

Item 6.**Development Application: 306, 308, 310 and 312 Cleveland Street Surry Hills**

File No.: D/2019/149

Summary**Date of Submission:** 21 February 2019

(Amended plans received 10 May 2019)

Applicant/Designer: ES Engineering and Design**Owner/Developer:** Ali Talanehzo**Cost of Works:** \$58,300**Zoning:** B4 - Mixed Use zone. The proposed use and works are permissible with consent.

Proposal Summary: The application proposes the use of 306 and 308 Cleveland Street in association with the existing brothel at 310 and 312 Cleveland Street. The development would add eight working rooms to the existing brothel. The proposed trading hours are consistent with those of the existing brothel, from 10am to midnight Sunday to Thursday and from 10am to 2am Friday and Saturday (to the following day). The works include the fit-out of the rooms and connecting 308 and 310 internally.

The existing brothel currently operates with 10 rooms but has permission for 14 rooms pursuant to development consent D/2018/742. This consent approved alterations and additions to 310 and 312 Cleveland Street, including one accessible car space and pedestrian entry located on Goodlet Lane, with the primary entrance through 310 Cleveland Street. These additions are yet to be undertaken.

The current application would result in the expansion of the brothel to include a total of 22 working rooms, accommodating up to 18 sex workers at any one time.

The premises has a history of unauthorised works and has been used as a brothel without permission. The use has ceased pending the outcome of this application.

**Proposal Summary
(continued):**

The site is located less than 75 metres from an existing brothel at 278-284 Cleveland Street, and adjoins and is opposite residential dwellings. Insufficient internal waiting areas are provided for patrons and the Plan of Management does not state the patron capacity or how access will be controlled from Goodlet Lane. Insufficient information has been provided to demonstrate compliance with accessibility provisions. The development will therefore have an adverse impact on the character and amenity on the surrounding area, and provides inadequate safety and accessibility for patrons.

The development was notified and advertised for 21 days and received 19 objections (15 unique), two petitions with 43 signatures in objection and one submission in support. The objections raised the following concerns:

- proximity to an existing brothel;
- proximity to residential premises;
- proximity to a place of public worship;
- acoustics;
- heritage impacts;
- traffic and parking;
- waste;
- antisocial behaviour; and
- insufficient information.

The application is referred to the Local Planning Panel for determination as the development is for the purpose of a sex services premises.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) State Environmental Planning Policy (Infrastructure) 2007
- (ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (iii) Sydney Local Environmental Plan 2012
- (iv) Sydney Development Control Plan 2012

Attachments: A. Selected Drawings

Recommendation

It is resolved that consent be refused for Development Application No. D/2019/149 for the following reasons:

- (A) The entrance to the site is located less than 75 metres to the entrance to an existing brothel at 278-284 Cleveland Street and is located adjacent to and opposite residential premises and a residential zone. Intensification and expansion of the premises will have an adverse impact on the streetscape, character and amenity of the surrounding area and is contrary to the following planning provisions:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(h) - to enhance the amenity and quality of life of local communities
- (ii) Clause 2.3(2) - B4 Mixed Use zone - To provide a mixture of compatible land uses and to ensure uses support the viability of centres
- (iii) Clause 7.21 - Location of sex services premises

Sydney Development Control Plan 2012

- (iv) Section 2.13.1 - Cleveland Street locality statement
- (v) Section 4.2.9 - Non-residential land uses in the B4 - Mixed Use zone
- (vi) Section 4.4.6.1 - proximity to residential premises and existing sex services premises

- (B) The internal layout and revised Plan of Management inadequately address the following matters:

- The maximum patron capacity of each room and the premises.
- How access will be managed from Goodlet Lane.
- The provision of a sufficient break-out area for staff.

The development is therefore likely to adversely impact the character and amenity of the surrounding area and provide insufficient facilities for the safety and security of staff, patrons and the general public. The development is therefore inconsistent with the following planning provisions:

Sydney Development Control Plan 2012

- (i) Section 4.4.6.2 - Access to the premises
- (ii) Section 4.4.6.4 - Health, Safety and Security
- (iii) Section 4.4.6.6 - Plan of Management

- (C) The application fails to demonstrate compliance with relevant planning provisions regarding accessibility. In particular, the application fails to identify the number of rooms required with accessible entry and that there is an acceptable path of travel for guests requiring an accessible entry. The development is therefore contrary to the following planning provisions:

Sydney Development Control Plan 2012

- (i) Section 3.12.1 - Accessible design

- (D) Unauthorised works have been undertaken to the premises such that it currently appears dilapidated, adversely impacting on its contribution to the character and appearance of the Goodlet Street conservation area (C63). The heritage impact statement submitted during the assessment of the application identifies works required to rectify these unauthorised works and improve the character and appearance of the building, however the application does not propose undertaking these works. The development is therefore contrary to the following planning provisions:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(k) - to conserve the environmental heritage of the City of Sydney
(ii) Clause 5.10 - Heritage conservation

