

Item 7.**Development Application: 310 - 312 Cleveland Street, Surry Hills**

File No.: D/2018/742

Summary

Date of Submission:	4 July 2018
Applicant:	ES Engineering and Design
Designer:	ES Engineering and Design
Owner:	Chao Chang
Cost of Works:	\$147,500
Zoning:	The use as a sex services premises is permissible within the B4 Mixed Use zone.

Proposal Summary:	<p>Consent is sought for alterations and additions to an existing commercial building containing a sex services premises (brothel) including ground and first floor rear additions to provide four new work rooms and laundry.</p> <p>The brothel has been operating on the site since 1999 and occupies two adjoining terraces that have been modified to operate as one premises. The proposal does not include changes to the approved trading hours or existing operational conditions. The increase in scale of the brothel is not considered likely to have any adverse impacts on neighbourhood amenity, subject to the imposition of recommended conditions of consent. The proposed works are sympathetic to the existing contributory building and heritage conservation area.</p> <p>The application is referred to the Local Planning Panel for determination as it relates to a sex service premises.</p>
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Summary Recommendation:	The development application is recommended for approval, subject to conditions.
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- Development Controls:**
- (i) State Environmental Planning Policy (Infrastructure) 2007
 - (ii) State Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
 - (iii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
 - (iv) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings

Recommendation

It is resolved that consent be granted to Development Application No. D/2018/742 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The use is permissible with consent in the B4 Mixed Use zone.
- (B) The use as a sex services premises is considered to be in keeping with the character of the area given its broad mix of commercial uses.
- (C) The revised Plan of Management adequately addresses the operational, safety and security requirements of the premises.
- (D) The proposed rear addition is of an appropriate scale and is considered to be sympathetic to the heritage conservation area.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 18 July 2018.
2. The subject site encompasses 310 and 312 Cleveland Street, Surry Hills, and is formally described as Lots A and B on DP 438607. The site is rectangular and has a total combined area of 278.2sqm. The site has a primary frontage to Cleveland Street and a secondary frontage to Goodlet Lane.
3. Two double storey terraces (converted to one building) are contained within the site. The primary entry to the site is from Cleveland Street, via the western terrace at 310 Cleveland Street. The rear of the site comprises two semi-enclosed courtyards containing outbuildings, presenting as roller garage doors and a single door for pedestrian access to Goodlet Lane. Vehicular access is only available to the rear of no. 310 as the rear courtyard of no. 312 is largely occupied by a shed structure accommodating a laundry.
4. Three palm trees are contained within the rear courtyard of the eastern terrace at 312 Cleveland Street.
5. Surrounding land uses are residential to the north and west and commercial to the east and south. The site is located within a row of five terraces, one of which has been converted into a commercial premises with awning on the corner of Cleveland and Wilson Street.
6. The building on the site contains a brothel known as the Ginza Club. The use was approved under U98/01208 in March 1999.
7. The site is not identified as a heritage item but is identified as a contributory building within the Goodlet Street Conservation Area (C63). Delete this paragraph?
8. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Cleveland Street with the arrow showing the frontage



Figure 3: The rear of 310 Cleveland Street with the outbuildings to the right



Figure 4: The rear of 312 Cleveland Street with the existing laundry shed to be demolished and trees to be removed



Figure 5: The site frontage from Goodlet Lane

Proposal

9. The application seeks consent for alterations and additions to an existing commercial terrace building containing a sex services premises (brothel) including:
 - (a) Demolition of the single storey outbuildings, garage and laundry shed. The wall on the western boundary is proposed to be retained;
 - (b) Removal of three palm trees; and
 - (c) Construction of a two storey rear addition including a new work room (room 11), new laundry and one accessible parking space on the ground floor and three new work rooms (rooms 12 -14) above with three dormers facing Goodlet Lane.
10. The rear addition fully encloses the existing rear yards and includes the demolition and replacement of the concrete slab. The second storey of the addition is accessible from the rear ground floor extension only and not directly accessible from the existing terrace houses.
11. Plans of the proposed development are provided below.

