

REPORT SUBMITTED TO THE  
BALLINA SHIRE COUNCIL MEETING  
OF 19 DECEMBER 2013

8.3 Swimming Pools - Barrier Inspection Program

<b>Delivery Program</b>	Building Services
<b>Objective</b>	To determine a swimming pool barrier inspection program.

---

**Background**

In October 2012 the NSW Government introduced the *Swimming Pool Amendment Act 2012* which requires all swimming pools installed within NSW to be registered with the NSW Government on-line.

The deadline for the registration of all existing pools was 29 October 2013 and all new pools are to be registered once completed.

As part of the legislation, councils are required to develop and introduce a swimming pool barrier inspection program in consultation with their communities.

Councils are also required to inspect all higher risk pools (multi-residential, tourist facilities, motels and child care facilities) at three year intervals, commencing no later than 29 April 2014. Under the adopted programs, councils may choose to inspect the mandatory higher risk pools only, or all pools at various intervals.

In order to effectively assess the number of pools within the Ballina Shire, a combination of Council's electronic recording system and the NSW Division of Local Government's (DLG) register has been used. Until recently, the DLG register has not been accessible for this purpose due to problems at their end that has caused delays in Council preparing our program and this report.

Access to the NSW register, identifying the number and addresses of pools registered in each council area is now available. Council as at 28 November 2013 has 2,218 pools registered on the NSW system.

The following report provides a brief overview of the legislation, results of the community survey undertaken and recommendations for the type of program to be introduced.

**Key Issues**

- Legislative requirements
- Community expectations
- Public safety
- Economic impacts

**Information**

Briefly, the legislation requires the following:

- Development and implementation of the NSW Government on-line register by 29 April 2013
- Pool owners are required to register their pools on the register by 29 October 2013; penalties of \$220 apply for failure to register
- Councils are required to develop and implement a swimming pool barrier inspection program in consultation with their communities by 29 October 2013
- Councils are to report annually on the number of pool inspections undertaken, the level of compliance and requirements for compliance
- Owners of properties containing pools associated with sales or leases will have to provide a valid pool Compliance Certificate after 29 April 2014; councils or other privately accredited certifiers can issue these Compliance Certificates
- Commencing no later than 29 April 2014, councils must inspect higher risk pools associated with tourist facilities, multi-residential developments, motels and child care facilities; thereafter inspections are to be made at three year intervals
- Councils can charge a maximum initial inspection fee of \$150 and an additional \$100 for one re-inspection where required

### Community Consultation

Under the inspection program, rather than only inspecting the higher risk pools as required, councils may choose to inspect all pools within their area at various intervals providing they have consulted with their communities.

Regarding the pool inspection program and community consultation, we undertook a survey through the local newspapers, requesting submissions be made on-line or over the counter.

The survey included a brief description of the program and also included the following options and question:

1. If you wish to contribute to how Ballina Shire Council should implement the program for the inspection of swimming pool barriers, please tick the relevant box below:
  - Inspect only the higher risk pools every three years, not all pools (54%)
  - Inspect all pools every three years (14%)
  - Inspect all pools every five years (15%)
  - Inspect all pools every ten years (17%)
2. Do you have any other comments to make?

The response to the survey resulted in 78 submissions being received. Thirty seven of these respondents also provided additional comments regarding question two above.

The bracketed percentage figures above indicate the preferred option as a result of the total number of submissions received. As depicted, the preferred option from the respondents was to inspect only the higher risk mandatory

pools, being the multi-residential buildings, tourist facilities, child-care facilities and motels.

