



COFFS HARBOUR CITY COUNCIL Swimming Pool Inspection Program

October 2013



THIS IS A LOOKING AFTER OUR ENVIRONMENT PROJECT
Helping to achieve the 2030 Community Vision

1. Introduction

Swimming pool safety is a critical issue that affects the entire community. Every year, many toddlers drown or are severely injured in swimming pools on private properties throughout Australia.

Alarming, the NSW Government has identified a high level of non-compliant pool barriers around swimming pools on private properties. To improve the level of compliant pool barriers in NSW and lower the risk of young children drowning in swimming pools on private properties, the NSW Government adopted amendments to the Swimming Pools Act 1992 (Act) on 29 October 2012 and other legislation, with delayed commencement provisions.

Section 22B of the Act requires Council's to develop and adopt a mandatory pool inspection program, in consultation with their local community, by 29 October 2013. Council's must then inspect the swimming pools in accordance with adopted pool inspection program.

This document outlines the swimming pool inspection program for Coffs Harbour City Council. It aims to reduce the risk of children drowning in swimming pools in the Coffs Harbour community by developing a comprehensive inspection schedule for all swimming pools in the local government area (LGA). The hierarchy of inspections to be carried out is based on a mandatory versus an elective inspection program and the level of risk.

2. Definitions

Exempt development – in respect of swimming pools means a portable swimming pool installed in accordance with the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Note: Exempt swimming pools, which meet the definition of a swimming pool, are included within the following inspection program.

Multi-occupancy development – is a building, or buildings that is, or are, situated on premises that consist of more than two dwellings.

Relevant occupation certificate – in respect of a swimming pool means an occupation certificate issued under the Environmental Planning and Assessment Act 1979 and that is less than 3 years old and that authorises the use of the swimming pool.

Swimming pool – means any 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 the Act.

Spa – includes any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

Tourist and Visitor accommodation – means a building or place that provides temporary or short term accommodation on a commercial basis and includes backpacker's accommodation, bed and breakfast accommodation, farm stay accommodation, hotel or motel accommodation and serviced apartments.

3. To what properties does this program apply?

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.

4. Swimming Pool Inspection Program

Coffs Harbour City Council's Swimming Pool Inspection Program will be implemented utilising a hierarchical order of inspection priority detailed within the following tables 1 and 2. This order will be utilised to prioritise inspections having regard to legislative requirements and resource limitations. The program will be a continuous program, relating to pools on private properties, not on public land in accordance with Section 4 of the Act.

Table 1 reflects mandatory legislative inspections that must be undertaken whilst **Table 2** reflects inspections that Council may elect to undertake.

The pools listed in Table 2, whilst not requiring mandatory inspection under the Act, have been added to the inspection program, in recognition of the risk of young children drowning in swimming pools.

Swimming pools with a valid Certificate of Compliance or a relevant Occupation Certificate are not required to be inspected as part of this Swimming Pool Inspection Program for three years from the date of issue of the Certificate of Compliance or a relevant Occupation Certificate (Section 22B(3) of the Act). However if Council is made aware of a pool that no longer has compliant pool barriers, then the pool may be inspected earlier.

Table 1: Pool Inspection Program – Mandatory pool inspections

Hierarchy of Inspections	Types of Pool Inspections
1	<p>When Council becomes aware of non compliant pool barriers:</p> <ul style="list-style-type: none"> (a) During inspections of other works (not associated with swimming pools) (b) Upon receipt of a written complaint (investigations to commence by Council within 3 days, as specified in Section 29A of the Act) (c) Upon receipt of a notice from an accredited certifier submitted in accordance with Section 22E of the Act (d) Upon receipt of a customer request (e) When Council suspects a pool contravenes the Act (e.g. pools constructed without approval)
2	<p>When an inspection request is received:</p> <ul style="list-style-type: none"> (a) Prior to the sale/lease of properties with pools - mandatory after 29 April 2014 (Schedule 2 of the Swimming Pools Amendment Act 2012) (b) Voluntarily from pool owners (Section 22C of the Act). <p>Council must carry out these inspections within 10 business days of receiving the inspection requests (Section 17 of the Swimming Pools Regulation 2008)</p>
3	<p>Tourist and visitor accommodation every 3 years - mandatory after 29 April 2014 (Section 22B(2) of the Act) consisting of:</p> <ul style="list-style-type: none"> (a) Hotels (b) Motels (c) Serviced apartments (d) Bed and Breakfast accommodation (e) Backpackers accommodation, <p>But does not include:</p> <ul style="list-style-type: none"> (f) Camping grounds (g) Caravan Grounds (h) Eco-tourist facilities.
4	<p>Multi-residential dwellings with more than two dwellings, every 3 years - mandatory after 29 April 2014 (Section 22B (2) of the Act).</p>

Table 2: Pool Inspection Program – Elective pool inspections

Hierarchy of Inspections	Types of Pool Inspections
1	Pools approved prior to 1990
2	Pools approved between 1990 – 2000 without a current Certificate of Compliance
3	Pools approved between 2001 – 2010 without a current Certificate of Compliance or Occupation Certificate
4	Pools approved from 2010 without a current Occupation Certificate or Certificate of Compliance. i.e. Council has not carried out a final inspection within the proceeding 6 month period
5	Other pools, without a current Certificate of Compliance or Occupation Certificate, including exempt pools

5. Pool Barrier Compliance

Council must inspect swimming pools in the Coffs Harbour LGA in accordance with its adopted Swimming Pool Inspection Program, and check that pool barriers comply with the requirements of the Section 22B(4) of the Act. Inspections can be performed by Council’s authorised officers or a qualified accredited certifier (Section 22A of the Act). Council’s power of entry is consistent with the Local Government Act 1993.

