

Swimming Pool Inspection Program Procedure

Procedure administration

Dates	Procedure approved 11/09/2023 This Procedure is effective upon its approval. Procedure is due for review 09/2026
Approved by	Council Meeting 11/09/2023 Council Resolution ENV032-23
Procedure Owner	Manager Environment Health and Regulatory Services Environment and Planning Directorate
Related Documents	Georges River Council Swimming Pool Policy
Appendices	Appendix 1 – Swimming Pool Inspection and Enforcement Process
Document Identifier	Procedure #: Pdr-ES&W-004.01 Doc #: D23/274882
Record Keeping	All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the NSW State Records Act 1998, Georges River Council's Corporate Records Policy and adopted internal procedures.

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Purpose

The *Swimming Pools Act 1992* (“the Act”) requires all NSW councils to develop and implement a Swimming Pool Barrier Inspection Program.

The Swimming Pool Barrier Inspection Program aims to support Council’s Swimming Pool Policy by defining the scope of the program to ensure compliance with the Act and relevant standards while also increasing pool safety awareness and compliance in the Georges River LGA

Context

Councils are required to inspect privately owned swimming pools situated in their local government area in accordance with the adopted program, to ensure compliance with the requirements of Part 2 of the Act, which relates to access to swimming pools and swimming pool barriers.

Scope

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

Relevant Legislation and Standards

The Legislation, Regulation and Standards that apply to this Swimming Pool Barrier Inspection Program include the following, as may be amended from time-to-time:

- *Swimming Pools Act 1992*
- *Swimming Pools Regulation 2018*
- *Conveyancing (Sale of Land) Amendment (Swimming Pools) Regulation 2016*
- *Residential Tenancies Amendment (Swimming Pools) Regulation 2016*
- Building Code of Australia
- Australian Standard AS1926 - Swimming Pool Safety, Part 1: Safety barriers for swimming pools (2012)
- Australian Standard AS1926 - Swimming Pool Safety, Part 2: Location of safety barriers for swimming pools (2007)

NSW Fair Trading has provided advice requiring all pools to comply with the current barrier requirements unless it can be verified that the pool complied on 31 August 2008 and continued to comply until date of inspection. Council will follow all advice from NSW Fair Trading in regard to the interpretation of the *Swimming Pools Act 1992* and *Swimming Pools Regulation 2018*.

Definition of Terms

Term	Meaning
Accredited Certifier	An Accredited Certifier is an individual who is registered with the NSW Building Professionals Board for the purpose of performing swimming pool inspections.
Certificate of Compliance	A Certificate of Compliance is evidence that a swimming pool meets the requirements of the Swimming Pools Act 1992 and the Swimming Pools Regulation 2008. A Certificate of Compliance is valid for three years
Certificate of Non-Compliance	A Certificate of Non-Compliance is evidence that a swimming pool does not meet the requirements of the Swimming Pools Act 1992 and the Swimming Pools Regulation 2008. A Certificate of Non-Compliance issued at the owners request is valid for one year
Certificate of Registration	A Certificate of Registration is evidence that a swimming pool is registered on the NSW Swimming Pool Register; either the owner of the premises or local council can register a swimming pool.
Direction	An authorised person acting under the delegation of a local authority may issue a Direction against the premises with a swimming pool under section 23A of the Swimming Pools Act 1992. This directs the owner to take, within reasonable time as specified in the direction, such measures to ensure that the swimming pool or premises comply with the requirements of the <i>Swimming Pools Act 1992</i> .
Notice of Direction	Written Notice of Councils intention to issue a Direction against the premises within 14 days unless the terms of the Notice are completed.
Pool Barrier Exemption	A certificate issued under the <i>Swimming Pools Act 1992</i> to exempt a swimming pool from any or all the requirements of the Act. An Exemption Certificate is granted subject to any conditions Council deems appropriate
Portable pool	A structure that is designed as a swimming pool but is not a permanent structure
Occupation Certificate	An Occupation Certificate is issued under the <i>Environmental Planning and Assessment Act 1979</i> and authorises the use of the swimming pool.

Spa Pool	<p>Defined by the <i>Swimming Pools Act 1992</i> and:</p> <p>Includes any excavation, structure, or vessel in a spa pool, flotation tank, tub, or the like.</p> <p>Additionally, Georges River Council does not consider swim spas as spa pools.</p>
Swimming Pool	<p>Defined by the <i>Swimming Pools Act 1992</i> as:</p> <p>an excavation, structure or vessel that is capable of being filled with water to a depth greater than 300 millimetres and 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 any declared by the swimming pool for the purposes of this Act.</p>

Responsibilities of Swimming Pool Owners

Swimming Pools offer a social amenity that is of great benefit to those who have use and have access to them. 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 several occasions for a pool inspection program requiring an ongoing inspection regime of pool safety barriers. 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.”