As a comparison, we have been advised that other nearby councils received the following number of submissions from their community consultation surveys:

- Lismore 94 responses
- Tweed 200 responses
- Byron N/A (community not provided with options)

A summary of the additional comments raised by the 37 respondents is as follows:

- All pools are a risk and need to be inspected, complete aerial and street surveys, contract out the inspection process, charge a \$120 inspection fee and \$30 administration fee
- Only do inspections on sale of properties and rentals, not all pools
- Money grab for councils, full responsibility rests with the pool owners to ensure their pool complies
- Over regulation, we are a nanny State, responsibility rests with property owners
- Waste of ratepayer's money, parent supervision is the issue
- Inspection fees are onerous, pensioners can't afford more fees
- Focus resources only on unregistered pools and fine them
- Fear rates will rise to cover costs, pool owners need to cover the full costs
- Focus on old pools firstly
- Private contractors should never be used for inspections
- Only pools without final inspections under the Development Application (DA) process should be inspected
- Costs are an unjustifiable impost
- Education of pool owners is the answer, not the inspection process as the obligation rests with the pool owner
- Only inspect pools when property sold or at final inspection stage
- Injuries can occur as well as drowning
- If pool inspected at final stage, no need for further inspections
- Inspections will make little difference, don't bother
- Inspection of low risk pools has resourcing issues for Council
- Should be yearly inspections as things change

As can be seen above, although the sample is small, there are mixed views on the operation of the program.

### Records management

Regarding the recording of pools within our Shire, we only have those pools constructed after 1990 within our electronic records management system. As an indication on pool numbers, the number of pool Development Applications retrieved from the electronic data system is 2,230 for the 1990 to August 2013 period. We currently do not have any other means of retrieving records for those pool applications received prior to 1990.

## 8.4 Swimming Pools- Pool Barrier Inspection Program.DOC

The number of Ballina Shire pools currently registered on the NSW DLG register is 2,218. Having regard to the above 1990-2013 statistics, this figure suggests there are additional pools not yet registered on the system. We have advertised the need for pool registrations on our web page and in both the local papers, our local Community Connect newsletter and at a Master Builders' Association seminar.

In comparison, Lismore Council currently has approximately 2,300 pools registered on the NSW DLG register whilst Byron Council advises they have approximately 2,200 pools known in their Shire.

Tweed has advised they currently have 4,587 pools registered on the NSW DLG system, although suspect they have approximately 8,000-10,000 pools within their Shire.

As part of our program and in order to identify unregistered pools, we intend to carry out a cross check of pools currently recorded in both our electronic records management system (1990-2013 period) and the NSW DLG register.

Regarding other pools prior to 1990, we may be able to identify those properties containing pools and not registered through Council's GIS Mapping system.

Alternatively, there are private companies that use a similar GIS mapping system to the Council that will provide details of all pools in a particular shire size area similar to Ballina, at a cost of approximately \$2,000-\$3,000.

### Program Recommendation

Separate to the current requirement for the introduction of the Swimming Pool Barrier inspection program, Council has been proactively involved in an alternative swimming pool inspection program over recent years, although not required by legislation.

This program has been aimed at finalising Development Applications (DA) for pools where owners or applicants have not called for final inspections on their pools or where outstanding issues remain.

The period we have been focusing on is the year 2008 to the present and it is intended to be a continuous program, with most outstanding applications now finalised up to the current period. The on-going progress of this program, however, is dependent upon workloads and resourcing.

The operation of any proposed new program and degree of inspection is dependent upon resourcing and should a full "belt and buckle" approach be adopted, being the inspection of all pools on a regular basis (say across a five year period), additional resources will be required.

The administrative costs for running the program also need to be considered, where debtor's invoices are required to be sent out to recover inspection costs.

Council can also consider using private contractors to inspect premises for compliance, however further scoping work would need to be undertaken regarding the true cost and implications of such a process.

## 8.4 Swimming Pools- Pool Barrier Inspection Program.DOC

There are some concerns regarding the likely public perception of private companies being involved in a regulatory compliance function, involving the issue of notices/orders and penalties.

As can be seen by some of the community comment, there are concerns with the cost of running any program and the potential impost on residents, particularly those that are law abiding or on lower incomes.

Many of the pools will be finalised with our current DA final inspection process and with the sale or rental of properties. In addition, councils must inspect the higher risk pools as described earlier, commencing the program no later than 29 April 2014.

We have commenced preparing a list of the higher risk pools and at this stage have identified approximately 50-60 properties that will be required to be inspected and finalised over the next four months.

