

Wellington City Council

Performance Monitoring Assessment Report -
Compliance schedules, BWoFs and pool barriers

September 2022

**BUILDING
PERFORMANCE**



Assessment class	
High-level	✓
Detailed	

Assessment method	
Desktop	✓
On-site	

Overview

The assessment

Ministry of Business, Innovation and Employment (MBIE)'s Compliance and Assurance (C&A) team carried out a performance monitoring assessment of Wellington City Council (WCC). The assessment covered the following territorial authority (TA) functions:

- means of restricting access to residential pools
- compliance schedules and building warrants of fitness (BWoFs).

This report

This report summarises the findings from the desktop assessment and identifies any corrective actions or recommendations to improve performance. It also outlines what follow-up or compliance actions the C&A team plan to take as a result of the assessment.

Mandate and purpose




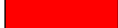
MBIE's responsibility as the central regulator in the building system is to enable and ensure the performance of TAs under the Building Act 2004 (the Act). A compliance strategy has been developed to guide MBIE's regulatory activities to achieve the following objectives:

- promote compliance
- develop a picture of risk using monitoring and analysis
- identify and respond to non-compliance.

Performance monitoring assessments are carried out under s204 of the Act and aim to achieve the objectives of the compliance strategy by collecting and analysing key performance data which can then be used to help the Council improve performance and allow C&A to take further action if required. The data collected across multiple councils can also be used to establish whether wider activity is required, for example, advising best practice in an edition of the Building Control Update.

Performance findings

TAs are assessed against a series of performance indicators. A colour coding system is used to represent how the TA is performing against each indicator (the 'performance finding'). The colours have the following meanings:

Colour	Performance finding	Outcome
	Satisfactory	No recommendation
	Improvement opportunity	Recommendation
	Concern	Strong recommendation
	Significant concern	Corrective action

Disclaimer

Findings and associated outcomes are based on the information MBIE has received and involve an element of trust. We acknowledge they may not provide a wholly accurate picture of how the Council is performing in these areas.

Acknowledgement

We would like to thank WCC's building control management and staff for its cooperation and assistance during this performance monitoring assessment.

Performance summary

Outcomes

The following table shows the number of corrective actions and recommendations C&A have given as a result of the findings of this assessment.

	Means of restricting access to residential pools	Compliance schedules and BWoFs	Total
Corrective actions	0	1	1
Strong recommendations	4	6	10
Recommendations	2	1	3

Performance findings

The following table shows a list of performance indicators which have been categorised based on the findings of this assessment. Details of the findings and associated outcomes are included under 'Findings and outcomes' section.

Finding	Means of restricting access to residential pools	Compliance schedules and BWoFs
Significant concerns	<i>None</i>	2E. BWoF audits – Number
Concerns	1A. Policies and procedures 1C. Inspection check sheet 3B. Inspection quality 4A. Enforcement	1B. Staff resources 2B. Early intervention – Pre BWoF stage 2D. Quality of compliance schedules 3A. Acceptance of less than 12 months compliance 3B. Vacant buildings 4A. Enforcement
Improvement opportunities	2A. Capture of residential pool barriers 5A. Public/owner information and assistance	1A. Policies and procedures
Satisfactory	1B. Staff resources 3A. Inspection quantity 3C. Small heated pools	1C. Audit and processing check sheets 2A. Early intervention – Consent stage 2C. Building Amendment Act 2012 requirements 2F. BWoF audits – Compliance schedule alignment 3C. Percentage of buildings with a BWoF 3D. Processing BWoFs 3E. BWoF audits – IMR assurance 5A. Public/owner information and assistance

Action to be taken

Please respond to the questions in the 'Council comment' sections for each Corrective Action within this report and return it to C&A at TA_Assessments@mbie.govt.nz within 20 working days.

C&A have no plans to follow-up further in relation to the strong recommendations in the report. However, if WCC would like to inform of us of their progress in implementing the recommendations, C&A would be receptive to receiving such information.

Upon receipt and consideration of Council comments, C&A will confirm whether they are satisfactory or whether further clarification or changes are required.

