

Fire Safety Corporate Protocol

PROCEDURE ADMINISTRATION

Dates	6 August 2019
Approved by	Executive Team (EXE062-19)
Procedure Owner	Manager Development and Building
Who is responsible for implementing this Procedure?	Coordinator Building Certification Senior Building Surveyor (Fire Safety)
Related Documents	N/A
Appendices	N/A
References & Legislation	Environmental Planning and Assessment Act 1979 Local Government Act 1993 Building Product (Safety) Act 2017 State Environmental Planning Policy (Exempt and Complying Codes) 2008 State Environmental Planning Policy (Affordable Rental Housing) 2009 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Building Professionals Act 2005 Strata Schemes Management Act 2015
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1. PURPOSE

The main objectives of this Corporate Protocol are to:

- (a) Assist premise owners to meet their legal obligations regarding the implementation and maintenance of fire safety measures.
- (b) 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.
- (c) Promote fire safety awareness and compliance in buildings within Georges River LGA.

2. STATEMENT OF PROCEDURES

Council will undertake the following activities:

- (a) **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.
- (b) **Reminder Notification**
Owners of premises registered on Council's register will generally be sent written notification approximately two (2) months prior to the due date of the fire safety statement as a reminder of the request to submit an annual 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.
- (c) **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 adopted Fees and Charges Schedule.
- (d) **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 standardised 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 requirements 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.
- It is not signed and dated by the owner, owner's agent or endorsed with the common seal by the Owners' Corporation.

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

In the case of strata/stratum/community 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 areas, 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.

(e) **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.

Therefore, if the statement is not submitted by the due date, enforcement action may be taken without further notice. The enforcement includes the issuing of Penalty Infringement Notices (PINs) and/or emails, letters, and for higher risk properties - fire safety notices and orders. Council's Penalty Notice Corporate Protocol 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 of NSW.

(f) **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 the 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. Further details are to be provided on how the building owner will manage/mitigate the risk. This request must be lodged prior to the due date of the annual fire statement and submitted via:

Email: mail@georgesriver.nsw.gov.au

Mailing address: PO Box 205, HURSTVILLE BC NSW 1481

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

(g) **Enforcement Proceedings**

Council, in deciding whether to take enforcement action, will base the decision on the provisions of the Georges River Council Enforcement Policy and applicable legislative provisions.

The process will be based on available evidence and individual circumstances. Generally at the conclusion of an investigation, Council may:

- Take no action.
- Issue verbal advice/warning.
- Issue a formal letter.
- Issue a Penalty Infringement Notice.
- Issue Notices/Orders.
- Commence legal proceedings.

(h) **Proactive Fire Safety Activities**

Council will engage in various proactive fire safety activities to ensure buildings within the LGA continue to meet an acceptable level of fire safety. Priority will be given to buildings that pose the greatest risk to human safety due to the way they are used and the number of people they accommodate, or where maintenance of fire safety measures are not identified on Council's Register. Buildings of significance include boarding houses, hotels, aged care facilities, schools, clubs, pubs, function centres 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 which may generate notices/orders being issued.

Council conducts random audits of high risk premises in concert with other Government agencies including NSW Police, Fire & Rescue NSW, Federal Police and Immigration. The joint authority audit inspections are a pro-active educational exercise as well as an enforcement program where significant breaches of planning rules and legislation attract enforcement action by Council.

Council may conduct fire safety checks of existing Class 1b to 9 buildings. Council may charge a fee for conducting fire safety inspections as per Council's adopted fees and charges schedule. Alternately, Council may require an assessment report of the building by an independent and accredited certifier/building code consultant. It is expected a consultant report compares the level of fire safety in the building against the current requirements of the National Construction Code and if there are deficiencies, make recommendations as to 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 to meet National Construction Code requirements or improve the building's essential fire safety measures. Building design and the level of risk will vary from case to case and will influence the upgrade requirements, priorities and expenses.

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

- 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.
- Maintenance or use of the premises constitutes a significant fire hazard.

