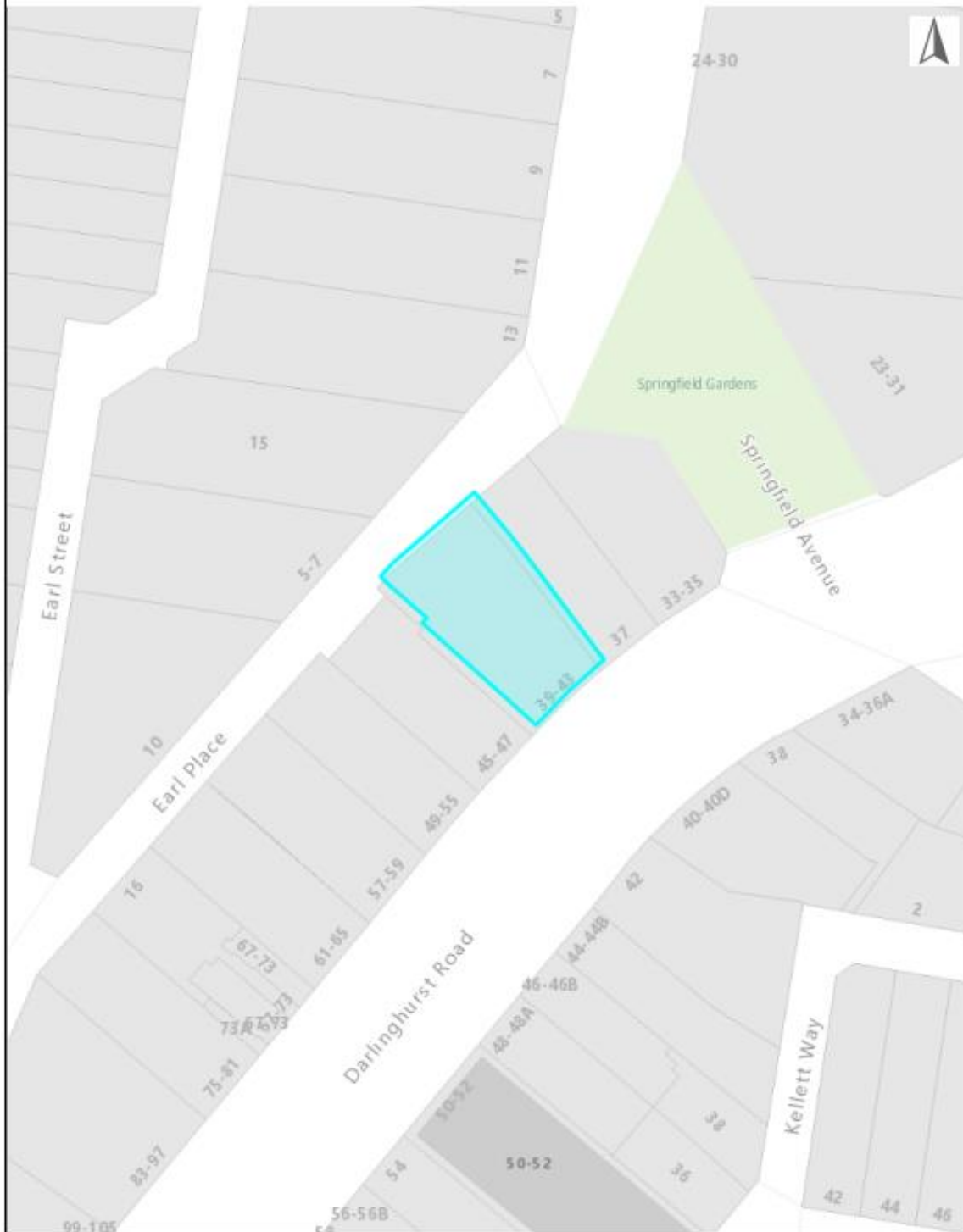


Attachment B

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

39-43 Darlinghurst Road, Potts Point

CITY OF SYDNEY 



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Notes

1/05/2023

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 2952394

Officer: T. Zeljkovic

Date: 1 May 2023

Premises: 39-43 Darlinghurst Road, Potts Point

Executive Summary:

Council received correspondence from the Commissioner of Fire and Rescue NSW (FRNSW) in relation to 39-43 Darlinghurst Road, Potts Point, identified as “Kings Hotel”, with respect to matters of fire safety.

The premises is comprised of a three (3) storey brick commercial building, containing four levels, with an effective height of approximately 10 metres. The building is within a heritage conservation area, identified in the Sydney Local Environmental Plan 2012.

The lower ground floor level of the building contains a vacant nightclub formerly known as the ‘O Nightclub’, ground floor level contains a tobacconist and the ‘Showgirls’ adult theatre. The first and second floor levels contain the ‘Kings Hotel Sydney’, a private hotel.

