

Attachment B

**Inspection Report
2 Cunningham Street, Haymarket**

2-4 Cunningham Street Haymarket



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Notes

28/03/2022

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: CSM 2729084

Officer: T. Zeljkovic

Date: 29 March 2022

Premises: 2-4 Cunningham Street, Haymarket

Executive Summary:

Council received correspondence from the Commissioner of Fire and Rescue NSW (FRNSW) in relation to the subject premises on 17 February 2022, with respect to matters of fire safety.

The premises is a forty-one (41) storey building, known as 'Aspect Building', and contains both residential units and serviced apartments run by APX Hotel, World Square. The building also contains a ground level commercial restaurant and basement carparking.

FRNSW inspected the building on 18 November 2021, and a proposed fire safety order ('notice of intention') was issued by FRNSW on 19 November 2021. This Notice was then followed up with a joint inspection by City staff on 15 December 2021, to assess compliance with the terms of the notice. The terms of the notice were not satisfied and the Commissioner of FRNSW referred the matter to Council.

Council's inspection on 15 December 2021, in the presence of the building manager, revealed that the premises are deficient in fire safety measures and egress provisions in the following areas:

- (i) Inadequate fire detection and alarm systems; due to a large number of faults and isolations;
- (ii) Unsuitable fire resisting construction to prevent the spread of fire, specifically, gaps found within sprinkler/hydrant pump room;
- (iii) Safe and dignified emergency egress not provided for occupants to safely evacuate the building in the event of a fire, due to insufficient illumination of exits sign(s) to ground level, non-compliant fire panel and stair pressurising systems, that require upgrade;
- (iv) Poor fire safety management systems, lack of current fire certification signage in place due to fire system non-compliances.

In addition to the above, FRNSW passed on an allegation that unauthorised internal works had been carried out in other units in the building, and there was a concern of 'overcrowding' resulting in a high fuel load in the building. FRNSW referred specifically to two units, one was inspected during a joint inspection on 15 December 2021 (in the presence of building management) and no unauthorised building works, or other concerns were found at that time. During the inspection, two additional units were also brought to Council's attention, alleged to contain unauthorised building works and 'overcrowding'. A further unit was inspected by Council on 5 April 2022 and there was no evidence of unauthorised works or unauthorised use at the time. The two remaining units, and the general concerns raised in the building mentioned above, are currently being investigated by the Health & Building Investigations Team who will take steps to gain access to these apartments to assess if any unauthorised building works have been carried out or if any unauthorised use is taking place.

Council investigations have revealed that the premises is deficient in the provisions for fire safety and that a fire safety order is to be issued under Schedule 5 of the Environmental Planning and Assessment Act, 1979 so as to ensure and promote adequate facilities for fire safety/fire safety awareness. Council's notice of intention to issue a fire safety order contains additional upgrade works to FRNSW's proposed order, and Council will ensure compliance with its order once issued.

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

Chronology:

Date	Event
18/11/21	FRNSW inspected premises.
19/11/21	FRNSW issued proposed fire safety order.
15/12/21	<p>Joint inspection of FRNSW and Council conducted in response to FRNSW's Notice of proposed order dated 19/11/2021 regarding fire alarm faults, which revealed:</p> <ul style="list-style-type: none"> ▪ no current annual fire certification present within fire control room ▪ 35 fire panel faults/ isolations on various levels ▪ exit sign, fire seal, block plan and house /maintenance keeping deficiencies ▪ a covered smoke alarm within a unit - removed at time of inspection ▪ temporary partitioning within the living area in unit 1803 (no unauthorised building works were detected).
17/12/21	Further written Council instruction was issued to the Strata regarding fire safety maintenance matters noted during inspection.
17/02/2022	FRNSW correspondence received by Council, regarding the above issues.
25/02/2022	<p>A desktop audit and review of City records revealed:</p> <ul style="list-style-type: none"> - On 13 December 2000 development consent for a 41-storey building comprising of 94 residential units & 72 serviced apartments, ground commercial tenancy and 8 level basement car parking, was approved [File Reference D/1999/977]; - On 30 July 2019 a Complying Development Consent (CDC) by a Private Certifier for alterations to fire stairs and pressurisation systems was issued [File References: P20180054 & P/2019/1566].
04/03/2022	<p>A re inspection of the premises was undertaken by a Council officer with regards to previous fire safety matters, which revealed following deficiencies remained outstanding:</p> <ul style="list-style-type: none"> ▪ annual fire statement was not displayed on site; ▪ 9 fire panel faults– localised to ground level vacant commercial tenancy ▪ adequate fire hydrant & sprinkler block plan signage not present ▪ no works to stair pressurisation system, subject of the 2019 CDC; <p>- Issues specifically raised by FRNSW and responses to those issues are summarised in the table below.</p>
23/03/2022	<p>A Notice of Intention to Issue an Order was issued to owners for fire safety deficiencies noted within the building; requiring fire panel, stair pressurisation system upgrades and certification of existing fire safety measures. The Notice provides 21 days for the owner to provide representations to Council in respect to the proposed Order. [File Reference FIRE/2022/13].</p>