5.1 General Requirements for Outdoor Swimming Pools

In accordance with Section 7 of the Act: ‘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.’

5.2 Current Swimming Pool Standards and Legislation

The standards and legislation that are currently applicable to swimming pools are the:

- Swimming Pools Act 1992
- Swimming Pools Amendment Act 2012
- Swimming Pools Regulation 2008
- Swimming Pools Amendment Regulation 2013-08-20 13
- Building Code of Australia – Volumes 1 and 2
- Australian Standards AS 1926.1 and AS 1926.2

5.3 Certificate of Compliance

In order to obtain a Certificate of Compliance, under Section 22D of the Act, the swimming pool must:

- Be registered on the state wide register of swimming pools;
- Be inspected by Council’s authorised officer or an accredited certifier, and
- Comply with the requirements of Part 2 of the Act.

A Certificate of Compliance is valid for 3 years from the date of issue.

5.4 Determining Pool Barrier Compliance

During a pool barrier inspection, Council’s authorised officer will utilise checklists relevant to the age of the pool to determine whether the pool barriers comply with the relevant safety standards. If the pool barriers have:

(a) Not been altered, then the pool barriers will be required to comply with the safety standards that were applicable at the time of construction.

(b) Been substantially altered or the means of access to the pool has been rebuilt, then the pool barriers will be required to comply with the safety standards that were applicable when the modifications were assessed.

(c) Never complied with the safety standards that were applicable at the time of construction, then the pool barriers will be required to comply with the current standards.

5.5 Non Compliant Pool Barriers

A Certificate of Compliance cannot be issued by Council's authorised officer or an accredited certifier when the pool barriers do not satisfy the requirements of the Act. Consequently, if the pool barriers were inspected by:

- An accredited certifier - The accredited certifier is required to provide written notice to the pool owner detailing non compliant pool barrier issues and forward a copy of the notice to Council (Section 22E of the Act). Council will then investigate the non-compliant pool barriers and initiate appropriate action required to have them modified to meet compliance standards.
- Council's authorised officer – Notices and Directions will be provided to the pool owner detailing corrective actions and timeframe to rectify non compliant pool barrier issue. If corrective works are not performed within the specified timeframe, then a Penalty Infringement Notice may be issued and legal action may be taken (in accordance with the swimming pools legislation).

6. Standard Investigation Procedures

In determining the extent of the upgrade and an appropriate timeframe to comply, the following factors will be taken into consideration:

- Whether there is an immediate threat to life safety
- Accessibility from public land
- The year the pool was constructed
- Conditions of approval relating to the pool and barrier
- The conditions of the existing pool barrier
- The location of the swimming pool and the barrier
- Any special characteristics or uses of the pool e.g. a physiotherapy pool
- The type and use of building on the site where the pool is constructed
- Previously issued compliance certificates, occupation certificates and building certificates
- The relevant legislation and Australian Standards

The rules of evidence collection apply and are critical in the event that an immediate threat to life safety is present and/or if enforcement action is required to rectify a breach.

The Swimming Pools Act 1992 has very specific provisions in terms of pool safety compliance. Specifically for taking action after investigations, the Notices, Directions, Penalty Infringement Notices and Offences provisions under the Act are applicable.

In addition, the following procedures may apply:

- Owners of the swimming pool will be contacted by Council to arrange a time for an inspection of the premises (where possible).
- Swimming pools and barriers will be inspected by Council officers.
- Photos and/or videos may be taken of the pool fence for record purposes.
- Where it is identified there are outstanding pool safety matters, Council will issue a Notice of Intention to issue a Direction, followed by a Direction under Section 23 of the Swimming Pools Act. Where there is an immediate safety threat, a Direction will be served without a preceding Notice of Intention.
- The Direction will outline what works are required and give a prescribed period of time for the works to be completed. Council may review the time period for completion where it is considered reasonable to do so. All requests for extension in time are to be in writing and must provide reasons for such a request, including a schedule for completion of the works if appropriate.
- An owner who is the recipient of a Direction has a right of appeal to the Land & Environment Court.
- Failure to carry out works within the prescribed period may result in the issue of Penalty Infringement Notices and/or the instigation of legal proceedings to enforce Council's Direction.
- Inspection fees will be charged in accordance with Council's Schedule of Fees and Charges and the requirements of the Swimming Pools Act and Regulations hereunder.

Council will view pool safety offences as serious and 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 other enforcement policies by Council.

7. Pool Inspection Fees

For the purpose of issuing a Certificate of Compliance, Council will charge a pool barrier inspection fee of \$150 for the first inspection carried out, in accordance with Section 18A of the Swimming Pools Regulation 2008. This fee is payable prior to Council's authorised officer attending the property.

Should a further inspection be required, then an additional inspection fee of \$100 will be levied and require payment at the time of booking the reinspection. Subsequent pool barrier inspections will not incur further inspection fees.

8. Consultation

Community consultation was carried out through a survey. This survey was available on Council's website and from a swimming pool display located in Council's administration building.

The survey was also advertised on Council's page in the Advocate newspaper and this advertisement was then emailed to all preschools, primary schools and high schools requesting they place it in their school newsletters.

9. References

- Swimming Pools Act 1992
- Swimming Pools Amendment Act 2012
- Swimming Pools Regulation 2008