1. Swimming Pool Register

In accordance with the Act, the NSW Government, has introduced an “on-line” state-wide Swimming Pool Register - <http://www.swimmingpoolregister.nsw.gov.au> .

All owners of a residential premises or tourist and visitor accommodation on which a swimming pool is located must register their pools on the Register. A pool owner who fails to register their pool is guilty of an offence. Council has the option to issue a Penalty Notice for a non-compliance or initiate Court proceedings.

The Swimming Pools Register will record whether or not a swimming pool has been inspected by Council or an Accredited Certifier and if a current certificate of compliance has been issued.

Council's Compliance Unit is provided with access to the Swimming Pools Register to assist with the administration of councils' Swimming Pool Barrier Inspection Program. Council will rely upon the NSW Swimming Pools Register to determine what swimming pools are required to be inspected in accordance with this program.

2. Barrier requirements

The owner of the premises on which a swimming pool is situated is required to comply with all requirements under the *Swimming Pools Act 1992* and Regulations at all times.

They must ensure that the swimming pool is 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.

3. Sale and Lease Provisions

In accordance with the *Swimming Pools Amendment (Inspections) Regulation 2016*, a contract for the sale of land for a property with a swimming pool must have one of the following attached:

- A Certificate of Compliance; or
- A relevant Occupation Certificate and a Certificate of Registration; or
- A Certificate of Non-compliance.

Properties with swimming pools that are being 'leased' after 29 April 2016, must have a valid swimming pool Certificate of Compliance, issued by an Accredited Certifier or Council.

These provisions do not apply to properties with more than two dwellings and a shared pool, such as units in strata complexes or community schemes.

Responsibilities of Council

Council must inspect swimming pools in its area in accordance with its program. Under the *Swimming Pools Act 1992*, 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.

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

4. Enforcement

If Council undertakes an inspection or is notified by a Certifier that the pool safety devices fail to meet the requirement of the *Swimming Pools Act 1992* and prescribed standards, Council will issue a Notice of Direction pursuant to Section 23 of the Act. If Council considers that the safety of a person would be at risk if the requirements of the direction were not carried out as soon as possible, Notice will not be given, rather a Direction be issued in the first instance. In most cases, non-compliance with the requirements of the Act is considered a safety risk.

Failure to comply with the Direction is an offence and Council will issue a Penalty Notice and or initiate Court proceedings.

Council can also carry out some or all of the requirements of the Direction in accordance with section 23A of the Act and recover the costs associated with carrying out the works as a debt.

Appendix 1 details the enforcement process.

5. Fees

For the purposes of issuing a Certificate of Compliance, Council will charge a pool barrier inspection fee which is currently regulated at \$150 for the first inspection carried out, in accordance with the *Swimming Pools Regulation 2018*. Subsequent pool barrier inspections will incur a further inspection fee which is currently regulated at \$100 and will need to be paid at the time of booking the re-inspection.

Councils also imposes a fee which is currently regulated at \$250 for an Application for Exemption seeking exemption from barrier requirements that are impracticable or unreasonable.

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 the certificate ceases to be valid, Council may charge a fee in accordance with the above to carry out a new inspection for the purpose of issuing a new certificate of compliance.

Certificates of Compliance

6. 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 complies with 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.

7. The Role of Registered Certifiers

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 governed by the NSW Fair Trading.

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 enforcement action against the Pool Owner.

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

A Pool Certificate of Compliance cannot be issued if the pool safety devices fail to meet the requirements of the *Swimming Pools Act 1992* 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. 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.

9. What is the “Applicable Standard” that Applies?

To determine the applicable standard that applies to a pool there are two areas that are required to be determined, these are where 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 has been altered or rebuilt the barrier will need to comply with the latest standard. Also, 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 version of AS1926.

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 1992*. Council applies a risk base approach to the Inspection Program. The following inspections will be attended to in order of priority:

10. High Risk Pools

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;
- childcare centre/ family day care or premises accessed regularly by children for other than domestic purposes.

11. Council identified High Risk Pools

Council has a number (437 as of 21 July 2022) of non-compliant pools listed on the NSW Swimming Pool register. Some of these pools have had outstanding non compliances since 2014. There are 40 pools which have been marked as non-compliant on the register by Council officers between 2014 to 2020 which remain non-compliant. This is a priority action to have these pools reinspected and compliance pursued.

