

8.5 Fire and Rescue NSW Fire Safety Inspection Report

REPORT BY THE MANAGER BUILDING AND DEVELOPMENT
TO 19 OCTOBER 2022 ORDINARY MEETING
GOV400098, P0020611

RECOMMENDATION

That Council:

- A. table the report by the Manager Building and Development on the Fire and Rescue NSW Fire Safety Inspection Report of 49-51 Church Street, Mudgee;**
- B. proceed to exercise Councils powers to give Order No 1 in Schedule 5, Part 2 of the *Environmental Planning and Assessment Act 1979*; and**
- C. give notice of Council's determination under Schedule 5, Part 8, Section 17(4), of the *Environmental Planning and Assessment Act 1979* to the Commissioner of Fire and Rescue NSW.**

Executive summary

Council has received a report from Fire and Rescue NSW (dated 6 October 2022). The findings of this report states that Fire and Rescue NSW believes that there are inadequate provisions for fire safety within the noted building.

Council must consider the findings and recommendations of the inspection report and determine whether it will exercise its powers to give a fire safety order in accordance with the provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Disclosure of Interest

Nil

Detailed report

Background

Council has received a report from Fire and Rescue NSW (dated 6 October 2022) following an inspection conducted on the 16 September 2022 of 'Kelly's Irish Pub' located at 49-51 Church Street, Mudgee.

The premises was inspected pursuant to Section 9.32(1) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, which provides inspection powers to an authorised fire officer of Fire and Rescue NSW for the purpose of inspecting a building to determine whether or not:-

- (a) *adequate provision for fire safety has been made in or in connection with the building,*
or
- (b) *the fire safety provisions prescribed for the purposes of this section by the regulations have been complied with.*

A copy of the inspection report is provided in **Attachment 1** of this report.

Findings

As a result of a number of non-compliances identified and the recommendations provided within the report, Council is required pursuant to Schedule 5, Part 8, Section 17(2) of the *EP&A Act* to table the report at the next available meeting of Council and determine whether it will exercise its powers to give a fire safety order under the *EP&A Act*.

Schedule 5, Part 2 of the *EP&A Act* provides the relevant orders which may be issued by Council to address the matters raised by Fire and Rescue NSW which is provided below:

Part 2 Fire safety orders

<i>To do what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
1 <i>To do or stop doing things for the purposes of ensuring or promoting adequate fire safety or fire safety awareness</i>	<ul style="list-style-type: none"> • <i>When provision for fire safety or fire safety awareness is inadequate to—</i> <ul style="list-style-type: none"> ○ <i>prevent fire, or</i> ○ <i>suppress fire, or</i> ○ <i>prevent the spread of fire.</i> • <i>To ensure or promote the safety of persons in the event of fire.</i> • <i>When lack of maintenance of the premises or the use of the premises constitutes a significant fire hazard.</i> 	<i>The owner of the premises or, in the case of a place of shared accommodation, the owner or manager</i>
2 <i>To stop doing an activity on premises, including on premises used for the purposes of shared accommodation</i>	<i>The activity is or is likely to be— life threatening hazard, or threat to public health or public safety, and the activity is not regulated or controlled under any other Act by a public authority.</i>	<i>Any person apparently engaged in promoting, conducting or carrying out the activity</i>
3 <i>To stop the use of premises or to evacuate premises, or not to enter the premises</i>	<i>When an order under item 1 or 2 above has already been served and has not been complied with.</i>	<i>Any person</i>

Recommendation

Based on all available information to-date, it is recommended that a fire safety order be issued pursuant to Schedule 5, Part 2(1) of the *EP&A Act* on the owner and operator of the premises in order to address items 1 to 4 of the inspection report provided by Fire and Rescue NSW.

Noting that Order No.1 in Part 2 of Schedule 5 to the EPA Act requires the giving of a notice of intention to issue the proposed order and the consideration of representations concerning the proposed order before the order may be given (see Sched. 5(6) – (15)).

Community Plan implications

Theme	Looking After Our Community
Goal	A safe and healthy community
Strategy	Work with key partners and the community to reduce crime, anti-social behaviour and improve community safety

Strategic implications

Council Strategies

Not Applicable

Council Policies

Not Applicable

Legislation

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment (Development Certification & Fire Safety) Regulation 2021

Local Government Act 1993

Financial implications

Nil

Associated Risks

Should Council proceed to issue a Development Control Order, the owner / licensee of the building may proceed to appeal the Order in the Land and Environment Court.

