

1.3 PROPOSED BUILDING AMENDMENT (SWIMMING POOL AND SPA) REGULATIONS

Responsible Director: Natasha Swan (Acting Director)

RECOMMENDATION

That Council:

1. *Notes that officers will make a submission generally supporting the introduction of the Proposed Building Amendment (Swimming Pool and Spa) Regulations but also making the comments and identifying the some concerns as generally detailed below:*
 - (a) *It is 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;*
 - (b) *It is considered that the RIS's assumptions about the reasonable costs of the development and implementation of registers by Council is approximately half (or less) of the true cost of doing so, and it may have been more effective, efficient and cheaper for Council(s) if a centrally managed IT system and register were created which could significantly ease the financial burden of implementation;*
 - (c) *There could be a significant (and as yet unknown) administrative and financial burden on Council in the establishment of the register without any funding path for this;*
 - (d) *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 or orders;*
 - (e) *No fees or levies are applicable in respect of Council having to re-notify and update registers upon the sale of land;*
 - (f) *Practitioner shortages to manage and undertake the significant number of inspections required particularly if many of these fall to Council by request of a land owner, or if the private building surveying industry does or is not adequately able to service this need;*
 - (g) *The short period of time for registration affecting participation rates whereas other states have allowed 12 months, and a submission that allows more time for residents to register their pools and have them inspected as required under the process;*

- (h) *The State Government 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, with a suggestion that this be required to be implemented before the next swimming pool barrier inspection which is 3 years after the date of the initial compliance certificate;*
- (i) *That there is concern with the proposed new category of Swimming Pool inspector with only a requirement of a minimum 6 months practical experience for such an important safety compliance matter, and that this function and responsibility would more appropriately rest with a more qualified professional who is registered as a building inspector as a minimum requirement.*
2. *Notes that officers will report back to Council following the decision by Government to implement the new regulations and provide updated information regarding the potential community, financial and resourcing impacts.*

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 are now proposed 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.

Consultation on the regulation changes and the regulatory impact statement have now commenced.

BACKGROUND

Currently, Council has responsibility under s212 of the *Building Act* 1993 to administer and enforce the Act and regulations within the municipality, and this extends to pool and spa barriers. In addition to reactive pool inspections undertaken as a result of a complaint, Council also undertakes 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 proposed 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.

An initial, and significant challenge, and impact upon Council and its resourcing, as well as cost to residents will be people requesting building permit information for when their pool was first constructed should they not have these records readily available.

DISCUSSION

Moving to a model where the responsibilities of Council are more clearly defined along with a dedicated funding stream through prescribed fees would be a positive, and officers suggest, a necessary step forward.

The purpose of the new scheme which is being introduced is primarily aimed at preventing incidences of young children drowning in private swimming pools and spas in Victoria. There is no doubt that anything that can be done to improve swimming pool safety is necessary. Under the regulations, the need for registration would also include relocatable swimming pools and spas where they are erected for more than 3 consecutive days.

Currently, Council is aware of approximately 4,500 swimming pools and spas within the municipality but this figure could be up to 7,000.

Fees proposed

Fees are being introduced to service the scheme and the state has fixed a 'maximum fee' for each step:

	State Maximum Fee
Application for registration of swimming pool or spa	\$51.24
Lodgement of Certificate of Compliance	\$30.65
Lodgement of Certificate of non-compliance	\$385.06

The inference is that Council could adjust these fees to a lower rate should it see particular relevant circumstances or based upon cost recovery, but there is no ability to increase them should this be necessary.

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 4.5 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. It is noted that the register is to be in place by 1 December 2019, with all registrations to be completed by April 2020.

For pools constructed before 14 April 2020, compliance certificates of pool and spa barrier compliance is required to be lodged progressively with Council as follows:

- 30 October 2020 for a swimming pool or spa constructed on or before 30 June 1994
- 30 April 2021 for a swimming pool or spa constructed on or after 1 July 1994 and before 1 May 2010
- 29 October 2021 for a swimming pool or spa constructed on or after 1 May 2010

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.

