

BUILDING & SWIMMING POOL INSPECTION POLICY

Policy Type:	Council
Responsible Department:	Development
Responsible Officer:	General Manager, Economic Development and Planning
Related Policies and Procedures	4.2.02 Building Inspection
Date Adopted:	C114, 25 June 2012
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1. POLICY STATEMENT

This Policy, in relation to building work, is mandatory under Section 71A(1) of the *Development Act 1993*.('Act')

In relation to swimming pools, this Policy is mandatory under Section 71AA(7) of the *Development Act* and Regulation 76D(4a) of the *Development Regulations 2008*.('Regulations')

Pursuant to Section 71A(2) this Policy must (and does) specify:

- (a) a level or levels of audit inspections to be carried out by the Council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12) involving classes of buildings prescribed by the regulations; and
- (b) the criteria that are to apply with respect to selecting the buildings that are to be inspected under the policy.

Pursuant to Section 71A(4a) this Policy complies with any regulation prescribing a minimum level of inspections to be carried out by the Council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12 of the Act). As of writing, the only regulation to do so is Regulation 80AB.

Pursuant to Regulation 76D(4b) this Policy complies with the requirements set out in that regulation as to minimum levels of inspection of swimming pools (including safety fences and barriers associated with such swimming pools) within the area of the Council.

This Policy does not apply to the appropriate authority constituted under Section 71(19), commonly known as the Building Fire Safety Committee, nor does it apply to an inspection under Section 71(1).

2. COMMUNITY GOAL

Goal 5.3; Good governance and legislative framework.

3. POLICY OBJECTIVES

The Council is empowered by the Act to inspect building work within its area. Such inspections aim to:

- 1) detect building work which does not accord with a development approval (or exemption);
- 2) detect building work or practices which do not accord with the requirements of the Act;
- 3) detect buildings and building work which are unsafe; and
- 4) gather the evidence necessary (a) to correct situations 1), 2) and 3) above, and (b) to punish those responsible.

By undertaking such inspections, the Council aims to deter persons from undertaking building work except in accordance with a development approval (or exemption) and the requirements of the Act.

In addition, the Council intends that where such inspections reveal problems (that is, one or more of situations 1) – 3) above exist), the evidence gathered by such inspections will permit the Council to take action to correct those problems.

This Policy provides general guidance as to when and what corrective action may be taken when problems are detected.

4. PRINCIPLES

This policy provides a framework for building inspections and swimming pool inspections under the Act.

In accordance with Section 71A(4) this Policy has been prepared taking the following matters into account:

- (a) the financial and other resources of the council, and of its local community; and
- (b) the impact that a failure to inspect a certain number of buildings of the relevant classes over a period of time may have on its local community; and
- (c) past practices of the council with regard to inspections and the assessment of building work in its area; and
- (d) whether the area, or a particular part of the area, of the council is known to be subject to poor building conditions; and
- (e) information in the possession of the council on poor building standards within its local community; and

- (f) the public interest in monitoring the standard of building work within the community and in taking steps to provide for the safety and health of people who use buildings.

In relation to swimming pools, this Policy acknowledges the serious risk to life safety (particularly for young children) posed by swimming pools which lack the swimming pool safety features required by the Development Act and Regulations.

5. DEFINITIONS

Words and phrases defined by the Development Act and the Development Regulations have the same meaning when used in this Policy.

In addition, the following words and phrases are defined:

<i>audit inspection</i>	<p>an <i>inspection</i> which determines (within the scope of the inspection and only insofar as the inspection is able to do so) whether or to what degree the inspected building work complies with:</p> <ul style="list-style-type: none">• the relevant development approval or any applicable exemption• if applicable, any other relevant documents (for example a required checklist) <p>an audit inspection does not involve any assessment of building work against the building rules or swimming pool safety requirements at large, nor any assessment of the structural or functional adequacy of any building work.</p>
<i>building inspection</i>	<p>an <i>audit inspection</i> of building work, excluding any building work comprising solely a swimming pool (including related swimming pool safety features) or swimming pool safety features or portion thereof.</p>
<i>inspection</i>	<p>a comparison by an <i>inspector</i> (with or without assistants) of</p> <ol style="list-style-type: none">(a) visual observations of that building work, and(b) measurements or test results of selected parts¹ of that building work, with:<ul style="list-style-type: none">• the plans and details (if any) which form part of a development approval (or exemption) which relates to that building work, and• if applicable, any other relevant documents (for example a required checklist)² <p>and may include the interview of any person associated with the building work.</p>

¹ How such parts are to be selected is dealt with later in this Policy.

