

**Item 5.****Development Application: 306 Cleveland Street, Surry Hills - D/2020/230**

File No.: D/2020/230

**Summary****Date of Submission:** 17 March 2020**Applicant:** ES Design**Designer:** ES Design**Owner:** Harmon International Holdings Pty Limited**Cost of Works:** \$0**Zoning:** Sex services premises are permissible with consent within the B4 Mixed Use zone.**Proposal Summary:** The proposal involves the change of use and fitout of 2 x existing terrace buildings at 306 and 308 Cleveland Street, to expand an existing sex services premises (brothel) located at 310 and 312 Cleveland Street.

The 2 x terrace buildings at 306 and 308 Cleveland Street have previously been used as a dwelling house and boarding house respectively, and have been used more recently as an expanded brothel without consent. The subject application therefore seeks consent to regularise the unauthorised use of 306 and 308 Cleveland Street as a brothel.

The proposal involves the provision of 7 x additional working rooms, increasing the number of approved rooms from 14 to 21 and increasing the number of workers permitted within the premises by 7, from 12 to 19.

The proposal retains an existing entrance at 310 Cleveland Street and an existing entrance from Goodlet Lane. New openings are proposed to connect the buildings (between 306, 308 and 310). Conservation works are proposed to the rear of the buildings including the replacement of render that has been removed and replacement of aluminium windows using timber windows.

2 x additional staff rooms and storage rooms are proposed within the new premises at 306 and 308 Cleveland Street. An additional waiting room is proposed to be located at the ground level of 308 Cleveland Street.

The new part of the brothel is proposed to operate in accordance with approved hours of operation for the existing brothel, which are between 10:30am and 12.00 midnight, Sunday through to Thursdays and between 10.30am and 2:00am the following day on Fridays and Saturdays.

The expansion of an existing sex services premises is defined as sensitive development in accordance with Schedule 3 of the Local Planning Panels Direction. The application is referred to the Local Planning Panel for determination.

A development application that is similar to the subject proposal was refused by the Local Planning Panel on 17 July 2019 (D/2019/149). Reasons for refusal included that the proposal was contrary to the relevant planning controls relating to the concentration of sex services premises and the amenity of adjoining residential dwellings, that the plan of management was inadequate in terms of addressing the number and amenities of staff and management of access from Goodlet Lane, that the proposal did not address accessible entry to the premises, the heritage conservation of the premises and waste management.

The subject application seeks to address the reasons for refusal of the previously refused application. Whilst several of the reasons for refusal of the previous application have been addressed by the proposal, the subject application is recommended for refusal on the basis that the site is located less than 75 metres from an approved brothel at 278-284 Cleveland Street, resulting in an unacceptable concentration of brothels in the locality.

The proposal will have significant impacts on the residential amenity of neighbouring dwellings that have frontages to Wilton Street, Goodlet Street and Cleveland Street, noting the Plan of Management does not provide sufficient detail in relation to mitigating noise and anti-social impacts for neighbouring dwellings in the vicinity of Goodlet Lane.

The applicant has failed to address the loss of affordable housing in the locality that has resulted from the unauthorised change of use of 308 Cleveland Street from an approved boarding house to a brothel.

The development was notified and advertised for 21 days between 11 May 2020 and 2 June 2020. 14 submissions by way of objection were received. The objections raised the following concerns:

- the proposal is contrary to the City's planning controls relating to sex services premises;
- the site is not suitable for the proposed use due to its impacts on residential amenity;
- parking impacts; and
- impacts on the existing buildings and streetscape.

**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) State Environmental Planning Policy (Affordable Rental Housing) 2009 ('ARHSEPP2009');
- (iv) Sydney Local Environmental Plan 2012 ('SLEP2012');
- (v) Sydney Development Control Plan 2012 ('SDCP2012').

**Attachments:** A. Selected Drawings

## Recommendation

It is resolved that consent be refused for Development Application No. D/2020/230 for the reasons outlined below.

### Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The entrance to the site is located less than 75 metres to the entrance to an approved brothel at 278-284 Cleveland Street and is located adjacent to and opposite to residential dwellings that are within a residential zone. The proposal intensifies and expands existing sex services premises and seeks to regularise the unauthorised change of use of a boarding house to a brothel. The development will have an adverse impact on the streetscape, character and amenity of the surrounding area and fails to satisfy the following planning provisions:

Sydney Local Environmental Plan 2012

- (i) Clause 1.2(2)(e) - to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing
- (ii) Clause 1.2(2)(h) - to enhance the amenity and quality of life of local communities
- (iii) Clause 1.2(2)(j) - to ensure ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities
- (iv) 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
- (v) Clause 7.21 - Location of sex services premises

Sydney Development Control Plan 2012

- (vi) Section 2.13.1 - Cleveland Street locality statement
  - (vii) Section 4.2.9 - Non-residential land uses in the B4 - Mixed Use zone
  - (viii) Section 4.4.6.1 - proximity to residential premises and existing sex services premises
- (B) The applicant has failed to address the reduction of availability of affordable housing within the locality that has resulted from the unauthorised change of use of an existing boarding house at 308 Cleveland Street to a brothel. The development fails to comply with the relevant provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009.