(i) **Fire Safety Orders – Section 9.34 Table to Part 2 of Schedule 5 EPA Act 1979**

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. Council can also consider Evacuation Orders where the building presents a high risk to human safety. Where a lesser fire risk is evident or more extensive works are required, a Notice of proposed 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. The representations need to be completed by the recipient of the Notice/Order, or the person entitled to act on their behalf. The representations need to be received by Council prior to the expiry date specified on the Notice or Order. Where an extension in time is requested to complete work, the recipient of the Notice/Order will need to include a program of works (inclusive of scheduled completion dates for staging of any works). All completed works will require sign off certification from the individual contractors who carry out the works with these certificates forming part of the final fire safety certificate on completion.

Given the nature of works and the complexity associated with major fire upgrades eg. Shopping Centres, the works required may take considerable time to complete. In these cases there is a need to stage the schedule of works. Council will require the active fire-fighting systems such as first attack equipment (eg. fire hose reels, portable fire extinguishers and smoke detection and alarm systems) a priority and ensure that these works are completed in the first stages of the work schedule.

Notice will be provided regarding the outcome of representation requests. Depending on the circumstances the outcome may include:

- Not to Proceed with Order;
- Proceed to Issue Order per terms stated in Notice of Proposed Order;
- Issue Modified Order;
- Revoke the Order;
- Extension of time to comply with Order granted; or
- Terms of Order stand and matter referred for legal action in the event they are not complied with.

(j) **Forms**

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

- Annual Fire Safety Statement;
- Fire Safety Certificate; and
- Request for Stay of Penalty Infringement Notice.

3. OTHER ASSOCIATED FIRE SAFETY INFORMATION

(a) **Responsibility for Property**

Fire safety is the responsibility of all property owners, property managers, tenants, and business operators who own, occupy or manage buildings in the area ranging from various types of residential properties to commercial, retail and industrial premises.

It is the responsibility as a building owner to ensure that:

- (i) All fire safety measures are inspected by a *competent fire safety practitioner* (visit the NSW Planning and Environment website for guidelines) to ensure the measures are being maintained to the appropriate standard of performance;
- (ii) Fire Safety Statements are displayed in a clearly visible prominent position inside the building such that Council or Fire and Rescue NSW officers can see them when inspecting the premises; and
- (iii) All exit doors are kept in good working condition and corridors or other paths of egress are kept clear of any obstructions.

These measures aim to prevent the spread of fire and to save property and lives.

The Fire and Rescue NSW website also has valuable information about home fire safety including a fire safety checklist.

(b) **Smoke Alarm Regulations**

The *Building Legislation Amendment (Smoke Alarms) Act 2005* and the *Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006* commenced in NSW on 1 May 2006. The legislation refers to residential and certain shared accommodation across NSW and requires:

- (i) The installation of one or more smoke alarms in buildings in which persons sleep;
- (ii) Smoke alarms installed in such buildings must be operational; and
- (iii) Persons do not remove or interfere with the operation of smoke alarms installed in such buildings.

(c) **Residential Accommodation, Boarding Houses, Shared Accommodation**

(i) Residential Accommodation

- Detached houses, terrace houses, town houses, villa units (Class 1a buildings);
- Apartments, home units, flats (Class 2 buildings);
- Caretakers flats, single residences above shops (Class 4 parts of buildings); and
- Relocatable homes, e.g. manufactured homes and moveable dwellings, but not tents, camper vans, caravans or the like.

(ii) Boarding Houses/Shared Accommodation

- Small boarding houses, guest houses, hostels; backpackers accommodation; bed and breakfast accommodation (Class 1b buildings not more than 12 persons with a total floor area not exceeding 300m²).
- Large boarding houses, guest houses, hostels, backpacker accommodation; residential parts of hotels, motels, schools, health care buildings, detention centres; certain residential accommodation for the aged, children and people with disabilities (Class 3 buildings more than 12 persons).
- Hospitals and nursing homes (Class 9a health care buildings).

If the onsite development applies to any of the above, a minimum of one working smoke alarm on each level of the property is required.

The NSW State Government allows building owners to install either hard-wired smoke alarms, or ones that are battery-only operated in certain existing buildings. However, the *Regulation* amendment does not override a local Council's role under the *Environment Planning and Assessment Act 1979* when Council has to consider a development application where changes are proposed to existing buildings.

The *Regulation* amendment does not override the need for a new building or an addition/alteration to an existing building to comply with the National Construction Code (NCC). Construction Certificates and Complying Development Certificates for building work cannot be issued unless the proposed works demonstrate compliance with the NCC which requires the installation of a hard-wired battery backup smoke alarm. The *Regulation* amendment also does not prevent a Council from issuing a fire safety upgrade order on a building to which the *Regulation* amendment applies, because if an existing building is subject to a current order, the *Regulation* amendment does not override that order.