Findings and outcomes

Means of restricting access to residential pools

1. Tools to perform the function

1A. Policies and procedures	
<p>Findings</p> <p>WCC have procedural documents for receiving independent qualified pool inspector (IQPI) reports and auditing swimming pools which contains a structured framework for carrying out administration processes. It details the various tasks to be performed and the methods used to perform them. However, this document does not contain high-level objectives, such as the purpose under s162A of the Act or the requirement to inspect all residential pool barriers within a three-year timeframe (s162D). Additionally, the document does not cover several aspects that we consider need to be covered (see the 'outcome' section).</p>	
<p>Outcome: Strong Recommendation (SR-P-1A)</p> <p>We recommend WCC develop and adopt an overarching policy and procedure document covering the Council's implementation of the pool barrier legislation. This should include high-level objectives (for example, the s162D requirement to inspect all residential pool barriers within three years). The document should also contain objectives and procedures for the following where appropriate:</p> <ul style="list-style-type: none">• identifying applicable pools that are not already on the register• how inspections will be scheduled/ordered• how inspections will be carried out• how to establish the compliance requirement for a particular pool to be inspected• the approach to ad hoc inspections (under s222 outside of the normal s162D requirements eg neighbour reports non-complaint fence)• how owners will be/have been informed of their requirements to restrict access to residential pools• how decisions will be made in relation to the issue of waivers/modifications under s67 and s67A (including notification to MBIE)• how decisions will be made in relation to non-complaint barriers eg notices to fix (NTFs) and infringement notices• re-inspection time frame. <p>The procedures for the above should be to a level of detail that enables a person who has not worked in the job before to follow and adequately achieve the objective/task.</p>	
<p>Council comment</p> <p><i>None required</i></p>	

1B. Staff resources	
<p>Findings</p> <p>WCC has 0.8 full-time equivalent (FTE) dedicated to this function. As WCC has 507 residential pools on its register, this works out to be a ratio of 211.25 pool barriers per</p>	

FTE, per year. Based on our calculation

Based on an average of two hours/inspection (including associated administration) and on the assumption the pool inspector spends 50% of their pool-related time on barrier inspections, this ratio is sufficient to ensure all pool barriers are inspected within the statutory three-year timeframe.

Outcome Satisfactory

None

Council comment

None required

1C. Inspection check sheet

Findings

WCC uses a digital residential pool inspection checksheet template with the ability to use prepopulated text. In general terms the check sheet provides adequate means to undertake the pool inspection and document the process. There are also other aspects with potential for improvement (see the 'outcome' section).

Outcome: Strong Recommendation (SR-P-1C)

We recommend WCC make the following changes to its inspection check sheet:

- have provision for the applicable compliance pathway to be designate (ie Schedule 1 of the Fencing of Swimming Pools Act (FOSPA) 1987, Building Code clause F9, F9/AS1 or F9/AS2) before the inspection begins and ensure this is the only compliance method that the barrier is measured against during the inspection. Note that the compliance requirement is not simply determined by the date when the Building (Pools) Amendment Act 2016 or F9/AS1 came into force
- include checks that accommodate all possible compliance paths. For example, F9/AS1 or Schedule 1 of the FOSPA
- have provision to attach supplementary evidence (in the form of photos) to be included and ensure photos have contextual information
- use 'Pass', 'Fail' or 'Not applicable' for each item inspected rather than having areas listed under Passed items/Failed items. This is to limit any possible confusion in the future
- include a check item for waiver and modification
- make provision for a site-specific summary which outlines why an inspection failed and the reasons for this and, for follow-up inspections, how a failed item has been resolved. Additionally, include a reference to any applicable follow-up documents (eg a site instruction notice or NTF)
- make provision to include commentary on what was observed during the inspection with an aim to benefit future inspectors
- include a check item for climbable objects to specifically cover vegetation
- have provision for pool installation date
- have provision for documenting verbal conversations that contain instructions and/or information considered important to the inspection process, including with whom

Council comment

None required

Based on an average of two hours/inspection (including associated administration) and on the assumption the pool inspector spends 50% of their pool-related time on barrier inspections.

