

Attachment B

**Inspection Report
10-24 Flinders Street, Darlinghurst**

10-24 Flinders Street, Darlinghurst



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Notes

13/12/2023

**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 3097635

Officer: Ashley Host

Date: 30 January 2024

Premises: 10-24 Flinders Street, Darlinghurst (aka 2 Sturt Street, 'Arq Nightclub')

Executive Summary:

Council received correspondence dated 1 December 2023 from the Commissioner of Fire and Rescue NSW (FRNSW) in relation to the subject premises with respect to matters of fire safety.

The site is occupied by a two-storey building containing a nightclub known as *Arq Sydney*, boarding house accommodation with twenty-two (22) rooms, and one ground floor retail tenancy. The site fronts Flinders Street and has rear lane access to Sturt Street.

An inspection of the whole premises was undertaken with the nightclub manager which revealed 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

Council investigations have revealed the premises are deficient in the provisions for fire safety and that a Notice of Intention to issue a fire safety order is required 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.

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
01.12.2023	FRNSW correspondence received regarding premises 10-24 Flinders Street, Darlinghurst
22.12.2023	An inspection in the presence of the building's nightclub and boarding house manager revealed the following fire safety issues: <ol style="list-style-type: none">1. The fire hydrant system appears to be an older system and is not correctly installed to meet the operational needs of FRNSW.2. The fire hydrant system appears to not have been being routinely serviced.3. A number of emergency exit light fixtures were not operational.4. A number of exit signs were not operational.5. Items were observed to be installed within the path of travel to the exit in Flinders Street, partially reducing its width.
14. 02.2024	Notice of Intention to issue a fire safety order issued.

FIRE AND RESCUE NSW REPORT:

References: [BFS23/6028 (31545), BFS23/121236; Trim Ref: 2023/690615]

Fire and Rescue NSW (FRNSW) received correspondence on 14 September 2023 concerning the adequacy of the provision for fire safety in connection with the premises following their response to an automatic fire alarm at the premises.

Issues

The report from FRNSW detailed numerous issues, in particular noting:

Ref	Issue	City response
1A. Automatic smoke detection		
A	A performance was occurring on stage at the time of inspection with an angle grinder, which produced a significant amount of smoke, yet the smoke detection system did not activate despite not showing any faults or disablements.	To be addressed by Fire Safety Order to require certification that the system complies with and operates in accordance with the requirements of AS1670.1
B	The monthly logbook for the smoke detection system included a note that the 'EWIS batteries were out of date' and it is unclear if this issue has been resolved.	At the time of inspection, the monthly logbook recorded that the EWIS batteries had been replaced.
1B Fire hydrant system		
A(i)	The fire hydrant booster assembly is located within the nightclub which does not suit the operational needs of FRNSW or afford maximum accessibility for and protection of fire fighters contrary to Clause 7.3 of AS2419.1-2005.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
A(ii)	Feed fire hydrants have not been installed onsite adjacent to the booster inlet connections contrary to Clause 7.4 of AS2419.1-2005.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
A(iii)	The doors to the booster enclosure were not marked with the words 'FIRE HYDRANT BOOSTER' in letters not less than 50mm high contrary to Clause 7.9 of AS2419.1-2005.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
A(iv)	A permanent and fade resistant or engraved sign indicating the boost pressure and test pressure was not provided at the booster assembly contrary to Clause 7.10.1 of As2419.1-2005.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
A(v)	A permanent water and fade resistant block plan was not provided to the booster assembly contrary to Clause 7.11 of AS2419.1-2005.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
A(vi)	The boost/inlet connections associated with the booster assembly contained service labels/tags indicating the valves had not received any routine servicing since October 2019 contrary to Clause 4.3 of As1851 and Clause 81 of the EPA Regulation 2021.	The service labels/tags to the hydrant system were up to date at the time of inspection, indicating that it had received recent routine testing.