If any residential premises (i.e. dwelling, unit, hotel, motel, boarding house, backpackers etc.) ever come under the scrutiny of Council through an application that is submitted such as a Development Application, Complying Development Certificate, Building Certificate, etc, then that application will be subject to an

assessment under the NCC. If that occurs then the requirements of the NCC will be applied to that assessment and it will be insisted at that time that the NCC requirements for a “hard-wired” smoke alarm system which is to be interconnected within dwelling’s or SOU’s compatible with that particular building use be provided.

Similarly, these same requirements will be applied to buildings that Council audits for fire safety purposes and then follows-up with the issuing of a fire safety order. Basically, more stringent BCA requirements will be applied to any buildings that attract Council's involvement for any sort of assessment or audit.

(d) **Fire Safety Certificates**

A final Fire Safety Certificate is a certificate which is issued once the installation of new essential fire safety measures – either as a result of a fire order or new building construction works – have been completed.

The Certificate is supplied to Council as part of a Fire Order upgrade or as part of an Occupation Certificate application prior to the occupation of a building.

A final Fire Safety Certificate is only required:

- Before the issue of a final Occupation Certificate under the *Environmental Planning and Assessment Regulation 2000*; and
- If a Fire Safety Order has been issued in relation to a building or premises.

A copy of the Fire Safety Certificate is also to be forwarded to Fire and Rescue NSW and a copy must be prominently displayed in the building.

Upon endorsement of a Fire Safety Certificate by Council or receipt from a Private Certifying Authority, the Fire Safety Certificate is added to Council’s Annual Fire Safety Statement Register.

(e) **Essential Fire Safety Measures**

Essential fire safety measures are any measures that are installed in a building to ensure the safety of persons using the building in the event of fire. The *Environmental Planning and Assessment Regulation 2000* contains a list of statutory fire safety measures that may have been incorporated into the building to ensure the safety of the occupants within the building in the event of a fire or other emergency, including:

- Access panels, doors and hoppers to fire-resisting shafts
- Automatic fail-safe devices
- Automatic fire detection and alarm systems
- Automatic fire suppression systems
- Emergency lifts
- Emergency lighting
- Emergency warning and intercommunication systems
- Exit signs
- Fire control centres and rooms
- Fire dampers
- Fire doors

- Fire hose reel systems
- Fire hydrant systems
- Fire seals protecting openings in fire-resisting components of the building
- Fire shutters
- Fire windows
- Lightweight construction
- Mechanical air handling systems
- Perimeter vehicle access for emergency vehicles
- Portable fire extinguishers
- Safety curtains in proscenium openings
- Smoke alarms and heat alarms
- Smoke and heat vents
- Smoke dampers
- Smoke detectors and heat detectors
- Smoke doors
- Solid core doors
- Standby power systems
- Wall-wetting sprinkler and drencher systems
- Warning and operational signs

In the majority of cases, building regulation such as the National Construction Code (NCC) requires the installation of essential fire safety measures.

Council may request other items of equipment or methods of construction, not part of a typical list of essential fire safety measures, to ensure the safety of persons in a building in the event of fire, or the prevention of fire or to prevent the spread of fire.

Council may require the installation of essential fire safety measures or the fire safety upgrading of buildings in the following instances:

- Development Applications/Complying Development Certificates for Building Works
 When a Development Application for works involving the rebuilding, alteration, enlargement or extension of an existing building is submitted to Council for approval, the application will be assessed for compliance with current building regulations (i.e. the NCC). Council will determine and nominate the essential fire safety measures to be installed as required by the regulations and will inform the applicant via placing conditions on the development consent. At this same stage, pursuant to Clause 94 of the *Environment Planning and Assessment Regulation 2000*, Council also has ultimate discretion to decide whether it would be appropriate to require the existing part/s of the building to also be brought into total or partial conformity with the NCC. Clause 132 of the EPA Regulation applies to development for which a Complying Development Certificate is sought and requires that development standards applicable to the development be considered such as that the building will contain measures that are adequate in the event of fire, to facilitate safe egress of persons from the new part of the building and the fire protection and structural capacity of the building will not be reduced by the new work.

