

CORPORATE PROCEDURE

Procedure title:	Fire Safety in Buildings
Procedure number:	
Objective:	To improve the level of fire safety afforded to the occupants of buildings within City of Lismore
Link to community vision/service:	Best Practice Corporate Governance
Program Manager:	Manager Development and Compliance
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1. Introduction

Lismore City Council adopted a Policy “Fire Safety in Buildings” by resolution at its meeting on the 11 July 2017, which provided clear strategies as to how Council will conduct, not only its legislative requirements with respect to fire safety within existing buildings in the Lismore City Council area, but also its moral and ethical responsibilities to the occupants of those buildings to ensure that an adequate level of fire safety has been provided.

Council has previously been involved in the inspection and upgrading of a variety of buildings throughout the Lismore City local government area, many of which had been erected prior to the introduction of current building regulations. Some buildings have been identified to be in a condition that was deemed to be a danger to the occupants in the event of a fire and / or an emergency event. In these instances, Council has served a Fire Safety Order on the owner of the building requiring the building to be upgraded to provide a reasonable level of fire safety for the occupants.

Over the past seventeen (17) years Council has been fulfilling its legal obligations by endeavouring to maintain a regime which ensured the essential fire safety measures installed in buildings, are being maintained and serviced on a regular basis

It is important that this legislative function of Council is carried out in a responsible manner and with integrity. The community, quite rightly, expects that fire safety is dealt within the appropriate manner. This Procedure for the management of fire safety in buildings is to provide a solid platform for Council to undertake its responsibilities, compliance and enforcement. It will also assist the community and other stakeholders in understanding how Council goes about its work and manages its responsibilities in this area.

Council incurs costs in undertaking compliance and enforcement activities and there is a need to consider the long term financial sustainability of providing these services to the community in a cost effective manner. It is therefore important that these costs incurred by Council are not solely funded from Council’s general rate revenue and that appropriate administration and inspection fees, penalties and costs notices are utilised to recover the certain costs incurred by Council in undertaking these activities.

2. Preliminary

2.1 Name of the Procedure

This Procedure is named Procedural Guidelines for Fire Safety in Buildings.

2.2 Application of the Procedure

This Procedure applies to all lands in the Lismore City Local Government area.

2.3 Aims of the Procedure

To provide procedural guidelines for the administration of Council's Fire Safety Policy.

2.4 Objectives of the Procedure

The objectives of the procedure is:

- a) To manage Council's fire safety obligations in an efficient and effective manner that has proper regard to the level of resources allocated to this task;
- b) To establish criteria for the fire safety upgrading of buildings within the Lismore City local government area;
- c) To maintain an Essential Fire Safety Services Register for the submission of Annual Fire Safety Statements.

3. Legislative Requirements

3.1 Relevant Legislation

Council has legislative responsibilities and obligations in relation to ensuring the provision of reasonable levels of fire safety is provided to the occupants in buildings and to monitor and enforce compliance within resource allocations. When an inspection is undertaken of a building it is only for that building and consideration is given for preventing flames spreading to adjoining buildings. The adjoining buildings are not taken into account when undertaking this assessment.

These obligations are detailed in various legislation, including (but not necessarily limited to) the provisions of:

- *Environmental Planning & Assessment Act 1979;*
- *Environmental Planning & Assessment Regulations 2000;*
- *Environmental Planning & Assessment Amendment (Fire Safety & Building Certification) Regulations 2017;*
- *Heritage Act 1977;*
- *Local Government Act 1993;*
- *Local Government (General) Regulation 2005;*
- *Work Health and Safety Act 2011;*
- *Building Code of Australia;*
- *Relevant Australian Standards.*

In undertaking these obligations, Council staff are also required to take into consideration the following Council's Policies:

- Enforcement Policy;
- Enforcement and Compliance Guidelines;
- Enterprise Risk Management Policy;
- Risk Management Procedure;
- Pricing Policy—Fees and Charges.

3.2 Co-operation with NSW Fire Brigade and NSW Rural Fire Service.

Council currently works in cooperation with NSW Fire and Rescue to ensure a reasonable level of fire safety exists within buildings in the Lismore City Council LGA.

Under the *Environmental Planning & Assessment Act 1979, Section 118M*, Council is required to carry out a fire safety inspection if notified of a breach by the NSW Fire Brigade.

