

Building and Swimming Pool Inspection Policy



Endorsed by Council: 25 February 2014

POLICY STATEMENT

This policy seeks to improve the standard of construction work within the Council's area by undertaking audit inspections of buildings under construction within that area.

STATUTORY FRAMEWORK

This Policy is mandatory under Section 71A(1) and Section 71AA(7) of the *Development Act 1993*.

Pursuant to Section 71A(2) and Section 71AA(7) 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) minimum levels of inspection of swimming pools (including safety fences and barriers associated with such swimming pools) within the area of the council; and
- (c) 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) and Section 71AA(7) 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 *Development Act*). As of writing, the only regulations to do so are Regulations 76D and 80AB of the *Development Regulations 2008*.

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).

OBJECTIVES

The Council is empowered by the *Development 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 *Development 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 *Development Act*.

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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. Such corrective action is not considered in this Policy.

CONSIDERATIONS

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.

SELECTION OF BUILDINGS FOR INSPECTION

Not all buildings will be inspected. The Council does not have the resources to do so.

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 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).

Where a complaint is made about the condition or use of a new or existing building, an excavation or construction work in progress, an inspection will be undertaken within timeframes that take account of the urgency of the situation and the availability of resources at the time the complaint is made.

LEVELS OF INSPECTION

Prescribed Minimum Levels

In accordance with Section 71A(4a), Section 71AA(7), Regulation 76D(4b) and Regulation 80AB(2) this Policy specifies the following minimum inspection levels for all classes of buildings, other than Class 10 buildings which are not attached to any part of the roof framing of a building of another class:

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 consents¹ issued over the course of the year² for building work involving the construction of any roof framing where a licensed building work contractor is responsible for the relevant building work³; 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 work⁴.

Where the building work involves the construction of a swimming pool (including safety fences and barriers associated with such swimming pools) within the area of the Council:

- (a) a number of inspections equal to 100% of the building rules consents issued over the course of the year for building work involving the construction of swimming pools. Of these:
 - at least 80% of swimming pools will be inspected within 2 weeks of Council being notified of completion of the permanent swimming pool child-safety barriers;
 - no more than 20% of swimming pools will be inspected within 2 months of Council being notified of the completion of the permanent swimming pool child-safety barriers.

NOTE: The number of buildings rules consents issued over the course of the year will not be known until the end of the year. By that time it will be too late to determine whether there is a shortfall between the number of inspections conducted and the prescribed minimum levels.

To minimise any possible shortfall, the number of inspections undertaken by the Council will be reconciled with the prescribed minimum levels on a month-by-month basis. The Council aims to make up for shortfall: (a) in any month by additional inspections in the subsequent month, and (b) at the end of any year by additional inspections in the first three months of the subsequent year.

¹ 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).

² For the purposes of this Policy, “the year” is the relevant calendar year.

³ 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.

⁴ 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.

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Counting Inspections

Inspections must be counted to determine whether minimum inspection levels are met.

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 immediately-prior 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.

LIABILITY

The Council inspects building work in accordance with the objectives of this Policy and for the public good. Inspections are undertaken by the Council solely as a result of its duties under the Policy. Inspections are not carried out for the benefit of any past, current or future owner, occupier or neighbour of any building work and no legal relationship is created between the Council and any other such person as a result of the conduct of the inspections. 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.

The Council does not accept any liability in relation to any inspection. In the event of any dispute with the Council as a result of an inspection, any conduct engaged in or statements or comments made by an officer of the Council with the intent of resolving or otherwise managing the dispute are not intended as, and are not to be taken as, any admission of responsibility or liability on the part of the Council.