Sydney Development Control Plan 2012

- (iii) Section 3.9.7 - Contributory buildings

- (E) The application does not include areas for waste storage and is not accompanied by a demolition, construction and operational waste management plan. The development is therefore inconsistent with the following planning provisions:

Sydney Development Control Plan 2012

- (i) Section 3.14 - Waste Management

Guidelines for Waste Management in New Development 2018

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 14 March 2019.
2. The site is legally known as Lots A and B DP 443480 and Lots A and B DP 438607, has a combined site area of 632.3sqm and contains four x two storey Victorian terrace buildings. The site is located on the north side of Cleveland Street to the west of the intersection with Wilton Street and with a secondary frontage to Goodlet Lane at the rear.
3. A brothel known as the Ginza Club operates 10 rooms within the adjoining sites at 310-312 Cleveland Street. The subject sites being 306 and 308 Cleveland Street are currently vacant.
4. 304 Cleveland Street adjoins the site to the west and is occupied by a two storey shop-top housing attached building. 314 Cleveland Street adjoins the site to the east and similarly contain a two storey shop-top housing semi-detached building. To the rear of the site are residential terraces fronting Wilton Street.
5. Opposite the site at 295 and 297 Cleveland Street are two residential terraces. A shop-top housing building occupies 299-301 Cleveland Street, and a commercial warehouse is at 303 Cleveland Street.
6. A mosque is located to the east of the site at 328-330 Cleveland Street and an existing brothel containing 10 working rooms is located to the west at 278-284 Cleveland Street. Both premises are less than 75 metres from the entrance to the subject site.
7. The site is located within the Goodlet Street conservation area (C63).
8. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site in blue and the surrounding area



Figure 2: 306-308 Cleveland Street



Figure 3: 310-312 Cleveland Street (the existing brothel)



Figure 4: The rear of 312 Cleveland Street from within the site



Figure 5: The rear of 310 Cleveland Street from within the site



Figure 6: The rear of 308 Cleveland Street from within the site



Figure 7: The rear of 306 Cleveland Street from within the site



Figure 8: The rear fences of 306-308 Cleveland Street on Goodlet Lane



Figure 9: The rear fences of 308-312 Cleveland Street on Goodlet Lane



Figure 10: Goodlet Lane looking west from Wilton Street

Proposal

- 9. The application proposes the use of 306 and 308 Cleveland Street as a brothel in association with the existing brothel, Ginza Club, at 310-312 Cleveland Street. Eight additional working rooms will be provided within 306 and 308 Cleveland Street, in addition to the 10 working rooms within 310-312 Cleveland Street (as discussed below, 310-312 Cleveland Street has extant approval for a total of 14 working rooms).
- 10. The revised Plan of Management submitted during the course of the assessment proposes to continue the existing trading hours of the Ginza Club which are as follows:

	Proposed Trading Hours
Sunday to Thursday	10.30am - midnight
Friday and Saturday	10.30am - 2am (Sunday morning)

- 11. The revised Plan of Management states that a maximum of 18 sex workers will be employed per day.
- 12. The proposed works include partial demolition of internal walls between 306-310 Cleveland Street to provide internal access between the buildings. No external works or additional floor space are proposed.

