

POLICY NAME: Built Environment Fire Safety Program
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OBJECTIVE

The aim of this policy is 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, Environmental Planning and Assessment Regulation, 2000.

The objectives of this policy and the associated procedures are to:

1. assist building owners of *applicable buildings* meet their legal obligations regarding the implementation and maintenance of fire safety measures.
2. give the community confidence that Council fulfils its obligations under the relevant legislation.
3. identify Council's approach to meeting its legal obligations under the *Environmental Planning and Assessment Act* and associated regulations in relation to building fire safety (Essential Services).
4. promote fire safety compliance in buildings within Ballina Shire.

POLICY

Council will assist owners of *applicable buildings*, to be aware of and meet their fire safety obligations, as governed under legislation.

Building owners are required under legislation to record and report on the 'Essential Services' associated with the building. In this context, 'Essential Services' refer to the fire safety measures installed within a building.

The Essential Services details required of building owners are as follows:

- **Fire Safety Certificate.**
 - A Fire Safety Certificate is a document issued by or on behalf of the building owner(s) upon the completion of new building work. The certificate confirms that each of the fire safety measures as listed in the Fire Safety Schedule issued with the Construction Certificate or Development Consent have been installed in the building, or part of the building, and checked by a properly qualified person.
 - A Fire Safety Certificate must be issued using a standard template form published by the NSW State Government.
 - This certificate is issued once the fire safety measures are installed and is a requirement prior to the issuing of an Occupation Certificate (OC).
 - The issue of Fire Safety Certificates falls outside of the scope of this policy other than for setting the date by which the Annual Fire Safety Statement (AFSS) is required to be provided.
- **Annual Fire Safety Statement (AFSS).**
 - Building owners are required under legislation to ensure an Annual Fire Safety Statement (AFSS) is provided to both Council and FRNSW annually.
 - Annual Fire Safety Statements must be issued using a standard template form published by the NSW State Government and be accompanied by a Fire Safety Schedule.
 - The AFSS confirms that an accredited practitioner (fire safety), selected from a register of accredited practitioners, has assessed, inspected and verified the performance of each fire safety measure that applies to the building.
 - Under the legislation, an AFSS must be issued within 12 months of a Fire Safety Certificate being issued or, in subsequent years, within 12 months after the date on which an AFSS was previously provided.

Council will maintain an Essential Services Register and receive Annual Fire Safety Statements.

Essential Services Register

Council maintains an Essential Services Register that references all known essential fire safety measures in applicable buildings. Council will add to the Register as opportunity and resourcing allow.

Management of Annual Fire Safety Statements

Council has a legal obligation to receive submitted AFFSs.

In addition to this obligation, Council will conduct a brief review of a submitted AFSS to ensure that it:

- i. has been signed and dated by the landowner or their representative,
- ii. contains all of the fire safety measures as listed in Council's Essential Services Register or in the Fire Safety Schedule if it is attached to the AFSS,
- iii. each of the listed fire safety measures has been tested by a registered practitioner (fire safety) and signed by that practitioner, or practitioners,

- iv. the fire safety measures have been tested within three months of the date of expiry date of the previous AFSS as listed on Council's Essential Services Register.

In the event that a Fire Safety Schedule is not attached to the AFSS, Council will rely on the Essential Services Register to determine the fire safety measures that are required for the purposes of the AFSS.

Where a property owner, or their agent, advises Council that the fire safety measures in the building differ from those contained in the Essential Services Register, the property owner will be required to have the building inspected by an appropriately qualified person and provide details of the fire safety measures that are installed so that the register can be updated accordingly. Alternatively, for smaller buildings, Council may review the building files and/or inspect the building and update the register based on advice from a Council Registered Certifier.

Council may, as resources permit, carry out random audits or targeted audits of properties based on the fire risks of particular types of buildings.

Council will also provide a fee for service to remind landowners of the due date of their Annual Fire Safety Statement.

Penalty provisions

Council will work with building owners as far as is reasonable to ensure fire safety is adequate and appropriate for a building's use and to facilitate them meeting their obligations to maintain the building in relation to fire safety matters.

However, Council may also draw on legislative provisions to achieve required fire safety outcomes and/or issue penalties for breaches of regulatory provisions.

The *Environmental Planning and Assessment Regulation 2000* provides for fixed penalties and Council may issue a penalty infringement notice for breaches, including if the owner fails to:

- display the final Fire Safety Certificate.
- provide the Annual Fire Safety Statement by the due date.
- display the Annual Fire Safety Statement.
- maintain essential fire safety measures.

Penalties may also be issued for failure to comply with conditions of development consent and failure to comply with a Fire Safety Order.

Fire Safety Orders

The Council will, as necessary, issue Fire Safety Orders to owners of buildings in order to ensure the existence and/or maintenance of essential services within a building. Council's legal authority to serve a Fire Safety Order is contained in the Act.