- Development Application/Complying Development Certificate for Change of Use
Where the use of an existing building is proposed to be changed, but the applicant does not seek the rebuilding, alteration, enlargement or extension of the building, Council must still consider the consequences to the safety of persons proposed to occupy the building as a result in the change of circumstances and purpose for which the building will function. In considering the change of use under Clause 93 for Development Applications or Clause 131 for Complying Development Certificates, Council will determine that the building will comply with Category 1 fire safety provisions for the proposed new use in addition to matters referred to above in building works situations and to nominate any essential fire safety measures that are needed to be installed, thereby requiring building work to be carried out even though none is proposed as part of the application.
- Complying Development/Division 6.2 Certificate Notification of Significant Fire Safety Issues
A Certifying Authority/Principal Certifier is required to give written notice to the Council when an application for Complying Development/Division 6.2A Certificate is received by the Certifying Authority/Principal Certifier under Clauses 129D and 162D of the EPA Regulation 2000 and where the Certifying Authority/Principal Certifier becomes aware of significant fire safety issues with any part of the building and it relates to Classes 1b through to 9 type buildings.
- Fire and Rescue NSW Request for Inspection by Officer of Council
Pursuant to Section 9.32 of the EPA Act 1979 an Authorised Officer from Fire and Rescue NSW must send a report of any inspection carried out under this section by Fire and Rescue NSW to the Council. The report given at the written request of the Commissioner of Fire and Rescue NSW must be considered by Council and inspection must be carried out by the Council. The Council must send a copy of the report of the inspection to the Commissioner.
- Liquor Licence Applications
Council is required to view and provide comment on applications for Liquor Licences lodged with the Office of Liquor and Gaming. The role involves considering the impacts of the proposed licence with regards to patronage numbers, fire safety, hours of operation and other potential impacts. Existing Development Consents and Complying Development Certificates need to be reviewed when considering these application licence types.

(f) **Annual Fire Safety Statements**

All building owners and property managers must maintain essential fire safety measures in their buildings, as outlined in the *Environmental Planning and Assessment Regulation 2000*.

There is no requirement to submit an annual fire safety statement for single dwelling houses classified as 1a under the National Construction Code. Typically, Class 1a refers to single dwelling houses, terraces or villa houses.

Clause 182 of the *Regulation* requires the owner of a building to maintain each essential fire safety measure in that building in accordance with relevant standards of performance and those standards are usually nominated by Council or an accredited certifier in a previous Development Consent, Construction Certificate or Complying Development Certificate or a previous Fire Safety Order that was issued upon that property.

This Clause places ultimate responsibility for the maintenance of fire safety measures on the building owner.

Apart from legal requirements, other vital reasons for maintaining fire safety measure include:

- To ensure safety of building occupants;
- To preserve the function and performance of fire safety systems and equipment;
- To maintain and protect assets – proper preventative maintenance can save money; and
- To avoid business interruption and disruption to activities/operations in the event of fire.

An annual fire safety statement is a statement issued by or on behalf of the owner of a building to the effect that:

- (i) Each essential fire safety measure specified in the statement has been assessed by a competent fire safety practitioner and was found, when it was assessed, to be capable of performing:
 - a. In the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
 - b. In the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented, and
- (ii) The building has been inspected by a properly qualified person and was found, when it was inspected, to be in a condition that did not disclose any grounds for a prosecution under Division 7 of the *Environmental Planning and Assessment Regulation 2000*.

Generally, property owners may have several contractors attending the premises at specific intervals throughout the year to provide a maintenance service for several different fire safety measures.

Each contractor should then provide certification in relation to the assessment they have carried out listing the specific measure/s they have serviced and referencing a particular Standard of Performance that the installed measure is achieving. Once the property owner has obtained all the necessary documentation, the detail is then consolidated and transferred collectively onto the one document known as an Annual Fire Safety Statement.

An Annual Fire Safety Statement for a building must deal with each essential fire safety measure in the building.

It must be submitted within 12 months after the date on which the previous Statement or the Final Fire Safety Certificate was given, and it must be lodged within 3 months of the date of inspection and assessment. The Statement must be submitted to Council and the Commissioner of NSW Fire and Rescue.

What will happen if an Annual Fire Safety Statement is not submitted?

