

Annual Fire Safety Statement Policy

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1 OUTCOMES

- 1.1 The purpose of this Policy is to assist Council staff to act promptly, consistently and effectively in respect to the receipt and enforcement of the Statutory Scheme pertaining to Annual Fire Safety Statements.
- 1.2 The aims of this policy are:
1. To establish clear guidelines for the exercise of discretion in dealing with breaches of the Act
 2. To encourage a process of education and awareness of the statutory requirements amongst Council staff.
 3. To facilitate the transparent investigation and enforcement of statutory requirements by Council staff:
 4. To remove ad hoc and inconsistent application of the statutory requirements
 5. To provide staff with a framework for the dealing with of complaints and enforcement action.

2 ENFORCEMENT PRINCIPLES

- 2.1 Queanbeyan-Palerang Regional Council is committed to:
1. Acting in the interest of protecting community health/safety and/or the environment
 2. Acting consistently, fairly and impartially
 3. Preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s
 4. Ensuring the proposed enforcement action is in keeping with the relative severity of the offence/s
 5. Ensuring enforcement action is taken against the right person for the correct offence
 6. Ensuring that any actual or potential conflict of interest situations are managed in a fair, consistent, and impartial manner
 7. Disclosing all evidence relevant to the alleged offences
 8. Assisting the Court by providing all necessary information, whether or not that information is in favour of the Council case
 9. Issuing cautions to the alleged offenders, where necessary
 10. Making cost effective decisions concerning enforcement action having regard to the likely outcome at Court
 11. Ensuring action is instigated within the specified time limits.

3 DEFINITIONS

- 3.1 This Policy adopts the definitions contained within the Environmental Planning and Assessment Act 1979 (the Act) and Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (the Regulations).

Fire Safety Measure - any measure (including any item of equipment, form of construction or fire safety strategy) that is, or is proposed to be, implemented in a building to ensure the safety of persons using the building in the event of fire.

Penalty Notice – is a financial penalty issued for specific minor breach of the Act, which needs to be paid by a certain date.

Essential Fire Safety Measure - in relation to a building, means a Fire Safety Measure that is included:

1. In the Fire Safety Schedule for the building
2. In the Essential Services (within the meaning of Ordinance No 70 under the Local Government Act 1919) attached to an approval or order referred to in Part 59 of the Ordinance, being an approval or order that was in force immediately before 1 July 1993
3. In the Essential Services (within the meaning of the Local Government (Approvals) Regulation 1993) attached to an approval referred to in Clause 22 of that Regulation, being the latest such approval granted during the period from 1 July 1993 to 30 June 1997
4. In the Essential Services (within the meaning of the Local Government (Orders) Regulation 1993) attached to an order referred to in Clause 6 (1) of that Regulation, being the latest such order given during the period from 1 July 1993 to 30 June 1997.

4 LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS

4.1 The *Environmental Planning and Assessment Act 1979* (the Act), and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (the Regulations) set out a mandatory statutory scheme that oblige an owner of a building to give the Council an AFSS.

4.3 The Regulations provide that on an annual basis, the owner of a Building to which an Essential Fire Safety Measure is applicable must cause the Council to be given an Annual Fire Safety Statement (AFSS). Clause 89 (1) of the Regulations provides:

1. The owner of a building to which an essential fire safety measure applies must give the council an annual fire safety statement for the building”.

Maximum penalty for not providing an annual fire safety statement:

- a) for a corporation – 800 penalty units = \$8,800.00
- b) for an individual – 400 penalty units = \$4,400.00

(Note: A penalty unit is currently \$110.00)

4.4 Failure to cause the Council to be given an AFSS is an offence (see Section 89 (3)):

1. Failure to give an annual fire safety statement to the council within the time required by subsection (2) is a separate offence for each week that the failure continues after the expiry of the required time.

5 CONTENT

No Enforcement Action Unless Owner Warned

5.1 Council will write to the owner of the building at least 90 days before the time to cause the Council to be given an AFSS (90-day reminder letter).

- 5.2 Council will write to the owner of the building on the due date of the AFSS, if no AFSS received, warning that penalty notices will be issued (7-day reminder letter).
- 5.3 Council will not issue any Penalty Notice or take other enforcement action unless the owner has been advised in writing in accordance with paragraph 5.1 and 5.2 above.

Obtaining an AFSS

- 5.4 The Council shall maintain the register of all buildings currently submitting Annual Fire Safety Statements.
- 5.5 The Council shall seek to implement this policy to add to its register of all buildings that have been issued with an applicable schedule that are not currently maintained on the register in accordance with the internal process laid out in "Placement of Properties on AFSS Database".

Receipt of AFSS

- 5.6 Upon receipt of an AFSS, the Council officer shall follow internal process "Processing of Annual Fire Safety Statement".
- 5.7 If the AFSS received is not compliant against Council's Fire Safety Schedule, the Council officer shall:
 - 1. Determine whether the non-compliance or variance from Council's schedule is minor. If the non-compliance or variance is minor then the Council officer shall follow internal process "Non-compliant AFSS – Issue Penalty Notice" (minor non-compliances or variance would include errors in form only, the wrong year is stated, there is a misspelling of words).
 - 2. If the non-compliances or variance relates to substance, i.e. a change to the standards, FSM deleted or FSM added the officer shall follow internal process "Change in substance to an AFSS".
- 5.8 If a new AFSS is received but there has been no previous AFSS then the Council officer shall follow internal process "Annual Fire Safety Statement not previously submitted".
- 5.9 If the AFSS is received but it is not complete, but attached is a request for an extension of time, the Council officer shall follow internal process "Annual Fire Safety Statement not previously submitted".

