

TOWNSVILLE CITY COUNCIL

LOCAL LAW NO. 17

SWIMMING POOLS

PART I

INTERPRETATION

1. In this Chapter unless the context otherwise indicates or requires the terms undermentioned shall have the meaning set against each of them respectively; otherwise the terms used in this Chapter shall have the same meaning as is assigned to each of them respectively in the Building Act and the Standard Building By-laws:

"Analyst"-means an analyst as defined for the purposes of and by the Health Act 1937-1978;

"Appropriate Officer" means the Chief Health Surveyor, the City Architect or the City Engineer as the occasion requires;

"Building Act" means the Building Act 1975-1978 as amended from time to time;

"Building Inspector" means a Building Inspector for the time being appointed by the Council;

"Chief Health Surveyor" means the Chief Health Surveyor for the time being appointed by the Council;

"City Architect" means the City Architect for the time being appointed by the Council;

"City Engineer" means the City Engineer for the time being appointed by the Council;

"Code" means the "The Swimming Pool Code" adopted by the Council under this Chapter and as amended from time to time;

"Council Swimming Pool" means and includes the Tobruk Memorial Baths situated on The Strand, the Kokoda Memorial Baths situated at the corner of Gulliver and Wellington Streets, the Long Tan Memorial Baths situated in Fulham Road, Heatley and any other Baths or Swimming Pool at any time hereafter established or acquired by the Council and all or any of them and whether or not the same are conducted by the Council or by a Lessee or Licensee or by any other person;

"Dressing Accommodation" means and includes a building, structure, room or set of rooms so constructed that the same cannot be seen into from without and which contains provision for persons to dress and undress in reasonable privacy and ablutionary and sanitary conveniences sufficient for the purposes of the number of persons likely to use the Swimming Pool;

"Exempt Swimming Pool" means any Swimming Pool or any Swimming Pool of a class or kind for the time being exempted pursuant to By-law 7 of this Chapter from the provisions of Part III of this Chapter;

"Female Person" includes a male child who has not attained the age of five years;

"Health Surveyor" means a Health surveyor for the time being appointed by the Council;

"Licence" means a licence granted in respect of a Swimming Pool whether as a private, non-private or public Swimming Pool under the provisions of this Chapter;

"Licensed Pool" means a Swimming Pool in respect of which a Licence has been granted under the provisions of this Chapter;

"Male Person" for the purposes of an offence against the provisions of this Chapter which may be committed only by a male person, does not include a male child who has not attained the age of five years;

"Manager" includes the person who at the relevant time has the care, management or control of a Swimming Pool;

"Non-private Swimming Pool" means a Swimming Pool used, conducted or maintained in association with any multiple dwelling, hotel, motel, caravan park, school, hospital or institution or any other Swimming Pool declared by the Council by resolution to be a non-private Swimming Pool;

"Occupier" means the occupier of the land whereon a Swimming Pool is situated and includes the owner of such land;

"Permit" means a permit issued under this Chapter;

"Private Swimming Pool" means a Swimming Pool used, conducted or maintained in association with a single dwelling-house for the exclusive and private enjoyment of the occupier of that dwelling-house his family and his and their guests;

"Public Swimming Pool" means any Swimming Pool that is neither a private nor a non-private Swimming Pool;

"Purification Equipment" includes the filtration plant, pumps, pipes, fixtures, fittings, equipment, apparatus, chemicals, and other things used or necessary for the purpose of filtering, purifying, cleansing, chlorinating, and testing the alkalinity of and the residual chlorine content in the water in a swimming pool;

"Rules" means the "Rules and Regulations relating to Council Swimming Pools" adopted by the Council under this Chapter and amended from time to time;

"Standard Building By-laws" means the "Standard Building By-laws 1975" as amended from time to time;

"Swimming Pool" includes any excavation or structure capable of being filled with water and used or in the opinion of the Council intended to be used for the purposes of swimming and also includes any excavation or structure capable of being used as a paddling pool and also includes the environs of a swimming pool and any dressing accommodation, fences, or purification equipment associated with the swimming pool in question.