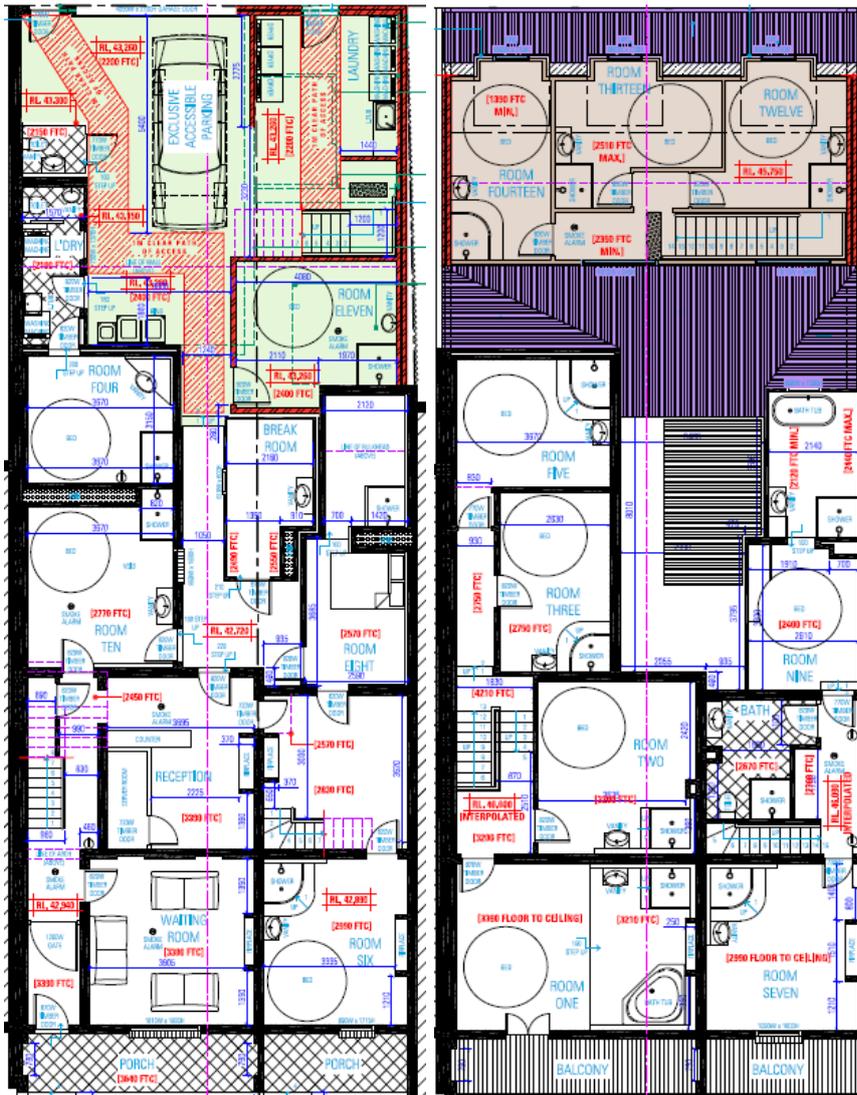


Figure 6: The proposed ground floor (left) and first floor (right)