On receipt of notification Council will, as a matter of urgency, undertake to carry out the requested inspections. Where necessary Council authorised staff will carry out joint inspections with NSW Fire and Rescue.

Council supports the NSW Fire and Rescue and the NSW Rural Fire Services in their role.

4. Fire Safety Activities undertaken by Council

Fire safety refers to:

- precautions that are taken to prevent or reduce the likelihood of a fire, that may result in death, injury, or property damage;
- the safeguarding of the life of occupants of a building;
- alert occupants of a building to the presence of an uncontrolled fire;
- enable the occupants of a building to evacuate in a safe manner;
- to assist in minimising any damage in a building or to an adjoining building caused by a fire.
- affording community awareness and education.

To address the complexities of ensuring that an acceptable level of fire safety is provided to the occupants of buildings in the Lismore City Council local government area, Council has developed a fire safety program consisting of the following actions:

4.1 Investigation of fire safety matters.

The triggers for when an inspection of a building will be undertaken by Council to assess whether an acceptable level of fire safety is afforded to the occupants are:

- i) A Development Application is lodged for:
 - building work to be carried out on a building and / or
 - a change in building use;
- ii) Inadequate certification / maintenance of existing Fire Safety Measures identified from the submission of Annual Fire Safety Statements;
- iii) Fire safety breaches identified by Council Officers during the course of building inspections.
- iv) An application is lodged for the issue of a Building Certificate (Certificate of Compliance) under Section 149 of the *Environmental Planning and assessment Act 1979*;
- v) In response to a complaint being made by the public, tenants, Fire and Rescue NSW or NSW Rural Fire Service;
- vi) Owners of a building seeking advice on how to voluntarily upgrade their building;
- vii) The building is identified by Council as belonging to a high risk category (i.e., places of shared accommodation, Place of Public Entertainment, etc), following a fire safety risk analysis under the National Construction Code.

Lismore City Council will respond to all complaints and action requests regarding fire safety as a matter of high priority.

4.2 Maintenance of Essential Fire Safety Measures and the provision of Annual Fire Safety Statements (AFSS)

Fire safety measures installed within buildings have a vital function in protecting life and preventing injury to persons in an emergency event.

The importance of having procedures in place to ensure the operation of the essential fire or other safety measures installed within and around buildings will perform in the manner intended in the event of an emergency cannot be over- emphasised.

The importance of having appropriate fire safety procedures was highlighted in the NSW State Government “Lambert Review 2015”, which resulted in a wide range of fire safety reforms and introduced by the *Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017*, to improve fire safety in new and existing buildings.

Under the *Environmental Planning and Assessment Regulation 2000*, owners of buildings which have a Building Classification of Classes 1b, 2, 3, 4, 5, 6, 7, 8, 9 and respective sub-classes as defined under the Building Code of Australia, have clear obligations to ensure all the Fire Safety Measures installed in their building are being maintained in accordance with the relevant ‘Standard of Performance’ and are inspected on an annual basis by a suitably qualified *competent Fire Safety Practitioner*.

Upon completion of this assessment, the owner is to submit an Annual Fire Safety Statement to Council and Fire and Rescue NSW certifying all Fire Safety Measures are compliant.

In order to ensure the efficient and effective allocation of Council resources to this statutory obligation the system for ensuring Annual Fire Safety Statements are completed on an annual basis is detailed in the following sections.

4.2.1 Update Essential Services Register

Council’s existing Essential Fire Safety Register is to be updated and placed on Council’s webpage for public access.

The following documents will be able to be accessed for each building that has been registered with Council:

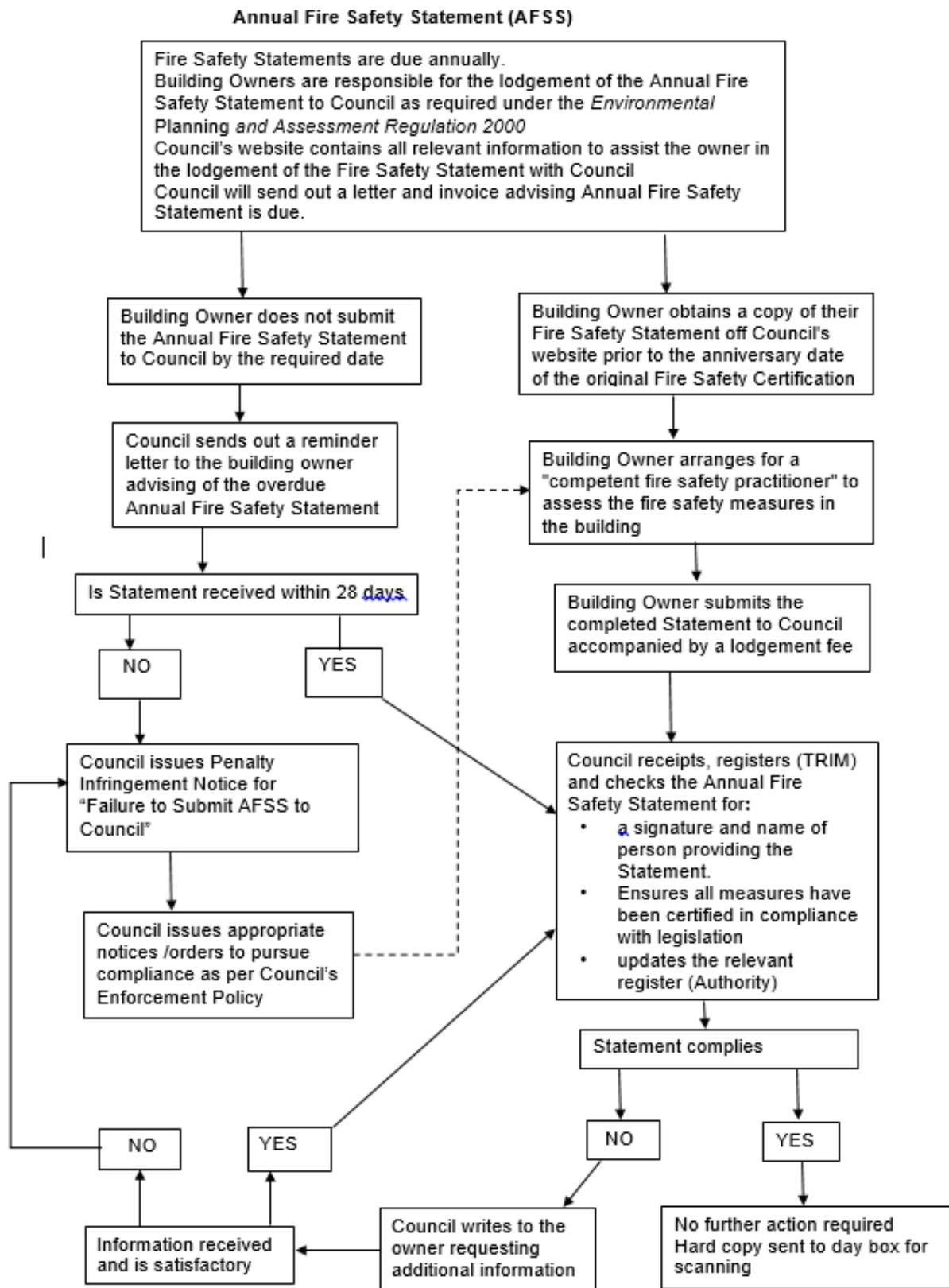
- Copy of the existing Fire Safety Schedule for each property;
- Template for the Annual Fire Safety Statement for each property;
- Template for Final Fire Safety Schedule;
- Template for Interim / Final Fire Safety Certificate;
- Information fact sheets to assist building owners to complete the Statement;
- A copy of the NSW State Government – “Selecting a competent fire safety practitioner – A guide for building owners who must issue fire safety statements”.

The following links will also be included to assist building owners in completing their legislative responsibilities:

- NSW Fire Brigade www.nswfb.nsw.gov.au
- Building Professionals Board NSW www.bpb.nsw.gov.au
- Fire Protection Association Australia www.fpaa.com.au
- Department Planning & Environment www.planning.nsw.gov.au

4.2.2 Procedure for the Issuing of Annual Fire safety Statements

In order to ensure the efficient and effective allocation of resources to this statutory obligation the system for ensuring Annual Fire Safety Statements are completed on an annual basis is as follows:



This process (including the issue of penalty infringement notices, orders and education programs) will eliminate multiple reminder letters being sent by Council and reinforce the obligation of building owners to ensure the annual checking of fire safety measures within a building, encourage compliance in a timely manner and identify Council has adopted appropriate procedures to improve fire safety.