13. Plans of the proposed development are provided below and at Attachment A.



Figure 11: The proposed ground floor layout

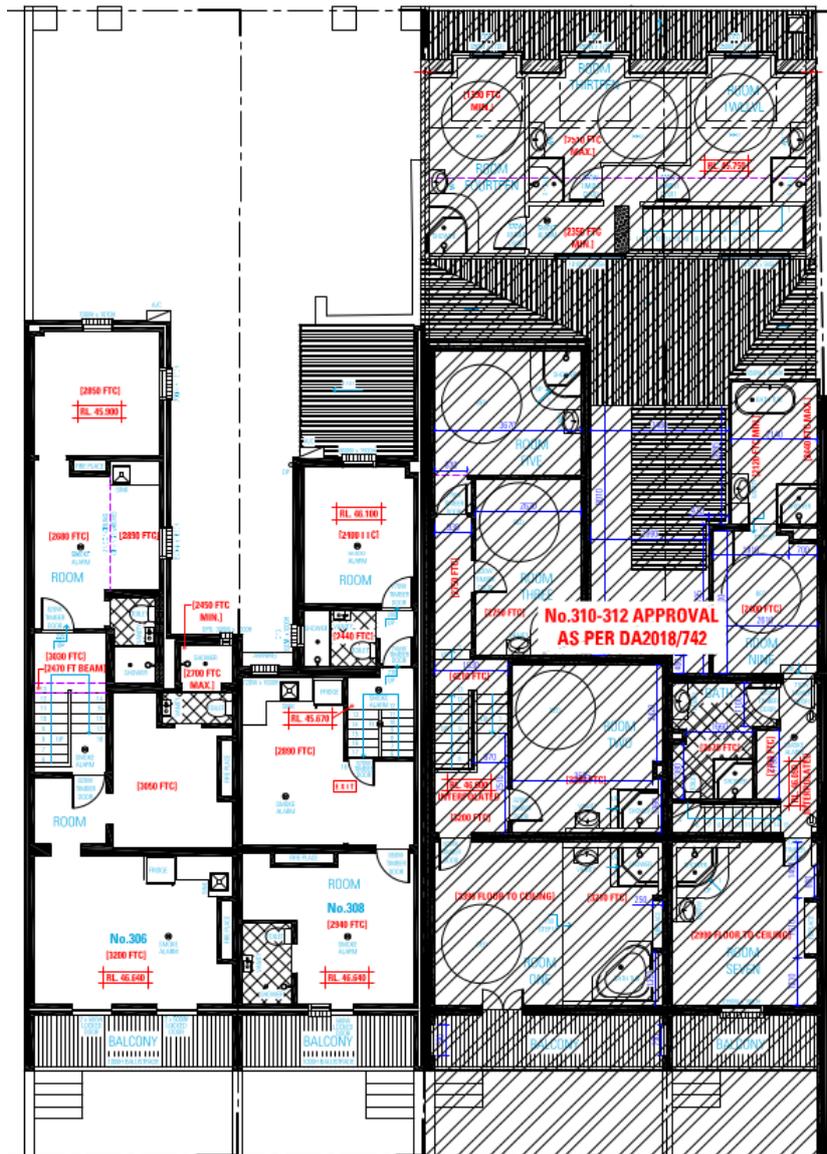


Figure 12: The proposed first floor layout

History Relevant to the Development Application

Development consents

306 and 308 Cleveland Street

14. On 22 March 2018, applications HWC/2018/50 and HWC/2018/51 were granted to remove the render from the rear elevation of both terraces and replace the timber windows like-for-like. Alterations to the width of the internal stairs were not approved. Based on the Heritage Impact Statement accompanying the application, the windows have not been replaced with timber frames.
15. On 21 November 2017, applications HWC/2017/316 and HWC/2017/317 were granted to paint the buildings.

16. On 24 November 2017, development applications D/2017/1093 and D/2017/1094 were refused for alterations and additions including demolition of the rear wings and construction of three storey additions and semi-detached two storey secondary dwelling fronting Goodlet Lane. It appears that some demolition has occurred.
17. On 8 July 2015, development consents D/2015/793 and D/2015/795 were granted for the removal of the rear boundary walls and construction of roller doors to Goodlet Lane.
18. On 21 November 2003, development consent U03/00321 was granted to convert the existing boarding house at 306 Cleveland Street to a single dwelling. This is the most recent approved use of this property.
19. On 10 February 2003, development consent U02/01284 was granted to regularise the use of 308 Cleveland Street as a boarding house containing five boarding rooms. This is the most recent approved use of this property.

310-312 Cleveland Street

20. On 10 October 2018, development consent D/2018/742 was granted for alterations and additions to the existing brothel including ground and first floor rear additions to provide four new work rooms and a laundry. The approved works and layout are shown hatched in figures 11 and 12 above.
21. On 24 March 1999, development consent U98/01208 was granted to regularise the use of the premises as a brothel (bondage and discipline), trading from 10.30am to midnight Sunday to Thursday and from 10.30am to 2am Fridays and Saturdays (including the following day). The approval was for 10 work rooms.

278-284 Cleveland Street

22. A current development application is under assessment, D/2019/357 which seeks to regularise the use of an additional four working rooms. The premises had received approval for six rooms pursuant to U97/00541. Unauthorised internal alterations have been undertaken to accommodate the work rooms. The existing approved hours for the brothel are from 11am to 3am every day.

Compliance history

23. On 22 January 2019, a brothel closure order was issued for 306-308 Cleveland Street. The premises has ceased use, pending determination of the subject application.
24. On 21 March 2019, a Notice of Intention to Give an Order was issued to the owners of 306-308 Cleveland Street for unauthorised works to the properties. The works are generally internal, with the exception of changes to openings at the rear, and associated with the unauthorised use of the premises as a brothel.