Figure 7: The proposed rear lane elevation

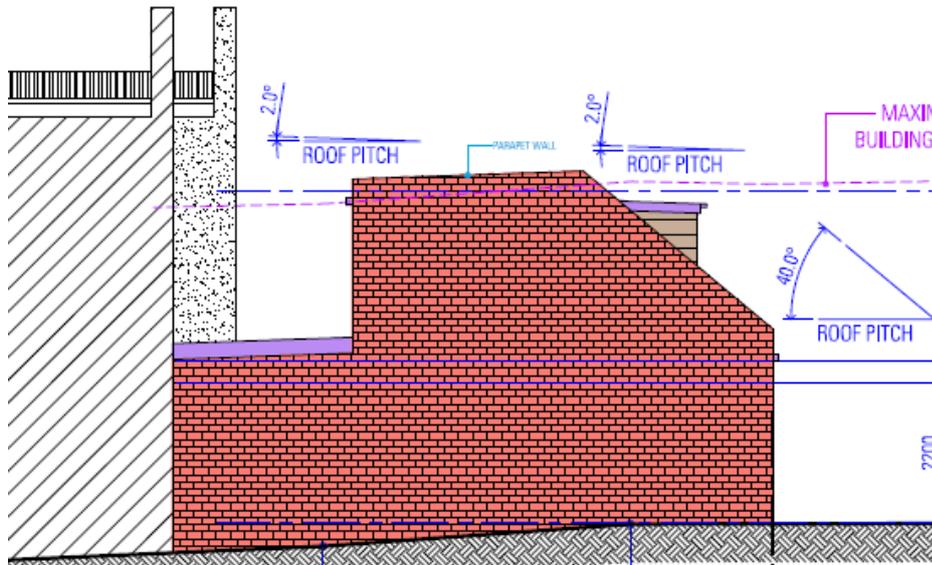


Figure 8: The proposed south-east elevation of the rear addition

History Relevant to the Development Application

12. On 24 March 1999, U98/01208 was approved for the use of a brothel (with bondage and discipline) with six workrooms to operate from 10.30am to 12.00 midnight Sunday to Thursday and 10.30am to 2.00am Friday and Saturday.
13. On 7 September 2016, Council issued a letter to the owner in relation to unauthorised building works to the premises which was identified during a routine inspection on 28 June 2016. The below two applications are relevant to subsequent enforcement action.
14. On 19 April 2017, DU/1998/1208/A was approved for the modification to consent for a brothel including converting four existing rooms to workrooms to have a total of ten workrooms at the premises. Approved trading hours of 10.30am to 12.00 midnight Sunday to Thursday and 10.30am to 2.00am Friday to Saturday remain unchanged.
15. On 3 August 2017, BC/2017/32 was approved for internal modifications, construction of outbuildings including rest rooms, dryer area and mechanical ventilation.
16. On 4 July 2018, the subject development application was lodged.
17. On 26 July 2018, a request for amended plans and additional information was sent to the applicant requiring a change to the proposed design to include parapets on the rear addition, shadow diagrams, detailing on the waste storage area, and updated Plan of Management to address the issues raised by the City's Environmental Health and Safe City units.
18. On 6 September 2018, all information was received to Council's satisfaction.

Economic/Social/Environmental Impacts

19. 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.

State Environmental Planning Policy (Infrastructure) 2007

20. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 101

21. The application is subject to Clause 101 of the SEPP as the site has frontage to Cleveland Street, which is a classified road. The application is considered to satisfy Clause 101 of the Infrastructure SEPP subject to conditions of consent, as it does not provide vehicular access to the site from the classified road and does not comprise a land use that is sensitive to traffic noise or vehicle emissions.

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

22. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
23. 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;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
24. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

25. The site is located within the B4 Mixed Use zone. The use is defined as a sex services premises and is permissible.
26. The relevant matters to be considered under Sydney Local Environmental Plan 2012 (Sydney LEP 2012) for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 12m is permitted. A height of 5.6m is proposed.