TY ROBSON
MANAGER BUILDING AND DEVELOPMENT

ALINA AZAR
DIRECTOR DEVELOPMENT

7 October 2022

Attachments: 1. FRNSW Inspection Report - Kelly's Irish Pub.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER

Unclassified



File Ref. No: BFS22/4877 (23869)
TRIM Ref. No: D22/86147
Contact: Edren Ravino

6 October 2022

General Manager
Mid-Western Regional Council
86 Market Street
MUDGEE NSW 2850

E-mail: council@midwestern.nsw.gov.au

Attention: Manager Compliance/Fire Safety

Dear General Manager

**Re: INSPECTION REPORT
'KELLY'S IRISH PUB'
49-51 CHURCH STREET, MUDGEE ("the premises")**

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 16 September 2022. The NSW Police Force was 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:

- 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.

Fire and Rescue NSW

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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. Regular 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. Australian Standard AS1851-2012 (amendment 1) - "Service of fire protection systems and equipment" details how essential service measures are regularly tested and maintained. Having regard to Section 81 of EPAR2021 and the Australian Standard AS1851, authorised fire officers observed the following at the time of the inspection:
 - A. Log Books – Clause 1.16.2 requires service logbooks to be left on site. At the time of the inspection, copies of previous service records were unavailable for the Fire Indicator Panel (FIP). As a result, it is unclear whether the FIP is regularly maintained.
 - B. Exit signs – Many exit signs either were not illuminated or did not operate when the test button was pressed.
 - C. Portable Fire Extinguishers (PFE) – Table 10.4.1 of AS1851 requires PFE to remain conspicuous, readily accessible and in its assigned location. At the time of the inspection, items were restricting access to many PFE.
 - D. Fire Hose Reels (FHR) – Table 9.4.1 of AS1851 requires FHR to be accessible with no obstacles restricting its access. At the time of the inspection, items were limiting access to many FHR at "the premises".
 - E. Smoke Alarms and Heat Alarms – Table 6.4.2.2 and Table 6.4.2.3 of Clause 6.4.2 of AS1851 requires Smoke Alarms and Heat Alarms to be inspected and cleaned regularly. At the time of the inspection, excessive dust covered many detectors.

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- 1B. Smoke Detection and Alarm System – Table E2.2a and Specification E2.2a of the NCC detail the type of smoke detection and alarm system in Class 2-9 buildings. It is the Council's discretion to conduct an inspection and review the development approval to confirm the following:
 - A. The building appears to be three storeys, and typically, a Class 3 part of a building consisting of a rise in more than two storeys would require the installation of a Clause 8 Fire alarm monitoring system (alarm signalling equipment - ASE). An ASE could not be located.
 - B. The building appears to contain a Clause 4 system which requires a Clause 7 Building Occupant Warning System (BOWS). A BOWS could not be located.
- 1C. Smoke Detection – For buildings with an installed Clause 4 system, of Specification E2.2a of the NCC, Australian Standard AS1670.1:2015 – “Fire detection, warning, control and intercom systems—System design, installation and commissioning” applies. Having regard to the Australian Standard, the following comments are provided:
 - A. Signage – Clause 3.9.2 requires doors obscured from view and containing a Fire Indicator Panel (FIP) to be marked in a contrasting colour scheme with the words 'FIRE PANEL' in letters not less than 50 mm high. At the time of the inspection, signage on the door to the FIP was missing.
 - B. Zone Block Plan – Clause 3.10 of the Australian Standard 1670.1 -2015 requires a Zone Block Plan to be securely mounted and located adjacent to the FIP. At the time of the inspection, a Zone Block Plan was not displayed.
 - C. Smoke Detectors – Clause 3.27 of the Australian Standard 1670.1 -2015 outlines smoke detector locations. The location of the smoke detectors appears intermittent and haphazardly installed around the building. There were heat detectors in areas that would typically require smoke detectors
- 1D. Portable Fire Extinguishers (PFE) – Table E1.6 of the NCC details the risk class (as defined in AS 2444) for the selection of PFEs in specific areas of a building. It is the Council's discretion to conduct an inspection and review the development approval to confirm whether the following applies:
 - A. A Class F (wet chemical) PFE could not be located within the kitchen.
 - B. There was no PFE in the bar for the “balcony bar” area.
- 1E. Hydrant System – Clause E1.3 of the NCC requires a fire hydrant system for buildings with a total floor area greater than 500m² and installed to Australian Standard AS2419.1. The total floor area of the building appears to be greater than 500m², and a review may be required.

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1F. Annual Fire Safety Statements (AFSS) and Fire Safety Schedule (FSS) – Section 89(4)(b) of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021) requires the building owner prominently display a copy of the AFSS and FSS.

A. Displaying an AFSS and FSS means:

- i. That each essential fire safety measure specified in the AFSS has been assessed by an accredited practitioner (fire safety) as capable of performing to a standard no less than that specified in the FSS;
- ii. An original measure, as defined under Section 81 of EPAR 2021 — is maintained to a standard no less than when the measure was initially designed and implemented, AND
- iii. The building had been inspected by an accredited practitioner (fire safety). When it was inspected, it was found to be in a condition that did not disclose grounds for prosecution.

