

Item 4.**Development Application: 382-388 Botany Road, Beaconsfield**

File No.: D/2019/991

Summary**Date of Submission:** 6 September 2019**Applicant:** Mr Con Bletsas**Designer:** Adrian Minnard**Owner:** Bill and Sophia Papadopoulos**Cost of Works:** \$4,095.00**Zoning:** B4 Mixed Use - Restricted retail premises (adult entertainment) Permissible with consent

Proposal Summary: The development application seeks consent for a change of use and fit-out for an adult entertainment restricted retail premises with internal alterations to combine two tenancies (Shop A and B). The proposal also includes external alterations to the shop frontage and the provision of signage. The proposed trading hours are 9.00am to 8.00pm Monday to Saturday and 10.00am to 8.00pm Sunday.

The tenancy is located within a mixed use building including ground floor retail and upper level commercial and residential uses. The tenancy maintains a separate pedestrian access point to residential uses on the site and is acceptable subject to conditions.

Issues that can be resolved by condition include street frontage design and separation of the use from residential dwellings at upper floors.

The application was advertised and notified for a period of 21 days, between 20 September and 12 October. Six (6) submissions were received. The objections raised the following concerns:

- proximity to Green Square Town Centre
- proximity to residential dwellings

- proximity to commercial premises
- proximity to existing restricted premises
- streetscape amenity
- antisocial behaviour
- traffic and parking
- proximity to bus stop
- display of non-compliant signage.

The application is referred to the Local Planning Panel (LPP) for determination as it is sensitive development under Schedule 1 of the Local Planning Panels Direction - Development Applications.

The proposal is a permissible use and generally complies with relevant planning controls. It is recommended for deferred commencement given the need for an improved design outcome for the street frontage. Operational conditions will assist in ensuring residential amenity is maintained.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) Sydney Local Environmental Plan 2012 (Gazetted 12 December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that deferred commencement consent be granted to Development Application No. D/2019/797 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 proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that it achieves the objectives of the planning controls for the site and does not result in adverse environmental impacts for the reasons outlined in this report.
- (B) The adult entertainment restricted retail premises is permissible and consistent with the objectives of the B4 - Mixed Use zone. The layout of the premises and use of a separated access point ensures it is compatible with the surrounding land uses in this location.
- (C) Subject to conditions, the proposal will meet Clause 6.21 Design Excellence provisions.
- (D) For the reasons above and as outlined in this report, the proposed development is in the public interest, subject to conditions.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 5 September 2019.
2. The site is a rectangular shaped lot, with area of approximately 751sqm. It has a primary street frontage to Botany Road and secondary frontage to Beaconsfield Lane. The site contains a mixed use building. Ground floor consists of commercial tenancies. The upper floors include three residential dwellings. All car parking spaces associated with the commercial and residential uses are located on common property.
3. The subject tenancy forming part of this application is located on the southern end of the ground floor fronting Botany Road. The tenancy is known as Shop A and Shop B and is currently vacant. Pedestrian access to the tenancy is from Botany Road.
4. A flooring business occupies a separate tenancy at the northern end of the ground level retail area and a therapeutic massage premises on the first floor. The tenancies are accessed by independent entries.
5. The residential units are accessed from a separate entry point on Botany Road and a via a rear entrance adjoining garages facing Beaconsfield Lane.
6. The site adjoins retail and commercial uses on the east and western side of Botany Road
7. The lot is located approximately 240 metres from the Green Square Town Centre.
8. The site is not a heritage item nor is it located within a Heritage Conservation Area.
9. Photos of the site and surrounds are provided below:

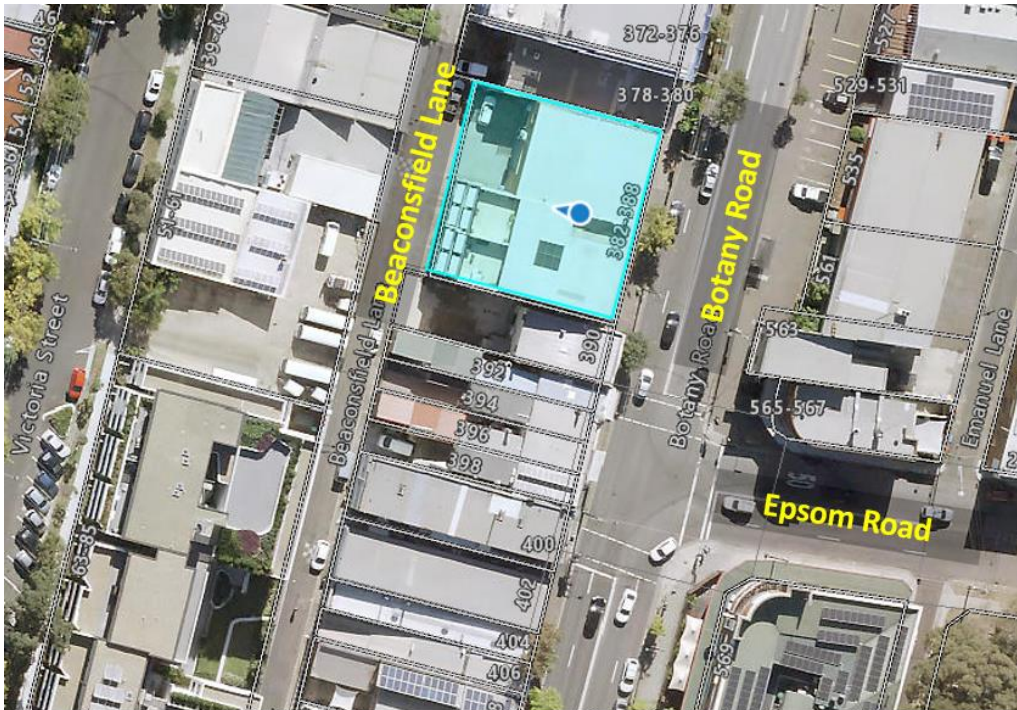


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Botany Road, Beaconsfield with separate residential entrance in mid section of the site of the subject site, under the awning.



Figure 3: Site viewed from Beaconsfield Lane, Beaconsfield.



Rear exit
to be
enclosed

Rear stairs
to dwellings

Figure 4: Rear access adjoining proposed staff room and adjoining residential garages



Rear exit to be
unobstructed

Figure 5: Rear exit to ground floor tenancy from Beaconsfield Lane looking eastward.



Figure 6: Botany Road looking south-eastward towards intersection of Botany Road and Epsom Road.



Figure 7: Historical image of site - retail adult entertainment premises originally located in the building circa 2000.



Figure 8: Surrounding land uses within 75 metres of the primary entrance residential (pink) commercial uses (purple).

Proposal

10. The application seeks consent for the change of use and fit-out for an adult entertainment restricted retail premises. There are internal alterations to combine two existing tenancies including external alterations and signage. The schedule of works is as follows:

(a) Exterior

- (i) Construct new entry and exit doors adjoining Botany Road
- (ii) Replace glazing with manufactured tinted glass
- (iii) Display of one business identification awning fascia sign on the east elevation
- (iv) Install new CCTV cameras

(b) Ground Floor:

- (i) Demolition of internal walls to create one tenancy
- (ii) Construction of a 2.4 metre screen and front counter
- (iii) Install new CCTV cameras
- (iv) One staff room with toilet

