

ITEM 2 POLICY REVIEW - FIRE SAFETY COUNCIL POLICY

The purpose of this report is to submit to Council a revised Fire Safety Policy for adoption in accordance with the rolling Policy review schedule.

RECOMMENDATION

The amended Fire Safety Council Policy be adopted by Council.

REPORT AUTHORISATIONS

Report of: Mark Adamson, Manager Development Assessment and Certification
Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Draft Reviewed Fire Safety Council Policy
- 2 Current Fire Safety Council Policy

BACKGROUND

The existing Fire Safety Council Policy was last reviewed on 25 June 2018 with minor amendments to reflect Legislative changes. In June 2023, an Internal Audit of Council's Fire Safety Regulatory Role was undertaken. A recommendation from the Audit required management to review and update existing Policies supporting fire safety.

The draft Fire Safety Council Policy has been revised to reflect the adopted Council Policy Template and reflect the current processes related to Council's Fire Safety functions.

The relevant changes made to the existing Policy are:

- Improved readability, with a focus on plain English terminology
- Updated formatting to comply with the current Council Policy template
- References to updated Council systems
- Reflect current Legislative requirements
- Removal of references to specific dollar values relating to Penalty Notices
- Additional detail surrounding Council's Fire Safety obligations/activities
- The removal of unnecessary definitions which define statutory references
- Removal of references to specific Council Forms.

PROPOSAL

The Fire Safety Council Policy states Council's responsibilities, systems and processes for fire safety compliance and provides information to the community on building fire safety matters.

Council's existing fire safety policy has been updated to accord with the latest legislative requirements and provide an improved delivery of information to internal and external customers.

While the changes are largely administrative, edits have been made throughout the entire document, making a tracked change version of the updated policy difficult to read. Therefore, both the current and revised Policies are provided for reference.

CONSULTATION AND COMMUNICATION

Consultation was undertaken with relevant Development Assessment and Certification staff undertaking Council's Fire Safety Functions. There is an established collaboration between the Development Assessment and Certification team and Information Management & Technology partners. There will be no additional actions triggered by the revised policy that have not already been established for fire safety with the introduction of the OneCouncil System.

Wider consultation is not considered necessary prior to Council considering adoption of the revised Policy.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 'We have a healthy community in a liveable city.'

This Policy contributes to Goal 5 'We have a healthy community in a liveable city' and specifically delivers the Core Business of Regulatory Compliance in particular Goal 5.2 'Urban areas are created and maintained to provide a healthy and safe living environment for our community'.

RISK MANAGEMENT

The revised Fire Safety Policy outlines Council's commitment to ensuring premises owners within the Wollongong Local Government Area, are aware of and meet their statutory fire safety obligations to mitigate the risk of fire that has the potential to result in property damage and personal injury.

The revised Fire Safety Policy reflects the principles/policy intent of the Council's Enterprise-wide Risk Management Policy.

FINANCIAL IMPLICATIONS

There are no direct financial implications that would be added with the adoption of the revised Fire Safety Policy.

CONCLUSION

The review of the Fire Safety Policy provides a regulatory update on Council's Statutory Fire Safety obligations/processes.

The reviewed policy is also consistent with the underlying objectives/recommendations of the internal Audit conducted in June 2023, and meets Council's objectives in regularly reviewing its policies.



FIRE SAFETY COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

This policy states Council's commitment to and responsibilities for fire safety compliance within the Wollongong Local Government Area governed under the provisions of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. It also defines Council's role in fire safety regulation and provides information for the local community and the wider public on building fire safety matters.

POLICY INTENT

This policy has been developed to state Council's commitment to and responsibilities for fire safety management and provide information for the local community and the wider public on fire safety matters within the Wollongong Local Government Area.

The main intent of this policy is to:

- 1 Assist premises owners of class 1b to 9 buildings meet their legal obligations regarding the implementation and maintenance of fire safety measures and reporting requirements. These classes of building are defined under the National Construction Codes Series – Building Code of Australia.
- 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 Local Government Area.
- 4 Outline Council's relevant regulatory powers in relation to fire safety.

WOLLONGONG 2032 OBJECTIVES

This policy helps deliver the following goal from the Wollongong 2032 Strategic Plan, Goal 5.2: Urban areas are created and maintained to provide a healthy and safe living environment for our community.

POLICY

Council is strongly committed to ensuring premises owners within the Wollongong Local Government Area, are aware of and meet their statutory fire safety obligations to mitigate the risk of fire that has the potential to result in property damage and personal injury.

Council will undertake the following:

- 1 Maintain Council's electronic management system relating to 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 Send written notification to building owners regarding submission requirements for annual fire safety statements.
- 3 Respond to Fire and Rescue NSW inspection reports.
- 4 Council may engage in various proactive fire safety activities and compliance investigations.
- 5 Conduct enforcement action with due consideration of Council's Compliance and Enforcement Policy.
Under current legislation Council can:
 - a. Issue Penalty Notices in accordance with the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 related to:
 - i. Section 89(1) Failure to submit an annual fire safety statement or
 - ii. Section 92(1)(2) Failure to submit an annual fire safety statement in the approved form and not containing the required information.

