

1.5 BUILDING AMENDMENT (SWIMMING POOL AND SPA REGISTER) REGULATIONS 2019

(N/A)

Responsible Director: Peter Panagakos

RECOMMENDATION*That Council:*

1. *Approve the proposed fees and charges associated with the various steps for the swimming pool and spa registration process.*
2. *Approve the resources required this financial year in terms of personnel to support the register, being 1 x Technical Officer 1 EFT (Fixed Term 24 months), 1 x Building Inspector 1 EFT, 1 x Building Inspector 0.6 EFT and noting this will increase Council's overall EFT.*
3. *Notes that the swimming pool and spa registration fees are a fee for service activity and it is expected there will be cost recovery as a result.*
4. *Delegate the Chief Executive Officer to set an appropriate service fee for the Certificate Compliance process at the appropriate time.*
5. *Note that officers will monitor the appropriateness of the fees relative to the work required and review as part of the normal budget process.*

INTRODUCTION

In September 2018, the Victorian Government amended the Building Act 1993, in particular s16D of the Act which requires Councils to establish and maintain a register of swimming pools and spas located within the municipal district. At the time the Act was changed there were no details regarding the implementation of how and when this was to occur.

Amendments have now been made to the *Building Regulations 2018* to provide for the mandatory registration and inspection of domestic swimming pools and spas, with registrations proposed to commence from 1 December 2019.

BACKGROUND

Council has a general responsibility under s212 of the *Building Act 1993* to administer and enforce the Act and regulations within the municipality, and this extended to pool and spa barriers. In addition to reactive pool inspections undertaken as a result of a complaint, Council also undertook approximately 170 pro-active random swimming pool inspections per annum.

Amendments to the Act require Council to establish and maintain a swimming pool register that must contain specified information such as, date of construction and the applicable barrier standard as prescribed by the regulations relating to swimming pools and spas.

The new regulations now make the owner the primary person responsible for registering their pool or spa, with a requirement to engage a qualified person to perform inspections, and lodging proof of compliance resulting from that inspection with Council within the required timeframe. Periodic mandatory inspections will also be required.

Council provided feedback to the draft regulations as follows:

Council generally supports the development of a swimming pool and spa register to ensure swimming pool and spa safety with the following submissions:

- *It is considered a lost opportunity that the register is not a state based centrally managed IT solution supported through the VBA and in which Councils can input.*
- *It is considered that the RIS's assumptions about the reasonable costs of the development of registers Council by Council is about half the true cost and accordingly if that money were invested centrally it could significantly ease the financial burden of implementation.*
- *There could be a significant administrative and financial burden on Council in the establishment of the register without any funding path for this.*
- *The process whereby the non-compliance fee is not lodged with the non-compliance certificate is unworkable and places the onus on Council to seek fee recovery in addition to the costs associated with following up non-compliances through the issues of notices.*
- *No fees or levies are applicable to the process following a notice of acquisition in respect of Council having to renotify and update registers upon the sale of land.*
- *Practitioner shortages and concerns with the proposed category of lesser qualified swimming pool inspector.*
- *Short period of time for registration affecting participation rates whereas other states have allowed 12 months.*
- *The state should take the opportunity to make it law that all pool and spa barriers comply with the most current standards in the interests of safety and allow sufficient time for this work to occur.*

The following consultation the following changes were included in the new regulations:

- Inclusion of the ability for councils to charge an information search fee to assist recovery of costs associated with determining dates of construction for existing swimming pools and spas;

- Alterations to implementation timeframes to provide more time for owners, councils and other stakeholders to understand the new requirements and take action where necessary;
- Changing the requirement for new certificates of barrier compliance to be lodged with councils from every 3 years to every 4 years;
- Requiring swimming pool and spa inspectors to disclose whether they carried out any work on the barrier prior to certification in order to increase transparency and oversight;
- Allowing swimming pool and spa inspectors to provide a longer period of time (max. 60 days plus a further 7 days in certain conditions) to rectify non-compliant barriers before the non-compliance must be referred to council.

DISCUSSION

As part of the *Building Regulations 2018* the owner of a pool or spa must register with Council and provide a compliance certificate confirming the pool/spa barrier satisfies the relevant regulations.