Economic/Social/Environmental Impacts

25. 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 55 - Remediation of Land

26. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
27. A search of the City's archives indicates that the sites have historically been used for residential purposes and are therefore unlikely to be contaminated. The proposed use is not listed under clause 7 as requiring a preliminary site investigation to be undertaken. Council's Environmental Health officer raised no concerns with the proposal with regard to contamination. As such, the site does not require remediation and, insofar as the SEPP is concerned, the site is suitable for the proposed development.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 101

29. The application is subject to Clause 101 of the SEPP as the site has frontage to Cleveland Street, which is a classified road. The proposed use is not sensitive to vehicle noise and emissions and does not require vehicular access to Cleveland Street. As such the development satisfies the provisions of the SEPP.

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

30. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
31. 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.
32. Part of 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 Local Environmental Plan 2012

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

Zoning

34. The site is located within the B4 - Mixed Use zone. The proposed sex services premises (brothel) is permissible in the zone with consent. Notwithstanding, the development by way of intensifying an existing brothel and its proximity to an existing brothel is contrary to the objective of the zone to ensure it is compatible with surrounding land uses. Further discussion is provided within the report.

Clause 5.10 Heritage conservation

35. The site is located within the Goodlet Street conservation area (C63) and is not a heritage item. Opposite the site on Cleveland Street are seven heritage items, which will not be adversely affected by the proposal.
36. A heritage impact statement was submitted during the assessment of the application. The statement identifies a schedule of works required to rectify unsympathetic unauthorised alterations to the property, which are not addressed by the proposal.
37. Further discussion is provided under the Issues heading.

Clause 7.21 Location of sex services premises

38. The objective of this clause is to minimise land use conflicts and adverse amenity impacts relating to sex services premises.
39. 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:
- (a) because of its size, location, hours of operation or number of employees, or
 - (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.
40. The site is located less than 75 metres (refer to DCP section below) from the entrance to an existing brothel at 278-284 Cleveland Street and, by way of substantially increasing the number of rooms and employees of the existing Ginza club, will have an adverse impact on the neighbourhood.
41. Further discussion is provided under the Issues heading.

Sydney Development Control Plan 2012

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

2.13.1 Cleveland Street Locality

The subject site is located in the Cleveland Street locality. The character statement seeks to enhance the function of the street as a place for people. Commercial and retail uses are encouraged to support a greater pedestrian focus, while retaining the residential component to sustain those uses.

The conversion of 306 and 308 Cleveland Street from residential to sex services premises is contrary to the desired future character of the Cleveland Street locality, in that the nature of brothels require inactive frontages. The loss of residential accommodation also hinders the locality to sustain commercial uses. Therefore extending the existing brothel to occupy 306 and 308 Cleveland Street is contrary to the desired future character of the locality.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	No	Brothels by nature present inactive frontages for discretion and to protect the amenity of the surrounding area. In addition to blocking out windows, the proposal will not permit entry from the primary frontage through 306 and 308 Cleveland Street.
3.9 Heritage	No	<p>The site is located within the Goodlet Street conservation area (C63) with the terrace dwellings identified as contributory buildings.</p> <p>A heritage impact assessment was submitted during the course of the assessment.</p> <p>The amended plans do not reflect the recommendations of the heritage impact statement and will not rectify the adverse unauthorised works undertaken to the property.</p> <p>Further discussion is provided under the Issues heading.</p>
3.11 Transport and Parking	No	While the plans indicate an accessible car space is provided at the rear of 310 Cleveland Street, no discussion is provided to demonstrate that the site provides accessible egress and facilities for people with disability.
3.12 Accessible Design	No	
Schedule 7.8.5 Accessible car parking spaces	Partial compliance	

3. General Provisions	Compliance	Comment
3.14 Waste	No	The Plan of Management states that the existing waste contractor will continue to service the site weekly. However, the plans do not indicate where waste will be stored and separated.

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.9 Non-residential development in the B4 Mixed Uses Zone	No	The provisions regard protecting the amenity of residential properties located within the B4 - Mixed Use zone. Of relevance to the application, considerations include noise impacts, operating hours and privacy. The proposal is not considered to adequately address potential impacts on residential amenity of adjoining residential premises.

The application proposes the intensification of an existing brothel by occupying adjoining sites (and thereby an increase in floor area) and increasing the number of working rooms. The Sydney DCP 2012 states that the provisions for sex industry premises apply not only to new premises but equally to proposals that intensify an existing adult entertainment or sex industry premises.