FIRE AND RESCUE NSW REPORT:

References: [BFS21/1562; 2022/10628]

Fire and Rescue NSW (FRNSW) conducted an inspection of the subject premises due to a small unit fire highlighting detectors failures and unit fit/out concerns.

Issues: The report from FRNSW detailed the following issues:

Issue	City response
1. <u>Essential Fire Safety Measures</u> 1A (a-c) <u>Fire Indicator Panel (FIP)</u> - displayed 19 and 35 faults, 1 isolation to motherboard and 1 sprinkler pump tamper alarm, during several FRNSW inspections	To be addressed in the Notice of intended fire safety Order, requiring enhancements of the main fire panel and associated detectors in keeping with relevant Building Codes/Australian Standards; obtaining certification attesting to their compliance
1B (a-c) <u>Combined Hydrant/Sprinkler Booster</u> – door device deficiency not openable to 90-degree angle, a hydrant block plan and schematic drawings/details not provided within booster enclosure	To be addressed in the Notice of intended fire safety Order, requiring compliance of said systems in keeping with relevant Australian Standards which includes operation of booster enclosure doors/ block plans
1C (a-d) <u>Fire Pump Room</u> - sprinkler and hydrant block plans, schematic drawing(s) and stock of spare sprinkler heads were not provided within the pump room	To be addressed in the Notice of intended fire safety Order, requiring enhancements of mounted waterproof block plans/drawings and installation of spare sprinkler heads, in keeping with relevant Australian Standards
1D <u>Smoke alarm within Unit 1803</u> covered - removed at time of inspection	To be addressed in the Notice of intended fire safety Order, requiring inspection of detectors and in keeping with relevant Australian Standards; furnishing certification attesting to their compliance. Further investigations are being undertaken to other unit(s).
1E <u>Annual Fire Safety Statement (AFSS)</u> – Clause 177(2) of the EP&A Regulation requiring the AFSS be updated annually	To be addressed in the Notice of intended fire safety Order, requiring inspection of <u>all</u> fire safety systems and fire safety certification attesting to their compliance/installation
1F <u>Exit Signs</u> - An exit sign on level 1 restaurant was not illuminated and not maintained	To be addressed in the Notice of intended fire safety Order requiring inspection/repair of exit signs in keeping with relevant Australian Standards; obtaining certification attesting to their compliance
2. <u>General</u> 2A. <u>Investigation Outcomes</u> – At the time of FRNSW follow-up inspection 35 faults showing on the FIP. (a i-iv) <u>Strata Management assertion</u> – FIP requires replacing, smoke detector(s) not defective - technician attendances fire alarm line and fire hydrant sprinkler systems operational	To be addressed in the Notice of intended fire safety Order, requiring inspection of <u>all</u> fire safety systems, and obtaining fire safety certification attesting to their compliance/installation.