MANDATORY NOTIFICATIONS

Pursuant to Regulation 74(1) of the *Development Regulations 2008*, Council will require the following:

For all sites, including those referred to above and all other sites (irrespective of whether the building work involves the construction of any roof framing):

- 1 business day's notice of the intended commencement of building work on the site;
- 1 business day's notice of the intended commencement of pouring of footings (if any footings are to be poured);

- 1 business day's notice of the completion of all roof framing forming part of the building work (including top and bottom chord restraints, bracing and tie-downs) (if any);
- 1 business day's notice of completion of the building work;
- 1 business day's notice of the intended commencement of pouring of a suspended floor slab (if any)
- 1 business day's notice of the intended completion of tilt-up walling (if any).

For sites where the building work involves the construction of a swimming pool (including safety fences and barriers associated with such swimming pools):

- 1 business day's notice of the intended commencement of building work on the site;
- 1 business day's notice of the completion of the construction of a swimming pool (before the pool is filled with water);
- 1 business day's notice of the completion of construction of a safety fence or barrier for a swimming pool.

In relation to some other form of building work where swimming pool safety features are relevant:

- 1 business day's notice of the completion of that aspect or those aspects of the building work relating to the swimming pool safety features.

STAGES OF INSPECTION

Council may inspect building work at any of the following stages and may inspect a building more than once at different stages. Council may also inspect building work at any other stage.

1. Class 1 and 2 buildings

- at pouring of footings;
- at completion of wall and roof framing;
- at completion of masonry walls;
- at completion of wet area waterproofing;
- on completion of building work; and
- where a swimming pool is to be constructed, on completion of installation of safety barriers (prior to the swimming pool being filled with water).

2. Class 3 to 9 buildings

- on completion of wall/floors/roof framing;
- on completion of fire or smoke separation; and
- on completion of building work.
- where a swimming pool is to be constructed, on completion of installation of safety barriers (prior to the swimming pool being filled with water).

3. Class 10 buildings

- inspection of swimming pools on completion; and

- inspection of any stage of the construction of Class 10 buildings where the Class 10 building is attached to the roof framing of a building of another class. Particular attention will be paid to the inspection of the point of attachment of the Class 10 building to the roof framing of the other building.

4. Swimming Pools

- where a swimming pool is to be constructed, on completion of installation of safety barriers (prior to the swimming pool being filled with water).

Subsequent inspections shall be at the discretion of the Inspector inspecting the particular site. Council will request a Certificate of Inspection from the Design Engineer for all concrete slabs.

DEFINITIONS

Words and phrases defined by the Development Act, the Development Regulations and the Building Rules have the same meaning when used in this Policy. For convenience, the definitions of commonly used terms have been reproduced further below. They are correct as at the date of writing but do not take into account any subsequent changes to the Act, Regulations or Rules.

In addition, the following words and phrases are defined:

Audit Inspection* - 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, nor any assessment of the structural or functional adequacy of any building work.

Inspection* - A comparison by an *inspector* (with or without assistants) of

- (a) visual observations of that building work, and
- (b) measurements of selected parts 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)⁵

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

⁵ At present a supervisor's checklist is prescribed in relation to roof framing under Regulation 74(5), and the Minister's Schedule 5 roof framing checklist is prescribed under Regulation 74A in relation to the provision of truss information by a truss manufacturer.

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Inspector - 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)

Notification, Mandatory - a notification given in relation to a mandatory notification stage pursuant to Section 59(1) and Regulation 74(1)-(4) inclusive. Such may be given in writing (by post, fax, email or in person) or by telephone.

Person - includes all legal persons including bodies corporate

Statement of Compliance - a form set out in Schedule 19 to the Development Regulations and required to be completed and provided in relation to all building work (excluding work in relation to a Class 10 building) under Regulation 83AB(4)

Trained Building Work Supervisor - a person registered as a building work supervisor under Part 3 of the *Building Work Contractors Act 1995* who has undertaken any training required and recognised under a scheme approved by the Minister for the purposes of Regulation 74(5) of the *Development Regulations 2008*.

Transportable Building - A building that is fabricated in its entirety (or substantially so) at one site and then transported without material disassembly to and located at another site

* Except within the above definitions, 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*”.