PART II

SWIMMING POOL CONSTRUCTION AND LICENCING

2. (1) Application to erect a swimming pool, the granting or refusal of approval in respect thereof and the erection of a swimming pool shall in all respects be made under and in accordance with and be governed by the Building Act, the Standard Building By-laws and this Chapter.
- (2) Before building work in respect of a swimming pool is commenced and in addition to the plans, specifications and application referred to in the Standard Building By-laws
 - (a) a plan or description in duplicate showing or indicating the proposed method of emptying the pool;
 - (b) a statement of the technical performance details of the proposed purification equipment including size and layout of proposed suction and return lines and provision for back-washing or other means of cleansing such equipment and the proposed method of disposal of filtered wastes; and
 - (c) a statement as to whether it is intended to erect the swimming pool as a private, non-private or public swimming pool and, in the case of a non private or a public swimming pool, the number of persons likely to use the swimming pool at any one time and whether it is intended that both sexes will use the pool at the same time or otherwise as the case may be.

shall be submitted to the Council.

3. (1) Approval to erect a swimming pool shall be refused where the plans and specifications accompanying the application indicate that the swimming pool will not conform in all respects with the Code.
 - (2) Without limiting the generality of the last preceding clause of this By-law where any part of a swimming pool exclusive of any fence wall or building or any combination thereof enclosing the same is less than 1.2 metres from any boundary of the land upon which the same is situated that swimming pool shall not conform with the Code.
4. (1) Where a swimming pool has been erected either before or after the day on which this Chapter shall come into force, the occupier may apply to the Council for a licence or a renewal of a licence in respect of such swimming pool as either a private, non-private or public swimming pool as the case may be.
 - (2) If the Council is satisfied that the Swimming Pool has been erected -

- (a) in the case of a swimming pool erected or for which approval to erect was given prior to the day on which this Chapter shall come into force, in complete conformity with the approval to erect such swimming pool and such swimming pool has been fenced so as to comply with Part III of this Chapter;
- (b) in the case of any other swimming pool, in complete conformity with this Chapter; and
- (c) is otherwise suitable for use as a private, non private or public swimming pool,

subject to the next following clause of this By-law, the Council shall grant a licence in respect of such swimming pool as either a private, non-private or public swimming pool as the case may be.

- (3) Upon the granting of a licence, the Council may impose such conditions as to the use, conduct and maintenance of the swimming pool as it thinks fit.
- (4) Unless sooner cancelled or suspended a licence shall remain in force
 - (a) in the case of a Private Swimming Pool, until the thirtieth day of June next following a resolution by the Council that such licences shall be renewable annually or at some other periodic interval; and
 - (b) in the case of any other swimming pool, until the thirtieth day of June next following the date shown on the face thereof, or, as the case may be, the date of last renewal.
- (5) (i) Where a licence (other than a licence in respect of a Private Swimming Pool that is not renewable annually or periodically) is in force on the thirty-first day of May in any year the occupier may apply to the Council to renew the licence as from the first day of July next following;
 - (ii) The Council may grant the renewal or refuse to grant the renewal or it may grant the renewal subject to such conditions, including conditions in addition to or in variance of existing conditions, as it thinks fit.
- (6) (i) Where a licensed pool is altered with or without the approval of the Council, then upon the commencement of such alterations, the licence in respect of that licensed pool shall *ipso facto* be cancelled.
 - (ii) The appropriate officer may by written notice to the occupier cancel a licence if, in the opinion of such Officer, the structural state of the licensed pool is or has become such that it is or it is likely to be a danger to the life, health or property of any person or the public.
 - (iii) When a licence has been cancelled, the occupier may apply to the Council under this By-law for a new licence in respect of the swimming pool.

- (7) (i) a person shall not use, nor shall he conduct or maintain in such a state that it is capable of being used a swimming pool in respect of which a licence is not in force.
- (ii) a person shall not use, conduct or maintain a private swimming pool for a purpose other than as a private swimming pool.
- (iii) a person shall not use, conduct or maintain a non-private swimming pool for the purposes of a public swimming pool.