<i>inspector</i>	an authorised officer of the Council, appointed under Section 18 of the Development Act, who holds a current accreditation as a building surveying technician (or equivalent or greater accreditation), or who has been approved by the Minister under Regulation 87(3)(c)
<i>person</i>	includes all legal persons including bodies corporate
<i>swimming pool inspection</i>	an <i>audit inspection</i> of a swimming pool (including related swimming pool safety features) or swimming pool safety features or portion thereof
<i>swimming pool safety requirements</i>	the requirements of the Development Act 1993 and Development Regulations 2008 pertaining to swimming pool safety

Where this Policy refers to an *inspection*, that is a reference to an *audit inspection* as defined above. Where this Policy uses the word “inspect”, that means “undertake an *audit inspection*”.

6. POLICY

6.1 SELECTION OF BUILDING FOR INSPECTION

Excluding swimming pools, not all buildings will be inspected. The Council does not have the resources to do so. However, all swimming pools known to the Council will be inspected in accordance with this Policy.

Buildings will be selected for inspection in accordance with the following criteria (in descending order of preference):

1. buildings which appear to be unsafe;
2. buildings which ordinarily present a high risk to fire and life safety, and in particular swimming pools;
3. buildings which are used by many people, particularly where many people do so simultaneously;
4. buildings which involve roof framing;
5. buildings which are obliged to provide access to disabled persons;
6. buildings in respect of which a complaint has been made; and
7. in the event that inspection of the foregoing buildings does not result in the prescribed minimum inspection levels being met, any other buildings.

Where a building is selected for inspection it may be inspected at any stage of construction, and may be inspected more than once (i.e. it may be inspected at different stages of construction).

As noted above, all swimming pools known to the Council will be inspected in accordance with this Policy.

² At present a supervisor’s checklist is prescribed in relation to roof framing under Regulation 74(5).

6.2 LEVELS OF INSPECTION

Prescribed Minimum Levels

In accordance with Section 71A(4a) and Regulation 80AB(2) this Policy specifies the following minimum inspection levels for all classes of buildings, other than (a) Class 10 buildings which are not attached to any part of the roof framing of a building of another class, and (b) swimming pools:

where the building work involves the construction of any roof framing within the area of the Council:

- (a) a number of inspections equal to **66%** of the building rules consents³ issued over the course of the year⁴ for building work involving the construction of any roof framing where a licensed building work contractor is responsible for the relevant building work⁵; and
- (b) a number of inspections equal to **90%** of the building rules consents issued over the course of the year for building work involving the construction of any roof framing where a licensed building work contractor is not responsible for the relevant building work⁶.

In accordance with Regulation 76(4b) this Policy specifies the following minimum levels of inspection of swimming pools (including safety fences and barriers associated with such swimming pools):

- (a) at least **80%** of swimming pools constructed over the course of the year must be inspected within **2 weeks** of the Council being notified of the completion of—
 - (i) in the case of a swimming pool the construction of which required the construction of a safety fence or barrier—the construction of the safety fence or barrier; or
 - (ii) in any other case—the construction of the swimming pool;
- (b) the remaining **20%** of swimming pools constructed over the course of the year must be inspected within **2 months** of the Council being notified of the completion of—
 - (i) in the case of a swimming pool the construction of which required the construction of a safety fence or barrier—the construction of the safety fence or barrier; or
 - (ii) in any other case—the construction of the swimming pool.

³ For the purposes of this Policy, a variation to an operative building rules consent does not, itself, count as a building rules consent and nor does the extension of the operative period of any building rules consent (whether operative or lapsed).

⁴ For the purposes of this Policy, “the year” is the relevant calendar year.

⁵ Regulation 80AB(2) does not identify what “the relevant building work” is. For the purposes of this Policy “the relevant building work” is the entirety of the building work to which the relevant approval or exemption relates.

⁶ See above note. Adopting this interpretation has the effect that paragraph (b) applies to “owner-builder” situations. This is consistent with the recommendations of the October 2008 Report of the Ministerial Taskforce on Trusses.

Counting Inspections

To determine whether the minimum numbers set out above are met:

- (a) building inspections must be counted in accordance with the methodology set out below; and
- (b) swimming pool inspections must be cross-referenced with swimming pools known to be constructed.

The first inspection of the building work forming part of any particular building is counted as one inspection.

Where building work forming part of a building is inspected at a particular stage, and problems are found, any re-inspection undertaken to determine whether the problems have been corrected does not count as an inspection. Rather, it is taken to be part of the initial inspection.

However, inspection of building work forming part of a building at a later stage is counted as a separate inspection, even if the building was inspected at an earlier stage.

Target Inspection Levels

In addition to⁷ the prescribed minimum levels, the Council aims to inspect:

- (a) in relation to building work which relates to a non-residential building or buildings (but excluding free-standing Class 10 buildings), a number of inspections equal to 20% of all notifications received by the Council under Section 59(1) and Regulation 74(1)(a) for the intended commencement of such building work.

6.3 INSPECTION PROCEDURES

The Team Leader Building will, in consultation with the Council's inspectors, prepare an inspection procedure.