B. The AFSS and FSS could not be located during the inspection.

2. Access and Egress

2A. Fire Exits and Fire Exit Doors – Section 109 of EPAR 2021 requires that nothing must obstruct the free passage of persons in using a fire exit or a path of travel leading to a fire exit for the building. At the time of the inspection:

A. Tables and chairs obstructed many exit doors in and around the ground and first floor.

B. Many signposted exit doors included barrel bolts.

2B. Exit Signs – Performance Requirement EP4.2 of the NCC requires the installation of suitable signs to identify the location of exits. At first sight, there are insufficient cues to determine the location of exits, particularly on the first floor of the building from the balcony. The Council may require a review of the exit strategy.

3. Compartmentation

3A. Type of Construction – Clause C1.1 of the NCC requires a building with a specific building class to achieve the minimum fire-resisting construction. It is the Council's discretion to conduct an inspection and review the development approval to confirm the type of construction and whether the different uses require compartmentation.

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4. Generally

4A. Investigation Outcomes – The following items are provided to Council as part of the investigation on Friday, 16 September 2022:

- A. The licensee provided details in writing of defects to the essential fire safety measures installed in the building. As part of the defects list, the FIP was identified as one of the items requiring replacement but remains online and operational despite faults.
 - i. At the time of inspection, the FIP appeared to flutter between fault and normal operation.
 - ii. FRNSW took no enforcement action for the FIP based on observations that concur with the written evidence in the defects list from the service provider.
- B. The old “manager's flat” on the first floor appears to have been converted into additional individual hotel rooms and currently accommodates guests.
- C. Discussions with the licensee indicated that events and dances occur at the “balcony bar”.

4B. Items for Further Investigation –

- A. The change in “use” for the manager's flat may require the Council to conduct an inspection and review for the following reasons:
 - i. If a change in use had been submitted to the Council before the change had been conducted, Section 64 of the Environmental Planning and Assessment Regulation 2021 would have considered an upgrade to the essential fire safety measures.
 - ii. The use potentially changes the type of construction.
 - iii. The rise in storeys changes from two to three, requiring an ASE and smoke detectors (instead of the smoke alarms that are haphazardly installed).
- B. Smoke Hazard Management – Performance Requirement EP2.2 of the NCC requires that in the event of a fire, the conditions of a building in any evacuation route be maintained for a time to allow evacuation. The Council may need to review the following items to determine whether the intent of EP2.2 of the NCC is satisfied:
 - i. Assembly Buildings – The building appears to contain a mix of uses. It may require confirming which part of the building is considered an ‘Assembly Building’. A review of the development consent may be necessary to verify whether

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the “balcony bar” area is a Class 6 building or a Class 9b bar area containing a dance floor.

- ii. Smoke Hazard Management – Table E2.2a and NSW Table E2.2b of the NCC outline requirements to manage smoke in a building that is not more than 25 metres in effective height and of a specific “Class” of a building which includes an “assembly building”. Subject to the Council’s review, consideration may consist of an “automatic smoke detection and alarm system” that complies with Clause 6 of Specification E2.2a, Table E2.2b – an automatic shutdown of any air-handling system and Specification E2.2b - smoke exhaust system.
- C. Review of Fire Safety Requirements – It is the Council’s discretion to confirm that the maintenance of the essential fire safety systems meets its obligations to enforce the Annual Fire Safety Statement and development approval. Specifically, the Council’s policy and procedures meet the commitments to maintain essential fire safety measures to a standard no less than initially designed and implemented.
- D. Smoke and Heat Detectors – The Council may need to review its records to confirm whether the circumstances surrounding the installation of the smoke and heat detectors are approved. Clause 3.27 of Australian Standard AS1670.1:2015 outlines:
 - i. The circumstances where smoke detectors can be replaced with heat detectors – A review may be required as there were heat detectors where smoke detectors are typically located.
 - ii. The minimum spacing between detectors for level and uneven surfaces – A review of the detector types and spacings may be required, particularly as the observed spacings were intermittent or were lacking where detectors are needed.
- E. 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 this as part of an approved management plan for “the premises”, particularly for the hotel.

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

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RECOMMENDATIONS

FRNSW recommends that Council:

- a. Inspect and address items 1 to 4 of this report and 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 Edren Ravino of FRNSW’s Fire Safety Compliance Unit at FireSafety@fire.nsw.gov.au or call on (02) 9742 7434 if there are any questions or concerns about the above matters. Please ensure that you refer to file reference BFS22/4877 (23869) regarding any correspondence concerning this matter.

Yours faithfully



Edren Ravino
Senior Building Surveyor
Fire Safety Compliance Unit

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