2. Capture of residential pool barriers

2A. Capture of residential pool barriers	
<p>Findings</p> <p>WCC has a register for residential pools, a process for capturing residential pools/pool barriers through the building consent process and identify existing unregistered pools through building inspections and other compliance related matters/LIMs. WCC also ensures the relevant compliance pathway is recorded for each individual pool to ensure it is inspected appropriately.</p>	
<p>Outcome: Recommendation (R-P-2A)</p> <p>We recommend WCC expand current methods of actively identifying and capturing residential pools that are not already on its register. For example, browsing real estate advertisements, and looking at aerial photos (e.g. Google Earth)</p>	
<p>Council comment</p> <p>None required</p>	

3. Inspection of residential pool barriers

3A. Inspection quantity	
<p>Findings</p> <p>WCC have 507 pools on its register and have carried out 779 pool barrier inspections between 1 January 2017 and 1 May 2022.</p> <p>Of the 507 pools, it is unknown how many were installed before 1 November 2018 and should have had their barriers inspected under section 162D of the Act at the time of collecting the data for this report (three years and six months after 1 November 2018). However, WCC has carried out 507 (100%) of the required pool barrier inspections in the previous auditing cycle and is currently more than halfway through the current cycle. WCC have confirmed that all existing pool barriers, subject to the section 162D requirements of the Act, were inspected before 1 July 2020</p> <p>Two inspections were carried out by an independent qualified pool inspector (IQPI).</p>	
<p>Outcome: Satisfactory</p> <p>None</p>	
<p>Council comment</p> <p>None required</p>	

3B. Inspection quality	
<p>Findings</p> <p>C&A reviewed three completed inspection check sheets provided by WCC. The inspector provided comments in each of the three completed inspection check sheets supplied by WCC. However, the comments were not always clear and the following issues were found:</p> <ul style="list-style-type: none"> • of the three examples provided only two made reference to site photos. These photos have not been provided and have not been incorporated into the check 	

<p>sheets</p> <ul style="list-style-type: none"> • inspection for 10 Domanski Crescent (#309474) lists reason for failed inspection under the Passed Items general area. • inspection for 133 Ohariu Rd (#511564) does not include photos and site-specific notes do not clearly detail how compliance has been achieved from previous failed inspection • limited site-specific comment summary was provided for two of the examples (133 Ohariu Rd and 11 Agra Crescent) Further detail on what was observed while carrying out the pool barrier inspection would be recommended (ie general barrier conditions, possible future issues with vegetation). This information would help inform the next officer • while the inspection check sheet template has a field for recording comments about non-compliance, the requirements for the owner on what to do next were not always clear. Timeframes for re-inspection were not specified. <p>There is also potential for improvement in other areas (see the 'Outcome' section below).</p>	
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Outcome: Strong Recommendation (SR-P-3B)

We recommend WCC ensure:

- photo evidence (along with any contextual captions) taken during an inspection is included with the inspection checksheet. This should include photos for documenting the pool surroundings for future references and non-compliance issues for future reference
- the applicable compliance pathway is known before the inspection begins and ensure this is the only compliance method that the barrier is measured against during the inspection
- the inspection checksheet clearly identifies any failed items, explains what the owner needs to do next and state the timeframe in which any non-compliance needs to be resolved
- there is enough space on the checksheet to fully capture the inspection commentary and append supplementary notes
- include commentary on what was observed during the inspection with an aim to benefit future inspectors
- to include site specific summary which can be used to outline why an inspection failed and the reasons for this and, for follow-up inspections, how a failed item has been resolved. Additionally, include a reference to any applicable follow-up documents (eg a site instruction notice or NTF)

Having informative inspection documentation detailing reason for decisions is fundamental in an inspection process.

