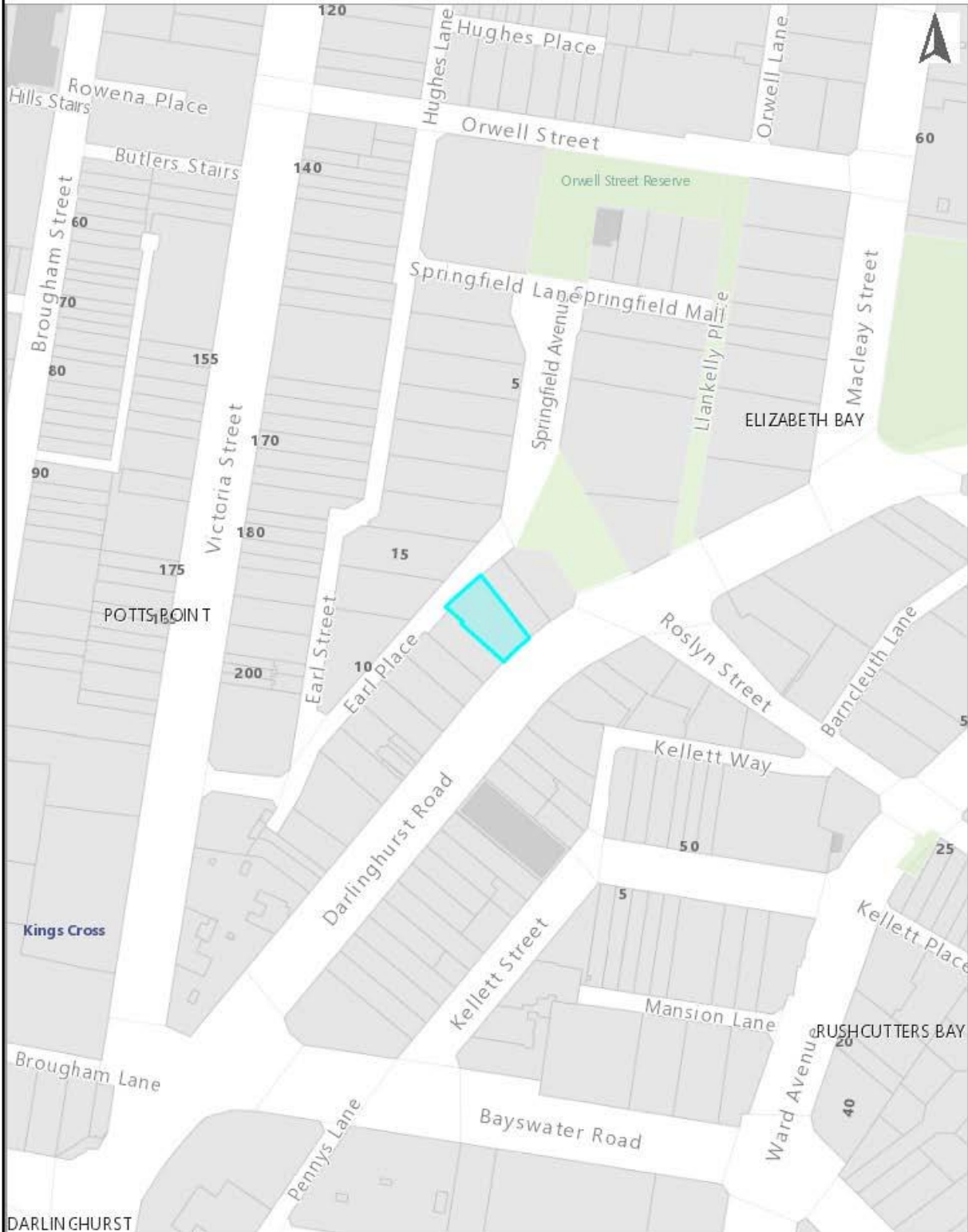
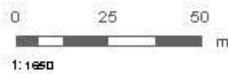


Attachment B

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



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Notes

1/03/2022

Council investigation officer Inspection and Recommendation Report
Clause 17(2), Part 8 of Schedule 5, of the Environmental Planning and Assessment Act 1979
(the Act)

File: 2022/032847-01

Officer: Andrew Venios

Date: 25 March 2022

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 on 28 January 2022 with respect to matters of fire safety. This correspondence was initiated by a report from the NSW Police sent to both FRNSW and Council. The police identified several safety concerns at the premises on 20 November 2021, resulting from a one-off private function being held by the new tenant.

The premises consist of a four (4) storey mixed use commercial building. The basement level, the subject of the police report and this report, contains an approved nightclub/entertainment venue. The ground floor contains an adult entertainment venue, and the first and second floor contain a hotel/motel.