The inspection procedure will:

- include a standard-form inspection checklist;
- identify what evidence should be gathered during an inspection so as to permit punishment of any person found to be responsible for any breach of the Act or Regulations arising from, or in connection with the inspected building work;
- set out what record keeping will occur, including how evidence gathered in the course of an inspection is to be filed; and
- set out what statistics must be identified and reported, including to whom and how such reports will be made.

All inspections will comply with the inspection procedure insofar as is reasonably practicable and the inspector in each case will complete the inspection checklist.

⁷ But recognising that inspections undertaken to satisfy the prescribed minimum levels may also wholly or partially satisfy the target inspection levels.

6.4 ENFORCEMENT & DISPUTE RESOLUTION

All inspectors will hold current delegations which permit directions to be given under Section 84(2) by the inspector.

Where an inspection reveals a problem the inspector will determine what action to take to correct the problem or may refer the matter to a Team Leader or Manager. In determining what action to take, the inspector will not permit a problem to be fixed in manner which prevents the inspector from reasonably observing that the problem has been fixed unless the inspector considers exceptional circumstances apply.

Possible actions include:

- (a) obtaining a verbal or written assurance from the person responsible for the building work (for convenience called “the builder) that the problem will be corrected by a particular date and will be left in a state so that the correction can be inspected, and scheduling a follow-up inspection on that date to verify that has occurred;
- (b) in the case of a breach of the Act or Regulations, giving a direction⁸ to a person under Section 84(2) to
 - i. refrain (for a specified period or until further notice) from the act or course of action that constitutes the breach; and/or
 - ii. make good any breach in a manner, and within a period, as specified;
- (c) taking, or arranging to be taken in the name of the Council, such urgent action as is required because of any situation resulting from the breach pursuant to Section 84(2)(c);
- (d) in the case of a threat to safety arising out of the condition or use of a building or an excavation, or a threat to any State or local heritage place, making an emergency order under Section 69(1) which requires the owner of any land or building to:
 - i. evacuate the building or land;
 - ii. not to conduct or allow a specified activity;
 - iii. immediately terminate a specified activity; and/or
 - iv. carry out building work or other work;
- (e) also in the case of a threat to safety arising out of the condition or use of a building or an excavation, or a threat to any State or local heritage place, making an emergency order under Section 69(1) which:
 - i. prohibits the occupation a building or land; or
 - ii. prohibits the use of a building or land for a specified activity, or an activity of a specified class;
- (f) expiating a breach of Section 84 or Regulation 74 (the notification, supervisor’s checklist and non-concealing requirements), pursuant to sub-Regulation 74(8).

⁸ A direction can be given verbally, but will lapse if not confirmed in writing by 5 pm on the next business day by the authorised officer who gave the direction. Owing to the inherent difficulty of “confirming” verbal directions (there is rarely a verbatim record of the verbal direction), verbal directions will ordinarily be limited to directions to refrain from further building work (commonly known as a “stop work” direction) and will, before the verbal direction lapses, be followed by fresh directions in writing which supersede the verbal direction.

Legal Proceedings

Legal proceedings, including civil or criminal proceedings, will not be commenced by an inspector.

Where the correction of a problem becomes a dispute between the Council and another party, the Council will first attempt to resolve the dispute without use of legal proceedings.

Attempts which may be made to resolve such disputes include:

- (a) in the case of a dispute as to the meaning of a building rules consent, referring the matter to a building assessor;
- (b) involving other Council officers and inspectors for clarification and/or a second opinion of the dispute; and
- (c) consulting an independent professional with expertise in the relevant area.

6.5 LIABILITY

The Council inspects building work and swimming pools in accordance with the objectives of this Policy and for the public good. Inspections are not carried out for the benefit of any past, current or future owner, occupier or neighbour of any building work. The Council does not accept that it owes a duty to such persons or indeed any particular person in relation to any inspection.

Section 99 provides that no act or omission in good faith in relation to a particular development by a council or an authorised officer after the development has been approved subjects that person or body to any liability.

All inspections will be undertaken in good faith.

The Council does not accept any liability in relation to any inspection. In relation to any allegation of liability (including any claim) no officer other than the CEO may admit liability.

7. LEGISLATION / REFERENCES

Development Act 1993

Development Regulations 2008

Disability Discrimination Act 1992

Guide to Safer Roof Framing 2012

8. POLICY DELEGATIONS

The officers listed below have sub-delegation under this policy:

- The Chief Executive Officer will implement this Policy.

Full information about the sub-delegated powers and duties is contained in the Council Delegations Register.

9. ROLES /RESPONSIBILITIES

- Manager Development

10. AVAILABILITY

The policy is available for public inspection during normal office hours from;

Civic Centre
181 Unley Road
Unley SA 5061

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website, www.unley.sa.gov.au

11. DOCUMENT HISTORY

Date:	Council/Committee/Internal	Comment:
12 June 2012	CSP	
25 June 2012	Council; C114/12	
11 March 2014	Council; C1071/14	Was policy number COU18
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