

Swimming Pool Barrier Inspection Protocol

DOCUMENT ADMINISTRATION

Dates	This Protocol is effective upon its approval.
Approved by	Executive Team on 9 April 2019 (See Resolution EXE096-19)
Policy Owner	Manager Development and Building Environment and Planning Directorate
Related Documents	Georges River Enforcement Policy
References & Legislation	<ul style="list-style-type: none"> * Swimming Pools Act 1992 * Swimming Pools Amendment Act 2012 * Swimming Pools Regulation 2018 * Environmental Planning and Assessment Act 1979 * Local Government Act 1993 * Building Code of Australia * Australian Standards AS 1926.1 * Australian Standards AS 1926.2 * Georges River Enforcement Policy
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1. SWIMMING POOL BARRIER INSPECTION PROTOCOL

1.1. The Purpose of the Protocol

- Implement a mandatory pool inspection program in accordance with Section 22B of the Swimming Pools Act 1992.
- Ensure swimming pools within the Georges River Council area are adequately surrounded by a child resistant barrier.
- Provide guidelines and timeframes for inspection of pools to ensure compliance with the relevant legislation.
- Promote awareness within the Georges River Council area of the Swimming Pools Act.
- Reduce the incidents of drowning and near deaths of young children through pro-active measures ensuring compliance with the requirements of the Swimming Pools Act.
- Require all swimming pools and spas that this Protocol applies to are registered and updated upon the NSW Swimming Pool Register.

2. APPLICATION OF THIS PROTOCOL

This Protocol applies to swimming pools (both outdoor and indoor) and spas that are situated or installed on premises on which a residential building, a moveable building 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.

3. RELEVANT LEGISLATION AND STANDARDS

Swimming pools are at all times required to be surrounded by a child resistant barrier:

- 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
- That is designed, constructed, installed and maintained in accordance with the standards prescribed in the Swimming Pool Regulations.

The legislation, regulation and standards that apply to this Protocol include:

- Swimming Pools Act 1992
- Swimming Pools Regulations 2018
- Swimming Pools Amendment Act 2012
- Swimming Pools Amendment (Consequential Amendments) Regulation 2013
- Environmental Planning and Assessment Act 1979
- Local Government Act 1993

- Building Code of Australia
- Australian Standards AS 1926.1
- Australian Standards AS 1926.2

4. REGISTRATION OF SWIMMING POOLS

The owner of the premises on which a swimming pool is situated must register their pool on the NSW Swimming Pool online register provided by the Division of Local Government.

The owner is also required to carry out a barrier self-assessment and state in the register that, to the best of their knowledge, their swimming pool barrier complies with the applicable standard when registering their pool.

Council may register a pool on behalf of the property owner for a fee no higher than that prescribed by the Regulations.

5. IMPLEMENTATION OF INSPECTION PROGRAM

Implementation of the inspection program under the Swimming Pools Act 2012 and this Protocol will involve:

5.1 Inspection as a Result of a Complaint (Section 29A)

Section 29A of the Swimming Pools Act 1992 requires the commencement of an investigation made to a local authority in writing within 72 hours after the complaint is received.

5.2 Inspection at the Request of a Pool Owner – General (Section 22C (1))

Section 22C(1) of the Swimming Pools Amendment Act 2012 requires that a Local Authority or an accredited certifier may carry out an inspection of a swimming pool upon request from a pool owner. The inspection must be carried out within a reasonable time.

5.3 Inspection at the Request of a Pool Owner – Sale or Lease (Section 22C (3))

Section 22C (3) of the Swimming Pools Amendment Act 2012 requires that a local authority must carry out an inspection within a reasonable time, if the request is in writing and states that the inspection is required to enable the sale or lease of a premises on which there is a pool.

Under the Conveyancing (Sale of Land) Regulation 2010 a warning notice is required within the contract of sale stating the owner of a property on which a swimming pool is situated must ensure that the pool complies with the requirements of the Swimming Pools Act 1992.

Under the Residential Tenancies Regulation 2010 residential tenancies agreement, the landlord must agree to ensure that the requirements of the Swimming Pools Act 1992 have been complied with in respect of the swimming pool on the residential premises.

5.4 Inspection of a Tourist, Visitor, Multi-Occupancy Development (Section 22B(2))

Section 22B(2) requires that Council must make provision for the inspection, at least once every three years, of a swimming pool situated on a premise on which there is a tourist and visitor accommodation or more than two dwellings.

Pools included within this section include, backpackers, bed and breakfast, hotel, motel, serviced apartments and residence of more than two occupancies.

5.5 Inspection of Development Applications which have not been finalised

Council's Building Certification Team currently review swimming pools when on site for Building Certificates, Construction Certificates and Complying Development Certificates

5.6 Referral of Complaints from Council's Internal Staff

Council Officers, including Town Planners, Building Surveyors and Health Inspectors regularly attend properties that have swimming pools. If as a result of an inspection, concerns are raised that the swimming pool barrier may not be compliant, the property will be referred to Council's Building Assessment Team for inspection.

