

Attachment D

**Inspection Report -
39-43 Darlinghurst Road, Potts Point**



**Council investigation officer Inspection and Recommendation Report
Clause 17(2) of Schedule 5, of the Environmental Planning and Assessment Act
1979 (the Act)**

File: CSM 2062096

Officer: Chad Grant

Date: 11 April 2019

Premises: 39 – 43 Darlinghurst Road, Potts Point

Executive Summary:

Council received correspondence from the Commissioner of Fire and Rescue NSW (FRNSW) in relation to the subject premises with respect to matters of fire safety.

The premises consists of a four storey mixed use building.

The lower ground floor level of the building contains a disused and vacant nightclub formerly known as the 'O Nightclub', the ground floor level contains a retail premises known as 'Peter Pans Adventure Travel' and the 'Showgirls' strip club, and the first and second floor levels of the building contain the 'Kings Hotel Sydney' private hotel.

The premises are equipped with numerous fire safety systems (both active and passive) that would provide adequate provision for fire safety for occupants in the event of a fire. The annual fire safety certification is current and compliant and is on display within the building in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

The building was subject of a prior fire safety order, which required upgrading of fire safety systems within the building. The order was issued by Council in April 2015 and subsequently completed with a final fire safety certificate being given to Council in December 2016.

Observation of the external features of the building did not identify the existence of metallic sheet cladding on the façade of the building.

Chronology:

Date	Event
29/03/2019	FRNSW correspondence received regarding premises located at 39 – 43 Darlinghurst Road, Potts Point.
04/04/2019	An inspection of the subject premises was undertaken by a Council officer which revealed the following: <ul style="list-style-type: none">➤ The fire safety issues related to the annual fire safety statement and exit signs raised by FRNSW had already been rectified.➤ 'Showgirls' is considered to be approved and functioning as an assembly building and not an entertainment venue as defined in the Environmental Planning and Assessment Regulation 2000. Therefore the entertainment venue requirements raised by FRNSW are not considered relevant to this building.

FIRE AND RESCUE NSW REPORT:

References: [D19/21005 and BFS19/205; 2019/158620]

Fire and Rescue NSW conducted a joint inspection of the subject premises on 19 January 2019 in the company of Officers from the NSW Police Force which identified issues within the building.

Issues: The report from FRNSW detailed the following issues within the building:

- The annual fire safety statement that was displayed did not appear to be up to date.
- A number of exit signs were not operating.
- Clarification of the use of the premises and the application of entertainment venue requirements.

FRNSW Recommendations:

FRNSW have made recommendations within their report. In general FRNSW have requested that Council:

1. Inspect the subject premises and take action to have the identified fire safety issues appropriately addressed;
2. Advise them in writing of its determination in relation to this matter in accordance with the provisions of clause 17(4) of Schedule 5 of the Environmental Planning and Assessment Act 1979
3. FRNSW has recommended that as Council are the regulatory authority the matter is referred for Council to take action to have the abovementioned items appropriately addressed.

COUNCIL INVESTIGATION OFFICER RECOMMENDATIONS:

Issue Order(NOI)	Issue emergency Order	Issue a compliance letter of instruction	Cited Matters rectified	Undertake compliance action in response to issued Council correspondence	Continue with compliance actions under the current Council Order	Other (to specify)

Inspections undertaken by a Council investigation officer revealed that the above recommendations of FRNSW have been complied with.

It is recommended that Council not exercise its powers to give a fire safety order at this time.