Common Definitions

Building – a building or structure or a portion of a building or structure (including any fixtures or fittings which are subject to the provisions of the Building Code of Australia), whether temporary or permanent, moveable or immovable, and includes a boat or pontoon permanently moored or fixed to land, or a caravan permanently fixed to land

Building Code – an edition of the Building Code of Australia⁶ published by the Australian Building Codes Board, as in force from time to time and as modified (from time to time) by the variations, additions or exclusions for South Australia contained in the code, but subject to the operation of subsection (7) of the Act⁷

Building Owner – the of land on or in relation to which building work is or is to be performed

the Building Rules – any codes or regulations under the Act (or adopted under the Act) that regulate the performance, standard or form of building work and includes any standard or document adopted by or under those codes or regulations, or referred to in those codes or regulations

⁶ Now known as Volumes 1 and 2 of the National Construction Code.

⁷ Subsection (7) provides that any alteration to the Building Code will not take effect for the purposes of this Act (a) before a day on which notice of the alteration is published by the Minister in the Gazette; and (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.

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Building Rules Consent – a consent granted under section 33(1)(b)

Building Work – means work or activity in the nature of—

- (a) the construction, demolition or removal of a building (including any incidental excavation or filling of land); or
- (b) any other prescribed work or activity,

but does not include any work or activity that is excluded from this definition by regulation

Class 1 building – one or more buildings, which in association constitute –

- (a) Class 1a – a single dwelling being –
 - (i) a detached house; or
 - (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; or
- (b) Class 1b –
 - a boarding house, guest house, hostel or the like –
 - with a total area of all floors not exceeding 300 m² measured over the enclosing walls of the Class 1b building; and
 - in which not more than 12 persons would ordinarily be resident; or
 - 4 or more single dwellings located on one allotment and used for short-term holiday accommodation,

which are not located above or below another dwelling or another Class of building other than a private garage.

Class 2 building – a building containing 2 or more sole-occupancy units each being a separate dwelling

Class 3 to 9 buildings – guidance note only: the full definitions are not reproduced, but Class 3 to 9 buildings are all buildings which are not Class 1, 2 or 10 and generally comprise commercial and industrial buildings including motels, hotels, offices, shops, warehouses, storage buildings, factories, laboratories, churches, schools, hospitals, nursing homes and the like.

Class 10 – a non-habitable buildings or structure being –

- (a) Class 10a – a non-habitable building, being a private garage, carport, shed or the like; or
- (b) Class 10b – a structure being a fence, retaining wall, mast, antenna, swimming pool, or the like; or

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- (c) Class 10c – a private bushfire shelter

Construct – in relation to a building, includes—

- (a) to build, rebuild, erect or re-erect the building;
- (b) to repair the building;
- (c) to make alterations to the building;
- (d) to enlarge or extend the building;
- (e) to underpin the building;
- (f) to place or relocate the building on land

Structure – includes a fence or wall

Supervisor's checklist – a checklist published by the Minister in the Gazette for the purposes of Regulation 74(5) of the Development Regulations 2008.⁸

Swimming Pool – an excavation or structure that is capable of being filled with water and is used primarily for swimming, wading, paddling or the like and includes a bathing or wading pool or spa pool (but not a spa bath)

Swimming Pool Safety Features – a fence, barrier or other structure or equipment prescribed by regulation, namely, (insofar as are relevant to the particular circumstances taking into account the provisions of the Building Code): (a) fences; (b) barriers; (c) water recirculation systems; (d) secondary outlets from a swimming pool; and (e) warning notices.

REFERENCES

Strategic Plan:

CW2.3: Improve the built environment by enhancing character, amenity, safety and accessibility.

Procedure References:

Not Applicable

Other Related References:

Development Act 1993

Development Regulations 2008

National Construction Code (formerly the Building Code of Australia)

Australian Standards as referenced in the NCC

Minister's Specifications as referenced in the NCC.

⁸ As of writing, see the Gazette of 19 January 2012, p 207.
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