5.7 Inspection of a Child Care Centre/Family Day Care Premises

Council staff will make provision for the inspection, at least once every three years of a swimming pool situated on child care centre/family day care premises.

5.8 Inspection carried out as part of Random Auditing

In accordance with resourcing available, Council will carry out random auditing of swimming pools in accordance with the methodology outlined in this protocol.

5.9 Program Components

- (i) Council will promote awareness on the need to register swimming pools.
- (ii) Identification of pools to be inspected.
- (iii) Identifying procedures and methods for investigation.
- (iv) Child resistant barriers identified as faulty or deficient will require specific upgrading works within a prescribed timeframe.
- (v) Council will issue Compliance Certificates where appropriate.

5.10 Staff Resources

Council will ensure employment of suitably qualified staff to oversee the program and fulfil Council's legal obligations. Accredited Building Surveyors and specialist staff will provide high level safety advice to the organisation and the community.

6. IDENTIFICATION OF POOLS TO BE INSPECTED

6.1 What type of pool structures are subject to this Protocol and Council's Swimming Pool Barrier Inspection Program?

- (i) Swimming pools including inflatable pools which are capable of being filled to a depth of water greater than 300mm (refer to definition 'swimming pool').
- (ii) Spa pools (refer to definition 'spa pool').

6.2 In what circumstances will Council inspect swimming pools as part of this Protocol and Council's Swimming Pool Barrier Inspection Program?

- (i) Where a swimming pool exists on a premises subject to a Complying Development or Construction Certificate application lodged with Council.
- (ii) Where the premises is subject to a Building Certificate application.
- (iii) Where a request to inspect the pool barrier is made by the owner whether required for pool registration or prior to sale or lease of a premises. (Council will inspect within ten (10) working days of a formal request.)
- (iv) At three (3) year intervals where the pool is associate with tourist, visitor accommodation and multi-occupancy developments.
- (v) Where the pool barrier is subject of a complaint (Council will initiate investigation within three (3) working days).
- (vi) Where an inspection by an authorised Council officer reveals an inadequately fenced pool at the subject premises or a neighbouring premises.
- (vii) Where a swimming pool has been identified as not being registered on the NSW Swimming Pool Register.
- (viii) A referral from a privately accredited certifying authority where a Compliance Certificate cannot be issued.
- (ix) Upon notification from a privately accredited certifying authority where a Notice under Section 22E of the Swimming Pools Act has not been complied with.
- (x) Where Council is informed that a swimming pool has been removed from the State Register.
- (xi) Randomly, based on available resources.
- (xii) Where an authorised Council officer has reasonable suspicion as to the existence of a non-compliant swimming pool or spa barrier.

6.3 In what circumstances will Council not inspect a swimming pool barrier?

Random inspections will not be undertaken of a swimming pool in respect of which there is a valid compliance certificate or Occupation Certificate (relating to the swimming pool) issued within the previous three (3) years.

Where a full exemption has been previously granted by the local authority under the provisions of the Swimming Pools Act.

6.4 Applicable inspection, registration and exemption fees

Council will not charge a fee higher than that prescribed by the Swimming Pools Act and Regulations. Council may charge for a swimming pool compliance re-inspection but for no further subsequent inspections.

7. PROCEDURES FOR INSPECTION AND INVESTIGATION

7.1 The Role of the Authorised Council Officer

Upon non-compliance with the applicable Swimming Pools Act, Regulation and Australian Standards the authorised Officer will determine the appropriate course of action in accordance with this Protocol and the applicable legislation.

In the event of life threatening and serious circumstances, the Council Officer may take immediate enforcement action in accordance with this Protocol and Council's adopted Enforcement Policy.

7.2 Random Inspections Procedure

Council will compare its records with the public register held by the Division of Local Government to identify swimming pools which have not been registered. Council will then contact the owners of unregistered pools in writing to arrange a suitable time for an inspection. If no contact is made Council will then utilise its entry powers under the Swimming Pools Act and Local Government Act to inspect these swimming pools and the surrounding child resistant barrier.

In addition to the above and where resources permit, Council will undertake random inspections of child resistant barriers surrounding swimming pools. Initially, and due to the age of the pools, inspections will be focussed on all pools built prior to 1976. This year aligns with the date when the first Australian Standard for swimming pool barriers was introduced. Pool owners who have been selected will be notified in writing prior to the inspection.

7.3 Standard Investigation Procedures

In determining the extent of the necessary upgrade work and the period for compliance, the following factors will be taken into consideration:

- (i) Whether there is an immediate threat to life safety.
- (ii) Accessibility from public land.
- (iii) The year the pool was constructed.
- (iv) Conditions of approval relating to the pool and barrier.
- (v) The condition of the existing pool barrier.
- (vi) The location of the swimming pool and the barrier.
- (vii) Any special characteristics or uses of the pool eg a physiotherapy pool.
- (viii) The type and use of building on the site where the pool is constructed.
- (ix) Previously issued Compliance Certificates, Occupation Certificates and Building Certificates.
- (x) 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 enforcement action is required to rectify a breach.