That the Commissioner of FRNSW be advised of Council's actions and outcomes

Referenced documents:

No#	Document type	Trim reference
A1.	Fire and Rescue NSW report	2019/174464-01
A2.	Locality Plan	2019/174464-02

A3	Attachment cover sheet	2019/174464-03
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Trim Reference: 2019/174464

CSM reference No#: 2062096



File Ref. No: BFS19/205

TRIM Ref. No: D19/21005

Contact: [REDACTED]

29 March 2019

General Manager
City of Sydney
GPO Box 1591
SYDNEY NSW 2001

Email: council@cityofsydney.nsw.gov.au

Attention: Manager Compliance/Fire Safety

Dear General Manager

**Re: INSPECTION REPORT
'SHOWGIRLS'
39 DARLINGHURST ROAD POTTS POINT ("the premises")**

Pursuant to the provisions of Section 9.32(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), an inspection of 'the premises' on 19 January 2019 was conducted by Authorised Fire Officers from the Fire Safety Compliance Unit of Fire and Rescue NSW (FRNSW). The inspection was also conducted in the company of Officers from the NSW Police Force.

The inspection was limited to the following:

- A visual inspection of the essential Fire Safety Measures as identified in this report only.
- A conceptual overview of the building, where an inspection had been conducted without copies of the development consent or copies of the approved floor plans.

On behalf of the Commissioner of FRNSW, the following comments are provided for your information in accordance with Section 9.32(4) and Schedule 5, Part 8, Section 17(1) of the EP&A Act. Please be advised that Schedule 5, Part 8, Section 17(2) requires any report or recommendation from the Commissioner of FRNSW to be tabled at a Council meeting.

COMMENTS

Please be advised that this report is not an exhaustive list of non-compliances however, the proceeding concerns also identifies deviations from the National Construction Code 2016, Volume 1 Building Code of Australia (NCC). Given the concerns are based on observations available at the time FRNSW acknowledges that the deviations may contradict development consent approval. In this regard, it would be at council's discretion as the appropriate regulatory authority to conduct its own investigation and consider the most appropriate action.

The following items were identified as concerns during the inspection:

1. Essential Fire Safety Measures

- 1A. Annual Fire Safety Statement (AFSS) – Clause 177(2) of the Environmental Planning and Assessment Regulation 2000 requires the AFSS be updated annually. At the time of the inspection, the AFSS that was displayed did not appear to be up to date.
- 1B. Exit signs – A number of exit signs were either not operating when the test button was pressed or were not illuminated.

2. Generally

- 2A. Entertainment Venue Use – “The premises” appears to be used specifically for live entertainment. Council may need to review its records to confirm whether the principal use of the venue is an entertainment venue as defined in the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).
- 2B. Entertainment Venues – If the premises has approval as an Entertainment Venue, council may need to review compliance with NSW Part H101 of the NCC in relation to the following:
 - A. Load Notice – At the time of inspection, a notice indicating the actual distributed and concentrated load could not be located. Such a sign would normally be conspicuously displayed adjacent to the stage floor with legible letters and figures at least 50 mm high and with a contrasting background. The sign must show the actual distributed and concentrated load for which the stage was designed, in accordance with NSW H101.8 of the NCC.
 - B. Seating – At various times during the inspection, the seating around the stage was placed in the path of travel to an exit. Council may need to review whether seating forms part of the development consent approval.
- 2C. Patron Numbers – If approved as an Entertainment Venue, consideration to apply Clause 98D EP&A Regulation may be required which requires signage displaying the maximum capacity for patrons.

FRNSW is therefore of the opinion that there are inadequate provisions for fire safety within the building.

RECOMMENDATIONS

FRNSW recommends that Council:

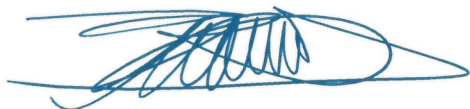
- a. Inspect and address any other deficiencies identified on 'the premises', and require item no. 1 through to item no. 2 of this report be addressed appropriately.

This matter is referred to Council as the appropriate regulatory authority. FRNSW therefore awaits Council's advice regarding its determination in accordance with Schedule 5, Part 8, Section 17(4) of the EP&A Act.

Should you have any enquiries regarding any of the above matters, please do not hesitate to contact [REDACTED]

[REDACTED] Please ensure that you refer to file reference BFS19/205 for any future correspondence in relation to this matter.

Yours faithfully



[REDACTED]
[REDACTED]
[REDACTED]