

Attachment B

**Inspection Report
100 Broadway, Chippendale**

100 Broadway, Chippendale



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Notes

9/02/2023

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 2924343

Officer: Joe Kalgovas

Date: 6/02/2023

Premises: 100 Broadway, Chippendale

Executive Summary:

Council received correspondence from the Commissioner of Fire and Rescue NSW (FRNSW) in relation to the subject premises on 31 January 2023 with respect to matters of fire safety.

The premises consists of a three-storey building used as a licenced hotel/pub trading as the Abercrombie Hotel. The building is linked to the Frasers Block 4N development.

Development Application D/2017/853 determined the proposed use of the building as class 6 retail. A Private Certifier has recently issued an Occupation Certificate dated 22 December 2022.

The ground floor comprises a pub lounge, gambling lounges and courtyard. The second floor is used as a kitchen and restaurant with further lounges and the third floor is in use as a lounge bar and terrace.

An inspection of the premises undertaken by a Council Officer in the presence of the Hotel Manager and Chief Operating Officer for Solotel revealed that the premises are deficient in fire safety and egress provisions in the following areas:

- (i) A lack of adequate facilities for firefighting;
- (ii) Safe and dignified emergency egress for occupants to safely evacuate the building in the event of a fire
- (iii) Poor fire safety management systems (signs/notices/not displayed etc.) in place

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

Chronology:

Date	Event
31/01/2023	FRNSW correspondence received regarding premises 100 Broadway, Chippendale.
7/02/2023	An inspection of the subject premises was undertaken by Council Officers which identified minor issues. The inspection was carried out in the presence of the Hotel Manager and Solotel Representative. The FRNSW issues and concerns appear to relate to the large capacity and control of the venue.
17/02/2023	A compliance letter of instruction sent for building management to request compliance with the items identified at the Council inspection.

FIRE AND RESCUE NSW REPORT:

References: (BFS23/94, 2023/054310)]

Fire and Rescue NSW conducted an inspection of the subject premises after receiving an enquiry about security/management having no monitoring system to count the exact number of patrons.

Issues: The report from FRNSW detailed a number of issues which are addressed in the following table:

Issue	City response
1. Essential Fire Safety Measures	
1A. Fire Safety Certificate and Fire Safety Schedule could not be located	The Fire Safety Certificate & Schedule were not on display, need to comply.
1B. Sprinkler System	
A. Unclear whether the reference standard (AS 2118.1-1999) on the block plan for the sprinkler system requires a newer standard	Occupation Certificate on the City's files issued by the Private Certifier dated 22 December 2022 identifies the standard of performance as AS 2118.1-1999.
B. Sprinkler alarm valve room door lacked signage	Signage was found to be missing, to be installed.
C. Security gate owned and operated by adjoining property prevents access to the sprinkler alarm valve	Security gate prevents access to the sprinkler alarm valve, to be complied with under the corrective action letter 17 February 2023.
D. Unclear whether Alarm Signalling Equipment is installed in sprinkler control room	Not listed on the final Fire Safety Schedule accompanying the Occupation Certificate on the City's files, need to comply.
E. Sprinkler guards may be required to the storeroom under the stairway of 'Lil Sis'.	Inspection revealed that the sprinkler guards have been installed.
F. Unclear whether the sprinkler system has been tested due to noted frangible elements	No frangible elements identified, request to be made for audit to be undertaken.
1C. Access to Portable Fire Extinguishers was restricted	No restrictions to PFE identified.
1D. Council may require a review of the detector types and spacing	A desktop review identifies that an Occupation Certificate issued by the Private Certifier on the City's files identifies AS 1670.1-2018 as the standard of installation and includes a reference to the Installation Certification by CFSP-F034873A and Red-Hot Fire Protection. Further documentation to be requested to confirm compliance.