4.4.6 Sex industry premises and adult entertainment	Compliance	Comment
<p>4.4.6.1 Location of Premises</p> <p>Adult entertainment and sex industry premises must not be located:</p>		
<p>(a) within buildings containing a residential use</p> <p>(b) immediately adjacent or directly opposite land developed for residential purposes</p> <p>(c) adjacent or directly opposite a sensitive land use as defined in the definitions above unless separated by at least:</p> <p>(i) one other non-sensitive land use</p> <p>or</p> <p>(ii) a waterway, an undeveloped site or a road, each of which are to be greater than 30 metres in width</p> <p>(iii) within a radius of 75m of an existing, approved adult entertainment or sex industry premise as measured from the centre of the primary access to the proposed and existing premises. This includes premises located within a neighbouring local government area.</p>	No	<p>The site is located less than 75 metres from an existing brothel at 278 Cleveland Street (currently seeking approval to regularise the unauthorised increase in working rooms) and adjoins and is opposite residential dwellings on Cleveland Street and Goodlet Lane.</p> <p>As discussed further under the Issues heading, the proposal is contrary to the principles of the control which seeks to avoid a clustering of sex industry premises and protect residential amenity.</p>

4.4.6.2 Design of Premises		
<p>(1) All entrances and exits are to be:</p> <p>(a) designed to facilitate the privacy of staff and visitors without compromising personal safety</p> <p>(b) visible from public areas and not obstructed by any existing or proposed landscaping</p> <p>(c) provided with adequate lighting</p> <p>(d) designed to maximise surveillance and safety</p>	No	<p>The development relies on the existing entry from Cleveland Street through 310 Cleveland Street which is safe yet discreet. The submitted plans maintain two separate pedestrian access points from Goodlet Lane.</p> <p>Concern has been raised with the applicant during the assessment of the application regarding access from Goodlet Lane. If the application were to be supported, access from the rear would only be permitted for people with disability, as the Cleveland Street entrance is not suitable for accessible entry. It is noted that this matter was not previously raised during the assessment of D/2018/742, however the matter is significant as the subject application proposes a substantial intensification of the use and has been raised in submissions.</p>
<p>(2) The external appearance of the premises must ensure the brothel is not a prominent feature in the street.</p>	Yes	<p>The development would maintain the existing facades of the buildings.</p>
<p>(3) Premises are to be clearly numbered, with the number clearly visible from the street, subject to the signage provisions under Section 3.16.</p>	Yes	<p>The existing premises and entrance is clearly numbered and complies with Section 3.16.</p>
<p>(4) There must be no display of restricted material, sex-related products, sex workers, performers, or nude or semi-dressed staff in windows or doors, or outside the premises.</p>	Yes	<p>The premises does not display products and services offered.</p>

4.4.6.2 Design of Premises		
(5) The interior of the premises must not be visible from any place in the public domain.	Yes	The windows are internally covered. If the application were to be approved, a condition would be recommended requiring the blinds to be closed at all times.
(6) Where the interior is visible from neighbouring buildings, adequate measures are to be taken to screen the interior of the building, for example through the use of blinds or screens.	Yes	
4.4.6.4 Health, safety and security	No	A revised Plan of Management for the entire venue has been submitted during the course of the assessment. Concern is raised that the development does not provide an increased waiting area for patrons, and does not provide sufficient break-out space for staff. The Plan does not state the maximum number of guests permitted on site and does not specify the maximum number of guests per room. The Plan also provides insufficient information regarding rear lane access as discussed further under the Issues heading.
4.4.6.6 Management of operations	No	

Issues

Anti-clustering provisions

43. Clause 7.21 (Location of sex services premises) of the Sydney LEP 2012 states:

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:

- (a) *because of its size, location, hours of operation or number of employees, or*
- (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.*

44. Section 4.4.6.1(1)(c) of the Sydney DCP 2012 restricts the location of new and intensified brothels such that they are a minimum 75 metres from the entrance to existing brothels measured as a radius and not opposite or adjoining residential premises. The minimum separation requirement aims to protect the character and amenity of the neighbourhood by ensuring that sex services premises do not cluster in certain locations and are adequately separated from residential properties. As such clause 7.21 of the Sydney LEP 2012 and section 4.4.6.1 of the Sydney DCP 2012 are intrinsically linked.
45. The entrance to the existing brothel is located approximately 60 metres from the entrance to 278, the brothel located at 278-284 Cleveland Street, and the premises operate at similar times. While the entrances to the premises are located on different streets and not visible to each other, intensifying the existing brothel by expanding to adjoining sites is contrary to Section 4.4.6.1(1)(c)(iii) of the Sydney DCP 2012.
46. The subject site also adjoins residential uses at 304 and 314 Cleveland Street, and opposite residential uses at 295 and 297 Cleveland Street and 115 Wilton Street (located within the R1 - General Residential zone). Intensifying the existing brothel is contrary to Section 4.4.6.1(1)(b) of the Sydney DCP 2012 which aims to separate sex services premises and residential premises.
47. Development consent D/2018/742 approved the addition of four working rooms to the existing premises at 310-312 Cleveland Street, creating a total of 14 work rooms. The additions were considered acceptable as there was no increase in sex workers on site and the premises would remain of a small scale. In contrast, the proposed development would occupy two adjoining sites, nearly doubling the site area and street frontage, increasing the number of working rooms from 14 to 22 and increase the number of sex workers on site from 10 to 18.
48. It is noted that development application D/2019/357 is currently under assessment to regularise the use of four unauthorised additional work rooms at 278, which may also further intensify the cumulative impact of brothels on the local area. This proposal differs from the subject application however as the intensified use is contained within the existing building.