On 24 March 2023, an inspection of the premises undertaken by a Council investigation officer in the presence of the building manager, revealed that there were no significant fire safety issues occurring within the building.

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 on display within the building in accordance with the requirements of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Council investigations have revealed that whilst there remains several minor fire safety maintenance and management works to attend to such as, detector repairs, sealing around cable penetrations, updating fire block plans, locks and general housekeeping, the overall fire safety systems provided are adequate in the circumstances.

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.

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.

Council investigations have revealed that the overall fire safety systems provided within the building are adequate.

Chronology:

Date	Events
15 March 2023	Fire and Rescue NSW (FRNSW) correspondence dated 13 March 2023 received regarding a 28 February 2023 attendance – which noted, fire panel faults, block plan, fire seal, egress deficiencies, annual certification and other management issues.
16 March 2023	Review of Council records revealed a historical fire order was issued on 24 April 2015, subsequently completed on 19 December 2016, which updated/certified the Fire Safety Schedule/measures for the building, included fire alarm, fire compartmentation and sprinkler systems. [Reference No. FIRE/2015/19]
24 March 2023	Site inspection conducted in presence of hotel manager revealed: <ul style="list-style-type: none">○ fire indicator panel (FIP) located within the hotel foyer, servicing all tenancies:<ul style="list-style-type: none">- a basic zone block plan present- 9 faults noted, 1 to vacant basement level and 8 to Show Girls tenancy○ an annual fire safety statement was not present○ sprinkler protection provided, with a basic block plan○ exit signs illuminated○ one fire isolated stair to rear, main central stair contained smoke sealed doors○ various cable, timber and camera penetrations located within common ceilings○ ground level glazed exit door containing a push button release○ limited access to sprinkler/pump room located within Earl Place - 003 key hardware not present○ ground level hose reel obstructed by large pot plant○ rear stair, required minor cleaning/mopping - no sheets/goods or furniture noted
24 March 2023	Written instruction sent to property managers to rectify fire panel faults and hose reel obstruction, which was acknowledged, fire contractors attended site 25 March 2023
30 March 2023	Further written instruction pertaining to all maintenance issues identified during Council and FRNSW inspection(s), i.e. fire detection system, signage, access/egress, compartmentation, hose reel and sprinkler room matters – staged compliance
19 April 2023	Follow up inspection confirmed staged repairs/maintenance on target; further compliance inspections proposed

FIRE AND RESCUE NSW REPORT:

References: [BFS22/5485 (24476); 2023/211007-01]

Fire and Rescue NSW conducted an inspection of the subject premises after receiving an enquiry about the existing hotels operation, evacuation, fire door and hydrant system issues.

Issues: The report from FRNSW detailed the following issues, regarding maintenance of certain fire safety measures:

Issue	City response
1. Maintenance of existing fire safety measures /issues: <ul style="list-style-type: none">A. Fire Brigade Panel (FBP) – in “FAULT” and “ISOLATED”. The LCD screen display identified two (2) isolations and eight (8) faults. FRNSW issued A “Notice of Proposed Order”.B. Fire Hose Reels (FHR) operation of reel, affected by obstruction i.e., pot plant proximity.	Addressed by Council’s written instruction – 19 April 2023 Council inspection verified faults to Fire indicator panel had been investigated, subsequently cleared and the hose reel obstruction removed.

Issue	City response
<p>2. Fire alarm Zone Block Plan did not depict required building/ system information as per – Clause 3.10 of the Australian Standard (AS) 1670.1-2018. Items A-1 Summary of required information:</p> <ul style="list-style-type: none"> ○ The building layout, location of fire alarm system, zones, fan, sprinkler controls, main electrical switchboard, special hazard and on-site base line data, 000 signage, and a statement, identifying the design / relevant building code/ Australian Standard and revision No. of said block plan. 	<p>Addressed by Council's written instruction - the buildings property agents have ordered an updated, fire alarm zone block plan in keeping with (AS) 1670.1-2018.</p>
<p>2. Access and egress</p> <ul style="list-style-type: none"> A. Operation of latch of the Hotels front final exit, to be in accordance with Clause D2.21 of the National Construction Code (NCC) - readily openable from the side that faces a person seeking egress. 	<p>Addressed by Council's written instruction – the front doors automatic fail-safe device/button to be reviewed by a competent fire safety practitioner ensuring adequate signage/operation, as per D2.21 of the NCC.</p>
<p>3. Compartmentation – Fire stair</p> <ul style="list-style-type: none"> A. Electrical wiring for a CCTV noted within the stairwell, may contravene Clause 3.9 of the NCC. B. Plasterboard noted to a shaft, compliance to be verified. 	<p>Addressed by Council's written instruction, a competent fire safety practitioner to inspect and fire seal as applicable.</p>
<p>4. General</p> <ul style="list-style-type: none"> A. Housekeeping – sheets, goods, refuse in fire stair B. Annual Fire Safety Statement (AFSS) location and access to sprinkler room 	<p>Addressed by Council's written instruction, as follows:</p> <ul style="list-style-type: none"> ○ Hotel to furnish a house keeping plan of management. ○ AFSS is installed adjacent to Fire panel, additional copies will be placed in tenancies ○ Sprinkler room hardware being changed, to suit 003 keys, used by FRNSW