PART III

SWIMMING POOL SAFETY

- 6. The By-laws contained in this Part of this Chapter do not apply to or in relation to
 - (a) any water impounded for agricultural use or as a water supply for fire fighting purposes or for Local Government Purposes including ornamental purposes on or within lands owned by or under the control of the Council.
 - (b) any naturally occurring water pool whether or not used as a swimming pool; or
 - (c) any exempt swimming pool.
- 7. (1) Subject to this By-law, the Council may by resolution exempt from the provision of the By-laws contained in this Part of this Chapter
 - (i) any swimming pool; or
 - (ii) any swimming pool of a class or kind, specified in such resolution and the Council may by resolution revoke or vary any such exemption.
- (2) A resolution revoking or varying any exemption under clause (1) of this By-law shall have no force or effect unless and until notice of such resolution is served upon the occupier.
- (3) An exemption under clause (1) of this By-law may be expressed to be subject to conditions, restrictions or limitations specified in relation thereto and where any such condition, restriction or limitation is not complied with or not given effect to in relation to a swimming pool to which it is applicable that swimming pool shall not be an exempt swimming pool for the purposes of this Part of this Chapter.
- 8. (1) (i) Where a swimming pool in relation to which a building approval under the Standard Building was given after the coming into force of this By-law; or
- (ii) Where on or after the thirty-first day of December, 1982, a swimming pool
 - (a) that was constructed before the coming into force of this By-law; or

- (b) that was constructed after the coming into force of this By-law pursuant to a building approval under the Standard Building By-laws which approval was given before the coming into force of this by-law:

is not enclosed, by a fence, wall or building of any combination thereof that complies with this Bylaw, the occupier shall be guilty of an offence against this By-law.

- (2) A fence wall or building or any combination thereof shall comply with this By-law if and only if

- (a) no part of that fence, wall or building is less than 1.2 metres in height measured vertically;
- (b) every part of that fence, wall or building is so constructed as
 - (i) to prevent a child of tender years gaining access to the swimming pool it encloses by passing beneath or through that fence, wall or building;
 - (ii) not to afford foot or hand holds to a child of tender years attempting to gain access to the swimming pool enclosed by it by climbing the fence, wall or building;
 - (iii) every gate or door that is incorporated in the fence, wall or building and intended for use by persons to gain entrance to the swimming pool is fitted with a mechanism that automatically comes into operation on the gate or door being closed and is such as to prevent a small child opening the gate or door when the gate or door is closed; and
 - (iv) otherwise conforms in all respects with the Code.

- (3) For the purposes of this By-Law a fence, wall or building or any combination thereof shall be deemed to enclose a swimming pool notwithstanding that it also encloses other land, buildings or structures.

- 9. The occupier shall display or cause to be displayed within the environs of a swimming pool in a position where it may be readily seen by persons using the swimming pool a notice in legible form clearly describing the method of applying mouth to mouth resuscitation or mouth to nose resuscitation or some other form of resuscitation approved by the Council.

PART IV

HEALTH AND CONVENIENCE

- 10. (1) A swimming pool shall be used, conducted and maintained so as to comply with the following standards, that is to say

- (a) save where another source of water has been approved do writing by the Council only water from the domestic water supply of the Council shall be used to fill a swimming pool or to replenish the supply of water in a swimming pool;
 - (b) the purification equipment shall be kept and maintained in good and proper and efficient working order;
 - (c) the water in the swimming pool shall be maintained within the pH range of 7.5 to 8.0;
 - (d) the alkalinity of the water in the swimming pool shall be maintained at between 150 parts per million and 200 parts per million of dissolved salts.
 - (e) where chlorination is not used, the water shall be maintained to such other standard or standards as may be specified in the Code;
 - (f) the water in the swimming pool is kept clean and clear and free from (foreign matter to the satisfaction of the Chief Health Surveyor;
 - (g) the dressing accommodation is kept clean to the satisfaction of the Chief Health Surveyor;
- (2) Where a swimming pool is so used, conducted or maintained as not to comply with any of the standards set out in this By-law, the occupier shall be guilty of an offence against this By-law.
- (3) (i) Where in the opinion of a Health Surveyor a swimming pool is so used, conducted or maintained as not to comply with any of the standards set out in this By-law and whether or not proceedings for an offence against this By-law have been or are intended to be commenced against any person, the Chief Health Surveyor may by notice in writing served upon the occupier require the occupier to restore the swimming pool to the prescribed standard within the time specified in such notice. The licence for a Swimming Pool in respect of which a notice under this paragraph of this sub-clause has been served on the occupier shall *ipso facto* be suspended upon service of such notice upon the occupier and such suspension shall remain in force until notified by a Notice in writing to the occupier signed by the Chief Health Surveyor.
- (ii) An occupier who fails to comply with the provisions of a notice under the last preceding sub-clause served upon him or who uses the swimming pool or causes or permits or suffers to be used the swimming pool in respect of which such notice was issued without the approval in writing of the Chief Health Surveyor shall be guilty of an offence against this By-law.

