



The Owners Corporation 52948
Waratah Strata Managers Pty Ltd
1-15 Fontenoy Road
Macquarie Park NSW 2113

27 March 2024

NOTICE OF INTENTION PROPOSED FIRE SAFETY ORDER

1-15 Fontenoy Rd Macquarie Park EPA2024/19 / FSS2014/7

1. The City of Ryde “**Council**” has received correspondence from Core Consulting Engineers, dated 21/12/2023 Reference No. REF: AC2718 stating that an inspection conducted on premises identified non-compliances with the fire safety provisions prescribed in Section 9.32(1)(B) of the Environmental Planning and Assessment Act 1979 (EP&A ACT1979), Section 112 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021)

Due to the non-compliances with the fire safety provisions prescribed in Section 9.32(1)(B) of the Environmental Planning and Assessment Act 1979, Section 112 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 and Section D2.16 & TABLE D2.16A of the Nation Construction Code Volume One Building Code of Australia (NCC), “**Council**” is of the opinion that adequate provision for fire and occupant safety has not been made concerning the subject building.

Council records show that you are the registered owner of the Premises. Accordingly, notice is hereby given that “**Council**” proposes to serve you with a Fire Safety Order pursuant to Item 1, Part 2 of Schedule 5 of the Environmental Planning & Assessment Act 1979.

The Order will require you to: do the things specified below so as to ensure or promote adequate fire safety, fire safety awareness and occupant safety.

You are invited to make representations to “**Council**” as to why the Order should not be given or as to the terms of or period for compliance with the Order.

You or your legal representative may make representations to Council in writing within **FOURTEEN (14) DAYS** from the date of service of this notice as to why the Order should not be given or as to the terms of or period of compliance with the Order.

Council will review all representations made and determine whether to proceed with the Order, modify the Order or not to proceed with the Order.

If you do not make representations, Council will serve the Order.

Should you require any further information in relation to this matter, please contact Council's Building Surveyor, Lorelle Mainsbridge on (02) 0435 964 253 quoting your EPA reference number during business hours between 9.00am and 5:00pm, Monday to Friday or by email to cityofryde@ryde.nsw.gov.au.

Yours faithfully,

A handwritten signature in cursive script that reads "Lorelle Mainsbridge".

Lorelle Mainsbridge
Team Leader Certification
Building Surveyor
Health and Building and Regulatory Services.

Start of Proposed Order

The Owners Corporation 52948
Waratah Strata Managers Pty Ltd
1-15 Fontenoy Road
Macquarie Park NSW 2113

Dated:

FIRE SAFETY ORDER PURSUANT TO ITEM 1, PART 2 OF SCHEDULE 5 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AND SECTION 9.34 & SCHEDULE 5 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.

Premises: SP 52948 1-15 Fontenoy Rd Macquarie Park

The Council of the City of Ryde "**Council**" orders that you Waratah Strata Management Pty Ltd as the owner "**Owner**" of SP 52948 otherwise known as 1-15 Fontenoy Rd Macquarie Park "**Premises**" comply with the following terms of this Order in order to that the Premises and its occupants are adequately protected in the event of a fire on the Premises:

Terms of Order

TERMS OF ORDER

You are ordered to:

1. To follow the Core fire engineering advice within the report dated 21/12/2023 who are independent¹ Building Surveyor (unrestricted or all classes of buildings) and/or an independent¹ Fire Safety Engineer (C10), registered with the NSW Department of Fair Trading, to carry out a Building Code of Australia (BCA) Fire Safety Audit of the "**Premises**" in terms of the deemed-to-satisfy fire safety provisions.
2. The Fire Safety Performance Requirements of the Building Code of Australia, the Registered Building Surveyor or Registered Fire Safety Engineer is to incorporate the results of the Fire Safety Audit of the "**Premises**" into a Report, Strategy and Recommendations to provide an adequate provision of fire safety to prevent fire, suppress fire, prevent the spread of fire and ensure or promote the safety of persons in the event of fire.
3. The Fire Safety Audit of the property must specifically cover all relevant clauses within section C, D and E of the current Building Code of Australia, reflecting compliance, non-

compliance or not applicable in the circumstances and a suitable checklist is to accompany the Report.