Issue	City response
2. Access and Egress	
2A. Fire exit area to be free of obstructions	
A. The stairway leading from the ground floor to the first floor on Broadway include a gate	Gate is a heritage item, request made to ensure it is maintained in the open position.
B. Rope and bollards were installed on the stairway leading from the first floor to the second floor on Broadway	Officers were advised that this was a temporary measure to restrict access as the second floor was not in use.
C. Final exit gates from the beer garden open into a covered area of the adjoining building. The paths toward Abercrombie Street and Broadway include doors within the swinging security gates for pedestrian egress. Both doors do not appear to have latches which comply with Clause D2.21 of the NCC	Doors in gates to paths to streets have a push button system for releasing the gates. This is in compliance with D2.21(a)(ii) of the NCC with the latch operation device located on the gate.
3. Compartmentation	
3A. A review may be required to confirm that the openings in external walls have been considered as part of the approval.	<p>A desktop review identifies that an Occupation Certificate issued by the Private Certifier on the City's files include two Fire Engineering Reports (FER), one for the building known as Frasers Block 4N (by WSP Rev 5 dated 15/05/2018) the other for Australian Hotel & Terraces (by Red Fire Engineers JN19-00365 vers 3 dated 19/10/2022).</p> <p>Both FERs contain Performance Solutions relied upon by the Certifier which address the protection of openings in external walls between two separate buildings on the same allotment (Australian Hotel & Terraces and Block 4N).</p>
4. Generally	
4A. Investigation outcomes	
A. The Councils discretion is to determine whether DJs are playing live music and whether the use of the premises is a Night Club/Discotheque.	<p>BCA Assessment Report by City Plan Services RE 173308 Issue 2 dated 22 June 2017 was considered in the assessment of the DA which determined the proposed use of the building as Class 6 retail.</p> <p>D/2017/853 suite is approved as a licenced hotel/pub use.</p> <p>Due to the NSW variation to the National Construction Code, not including a nightclub/discotheque or hotel providing live entertainment under the definition of an</p>

Issue	City response
	<p>assembly building classifies the use as a Class 6.</p> <p>Whether the DJ is playing live music does not change the Class 6 classification determined by the DA and the appointed Certifier.</p>
<p>B. Pre-sold tickets were required to enter the ground floor and security managed the population numbers throughout the venue.</p>	<p>While pre-sold tickets are used for some events, management (Security) use a counting system at the entrance to the premises to maintain a total patron capacity within the premises.</p> <p>Management (Security) then use a counting system between floors to maintain the patron capacity between the different areas of the premises when the premises is nearing full capacity.</p>
<p>4B. For further investigation</p>	
<p>A. Council may need to conduct a review of:</p>	
<p>i The building appears to be class 9b</p>	<p>Due to the NSW variation to the NCC not including a nightclub/discotheque or hotel providing live entertainment under the definition of an assembly building classifies the use as Class 6.</p>
<p>ii The building has a rise in storeys of more than two</p>	<p>Yes, the building consists of three storeys.</p>
<p>iii Operators appear to promote live music or arts</p>	<p>Commencing from 26 October 2009 pubs (and other venues) do not require development consent to provide entertainment (including live music or arts).</p>
<p>iv Total floor area seems to be more than 500 square metres</p>	<p>Agree the floor area of the building is greater than 500m² (approximates 1,000m²).</p>
<p>B. Councils discretion to determine whether NSW Table E2.2b of the NCC requires the sprinkler system to comply with Specification E1.5 with fast response sprinkler heads.</p>	<p>Class 6 buildings under NSW Table E2.2b does not call up specification E1.5 and as such are not required to have fast response heads.</p>
<p>C. The Council could consider requiring the operators to display the maximum number of people in a sign for each storey to assist in regulating the number of people.</p>	<p>This was not a condition that was included when the development consent was approved and as such cannot be retrospectively introduced.</p>
<p>D. The Council could consider including a method of monitoring population numbers between each floor as part of management to prevent excessive numbers on the ground floor.</p>	<p>The City has set the capacity for the different parts of the hotel in the development consent. It is the responsibility of the operator to comply with this condition and to have a procedure in place for</p>

