



## COUNCIL POLICY

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| <b>Council Policy Title:</b>    | <b>Essential Safety Measures</b><br>The Administration and Enforcement of Part 12 Division 1 of the Building Regulations 2006 |
| <b>Council Policy ref. no:</b>  | 19.3  |
| <b>Responsible Department:</b>  | Planning and Environment  |
| <b>Date of adoption/review:</b> | 23 October 2013   |

### ADMINISTRATION AND ENFORCEMENT

#### 1. Purpose

The purpose of this policy is to guide Council's activities in meeting its responsibilities under the *Building Act 1993* ("the Act") and in particular regulation *Part 12, Division 1* of the *Building Regulations 2006* which relate to Essential Safety Measures (ESM) requirements.

The use of policies by Councils has long been recognised by the courts as a means of Councils determining how (due to the many responsibilities held) limited resources are to be allocated. By having an appropriate policy in place Council will both reduce its exposure to risk and provide guidance to Council officers on how the regulations are to be administered.

#### 2. Background

Council is required by Section 212 of the *Building Act 1993* ("the Act") to administer and enforce specified parts of that Act and the whole of the *Building Regulations 2006* ("the Regulations") within its municipal boundaries. As with many other responsibilities, Council has the ability to determine how it will carry out these functions having regard to competing obligations and limited resources.

Regulation Part 12, Division 1 of the Building Regulations deals with essential safety measures. An essential safety measure is defined under the *Building Regulations 2006* (the Regulations) as an item listed in Tables I1.1 to I1.11 of Volume One of the Building Control Act (BCA), except the item in Table I1.4 relating to artificial lighting.

All buildings other than a house or outbuilding are affected. These include the following Classes as defined in the Building Code of Australia:

- Class 1b: Some boarding houses, guest houses or hostels
- Class 2: Buildings containing sole-occupancy unit (e.g. apartments, blocks of flats)
- Class 3: Backpacker accommodation, residential parts of hotels or motels, residential parts of schools, accommodation for the aged, disabled or children
- Class 5: Offices for professional or commercial purposes
- Class 6: Shops or other buildings for sale of goods by retail cafés, restaurants, milk bars, dining rooms, and bars
- Class 7: Buildings used for car parks, storage or display of goods.
- Class 8: Laboratories or buildings for production or assembly of goods
- Class 9: Public buildings such as health care buildings or assembly buildings, nightclubs, bars etc.

When the construction of a building is complete, the building owner is responsible for its upkeep and maintenance, particularly its safety features.

The maintenance of essential safety measures ensures that the safety measures mainly dealing with fire situations within the building, remain at the required operational level throughout the life of the building. The type of maintenance depends on the complexity of the service, equipment or feature and the experience of the person carrying out the inspection or test.

As an example, essential safety measures defined under the Building Regulations include:

|                                  |                                      |
|----------------------------------|--------------------------------------|
| Air conditioning systems         | Fire hydrants                        |
| Emergency lifts and lighting     | Fire windows                         |
| Ext doors and exit signs         | Mechanical ventilation               |
| Emergency power supply           | Fire isolated stairs, passages ramps |
| Fire control centres             | Fire rated materials                 |
| Fire curtains and doors          | Path of travel to exits              |
| Emergency warning systems        | Smoke alarms                         |
| Fire detectors and alarm systems | Smoke control systems                |
| Fire extinguishers               | Sprinkler systems                    |

The Regulations contain a full listing of essential services.

If a building was built or altered since 1 July 1994, the Regulations require a land owner to keep a current copy of the building's occupancy permit together with an annual essential safety measures report in the building. All essential safety measures reports, records of maintenance checks, services and repair work to the building must also be kept on the premises so it is easily accessible for a Municipal Building Surveyor or Chief Officer of the relevant fire brigade to randomly check for compliance. These documents are important as collectively they ensure that owners are fulfilling these obligations.