11. Plans of the proposed development are provided below.

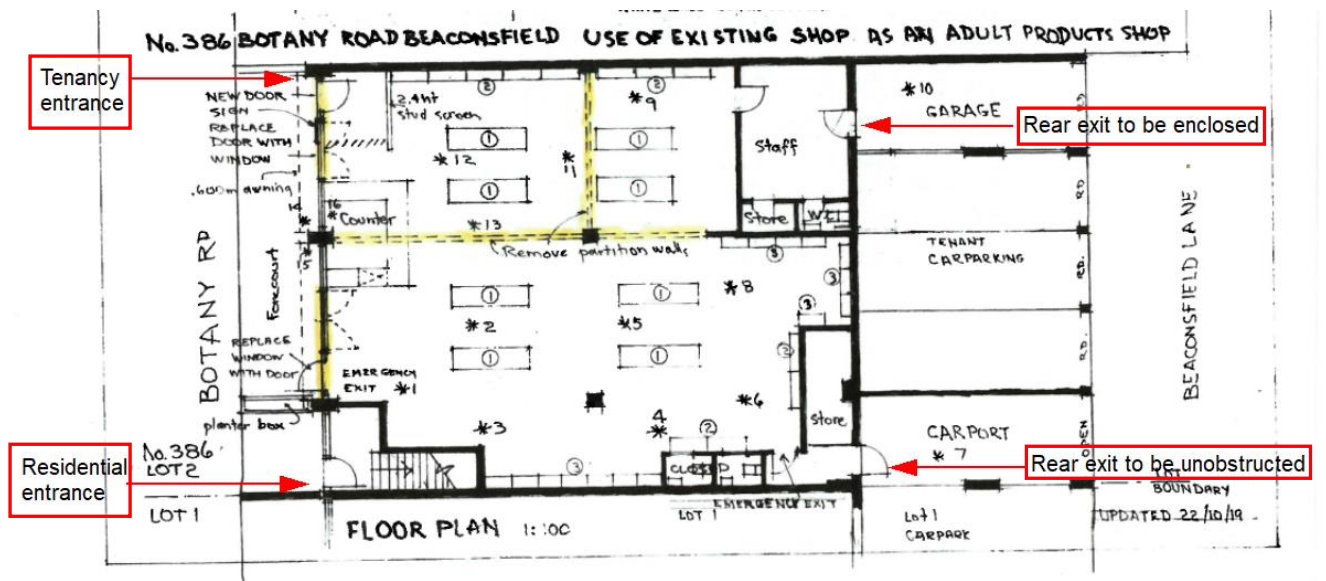


Figure 9: Proposed floor plan, showing the joining of existing two tenancies into one shop and proposed access points.