11. A person shall not fill a swimming pool with water nor shall he discharge water from a swimming pool otherwise than at such time or times as the City Engineer shall prescribe, in a particular case, by notice in writing to the occupier or, in general, in a notice published in a newspaper.

12. (1) All electric lights for the lighting of a swimming pool and its environs shall be installed in accordance with the laws relating to the installation of electric lights.
 - (2) The occupier shall not cause or permit the lights of a swimming pool or its environs to shine or unnecessarily reflect onto any road or onto any adjoining or adjacent premises.
13. (1) The Chief Health Surveyor may by notice in writing to the occupier specify the hours within which a swimming pool may be used.
 - (2) Where the Chief Health Surveyor has specified the hours during which a swimming pool may be used, the occupier shall not use the swimming pool nor shall he cause, suffer or permit the swimming pool to be used otherwise than within the hours so specified.

PART V
NON-PRIVATE AND PUBLIC SWIMMING POOLS-PERMITS

14. The provisions of this Part of this Chapter do not apply to or in relation to a private swimming pool.
15. (1) A person shall not have charge of a licensed pool unless he is the holder of a permit issued under this by-law in respect of such licensed pool.
 - (2) For the purposes of this By-law
 - (a) in the case of a licensed pool associated with a building described in a Building Units Plan within the meaning of the Building Units and Group Titles Act 1980, the Body Corporate, if any and the occupier of each unit defined in such Building Units Plan; and
 - (b) in any other case, the occupier, manager, secretary, caretaker, lessee, tenant, licensee or other person for the time being having or exercising control of or over the licensed pool or the premises associated with the licensed pool;

and each of them shall be and be deemed to be a person having charge of a licensed pool unless and until the contrary is proved and each of such persons may be convicted of an offence against this By-law notwithstanding that some other person has already been convicted of an offence in respect of the same breach.

- (3) (i) Any person having charge of a licensed pool may apply to the Council for a permit to have charge of a particular licensed pool specified in the application.
 - (ii) The Council may grant the permit, refuse to grant the permit, or grant the permit subject to such conditions as it thinks fit.
 - (iii) It shall be the duty of the holder of a permit to ensure that the licensed pool is used, conducted and maintained in complete conformity with the provisions of this Chapter and the conditions of his permit.

- (iv) Where a licensed pool is used, conducted or maintained in any way in breach of the provisions of this Chapter, the holder of a permit in respect of such licensed pool shall be guilty of an offence against this By-law.
- (v) It shall be a defence to proceedings for an offence against the last preceding subclause of this clause that the breach of this Chapter complained of being an act of commission occurred without the knowledge of the holder of the permit or in circumstances over which the holder of the permit had no control.
- (vi) A permit shall remain in force until the thirtieth day of June next following the date shown on the face thereof or until sooner revoked by the Council.
- (vii) The Council may at any time revoke a permit
 - (a) if the holder of the permit is convicted of an offence under this Chapter;
 - (b) if any person is convicted of an offence under this Chapter in respect of the licensed pool to which the permit relates;
 - (c) if the permit holder or any person employed or engaged -by him for the purposes of maintaining that said pool is suffering from any infectious communicable or offensive disease or condition likely to affect the health of any person using the licensed pool;
 - (d) if in the opinion of the Chief Health Surveyor and notwithstanding that proceedings for an offence in respect of such have not been commenced the swimming pool has been used, conducted or maintained otherwise than in complete conformity with the standards prescribed by By-law 10 of this Chapter; or
 - (e) if the holder of the permit has not in the opinion of the Chief Health Surveyor satisfactorily carried out the duties imposed upon him by this By-law.
- (viii)
 - (A) The holder of a permit in force an the thirty-first day of May, in any year may apply to the Council to renew the permit as from the first day of July next following.
 - (B) The Council may grant the renewal or refuse to grant the renewal for any of the reasons set out in the last preceding subclause or grant the renewal subject to such conditions as it thinks fit.
- (ix) Notwithstanding the coming into force of this Chapter, this By-law shall not have force and effect until the day referred to in By-law 8 of this Chapter.

