered on the NSW Register of Swimming pools
- be inspected by an authorised officer or an accredited certifier, and
- comply with the requirements of Part 2 of the Swimming Pools Act.

A certificate of compliance is valid for 3 years from the date of issue.

A certificate of Compliance ceases to be valid if a subsequent direction is issued under the Swimming Pools Act because the pool is later found to be defective and requires rectification.

## **The inspection process**

During a pool barrier inspection, the qualified pool inspector will take measurements, and in some cases photographs or video, whilst using a comprehensive checklist to determine whether the pool barrier complies with the relevant safety standards. Where possible, the original approved plans detailing the swimming pools construction will be referenced.

If the pool barrier has:

- Not been altered, then the pool barriers will be required to comply with the safety standards that were applicable at the time of construction.
- Been substantially altered or the means of access to the pool has been rebuilt, the pool barriers will be required to comply with the safety standards that were applicable when the modifications were assessed.
- Never complied with the safety standards that were applicable at the time of the construction, the pool barrier will be required to comply with the current safety standards.

Officers will view pool safety offences as serious and will issue notices and directions as standard procedure. Penalty notices will be issued at the discretion of the authorised officer. Prosecution may also be considered where deemed to be appropriate. A minimal tolerance approach is considered appropriate and is consistent with Council's adopted Compliance Policy.

## **Non-compliant swimming pool barrier**

A certificate of compliance may not be issued by a qualified pool inspector when the pool barriers do not satisfy the requirements of the Swimming Pools Act.

If the pool barrier is inspected by an accredited certifier, the accredited certifier will need to give a written notice to the pool owner and forward a copy of the notice to Council (Section 22E of the Swimming Pools Act). Council will then investigate the non-compliant pool barriers.

If the pool barrier is inspected by Council's authorised officer, a notice or order will be sent to the owner, outlining the upgrade works required. If the upgrade works are not performed

within the timeframes specified, a Penalty Infringement Notice may be issued and legal action may be taken (in accordance with the swimming pools legislation).

## **Exemptions**

In limited circumstances, Council may issue exemptions under the Swimming Pools Act. Section 22 of the Swimming Pools Act allows Council to grant exemptions from swimming pool barriers that are impracticable or unreasonable in particular cases.

Circumstances include the physical nature of the premises, because of the design or construction of the swimming pool or because of special circumstances of a kind recognised by the Regulations as justifying the granting of an exemption, such that an adult occupant of the premises, because of a physical disability or impairment, would be significantly impeded in gaining access to the pool if the swimming pool barrier were made to be installed in accordance with the Swimming Pools Act.

## **Penalty Infringement Notices**

Where a Penalty Infringement Notice is issued by Council for a breach of the Swimming Pools Act, any appeal against the issue of the Penalty Infringement Notice will need to be made through Revenue NSW.

A legal challenge against the issue of a Penalty Infringement Notice is to be made in accordance with the procedural guidelines outlined on the back of the Penalty Infringement Notice.

Legal challenges against Penalty Infringement Notices issued for swimming pool breaches may incur additional Court costs and could result in the Court issuing a greater fine than that specified on the original notice should the notice be upheld by the Court.

## Definitions

Term / Abbreviation	Definition
<b>Barrier</b>	(a) a 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 the Swimming Pools Act.
<b>Certificate of compliance</b>	in respect of a swimming pool, means a certificate issued under section 22D of the Swimming Pools Act.
<b>Dwelling</b>	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 and the like.
<b>Multi-occupancy development</b>	a building, or a group of buildings, that is/are situated on premises that consists of two or more dwellings.
<b>Procedure</b>	a formal statement of the way in which Council will undertake certain activities.
<b>Relevant occupation certificate</b>	in respect of a swimming pool, 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.
<b>Swimming pool</b>	an excavation, structure or vessel; (a) that is capable of being filled with water to a depth greater than 300mm, including inflatable pools, and (b) that is solely or principally used or that is designed, manufactured or adapted to be solely 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 the Swimming Pools Act.
<b>Tourist and visitor accommodation</b>	a building or place that provides temporary or short term accommodation on a commercial basis and includes back packers accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation and serviced apartments, but does not include camping grounds or caravan parks.