Council comment

None required

3C. Small heated pools	
<p>Findings</p> <p>WCC has completed inspecting all known small heated pools to confirm they have an exempt safety cover (in accordance with Schedule 1(21A) of the Act) and thus are not subject to ongoing inspections under s162D.</p>	
<p>Outcome: Satisfactory</p> <p>None</p>	
<p>Council comment</p> <p><i>None required</i></p>	

4. Enforcement

4A. Enforcement	
Findings During the period 1 January 2017 to 1 May 202, WCC failed 342 inspections, issued seven NTFs but no infringement notices. The use of enforcement is often an indicator of a council's willingness to use the tools available to ensure compliance.	
Outcome: Strong Recommendation (SR-P-4A) We recommend WCC review and establish a robust system of auditing and enforcement that achieves both legislative requirements and public expectations under the means of restricting access to residential pools function.	
Council comment <i>None required</i>	

5. Public/owner information and assistance

5A. Public/owner information and assistance	
Findings WCC has public information about pool barriers on its website which is up-to-date, covers some of the key topics, aligns with legislation and has links to a guidance document Fencing your spa or swimming pool. The website has useful resources and contains a good level of detail for pool owners and tenants highlighting their responsibilities under legislation and various methods to achieve compliance. However, there is potential for improvement (see the 'outcome' section).	
Outcome: Recommendation (R-P-5A) We recommend WCC make the following changes to its public information: <ul style="list-style-type: none">• include details about the various compliance pathways• provide a downloadable checklist, so pool owners can carry out their own review of their pool barrier, before the periodic inspection is undertaken• a link to MBIE's 'Safety guidance for pool owners' webpage• ensure references to 'fence' are changed to 'barrier', in order to align with legislative terminology	
Council comment <i>None required</i>	

Findings and outcome

Compliance schedules and BWoFs

1. Tools to perform the function

1A. Policies and procedures	
<p>Findings</p> <p>WCC does not have an overarching policy document for BWoFs and compliance schedules. WCC does have a procedure document for these functions which cover most of the procedures we consider need to be covered. However, there is potential for improvement (see the 'outcome' section).</p>	
<p>Outcome: Recommendation (R-A)</p> <p>We recommend WCC develop an overarching policy which states its position and objectives for BWoFs and compliance schedules functions. Furthermore, we recommend that WCC amend its procedure document to include procedures for managing the following:</p> <ul style="list-style-type: none"> • purpose of and issuing of compliance schedule statements • actions to be taken for false or misleading BWoFs • 'reports in lieu of Form 12A' supplied with the BWoF • 'reduced period Form 12s (ie for less than the required 12 months) • copying in the owner when corresponding with an independent qualified person (IQP/owner's agent • the process for accepting IQPs including the criteria for IQP registration for the various specified systems • the removal of IQPs from the register • vacant/unoccupied buildings which have a compliance schedule 	
<p>Council comment</p> <p>None required</p>	

1B. Staff resources	
<p>Findings</p> <p>WCC has FTE dedicated to these functions, consisting of two auditors and two administration staff</p> <p>As WCC has 2883 compliance schedules, this gives a ratio of 20.8 buildings (with compliance schedules) per FTE. Based on data we have received so far, the ratio is slightly high for the Council to be adequately performing day-to-day BWoF functions.</p>	
<p>Outcome: Strong Recommendation (SR--1)</p> <p>We recommend WCC undertake a review focusing on staff resourcing and how this resource is used to enable it to carry out an adequate number of on-site BWoF audits</p>	
<p>Council comment</p> <p>None required</p>	

1C. Audit and processing check sheets	
<p>Findings</p> <p>WCC has a checksheet for conducting on-site BWoF audits. WCC also has a checksheet for processing submitted BWoFs/Form 12As.</p>	
<p>Outcome: Satisfactory</p>	

None
Council comment None required

2. Accuracy of compliance schedules

2A. Early intervention – Consent stage	
Findings WCC appropriately refuses to accept building consent applications that do not contain sufficient information about specified systems in order to populate the building's compliance schedule.	
Outcome: Satisfactory	
None	
Council comment None required	

2B. Early intervention – Pre BWoF stage	
Findings WCC's BWoF compliance officers attend the final inspection of new buildings (or building work) that either have or will have a compliance schedule and they do carry out an inspection of the building within six months of a newly issued compliance schedule where appropriate and if resourcing allows WC also advised they do not attend all final inspections.	
Outcome: Strong Recommendation (SR-B-2B)	
For new-build compliance schedules, we recommend that an on-site inspection is undertaken as early as possible and no later than six months after issue. This will ensure owners understand their compliance schedule responsibilities and obligations. Taking this early proactive step is likely to minimise compliance issues for the owner and potentially save time for council officers who would normally have to deal with resolving such situations.	
Council comment None required	