Council treats fire safety very seriously. Where required under legislation to provide a Statement, the owner is responsible to ensure lodgement, regardless as to whether the property is tenanted or vacant.

Consideration is given to the following:

- Incomplete or late Annual Fire Safety Statements may result in a fine.
- If the Annual Fire Safety Statement is not completed satisfactorily a property owner will be required to submit a corrected Statement.
- Failure to provide an Annual/Supplementary Fire Safety Statement can result in on-the-spot fines ranging from \$1,000 to \$4,000 per week.
- If a fine is issued, it will not excuse property owners from the need to submit an Annual Fire Safety Statement.
- If property owners fail to meet the statutory requirements, Council will take legal action against the property owner and/or will continue to issue On-The-Spot fines. "*Failure to maintain essential fire safety measures*" (which is a separate offence) can also result in a fine. The penalty in this instance is from \$3,000 to \$6,000 and Council will impose this as necessary.

(g) **Vacant Buildings**

All fire safety measures listed on the Annual Fire Safety Statement and Fire Safety Schedule including egress paths and exits must be maintained at all times even when the building becomes vacant.

Vacant buildings should also be the subject of regular security checks and ongoing maintenance to prevent the premises falling into disrepair and possible unauthorised access by squatters and vandals. Maintaining the fire safety measures and ongoing maintenance will promote the safety of persons who are nearby the premises or who access vacant buildings (eg. security, Fire and Rescue NSW, Police, building owners, Council staff, real estate agents, etc.)

When called to a vacant building under fire, Fire & Rescue NSW officers need be satisfied that the existing fire safety measures located upon the premises are to an acceptable standard for fire-fighting purposes.

(h) **New Buildings**

A Fire Safety Schedule will be issued with the Construction Certificate or Complying Development Certificate listing the essential fire safety measures that are to be installed in the building. A Fire Safety Certificate must be submitted prior to the issue of an Occupation Certificate. This certifies that each of the specified essential

fire safety measures are capable of operating to the performance listed in the Fire Safety Schedule. Subsequently, an Annual Fire Safety Statement must then be submitted to Council and Fire and Rescue NSW as well as prominently displayed within the building every year.

(i) **Old Buildings**

Old buildings and buildings built before the current National Construction Code standards are not exempt from fire safety requirements and it is the obligation of the owner to ensure that sufficient fire safety measures are in place.

It is necessary for owners to work with Council to achieve acceptable fire safety compliance and to undertake voluntary upgrades as needed by engaging the services of private fire safety consultants and engineers. Where current NCC compliance is not achievable without substantial demolition and/or redevelopment, alternative solutions may be proposed to Council by accredited professionals who have undertaken a detailed assessment of the building.

Owners of heritage buildings can contact the Heritage Council of NSW for guidance with fire safety compliance.

(j) **Aged Care Facilities**

In August 2012, the NSW State Government announced it would become mandatory for all residential aged care facilities to have an automatic sprinkler system installed. The new laws include the *Environmental Planning and Assessment (Fire Sprinkler Systems) Regulation 2012*, the *State Environmental Planning Policy (SEPP) Amendment (Fire Sprinkler Systems) 2012* and the *Fire Sprinkler Standard*.

The NSW State Government encouraged all facilities without a sprinkler system to install them as soon as possible to improve the safety of residents. Existing facilities were required to install a sprinkler system within 18 months, however some providers may have requested three years to complete the installation. For more information see the NSW Planning and Environment website – Fire Sprinklers in Aged Care Facilities.

(k) **Boarding Houses – Class 1B and Class 3 Buildings**

An annual boarding house inspection program is operating to ensure that all approved and known places of shared accommodation (boarding houses) are inspected and regulated. The inspections attract fees as adopted by Council.

These premises either have consent/approval (Development Application, Building Applications, Construction Certificates) and/or previous repealed Ordinance 42 *Local Government Act 1919* licenses. Please note that boarding house premises are no longer licensed under Ordinance 42.

Council Officers will conduct inspections of boarding houses either unannounced or by appointment depending on the circumstance and risk factors. Council assesses the premises for compliance and adequacy with the requirements of the National Construction Code, the *Environmental Planning and Assessment Act 1979*, and the *Local Government Act 1993*, which refer to such things as the number of

boarders/rooms, light and ventilation, kitchen facilities, general cleanliness and hygiene, fittings and fixtures, furniture, consent requirements to ensure compliance with the approval, and – in particular – fire safety.