In order to move forward with the implementation of a suitable program, it is important to have all of the pools registered on the NSW DLG register to enable full consideration of pool numbers, the frequency of inspections, and resourcing.

Due to our electronic records retrieval system only covering the 1990-present period and the apparent lack of full pool registrations on the register, we will have to allocate both financial and human resources to this area.

This will involve cross-checking our electronic records with the NSW DLG register and the use of our mapping system to identify pools within our Shire. As stated earlier, we may choose to use the services of a private company to identify all pools in our Shire at an approximate cost of \$2,000-\$3,000, dependent upon funding availability. We also intend to implement a detailed pool register in our records management system once total pool numbers are established.

Due to the current available staff resources and the need for further information gathering, it is recommended we proceed immediately with the following suggested interim program and the matter be further reported to Council in May 2014, when the operation of the program can be reviewed and decisions made on its future delivery and resourcing.

### **Suggested interim program:**

1. Commence cross checking all pools registered on the NSW DLG register and our electronic records management system (1990-present)
2. Identify and take action on all pools not registered on the NSW DLG register via our GIS mapping system or through the services of a private company offering similar services
3. Once all pools are identified, establish a pool register in our electronic Authority system
4. Commence inspection of all identified higher risk pools in our Shire, to be finalised by April 2014
5. Commence inspection of pools not registered on the NSW DLG register
6. Continue to inspect outstanding pools subject to the DA process under our current program (2008-present)

7. Inspect pools subject to lease or sale as required under the legislation, commencing 29 April 2014 or as requested sooner
8. Investigate the pros and cons, including costs, of providing an inspection service through a private consultant individual or company.

Alternatively, Council may resolve to adopt a minimalist program compliant with the legislation, one that only involves the mandatory inspection of the higher risk pools and properties subject to sale or lease, to be commenced by 29 April 2014.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Public safety, minimizing the risk of child drownings
- **Economic**  
Cost of inspection, service delivery, and potential non-compliance penalties

#### **Legal / Resource / Financial Implications**

The potential for litigation regarding non-compliance issues exist. Additional human and financial resourcing for the operation of the adopted inspection program may be required.

#### **Consultation**

The community has been consulted on the delivery of the program in accordance with the legislation.

#### **Options**

The following options are considered to be available to Council:

1. Adopt the suggested interim program as outlined earlier with a further report being tabled to Council in May 2014, at which time the delivery of the program can be further assessed and determined.
2. In accordance with the legislation, adopt a program that involves only the mandatory inspection of those pools identified as higher risk, being multi-unit residential, motels, tourist facilities, child care facilities and properties subject to lease or sale, to be commenced by 29 April 2014; Under this program, Council staff will continue to also finalise pools under its existing DA program (2008-present).

Option one is the preferred option as the intention of the legislation is to encourage councils to implement programs involving the inspection of all pools at various stages during their lifetime.

Pool barriers do deteriorate over time and can be altered by owners and occupiers. It is acknowledged that parental supervision is paramount and some owners are more diligent than others in maintaining pool barriers. Drowning incidents do occur through defective barriers.

**RECOMMENDATIONS**

1. That Council take the following actions in respect to the Swimming Pool Inspection Program:
  - a) Commence cross checking all pools registered on the NSW Division of Local Government register and our records management system
  - b) Identify and take action on all pools not registered on the NSW Division of Local Government register through Council's GIS mapping system or through the services of a private company offering similar services
  - c) Establish an electronic pool register
  - d) Commence an inspection program for all identified higher risk pools, to be finalised by April 2014
  - e) Commence an inspection program for pools not registered on the NSW Division of Local Government register
  - f) Continue to inspect outstanding finalisations for pools subject to the DA process
  - g) Inspect pools subject to lease or sale, as required under the legislation, commencing 29 April 2014 or as requested sooner by applicants and
  - h) Investigate the advantages of providing an inspection service through the private sector.
2. That Council receive a further report by 31 May 2014 to review the operation and delivery of the Swimming Pool Barrier Inspection program actions undertaken, as per point one above.