2C. Building Amendment Act 2012 requirements	
Findings C advised that all 2883 (100%) of its compliance schedules comply with s103 of the Act (changes to s103 and s106 were introduced in the Building Amendment Act 2012 and were required to be completed by March 2013).	
Outcome: Satisfactory	
None	
Council comment None required	

D. Quality of compliance schedules	
Findings The three compliance schedules reviewed by MBIE were succinct, building-specific, made reference to attached plans showing the location of the specified systems and complied with the current legislation. However, there is potential for improvement (see	

the 'Outcome' section below).

Outcome: Strong Recommendation (SR-B-2D)

Although not a prescribed form, we recommend WCC make the following changes to its compliance schedules:

- ensure all the fields on the front page are populated with relevant and appropriate information (eg 'building name' and 'location within site')
- if and when necessary, provide version control and include the date, if and when, the compliance schedule is amended (perhaps with a brief description of the amendment, eg 'SS14/2 added, SS15.5 deleted' or refer to the relevant building consent number) so the history of the building can be traced
- number all pages (including any attachments) and provide the total number of pages in the complete document
- include a summary list of all specified systems at the front of the compliance schedule
- consistently include the version/amendment # and date of any referenced document (including Building Code, Standards, Acceptable Solutions, and Codes of Practice)
- provide performance standard for final exits (SS 15/2) in all three compliance schedules
- where the Building Code is used as the performance standard, it is necessary to specify the applicable sub-clause(s)
- in the interest of future-proofing, consistently describe in words the type of emergency warning system (BWOFF SR #512661 refers)
- although interfaced specified systems were mentioned, clearly indicate who is responsible for the end-to-end functional testing, frequency of testing and who is certifying
- be cautious when requiring daily inspections by the owner - it may be preferable to specify 'when building in use' (SS 3/2 for BWOFF SR #509692 refers)
- make provision for exit signage (SS 15/4) in BWOFF SR #505238.

Council comment

None required

E. BWOFF audits - Number

Findings

WCC conducted **292 BWOFF audits** in the three-year period (1 May 201to 1 May 202). This equates to **3.38% of buildings** with compliance schedules inspected per year. This number is well below what we would expect for an effective auditing regime. We recommend a three to five-year audit cycle (20-33% per year).

During MBIE's technical review of WCC's TA functions in August 2016, WCC advised it had undertaken about 1826 audits in just over four years. It is disappointing to see that these on-site audits do not currently feature as highly in WCC's administration and enforcement of the compliance schedule/BWOFF system.

Outcome: Corrective Action CAB-2E

We recommend that WCC increase the number of on-site BWOFF audits and to do so at a rate of 20-33% (which equates to 577961 per annum). MBIE's view is that undertaking on-site audits is a fundamental activity of the BWOFF system. Additionally, the audit frequency of a given building should reflect the perceived risk for the use of that building. For instance, it might be appropriate to have annual audits for budget accommodation (eg backpackers' hostel) and five-yearly audits for low-occupancy industrial buildings.

Council comment

Please provide responses to the following questions. See the 'Action to be taken' section above for the time period in which these questions must be answered.

Please advise:

a) how many on-site BWoF audits have been carried out since 2 May 202

b) what steps WCC has taken (or will take) to increase the rate of on-site BWoF audits.

F. BWoF audits – Compliance schedule alignment

Findings

WCC use BWoF audits to check that the specified systems contained in the building match the specified systems covered by the building's compliance schedule. An essential task to help ensure the accuracy of compliance schedules.

Outcome: Satisfactory

None

Council comment

None required

3. Assurance that inspection, maintenance and reporting (IMR) procedures are taking place

3A. Acceptance of less than 12 months compliance

Findings

WCC advised it accepts reports in lieu of Form 12As and reduced-period BWoFs. This is in contradiction to s108 of the Act and does not align with MBIE's position on this matter.

Outcome: Strong Recommendation (SR-B-3A)

We recommend WCC return any reports in lieu of a Form 12A or similar document to the building owner. Such documentation does not satisfy the requirements of s108 and will not allow a valid BWoF to be supplied and displayed.