Although councils have a responsibility under building legislation for the enforcement of building safety in their municipality, owners have an obligation to ensure that essential safety measures and other safety measures are maintained and operate satisfactorily. Each year building owners are required to prepare an annual essential services report on the building's essential safety measures. An owner may choose to engage specialist maintenance contractors to assist in the preparation of this report or if written delegation is provided, an agent may complete the report. The reports must be available at the building for inspection by the Municipal Building Surveyor or the Chief Officer on request after 24 hours notice.

If the building was built before 1 July 1994, owners are responsible for ensuring that any safety equipment, safety fittings or safety measures are maintained and fulfilling their purpose. Owners are also required to prepare and display an annual essential safety measures report. This includes exits and paths of travel to exits. It is also advised that records of maintenance checks, service and repair work be kept so they can be made available for inspection by a Municipal Building Surveyor or Chief Officer.

Council's Municipal Building Surveyor or Chief Officer of the CFA is responsible for the enforcement of these Regulations, and it is often the case that without proactive enforcement from Councils or the CFA, land owners fail to meet the requirements. There is therefore a significant risk to human life or safety if proactive enforcement is not carried out.

Non-compliance may result in an infringement notice issued by Council or the Fire Brigade up to \$1000 and furthermore, non compliance may result in prosecution in which a fine may be imposed of \$10,000 for an individual or \$50,000 for companies for each breach of the Regulations. More importantly, non-compliance could place not only building occupants at risk but also those of passers-by and the occupants of adjoining buildings.

### **Council's Approach to Enforcement of Essential Safety Measure (ESM) Requirements**

Colac Otway Shire does not have the staff resources which would enable it to proactively enforce ESM requirements for all land owners which are required to meet them under the Building Regulations. It does acknowledge the need however for a proactive approach to administration and enforcement in respect of these regulations, in addition to on-going response to known non-compliance when this becomes evident, and education of building owners. This policy will therefore undertake the following approach to enforcement of the requirements as a means of best managing risk to human life and safety within its resource capacity, with the aim of ensuring that eventually all buildings in the municipality are compliant with the regulation.

### **Reactive Approach**

Council officers, upon becoming aware of any building within the municipal district that does not have an annual report on essential safety measures, will utilise the procedure set out below to bring about compliance.

1. Upon becoming aware of a potential non complaint ESM report the designated Council officer will write to the property owner advising that there is concern that the building at the property may not comply with the Building Regulations and that an inspection will take place at a set date. A copy of the relevant information sheets will be sent with that letter. This will take place within 7 days of being notified of the potential non compliance.
2. Upon inspection, in the event there is no essential safety measures report, a Building Order for Minor Work (on the basis that the Municipal Building Surveyor is of the opinion that the report is minor work) will be issued pursuant to section 113 of the *Building Act*. The building order will be in a standard form and will generally allow the owner 30 days in which to provide a current compliant report.
3. In the event as determined by the Municipal Building Surveyor, the individual circumstances warrant the provision of emergency safety measures, an Emergency Order under section 102 of the Building Act will be issued.
4. Any order issued will be accompanied with information on how to comply with the order and advising as to when the next inspection will take place.
5. The time for compliance under the order may be extended provided proper grounds for doing so are provided.
6. At the end of the time for compliance, the building will again be inspected. If no genuine action has been taken by the owner or occupier to comply with the order, the matter will be referred to Council's solicitor for prosecution (for breaches of *Part 12* of the regulations and *section 118* of the *Building Act*) and enforcement through *section 253* of the *Building Act*, being an order of the Court requiring compliance. A letter will be sent to the owner advising of the referral to Council's solicitor and providing a final opportunity to comply. Officers may elect to send up to two warning letters prior to referral to Council's solicitor with the aim of seeking co-operative compliance with an order.
7. If at the time of that inspection the owner has attempted to comply with the building order but there are minor matters still outstanding, the owner will be advised of a time at which a further inspection will be carried out and if there is still non compliance at that time enforcement action may be taken.
8. If a further inspection is required as a result of the equipment or report not being fully compliant following that further inspection, the relevant Council officer may determine to refer the matter at that time to Council's solicitor for enforcement action.