Issue	City response
(b) <u>Council's officer confirmed</u> that Council would be issuing correspondence / Corrective action letter issued by Council on 17 December 2021 noted (Ref: CSM 2677654)	To be further addressed in the Notice of intended fire safety Order, requiring inspection of <u>all</u> fire safety systems and fire safety certification attesting to their compliance/ installation.

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

FRNSW Recommendations

FRNSW have made a recommendation within their report. FRNSW have requested that Council:

1. Inspect and address any other deficiencies identified on the premises, and to require the identified fire safety issues to be 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

COUNCIL INVESTIGATION OFFICER RECOMMENDATIONS:

Note issue of a fire safety Order by delegated authority (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 (to specify)

As a result of site inspections undertaken by a Council investigation officer it was determined that concern for public safety requires the giving of a notice of intention (NOI) for a fire safety order to be issued under Part 2 of Schedule 5 of the Environmental Planning and Assessment Act, 1979 without any further delay.

It is recommended that Council note the exercise of powers by Council's investigation officer by issuing a NOI on 23 March 2022 to give a Fire Safety Order in accordance with the above Act, prior to the resolution of Council.

The issue of a Notice of Intention to Give an Order (NOI) prior to the resolution of Council, will help to accelerate compliance response from building owners in rectifying fire safety deficiencies and will assist to ensure that occupants are not exposed to unnecessary fire safety risks.

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

Referenced/Attached Documents:

2022/197508 -01	FRNSW S9.32 report dated 16 February 2022
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Trim Reference: 2022/197508

CSM reference No#: 2729084

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File Ref. No: BFS21/1562 (15566)
TRIM Ref. No: D22/10628
Contact: [REDACTED]

16 February 2022

General Manager
City of Sydney
GPO Box 1591
SYDNEY NSW 2001

Email: council@cityofsydney.nsw.gov.au

Attention: Manager Compliance/Fire Safety

Dear Sir / Madam

**Re: INSPECTION REPORT
ASPECT
2 CUNNINGHAM STREET HAYMARKET ("the premises")**

Fire & Rescue NSW (FRNSW) received correspondence on 14 May 2021, in relation to the adequacy of the provision for fire safety in or in connection with 'the premises'.

The correspondence stated that:

Attended small fire and resulting sprinkler activation in unit 1803. Detector in fire occupancy still had cover on from installation, detector did not activate.

Apartment below detector had been removed, 1704.

Units had been sub divided into extra bedrooms and appeared to have 5-6 residents in what should be 2 bedroom units,

Signage for sprinkler room and location of pump room was confusing.

My main issue is that there appears to be a culture of lack of concern for fire safety measures and evidence of over occupancy and resulting high fuel loads.

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 18 November

Fire and Rescue NSW

ABN 12 593 473 110

www.fire.nsw.gov.au

Community Safety Directorate
Fire Safety Compliance Unit

1 Amarina Ave
Greenacre NSW 2190

T (02) 9742 7434
F (02) 9742 7483

www.fire.nsw.gov.au

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2021 was conducted by Authorised Fire Officers from the Fire Safety Compliance Unit of Fire and Rescue NSW (FRNSW).

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.

PROPOSED FIRE SAFETY ORDER NO. 1

The inspecting Authorised Fire Officers from the Fire Safety Compliance Unit of FRNSW issued a Notice No. 1, dated 19 November 2021, in accordance with the provisions of Section 9.34 of the EP&A Act, to have item no. 1A of this report rectified.

In accordance with the provisions of Schedule 5, Part 6, Section 12 of the EP&A Act, a copy of the Notice is attached for your information.

FRNSW has conducted a follow-up inspection on 15 December 2021 to assess compliance with the terms of this Notice. The inspection was also conducted in the company of an Officer from the *City of Sydney Council*. At the time of the inspection the terms of the Notice had not been satisfied.