If problems are found during the inspection, a Fire Safety Notice can be issued by Council. This will normally be followed by an Order requiring the owner or operator to meet their obligations with respect to fire safety requirements. Council Officers can also give “On-The-Spot” penalties to individuals who commit fire safety offences. The building owner is responsible to ensure that all required fire safety measures installed within the boarding house are maintained so they perform to the required standard during a fire emergency. Every boarding house is required to have suitable fire safety measures.

Each year boarding house owners are required by Regulation to provide an Annual Fire Safety Statement (AFSS) to Council and to NSW Fire and Rescue.

The implementation of good fire safety management practices, which involves the owner, operator, manager, agent and occupants, can reduce the likelihood of an outbreak and impact of fire.

Planning/zoning requirements as to where boarding houses can be permitted are regulated by Council's Local Environmental Plans (LEPs). The type of construction and level of fire safety is regulated by the National Construction Code (NCC). Council's controls, plans and policies provide an urban planning framework to guide development in the Local Government Area. Planning controls can be in the form of LEPs, Development Control Plans (DCPs), State Environmental Planning Policies (SEPPs) such as the *Affordable Rental Housing SEPP 2009*, as well as Council-specific codes, strategies and policies.

The following provides an overview of the *Boarding House Act 2012*:

- The *Boarding House Act 2012* and the *Boarding House Regulations 2013* were passed as a whole-of-Government response to concerns about the rights and safety of people living in boarding houses.
- The *Boarding House Act* requires operators of two types of boarding houses to register their boarding house with NSW Fair Trading. The two types of boarding houses that need to be registered are:
 - "General" boarding houses – boarding premises of 5 or more residents, and
 - "Assisted" boarding houses – boarding premises where 2 or more residents have "additional needs".

Once boarding houses have been registered with Fair Trading, Councils must inspect the premises within 12 months. The *Boarding House Act* provides Councils with new powers to gain access to boarding houses in order to conduct the initial compliance inspection. The inspection is to ensure the premises comply with the Council's own policies and existing laws including the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979 (EPAA)*.

The following links provide information concerning boarding houses:

- Affordable Rental Housing SEPP: See the Department of Planning website.
- Affordable Housing: See the Family and Community Services (FACS) website.
- *Boarding Houses Act 2012*: Boarding house operators must register with NSW Fair Trading under the *Boarding Houses Act 2012*. For more information about registration, or to register, please see the NSW Fair Trading website.
- In addition, the *Boarding Houses Regulation 2013* provides standards for assisted boarding houses and also sets out some additional requirements for the Boarding Houses Register. Please see the Family and Community Services (FACS) website for further information.

(l) **Fire Safety Upgrade Orders**

As part of its internal fire safety upgrading program, Council may, at any time, assess the fire safety level of an existing building and if it is considered necessary, order the owner/s to carry out upgrading works and install essential fire safety measures compatible to the building use and inherent with the risks involved as part of an overall risk management strategy.

Existing Buildings

If there are existing essential fire safety measures in a building and the property owner:

- Intends to carry out work for which development consent or a Complying Development Certificate is required, or
- Intends to change the use of the building for which consent is required

a suitably qualified competent person should be engaged in order to research and verify the design standards to which those measures were originally installed. Once this has been undertaken, verification in the form of a Fire Safety Audit Report is to be forwarded to Council's Assessment Department. Assuming approval is granted, Council will nominate (via either consent conditions and/or a fire safety schedule), any additional essential fire safety measures required in the building and the appropriate design standard to which they must be installed.

New Buildings

If property owner intend to construct a new building, approval is required. Forming part of any Construction Certificate and Complying Development Certificate that is issued, Council or a private certifier will nominate the essential fire safety measures required and the design standards to which they must be installed.

(m) **Firework Events**

A pyrotechnician's licence or fireworks (single-use) licence is issued by SafeWork NSW by way of legislation known as the *Explosives Regulation 2005*.