PART VI

NON-PRIVATE AND PUBLIC SWIMMING POOLS-GENERAL

16. Save where otherwise provided the provisions of this Part of this Chapter do not apply to or in relation to a private swimming pool.
17. (1) A male person shall not enter or be in or upon dressing accommodation or any part thereof set apart for the exclusive use of female persons.
- (2) A female person shall not enter or be in or upon dressing accommodation or any part thereof set apart for the exclusive use of male persons.
- (3) No person shall do or omit to do anything that is or is likely to be an invasion of the reasonable privacy of any person lawfully using dressing accommodation.
18. (1) Subject to By-law 20 of this Chapter where a swimming pool is open for use by persons of both sexes at the same time or is so fenced or walled that persons within the Swimming Pool may be seen from without, no person shall use or be in or upon that Swimming Pool other than the dressing accommodation unless adequately and decently attired.
- (i) The Manager of a Swimming Pool or any member of the Police Force who is of the opinion that any person in the Swimming Pool is not adequately and decently attired may direct that person to repair at once to the dressing accommodation and there to attire himself in decent and adequate dress.
- (ii) Any person who fails to obey any such direction to repair at once to the dressing accommodation or who having so repaired to the dressing accommodation leaves such dressing accommodation without having attired himself in a decent and adequate dress shall be guilty of an offence and may, with all necessary force and assistance, be removed from the Swimming Pool by the Manager or a member of the Police Force.
19. Where a Swimming Pool is set apart either permanently or during fixed periods from time to time for the exclusive use of persons of one sex, no male person shall enter or be in or upon the Swimming Pool when the same is set apart for the exclusive use of female persons and no female person shall enter or be in or upon the Swimming Pool when the same is set apart for the exclusive use of male persons.
20. (1) It shall be lawful for a person to use, conduct and maintain a Swimming Pool including a Private Swimming Pool for the purposes of naked swimming by persons of both sexes at the same time PROVIDED THAT such Swimming Pool is so fenced or walled or, if so required by the Council, roofed so that persons within the Swimming Pool cannot be seen from without and that at each and every entrance to such Swimming Pool (other than a Private Swimming Pool) a notice containing the words "mixed naked swimming allowed in this pool" in characters not less than one hundred and fifty millimetres in height is displayed in a prominent position.
- (2) Any person who uses conducts or maintains a Swimming Pool, including a Private Swimming Pool, for the purposes of naked swimming by persons of both sexes at the same time that is not so fenced or walled or if so required by the Council roofed so

that persons within the Swimming Pool other than a Private Pool that does not have at each and every entrance to such Swimming Pool a notice containing the words "mixed naked swimming allowed in this pool" in characters not less than one hundred and fifty millimetres in height displayed in a prominent position shall be guilty of an offence.

21. No person shall-

- (a) enter or be in or upon a Swimming Pool whilst under the influence of liquor;
- (b) enter or be in or upon a Swimming Pool whilst suffering from any infectious, contagious or offensive disease or condition or whilst wearing any bandage or medical dressing;
- (c) spit in or upon any part of a Swimming Pool;
- (d) smoke in any part of a Swimming Pool where a notice forbidding smoking is displayed;
- (e) deface in any way whatsoever any part of a Swimming Pool;
- (f) create or place filth in or upon or foul or pollute any part of a Swimming Pool or any thing found therein;
- (g) use or place in any Swimming Pool any soap, detergent or other substance whereby the water in the Swimming Pool may be rendered turbid or unfit or unpleasant for the use of persons resorting to that Swimming Pool; or
- (h) do any act to make any omission which would be likely to injure, endanger, obstruct, inconvenience or annoy any person resorting to the Swimming Pool.

22. (1) No person shall bring into or permit or allow a dog to enter or be in or upon a Swimming Pool including a Private Swimming Pool.

- (2) Where a dog is found in or upon a Swimming Pool the Manager may direct the owner or person apparently in charge of such dog to remove such dog from the Swimming Pool at once.
- (3) Any person who neglects or refuses to obey a direction of a Manager given under this By-law shall be guilty of an offence.
- (4) Where a person neglects or refuses to obey a direction to remove a dog from a Swimming Pool or where no owner or person in charge of the dog can be found in or upon the Swimming Pool that dog may be seized and/or detained by the Manager and then be dealt with as a straying dog under the provisions of Chapter X of these By-laws.