Development Control	Compliance	Comment
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 1.5:1 is permitted.</p> <p>The below FSR calculations are for each individual lot as the lots have not been consolidated.</p> <p>The western side of the site (310 Cleveland Street) proposes an additional 69.17sqm of floor space, resulting in an FSR of 1.45:1.</p> <p>The eastern side of the site (312 Cleveland Street) proposes an additional 51sqm of floor space, resulting in an FSR of 1.47:1.</p> <p>When calculated together, the gross floor area for both lots combined is 401.87sqm, resulting in an FSR of 1.44:1.</p>
5.10 Heritage conservation	Yes	<p>The building on the site is identified as a contributory building within the Goodlet Street Conservation Area (C63). The application involves the removal of three existing palm trees located at the rear of the site.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>The proposal results in the removal of sheds and outbuildings occupying the rear of the site that are of low quality and provide poor amenity, and replaced with a rear addition of an appropriate bulk and scale that activates the lane and is sympathetic to the contributory terraces on the site. The proposal will not result in adverse environmental impacts on the locality. The proposal satisfies the requirements of this provision.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	<p>The site is identified as a Category E site under the Public Transport Accessibility Level map.</p> <p>A maximum of five car parking spaces are permitted. The proposal complies, with the one existing parking space retained.</p> <p>The site is well serviced by public transport, being within walking distance to multiple bus routes, the future light rail and Central Railway Station.</p>
<p>Division 4 Miscellaneous</p> <p>7.21 Location of sex services premises</p> <p>(1) The objective of the 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 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 alterations and additions to the existing commercial building containing a sex services premises.</p> <p>The sex services 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 sex services premises is located 60m away at 278-284 Cleveland Street.</p> <p>The proposal is considered to be generally consistent with the objectives of this clause, in that the size of the operation and hours of operation will not adversely impact on the locality.</p>

Sydney DCP 2012

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

2. Locality Statements – Cleveland Street

The subject site is located in the Cleveland Street locality. The proposal is considered to be appropriate for the character of the area given its broad mix of commercial uses. The proposed additions are consistent with the site context and sympathetic to the character of the contributory building and heritage significance of the locality.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	The proposal includes the removal of three palm trees on the boundary of 310 and 312 Cleveland Street. The trees appear to be in good condition, but have been built in by concrete and structures. The application was referred to the City's Tree Management Officer who raised no objection to their removal. The requirement for replacement tree planting was not recommended given the site does not have deep soil areas.
3.7 Water and Flood Management	Yes	The proposal will connect to existing stormwater infrastructure.
3.9 Heritage	Yes	The buildings on the site are identified as contributory buildings within the Goodlet Street Conservation Area (C63). See discussion under the heading Issues.
3.11 Transport and Parking	Yes	The proposal retains the existing car parking space on the site and incorporates it into the ground floor extension. A condition of consent has been recommended to ensure that a total of two bicycle spaces are provided for staff and patrons in accordance with Sydney DCP 2012 requirements.
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the Sydney DCP 2012 and the Building Code of Australia (BCA).

3. General Provisions	Compliance	Comment
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition has been recommended to ensure the development complies with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.15 Late Night Trading Management	Yes	<p>The section identifies that sex services premises are not considered Category A or B premises.</p> <p>Notwithstanding this, it is noted that the premises is located outside an area designated for late night trading. The proposal maintains the existing approved trading hours of 10.30am to 12.00 midnight Sunday to Thursday and 10.30am to 2.00am Friday to Saturday.</p> <p>Council's records indicate that no complaints have been received in relation to late night trading.</p>

4. Development Types	Compliance	Comment
4.1 Single dwellings, terraces and dual occupancies		
4.1.1 Building height	Yes	<p>A maximum of three storeys is permitted.</p> <p>The proposed development is two storeys in height.</p>

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.2 Building setbacks	Yes	<p>The proposed ground floor extension encloses the existing open space at the rear of the site, extending to the north, east and west boundaries. The existing building includes partially open rear wing additions along the side boundaries, which will be demolished under this proposal.</p> <p>As the neighbouring properties are of varying architectural styles with inconsistent rear extensions, there is no established rear setback pattern. The rear setback of the principal building is maintained at the first floor, which is largely consistent with the established rear setback pattern for first floors within the row.</p> <p>While the proposal does not relate to a dwelling, the rear addition is consistent with the built form controls that apply to secondary and laneway dwellings under Section 4.1.6 of the Sydney DCP 2012. Refer to discussion under Section 4.1.6.</p>
4.1.3 Residential amenity	Yes	<p>The proposal will not have unreasonable impacts on the residential amenity of neighbouring properties.</p> <p>The shadow diagrams submitted with the application detail additional overshadowing to 308 Cleveland Street at 9.00am and 314 Cleveland Street at 12.00pm and 3.00pm. Both sites will achieve a minimum two hours of direct sunlight required under the Sydney DCP 2012. It is noted that 314 Cleveland Street is classified as shop top housing with no private open space at the rear.</p> <p>The windows of the rear addition do not provide direct sightlines into neighbouring habitable room windows or private open space.</p>

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.4 Alterations and additions	Yes	The proposal includes a rear addition which presents as a single storey with attic above. The addition is subservient to the principal building and maintains the characteristic form of the terraces. The proposal is of an appropriate scale and appearance and relates to the scale and character of the existing building, streetscape and heritage conservation area.