Figure 13: The entrance to the brothel at 278 Cleveland Street (located on Perry Street and in red) is within a 75 metre radius of the entrance to the subject brothel (located at 310 Cleveland Street in blue). 306 and 308 Cleveland Street are in yellow

49. The existing proximity between the two brothels does not accord with the community's expectations regarding the location of sex services premises. Intensifying the use by occupying the adjoining two properties and increasing the number of work rooms and sex workers will exacerbate this existing non-compliance and is therefore not supported.
50. That the premises are located adjoining and opposite residential properties contributes to the cumulative impact of the proposal on the local area.

Planning principle

51. The Land and Environment Court in *Yao v Liverpool City Council* [2017] NSWLEC 1167 revised the planning principle for the assessment of brothels established in *Martyn v Hornsby Shire Council* [2004] NSWLEC 614. The revision has resulted in the planning principle requiring consideration of the following matters:

When considering whether to grant consent for a development application for a "sex services premises" a consent authority should take into consideration such of the following matters as are relevant to the development application:

1. *the proximity to any sensitive land uses, such as, but not exclusively educational establishments, places of public worship, child care centres etc*
2. *the proximity to any premises used for residential accommodation*

3. *paths of travel for different members of the community near the premises*
 4. *the hours of operation*
 5. *signage*
 6. *means of access to the premises*
 7. *safety of patrons and employees*
 8. *streetscape appearance*
 9. *the existing or anticipated character of the area*
 10. *car parking and public transport access*
 11. *social impact*
 12. *impacts of clustering multiple sex services premises*
52. The applicant was requested to address the planning principle, and responded by addressing provisions (1) with regard to the proximity of the site to the mosque at 328-330 Cleveland Street; (3) with regard to paths of travel for nearby uses and (6) with regard to accessing the site.
53. With regard to (1), the applicant states that the brothel has been operating since 1999 without incident, and while 40 metres away is adequately separated from the mosque by neighbouring properties and Wilton Street.
54. With regard to (3), the applicant states that Cleveland Street is used by a large cross-section of the community, the site is discreet in appearance and traffic noise on Cleveland Street obscures any potential acoustic impacts.
55. With regard to (6), the entrance to the subject site will remain at 310 Cleveland Street and is adequately separated from adjoining properties.
56. The applicant has not adequately addressed any other relevant matters of the principle.

Response

57. Section 4.4.6.1(c) of the Sydney DCP 2012 states that sex services premises should not be located adjacent or directly opposite sensitive land uses, which includes places of public worship, and should be separated by a minimum of one non-sensitive land use. As sufficient separation is provided between the mosque and brothel in accordance with Council's controls, the proximity is considered acceptable and satisfies part (1) of the planning principle.
58. With regard to (2), the proximity of residential premises to the site is contrary to Section 4.4.6.1(b) of the Sydney DCP 2012 and is not supported. Concern is raised that the small waiting room will fail to accommodate patrons and may intensify loitering in the surrounding streets, disrupting the amenity of residents.

59. With regard to (3), concern has been raised within submissions regarding the use of Goodlet Lane by children and deem this an incongruous mix of uses. Furthermore, a submission has been received from the NSW Department of Education raising concerns that school children will travel past the brothel following the completion of the new Inner Sydney High School on the corner of Cleveland Street and Chalmers Street, approximately 290 metres to the west of the subject site. The applicant has stated verbally that approval for pedestrian access was granted under U98/01208 however the conditions of consent and approved Plan of Management do not specify this. Concern is raised that permitting pedestrian access from Goodlet Lane, which adjoins a residential zone. The Plan of Management does not adequately address how patrons accessing the site from the rear will be monitored and whether this would be limited to those patrons requiring an accessible entrance.
60. With regard to (4), the premises will maintain the existing trading hours of 10.30am to midnight Sunday to Thursday and from 10.30am to 2am Friday and Saturday (and Sunday morning). While the late night trading management provisions of Section 3.15 of the Sydney DCP 2012 do not apply to brothels, it is noted that the draft controls endorsed by Council and currently under final exhibition will identify the subject premises as within a local centre zone, permitting late night trading up to 2am.
61. The development does not propose additional signage to that existing and as such satisfies (5).
62. With regard to (6) and as previously discussed, concern is raised from the community towards providing means of access from Goodlet Lane.
63. As previously discussed, concern is raised that the existing waiting room is insufficient to accommodate patrons and as such may result in patrons loitering. The application provides no discussion on the number of people expected to frequent the premises and how patrons will be managed during peak periods. The poor internal layout will therefore compromise the safety of patrons and fails to satisfy (7).
64. No works are proposed to the front of the buildings, and the development seeks to retain the existing single entry from Cleveland Street through 310. However, as previously discussed, the development is incompatible with the Cleveland Street locality statement which encourages active frontages to improve the experience of pedestrians. That brothels are required to obscure windows and are by nature discreet is contrary to this control. As such, expanding the brothel into the adjoining two terrace buildings doubles the extent of inactive frontage in this location and does not satisfy (8) and (9).
65. With regard to (10), the site is located within 800 metres of Central Station, while Cleveland Street is well serviced by buses and taxis. The development provides one car space (within the existing approved premises) at the rear for patrons requiring accessible entry. It is unclear how patrons requiring accessible entry would access the site from Goodlet Lane, exacerbating concerns regarding loitering and impacts on the adjoining residential area.