Issue	City response
	compliance. The hotel management has a procedure in place to address this.
E. Lighting and speakers obscured the exit signs on the ground floor performance and dance floor area.	Compliant directional exit signage was found to be installed in an appropriate position indicating the direction of the exit.
F. Curtains on the ground floor may be treated to attain a Flammability Index of 6 if the Council reassesses the use as a 9b assembly building.	The BCA Assessment Report by City Plan Services RE 173308 Issue 2 dated 22 June 2017 was considered in the assessment of the DA which determined the proposed use of the building as Class 6 retail not 9b assembly building. D/2017/853 suite is approved for a licenced hotel/pub use.
G. The total floor area of the building appears to be greater than 500m ² requiring a fire hydrant system to be installed.	Yes, Occupation Certificate issued by the Private Certifier on the City's files lists a fire hydrant system installation with a standard of performance to BCA 2014 E1.3 & AS 2419.1-2005 Amdt 1. Documentation will be requested to confirm compliance.

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

FRNSW Recommendations

FRNSW have recommended that Council review the comments, inspect the subject premises and appropriately address noted (and other) deficiencies identified within their report.

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 (to specify)

As a result of site inspection undertaken by Council's investigation officers it was determined to issue the owners of the building a corrective action letter to rectify the identified fire safety deficiencies noted by Council and FRNSW.

The corrective action letter dated 17 February 2023 requests that building management:

- Put forward a strategy to tackle the security gate preventing access to the sprinkler alarm valve issue.

- Install compliant signage to fire systems .
- Conduct a survey of the existing fire sprinklers and carry out such rectifications as to cause operational compliance with the nominated standards of performance.
- Fix the identified heritage gate to the open position and sympathetically in accordance with the building's heritage guidelines.
- Provide certification from the installer of the smoke detectors to confirm that the correct minimum spacing between detectors for level and uneven surfaces is compliant.
- Provide documentation that the installed hydrant system complies with BCA 2014 E1.3 & AS2419.1-2005Amdt 1.
- Ensure that proper fire safety maintenance and management practices are in place at all times.
- Ensure an AFSS is prominently displayed at all times.

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

Referenced/Attached Documents:

2023/054310	FRNSW letter dated 31 January 2023
2023/074599	Corrective Action Letter 17 February 2023

Trim Reference: 2023/074586

CSM reference No#: 2924343

Unclassified



File Ref. No: BFS23/94 (25816)
TRIM Ref. No: D23/5370
Contact: [REDACTED]

30 January 2023

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
'THE ABERCROMBIE HOTEL'
100 BROADWAY, CHIPPENDALE ("the premises")**

FRNSW received a fire safety concern which stated in part that:

Each floor (3) has a capacity but after midnight, everyone is inside and ground floor is the main dance floor. The ground floor had a capacity of 400 but Police have recorded 600+. Security/management have no monitoring system to count the exact number of patrons.

My concern, being a 24hr licence, new owners, large capacity of patrons, and with fire exits covered with curtains or changed locations, something serious may occur if there were an emergency.

Pursuant to Section 9.32(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), Authorised Fire Officers from the Fire Safety Compliance Unit of Fire and Rescue NSW (FRNSW) inspected 'the premises' on 17 January 2023, the NSW Police Force were also present during the inspection.

On behalf of the Commissioner of FRNSW, comments in this report are provided under Section 9.32(4) and Schedule 5, Part 8, Section 17(1) of the EP&A Act.

Fire and Rescue NSW

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The items listed in the comments of this report are based on the following limitations:

- A general overview of the building was obtained without using the development consent conditions or approved floor plans as a reference.
- Details of the Provisions for Fire Safety and Fire Fighting Equipment are limited to a visual inspection of the parts in the building accessed and the fire safety measures observed at the time.

COMMENTS

Please be advised that the items in this report are limited to observations of the building accessed at the time of the inspection and identify possible nonconformities with the National Construction Code 2019, Volume 1 Building Code of Australia (NCC) and provisions for fire safety. The items are not an exhaustive list of non-compliances. FRNSW acknowledges that the differences observed at the time may contradict development consent approval or relate to the building's age. Therefore, it's the Council's discretion as the appropriate regulatory authority to consider the most appropriate action.