Issuing a Penalty Notice

- 5.10 In cases where an AFSS has previously been received on time, and there is no receipt by the Council of the current AFSS, the Council shall follow internal process "Non-submission of AFSS – Issue Penalty Notice".
- 5.11 The Council will issue a maximum of five (5) subsequent Penalty Notices.
- 5.12 If no AFSS is received within 5 weeks of the anniversary date, the Council officer shall refer the matter to the Fire Safety Officer for review to ascertain what further action would be required for example, fire order, legal action, inspection, etc. as laid out in process "Non-submission of AFSS – Issue Penalty Notice".

Rescinding a Penalty Notice

- 5.13 In circumstances where the Council has (for whatever reasons) issued a Penalty Notice that it should not have otherwise issued, the Penalty Notice should be withdrawn or rescinded. There should be no exercise of discretion if the Penalty Notice should not have been issued. The Council must withdraw or rescind the Penalty Notice.
- 5.14 Matters that should cause the Council to withdraw or rescind the Penalty Notice include:
1. The Element of the offence are not sound
 2. The Penalty Notice was not issued upon the correct person
 3. The Penalty Notice has not been issued correctly.
- 5.15 It is within Council power to withdraw a Penalty Notice if upon representations or other review of the matter, it is determined that the offence is excusable. Such matters would include:
1. The AFSS is shown to have been supplied to the Council, but appears not to have made it to the correct team.
 2. The AFSS is shown to have been sent to the wrong Council.
- 5.16 The Council officer should initially use the referral sheet “Fire Safety Referral Penalty Notice referral”.
- 5.17 The Council officer shall then follow the internal process “Request to Rescind Penalty Notice”.

Changes in Substance to the Previous AFSS

- 5.18 It shall be the practice of the Council to only allow changes in substance to Council’s schedule by a newly submitted AFSS, as laid out in internal process “Changes in Substance to an Annual Fire Safety Statement” by:
1. Issuing a Fire Safety Order under Division 9.3 of the Act
 2. Providing the owner with a Fire Safety Schedule reflecting the Essential Fire Safety Measures in the building and as contained in Council records.
- 5.19 Where the Council receives an AFSS which may include additional, removed or deleted Fire Safety Measure or altering of Council’s schedule in any substantial format, Council will carry out a review of the building and determine one of the above approaches under the internal process laid out in “Changes in Substance to an Annual Fire Safety Statement”.

Council will, in all changes in substance to the previous AFSS, submit to the owner a letter (Essential Fire Safety Schedule letter) with the new schedule attached.

Annual Fire Safety Statement not received

- 5.20 Council will confirm the Fire Safety Schedule associated with a building that currently does not have a fire safety application record, as laid out in internal process “AFSS not previously submitted” by:
1. Issuing a Fire Safety Order under Division 9.3 of the Act
 2. Providing the owner with a Fire Safety Schedule reflecting the essential fire safety measures in the building and as contained in Council records.

- 5.21 Council will carry out a review of the building and determine one of the above approaches under the internal process laid out in “AFSS not previously submitted”.
- 5.22 In formulating the Fire Safety Schedule for the building, Council will submit to the owner a letter (Essential Fire Safety Schedule letter) with the new schedule attached.

Removing the Requirement for Submission of AFSS

- 5.23 In circumstances whereby Council is notified by an owner of a building that an AFSS is not required to be submitted for a building to which Council currently holds a schedule, for whatsoever reason other than it is a Crown building, then the Council officer should refer to the internal process documented in “Making Essential Services File Historic”.

Fire Safety Referrals

- 5.24 If there are issues pertaining to deficient fire safety within a building, as opposed to affects on a Fire Safety Schedule, then the matter will be referred to the Fire Safety Officer to undertake an inspection and determine whether a fire order should be issued upon the owner. Reference should be made to internal process “AFSS - Referrals to other sections”.
- 5.25 Where there are issues relating to submission of an AFSS or altering of existing Fire Safety Measures to properties where Council has a current schedule; this matter will be referred to the Fire Safety Officer for review.

Development Consents and use Referrals

- 5.26 It shall be the practice of Council that if there is unauthorised use or unauthorised building works, then the matter will be referred to Compliance to undertake an inspection and issue the appropriate orders under the Act. Reference should be made to internal process “AFSS - Referrals to other sections”.

Crown Land

- 5.27 Buildings owned by the Crown and occupied must provide the Council with an AFSS provided there has been a schedule. Where no schedule exists further legal clarification may be needed.
- 5.28 It shall be the practice of the Council that buildings are not ‘vacant’ if they are unoccupied and contain FSM. Therefore, for this purpose, an AFSS will be required to be submitted. Reference should be made to the internal process laid out in “Crown Land Annual Fire Safety Statements”.

6 REVIEW

- 6.1 This policy will be reviewed every four years or earlier as necessary if:
1. legislation requires it, or
 2. Council’s functions, structure or activities change