The operation of this policy is defined in Council's *Built Environment Fire Safety Procedures*.

DEFINITIONS

Accredited practitioner (fire safety)

The holder of a certificate of accreditation as an accredited certifier under the *Building Professionals*

Act 2005 acting in relation to matters to which the accreditation applies.

AFSS	Annual Fire Safety Statement.
Annual Fire Safety Statement	As defined in the <i>Environmental Planning and Assessment Regulation 2000</i> .
Agent	Person appointed by a landowner to act on behalf of that landowner.
Applicable Buildings	For the purposes of Annual Fire Safety Statements, all buildings approved as Class 1b or Class 2 to 9 buildings as classified under the Building Code of Australia that have been constructed after 1 July 1988, or have had alterations or additions carried out after that date, are the subject of a Fire Safety Schedule.
Essential fire safety measures	As defined in the <i>Environmental Planning and Assessment Regulation 2000</i> .
Fire Safety Certificate	As defined in the <i>Environmental Planning and Assessment Regulation 2000</i> .
Fire Safety Schedule	As defined in the <i>Environmental Planning and Assessment Regulation 2000</i> .
FRNSW	Fire and Rescue New South Wales.
The Act	<i>Environmental Planning and Assessment Act 1979</i> (NSW).
The Regulations	<i>Environmental Planning and Assessment Regulation 2000</i> (NSW) and <i>Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017</i> .

SCOPE OF POLICY

This policy is primarily directed at the regulation and promotion of fire safety awareness and provisions within *applicable buildings*. These classes of building are defined under the National Construction Codes Series – Building Code of Australia (see Attachment 1).

The policy applies to Council employees.

BACKGROUND

The essential services provisions of the *Environmental Planning and Assessment Act* and *Regulations* came into force on 1 July 1988 and include a requirement that, under certain circumstances, a building owner (or building owners' representative) must submit an annual Fire Safety Statement for the property to a Local Council and FRNSW.

In 2017, the NSW Government introduced reforms through the *Environmental Planning and Assessment Regulation 2000 (the Regulation)* to strengthen fire safety certification for new and existing buildings. These reforms improve the regular maintenance testing and reporting of fire safety measures during the building life cycle.

Further legislative changes in July 2020 affected building owners, developers and certifiers, with the commencement of the *Building and Development Certifiers Act 2018*.

Historically, the building owner was responsible for the provision of an Annual Fire Safety Statement. Since 2017, the NSW Government has brought in a series of legislative amendments which support qualified technicians to inspect, test and certify essential fire safety measures within any building. These changes to the management of fire safety measures are ongoing, with the most recent changes commencing in March 2021. These changes have provided improved clarity regarding the responsibility for technical elements of building fire safety resting with qualified technicians.

The NSW Government continues to introduce new reforms to improve fire safety in buildings and it is the policy of Council to allow the State Government to lead this improvement and assist in implementing legislated changes.

RELATED DOCUMENTATION

This policy should be read in conjunction with:

- *Environmental Planning and Assessment Act 1979 (NSW)*
- *Environmental Planning and Assessment Regulation 2000 (NSW)*

- *Ballina Shire Council Enforcement Policy*
- *Local Government Act 1993 (NSW)*
- *Local Government (General) Regulation 2005 (NSW)*
- *Building Code of Australia*
- *Relevant Australian Standards.*

REVIEW

This policy is to be reviewed every four years.

Attachment 1: Classification summary of buildings and structures

This list provides the definitions of Building Classes as set out in the Building Code of Australia.

Classes of Building		
Class 1	Class 1a	A single dwelling being a detached house, or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.
	Class 1b	A boarding house, guest house, hostel or the like with a total area of all floors not exceeding 300m ² , and where not more than 12 reside, and is not located above or below another dwelling or another Class of building other than a private garage.
Class 2	A building containing 2 or more sole-occupancy units each being a separate dwelling.	
Class 3	A residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated persons. Example: boarding-house, hostel, backpackers' accommodation or residential part of a hotel, motel, school, or detention centre.	
Class 4	A dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.	
Class 5	An office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.	
Class 6	A shop or other building for the sale of goods by retail or the supply of services direct to the public. Example: café, restaurant, kiosk, hairdressers, showroom or service station.	
Class 7	Class 7a	A building which is a car park
	Class 7b	A building which is for storage or display of goods or produce for sale by wholesale.
Class 8	A laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing or cleaning of goods or produce is carried on for trade, sale or gain.	
Class 9	A building of a public nature.	
	Class 9a	A health care building, including those parts of the building set aside as a laboratory.
	Class 9b	An assembly building, including a trade workshop, laboratory or the like, in a primary or secondary school, but excluding any other parts of the building that are of another class
	Class 9c	An aged care building.
Class 10	A non-habitable building or structure (a. a private garage, carport, shed or the like; b. a structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool or the like; c. a private bushfire shelter.)	