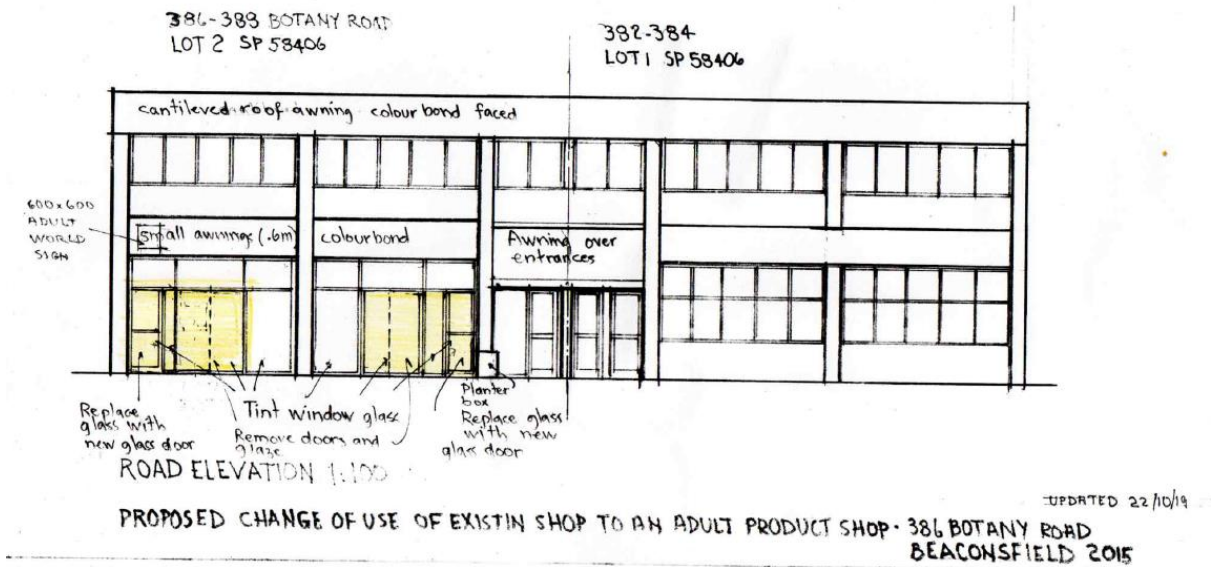


Figure 10: Proposed east elevation, Botany Road frontage.



Figure 11: Sign detail

History Relevant to the Development Application

12. On 30 June 1994, development consent (U94/00426) was granted for the internal fit-out of existing warehouse to store small baked food goods and to retail to the public.
13. On 20 November 1998, development consent (U98-00929) was granted for use of the southern unit of premises to wholesale adult products and display of associated signage.
14. On 20 November 2000, development consent (U00/00950) was granted for the fit-out and use as a restaurant/takeaway premises (Shop A, Lot 2). The use of tenancy (Shop B, Lot 2) continued as wholesale adult products (pictured in Figure 7 above).
15. On 21 March 2003, development consent (U01/01051) was granted for alterations and additions to an existing building by constructing 3 residential units above existing ground floor retail tenancies. The car spaces were not allocated to a particular tenancy or residential unit. Condition 9 required garbage/recycling storage facilities for the commercial use to be located within the site at street level adjoining the rear building line. From Council records, it appears the consent was activated on all or part of the site for over 16 years and the restricted use was operating from part of the site (Shop B) at the time of the assessment of the residential upper floors.
16. On 26 February 2007, development consent (U01/01051/A) was modified to enclose the car parking area with panel lift doors.
17. On 28 November 2005, development consent (D/2005/1817) was granted for fit-out and change of use of premises to a health food/ salad and juice bar and internet café with 12 internal seats and 8 external seats and wall sign displayed above the entry doors (Shop A, Lot 2)

Economic/Social/Environmental Impacts

18. 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 No 64—Advertising and Signage

19. The application proposes the following signage:

One business identification 0.6 metre by 0.6 metre awning fascia sign on the east elevation with a maximum height of approximately 4 metres above existing ground level and a total display area of approximately 0.36sqm. The sign contains the street address and is inscribed with 'Adult World'. The proposed colours and materials for the sign have not been provided.

20. SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

21. Clause 8 of SEPP 64 states the following:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

Assessment Criteria

22. The following table outlines the manner in which the proposed signage addresses the assessment criteria of SEPP64.

1. Character of the area	Comment
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The signage plans submitted with the application are poorly drafted. A condition is recommended to ensure appropriate signage details are submitted and the proposal is compatible with the existing and desired character of the locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no consistent theme for outdoor advertising within the locality.

2. Special areas	Comment
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is not located within a conservation area or otherwise sensitive area. A condition is recommended to ensure signage will not detract from the amenity of the area.

3. Views and vistas	Comment
Does the proposal obscure or compromise important views?	N/A
Does the proposal dominate the skyline and reduce the quality of vistas?	N/A

3. Views and vistas	Comment
Does the proposal respect the viewing rights of other advertisers?	N/A

4. Streetscape, setting or landscape	Comment
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale and proportion of the sign is in accordance with the Sydney DCP 2012. The signage plans submitted with the application are poorly drafted. A condition is recommended to ensure appropriate signage details are submitted and the proposal is compatible with the existing and desired character of the locality.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Conditions are recommended to ensure the proposal (both signage and shop frontage) is compatible with the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	N/A
Does the proposal screen unsightliness?	The proposed sign does not screen unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed sign does not protrude above the building.
Does the proposal require ongoing vegetation management?	N/A

5. Site and building	Comment
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed sign is compatible with the scale and proportion of the building.
Does the proposal respect important features of the site or building, or both?	The proposal respects and responds to features of the building, subject to conditions

5. Site and building	Comment
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage plans submitted with the application are poorly drafted. A condition is recommended to ensure appropriate signage details are submitted and the proposal is compatible with the existing and desired character of the locality.