The following items were identified during the inspection:

1. Essential Fire Safety Measures
 - 1A. Fire Safety Certificate (FSC) and Fire Safety Schedule (FSS) – Regulation 85(b) of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR2021) require the owner to prominently display a copy of the FSC and a copy of the current FSS in the building. Neither could be located at the time of the inspection.
 - 1B. Sprinkler System – EP1.4 of the NCC requires an automatic fire suppression system to control the development and spread of fire. The following observations may not meet this intent and, as a result, may require the Council's review:
 - A. Block Plan – The block plan for the sprinkler system is beside the sprinkler booster connection adjacent to Broadway Street. The block plan references Australian Standard AS2118.1 – 1999. As no FSC or FSS was displayed, it is unclear whether the newer standard applies to the sprinkler system.
 - B. Signage – The block plan references a “sprinkler alarm valve room” on the eastern elevation of the building. As identified in the block plan, the door to the room on the eastern elevation lacked signage identifying it as a sprinkler room. It is assumed that this is the location for the sprinkler alarm valve room.

- C. Access – A security gate prevented entry to the building's "sprinkler alarm valve room" on the eastern elevation. The security gate is owned and operated by the adjoining property. The licensee did not have permission or the capacity to open or close the security gate to allow entry into the room. The room's contents are unclear, as the security gate prevented access.
 - D. Alarm Signalling Equipment – Clause 3.3.2 of Australian Standard AS2881.1:2017 'Automatic Fire Sprinkler Systems – General Systems' requires transmission of an alarm signal to the fire brigade upon actuation of the sprinkler system. Because the security gate prevented access to the sprinkler control room and a FSC and FSS were not displayed, it is unclear whether an ASE was installed.
 - E. Sprinkler Guards – Clause 6.9 of Australian Standard AS2881.1:2017 'Automatic Fire Sprinkler Systems – General Systems' require sprinklers installed in locations likely to suffer mechanical damage to be fitted with metal guards. Guards are not to interfere with the sprinkler's spray pattern or used with flush, recessed or concealed-type sprinklers. The storeroom under the stairs of 'Lil Sis' may require sprinkler guards.
 - F. Frangible Elements of Sprinklers – Table 2.4.2.3, item No. 3.18 of Australian Standard AS1851-2012 (amendment 1) - "Service of fire protection systems and equipment" requires sprinklers to be free of obstructions likely to affect their function. It is unclear whether the system has been tested and commissioned, as many frangible elements of the sprinkler heads included protective plastic covers.
- 1C. Portable Fire Extinguishers (PFEs) – Table 10.4.1 of Australian Standard AS1851-2012 (amendment 1) - "Service of fire protection systems and equipment" requires PFEs to remain conspicuous, readily accessible and in their assigned location. At the time of the inspection, items were restricting access to many PFEs.
 - 1D. Spacing of Smoke Detectors – Clause 3.27 of AS1670.1 prescribes the minimum spacing between detectors for level and uneven surfaces. The Council may require a review of the detector types and spacings.
- 2. Access and Egress
 - 2A. Fire Exits and Fire Exit Doors – Regulation 109 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021) requires a fire exit area for a building to be free of items that may obstruct the free passage of persons. Nor should the operation of a fire exit door be interfered with or obstructed without a lawful excuse, which includes the operation of a fire door providing access to a building's fire exit. The Council may require a review as a result of the following observations:

- A. The stairs leading from the ground floor to the first floor from the required exit of Broadway Street included a gate.
 - B. Rope barriers and bollards were installed on the same stairs (in item A above), leading from the first floor to the second floor.
 - C. The final exit gates from the beer garden of “the premises” open into a covered area of the adjoining building. The paths toward Abercombe Street or Broadway Street include doors installed within the swinging security gates for pedestrian egress. Both doors do not appear to have latches that comply with Clause D2.21 of the NCC.
3. Compartmentation
- 3A. Protection of Openings in External Walls – Clause C3.2 & Clause C3.4 of the NCC require the installation of an acceptable protection method for any openings in external walls with an FRL and is less than the prescribed distance. A review may be required to confirm that the openings have been considered as part of the approval.
4. Generally
- 4A. Investigation Outcomes – The following items are provided to Council as part of the investigation on Tuesday, 17 January 2023:
 - A. Advertisement – “The premises” advertised the ground floor as a performance and club space and a public bar to see “*Sydney’s best record labels dial up the party vibes—Sweat It Out, Future Classic, Motorik, and of course—Purple Sneakers.*” The advertising included the other storeys, which stated – “*Casa Rosa, a late-night Italo-disco cocktail lounge, and a rooftop terrace with DJs.*” The Council’s discretion is to determine whether DJs are considered “live music” and whether the use of “the premises” is a Night Club/Discotheque (or the like).
 - B. Population Numbers – The licensee indicated that pre-sold tickets were required to enter the ground floor, and security managed the population numbers throughout the three storeys via the sold tickets.
 - 4B. Items for Further Investigation – Council may require an investigation to confirm the following:
 - A. Assembly Building – Regulation 4 of the Environmental Planning and Assessment Regulation 2021 (EP&A Reg 2021) varies the Building Code of Australia to permit the use of a building to be a Class 6 building instead of a Class 9b assembly building. Provided the building meets specific requirements, it may remain a Class 6 building or part of a Class 6 building where people assemble for entertainment if approved as a “small live music or arts venue.” The

Council may need to conduct a review as a result of the following observations:

- i. The whole or part of the building appears to be a Class 9b building.
 - ii. The building has a 'rise in storeys' of more than two storeys.
 - iii. The operators appear to promote live music or arts, and
 - iv. The total floor area seems to be more than 300 square metres.
- B. Night Clubs/Discotheques (or the like) – For a building or part of a building other than an auditorium containing a floor area not more than 2000m². It is the Council's discretion to determine whether NSW Table E2.2b of the NCC requires the sprinkler system to comply with Specification E1.5 with fast response sprinkler heads.
- C. Maximum Capacity Signage – Regulation 73 of the EP&A Reg 2021 requires a sign displaying the maximum number of persons in a prominent position in the building. Provided the development consent (which includes an existing development consent) specifies a maximum number. At the time of the inspection, a sign at the front entry door on Broadway Street stated the maximum number of persons as 700. The Council could consider requiring the operators display the maximum number of people in a sign for each storey to assist in regulating the number of people.
- D. Evacuation Plan – Owners and managers of hospitality facilities should provide oversight to fire safety training for the staff and ensure that adequate plans and procedures are ready to be executed in the event of a fire or emergency. A fire prevention plan should be developed under the Australian Standard, AS 3745 - 2010 Planning for Emergencies in Facilities, which outlines the minimum requirements for developing the emergency plan. The Council could consider including a method of monitoring population numbers between each floor as part of an approved "plan of management" for "the premises" to prevent excessive numbers on the ground floor.
- E. Exit Signs – Performance Requirement EP4.2 of the NCC requires suitable signs to identify the location of exits. At first sight, lighting and speakers obscured the exit signs on the ground floor performance and dance floor area. The Council may require a review of the exit strategy.
- F. Curtains – The curtains on the ground floor may be treated to attain a Flammability Index of 6 if the Council reassesses the use of "the premises" as a Class 9b assembly building to prevent accidental or malicious lighting of the curtains.

Unclassified

- G. Floor Area – Clause E1.3 of the NCC requires buildings with a total floor area greater than 500m² be installed with a fire hydrant system per Australian Standard AS2419.1. The total floor area of the building appears to be greater than 500m².

FRNSW believes that there are inadequate provisions for fire safety within the building.

RECOMMENDATIONS

FRNSW recommends that Council:

- a. Review the comments in the sub-heading of items 1 to 4 of this report and conduct an inspection.
- b. Address any other deficiencies identified on “the premises”.

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

Please do not hesitate to contact [REDACTED] of FRNSW's Fire Safety Compliance Unit at FireSafety@fire.nsw.gov.au or call on [REDACTED] if there are any questions or concerns about the above matters. Please ensure that you refer to file reference BFS23/94 (25816) regarding any correspondence concerning this matter.

Yours faithfully

[REDACTED]

[REDACTED]
Fire Safety Compliance Unit