

S0005: BUILDING & SWIMMING POOL INSPECTION POLICY

Policy Type:	Statutory Policy
Responsible Department:	City Services
Responsible Officer:	Manager, Development & Regulatory Services
Related Policies and Procedures	<ul style="list-style-type: none"> • Nil
Community Plan Link	<i>Community Living:</i> 1.1 Our community is active, healthy and feels safe
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1. PREAMBLE

- 1.1. The *Development Act 1993* (the Act) requires Council to have a building inspection policy and a swimming pool inspection policy. The policy must set the level of inspections and the criteria used to select buildings to be inspected.

2. SCOPE

- 2.1. This Policy applies to all development approvals issued for the Council area.

3. POLICY PURPOSE/OBJECTIVES

- 3.1. In relation to building work, this Policy is mandatory under Section 71A(1) of the Act.
- 3.2. In relation to swimming pools, this Policy is mandatory under Section 71AA(7) of the Act and Regulation 76D(4a) of the *Development Regulations 2008* (the Regulations).
- 3.3. Pursuant to Section 71A(2) this Policy must specify:
- (a) a level or levels of audit inspections to be carried out by 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.
- 3.4. Pursuant to Section 71A(4a) this Policy complies with any regulation prescribing a minimum level of inspections to be carried out by 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). In this Policy, the only regulation to do so is Regulation 80AB.

- 3.5. 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 Council.
- 3.6. 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).

4. DEFINITIONS

Words and phrases defined by the Act and Regulations have the same meaning when used in this Policy. In addition, the following words and phrases are defined:

4.1. **Audit Inspection** is an inspection 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:

- the relevant development approval or any applicable exemption
- if applicable, any other relevant documents (for example a required checklist)

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.

4.2. **Building Inspection** is an audit inspection 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.

4.3. **Inspection** is a comparison by an inspector (with or without assistants) of

- (a) visual observations of that building work, and
- (b) measurements or test results of selected parts¹ of that building work, with:
 - 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; and

may include the interview of any person associated with the building work.

4.4. **inspector** is an authorised officer of Council, appointed under Section 18 of the 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)

4.5. **person** is includes all legal persons including bodies corporate

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

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

- 4.6. **swimming pool inspection** is an audit inspection of a swimming pool (including related swimming pool safety features) or swimming pool safety features or portion thereof
- 4.7. **swimming pool safety requirements** the requirements of the Act and Regulations 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”.

5. ROLES AND RESPONSIBILITIES

- 5.1. This Policy will be administered on behalf of Council by the:
- Manager of Development & Regulatory Services

6. POLICY STATEMENT

6.1. Selection of Building for Inspection

- 6.1.1. 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.
- 6.1.2. Buildings will be selected for inspection in accordance with the following criteria (in descending order of preference):
- buildings which appear to be unsafe;
 - buildings which ordinarily present a high risk to fire and life safety, and in particular swimming pools;
 - buildings which are used by many people, particularly where many people do so simultaneously;
 - buildings which involve roof framing;
 - buildings which are obliged to provide access to disabled persons;
 - buildings in respect of which a complaint has been made; and
 - in the event that inspection of the foregoing buildings does not result in the prescribed minimum inspection levels being met, any other buildings.
- 6.1.3. 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).
- 6.1.4. As noted above, all swimming pools known to the Council will be inspected in accordance with this Policy.

6.2. Levels of Inspection

Prescribed Minimum Levels

- 6.2.1. 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:

- (i) 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
- (ii) 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.

6.2.2. 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.

Counting Inspections

6.2.3. 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.

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.

- 6.2.4. The first inspection of the building work forming part of any particular building is counted as one inspection.
- 6.2.5. 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.
- 6.2.6. 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

- 6.2.7. In addition to ⁷ the prescribed minimum levels, 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 Council under Section 59(1) and Regulation 74(1)(a) for the intended commencement of such building work.

6.3. INSPECTION PROCEDURES

- 6.3.1. The Team Leader Building will, in consultation with the Council's inspectors, prepare an inspection procedure.
- 6.3.2. 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.
- 6.3.3. All inspections will comply with the inspection procedure insofar as is reasonably practicable and the inspector in each case will complete the inspection checklist.

6.4. ENFORCEMENT & DISPUTE RESOLUTION

- 6.4.1. All inspectors will hold current delegations which permit directions to be given under Section 84(2) by the inspector.
- 6.4.2. 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

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

observing that the problem has been fixed unless the inspector considers exceptional circumstances apply.

6.4.3. 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).

6.5. Legal Proceedings

- 6.5.1. Legal proceedings, including civil or criminal proceedings, will not be commenced by an inspector.
- 6.5.2. Where the correction of a problem becomes a dispute between Council and another party, Council will first attempt to resolve the dispute without use of legal proceedings.

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.

- 6.5.3. 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.

6.6. LIABILITY

- 6.6.1. 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.
- 6.6.2. 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.
- 6.6.3. All inspections will be undertaken in good faith.
- 6.6.4. 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. POLICY DELEGATIONS

7.1. 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.

8. LEGISLATION

- *Development Act 1993*
- *Development Regulations 2008*
- *Disability Discrimination Act 1992*
- *Guide to Safer Roof Framing 2012*

9. AVAILABILITY OF POLICY

9.1. The Policy is available for public inspection during normal office hours at:

The 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.

10. DOCUMENT HISTORY

Date	Ref/Version No.	Comment
25 June 2012	C114/12:V1	
11 March 2014	C1071/14:V2	Was policy number COU18
23 Nov 2015	C307/15: V3	
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