The Swimming Pool 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 will generally apply:

- (i) Generally, owners of swimming pool will be contacted by Council to arrange a time for an inspection of the premises.

- (ii) Swimming pools and barriers will be inspected by Council's Officer in the presence of owners or their representatives (if preferred).
- (iii) Photos and/or videos may be taken of the pool fence for record purposes.
- (iv) Where it is identified there are outstanding pool safety matters, Council will issue a Notice of Intention, 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.
- (v) 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 extensions in time are to be in writing and must provide reasons for such a request, including schedule for completion of the works if appropriate.
- (vi) An owner who is the recipient of a Direction has a right of appeal to the Land and Environment Court.
- (vii) Failure to carry out the 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.
- (viii) 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 thereunder.

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.

7.4 Relationship to Other Policies

Enforcement action and procedures are to be carried out in accordance with Georges River Council's Enforcement Policy.

8. THE ROLE OF PRIVATELY ACCREDITED CERTIFYING AUTHORITIES

Pool owners may request a privately accredited certifier to provide a Certificate of Compliance. Privately accredited certifiers may set their own fees. Having conducted an inspection, if the pool does not meet the applicable standard, the accredited certifier may allow a pool owner six (6) weeks to rectify the deficiencies before advising Council, or if the pool is considered to be a significant public hazard or life threatening situation, the certifier may notify Council immediately. Upon notification Council may commence compliance and enforcement action.

As a private accredited certifier inherits the similar role of Council it is expected that the same duty of care will be exercised.

9. SWIMMING POOL COMPLIANCE CERTIFICATES

9.1 When will Council Issue a Certificate of Compliance (Section 22D of the Swimming Pools Act 1992)?

A Certificate of Compliance is issued where a swimming pool has been registered on the NSW Register of Swimming Pools, maintained by the Director General of the Division of Local Government, and the pool has been inspected by a Council Officer and found to comply with the requirements of the Swimming Pools Act 1992. A Certificate of Compliance will be issued to the owner of the property.

9.2 Validity of a Compliance Certificate

A Certificate of Compliance remains valid for three (3) years from the date on which it is issued but ceases to be valid if a direction is issued under Section 23 of the Swimming Pools Act 1992.

9.3 Compliance Certificate – Applicable Fees

Council will not charge a fee higher than that prescribed by the Swimming Pools Act and Regulations.

9.4 Auditing Fees

Council will charge auditing fees for both site and desktop audits in accordance with its adopted fees and charges schedule.

10. PRESCRIBED PENALTIES

There are a number of offences under the Swimming Pools Act which attract 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 associate with dwelling	\$550.00	50 penalty units = \$5,500.00
Section 12 – Failure to comply with general requirement for outdoor pools associate with movable dwelling and tourist and visitor accommodation	\$550.00	50 penalty units = \$5,500.00
Section 14 – Failure to comply with generally requirements for indoor pools	\$550.00	50 penalty units = \$5,500.00
Section 15(1) – Failure to maintain child resistant barrier	\$550.00	50 penalty units = \$5,500.00
Section 16 – Failure of occupier to keep access to pool securely closed	\$550.00	50 penalty units = \$5,500.00
Section 17(1) – Failure to display or maintain prescribed warning notice near pool	\$110.00	5 penalty units = \$550.00

Section 23(3) – Failure to comply with direction (pool safety order)	\$550.00	50 penalty units = \$5,500.00
Section 30B(1) – Failure to register a pool	\$220.00	20 penalty units = \$2,200.00

Council’s Director Planning and Environment, Manager Development & Building or Coordinator Building Certification may institute legal proceedings under the Swimming Pools Act and Regulations in accordance with this Protocol and Council’s adopted Enforcement Policy.

11. DEFINITIONS

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 or thing declared by the regulations to be a barrier for the purposes of the Swimming Pools Act

Certificate of Compliance – In respect of swimming pools means a certificate issued under Section 22D of the Swimming Pools Act.

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 Swimming Pools Act.

Emergency Direction – A direction given where there is serious risk to safety. An emergency direction can require immediate action without service of a Notice of Intention beforehand.

Multi-occupancy Development – A building, or buildings that is, or are, situated on premises that consist of two (2) or more 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 Environmental Planning and Assessment Act 197 that is less than three (3) years old and that authorises the use of the swimming pool.

Residential Building – Means a building (such as a dwelling house, residential flat building or boarding house) that is solely or principally used for residential purposes, and includes any structure (such as a garage or shed) that is ancillary to any such building, but does not include:

- (a) A building that merely forms part of a complex of buildings (such as a school or recreational centre) that is principally used for non residential purposes, or
- (b) A moveable dwelling, or
- (c) Tourist and visitor accommodation, or
- (d) A shed that is ancillary to a swimming pool and the primary purpose of which is to store equipment that is used in connection with the swimming pool (but not a shed of a kind prescribed by the Regulations), or
- (e) A building or structure of a kind prescribed by the Regulations.

Spa Pool – Includes any excavation, structure or vessel in the nature of a spa pool, floatation tank, tub or the like.

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 a 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.

Tourist and Visitor Accommodation – Means 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 and serviced apartments.