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.6 Secondary and laneway dwellings	Partial compliance	<p>While the proposal does not relate to a secondary or laneway dwelling, the built form controls that apply under this Section of the Sydney DCP 2012 have been applied given that the rear addition has direct frontage to a laneway and presents as a laneway dwelling within an attic above a garage.</p> <p>The proposal includes an extension of the ground floor by completely enclosing the rear courtyards and constructing a first floor addition above. The first floor addition is accessible by a stair from the ground floor extension but does not include access to the existing first floor within the terraces. The addition takes the form of a secondary or laneway dwelling.</p> <p>The rear addition has a total height of 5.6m, to the top of the parapet walls, or 5.3m to the ridgeline of the roof. The addition of the parapet walls was requested by Council to frame the lot boundaries and allow the original subdivision pattern to be discerned. The second storey of the rear addition is contained within a gabled roof with a pitch of 40 degrees, which contains three dormer windows overlooking the laneway. The addition is clearly subservient from the principal building.</p> <p>A secondary dwelling fronting Goodlet Lane is located near the site at 19 Goodlet Street, which contains a dormer window and similar roof form.</p> <p>The proposed addition will not result in a loss of amenity or solar access to neighbouring properties.</p>

4. Development Types	Compliance	Comment
4.1 Single dwellings, terraces and dual occupancies		
4.1.9 Car parking	Yes	The site includes one parking space with access from Goodlet Lane. The proposed ground floor extension maintains an area for parking for one vehicle.

4. Development Types	Compliance	Comment
4.4.6 Sex industry premises and adult entertainment		
4.4.6.1 Location of premises	No	The site does not contain any residential dwellings, however there are residential dwellings adjoining the site to the west and north. Council's records indicate that there are two other adult sex premises located within 200m of the site. See discussion under heading Issues.
4.4.6.2 Design of premises	Yes	The proposal maintains the site's existing entry arrangements from the front and rear of the site. The premises is not a prominent feature in the street, is clearly numbered, does not display sexual material, and does not have an interior that is visible from the street. The entries are safe and discreet and include CCTV for security purposes.
4.4.6.3 Scale of sex services premises	Yes	The proposal includes the addition of four new working rooms, bringing the total to 14. The premises is of a scale that is considered appropriate to the site and will not have adverse impacts on traffic generation, noise or amenity impacts on the surrounding area, subject to the imposition of appropriate conditions of consent. It is noted the number of staff is not proposed to increase.
4.4.6.4 Health, safety and security	Yes	The premises is considered to have appropriate health, safety and security

4. Development Types 4.4.6 Sex industry premises and adult entertainment	Compliance	Comment
		measures for staff and visitors in place. The City's Environmental Health and Safe City units raised no objection subject to conditions. A revised Plan of Management has been submitted with the application and assessed as acceptable.
4.4.6.5 Signs	Yes	The proposal does not include any signage.
4.4.6.6 Management of operations	Yes	An updated Plan of Management has been submitted with the application and assessed as acceptable by the City's Environmental Health and Safe City units.