### **Proactive Approach**

In addition to responding to non-compliance as it becomes known, Council will take a proactive approach to administration and enforcement of ESM requirements within its resource capacity, and taking a risk management approach. This is aimed at ensuring that eventually all buildings in the municipality are compliant with the regulations. Officers will follow the following procedure:

1. Council officers will create a database of all buildings in the municipality. The database will be created by analysing existing records and/or by the use of aerial photography. It is acknowledged that aerial photography may not identify all relevant buildings and existing records will also not include all relevant buildings. The database, even if not complete, is essential for:
  - a. Determining the number of buildings in the municipality, which is required to enable the level of risk to be assessed.
  - b. Determining the level of resources required.
  - c. Identifying all buildings erected before and after 1 July 1994 so as to enable if necessary an enforcement program with respect to Part 12 of the Regulations.
  - d. Identifying the addresses for “direct mailing” campaigns.
  - e. Determining the effectiveness of relevant policies.
2. The database is to be reviewed annually to determine an appropriate program of inspections including the numbers of buildings to be inspected over the course of the year (the inspection target) and the resources to be allocated to that work. The review will also determine the objective criteria on which the properties to be inspected are determined.
3. The list will be prioritised according to the degree of risk based on the nature of the land use. For example, accommodation (including motels, backpackers, apartments and bed and breakfasts), hotels, night clubs and the like will be considered a higher risk to human safety than shops or offices. These buildings will be audited for compliance with ESM requirements as a high priority.
4. Upon inspecting a property and identifying a non complaint system or report, the procedure set out in the “Reactive Approach” above will be utilised to bring about compliance.
5. The database of buildings will be updated on an ongoing basis, based on records of final inspections for buildings subject to ESM requirements.

### **Education**

Council also recognises the importance of educating building owners on their legal responsibilities to comply with the regulations and the underlying reasons for the regulations itself. Council will seek to ensure the maximum possible cover is being achieved and will undertake the following steps:

1. Council’s policies with respect to Part 12 of the regulations will be printed and made available in pamphlet form to the public.

2. A direct mail out campaign will take place following the establishment of a database. The mail out campaign will include the information on the policy and the options available to building owners and occupiers and the consequences of non compliance.
3. A series of articles on essential safety measures will be prepared for the local newspaper.
4. Enforcement action will be published to create greater public awareness of the consequences for non compliance.
5. Customer Service Centres, libraries and other appropriate outlets would be asked to distribute (via the counter) pamphlets and other public awareness material.
6. Information to be sent out with rate notices.
7. Advertisements in local newspapers.
8. Information and appropriate links on Council's website.

### **Reporting**

A Report will be prepared by Council officers on an annual basis detailing all actions taken under this policy, identifying:

- a) The audit program undertaken over the course of the previous year, including the criteria used for prioritisation of risk
- b) The number of buildings inspected
- c) The number of buildings that at 1<sup>st</sup> inspection required no further action
- d) The number of building orders issued
- e) The number of building orders complied with in the specified period
- f) The number of building orders referred for legal proceedings
- g) The number of emergency orders issued
- h) The number of emergency orders referred for legal proceedings
- i) The number of matters outstanding
- j) Details of education methods employed under the policy

This report will be forwarded to the Shire's Risk Management Committee for consideration.

### **3. Conclusion**

This policy will provide Council with a clear and transparent framework for directing resources to enforcement of ESM requirements in the highest priority developments based on a risk assessment process. It will ensure that Council is taking a responsible and risk based approach to this legislative responsibility within its financial capacity.

### **ADOPTED/AMENDMENT OF POLICY**

| <b>Reviewed Date</b> | <b>Reason for Amendment</b> |
|----------------------|-----------------------------|
| 23 October 2013      | Adopted by Council          |
|                      |                             |