B. Coverage		
i	Hydrant coverage from the installed system could not be determined due to the lack of a block plan and the limited number of internal hydrants found at the time of inspection.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
C. Hydrant system standard of performance		
i	FRNSW are of the opinion the standard of performance recorded on the AFSS for the hydrant is incorrect (AS2419.1-2005) and that the system displays the characteristics of an Ord 70 system.	To be addressed by Fire Safety Order to require the system to be upgraded to comply with the current Standard AS 2419.1-2021
Emergency lighting		
1C	Multiple emergency lighting fixtures were not operating and had not been maintained or observed to be covered with 'Gaffa' tape contrary to Clause 81 of the EPA Regulation 2021 and Clause E4D2 of the NCC.	To be addressed by Fire Safety Order to require the emergency lighting system to be rectified to comply with the installed Standard.
Fire doors		
1D	The fire door to the plantroom was 'choked' in the open position to ventilate the room contrary to specification 12 of the NCC and AS1905.1.	At the time of inspection there were no doors observed to be propped open.
2. Access and egress		
2A	There were multiple items stored within the fire exit (southeast corner of the building) contrary to Section 109 of EPA Regulation 2021.	At the time of inspection there were no items observed to have been installed in the fire exit located in the southeast corner of the building.
2B	A skip bin was located directly outside the discharge doors of the fire exits which discharges to Sturt Street at the rear of the building, which was partially obstruction the path of travel from the building.	At the time of inspection no skip bin was observed outside the exit doors to Sturt Street. Management advised items are often discarded at this location however the items are placed on the roadway, which is not the responsibility of the owner and would be the City's responsibility to address.
2C	Garbage bins were being stored along external passageway which leads to Flinders Street, which were partially obstructing the path of travel to the road after discharging from the buildings fire exits.	At the time of inspection large skip bins and beer kegs were observed to be stored along the external passageway leading to Flinders Street, partially reducing the exit width. To be addressed by Fire Safety Order to require the exit pathways to be kept clear and the bins to be relocated to a more suitable location.

FRNSW Recommendations

FRNSW have made two 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.

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 a site inspection undertaken by Council investigation officers a notice of intention (NOI) for a fire safety order was issued 14 February 2024 under Schedule 5 of the Environmental Planning and Assessment Act, 1979 to address the fire safety deficiencies identified by FRNSW and the Council investigation officer.

The issue of a fire safety order will ensure that suitable fire safety systems are in position throughout the building to provide improved and adequate provisions for fire safety.

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

Referenced/Attached Documents:

2023/690615	FRNSW S9.32 report dated 1 December 2023
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Trim Reference: **CSM reference No#:** 3097635

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File Ref. No: BFS23/6028 (31545)
TRIM Ref. No: D23/121236
Contact: Mark Knowles

1 December 2023

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
'ARQ SYDNEY'
16 FLINDERS STREET & 2 STURT STREET, DARLINGHURST ("the premises")
[AKA: 10-24 FLINDERS STREET, DARLINGHURST]**

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 20 October 2023. Officers from 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.

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

- Those parts of the building where access was available including ARQ Nightclub (16 Flinder Street & 2 Sturt Street). Note: Access was not available into Albion House (10 Flinders Street) and the retail shops (12-14 & 18-24).
- 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.

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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 2022, 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. Automatic Smoke Detection and Alarm System and Building Occupant Warning System - The Arq nightclub appears to be provided with its own independent automatic smoke alarm and detection system, separate from the remainder of 'the premises' (which includes 'Albion House' - 10 Flinders Street and the retail shops 12-14 & 18-24). The following comments relate to the Arq nightclub system:

A. The Fire Indicator Panel was not displaying any system faults, alarms or disablements and the system appeared in normal operation.

It is noted that a stage performance was occurring at the time of the inspection, which was utilising , among other things, an angle grinder which created a significant amount of sparks and smoke throughout the upper ground floor and mezzanine area, however, the FIP did not register any smoke detector activation.

B. Maintenance:

i. The latest entry in the Monthly Logbook Report, dated October 2023, noted the following:

a. EWIS batteries out of date

It is unclear whether the issues were resolved at the last monthly service.

1B. Fire Hydrant System – The Annual Fire Safety Statement on display listed the standard of performance for the hydrant system as being AS 2419.1-2005. As such, the following comments are provided having regard to AS 2419.1-2005:

A. The hydrant booster assembly:

i. The booster assembly is located within the confines of the building (in the main entry lobby to the Arq Nightclub) which does not suit the operational requirements of FRNSW or afford

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maximum accessibility for and protection of fire-fighters, contrary to the requirements of Clause 7.3 of AS 2419.1-2005.