66. With regard to (11) and (12), the anti-clustering provisions under Section 4.4.6.1 of the Sydney DCP 2012 and the desire to locate premises away from residences aim to avoid the creation of red light districts, protect the desired character and amenity of local areas and limit anti-social behaviour associated with brothels. Intensifying the use of the brothel by substantially increasing the number of working rooms, sex workers on site, expanding from two terrace buildings to four separated less than 75 metres from an existing brothel (which is also seeking to regularise an intensification of use) is contrary to the controls for the site.
67. The development is therefore deemed to be contrary to the planning principle for brothels established in *Yao v Liverpool City Council* [2017] NSWLEC 1167.

Heritage

68. The site is located within the Goodlet Street conservation area (C63) with the buildings identified as contributory items. D/2018/742 approved extensive alterations and additions to the rear of 310-312 Cleveland Street including the addition of laneway-style buildings. Unauthorised works have been undertaken to 306 and 308 Cleveland Street, none of which the subject application proposes to rectify.
69. Section 3.9.7 of the Sydney DCP 2012 regards development to contributory items and specifies that development should reinstate significant features and building elements, and remove unsympathetic alterations. Works are to use appropriate materials, finishes and colours and respect the pattern, style and dimensions of original doors and windows.
70. The Heritage Impact Statement accompanying the application specifies the following schedule of conservation works are required to restore the contributory features of the rear of the terraces:
 - (a) The rear wing brickwork is generally in poor condition. Render has recently been removed and should be reinstated. Some areas of mortar have degraded and require repointing. Missing bricks, flashings and sills should be replaced.
 - (b) Original timber windows have recently been removed from the rear of the principal form and the rear wing. The vertical proportions of the replacement aluminium windows are unsympathetic to the terraces and the Conservation Area and should be removed and replaced with double hung timber windows of the same dimensions as the original. Refer to Figure 8(above) for details of the original window configurations.
71. As the application does not seek to undertake the necessary works listed in the applicant's Heritage Impact Statement, the development fails to satisfy Section 3.9.7 of the Sydney DCP 2012.

Access

72. The application proposes to maintain the main entrance to the expanded premises from the front of 310 Cleveland Street and the secondary, accessible car space and pedestrian access from Goodlet Lane. The Plan of Management states that surveillance cameras will be placed at both entrances and entry provided by staff at the front counter.
73. Insufficient information is provided regarding patrons accessing the site from Goodlet Lane, including the following:

- (a) Will patrons be directed to access the site from Cleveland Street and only those requiring an accessible entry from Goodlet Lane? How?
 - (b) Will patrons have to ring in advance if they wish to park on site? How will management provide access for vehicles without requiring patrons to obstruct the lane?
 - (c) The path from the rear of the site to the front desk passes the laundry and working rooms. Will staff collect patrons at the Goodlet Lane door to ensure supervision when walking through the venue?
74. Furthermore, the application is not accompanied by an access report, demonstrating that a sufficient number of rooms are provided for workers and patrons with disability in accordance with DDA and the NCC.
75. The development therefore fails to satisfy Section 3.12 of the Sydney DCP 2012 with regard to accessible design.

Other Impacts of the Development

76. The revised architectural plans do not specify the unauthorised works previously undertaken, and any necessary rectification works.
77. The development does not provide sufficient evidence to demonstrate compliance with the NCC, particularly regarding accessibility.

Suitability of the site for the Development

78. The development is contrary to Section 4.4.6.1 which seeks to avoid the clustering of sex services premises within a 75 metre radius of each other, and separate residential uses from sex services premises. The development is contrary to these controls by substantially increasing the number of working rooms, sex workers on site and increasing the number of buildings occupied from two to four. The site is therefore not suitable for the proposed development.