An inspection of the premises was undertaken by a Council investigation officer in the presence of the owners representative, the tenant (who held the private function), and representatives from FRNSW on 21 December 2021. The inspection revealed that the basement nightclub, the subject of the Police and FRNSW reports, was closed and undergoing renovations, and issues raised by FRNSW were investigated. At the time of inspection, all fire safety systems in the building were operational. The nightclub had been closed for approximately six years, but the ground, first and second floors were in use. The fire safety issues raised by the Police were in the process of being rectified as part of renovations.

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.

Council investigations have revealed that whilst there remain several minor fire safety "maintenance and management" works to attend to (including sprinkler booster room to be kept clear of storage items, replace or repair self closer to fire door, and new thermal detectors to be assessed against existing Fire Safety Schedule), the overall fire safety systems provided within the subject premises are considered adequate in the circumstances.

It is considered that the above fire safety works are of a degree which can be addressed by routine preventative and corrective maintenance actions undertaken by the owner's fire service contractor(s) through written instruction from Council on 2 March 2022.

Observation of the external features of the building did not identify the existence of any potential combustible composite cladding on the façade of the building.

Chronology:

Date	Event
20/11/2021	<p>NSW Police (Licensing) attended the venue. The police observed a function in place in the basement nightclub, there was no lighting covering the stairwell from the front entrance on Darlinghurst Road to the lower levels, exposed wiring, an absence of fire safety measures including fire extinguishers and illuminated fire exit signs. The occupants of the premises appeared to have little to no regard for such measures despite claiming to be operating under a Development Consent for the use of the location.</p>
21/12/2021	<p>Joint Council and FRNSW inspection undertaken revealed that the tenants were carrying out minor works to the approved nightclub which has been closed for approximately six years. The tenants advised that the night of the police attendance they had a private party for their daughter and had recently become tenants of the existing nightclub. The tenants advised that they will be doing some minor maintenance and repairs including new floor coverings to nightclub and replacing existing decor within.</p> <p>Inspection confirmed minor defects within lower ground floor including some exposed temporary wiring and exposed service panels typical for maintenance works.</p> <p>Essential fire safety measures within the basement appeared to be maintained and new thermal detectors had recently been installed. It was noted that the sprinkler booster room had some storage within, advised owners representative to remove. Inspection to ground floor foyer Fire Indicator Panel (within hotel foyer portion) confirmed no errors, however, log books revealed that lower ground level had recently been isolated for repairs and maintenance.</p> <p>Access was also provided to the ground floor restricted premises (not operating at time of inspection) - essential services appeared to be operative at time of inspection.</p> <p>At conclusion of meeting discussion held with FRNSW representatives who advised that NSW Police will be notified of the joint inspection and their report will be forwarded to Council for follow up. The Council investigation officer advised that minor issues including sprinkler booster room to be kept clear of storage items, replace or repair self closer to fire door (front entry to Darlinghurst Road) and new thermals to be assessed against existing Fire Safety Schedule.</p>
28/01/2022	FRNSW correspondence received by Council regarding the premises.
2/3/2022	Verbal directions given on site to rectify the identified fire safety deficiencies followed up by a corrective action letter.

FIRE AND RESCUE NSW REPORT:

References: BFS21/4912 (18750)

Fire and Rescue NSW conducted an inspection of the subject premises as a result of correspondence received from the Police on 20 November 2021, in relation to the adequacy of the provision for fire safety in connection with 'O' Nightclub', 39-43 Darlinghurst Road Potts Point ("the premises").

Issues

The report from FRNSW detailed a number of issues, in particular noting;

Issue	City response
1A - Council may need to review its records to confirm whether the circumstances surrounding the installation of thermal detectors has been approved.	Thermal detectors adequate in basement nightclub area to reduce unwanted alarms that may be triggered by the smoke machines in use within the premises.
2A - The height and openings of the handrails leading from the entrance of Darlinghurst Road into the nightclub appeared contrary to the dimensions specified in the NCC.	Due to the age of the building, handrails do not comply with the current NCC, but were previously assessed and accepted "under a previous Council fire order. No further action required.
<p>3A. Generally</p> <p>A. The occupiers advised that they are proposing to install a smoke machine as part of the renovations. As a result, replaced smoke detectors with thermal detectors to avoid activation.</p> <p>B. The premises appeared to be under renovation, and as a result there were items stored in an around egress paths at the premises. Council may need to consider including a requirement as part of the plan of management to maintain a clear and unobstructed path to the exits upon completion of the renovation.</p> <p>C. The allegations surrounding the number of people at the premises at the time, may require council to review the population numbers for "the premises".</p> <p>D. The self-closing mechanism attached to the doors facing Darlinghurst road requires repair.</p> <p>E. There is a rubbish bin stored in the sprinkler room facing Earl Street. It is preferred that the sprinkler room remain clear of all items that could potentially inhibit the operation of the sprinkler valves.</p>	<p>A. Satisfactory, no further action recommended.</p> <p>B. Premises not operating until minor repairs and maintenance completed. Tenants reminded to keep all egress paths clear within basement level per existing plan of management per D/2004/1014.</p> <p>C. Nightclub currently not in operation – Councils late night premises team to monitor per D/2004/1014.</p> <p>D. Corrective Action letter sent for repairs.</p> <p>E. Corrective Action letter sent for sprinkler room to remain clear of storage items.</p>

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

FRNSW Recommendations

FRNSW have recommended that Council inspect the subject premises and appropriately address any other deficiencies identified on 'the premises' and require item no. 1 through to item no. 3 of the FRNSW report be addressed appropriately.