Issues

Heritage

28. The site is not a heritage item but is located within the Goodlet Street Conservation Area (C63). The converted terrace buildings on the site are identified as contributory.
29. The application was referred to the City's Heritage Specialist who requested the addition of three lightweight parapet walls to frame the boundaries of the lots and to allow the original subdivision pattern to be discerned, and the symmetrical arrangement of the dormer windows to Goodlet Lane.
30. In response to these concerns, the applicant submitted amended plans detailing parapets extending 300mm above the roof cladding and 240mm in width, with the dormer windows symmetrically placed on the roof plane.
31. Section 4.1.6.1 of the Sydney DCP 2012 prescribes a maximum height of 5.4m for secondary or laneway dwellings. While this Section of the Sydney DCP 2012 does not apply to commercial development, the proposal presents to Goodlet Lane such that it reads as this building typology. The proposed rear addition is below 5.4m, with the exception of parapet walls, which results in a minor exceedance to the height control of 0.2m. The non-compliance is considered acceptable as it results in an improved design and heritage outcome.

32. The proposed rear addition is of an appropriate scale and is designed to be subservient to the original building. As such the proposal is considered to be sympathetic and contributory to the character of the existing terraces contained within the site and the significance of the heritage conservation area.

Sex Services Premises

33. The premises is located approximately 60m from a brothel known as the 278 Club at 278-284 Cleveland Street. Section 4.4.6.1 of the Sydney DCP 2012 restricts sex services premises from being located within a radius of 75m. As the uses are existing, the distance between the two brothels is considered acceptable. The premises is of a small scale with the addition of four working rooms and no increase in staff numbers. In addition, the existing trading hours and operational management conditions will remain as currently approved. It is considered that the proposal will not result in a cumulative adverse impact on other sex services premises or adult entertainment venues in the surrounding area.
34. The City's Environmental Health and Safe City units have reviewed the proposal and the submitted Plan of Management (POM) and consider it 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.
35. It is noted that there have been no substantiated complaints in relation to the management of the premises in recent years. The premises was subject to an inspection by the City's Environmental Health Unit, Australian Federal Police and Border Force in June 2016 after a complaint was received regarding potential illegal activity and unsafe sex practices. The inspection found that the complaint was unsubstantiated and no further action was taken by Council or Police.
36. The inspection did find evidence of unauthorised works at both 310 and 312 Cleveland Street, namely the addition of unauthorised walls and doors and the use of kitchens and bathrooms for the provision of sex services. The applicant was required to regularise the works with a building certificate and the S96 development consent DU/1999/1208/A was issued for the use of the rooms. The enforcement action is now closed.
37. The proposed addition of four new working rooms will not impact on traffic generation and noise and other amenity impacts.