23. Every person in a swimming pool shall obey and conform to the requirements of the Manager or any Health Surveyor or member of the Police Force in relation to the conduct

or behaviour of such person in the swimming pool or the manner of his use and enjoyment thereof.

24. (1) Any person who in any licensed pool-

- (a) wilfully and indecently exposes his person;
- (b) wilfully exposes to view any obscene or indecent book, print picture, drawing, painting, photograph or other indecent exhibition or representation;
- (c) sings any obscene song or ballad;
- (d) writes or draws any obscene or indecent word, figure or representation;
- (e) plays or bets at any unlawful game; or
- (f) behaves in a riotous, disorderly or indecent manner;

shall be guilty of an offence.

(2) It shall be a defence to proceedings as for an offence against the provisions of paragraph (a) of clause (1) of this By-law that the exposure occurred in a Swimming Pool to which By-law 20 of this Chapter refers and that such exposure was not indecent.

25. The Manager may refuse to allow entry to or using such force and assistance as is necessary may remove from a swimming pool any person who, in the opinion of the Manager

- (a) is under the influence of liquor or drugs;
- (b) suffering from any infectious, contagious, or offensive disease or condition or who is wearing any bandage or medical dressing.
- (c) is of an unruly, quarrelsome or belligerent disposition;
- (d) has previously failed to comply with any of the provisions of this part of this Chapter or with the directions of a Manager, regardless of whether or not he has been convicted of an offence in respect of such;
- (e) is in a dirty state or condition;
- (f) is a child apparently under the age of nine years and who is unaccompanied by an older person apparently capable of caring for such child; or
- (g) is otherwise undesirable to admit to or have in the swimming pool.

PART VII

COUNCIL SWIMMING POOLS

26. Every Council swimming pool and each and every part of such whilst open to the Public or any class or classes of public shall be a public place within the meaning of and for the purposes of the "Vagrants Gaming and Other Offences Act, 1931" as amended and any other law conferring or imposing upon members of the Police Force powers or duties with respect to the public places or providing for the punishment of offences committed in public places.
27. Any person in or upon a Council swimming pool who neglects or refuses to comply with a direction of the Manager given in accordance with the Rules or who otherwise disobeys the Rules shall be guilty of an offence and, in addition, he may be removed by the Manager or a member of the Police Force using such force and assistance as may be necessary from the swimming pool.
28. No person shall, except pursuant to lawful authority the proof whereof shall lie on him, enter or remain in or be in or upon a Council swimming pool without having paid the prescribed fee or at any time when the Council Swimming Pool is not open for use.
29. If property shall be deposited into the custody of the Manager of a Council swimming pool for safe keeping, no liability shall attach to the Manager or the Council in respect of such property and the same will always be at the risk of the person depositing the same.
30. (1) The parents and each of them of a child
- (a) who is apparently under the age of nine years; and
 - (b) who is found in or upon a Council Swimming Pool otherwise than under the direct care and control of some older person who is capable of caring for him
- shall be guilty of an offence.
- (2) It shall be a defence to proceedings as for an offence against the provisions of clause (1) of this By-law that the child concerned was at the relevant time capable of swimming without assistance and without stopping for a distance of 25 metres.
- (3) It shall not be a defence to proceedings as for an offence against the provisions of clause (1) of this By-law that the parents of the child concerned or either of them did not know that the child was in or upon the Council Swimming Pool.
31. (1) A person shall not in a Council swimming pool for fee or reward teach, instruct, train or coach any other person in swimming or other notatorial sport or otherwise act as a professional swimming coach or professional swimming instructor unless he is the holder of a permit from the Council in respect of such Council swimming pool.
- (2) Application for a permit shall be made to the Council and the Council may either grant or refuse the permit or grant the permit subject to such conditions as it thinks fit.

PART VIII

APPLICATIONS

32. (1) Where by this Chapter application for any approval, licence or permit may be made to the Council, such application shall be made in the prescribed form.
- (2) The Council may from time to time by resolution determine the fees that shall be payable in respect of the various applications, licences, permits, renewals and inspections that may be granted or issued or made under this Chapter.
- (3) Where upon any application under this Chapter it is necessary for an officer of the Council to inspect the swimming pool in respect of which the application is made, if it is necessary for an officer of the Council to make more than one inspection of that swimming pool before the application may be properly dealt with by the Council the applicant shall pay to the Council such further or other fees as the Council may from time to time by resolution determine as being the fees that shall be payable in respect of each such reinspection.
- (4) An application shall not be complete and the Council shall not be required to consider the same unless and until the prescribed application fee and, if applicable, the prescribed reinspection fee or fees have been paid to the Council.