The Regulation requires that, as a condition of each licence issued, the licensee must notify each of the following authorities of an intention to use any fireworks, distress signal or model rocket propellant device:

- SafeWork NSW – at least 7 working days before the fireworks, signal or device is to be used;
- Council – at least 7 working days before the fireworks, signal or device is to be used;
- Local Area Commander of Police – at least 2 working days before the fireworks, signal or device is to be used; and
- Fire and Rescue NSW – at least 2 working days before the fireworks, signal or device is to be used.

While Council must be given notice, Council has no power to approve the use of fireworks – however Council may object to or impose conditions on their use. After receiving notification of the intended use of fireworks, Council may decide to object to the use of the fireworks, and inform the pyrotechnician and SafeWork NSW of this decision. The fireworks display must not proceed unless the licensee has been able to resolve any objections by Council.

Issues that Council may take into consideration when deciding whether to object to or impose conditions may include:

- Appropriateness of the location, e.g. proximity to residences or hospitals.
- Reason for the display, e.g. is the display in the public interest?
- Types of fireworks, e.g. Aerial fireworks may have greater impact on surrounding areas than ground fireworks.
- Impact on any affected residents and businesses.
- Impact on animal welfare.
- Public liability issues.
- Noise.
- Pollution.
- Public nuisance.
- Appropriate notification to neighbouring properties. Council may need to decide what it believes to be a reasonable area of coverage for notification, and how this should be done by the applicant, e.g. Letterbox drop, media advertisement.
- Proposed procedure for disposal of spent fireworks.
- Whether appropriate crowd and traffic management issues have been addressed where the display is likely to draw crowds.
- Whether a usage fee is charged in cases where Council land assets are utilised.
- Any other local conditions that Council may consider relevant.

All these matters are covered by a self-assessment fireworks display checklist, which is available on the SafeWork NSW website.

Council may request the completed checklist to be submitted to assist with review of the notification. In the event of a late notification being received by Council, then either of the following will be done:

- Council will notify SafeWork NSW no less than 2 working days prior to the event that it raises an objection, or

- Council will provide SafeWork NSW with written confirmation that no objections are raised, or
- Where Council is unable to provide SafeWork NSW with written confirmation that there are no objections due to the late notification, then Council may object on the grounds that there has been insufficient time to assess the notification.

Some parts of the Local Government Area are bounded by maritime property. If any fireworks events are proposed to be held on maritime property then the NSW Waterways Authority must also be contacted and notified of the proposed display, with any approvals to also be obtained, if required. For further information, please contact SafeWork NSW.

(n) **Fire Safety – External Cladding on Buildings – Legislative Changes**

Following the tragic fire at the Grenfell Tower in London in 2017 and the fire at the Lacrosse Building in Melbourne in 2014, new laws have been enacted for buildings with combustible cladding. The laws are part of a NSW Government response to the fire safety risks posed by external combustible cladding.

These laws are the:

- *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2018;*
- *State Environmental Planning Policy Amendment (Exempt Development – Cladding and Decorative Work) 2018;* and
- *Building Products (Safety) Act 2017.*

The new laws commenced on 22 October 2018 and the product use ban on aluminum composite panels (ACP) under the *Building Products (Safety) Act 2017* commenced on the 15 August 2018.

Under the Regulation, owners of certain buildings with external combustible cladding are required to register their building with the NSW State Government through an online portal. For buildings occupied before 22 October 2018, the deadline for registration was 22 February 2019. Owners of new buildings are required to register their building within four months of the building first being occupied.

Cladding Regulation - Building Types

The Regulation applies to the following building types (both new and existing buildings) of two or more storeys:

- Residential apartment buildings;
- Other types of residential buildings where unrelated people sleep. For example, hotels, boarding houses, backpackers, student accommodation;
- Aged-care buildings; hospitals and day surgeries (and any associated single dwellings within the building); and
- Public assembly buildings. For example, theatres, cinemas, schools and churches (and any associated single dwellings within the building).

Cladding Regulation - Cladding Types

The Regulation applies if any of the above buildings have external combustible cladding made of the following materials:

- Metal composite panels, including products that consist of aluminum, zinc, or copper outer layers and a core material; or
- Insulated cladding systems including systems comprised of polystyrene, polyethylene, polyurethane, and polyisocyanurate.

There are also new provisions in the Regulation that require referral of certain 'alternative solutions' (under the Building Code of Australia) involving external combustible cladding to Fire and Rescue NSW.