There are an estimated 6500 swimming pools plus an unknown amount of standalone spas within Monash Council. The proposed regulations create several new processes and responsibilities for Council.

The process broadly is as follows:

- Owner applies to register their pool/spa and obtains information regarding the date of their pool.
- Owner obtains a certificate of compliance for their pool/spa from an appropriately qualified practitioner.
- Owner lodges compliant certificate with Council within 30 days of receipt **OR** building practitioner lodges non-complaint certificate with Council.
- Council inspects site and issues appropriate notices and orders in relation to non-compliant certificates.
- Compliant certificates are recorded in the database and date set for renewal in 4 years and written advice provided to Owner.

Follow up processes for Council for registered pools/spas:

- Update any ownership details upon the sale of land and reissue a notice in writing to the new Owners regarding renewal dates.
- Record any amendments made to pool/spa barriers through a building permit following the initial compliance being achieved and reissue a notice in writing to the Owner as soon as practicable.

The commencement date of the regulations is 1 December 2019 with the timeline to complete any pool/spa registrations being 1 June 2020.

Compliance Certificates are then required to be lodged in three rounds with the key dates being:

- 1 June 2021 (pools built before 30 June 1994)
- 1 June 2022 (pools built between 1 July 1994 and 1 May 2010)
- 1 June 2023 (pools built after 1 May 2010)

Whilst the private sector will likely provide a large amount of compliance inspection services, it is likely some community members will come to Council to assist with this. We anticipate we would be called upon for approximately 1000 compliance certificate request per year during the initial phase of the program. Our current fees set for an inspection do not reflect the service and process outlined in the regulations so a new fee will need to be established.

We are aware that some private surveyors have had conditions on their practitioner insurances recently that excludes the issuing of pool/spa compliance certificates and will monitor the service demands on Council as a result.

Compliance rates

It is noted that NSW introduced a similar registration scheme recently and provided a 12 month period for registrations to occur. As a consequence they achieved compliance rates of around 80%. Councils are now required to follow up non-registered pools and spas to manage the balance, where a registration has not occurred.

The proposed scheme in Victoria is only proposing a 6 month window for registration and it is considered likely that compliance rates will be less as a consequence. This will place a greater and more significant burden on Council to follow up non-registered pools and spas.

Resourcing

The issue of resourcing goes beyond pool and spa barrier fences and is affecting the entire building regulatory system. There is a significant presumption that the private sector will resource the majority of swimming pool barrier compliance inspections. A new category of Swimming Pool Inspector has been developed and this person must have a minimum of 6 months practical experience to meet the registration requirements.

It is foreseeable with the current shortage of building inspectors in the industry available to use, in addition to the demands of other inspectorial work such as that affecting the Cladding inspections, that people may experience difficulty in finding available, but reasonably priced practitioners. Given the nature of the inspections and in particular the need to achieve compliance, much of the load will likely need to be managed in the initial phase by a higher level of professional.

Further to this, as a result of Council's own pro-active inspection program of approximately 170 random properties per annum. We are aware that over

80% of pools inspected require some form of further work undertaken, ranging from minor maintenance to more significant works to ensure that a swimming pool barrier is safe.

In most instances, at least two inspections by the practitioner would be required. One to inspect and identify any issues, and a second to inspect and ensure that the necessary compliance works have been undertaken. That being said, the majority of the non-conformances identified using the pro-active program as an indication, required only minor works so it is possible, but not certain that the time provided in the legislation for reinspection may be adequate on an individual basis. What is not known, is the availability and capacity of having rectification work done given that many companies with expertise in this area are finite, as well as for practitioners including Council to cause the reinspection to occur depending on demand within the timeframe.

Ultimately, if these non-compliances are not rectified within the timeframe, they are then all referred to Council for action, where the issue of resourcing and timing for inspections is again an unknown element and ultimately dependent upon demand.