PART IX

THE CODE AND THE RULES

33. (1) The Council may by resolution from time to time adapt and repeal or amend a "Swimming Pool Code", hereinafter referred to as "the Code", which shall set out and contain the requirements of the Council and the standards to be observed in the erection and siting of a swimming pool, the fencing thereof so as to comply with Part III of this Chapter, the provision of dressing accommodation, safety appliances, purification equipment and other necessary appurtenances in respect of swimming pools and such other matters or things relating to swimming pools as the Council shall think fit.
- (2) In adopting or amending the Code the Council shall have power to adapt and include in the Code, wholly or in part in relation to any matter provided for by it any of the standard rules, codes and specifications of the bodies known as the Standards Association of Australia, the British Standards Institution or a like body identified therein.
34. (1) The Council may by resolution from time to time adopt and repeal or amend "Rules and Regulations relating to Council Swimming Pools", hereinafter referred to as "the Rules", which shall set out and contain such provisions for the proper and effective use, conduct, management and control of a Council Swimming Pool as the Council shall think fit.
- (2) The Council shall have power to adopt different rules and regulations in respect of each of its several swimming pools.

35. (1) (i) a copy of the Code and a copy of the Rules shall be open for inspection by the public without fee at the public office of the Council during the Council's normal business hours.
- (ii) a copy of the Rules shall be open for inspection by the public without fee at every Council Swimming Pool during the hours that each such Council Swimming Pool is open to the public.
- (iii) a copy of the Code or as the case may be a copy of the Rules shall be supplied to any person requiring the same at the Public Office of the Council during the Council's normal business hours upon payment of the prescribed fee or fees.
- (2) A copy of the Code or as the case may be a copy of the Rules certified under the hand of the Town Clerk to be a true copy of the Code or as the case may be the Rules of which it purports to be a copy shall be admissible in evidence in any proceedings wherein proof of such Code or as the case may be such Rules is relevant and in the absence of proof to the contrary shall be conclusive proof of such Code or as the case may be such Rules.
- (3) In any proceedings a signature purporting to be that of the Town Clerk shall be taken to be the signature it purports to be until the contrary is proved.

PART X

MISCELLANEOUS

36. (1) Where a swimming pool contains water and -
- (a) such swimming pool is not a licensed pool; or
- (b) in the opinion of an appropriate Officer a person, and whether or not proceedings have been taken against such person, has contravened the provisions of this Chapter in relation to such swimming pool;
- (c) in the opinion of the appropriate officer the swimming pool is in such a state or condition that it is or is likely to be a danger to the life, health or property of any person or the public,
- the appropriate officer may give the occupier notice in writing requiring him to empty the water from such swimming pool within the time (being not less than 48 hours after the service of the notice upon him) specified in such notice or, in the case of an emergency, requiring him forthwith upon service of the notice upon him to commence to empty the water from such swimming pool and then to proceed to empty the swimming pool as soon as possible.
- (2) A person served with a notice under this By-law who fails, neglects or refuses to comply with such notice shall be guilty of an offence.
- (i) Where a person fails, neglects, or refuses to comply with a notice served upon him under this By-law, the Council itself may cause the swimming pool to be

emptied of water and the cost of the Council's so doing shall be an expense incurred on behalf of the Owner of the land whereon the swimming pool is situated for the purposes of subsection (7) of section 50 of the Local Government Act 1936-1980.

(ii) In the exercise of the power conferred upon it by subclause (i) of clause (3) of this By-law the Council shall have the power to enter upon the land whereon the swimming pool is situated conferred upon it by Section 50 of the Local Government Act 1936-1980.

(4) Where a swimming pool has been emptied of water pursuant to or by the Council following upon notice given under this By-law, no person shall place water or cause or permit water to be placed in that swimming pool unless the written approval of the Council has first been obtained.

(5) Neither the Council nor any officer servant or agent of the Council shall incur any liability for any loss or damage suffered or incurred by any person as a result of or in consequence of and whether directly or indirectly of the lawful exercise of the powers conferred by this By-law.

37. The Council may by resolution declare any swimming pool to be a non-private swimming pool for the purposes of this Chapter.