6. Associated devices & logos with advertisements & advertising structures	Comment
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	N/A

7. Illumination	Comment
Would illumination result in unacceptable glare?	N/A
Would illumination affect safety for pedestrians, vehicles or aircraft?	N/A
Would illumination detract from the amenity of any residence or other form of accommodation?	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A
Is the illumination subject to a curfew?	N/A

8. Safety	Comment
Would the proposal reduce the safety for any public road?	Conditions are recommended to ensure that the proposed sign will not impact on road safety.
Would the proposal reduce the safety for pedestrians or bicyclists?	Conditions are recommended to ensure that the proposed sign will not impact on the safety of pedestrians or bicyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed sign does not impact on sightlines.

23. The signage plans submitted with the application are poorly drafted. A condition is recommended to ensure appropriate signage details are submitted and the proposal is compatible with the existing and desired character of the locality. Sydney Local Environmental Plan 2012
24. The site is located within the B4 - Mixed Use zone. The proposed use is defined as restricted premises and is permissible.
25. 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
4.3 Height of Buildings	Yes	A maximum height of 12 metres is permitted. The proposal will not alter the height of the existing building.
4.4 Floor Space Ratio	Yes	A maximum FSR of 1.5:1 is permitted. The proposal will not alter the FSR of the existing building.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	Partial compliance	As an adult entertainment restricted premises, the interior of the premises is required to be screened from the exterior. The application documentation refers to tinted glazing to meet this requirement. However insufficient detail regarding materials and colours of the glazing have been provided. Appropriate conditions of consent requiring details to be submitted are recommended to ensure that the development presents an appropriate frontage to the street.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	The proposal will not affect the existing provision of car parking on the site.
7.13 Affordable housing	Yes	The proposed development is exempt from the Employment Land affordable housing provisions as the proposal does not result in an increase of gross floor area.
7.14 Acid Sulfate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil. No excavation works below the existing slab are proposed.
7.17 Development in areas subject to airport noise	Yes	The subject site is located within ANEF Contour 15. The proposed development is for a retail premises and is not noise sensitive.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	The proposal is located on land identified as Restricted Retail Development. The gross floor area is less than 1000sqm and therefore complies.
7.21 Location of sex services premises	Yes	The proposal is not a sex service premises. See discussion under heading issues.

Sydney Development Control Plan 2012

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

2. Locality Statements – Beaconsfield

The subject site is situated in the Beaconsfield locality area. The proposed restricted premises is considered to be in keeping with the unique character of the area and design principles in that it is a suitable ground floor commercial use sited along main street Botany Road.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	See discussion under heading issues
3.2.3 Active frontages	Yes	The provisions of this control do not apply.
3.4 Hierarchy of Centres, City South	Yes	The proposal is a permissible use providing a minor retail use outside of the town centre.
3.11 Transport and Parking	Yes	The application does not propose any bike parking on the site. A condition is recommended for 3 visitor bike spaces to be provided within the site, this could be provided in the frontage.
3.12 Accessible Design	Yes	The proposal is capable of providing equitable access is provided for persons with disabilities from Botany Road in accordance with the DCP and the BCA.
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 By condition	A condition has been recommended for a suitable location for a 4sqm bulky waste area and the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

3. General Provisions	Compliance	Comment
3.16 Signage and Advertising	Partial compliance	The proposed development includes signage. Refer to Section 4.4.6.5 (Signs)