FRNSW believed that there were inadequate provisions for fire safety within the building.

FRNSW Recommendations

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

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 the above site inspection undertaken by Council's 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 to rectify the identified fire safety deficiencies noted by FRNSW.

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:

2023/211007-01	FRNSW S9.32 report dated 13 March 2023
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Trim Reference: 2023/211007

CSM reference No#: 2952394

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File Ref. No: BFS22/5485 (24476)
TRIM Ref. No: D23/20260
Contact: [REDACTED]

13 March 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
'KINGS HOTEL'
39-43 DARLINGHURST RD, KINGS CROSS (hereafter "the premises")**

Fire and Rescue NSW (FRNSW) received correspondence on 24 October 2022 concerning the adequacy of the provision for fire safety in or in connection with the premises.

The correspondence stated that:

boxes and loose furniture blocking fire exit

fire exits are also generally not locked on exterior - held open

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 FRNSW inspected the premises on 28 February 2023.

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

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.

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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- 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 during 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 Measure
 - 1A. Maintenance – Section 81 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021) requires maintenance of the Essential Fire Safety Measure to a standard no less than when it was first installed. At the time of the inspection, authorised fire officers observed the following:
 - A. Fire Brigade Panel (FBP) – The LED lights on the FIP for “FAULT” and “ISOLATED” was lit. The LCD screen display identified two (2) isolations and eight (8) faults. A “Notice of Proposed Order” was issued. A copy is attached (refer to Appendix 1).
 - B. Fire Hose Reels (FHR) – Table 9.4.1 of Australian Standard AS1851-2012 (amendment 1) - “Service of fire protection systems and equipment” requires FHRs to be accessible with no obstacles restricting its access. During the inspection, a pot plant limited access to the FHR beside the front lobby desk.
 - 1B. Zone Block Plan – Clause 3.10 of the Australian Standard 1670.1-2018 requires an easily accessible and securely mounted zone block plan at the Fire Brigade Panel (FBP). The Council may need a review to confirm that the block plan is a water and fade-resistant permanent diagram in the correct orientation of the building. With a minimum of three (3) mm high lettering and includes the following information:
 - A. The building layout in which the Fire Detection and Alarm System (FDAS) is installed.
 - B. The area covered by each zone.
 - C. The location of all fire detection control and indicating equipment (FDCIE), special hazards control and indicating equipment

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(SHCIE), fire fan control panel (FFCP) and emergency warning control and indicating equipment (EWCIE).

- D. The location of any fire suppression system controls.
- E. The location of the building's main electrical switchboard.
- F. The year of the original installation and the date of the latest revision to the block plan.
- G. A notice stating, "In the event of a fire ring 000 to ensure fire service response", except the lettering height to be not less than 5 mm.
- H. The location where baseline data are stored. A label on the FDCIE meets this requirement.
- I. A statement identifying the design criteria used, including NCC reference, NCC referenced standards(s) and performance solutions as practicable.

2. Access and Egress

- 2A. Operation of Latch – Clause D2.21 of the NCC requires that a door located in a required exit, or forms part of a required exit or in the path of travel to a required exit must be readily openable without a key from the side that faces a person seeking egress. The front door entry is sign-posted as a required exit and includes a push button to open the magna latch lock. The Council may need to conduct a review of the door hardware.

3. Compartmentation

- 3A. Fire Isolated Stair – The following comments concern the second required exit leading towards the northwest of the building.
 - A. Clause C3.9 of the NCC minimises the number of service penetrations into the fire-isolated exit by only allowing the services specified. A penetration within the stairwell appears to be for electrical wiring and a CCTV camera. The Council may require a review.
 - B. There appears to be new plasterboard lining within the fire-isolated shaft. The Council may need to inspect and confirm whether the work is approved.