EXCERPT FROM  
MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL  
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS  
40 CHERRY STREET BALLINA,  
ON 19/12/13 AT 9.00 AM

8.3 Swimming Pools - Barrier Inspection Program

191213/1      RESOLVED

(Cr Sharon Cadwallader/Cr Robyn Hordern)

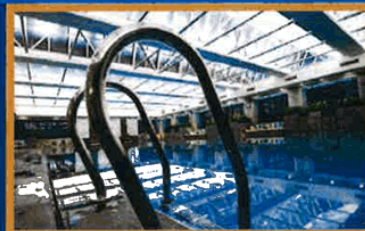
1. That Council take the following actions in respect to the Swimming Pool Inspection Program:
  - a) Commence cross checking all pools registered on the NSW Division of Local Government register and our records management system
  - b) Identify and take action on all pools not registered on the NSW Division of Local Government register through Council's GIS mapping system or through the services of a private company offering similar services
  - c) Establish an electronic pool register
  - d) Commence an inspection program for all identified higher risk pools, to be finalised by April 2014
  - e) Commence an inspection program for pools not registered on the NSW Division of Local Government register
  - f) Continue to inspect outstanding finalisations for pools subject to the DA process
  - g) Inspect pools subject to lease or sale, as required under the legislation, commencing 29 April 2014 or as requested sooner by applicants and
  - h) Investigate the advantages of providing an inspection service through the private sector.
2. That Council receive a further report by 31 May 2014 to review the operation and delivery of the Swimming Pool Barrier Inspection program actions undertaken, as per point one above.
3. That Council further promote this through our community advertising.

FOR VOTE - All Councillors voted unanimously.  
ABSENT. DID NOT VOTE - Cr Keith Johnson



# Control of public swimming pools & spa pools

The *Public Health Act 2010* and the *Public Health Regulation 2012* commence on **1 September 2012**. To support implementation of the *Act* and *Regulation*, a series of Information Sheets has been developed to outline the key requirements in relation to particular areas. Visit the NSW Ministry of Health webpage at [www.health.nsw.gov.au/phact](http://www.health.nsw.gov.au/phact) for more information on the *Act* and *Regulation*.



## What is the definition of a 'public swimming pool or spa pool'?

Under the *Public Health Act 2010*, a public swimming pool or spa pool is defined as:

'a swimming pool or spa pool to which the public is admitted, whether free of charge, on payment of a fee or otherwise, including:

- (a) a pool to which the public is admitted as an entitlement of membership of a club, or
- (b) a pool provided at a workplace for the use of employees, or
- (c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests, or
- (d) a pool provided at a school or hospital'.

The *Act* defines a spa pool as including any structure (other than a swimming pool) that:

- a) holds more than 680 litres of water, and
- b) is used or intended to be used for human bathing, and
- c) has facilities for injecting jets of water or air into the water.

A swimming pool under the *Act* includes any structure that is used or intended to be used for human bathing, swimming or diving, and includes a water slide or other recreational aquatic structure.

A pool situated at private residential premises is not considered a public swimming pool or spa pool under the *Act*.

## Who do the requirements of the *Public Health Act 2010* and the *Public Health Regulation 2012* apply to in relation to public swimming pools and spa pools?

The requirements of the *Act* and *Regulation* in relation to public swimming pools and spa pools relate to the occupier of the premises at which a public swimming pool or spa pool is located.

This includes:

- gyms/health clubs
- hotels/motels/accommodation providers
- schools
- hospitals
- work places
- brothels.

## When do these requirements come into force?

The provisions of the *Act* and the *Regulation* in relation to swimming pools and spa pools primarily commence on **1 March 2013**. Specifically, this relates to section 35 of the *Act* and clauses 15, 19 and 20 of the *Regulation* which deal with operating requirements and requirements to notify the local council.

The remainder of the provisions commence on **1 September 2012**.



Health

[www.health.nsw.gov.au/phact](http://www.health.nsw.gov.au/phact)