FRNSW have also requested that as soon as practical after the above recommendations have been tabled and considered that notice of any determination in respect of the recommendations is forwarded to them in accordance with clause 17(4) of Schedule 5 of the Environmental Planning and Assessment Act 1979.

COUNCIL INVESTIGATION OFFICER RECOMMENDATIONS

Issue Order (NOI)	Issue emergency Order	Issue a compliance letter of instruction	Cited Matters rectified	Continue to undertake compliance action in response to issued Council correspondence	Continue with compliance actions under the current Council Order	Other
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As a result of the above site inspection undertaken by Council investigation officers it is recommended that the owners of the building continue to comply with the written fire safety compliance instructions as issued by Council officers on 2 March 2022 to rectify the identified fire safety deficiencies noted by FRNSW.

The above correspondence has instructed the responsible site personnel to carry out corrective actions to promote compliance.

Follow-up compliance inspections will continue to be undertaken by a Council officer to ensure all identified fire safety matters are suitably addressed and that compliance with the terms of Councils correspondence occur.

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/Attached Documents:

Trim Reference: 2022/032847-01

CSM reference No: 2713716

Unclassified



File Ref. No: BFS21/4912 (18750)
TRIM Ref. No: D22/2640
Contact: [REDACTED]

28 January 2022

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
'O'NIGHTCLUB'
39-43 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 21 December 2021 was conducted by Authorised Fire Officers from the Fire Safety Compliance Unit of Fire and Rescue NSW (FRNSW).

The inspection was also conducted with Officers from City of Sydney Council as a result of correspondence received on 9 December 2021, in relation to the adequacy of the provision for fire safety in connection with 'the premises'.

The correspondence stated in part that:

...identified 200 persons were inside the premises, consuming alcohol and dancing. Latex gloves had been used to cover over 20 separate smoke detectors inside the premises. ### identified no fire exit signs were illuminated. The premises has one point of entry which had no lighting activated. From the ground floor there is a stair case to the basement which is about 10 feet in height. There was no lighting for these stairs. ### also identified exposed wiring, water leaks and faulty powerpoints during the inspection.

The inspection was limited to the following:

Fire and Rescue NSW	ABN 12 593 473 110	www.fire.nsw.gov.au
Community Safety Directorate	1 Amarina Ave	T (02) 9742 7434
Fire Safety Compliance Unit	Greenacre NSW 2190	F (02) 9742 7483

www.fire.nsw.gov.au Page 1 of 3

Unclassified

- 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 2019, 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 Measure
 - 1A. Specification E2.2a – The following comments consider Australian Standard AS1670.1:2015 – 'Fire detection, warning, control and intercom systems—System design, installation and commissioning':
 - A. Clause C3.27.1 of AS1670.1 outline the circumstance where smoke detectors can be replaced with thermal detectors. There were thermal detectors observed throughout the nightclub.
 - B. Council may need to review its records to confirm whether the circumstances surrounding the installation of thermal detectors has been approved.
2. Access and Egress
 - 2A. Handrails – Clause D2.16 and D2.17 of the NCC, specifies the requirements for the installation of barriers and handrails. At the time of the inspection, the height and openings of the handrails leading from the entrance of Darlinghurst Road into the nightclub appeared contrary to the dimensions specified in the NCC.
3. Generally
 - 3A. Investigation Outcomes – The following items are provided to council as part of the investigation on Tuesday, 21 December 2021:

Unclassified

- A. The occupiers advised that they are proposing to install a smoke machine as part of the renovations. As a result, replaced smoke detectors with thermal detectors to avoid activation.
- B. The premises appeared to be under renovation, and as a result there were items stored in an around egress paths at the premises. Council may need to consider including a requirement as part of the plan of management to maintain a clear and unobstructed path to the exits upon completion of the renovation.
- C. The allegations surrounding the number of people at the premises at the time, may require council to review the population numbers for "the premises".
- D. The self-closing mechanism attached to the doors facing Darlinghurst road requires repair.
- E. There is a rubbish bin stored in the sprinkler room facing Earl Street. It is preferred that the sprinkler room remain clear of all items that could potentially inhibit the operation of the sprinkler valves.

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. 3 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] of FRNSW's Fire Safety Compliance Unit on (02) [REDACTED]. Please ensure that you refer to file reference BFS21/4912 (18750) for any future correspondence in relation to this matter.

Yours faithfully

[REDACTED]

Fire Safety Compliance Unit