12. Reports of unsafe pools

Council receives complaints from the public in relation to unsafe pool barriers. Council staff (who may or may not necessarily be Authorised Officers under the Act) who attend a premises in relation to other matters, including staff attending premises for purposes relating to animal control, development (whether lawful or otherwise), applications for permits or consents, noise or similar complaints and other matters, who identify pools with inadequate barriers are also reported. Once reported, pools are lodged in Councils Customer management system and the investigative process will commence within 72 hours.

Before entering the property for an inspection, Council will aim to notify the owner or occupier of the premises about the complaint to arrange a time that is convenient for an inspection to be carried out.

13. Applications for Certificates of Compliance

Council accepts applications for Certificate of Compliance. Where an application is lodged and the relevant fees paid Council will aim to inspect within 10 days.

14. Certificates of Non-compliance

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 verify the report and issue a Direction to comply with the requirements of the SPA and Regulation.

Should the Direction not be complied with in the timeframe specified, Council will commence further enforcement action.

15. Exemptions

In limited circumstances, Council can issue exemptions under Section 22 of the Act. This allows Council to grant exemptions for swimming pools situated on complex sites, in the particular circumstances of the case:

- a) That it is impracticable or unreasonable (because of 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) for the swimming pool to comply with those requirements; or
- b) That alternative provision, no less effective than those requirements, exists for restricting access to the swimming pool.

When assessing applications for exemption, two officers will conduct the inspection. The findings of the inspection will be considered by a panel of a minimum 3 officers who will make a determination if the exemption should be granted.

When granting an exemption Council may impose conditions, including timeframes on the validity of the exemptions.

16. Proactive Inspections

When staff resources permit, Council Officers may schedule swimming pool inspections for pools which do not have a current Certificate of Compliance.

17. Monitoring

Compliance with this Program will be monitored by the Manager Environment, Health and Regulatory Services and the Coordinator Compliance. Council will review this program within 5 years or at the request of Council or in response to legislative and statutory requirements.

18. Privacy

Information must be managed in accordance with Council's Privacy management plan, Code of conduct, Access to information, Workplace surveillance policies and all relevant legislation.

19. Training and Competence

Council is committed to staff receiving training relevant to the tasks/activities undertaken in this procedure. Training requirements will be reviewed annually and recorded in Councils Performance Review System. All training will be evaluated to ensure continuous improvement.

Competence of employees, including any contractors, labour hire employees or volunteers, will be assessed prior to being expected to carry out the tasks associated with this procedure and will be reviewed from time to time.

Relevant authorised officers applying to complete a course must complete a Training Course application form that includes approval signatures from the relevant Manager and/or Director to then submit to the People and culture directorate for final approval.

20. Workplace Health and Safety

The safety of officers during the execution of duties is of paramount importance, incidents or near misses must be reported at the earliest possible time to the Team Leader Development Compliance.

Staff must be always aware of their surroundings and take immediate action to mitigate increased risk of harm or intimidation. Action can include calling for assistance removing themselves from the scene.

All duties are to be carried out in accordance with Council and Unit specific Safe Work Method Statements.

21. Corruption prevention

At any stage of investigation, if an actual or perceived conflict of interest is identified it must be disclosed to the Coordinator or Manager before further investigation is conducted.

Gifts or gratuities of any sort must not be accepted.

If an improper or undue offer is made or a person in a position of authority makes a perceived unreasonable exercise of their authority, this must be recorded and notified to the appropriate person immediately.

22. Breaches of Policy and Program

Breaches of the Swimming Pool Policy and this program will be dealt with in accordance with normal disciplinary procedures and will be advised to the General Manager and / or Director, Planning and Environment, via the Manager Environment, Health and Regulatory Services.

Responsibilities

Position	Responsibility
Executive	Provide leadership in complying with the legislative requirements and the Program. Approve resources to develop, implement and review this Program.
Director Environment and Planning	Provide leadership in understanding and complying with the legislative requirements and the Program. Allocate appropriate resources to assist Council in complying with this Program

Manager Environment, Health and Regulatory Services	Provide leadership in understanding and complying with the legislative requirements and this Program. Allocate appropriate resources to assist Council in complying with this Program.
Coordinator Compliance	Provide leadership in understanding and complying with the legislative requirements and this Program. Allocate appropriate resources to assist Council in complying with this Program. Undertake reviews of this Program as instructed.
Compliance Staff	Assist staff and the community in understanding and complying with the legislative requirements and this Program. Implement this Program
All Staff	Assist the community in understanding and complying with this Program.

Version control and change history

Version	Amendment Details	Policy Owner	Period Active
1.0	NewGeorges River Council Swimming Pool Policy	Manager Environment, Health and Regulatory Services	11/09/2023 – 09/2026

Appendix 1 – Swimming Pool Inspection and Enforcement Process