Internal Referrals

79. Council's Environmental Health officer reviewed the application and raised no objections subject to the imposition of conditions.
80. Council's Safe City and Waste officers reviewed the application and raised concerns as discussed within the report.
81. In particular, Council's Safe City officer states that the waiting room is too small to accommodate guests while the staff facilities are inadequate and it is unacceptable to expect workers to take respite in their rooms. Goodlet Lane is not recommended as an entry point to the premises so that impacts on noise, safety and amenity are kept to a minimum. Cleveland Street has greater sightlines and natural surveillance, making it safer for people accessing the business. Cleveland Street entrance is appropriate to screen patrons accessing the premises.

External Referrals

Notification, Advertising and Delegation

82. 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 26 February 2019 and 20 March 2019. As a result of this notification a total of 506 properties were notified and there were 19 objections (15 unique), two petitions with 43 signatures in objection and one submission in support received. The submissions objecting to the proposal raised the following concerns:

- (a) The site is located within 75 metres of an existing brothel contrary to Council's controls. The surrounding area is overburdened with sex services premises.

Response - The intensification and expansion of the brothel is incompatible with Section 4.4.6.1(c)(iii) having regard to its proximity to an existing brothel (also seeking to intensify) and is therefore not supported.

- (b) The development is incompatible with the surrounding residential area, particularly as children use the back lane to play.

Response - The site is located adjoining and opposite residential properties and as such the scale of the development is incompatible with Section 4.4.6.1(c) and the planning principle established in *Yao v Liverpool City Council* [2017] NSWLEC 1167.

- (c) The premises is within proximity to the mosque and will have an adverse impact on the amenity of the congregation.

Response - The premises is adequately separated from the mosque in accordance with Council's controls.

- (d) The existing brothel adversely impacts the acoustic amenity of neighbouring properties, particularly where patrons access the site from Goodlet Lane.

Response - It is noted that no noise complaints have been received regarding the existing brothel during the previous three years, however concern is raised that the intensification and expansion of the use, particularly regarding providing access from Goodlet Lane and the limited waiting area internally for patrons, is likely to adversely impact the surrounding area.

- (e) The development will adversely impact the safety and security of school students attending the soon to be completed Inner Sydney High School on the corner of Cleveland Street and Chalmers Street.

Response - The proximity of the school is not raised as a reason for refusal.

- (f) The development will contribute to needles in the surrounding area.

Response - The Plan of Management provides adequate measures to manage needle waste.

- (g) The development does not adequately address Council's waste policy.

Response - The development does not identify an area for waste and does not adequately discuss waste collection.

- (h) Insufficient parking is provided and, with additional traffic, will adversely impact the amenity of the surrounding area.

Response - The development is not required to provide parking, and is well served by public transport. However, concern is raised regarding managing access to the accessible car space at the rear.

- (i) The development will have an adverse heritage impact on the premises and conservation area.

Response - The development does not propose the rectification works identified in the accompanying heritage impact statement and as such fails to demonstrate compliance with heritage conservation provisions under Section 3.9.7 of the Sydney DCP 2012.

- (j) The development application lacks details and is unclear as to the proposed works and number of rooms.

Response - Amended plans were received during the course of the assessment, in response to concerns raised by Council officers. Notwithstanding, the application is not supported.

Public Interest

83. For the reasons provided in this report, the development is contrary to Council's relevant planning controls and is therefore not in the public interest.

Relevant Legislation

84. The Environmental Planning and Assessment Act 1979.

Conclusion

85. The application proposes the expansion of the existing brothel, located at 310-312 Cleveland Street, into the adjoining buildings at 306 and 310 Cleveland Street. Having regard development consent D/2018/742, the brothel will increase from 10 to 22 working rooms and from 10 to 18 workers on site at any one time. The existing trading hours from 10am to midnight Sunday to Thursday and from 10am to 2am Friday to Saturday would be maintained.
86. The development is located approximately 60 metres of the existing brothel at 278-284 Cleveland Street, and adjoins and is opposite residential premises on Cleveland Street and Goodlet Lane, contrary to Section 4.4.6.1 of the Sydney DCP 2012. The development is therefore likely to have an adverse impact on the character and amenity of the surrounding area, contrary to Clause 7.21 of the Sydney LEP 2012.

87. A heritage impact statement was submitted during the assessment of the application which identifies rectification works to improve the appearance of the building. The application does not propose undertaking these works and as such will have an adverse heritage impact on the Goodlet Street conservation area (C63).
88. The development provides insufficient information patron management, staff facilities, access and waste management with regard to relevant planning controls.
89. The application was notified and advertised for 21 days and received 19 objections (15 unique), two petitions with 43 signatures in opposition and one submission in support.
90. The development will adversely impact on the character and amenity of the surrounding area and is therefore not in the public interest.

GRAHAM JAHN, AM

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