

Item 8.**Development Application: 34-36A Darlinghurst Road, Potts Point****File No.: D/2018/89****Summary****Date of Submission:** 7 February 2018**Applicant:** Frank Johnson**Owner:** D & S Australia Pty Ltd, ATF J & B Trust**Cost of Works:** \$0**Proposal Summary:** Consent is sought for the use of the first floor as a brothel containing six working rooms operating from 10.00am to 12.00 midnight, Monday to Sunday inclusive.

A brothel was previously trading from the first floor; however, is currently vacant. No physical works are proposed as part of the current application.

The hours associated with this proposal are substantially reduced from the previous use as a sex services premises and in keeping with the established late night character of the area.

In accordance with the Minister's Direction, developments for the purpose of sex services premises must be determined by the Local Planning Panel.

Land Use Permissible in B2 Local Centre zone.**Summary Recommendation:** The development application is recommended for approval, subject to conditions.**Development Controls:**

- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

Attachments: A. Recommended Conditions of Consent

Recommendation

It is resolved that consent be granted to Development Application No. D/2018/89, subject to the conditions set out in **Attachment A** to the subject report.

Reasons for Recommendation

- (A) The use is permissible with consent in the B2 Local Centre zone.
- (B) The hours are reduced from the previous use as a sex services premises and in keeping with the late night character of the area.
- (C) The proposed use as a sex services premises is considered to be in keeping with the unique character of the area.
- (D) It is not considered that the proposal will result in significant amenity impacts.

Background

The Site and Surrounding Development

1. A site visit was carried out by Council staff on 1 June 2018.
2. The premises are located on the first floor of a five storey building on the south eastern corner of the intersection between Darlinghurst Road and Roslyn Street. The building consists of a mix of uses, including food, retail and commercial premises on the ground floor, a recently vacated brothel on the first floor (subject tenancy) and back-packer's accommodation on the upper floors. Access to the subject premises is from Darlinghurst Road
3. The subject premises occupies the entire first floor and was previously used as a brothel. The premises is currently vacant.
4. Surrounding land uses are commercial, retail, restaurants, night clubs, hotels and strip clubs. Springfield Gardens Plaza is located directly across Darlinghurst Road to the north. The site is not a heritage item but is located within a Heritage Conservation Area.
5. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Subject site and tenancy as viewed from Darlinghurst Road looking north-east. Location of tenancy and entrance highlighted with arrows.



Figure 3: Looking south east to the subject site on the corner of Roslyn Street and Darlinghurst Road. Tenancy is located on the first floor (being the grey painted facade).



Figure 4: Potts Point Hotel, located across Darlinghurst Road from the subject site.



Figure 5: Empire Hotel, located across Roslyn Street from the subject site.

Proposal

6. It is proposed to use the whole of the first floor as a brothel. There are six working rooms, each having either showers or baths. The premises will be accessed from the exclusive entry on Darlinghurst Road.
7. The maximum number of staff on the premises at any one time will be seven sex workers, one manager, one receptionist, a door manager and one cleaner.
8. The proposed hours of operation are from 10am to 12 midnight, seven days a week including public holidays.
9. The general layout of the premises is indicated below in Figure 6. The premises have previously been used as a brothel, so there is no structural work proposed, other than painting and re-carpeting.
10. Staff facilities and staff rest areas are provided within the premises, in an area which is not accessible by clients. There is a policy of no consumption of alcohol on the premises. A digital CCTV system is installed and will be in operation covering all entry/exit points and cash register.
11. The floor plan is indicated in Figure 6 below.



Figure 6: Floor plan.

History Relevant to the Development Application

12. There have been previous development consents for the use of the subject premises as a brothel, being D/2001/314 and D/2002/1167.
13. D/2001/314 was approved by Council on 14 November 2001 for a brothel with approved hours 10.00am to 6.00am the following day, seven days per week. This consent lapsed a year after its approval.
14. D/2002/1167 was approved by the Land and Environment Court on 15 March 2004 for use as a brothel with approved hours 10.00am to 6.00am the following day, seven days per week. This consent had 'deferred commencement conditions' which related to fire safety, health and safety that were not satisfied. It is unclear when the premises became vacant; however, it is noted that there have been no complaints regarding this use.
15. These consents have lapsed and Council requested that a new development application be submitted to continue the use of the premises as brothel.

Economic/Social/Environmental Impacts

16. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

17. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
18. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
19. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

20. The site is located within the B2 Local Centre zone. The proposed use is defined as a sex services premises and is permissible.

21. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

| Development Control | Compliance | Comment |
|----------------------------|------------|--|
| 5.10 Heritage conservation | Yes | <p>The subject site is located within a heritage conservation area.</p> <p>The proposal is limited to internal works including general painting and replacing carpets.</p> |

| Part 7 Local Provisions - General | Compliance | Comment |
|--|------------|---|
| <p>Division 4 Miscellaneous</p> <p>7.21 Location of sex services premises</p> <p>(1) The objective of this clause is to minimise land use conflicts and adverse amenity impacts relating to 'sex services premises'.</p> <p>(2) In deciding whether to grant development consent to development for the purposes of sex services premises, the consent authority must consider whether the operation of the 'sex services premises' is likely to cause a disturbance in the neighbourhood:</p> <p>(a) because of its size, location, hours of operation or number of employees, or</p> <p>(b) taking into account the cumulative impact of the 'sex services premises' along with other 'sex services premises' operating in the neighbourhood during similar hours.</p> | Yes | <p>The proposal includes the continued use of the existing brothel on Level 1 of the building.</p> <p>The sex service premises is not located in the same building as a dwelling and is therefore permissible pursuant to the provisions of this Clause.</p> <p>The closest adult entertainment premises is 'Showgirls', which is located 25m, across Darlinghurst Road; however, this is not a 'sex services premises'. The cumulative impact of 'sex services premises' is discussed further below in the Issues section.</p> <p>The use is considered to be generally consistent with objectives of this clause, in that the size of the operation and hours of operation will not adversely impact on the locality.</p> |

| Part 7 Local Provisions - General | Compliance | Comment |
|--|------------|---------|
| (3) Development consent must not be granted to development for the purposes of 'sex services premises' that are proposed to be located in a building containing one or more dwellings, unless the 'sex services premises' can only be accessed by a separate street entrance that does not provide access to the rest of the building. | | |

Sydney DCP 2012

22. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Kings Cross

The subject site is located in the Kings Cross locality. The proposed use as a sex services premises is considered to be in keeping with the unique character of the area.

| 3. General Provisions | Compliance | Comment |
|--|------------|--|
| 3.9 Heritage | Yes | The building is located within a heritage conservation area; however, works are limited to internal repainting and re-carpeting, which is acceptable. |
| 3.13 Social and Environmental Responsibilities | Yes | The entry will be well lit and CCTV will be installed, which covers the entry door on Darlinghurst Road. |
| 3.14 Waste | Yes | A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005. |

| 3. General Provisions | Compliance | Comment |
|------------------------------------|------------|---|
| 3.15 Late Night Trading Management | Yes | <p>This section identifies that 'sex industry premises' are not identified as either Category A or B premises.</p> <p>Notwithstanding this, it is noted that the site is located within the Late Night Management trading area, which for a Category B premise would have recommended base trading hours of between 6.00am and 2.00am, with a potential extension to 24 hours per day through the use of trial periods. The proposed hours are 10.00am to 12.00 midnight and are considered acceptable.</p> <p>A Plan of Management (POM) has been submitted, which has been reviewed by Council's Safe City unit and is considered acceptable.</p> |

| 4. Development Types | Compliance | Comment |
|---|--------------------|--|
| 4.4.6 Sex Industry Premises and Adult Entertainment | | |
| 4.4.6.1 Location of Premises | Partial compliance | <p>There are no residential dwellings within the subject building; however, residents are located at 1A Roslyn Street, which is located around the corner from the entrance to the premises approximately 44m.</p> <p>'Showgirls', which is an approved adult entertainment premise is located 30m from the subject site and it is a 50m radius to the nearest 'sex services premises' on Kellett Street (250m walking). This is discussed further under the issues section.</p> |

| 4. Development Types 4.4.6 Sex Industry Premises and Adult Entertainment | Compliance | Comment |
|---|------------|--|
| 4.4.6.2 Design of Premises | Yes | <p>The entrance/exit is to be well lit and provided with CCTV. As the premises are located on the first floor, the entrance will maintain the privacy of staff and visitors and the interior will therefore not be visible from the street.</p> <p>The exterior of the building is unchanged by the proposal. The existing frontage is conservative in design and acceptable.</p> |
| 4.4.6.3 Scale of sex services premises | Yes | The proposal is for six working rooms, which currently exist. The premises is of a scale that is considered appropriate and will not have adverse impacts on traffic generation, noise or amenity impacts on the surrounding area. |
| 4.4.6.4 Health, safety and security | Yes | The premises is considered to have appropriate health, safety and security measures for staff and visitors and is considered appropriate by Council's Safe City Unit and Environmental Health Officer. |
| 4.4.6.5 Signs | N/A | Signage is not included as part of this application. |
| 4.4.6.6 Management of operations | Yes | <p>A plan of management (POM) was submitted as a supporting document for the proposal, which has been reviewed by Council's Health and Safe City units and considered acceptable.</p> <p>The POM satisfactorily addresses staff training, premises security, CCTV, worker safety, sharps waste management, worker amenities and incident responses. Further, the prevention of sexually transmitted infections, worker induction, infection controls and provision of safe sex equipment are clearly detailed to adequately guide all staff.</p> |