38. The Council may by resolution declare that the By-laws contained in this Chapter or any of them shall not apply to any Swimming Pool or to any Swimming Pool of a class or kind specified in such resolution and until such a resolution is made the By-laws contained in this Chapter shall not apply to or in relation to a swimming pool which is so constructed that it cannot be filled at any point to a depth greater than 0.3 metre.

39. (1) A Health Surveyor may in exercise of the powers contained in Section 50 of the Local Government Act 19361980 enter upon the land whereon a swimming pool is situated and collect and remove from such land a sample of the water in such swimming pool or a sample of any material apparently used or apparently intended to be used in the treatment of the water in such swimming pool for testing purposes.

(2) A sample of water or material collected pursuant to the last preceding subclause of this By-law shall be collected in a clean receptacle which, after the collection of the sample, shall be tightly closed or sealed.

(3) The Health Surveyor collecting the sample shall on a label securely affixed or which he shall securely affix to the receptacle containing the sample write his name and the name of the occupier or person in charge of the swimming pool and the street address of the land whereon the swimming pool is situated and the date and time when the sample was collected.

(i) As soon as practicable after a Health Surveyor has, pursuant to this By-law, collected a sample of water or material from a swimming pool he shall deliver the same to an analyst.

- (ii) Such delivery may be effected either personally or by sending the sample to an analyst by registered post or certified mail.
- (5) A certificate purporting to be signed by an analyst and stating
- (a) that he received from the Health Surveyor named in the Certificate a sample of water or material collected on the date and time stated in the Certificate from a swimming pool situated at the address stated in the Certificate and which swimming pool was in the charge of or was situated upon the land occupied by the person named in the Certificate;
 - (b) that he made a laboratory test of such sample on the date and at the place stated in the Certificate; and
 - (c) the chemical content or composition of or as the case may be the bacterial level of or other matter relating to the condition of the water or the chemical composition of the material contained in the sample

shall be evidence of the matters contained therein and as well that the sample was placed in a clean receptacle and until the contrary is proved shall be conclusive evidence.

- (6) The provisions of the four last preceding clauses of this By-law shall not derogate from or otherwise prejudice the powers and rights of a Health Surveyor who has entered upon land and has taken and removed a sample or samples in accordance with clause (1) of this By-law to deal with such sample or samples otherwise than in accordance with the provisions of the said four last preceding clauses of this By-law.

PART XI

EVIDENTIARY

40. (1) In any proceedings for a breach of or for an offence against the provisions of this Chapter every allegation or averment contained in the Complaint shall be prima facie evidence of the matter so alleged or averred and without limiting the generality of the foregoing the allegation or averment in any Complaint that at the time and on the date mentioned in the Complaint
- (a) any person was the occupier of premises specified in the Complaint; or
 - (b) any person whilst in charge of a licensed pool was or was not the holder of a permit under this Chapter; or
 - (c) a licence had not been issued under this Chapter in respect of a swimming pool specified in the Complaint; or
 - (d) a swimming pool specified in the Complaint was not enclosed by a fence wall or building or any combination thereof that complied with By-law 8 of this Chapter; or

- (e) a swimming pool specified in the Complaint was so used conducted or maintained as not to comply with any of the standards set out in By-law 10 of this Chapter; or
- (f) an occupier failed to comply with the provisions of a notice under By-law 10 (3) (i) of this Chapter served upon him; or
- (g) an occupier used a swimming pool or caused permitted or suffered to be used a swimming pool in respect of which notice under By-law 10 (3) (i) was served upon him without the approval in writing of the Chief Health Surveyor; or
- (h) a person was the parent of a child specified in the Complaint; or
- (i) a child was apparently under the age of nine years; or
- (j) a child was found in or upon a Council Swimming Pool otherwise than under the direct control of some older person who was capable of caring for him;

shall be evidence of the matter or matters so alleged or averred and in the absence of evidence in rebuttal thereof shall be conclusive evidence of such matter or matters.

- (2) Notwithstanding the provisions of clause (1) of this By-law evidence in support of such matter or matters may be given and if given shall be considered on its merits and the credibility of the witness giving the evidence and the probative value of such evidence shall be neither increased nor diminished by reason of this By-law.
- (3) Where any allegation or averment to which this By-law refers is a mixed question of fact and law, the allegation or averment shall be evidence of the fact only.