4. Development Types	Compliance	Comment
4.4.6 Sex industry premises and adult entertainment		
4.2.9 Non- residential development in the B4 Mixed Use zone.	Yes	The proposal complies with operation requirements, subject to conditions See discussion under heading issues
4.4.6.1 Location of premises	Yes By condition	The location is acceptable. See discussion under heading issues.
4.4.6.2 Design of premises	Yes	The entry and exits are visible, reasonably lit, include surveillance cameras and have been designed to facilitate privacy without compromising personal safety.
4.4.6.4 Health, safety and security	Yes	The proposed layout minimises alcoves or entrapment spaces and CCTV cameras are to be installed in strategic locations.
4.4.6.5 Signs	Yes By condition	The proposed business identification sign is the required size, text only and displays the street number. The signage plans submitted with the application are poorly drafted. A condition is recommended to ensure appropriate signage details are submitted and the proposal is compatible with the existing and desired character of the locality.
4.4.6.6 Management operations	Yes	The application is accompanied by a Plan of Management which addresses the required health, safety and security controls. The internal layout provides appropriate security and safety for customers and staff.

5. Specific Areas	Compliance	Comment
5.2 Green Square	Yes	The restricted (retail) premises contributes to the diverse land use of Green Square is permissible and in accordance with the objectives in the zone.

Issues

Location of premises

27. The site is located within a mixed use building in a B4 Mixed Use zone and the proposed use is permissible with consent.
28. Council's planning controls include guidelines for the location of adult entertainment and sex industry premises.
29. The Sydney LEP 2012 specifies location requirements for sex service premises. The proposed use is defined as a restricted premises and (other than zoning) is not subject of specific location requirements in the LEP 2012.
30. Under the Sydney LEP 2012, sex service premises may be located in a residential building, if the premises can only be accessed by a separate street entrance that does not provide access to the rest of the building.
31. The Sydney DCP 2012 defines this use as a type of adult entertainment premises.
32. Clause 4.4.6.1 includes provisions relating to the location of sex industry and adult entertainment premises including that:
 - (a) *They are not located within a building containing a residential use;*
 - (b) *They are not immediately adjacent or opposite land developed for residential purposes;*
 - (c) *They are not adjacent or directly opposite a sensitive land use as defined in the definitions above unless separated by at least:*
 - (i) *one other non-sensitive land use; or*
 - (ii) *a waterway, an un-developed site or a road, each of which are to be greater than 30m in width; or*
 - (iii) *within a radius of 75m of an existing, approved adult entertainment 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.*

33. The premises' location complies with 4.4.6.1 (b) and (c) listed above. However, as the building contains three residential dwellings the proposal does not comply with 4.4.6.1 (a).
34. The building does not appear as a residential dwelling from the street as the dwellings are primarily oriented to Beaconsfield Lane with commercial ground floors. The primary residential entrance is from the main entry point within the mid-section of the buildings Botany Road frontage. This is well set back from the proposed tenancy entrance.
35. As indicated in Figure 9, the tenancy has two rear exits. The southern exit adjoins rear stairs to residential garages and dwellings at upper floors. To ensure complete separation a condition is recommended for the southern rear exit to be enclosed. This will align with the Sydney LEP 2012 requirements for the location of sex services premises.
36. The enclosure of this exit will not impact on safe egress from the building as there are (3) suitable exits which can be used to evacuate the building. Further conditions are recommended that, the northernmost rear exit adjoining the carport must not be obstructed. The applicant has been advised of these conditions and has agreed to them in principle.

Design of premises

37. Screening of the use from the street is required by Clause 4.4.6.2 (Design of premises) of the Sydney DCP 2012. This is to facilitate privacy and prevent the display of adult entertainment products.
38. The building has an existing ground floor double frontage with clear glazing to the street. The proposed development includes the provision of a new shop frontage.
39. The submitted documentation indicates the provision of tinted glass to the shop frontage but provides no further detail. In order to ensure the premises presents an appropriate frontage to the street a condition is recommended requiring the design details of the shop frontage to be submitted for approval. This may include a creative use of materials, or the provision of an artwork.
40. There are a number of commercial uses in the locality with significant areas of shopfront glazing that is screened by decal signage along Botany Road. In this instance the screening of the shop frontage which is required by the planning controls can be supported in principle

Amenity

41. The objectives of Section 4.4.6 (Sex industry premises and adult entertainment) planning control are to minimise adverse impacts and ensure high levels of internal and external amenity to the site and neighbourhood.
42. It is anticipated that there will no significant adverse amenity impacts to residential dwellings as a result of the operation of the use. The premises is a retail premises selling restricted material and products but at which no sex services or sexual activity will occur.