4. Generally

- 4A. Investigation Outcomes – The following items are provided to Council as part of the investigation on Tuesday, 28 February 2023:

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- A. Sheets were observed in the centre fire-isolated stairwell. However, the manager advised that this was because of housekeeping duties.
 - B. No boxes or loose furniture were found in the fire-isolated stairs or exit paths. However, a full garbage bag in the second fire-isolated exit may be associated with housekeeping duties.
- 4B. Items for Further Investigation – Council may require an investigation to confirm the following:
- A. Annual Fire Safety Statements (AFSS) and Fire Safety Schedule (FSS).– Regulation 89(4)(b) of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021) requires the owner of the building to prominently display in the building a copy of the AFSS and a copy of the current FSS. The Council may need to inspect and review its records for the premises as it was challenging to locate an AFSS and FSS. FRNSW prefers the statement to be beside the FBP for ease.
 - B. Access to the Sprinkler Control Room – Entry to the sprinkler control room at the time of inspection was restricted, as the door includes a lock restricting access for firefighters in an emergency. Typically a 003 lock compatible with a FRNSW access key is preferred.

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

FIRE SAFETY ORDER NO. 1

Authorised Fire Officers' of FRNSW issued a Notice No. **1**, dated 2 March 2023, under the provisions of Section 9.34 of the EP&A Act. In this regard, Council is not presently required to act on item no. 1A(A) of this report.

Under Schedule 5, Part 6, Section 12 of the EP&A Act, a copy of the Notice is attached for your information. FRNSW will conduct further inspections of the building to assess compliance with the terms of this Notice and advise Council accordingly.

RECOMMENDATIONS

FRNSW recommends that Council:

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

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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. FRNSW refers this matter to the Council as the appropriate regulatory authority and 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 (02) [REDACTED]. If you have any questions or concerns regarding the above matters, Please ensure that you refer to file reference BFS22/5485 (24476) for any future correspondence concerning this matter.

Yours faithfully

[REDACTED]

[REDACTED]

Fire Safety Compliance Unit

Attachment: [Appendix 1-Notice of Proposed Order 1 dated 2 March 2023 -3 pages]

Unclassified



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] [REDACTED]

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:

HERRMCORP PTY LIMITED
(name of the person whom Order is served)

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

with respect to the premise

'KINGS HOTEL'
LOT 1, DP499508, 39-43 DARLINGHURST RD, KINGS CROSS (hereafter "the premises")
(name/address of premises to which Order is served)

to do or refrain from doing the following things:

Reinstate the Smoke Detection and Alarm system at the premises to operate as designed, installed and commissioned by repairing the faults and removing the isolations observed on the Fire Indicator Panel (FIP) during the inspection.

The terms of the Proposed Fire Safety Order – Order No.1 are to be complied with:

By no later than 14 Days from the Date of the Fire Safety Order – Order 1.

The reasons for the issue of the Proposed Fire Safety Order - Order No.1 are:

1. During the inspection on Tuesday, 28 February 2023:
 - a. The LED lights on the Fire Indicator Panel (FIP) for "FAULT" and "ISOLATED" was lit.

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 7843
www.fire.nsw.gov.au		Page 3 of 5

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- b. The LCD screen display identified two (2) isolations as follows:
 - i. L02M008 SW_H at AAF Room 8 – Missing
 - ii. L01D035 Showgirls Cashier – Missing
 - c. The LCD screen display identified eight (8) faults as follows:
 - i. L01D062 Sprinkler Valve Rm – Missing
 - ii. L01D002 Basement Entry Hall – Missing
 - iii. L01D009 Basement Lower Bar – Missing
 - iv. L01D012 Basement Upper Area – Missing
 - v. L01D021 Basement Storage Rm – Missing
 - vi. L01D022 Basement Back Exit – Missing
 - vii. L01D001 Basement – Ground Level Entry – Missing
 - viii. L01D061 Main Switch Room - Missing
2. Faults and isolations to the smoke detection and alarm system are likely to delay the timely evacuation of the building in an emergency.
 3. Faults to the automatic smoke detection and alarm system will likely delay an automated warning on detecting smoke for the occupants, which may delay the occupants' evacuation to a safe place.
 4. The faults and isolations diminish the automatic identification and notification that the FIP provides. As a result, the evacuation routes from the premises may likely be compromised by poor visibility and high levels of toxicity that may endanger human life.
 5. To do or refrain from doing such things specified in the Order to ensure or promote adequate fire safety or awareness.

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 a Fire Safety Order – Order 1 once it is issued, other than an order that prevents a person from using or entering premises.

Non-Compliance with Fire Safety Order – Order No.1

Once issued, failure to comply with a Fire Safety Order – Order 1 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 a Fire Safety Order – Order No.1.

NOTE: Representations are to be made in writing and received by FRNSW no later than 5.00 pm on Thursday, 16 March 2023.



Fire Safety Compliance Unit

This Proposed Fire Safety Order - Order No. 1 was mailed and emailed on 2 March 2023.