There is concern with the proposed new category of Swimming Pool inspector, however. To attain this registration, a person, who may not necessarily be associated with the building trade in any capacity and with only a requirement of a minimum 6 months practical experience, would be responsible for inspecting and issuing compliance for such an important

safety compliance matter. There are concerns about the suitability of such people in the absence of relevant understanding, qualification and expertise. It is difficult to reconcile that this function and responsibility would not more appropriately rest with a more qualified professional who is registered as a building inspector as a minimum requirement.

Further to this, as a result of Council's own pro-active inspection program of approximately 170 random properties per annum, officers are aware that over 80% of pools inspected require some form of further work, 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; 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 re-inspection to occur depending on demand within the timeframe.

Ultimately, if these non-compliances are not rectified within the timeframe, they are then referred to Council for action, where the issue of resourcing and timing for inspections is again an unknown element and ultimately dependent upon demand. For this reason additional time for the implementation of the regulations is needed, and in particular so that there is time to rectify any issues as efficiently and cheaply as possible without the fear the regulations being breached. This additional time would also allow for appropriately qualified professionals as recommended above to undertake these inspections.

Currently Council offers its own swimming pool and spa barrier inspection service at a cost of \$180. The RIS suggests the market will likely charge \$200 for this service and accordingly Council will review its current fees if the Regulations are adopted. Council may also experience difficulties in attracting suitably qualified staff to meet community demands in the initial phase.

POLICY IMPLICATIONS

Further complicating this issue, is that DELWP has made a policy decision to not require pool owners to retrospectively upgrade their safety barriers. For this reason, there is a range of different barrier standards that apply to Victoria pools depending on the date of construction.

Officers consider that the introduction of this legislation provides the appropriate opportunity to ensure that all swimming pool barriers comply with the current and most relevant standards of safety. Whilst it is acknowledged that this may cause some financial burden to people with older pools, it is difficult to reconcile this decision in the context of pool safety.

Officers suggest that a further option be explored where older pools are identified through the registration process and determined compliant having regard to the date they were constructed, it is recommended that a land owner be required to have a swimming pool barrier that is compliant with the current regulations. This could occur before the next swimming pool barrier inspection which is 3 years after the date of the initial compliance certificate. The outcome would be that each and every swimming pool barrier would achieve the highest and best standard of protection under the legislation.

Council's routine inspection of swimming pools and spas will be replaced by mandatory registration and inspection by qualified and registered building practitioners contracted by owners. This could include a preference for owners to request that Council provide this service to them.

The deadline for registration of existing swimming pools and spas is 14 April 2020 with barrier compliance certificates required to be lodged in 3 stages over the following 18 months depending on the date of construction. Barriers will then be required to be inspected and certified every 3 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 Victoria. 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 proposed 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). An infringement notice of 2 penalty units or \$330.44 could be served.

The proposed 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.

CONSULTATION

DELWP advised on 30 July 2019 that a Regulatory Impact Statement (RIS) and *Building (Swimming Pool and Spa) Regulations 2019* had just been released for public consultation and remains open until 5.00pm on Friday 6 September 2019.

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. However, given the short window for registration compared with NSW we would likely see a lower participation rate and this figure would be reduced.

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.

Additional resources would be required, particularly in the implementation phase in terms of staff to set up the register and potentially ongoing staff to manage the administration and inspection demands of managing a register.

Again, the cost of establishing these registers and the unknown number of inspection and compliance activities that would be required are unknown.

Council will have a statutory responsibility to create systems and software upgrades and an inspection regime that is as yet unknown. Any estimates are variable, as it is not clear how many compliant registrations would be received and the participation rate of the community. Either of these could affect these costs significantly.

Officers will report back to Council following any final announcement by the State Government following the RIS, along with any updates to implementation costs.

Central Register

The documentation notes that the State's view is it could not develop a central register as the Act requires the Council to make provision for this. It is noted that in other areas of regulation, such as the subdivision process, a central piece of software known as SPEAR is provided for use by all Councils to manage this process.

It is considered a significant lost opportunity in not having a consolidated IT solution for the register, that could create time and cost savings required to properly implement the system.

CONCLUSION

Overall, the development of a swimming pool and spa register is supported, to ensure swimming pool and spa safety with the following concerns:

- 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.