43. Customer access will be restricted to Botany Road within the B4 - Mixed Use Zone. The applicant has indicated that proportion of retail sales will be facilitated through the online store. This is reflected in the proposed waste management plan as adult products are delivered to the site, packaged and redistributed.
44. The provisions of Section 3.15 (Late Night Trading) of the Sydney DCP 2012 do not apply as the proposed hours of operation are until 8.00pm. Trading up to 8.00pm is compatible with the base hours in the area and residential uses.
45. The proposed layout, surveillance and Plan of Management adequately addresses and manages any adverse risk. The proposal is not a traffic generating development, and is well serviced by public transport.

Access

46. As the proposal includes a new shopfront. The access is to be provided for persons with a disability in accordance with the provisions of the Sydney DCP 2012. This is addressed by recommended conditions of consent.

Other Impacts of the Development

47. The proposed development is capable of complying with the BCA.
48. 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

49. 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

50. 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, Safe City and Waste Management who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

51. The application was referred to NSW Police Force, no objections were raised.
52. The application was referred to RMS in accordance with Clause 31 (Consultation with RMS) of SEPP 64, no objections were raised.

Notification, Advertising and Delegation (Submission(s) Received)

53. 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 20 September 2019 and 12 October 2019. As a result of this notification a total of 208 properties were notified and there were 6 submissions received.

- (a) The proximity of the restricted premises to the Green Square Town Centre (GSTC) and residential uses and will have an adverse impact on the amenity of the area.

Response - The proposal is permissible use and generally complies with location requirements as discussed. This has been addressed under the heading issues of this report.

- (b) The proximity of the restricted premises to other types of commercial premises will have an economic impact on their revenue.

Response - Commercial revenue is not a planning consideration.

- (c) Proximity to existing restricted premises

Response - The existing adult entertainment restricted premises at 342 Botany Road is located approximately 120 metres to the north. The premises is relocating to the subject site at 382 Botany Road.

- (d) Streetscape amenity

Response - This has been addressed under the heading issues of this report.

- (e) Safety, security and antisocial behaviour

Response - The application proposed CCTV and is accompanied by a Plan of Management to minimise risk. The internal layout provides adequate surveillance. Any antisocial behaviour in the public domain is a policing matter. The application was referred to NSW Police Force and Council's safe city officer who have raised no objection to the proposal.

- (f) 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 serviced by public transport.

- (g) Proximity to bus stop

Response - There is a bus stop heading southbound located on the eastern side of Botany Road opposite No 386 Botany Road. The bus stop is setback approximately 20 metres from the primary entry. The northbound bus stop is approximately 50 metres from the primary entry. The proposal includes a discrete sign and screening to prevent the display of adult entertainment products from view.

- (h) An objector raised concern regarding the display of non-compliant signage including graphic content.

Response - The proposed sign is in accordance with Section 4.4.6.5 (Signs) of the Sydney DCP 2012. Display of non-compliant signage is to be reported to Council's compliance team for investigation.

Public Interest

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

S7.11 Contribution

55. The development is not subject to a S7.11 development contribution as it is for a change of use and fit-out for a retail restricted premises which is defined in the Sydney LEP 2012 as a retail premises. The previous use of the premises was retail. There is no change to the floor space of the premises.

Relevant Legislation

56. Environmental Planning and Assessment Act 1979.

Conclusion

57. The proposed development complies with the objectives of the relevant provisions of the Sydney LEP 2012 and Sydney DCP 2012. The development is compatible with surrounding land uses and will not significantly impact the surrounding development.
58. The application is recommended for approval subject to conditions of consent.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Natalie Wells, Planner