COMMENTS

This report is limited to observations and sections of the building accessed at the time of the inspection. As such, this report lists potential deviations from the National Construction Code 2019 Building Code of Australia – Volume One Amendment 1 (NCC), and at the time of writing the Notice of Intention to serve an Order and writing this report, the Environmental Planning and Assessment Regulation had not changed to EPAR 2021, as such the older legislation is referenced. Please be advised that whilst the report is not an exhaustive list of non-compliances, the items as listed may relate to the building's age or contradict development consent approval. In this regard, it is at council's discretion as the appropriate regulatory authority to consider the most appropriate action and determine whether an investigation is required.

The following items were identified as concerns during the inspection:

1. Essential Fire Safety Measures
 - 1A. Maintenance – Clause 182 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). requires that an

Essential Fire Safety Measure must be maintained to a standard no less than when it was first installed. At the time of the initial inspection the following was noted:

- A. The Fire Indicator Panel (FIP) displayed the following:
 - i. 19 (nineteen) Faults.
 - ii. 1 (one) Isolation - 'Main Mother Board'.
 - iii. 1 (one) Alarm - 'Sprinkler Pump Tamper'.
 - B. The Emergency Warning and Intercommunication System (EWIS) Panel displayed a fault.
 - C. At the time of the follow up inspection, the FIP displayed 35 faults.
- 1B. Combined Hydrant/Sprinkler Booster –
- A. The doors to the booster enclosure were not fitted with a device capable of securing the door in not less than a 90° open position, contrary to the requirements of Clause 7.9.2 of AS 2419.1-2005;
 - B. A block plan of the fire hydrant system had not been provided within the booster enclosure contrary to the requirements of Clause 7.11 of AS 2419.1-2005;
 - C. A schematic drawing of the system was noted within the booster cabinet. The drawing was on the floor of the enclosure and had therefore not been appropriately mounted, contrary to the requirements of Clause 2.2.4 of AS 2118.6-2012. Furthermore, the drawing did not feature all the required elements set out at (i) – (xii) of Clause 2.2.4.

It was noted that a comment has been handwritten on to the drawing indicating that the Low-Rise and Mid-Rise boosters are redundant. A review of Councils records may be required to ascertain if the combined system has been amended from its original configuration and what, if any, approvals have been granted to amend the system. In that regard, it is at councils discretion as the appropriate regulatory authority to determine whether or not a survey of the combined system is necessary.

- 1C. Fire Pump Room –
- A. A block plan of the fire hydrant system had not been provided within the pump room contrary to the requirements of Clause 7.11 of AS 2419.1-2005;
 - B. The plan of risk (block plan) had not been provided within the pump room contrary to the requirements Clause 8.3 of AS 2118.1-1999;

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- C. A full stock of spare sprinklers had not been provided at the sprinkler control valves contrary to the requirements of Clause 6.7 of AS 2118.1-1999;
 - D. A system schematic drawing has not been provided at the pump room, contrary to the requirements of clause 2.2.4 of AS 2118.6-2012.
- 1D. Smoke Alarms – During the follow up inspection, access was granted to Unit 1803. At the time of the inspection there was a cover on the smoke alarm. The cover was subsequently removed by the occupant.
- 1E. Annual Fire Safety Statement (AFSS) – Clause 177(2) of the EP&A Regulation 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.
- 1F. Exit Signs - An exit sign on level 1 restaurant was not illuminated and not maintained contrary to the requirements of Section 6 of AS2293.1-2005 and Clause 182 of the EP&A Regulation.

2. Generally

- 2A. Investigation Outcomes – At the time of the follow-up inspection there were 35 faults showing on the FIP. The following are outcomes from the investigation on Thursday 15 December 2021:
- A. Assertions from Strata Management and Building Management:
 - i. Both Strata Management and Building Management believe that the faults relate to an issue with the FIP itself and not the actual detectors or other items listed as being in fault.
 - ii. The FIP cannot be repaired and is to be replaced with a new FIP. **NOTE:** as this is considered building work, FRNSW is now referring the installation of a new FIP to council
 - iii. Fire technicians have attended the site to confirm that activation of any detector listed as being in fault will alert the automatic fire alarm service provider through the ASE.
 - iv. Fire technicians have attended the site to confirm that the hydrant/sprinkler system appears to be fully operational.
 - B. Council's fire safety officer confirmed that Council would be issuing correspondence to the building owners soon regarding the status of the essential fire safety measures. (A Corrective Action Letter has since been issued by Council on 17 December 2021 - Ref. CSM 2677654)