- ii. Feed fire hydrants have not been installed onsite adjacent to the booster inlet connections, contrary to the requirements of Clause 7.4 of AS 2419.1-2005.
- iii. The doors to the booster enclosure were not marked with the words 'FIRE HYDRANT BOOSTER' in letters not less than 50mm high, contrary to the requirements of Clauses 7.9 and 7.10 of AS 2419.1-2005.
- iv. A permanent and fade resistant or engraved sign indicating the boost pressure and test pressure was not provided at the booster assembly, contrary to the requirements of Clause 7.10.1 of AS 2419.1-2005.
- v. A permanent water and fade resistant block plan of the fire hydrant system had not been provided at the booster assembly, contrary to the requirements of Clause 7.11 of AS 2419.1-2005. As such, the extent of the hydrant system could not be determined at the time of the inspection.
- vi. Maintenance - The boost/inlet connections associated with the booster assembly, contained service labels/tags, indicating the valves had not received any routine servicing since October 2019, contrary to the requirements of Clause 4.3 of AS 1851-2012 and Clause 81 of the EPAR 2021.

B. Coverage:

- i. Hydrant coverage from the installed hydrant system could not be determined due to the lack of a block plan and the limited number of internal hydrants found at the time of the inspection.

C. Hydrant System Standard of Performance:

- i. Irrespective of the standard of performance listed on the Annual Fire Safety Statement (AS 2419.1-2005), based on observation at the time of the inspection, the system installed in the building exhibits physical characteristics commensurate of a system designed in accordance with Ordinance 70 and Ministerial Specification No.10.

In light of this, FRNSW brings to your attention a position statement published by FRNSW on 8 January 2019. The statement is shown below:

Fire hydrant system in existing premises

When the consent authority (e.g. Council) is assessing the adequacy of an existing fire hydrant system installed in accordance with the provisions of Ordinance 70 and Ministerial Specification 10 (or earlier), FRNSW recommend that the system be upgraded to meet the requirements of the current Australian Standard AS 2419.1 to facilitate the operational needs of FRNSW.

It may be appropriate for a partial upgrade of the existing fire hydrant system be undertaken. A partial upgrade may be proposed to address deficiencies in the design and/or performance of the existing fire hydrant system, when assessed against the requirements of Australian Standard AS 2419.1, so that the upgraded fire hydrant system will meet the operational needs of FRNSW.

Where a hybrid fire hydrant system is proposed, which incorporates the design and performance requirements from two different standards, the proponent should consult with FRNSW on the requirements for the fire hydrant system.

- 1C. Emergency lighting – There were multiple emergency lighting fixtures that were either not operating and had not been maintained or observed to be covered with 'Gaffa' tape which would prevent it from operating properly, contrary to the requirements of Section 81 of the EPAR 2021 and Clause E4D2 of the NCC.
- 1D. Fire Doors:
- A. The fire door to the plantroom, which is accessed directly from the fire exit/stairway (south-east corner of the building which discharges to Sturt Street), was 'chocked' in the open position in order to ventilate the room, contrary to the requirements of Specification 12 of the NCC and AS1905.1.

The Licensee was advised that the door was a fire door which is required to be kept in the closed position at all times to prevent any potential fire/smoke exposure to the fire exit.

2. Access and Egress

- 2A. Fire Exits - There were multiple items being stored within the fire exit (south-east corner of the building which discharges to Sturt Street), contrary to the requirements of Section 109 of the EPAR 2021.

Whilst the items were not blocking egress, the Licensee was advised and requested to relocate all items from the fire stairs.

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- 2B. A skip bin was located directly outside the discharge doors of the exits which discharges to Sturt Street at the rear of the building, which was partially obstructing the path of travel from the building.

The Licensee was advised that the skip bin needed to be relocated or removed as a matter of urgency. The Licensee advised FRNSW at the time of the inspection, that the building works being undertaken were now completed and the skip bin (which appeared to be full) would be removed the following day.

Notwithstanding this, it would be at Council's discretion as the appropriate regulatory authority, to determine whether further investigation is required in this instance.

- 2C. Garbage bins were being stored along external passageway which leads to Flinders Street, which were partially obstructing the path of travel to the road after discharging from the buildings fire exits.

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

RECOMMENDATIONS

FRNSW recommends that Council:

- a. Review items 1 to 2 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 Mark Knowles of FRNSW's Fire Safety Compliance Unit at FireSafety@fire.nsw.gov.au or call (02) 9742 7434 if there are any questions or concerns about the above matters. Please refer to file reference BFS23/6028 (31545) regarding any correspondence concerning this matter.

Yours faithfully



Mark Knowles
Senior Building Surveyor
Fire Safety Compliance Unit