This system identifies the role of accredited certifiers and suitably qualified fire safety engineering professionals in the process to assist building owners in obtaining appropriate fire safety advice. This has been exacerbated with recent legislative changes, placing significant emphasis on Councils and Certifiers to manage appropriately to meet Government and community expectations.

4.2.3 Non-compliance of Annual Fire safety Statements

Council does not have the resource or capability available to check the accuracy and content of each individual Annual Fire Safety Statement lodged with Council.

To ensure that a robust and transparent fire safety assessment of an existing building is undertaken the following methodology has been formulated:

- The receipting and processing of an Annual Fire Safety Statements as detailed in the flow chart in Section 4.2.2;
- Council to undertake an audit of no less than 12 (approx. 2.5%) randomly selected Annual Fire Safety Statements annually, to ensure they accurately identify the fire safety measures actually installed within the building and the submitted statement satisfies statutory requirements.

4.3 Fire Safety Audit of Buildings and Voluntary Upgrades

4.3.1 Criteria for Undertaking Fire safety Audit

Council will undertake on an annual basis a limited desktop fire safety audit program (including mapping data and AFSS referencing) to ensure known high risk buildings are identified and an acceptable level of fire safety is provided to the occupants of these buildings.

This audit will aim to identify buildings that are not compliant and in need of a fire safety upgrade. Priority is given to the buildings that pose the greatest risk to human life due to the way they are used and the number of people occupying, such as:

- i) Shared accommodation;
- ii) Council buildings;
- iii) Residential flat buildings;
- iv) Public Assembly Buildings and Place of Public Entertainment (POPE);
- v) Heritage buildings;
- vi) All other commercial / industrial buildings.

Where it is determined the building will be required to be upgraded the owner of the building will be advised of a fire audit inspection, which will carry a fee. Building design and the level of risk will vary from case to case and influence the upgrade requirements, priorities and expenses.

Council will serve appropriate Notices and Orders identifying the action or work required to adequately address fire safety within the identified premises. (Refer to Section 4.4.1). The cost

of this work is to be borne by the building owner, and provision will be made for the building audit and recommendations to be completed by Council or an appropriately qualified private certifier or fire safety expert.

It is acknowledged that due to the design and age of the building, the level of risk to the occupants will be different in each case and accordingly the upgrade requirements, fire safety priorities and associated upgrade expenses will vary and likely in most cases be performance based.

In many cases it is not practical to achieve strict compliance with current requirements of the Building Code of Australia, therefore the purpose of an assessment report is to endeavour to arrive at recommendations which will assist in achieving a reasonable level of fire safety for the occupants of the building, either in line with the performance standards of the Building Code of Australia or from report by an independent and qualified fire safety/ building consultant or fire safety engineer.

Part of the fire safety assessment process of the building will also require a review of the structural adequacy of any awning attached to the external wall of the building which cantilevers over Council's public footpath, located within the road reserve. This is to ensure the awning will not pose a life safety risk to the occupants of the building when exiting the building onto the footpath in a fire or other emergency event.

This assessment will be undertaken in accordance with the NSW Department of Planning and Infrastructure Building Regulation Advisory Note BS 13-001 dated 8 March 2013 and the Department of planning and Environment Building Regulation Advisory Note BS 17-001 dated 10 May 2017 and in conjunction with Council's awning safety program.

4.3.2 Methodology

Council recognises that many buildings within the Lismore Local Government area will be required to be upgraded in order to comply with current building and fire safety legislation to ensure an acceptable level of fire safety is provided to the occupants of buildings.

Council acknowledges that due to the age and design of many of these buildings, it would not be practical and not economically viable to achieve strict compliance with these current legislative requirements.

Therefore it is expected that any assessment of the building will be able to specify fire safety measures that can be readily implemented so as to achieve an acceptable level of fire safety for the occupants (include owners, tenants, visitors and patrons) of the building.

