

BACKGROUND

This policy has been developed in order to establish clear principles and guidelines to assist Council officers to act fairly, consistently and effectively in relation to building fire safety matters that are governed under the provisions of the Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000.

OBJECTIVE

The main objectives of this policy are to:

- 1 Assist premise owners of Class 1b to 9 buildings meet their legal obligations regarding the implementation and maintenance of fire safety measures.
- 2 Give the community confidence that Council takes its obligations under the law seriously in terms of submission of fire safety certificates and annual fire safety statements.
- 3 Promote fire safety compliance in buildings within Wollongong.

POLICY STATEMENT

Council is strongly committed to ensuring premise owners of Class 1b to 9 buildings within the Wollongong Local Government Area, are aware of and meet their fire safety obligations as governed under the Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000.

POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

STATEMENT OF PROCEDURES

Application

This policy is primarily directed at the regulation and promotion of fire safety awareness and provisions within Class 1b to 9 buildings. These classes of building are defined under the National Construction Codes Series – Building Code of Australia.

Terms

Annual Fire Safety Statement

An Annual Fire Safety Statement is issued every twelve months after the date of issue of the Final Fire Safety Certificate with the check of the essential fire safety measure being undertaken within three (3) months of the issue of the statement.

Essential Fire Safety Measure

Essential Fire Safety Measures are any installations or type of construction that have been incorporated into the building to ensure the safety of the occupants within the building in the event of fire or other emergency, and may include such measures as automatic fire suppression systems (eg sprinkler systems), fire hose reels, fire hydrants, automatic fire detection and alarm systems, fire doors, fire extinguishers, smoke exhaust systems, exit signs, emergency lighting and fire engineered solution.

Essential Service Details

Essential Service Details includes annual fire safety statement, fire safety certificates, fire safety statements, supplementary fire safety statement and/or fire safety schedules which acknowledges the existence, installation and performance standards of fire safety measures required to serve a Class 1b to Class 9 building.

Fire Safety Certificate

A Fire Safety Certificate is a type of certificate submitted by the owner or the person acting for the building owner, which in effect certifies that specified essential fire safety measures have been installed and perform in accordance with the relevant Building Code of Australia requirements and Australia Standards.

It is the first certificate issued after installation of essential fire safety measures following completion of:

- Any approved new building work or change of building use and prior to use of the new facilities.
- Fire safety upgrade works required by Council.

Fire Safety Schedule

A Fire Safety Schedule is a document specifying all the essential fire safety measures (both existing and proposed) serving the whole building and lists the minimum standard of performance to which each identified fire safety measure must be capable of operating to.

Fire Safety Statement

Fire Safety Statement means an annual fire safety statement or a supplementary fire safety statement.

Supplementary Fire Safety Statement

A Supplementary Fire Safety Statement is a statement applying to Critical Fire Safety Measures installed on the premises, which are measures that are of such importance that they must be certified more frequently than every 12 months and at an interval specified on the fire safety schedule for the premises. The assessment of the critical fire safety measures must be undertaken within one (1) month of the date of issue of the Statement.

Competent Fire Safety Practitioners

As described under Clause 167(A) of *Environmental Planning and Assessment Regulation 2000*.

The Competent Fire Safety Practitioner Co-regulatory Accreditation Framework Guideline .

Refer to

http://www.fairtrading.nsw.gov.au/sites/ftw/Businesses/Specific_industries_and_businesses/Fire_safety_practitioner_s/Professional_bodies_and_industry_associations.page

Fire Safety Regulatory Activities

Council will undertake the following activities:

- 1 Keep an electronic register of Class 1b to Class 9 buildings with fire safety measures based on information recorded on fire safety schedules, fire safety certificates or obtained from other relevant documentation.
- 2 Written notification to building owners regarding submission requirement for fire safety statement.
- 3 Procedures for handling late submission of a fire safety statement.
- 4 Compliance investigations.
- 5 Proactive fire safety activities.

Electronic Register

Essential service details will be recorded and tracked using Council's electronic management system. This system will be used to register receipt of fire safety schedules, fire safety certificate/statements and other correspondence received and sent regarding fire safety measures serving a Class 1b to Class 9 building.

Reminder Notification

Owners of premises registered on Council's essential service register will generally be sent written notification approximately one (1) month prior to the due date of the fire safety statement. While Council sends a courtesy reminder letter to the building owner, Council accepts no responsibility for any reliance upon it and the legal responsibility for providing the statement which rests with the owner of the premises. Notification will be sent to the building owners mailing address supplied for rate notification or in the case of strata subdivided properties, the mailing address supplied for the relevant Owners Corporation.

Registration Fees

Council will charge a fee for the registration of received fire safety statements. This fee will be charged in accordance with Council's Fees and Charges Policy.

Acceptability of Annual/Supplementary Fire Safety Statement

Council will generally check submitted fire safety statements to ensure that they comply with Part 9 Division 5 of the Environmental Planning and Assessment Regulation 2000. An annual fire safety statement must appear in the correct statutory format, include compulsory wording as prescribed by the legislation and confirm the performance of each required fire safety measures as listed on the fire safety schedule. A statement will not be accepted if:

- It is not prepared in accordance with Part 9 Division 5 of the Environmental Planning and Assessment Regulation 2000.
- It does not confirm the performance of each fire safety measures as listed on the fire safety schedule.
- It does not include the name and contact details of the competent fire safety practitioner who endorsed the statement.

Any problems that are identified will be communicated to the building owner or their representative for their rectification.