4. A Schedule of existing and proposed Essential Fire Safety measures including their Standard of Performance must be included in the Strategy.
5. The Report and Recommendations must be submitted to “**Council**” for its consideration and approval prior to implementation of any proposed works.
6. A proposed timetable of works is to accompany the Recommendations.
7. Any BCA performance-based solutions prepared by other stakeholders to address fire safety matters in the “**Premises**” must be fully reviewed by the suitably qualified Registered Building Surveyor or Registered Fire Safety Certifier accepted, incorporated, and annexed into the final BCA Fire Safety Audit Report.

Note 1: “independent” means someone who has not been previously involved in the certification or design of the building, ie: was not involved in the construction certificate (CC) or occupation certificate (OC). This would include:

- the certifying authority and the principal certifying authority (mandatory inspections and OC), and
- someone who prepared an alternative solution in accordance with the performance provisions of the BCA for a product, system or other design element of the building.

Note 2: NSW register certifiers: NSW Department of Fair Trading.

REASONS FOR SERVING ORDER

1. “**Council**” has been made aware that the existing provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure the safety of persons in the event of fire.
2. Correspondence from Core Consulting Engineers, dated 21/12/2023 Reference No. REF: AC2718 stating that an inspection conducted on premises identified non-compliances with the fire safety provisions prescribed in Section 9.32(1)(B) of the Environmental Planning and Assessment Act 1979 (EP&A ACT1979), Section 112 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021)
3. Due to the non-compliances with the fire safety provisions prescribed in Section 9.32(1)(B) of the Environmental Planning and Assessment Act 1979 (EP&A ACT1979), Section 112 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EPAR 2021) and Section D2.16 & Table D2.16a of the National Construction Code Volume One Building Code of Australia (NCC), “**Council**” is of the opinion that adequate provision for fire safety has not been made concerning the subject building.
4. “**Council**” records show that you are the owner of the Premises and therefore the person to whom the order can be served upon.

5. The “**Council**” has issued the Order to ensure that:

- (i) Any fire safety deficiencies of the building on the “**Premises**” are properly addressed;
- (ii) The fire safety measures in the building on the “**Premises**” are reviewed to ensure they remain appropriate and effective.

FAILURE TO COMPLY WITH THE ORDER

OFFENCE

It is an offence against the Environmental Planning and Assessment Act 1979 (NSW) not to comply with any Order: see Part 9, of Division 9.3, Clause 9.37 of the Environmental Planning and Assessment Act 1979 (NSW). In the event that an Order is issued, and you do not comply, Council may issue penalty infringement(s) or commence Court Proceedings to compel compliance and / or undertake a criminal prosecution. The maximum penalty for non-compliance with this order is (a) in case of a corporation \$5 million, and for a continuing offence a further \$50,000 for each day the offence continues; or (b) in the case of an individual \$1 million, and for a continuing offence a further \$10,000 for each day the offence continues: see Part 9, Division 9.6, Clause 9.52 of the Environmental Planning and Assessment Act 1979 (NSW).

If you fail to comply with the terms of an Order Council may do all such things as are necessary or convenient to give effect to the terms of the Order, including the carrying out of any work required by the Order, and may, among other things, recover from you the costs incurred by Council in so doing: see Part 11, Clause 34 of Schedule 5 of the Environmental Planning and Assessment Act 1979.

RIGHT OF APPEAL AGAINST ORDER

If you wish to appeal against an Order you must appeal to the Land and Environment Court, Level 4, 225 Macquarie Street, Sydney NSW 2000, within 28 days after the service of the Order on you: see Part 8, Division 8.5, Clause 8.18 of the Environmental Planning and Assessment Act 1979. Failure to comply with this Order is an offence against the Environmental Planning and Assessment Act 1979. The maximum penalty on conviction for an offence is set out by the Environmental Planning and Assessment Act 1979.

You and any person affected by this Order may appeal against this Order or a specified part of it to the Land and Environment Court within 28 days after service of the Order. You are hereby notified that if the Order is not complied with in the period set out above, Council may give effect to the Order and recover the costs of doing so from you in a Court.

TIME LIMIT FOR COMPLIANCE WITH THIS ORDER

You are required to comply with the terms of this Order within **60 Days** from the date of service of this Order.

Should you require any further information in relation to this matter, please contact Council’s Building Surveyor, Lorelle Mainsbridge during business hours between 9.00am and 5:00pm, Monday to Friday or by email to cityofryde@ryde.nsw.gov.au.

Yours faithfully,

Lorelle Mainsbridge

Lorelle Mainsbridge
Team Leader Certification
Health and Building and Regulatory Services

End of Proposed Order