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

RECOMMENDATIONS

FRNSW recommends that Council:

Inspect and address any other deficiencies identified on 'the premises', and require item no. 1 and 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] of FRNSW's Fire Safety Compliance Unit on (02) [REDACTED]. Please ensure that you refer to file reference BFS21/1562 (15566) for any future correspondence in relation to this matter.

Yours faithfully

[REDACTED]

[REDACTED]

Fire Safety Compliance Unit

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Proposed Fire Safety Order ORDER No. 1

Under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*
Part 9 Implementation and Enforcement – Division 9.3 Development Control
Orders

Fire Safety Orders in accordance with the table to Part 2 - Schedule 5.
Intend to give an Order in accordance with Section 9.34(1)(b)

I, [REDACTED] **Building Surveyor** **905798**
(rank) (number)

being an authorised Fire Officer within the meaning of Schedule 5, Part 8, Section 16 of the *Environmental Planning and Assessment Act 1979*, and duly authorised for the purpose, hereby order:

The Owners of SP 81141
(name of person whom Order is served)

Owner
(position i.e. owner, building manager)

with respect to the premise

'ASPECT'
SP 81141; 2 CUNNINGHAM STREET HAYMARKET ("the premises")
(name/address of premises to which Order is served)

to do, or refrain from doing, the following things:

1. Ensure the automatic smoke detection and alarm system installed in 'the premises' is fully operational, by repairing the alarm, faults and isolation to the Fire Indicator Panel.
2. Ensure the fire hydrant system and sprinkler system installed in 'the premises' is fully operational, by repairing the faults to the diesel hydrant/sprinkler pump.
3. Ensure the Emergency Warning and Intercommunication System (EWIS) installed in 'the premises' is fully operational, by repairing the fault displayed on the EWIS Panel.

The terms of the Order are to be complied with:

By no later than **14 days** from the date of the order

The reasons for the issue of this Order are:

- a. At the time of the inspection on 18 November 2021, the Fire Indicator Panel displayed the following:
 - 19 (nineteen) Faults.
 - 1 (one) Isolation - 'Main Mother Board'.
 - 1 (one) Alarm - 'Sprinkler Pump Tamper'.
- b. At the time of the inspection on 18 November 2021, the EWIS Panel displayed a fault.
- c. To ensure that the automatic smoke detection and alarm system is capable of operating to the standard of performance to which it was designed, installed and commissioned.
- d. To ensure that the combined hydrant/sprinkler system is capable of operating to the standard of performance to which it was designed, installed and commissioned.
- e. To ensure that the EWIS is capable of operating to the standard of performance to which it was designed, installed and commissioned.
- f. Failure to repair and maintain the combined hydrant/sprinkler system and the automatic smoke detection and alarm system, is likely to delay the timely response of firefighting operations by Fire and Rescue NSW.
- g. To ensure the fire sprinkler system is capable of performing to the degree necessary to control the development and spread of fire in 'the premises'.
- h. To ensure or promote the safety of persons in the event of fire.
- i. To ensure compliance with the requirements of Clause 182 of the Environmental Planning and Assessment Regulation 2000.

Appeals

Pursuant to Section 8.18 of the Environmental Planning & Assessment Act 1979 (EP&A Act), there is no right of appeal to the Court against this Order, other than an order that prevents a person using or entering premises.

Non-Compliance with the Order

Failure to comply with this Order may result in further Orders and/or fines being issued.

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Substantial penalties may be imposed under Section 9.37 of the EP&A Act for failure to comply with an Order.

NOTE: Representations are to be made in writing and should be received by FRNSW by no later than close of business **3 December 2021**.



Fire Safety Compliance Unit

This **Proposed** Fire Safety Order No. 1 was sent by mail on **19 November 2021**.

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