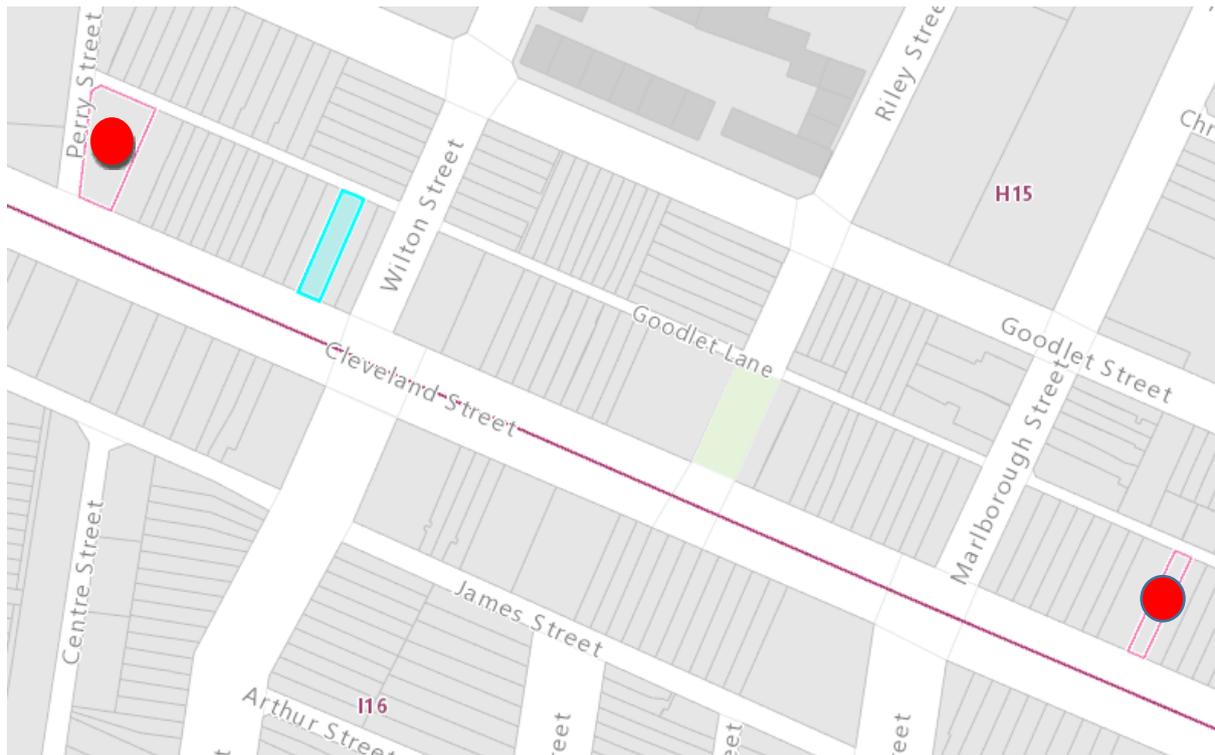


Figure 9: An extract of a map showing the premises in light blue and the two closest sex services premises indicated by the red circles

Other Impacts of the Development

38. The proposed development is capable of complying with the BCA.
39. 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

40. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

41. The conditions of other sections of Council have been included in the proposed conditions.
42. The application was discussed with the Heritage and Urban Design Specialists; Tree Management Officer; Building Services Unit; Environmental Health Unit; and Safe City Unit; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

43. The application was referred to NSW Police who raised no objection to the proposal. The referral recommended Council consider the design, safety and security of the premises during the assessment.

Notification, Advertising and Delegation

44. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 21 days between 6 July 2018 and 23 July 2018. As a result of this notification there was one submission received. The matters raised in the submission are outlined below:

- (a) The proposed development exceeds the floor space ratio development standard

Response - The proposal complies with the floor space ratio development standard.

- (b) The addition of the first floor does not maintain the heritage of the area.

Response - The proposal is considered to be of an appropriate scale. The rear addition maintains the original form of the existing building and is not considered to result in detrimental impacts on the subject site or the broader conservation area.

- (c) Increase in traffic and parking

Response - The proposal is of a small scale and unlikely to impact on traffic generation and parking. The LEP and DCP do not require parking to be provided. The site is well serviced by public transport, being within walking distance to multiple bus routes, the future light rail and Central Railway Station.

- (d) Additional waste generation

Response - The proposal is unlikely to significantly increase waste generation. A waste storage area has been provided on the ground floor.

- (e) Syringes in the rear lane

Response - There is no direct correlation between patrons and staff and the use of syringes. These matters can be reported to Council or Police if they occur.

- (f) The site is located in close proximity to the future high school under construction on the corner of Cleveland and Chalmers Street

Response - It is noted that the premises has operated on the site for a number of years and in accordance with an existing development consent. The proposal complies with the requirements of the DCP in terms of safety, security and design.

Public Interest

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

S7.11 Contribution

46. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

47. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$5,467.67
(b) Community Facilities	\$5,151.88
(c) Traffic and Transport	\$857.14
(d) Stormwater Drainage	\$0.00
Total	\$11,476.69

Relevant Legislation

48. The Environmental Planning and Assessment Act 1979, Heritage Act 1977.

Conclusion

49. The application proposes alterations and additions to the existing commercial premises containing a sex services premises (brothel).

50. The proposed alterations and additions are consistent with Sydney LEP 2012 and Sydney DCP 2012 provisions, are sympathetic to the contributory building and heritage conservation area, and will not impact on neighbourhood amenity.

51. The premises is of a scale that is considered appropriate and will not have adverse impacts on traffic generation, and noise or amenity impacts on the surrounding area. The applicant has adequately addressed operational and security measures in the revised Plan of Management.

52. The development is therefore in the public interest and is recommended for approval subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Zeb McInnes, Planner