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- b. Give notice of proposed fire safety order and issue fire safety orders where Council has concerns over the provision of fire safety in a building in accordance with the Environmental Planning and Assessment Act 1979.
- 6 Respond to complaints and customer enquiries concerning fire safety in accordance with Council's Customer Service Policy.
- 7 Maintain and proactively manage a public register of fire safety schedules on Council's website.
- 8 Provide technical advice regarding fire safety matters to building owner/managers, fire safety contractors and the local community.
- 9 Maintain general fire safety information on Council's website to inform building owners of their legal obligation.
- 10 Collaborate with other agencies, including Fire and Rescue NSW and the NSW Rural Fire Service in support of managing fire safety risks within the Wollongong Local Government Area.

FIRE SAFETY REGULATORY FUNCTIONS

Electronic Management System

Fire safety 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

Council will send a courtesy reminder notification approximately three (3) months prior to the lapsed date of the annual fire safety statement. Council accepts no responsibility for any reliance upon this correspondence and the legal responsibility for providing the statement rests with the owner of the premises.

Fees

Fees and charges will apply for Council's fire safety functions as referenced in the adopted 'Revenue Policy, Rates, Annual Charges & Fees'.

Acceptability of Annual/Supplementary Fire Safety Statement

Council will check submitted Fire Safety Statements to ensure that they comply with Part 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. An Annual Fire Safety Statement must be submitted using the form approved by the Commissioner for Fair Trading, Department of Customer Service.

Overdue Statements

Failure to provide an annual fire safety statement to Council by the lapsed date, is an offence. Submission of late statements may be subject to additional fees in accordance with Council's 'Revenue Policy, Rates, Annual Charges & Fees' policy.

In addition to any administrative fees for late statements, substantial and continuing weekly Penalty Notices may apply. If the statement is not submitted by the lapsed date, enforcement action may be taken in accordance with Council's Compliance and Enforcement Policy.

The enforcement action may include the issuing of Penalty Notices and/or fire safety Notice and Orders. Penalty rates will be in accordance with the Local Government Fixed Penalty Handbook and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Failure to submit an annual fire safety statement could also lead to legal proceedings in the Land and Environment Court.

Request to Stay Penalty Notice(s)

Although there are no provisions in the legislation for extensions of time to be given, Council may grant an extension of time in extenuating circumstances. 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 'Request to Stay Penalty Notice(s)' form which includes reasons for this delay and advises an anticipated date the statement will be submitted. A partial statement must be provided to support the application, for any compliant measures contained within the building.

A Request to Stay Penalty Notice may not be supported where there is a history of late submissions.

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Enforcement Action

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 further action in accordance with the relevant legislation and Councils Compliance and Enforcement Policy.

Proactive Fire Safety Activities and Compliance Investigations

Council may engage in various proactive fire safety activities or compliance investigations to ensure buildings within the Wollongong Local Government Area meet an acceptable level of fire safety.

A building may be brought to Council's attention through the approval of building works and issuance of an Occupation Certificate, a change in building use, or due to a complaint. 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 a building is not identified on Council's Fire Safety Register.

Council may require an assessment report of a building by an independent and qualified building code consultant. It is expected a consultant's report compares the level of fire safety in the building against the current requirements of the National Construction Code - 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 Notices and Orders

Fire Safety Notices and Orders may be issued in accordance with the Environmental Planning and Assessment Act 1979 where Council believes that the provision for fire safety or fire safety awareness is inadequate to prevent fire, suppress fire or prevent the spread of fire, to ensure or promote the safety of persons in the event of fire due to the lack of maintenance, or the use of the premises constitutes a significant fire hazard.

LEGISLATIVE REQUIREMENTS

- Environmental Planning & Assessment Act 1979 and
- Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

REVIEW

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

REPORTING

No external reporting is required under this policy.

ROLES AND RESPONSIBILITIES

Divisional Manager – Is responsible for:

- Leading and advocating the implementation, maintenance and action of policies, procedures, and systems to ensure compliance with statutory requirements, specifications, codes of practice, industry standards, practice notes and organisational policies, procedures, and practices.

Building + Certification Manager - is responsible for:

- Leading and advocating the adherence to the fire safety policy, procedures, and systems to ensure compliance with Council's statutory obligations relating to fire safety.

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- Managing the Building and Certification staff in the implementation of Council's fire safety program.

Development Project Officer/s - are responsible for:

- Provide technical advice to both internal and external customers in relation to fire safety.
- Undertake fire safety investigations / enforcement action.
- Liaise with external agencies such as Fire and Rescue NSW and Building Commission NSW.

Administrative Officer Planning Support - is responsible for:

- Providing administrative support to Council fire safety program including the oversight of Annual Fire Safety Statements, Fire Safety Certificates and Request to Stay Penalty Notices received by Council.
- Support the Building and Certification Manager and Development Project Officers in the implementation of Council's fire safety program.

RELATED STRATEGIES, POLICIES AND PROCEDURES

- Compliance & Enforcement Policy
- Penalty Notice Review Policy
- Customer Service Policy

APPROVAL AND REVIEW	
Responsible Division	Development Assessment & Certification
Date adopted by Council	[To be inserted by Corporate Governance]
Date/s of previous adoptions	25 June 2018
Date of next review	Two years from the date of adoption



ADOPTED BY COUNCIL: 25 JUNE 2018

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.

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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_practitioners/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.

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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.

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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.

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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.

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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