To facilitate this process Council will need to appoint additional staff as follows:

Technical Officer

Technical Officer	Fixed term (24months)
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The purpose of this role is support the establishment of the register and the subsequent registration of pools/spas in the initial phase. We anticipate that after the initial rush of work it is most likely these functions can return to a business as usual model within the City Planning Support Team so this position would have a fixed term. We will be in a better position to understand the administrative and enquiry demands once the program is underway. Any additional or ongoing resource needs with regards to this position will be referred through the normal budget processes if/as required on either a temporary or ongoing permanent basis.

Building Inspectors

Full time inspector	Permanent on-going
0.6 inspector	Permanent on-going

Currently our existing inspectors work with an average inspection rate of between 3.6 and 3.8 per day. We note that the oldest pools are required to achieve their compliance certificates first and we anticipate that there will be a higher number of non-compliant pools in this cohort. Further if more than 1000 pool/spa owners request inspections even in the short term, further resources may be required on a temporary basis.

The resourcing proposed would aim to sit at a 3.9 inspection per day average. While the proposed new staff will be able to complete the majority of the new inspections, the existing staff would have the capacity to pick up additional inspections also as a result of not requiring to undertake the proactive inspection program we currently run.

The total expense for the additional EFT, including on costs, is expected to be \$180,955, with cost recovery through income received from the fees and charges applicable.

Any further proposals for resources will come back through the normal budget cycle process for future years.

SOCIAL IMPLICATIONS

The new scheme is being introduced to prevent incidences of young children drowning in private swimming pools and spas in Victoria.

Between January 2000 and May 2019, there were 27 fatal drownings of young children in private swimming pools and spas in this state. The effects of such tragedies on family, and particularly parents and siblings, are significant and long term. These incidents affect the broader community, including neighbours, family friends and emergency services personnel who attend the scene.

The regulations prescribe offences in relation to the mandatory registration and inspection of swimming pools and spas and which the penalty ranges from 10 to 50 penalty units (1 penalty unit = \$165.22).

The regulations also provide that owners, occupiers and spa users must take all reasonable steps to ensure that the swimming pool and spa barriers are properly maintained, operating effectively and gates are immediately closed after entering or leaving. They are all responsible for their actions and could be subject to penalties under the proposed regulations should this not occur. An example of such an offence could be propping open a gate open to the pool enclosure whether children are present or not.

FINANCIAL IMPLICATIONS

Council is required to establish and maintain a swimming pool and spa register and the creation of the regulations allows Council to substantially recover the costs from owners of swimming pools and spas rather than all ratepayers across the municipality. Significant administrative functions apply in giving written notice of the applicable barrier standard to owners upon registration and upon receipt of compliance or non-compliance certificates.

It is difficult to estimate the exact income to Council's scheme, particularly as it is not clear how many non-compliances will be lodged with Council and what the participation rate will be in accordance with the process.

To manage the system, Council would need to invest in our system software to develop a register which also provides for managing the renewal and reminder processes and also an uplift in our mapping information to identify the location of pools and where possible spas.

Fees proposed

The ability to set fees has been introduced to service the scheme and the state has fixed a 'maximum fee' for each step:

Proposed Fees	
Application for registration of swimming pool or spa	\$31.80
Information search fee (construction date)	\$47.20
Lodgement of Certificate of Compliance	\$20.40
Lodgement of Certificate of non-compliance	\$385.10

At this time it is recommended that Council establish the maximum fee applicable for each stage. We can monitor the effective workload for processing the requests over time and establish whether there is any need to reduce or vary any fees in the future. These can then be dealt with in Council's annual budget process.

Currently, the Council fee for inspection and comprehensive report is \$180 including GST. The service obligations under the process for issuing a compliance certificate are different. A new fee for service will need to be established to cover the initial inspection, the potential notice in writing that the barrier does not meet the applicable barrier standard and the reinspection after 20 business days to again determine compliance.

As this service is also provided by the private sector providers any fees set need to ensure they are not inconsistent with competition practices. In circumstances where the market is not yet known it is appropriate to delegate the CEO to determine the appropriate service fee when market benchmarks are available. Council can subsequently review this fee during normal budget process.

CONCLUSION

Council has an obligation to establish a Swimming Pool and Spa Register. It is recommended that the proposed maximum fees provided for by the state are fair and reasonable for the work associated with the register at this time. Additional resources as outlined above are needed to support the community in complying with their obligations.