To ensure that to Council's best endeavours, a robust and transparent fire safety assessment of an existing building is undertaken, the following methodology has been formulated:

- a) a physical inspection of the building to familiarise layout and construction of building and note any non-compliant issues with the current requirement of the Building Code of Australia, and
- b) the utilization of the criteria contained in Clause 93 of the *Environmental Planning and Assessment Regulation 2000*.
This Clause sets out a detailed procedure recognized in legislation for the purpose of assisting Regulatory Authorities in providing a consistent approach when assessing whether an existing building has adequate fire safety measures.
It is considered that the requirements of this Clause in particular addressing the 'Category 1 fire safety provisions' which are defined under Clause 3 of the Environmental Planning and Assessment Regulation 2000 provide a benchmark for undertaking an initial fire safety assessment of an existing building and determining what if any measures are required to achieve a reasonable level of fire safety for the occupants of a building; or

- c) Undertake a comparative assessment of the existing building with regards to the Deemed-to-Satisfy provisions of the Building Code of Australia, detailing the areas of non-compliance and determining how the building can be provided with a reasonable level of fire protection.
- d) **Alternatively**, the owner of the building can have an assessment undertaken by a suitably qualified Fire Safety Engineer or a suitably Accredited Building Surveyor. This Assessment Report is to be submitted to Council for consideration, in determining what upgrade works are required to address the deficiencies in the building, so as to achieve an adequate level of fire safety for the occupants of the building.

4.4 Enforcement of Fire Safety

4.4.1 Issuing Fire Safety Orders

The *Environmental Planning & Assessment Act 1979* has very specific provisions in terms of fire safety compliance which includes the issuing of Notices, Orders and Penalty Infringement Notices.

Council's responsibility for the serving of Fire Safety Orders is contained in the *Environmental Planning & Assessment Act 1979 -Section121B - Order No. 6*.

Fire Safety Orders can be served where the following circumstances have arisen:

- a) Provisions for fire safety or fire safety awareness is 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.

Council uses the Nation Construction Code (Building Code of Australia) and relevant Australian Standards to determine the fire safety criteria to assess the abovementioned circumstances.

Where it is identified in the building, there are numerous fire safety matters which are likely to pose a life safety threat, Council will serve the owner of the building a Fire Safety Notice, advising of Council's intentions to serve a Fire Safety Order.

The "Notice of Intention" will indicate a "schedule of works" to be carried out within a specified time period.

The Notice will also indicate that the person to whom the Order is proposed is to be given, may make representations to Council, as to why the Order should not be given or as to the terms of or period for compliance with the Order.

The Fire Safety Order will specify the works Council requires to be undertaken to ensure adequate fire safety is provided to the building.

Upon completion of all upgrading works, the owner is required to submit to Council a Final Fire Safety Certificate, certifying all the essential Fire Safety Measures installed in the building as required by the Fire Safety Order have been inspected by a properly qualified person and found to be capable of performing to the relevant minimum standard performance.

The Final Fire Safety Certificate is to be forwarded to Council & the Fire and Rescue NSW, with a copy being prominently displayed in the building.

This Final Fire Safety Certificate will be entered into the Essential Fire safety Register and will form the basis of the Annual Fire Safety Statement.

4.4.2 Emergency Fire Safety Order

An Emergency Fire Safety Order is served on a building owner where it is considered that the level of risk posed to the occupants of a building is serious enough to warrant such an Order being served.

The terms of such an Order are required to be complied with immediately.

In these circumstances the Order will specify the reasons it is considered an emergency and that a Notice of Intention was not required.

If the work is not complied with, in the required time as specified in the Order, the Council may immediately seek Court directions to have the terms of the Order fulfilled & or issue an Emergency Order to cease the use & / or vacate the premises.

4.4.3 Outstanding Fire Safety Orders

Outstanding Orders that are not being followed up pose a vicarious liability risk to Council in the event that a fire does occur. Council will allocate resources to work through the existing list of buildings already identified (attached list), where Orders have already been served and/or in process of being served.

Resources will be allocated to resolve agreed actions or preferably conclude all outstanding fire safety orders desirably within 12 months of the adoption of this procedure.

Council will view all fire safety offences as serious and will follow up outstanding matters and take appropriate enforcement action in accordance with Council Policy.

4.4.4 Compliance

Council in the first instance will seek the co-operation of the building owners in achieving the necessary upgrade, rather than proceed to the issuing of penalty notice or the institution of legal proceedings in either the Land & Environment Court or the local Court.

However, there will be occasions, where Council will be required to undertake the following legal mechanisms to achieve acceptable levels of fire safety in buildings.