Cladding Regulation - Council's Role

Building owners are responsible for ensuring their premises are maintained safe for occupation and that essential fire safety measures are in working order – amendments to the Exempt provisions of a number of Statement Environment Planning Policies will enable portions of work to be undertaken to buildings with combustible cladding without the need for DA approval.

For those developments currently under construction recent changes to the Building Code of Australia provisions provides Certifiers (whether Council or Private) relevant provisions to enable them to determine if new cladding products meet building code requirements.

For those buildings that have been constructed, under the legislative amendments, Council will gain additional powers to Direct Property owners to register their properties on the NSW State Government Portal.

Rectification will follow Council's Combustible Cladding Standard Operating Procedure.

Council Certification (Cladding)

Georges River Council's Certifiers will only support cladding materials that are "deemed to satisfy" under the provisions of Clause 1.9 of the National Code of Australia (Volume 1, Class 2-9 Buildings). Only materials strictly complying with these requirements will be supported in the issue of Construction Certificate and Complying Development Certificate approvals.

DEFINITION OF TERMS

Term	Meaning
<u>Annual Fire Safety Statement</u>	An Annual Fire Safety Statement is issued every 12 months after the date of issue of the Final Fire Safety Certificate with the check of the essential fire safety measure being undertaken within 3 months of the issue of the Statement.
<u>Essential Fire Safety Measure</u>	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.
<u>Essential Service Details</u>	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.
<u>Fire Safety Certificate</u>	<p>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 National Construction Code requirements and Australia Standards.</p> <p>It is the first certificate issued after installation of essential fire safety measures following completion of:</p> <ul style="list-style-type: none"> • 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.
<u>Fire Safety Schedule</u>	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.
<u>Fire Safety Statement</u>	Fire Safety Statement means an Annual Fire Safety Statement or a Supplementary Fire Safety Statement.
<u>Supplementary Fire Safety Statement</u>	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.
<u>Competent Fire Safety Practitioner</u>	As described under Clause 167(A) of <i>Environmental Planning and Assessment Regulation 2000</i> . 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
<u>Category 1 Fire Safety Provisions</u>	Means the following provisions of the National Construction Code (NCC) namely EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume One of the Code and P2.3.2 in Volume Two of that Code.
<u>External Combustible Cladding</u>	In relation to a building means: (a) Any cladding or cladding system comprising metal composite panels including aluminium, zinc and copper that is applied to any of the building's external walls or to any other external area of the building; or (b) Any insulated cladding system including a system comprising polystyrene, polyurethane or polyisocyanurate that is applied to any of the building's external walls or to any other external area of the building
<u>Fire Commissioner</u>	Means the commissioner of Fire and Rescue NSW.
<u>Fire Protection and Structural Capacity</u>	Of a building means: (a) The structural strength and loadbearing capacity of the building; and (b) The measures to protect persons using the building and to facilitate their egress from the building in the event of fire; and (c) The measures to restrict the spread of fire from the building to other buildings nearby
<u>Fire Safety Order</u>	Means an Order of the kind referred to in Schedule 5 Part 2 of the Act and includes if an order is subsequently made under section Schedule 5 Part 4 of the Act, an order under that section.
<u>Building Work</u>	Is defined by the Act to mean any physical activity involved in the erection of a building.
<u>National Construction Code</u>	Means the document published by or on behalf of the Australian Building Code Board that is prescribed for purposes of this definition by the regulations together with: a) Such amendments made by the Board; and b) Such variations approved by the Board in relation to NSW.

	As are prescribed by the regulations.
<u>Provision for Fire Safety</u>	Means provision for any or all of the following: (a) The safety of persons in the event of fire; and (b) The prevention of fire; and (c) The detection of fire; and (d) The suppression of fire; and (e) The prevention of the spread of fire.
<u>Non-Conforming Building Products (NCBP)</u>	Means materials that claim to be something that they are not, do not meet required standards for their intended use and are marketed or supplied with the intent to deceive those who use them. Eg - A building product that is labelled or described as being non-combustible but which is actually combustible is a non-complying building product.
<u>Non-Compliant Products (NCP)</u>	Means materials or products used in situations where they do not comply with the requirements of the National Construction Code (NCC). Eg A building product that is combustible and described as such but is used in a situation where a non-combustible product is required under the NCC and is not fit for purpose and is a non-complying product.