Council comment

None required

3B. Vacant buildings

Findings

WCC advised it considers reducing the testing regime when the building is vacant or unoccupied, however it still places compliance schedules 'on hold' (eg seismic strengthening or change of use). Note that the Act does not provide an exemption from compliance schedule requirements for vacant buildings (ie a BWoF is required irrespective of the building being unoccupied)

Outcome: Strong Recommendation (SR-B-3B)

Where a building with a compliance schedule is left vacant, we recommend WCC adopt a policy of working with the owner to amend the compliance schedule to include reduced IMR procedures for all relevant specified systems so that a valid BWoF can be supplied. Once the building is reoccupied, the compliance schedule can be amended to revert to its original IMR procedures

Council comment

None required

3C. Percentage of buildings with a BWoF

Findings 3.69 of buildings with compliance schedules in the WCC district have a current BWoF. Given some buildings will be operating under a compliance schedule statement and given WCC accept reports in lieu of a Form 12A, this percentage is considered acceptable.	
Outcome: Satisfactory None	
Council comment None required	

D. Processing BWoFs	
Findings WCC carry out the appropriate checks when reviewing submitted BWoFs and their associated documents. For example, ensuring Form 12As are from registered IQPs.	
Outcome: Satisfactory None	
Council comment None required	

E. BWoF audits - IMR assurance	
Findings WCC's on-site BWoF audits include a check that a current BWoF is displayed and that records of IMR procedures have been completed.	
Outcome: Satisfactory None	
Council comment None required	

4. Enforcement

4A. Enforcement	
Findings During the period 1 May 201 to 1 May 202 WCC did not issue any NTFs for compliance schedule/BWoF matters. WCC were unable to run the report on how many infringement notices were issued but advised that it might be less than five Use of enforcement is often an indicator of a council's willingness to use the tools available to ensure compliance.	
Outcome: Strong Recommendation (SR-B-4A) We recommend WCC review and establish a robust system of auditing and enforcement that achieves both legislative requirements and public expectations for compliance schedules and BWoFs.	
Council comment None required	

5. Public/owner information and assistance

5A. Public/owner information and assistance

Findings

WCC has public information on its website which is up-to-date, covers all the key topics, aligns with legislation and contains links to MBIE's guidance documents. Additionally, WCC makes an application to amend a compliance schedule (Form 11) available on its website.

WCC ha online access to compliance schedules (to ensure IQPs are always inspecting to the correct schedule).

Outcome: Satisfactory

None

Council comment

None required

Appendix 1 - Statistical Information

As supplied by Wellington City Council

	Subject	Period	Total for the period specified
	Means of restricting access to residential pools		
	Residential pools (subject to means of restricting access requirements) on the Council's register/records subject to s162D inspections	As at 26 May 2022	507
	On-site pool barrier inspections carried out under s162D by the Council (excl re-inspections)	1 Jan 2017 to 1 May 2022	779
	Certificates of periodic inspection received from independent qualified pool inspectors (IQPIs)	1 Jan 2017 to 1 May 2022	
	Notices to fix (NTFs) re pool barriers issued for breaches of the means of restricting access requirements	1 Jan 2017 to 1 May 2022	
	Infringement notices issued for breaches of the means of restricting access requirements	1 Jan 2017 to 1 May 2022	
	Compliance schedules and BWoFs		
	Buildings that have compliance schedules	As at 27 May 2022	883
	Compliance schedules amended to comply with s103s106 of the Act (as amended by the Building Amendment Act 2012)	As at 27 May 2022	2883
	Buildings that have a current BWoF	As at 27 May 2022	2701
8 A	Buildings with a building systems status report (BSSR)	As at 27 May 2022	Unknown
	Buildings that have a current compliance schedule statement (CSS)	As at 27 May 2022	Unknown
10	On-site BWoF audits carried out (excl re-inspections)	1 May 2017 to 1 May 2022	292
	NTFs issued for breaches of compliance schedule and BWoF provisions	1 May 2017 to 1 May 2022	
	Infringement notices issued for breaches of compliance schedule and BWoF provisions	1 May 2017 to 1 May 2022	