Section 125 and 126 of the *Environmental Planning Assessment Act 1979* provides for severe penalties which can be imposed for a person who does not carry out the work listed in a fire safety order

4.4.4a Issue of Penalty Infringement Notice

Clause 127A of the *Environmental Planning and Assessment Act 1979*, an authorised person is able to serve a penalty notice, if it appears that an offence has been committed under this Act or the *Environmental Planning and Assessment Regulation 2000*.

The serving of a penalty notice allows the person upon whom the notice was served, to either:

- elect to have the matter heard by a court, or
- pay the penalty amount within the time specified in the notice.

Clause 127A (5) of the *Environmental Planning and Assessment Act 1979* states, payment of the penalty notice "is not regarded as an admission of liability for the purpose of, & does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

The amount of a penalty notice for offences under both this Act and Regulation is specified in Schedule 5 of the *Environmental Planning and Assessment Regulation 2000*.

4.4.4b Legal proceedings

Failure to comply with the terms of a Fire Order may likely result in Council initiating prosecution of the owner/s of the building either in the local Court or the Land & Environment Court and/or seek enforcement / orders from the Land and environment Court.

This final course of action will be taken to ensure the building's occupants are provided with an acceptable level of fire safety during their lawful occupation of the building and also to the community as a whole.

4.5 Shop Top Housing within the Lismore CBD

“Shop top housing” as defined in the LEP 2012, is one or more dwellings located above ground floor shops or businesses. Shop top housing is primarily allowed in the Lismore Central Business District (CBD) - B3 Commercial Core and B4 Mixed Use Zones.

Council has adopted a proactive approach to encourage shop top housing in Lismore's CBD. An information package has been developed for building owners interested in providing shop top housing within the CBD.

The aim of the information package is to outline the key issues that need to be addressed, including planning requirements and fire safety. Examples of fire safety options to achieve an appropriate level of fire safety, diagrams and sample conditions are also included as part of this package.

It is acknowledged that many of the existing buildings in the CBD, where shop top housing is proposed, it will not be practical to achieve strict compliance with current requirements of the Building Code of Australia and any assessment will be undertaken in accordance with previously identified methodologies.

4.6 Nimbin Village Fire Safety Procedure

Many of the subject buildings in the Nimbin Village were erected in the early 1900's and therefore complying with the prescriptive requirements of the Building Code of Australia would be cost prohibitive and unattainable.

The objective of a Nimbin Village Fire Safety Procedure will be to identify a consistent approach to a level of fire safety required for the existing buildings in the Nimbin Village.

The draft procedure shall be developed with community and stakeholder consultation, communication, notification and relevant information in a plain English format.

In the absence of a dedicated resource being available to develop this procedural guideline, external resourcing will be considered, so as to ensure the risk of fire in Nimbin is appropriately managed.

4.7 Community Education and Awareness

Council will undertake a community education program to raise public awareness of the need for adequate fire safety in buildings on an annual basis.

Council will place relevant information on Council's webpage about fire safety issues, and building owner's responsibilities utilising the fact sheets published by NSW Fire and Rescue to assist people in keeping their businesses and homes safe from fire and may seasonally utilise other Council media publications, reminders and the like within Local Matters or subscription emails.

5 Resources

5.1 Staffing

Council will endeavour to allocate resources to this program from the current staff compliment on an annual basis to achieve the actions identified in this procedure are completed. Consultants will be engaged to maintain service levels in fire safety matters, or service levels in other delivery areas may be reduced, in the event of competing priorities to ensure the actions identified in this procedure are completed.

5.2 Financial

The delivery of this procedure will be funded from within existing budgets, and funds generated through annual fees and compliance activities. Where consultants are required, quarterly budget reviews will identify risks and seek funding to address any additional budget impacts. Council will offer the professional services of qualified and experienced staff at commercially competitive rates to compete with the private sector in delivery of fire safety advice to building owners where there is an option available.

6 Conclusion

Council is committed to ensuring the safety and welfare of all people that are exposed to fire safety risks in buildings. This procedure identifies the level of service and resources that are to be prioritised in delivering this commitment in a financially sustainable manner that recognises current resource availability and allocation and competing demands for service. Periodic reviews should be undertaken every two (2) to five (5) years to ensure that this procedure is updated to reflect new technology and appropriate outcomes are still being achieved to appropriately manage risk, together with considering other options if Council's commitments are not being met on a regular basis.