Issues

Location of sex services premises

23. The subject premise is located on the corner of Darlinghurst Road and Roslyn Street, within Potts Point/Kings Cross area. The area comprises of a number of commercial, retail and late night venues including adult entertainment.
24. The subject premise is located on the first floor of the building, which is accessed from Darlinghurst Road. There are no dwellings located within the building. It is, however; noted that 1A Roslyn Street contains some residential accommodation, including at first floor level; the entrance to this property is located 44m from the entrance to the subject premises. Due to the layout of the premise, there are unlikely to be any noise impacts from the proposal, as the existing toilets share the party wall with 1A Roslyn Street, and the working rooms are located centrally or towards the street. In addition, the entrance, being on Darlinghurst Road is around the corner and out of sight of the residential entrance.
25. In regards to the sensitivity of uses of the surrounding area and cumulative impacts of adult entertainment premises, Figure 7 below indicates the location of 'sex on premises' and 'adult entertainment premises'. 'Showgirls' is an approved 'adult entertainment premise' is located 30m from the subject site across Darlinghurst Road; and it is a 50m radius to the nearest 'sex services premises' on Kellett Street (250m walking).
26. While these are within a 75m radius of the site, the site was previously used as a 'sex on premises', so a new use is not being introduced to the site. In addition, the proposal is of a small scale with six workers and reduced hours from the previous approval, being to 12.00 midnight from the previously approved 6.00am. It is considered that the proposed closing time of 12.00 midnight will therefore not result in a cumulative adverse impact of these adult entertainment venues on the surrounding area.
27. Council's Health, Safe City and Licensed Premises have all reviewed the proposal and the submitted POM and consider it to be acceptable. Through the implementation of the POM and suitable conditions regarding noise, health, management and safety, the operation of the premises is unlikely to cause a disturbance in the neighbourhood.



Figure 7: Location of existing sex on premises (red star) and adult entertainment premises (yellow star)

Other Impacts of the Development

28. The proposed development is capable of complying with the BCA.
29. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

30. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial surrounding.

Internal Referrals

31. The conditions of other sections of Council have been included in the proposed conditions. The application was discussed with the Building Services Unit; Environmental Health and Safe City who advised that the proposal is acceptable subject to the recommended conditions.

32. The POM for this development has been reviewed and adequately addresses key safety and health considerations, including the safety of workers, room intercoms and duress alarms, CCTV, access for local health workers to provide outreach to staff and sharps waste disposal.

External Referrals

Police

33. The NSW Police reviewed the proposal and have no issues with the use of the premises as a brothel. They addressed various issues, including location, trading hours and impact on adjoining properties, access, security, fire safety and food and beverage. A condition regarding CCTV is recommended, which has been included.

Notification, Advertising and Delegation (Submissions Received)

34. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 14 March 2018 and 5 April 2018. As a result of this notification there were two submissions received.

- (a) Against the brothel reopening, as it is in a state of disrepair and is on the main street, which will attract 'stragglers'.

Response - The applicant is proposing to upgrade the premises through repainting and recarpeting. The use is permitted in the zone with consent. The location and security measures have been discussed above.

- (b) The brothel is adjacent to residential properties and sound proofing should be provided.

Response - The premises will be subject to noise conditions. Notwithstanding this, and as discussed above, there are existing toilets which adjoin 1A Roslyn Street and no working rooms.

Public Interest

35. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

36. The development is exempt from the provisions of the City of Sydney Development Contributions Plan 2015.

Relevant Legislation

37. The Environmental Planning and Assessment Act 1979.

Conclusion

38. The proposal to reinstate the first floor of the subject site for use as a sex services premise is considered to be acceptable. The proposed use, is of a small scale, with substantially reduced hours of 10.00am to 12.00 midnight and a detailed POM, which will ensure suitable management and security of the premises.

GRAHAM JAHN, AM

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