In the case of strata titled properties, one annual fire safety statement must cover the entire building. In this instance, the Executive Committee of the Owners Corporation (or Body Corporate) is responsible for organising the assessment of all fire safety measures that exist within individual units and on common property such as common area, corridors/hallways and car parks. The Owners Corporation then prepares and submits one complete annual fire safety statement for the whole of the premises. The Executive Committee may appoint the property strata manager to prepare and submit the annual fire safety statement on their behalf.

Overdue Statements

It is an offence to fail to provide an annual fire safety statement by the due date. Substantial and continuing weekly penalty notices apply for this offence:

- One (1) week late \$1000.
- Two (2) weeks late \$2000.
- Three (3) weeks late \$3000.
- Four (4) weeks / 4+ weeks late \$4000.

Therefore, if the statement is not submitted by the due date, enforcement action will generally be taken. The enforcement includes the issuing of Penalty Infringement Notices (PINs) and/or fire safety notice and orders. Council's Penalty Notice Policy outlines the process for managing PINs. Penalty rates will be in accordance with the Local Government Fixed Penalty Handbook.

Failure to submit an annual fire safety statement could also lead to legal proceedings in the Land and Environment Court where the maximum penalty for a breach is \$110,000.

Stay of Penalty Notice

Although there are no provisions in the legislation for extensions of time to be given, Council may grant small extensions of time in extenuating circumstances. Where maintenance work might be required and will delay the issue of the fire safety statement, a written submission should be made to Council regarding reasons for this delay and anticipated date statement will be submitted. So that Council can consider any stay in proceedings, the building owner or the person acting for the building owner will need to apply by completing Council's Stay of Penalty Infringement Notice Form. This request must be lodged prior to the due date of the annual fire statement and submitted either via email, fax or post.

It is unlikely a Stay of Penalty Infringement Notice will be supported in the event of a history of late submission.

Enforcement Proceedings

Council, in deciding whether to take enforcement action, will base the decision on the available evidence and individual circumstances. At the conclusion of an investigation, Council may:

- Take no action.
- Issue verbal advice.
- Issue a formal letter.
- Issue a Penalty Infringement Notice.
- Issue notices/orders.
- Commence legal proceedings.

Proactive Fire Safety Activities

Council will engage in various proactive fire safety activities to ensure buildings within our city continue to meet an acceptable level of fire safety. Priority will be given to buildings that pose the greatest risk to human life due to the way they are used and the number of people using it, or where maintenance of fire safety measures are not identified on Council's Essential Service Register. Buildings of significance include boarding houses, night clubs and premises without an existing fire safety schedule. The level of fire safety may also be brought to Council's attention through the approval of building works, a change in building use, or due to a complaint.

Council may conduct fire safety checks of existing Class 1b to 9 buildings. Council may charge a fee for conducting fire safety inspections. Alternately, Council may require an assessment report of the building by an independent and qualified building code consultant. It is expected a consultant report compares the level of fire safety in the building against the current requirements of the Building Code of Australia and if there are deficiencies, make recommendations on how to achieve acceptable levels of fire protection and fire safety awareness with regard to the occupants of the building.

Some buildings may need to be upgraded. Building design and the level of risk will vary from case to case and influence the upgrade requirements, priorities and expenses.

Upgrading is likely to be required if Council determines that the:

- a Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire.
- b Maintenance or use of the premises constitutes a significant fire hazard.

Fire Safety Orders

Fire Safety Orders are issued by Council or Fire and Rescue NSW where the level of fire safety within a building is found to be inadequate.

Fire Safety Orders may be issued as Emergency Orders where immediate action is required to reduce fire risk. Where an Emergency Order is issued it is imperative that the terms of the order be complied with immediately and that Council is contacted to establish that the terms of the Order have been complied with.

Where an Emergency Fire Safety Order is not complied with within the required period, Council may immediately seek Court directions to have the terms of the Order fulfilled.

Where a lesser fire risk is evident or more extensive works are required a Notice of Intention to Serve an Order will be issued. The notice will indicate the terms of the proposed order, the proposed period of compliance and the period in which representation must be made to Council.

Representations seeking to appeal against or modify the terms of the proposed order or when requesting an extension of time to comply with the order must be received in writing. In order for Council to consider the case, a Notice of Intention/Order – Representation Request Form should be completed. This form should be completed by the recipient of the notice/order, or the person entitled to act on their behalf. The form needs to be received by Council prior to the expiry date specified on the notice or order. Where an extended time is requested to complete work, the recipient of the notice/order will need to include a programme of works (inclusive of scheduled completion dates for staging of any works). Notice will be provided regarding the outcome of representation requests. Depending on the circumstances the outcome may include:

- Not to Proceed with Order.
- Issue Modified Order.
- Revoke Order.
- Proceed to Issue Order per terms stated in Notice of Intention.
- Extension to time to comply with Order granted.
- Terms of Order stand and matter referred for legal action.

Forms

The following forms will be available for download from Council's website:

- Annual Fire Safety Statement.
- Fire Safety Certificate.
- Request for Stay of Penalty Infringement Notice.
- Notice of Intention/Order – Representation Request Form.

Related Policies

- Penalty Notice Review Policy.

SUMMARY SHEET

Responsible Division	Development Assessment and Certification
Date adopted by Council	25 June 2018
Date of previous adoptions	10 March 2014; 4 July 1994
Date of next review	June 2021
Responsible Manager	Manager Development Assessment and Certification
Authorised by	Director Planning + Environment Future City and Neighbourhoods