- (C) The Plan of Management lodged with the application fails to address the how access will be managed from Goodlet Lane. The development fails to comply 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
- (D) The proposal fails to comply with the City's Planning Policies regarding sex services premises and would intensify existing impacts on residential amenity that are significant. Approval of a development that contradicts the planning policies and that would adversely impact upon the character and amenity of the surrounding dwellings and the locality would not be in the public interest.

## Background

### The Site and Surrounding Development

1. Due to Covid-19 restrictions, Council's assessing officers were not able to carry out an internal site visit of the premises. An external site visit was carried out on 28 May 2020.
2. The proposal relates to 4 x 2 storey Victorian terrace buildings that are legally known as Lots A and B in DP 443480 (306 and 308 Cleveland Street) and Lots A and B DP 438607 (310 and 312 Cleveland Street).
3. The site is located on the northern side of Cleveland Street, close to its intersection with Wilton Street. Clients are able to access the site via a front door entry at 310 Cleveland Street and a rear door entry at the rear of 310 Cleveland Street on Goodlet Lane. Vehicular access is provided to the rear of 310 Cleveland Street via a roller door to Goodlet Lane (Figure 4).
4. Surrounding land uses are residential and commercial. To the west and east of the site at 304 and 314 Cleveland Street are located 2 storey mixed use buildings containing commercial premises at the ground level and shoptop housing above.
5. To the north and north-east are residential dwellings that have frontages to Wilton Street and Goodlet Street (Figures 6-8). To the south, on the opposite side of Cleveland Street are 2 storey dwelling houses (295 and 297 Cleveland Street) (Figure 9).
6. A mixed use building containing commercial premises at the ground level and shop top housing above is located at 299-301 Cleveland Street. A commercial warehouse is located opposite the site at 303 Cleveland Street.
7. A building with approval to operate as a brothel is located approximately 60m to the west of the site at 278-284 Cleveland Street. A place of worship (mosque) is located approximately 45m to the east of the site at 328-330 Cleveland Street (Figure 2 below).
8. The site is identified as a contributory building within the Goodlet Street conservation area (C63).
9. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site and surrounding land uses including residential, commercial, an approved brothel and a place of worship



**Figure 3:** Site and adjoining mixed use buildings viewed from the opposite side of Cleveland Street, looking north. 2 x terrace buildings at 306-308 Cleveland Street are proposed to be used as an expanded brothel, in association with an existing brothel at 310-312 Cleveland Street.



**Figure 4:** Site and rear entry door to the site at 310 Cleveland Street, viewed from Godlet Lane, looking south-west



**Figure 5:** Rear elevations of 310 & 312 Cleveland Street, viewed from Goodlet Lane, looking south



**Figure 6:** Site, rear entry door at Goodlet Lane and dwellings on the western side of Wilton Street, looking south-west from Wilton Street



**Figure 7:** Dwellings on the eastern side of Wilton Street (116-124 Wilton Street), looking north-east from the corner of Goodlet Lane and Wilton Street



**Figure 8:** Dwellings on the eastern side of Wilton Street (126-140 Wilton Street), looking east from the corner of Goodlet Lane and Wilton Street



**Figure 9:** Dwellings and mixed use buildings opposite to the site, on the southern side of Cleveland Street

## Proposal

10. The proposal involves the change of use and fitout of 2 x existing terrace buildings at 306 and 308 Cleveland Street, to expand an existing brothel known as Ginza Club. The existing brothel is located at 310 and 312 Cleveland Street (Figure 3 below).
11. The proposal involves the provision of 7 x additional working rooms, increasing the number of approved rooms for the brothel from 14 to 21. The proposal involves increasing the number of workers permitted within the premises by 7, from 12 to 19.
12. 2 x additional staff rooms and storage rooms are proposed within the new premises at 306 and 308 Cleveland Street. An additional waiting room is proposed to be located at the ground level of 308 Cleveland Street.
13. The expanded brothel is proposed to operate in accordance with approved hours of operation for the existing brothel. That is, between:
  - (a) 10:30am and 12.00 midnight, Sunday through to Thursdays; and
  - (b) 10.30am and 2:00am the following day on Fridays and Saturdays.
14. 2 x bicycle parking spaces are proposed at the rear of 310 Cleveland Street and a waste bin holding area is shown at the rear of 308 Cleveland Street. An accessible pedestrian entry and accessible car space are shown at the rear of 310 Cleveland Street.





**Figure 11:** First level plan showing existing brothel component (hatched) at 310 and 312 Cleveland Street and the proposed expanded brothel component (306 and 308 Cleveland Street).

## History Relevant to the Development Application

### Previous Application - D/2019/149 - for 306 and 308 Cleveland Street

17. A previous similar development application (D/2019/149) was refused by the Local Planning Panel on 17 July 2019.
18. The application was similar to the subject application in that it sought to regularise the unauthorised use of 2 x terraces at 306 and 308 Cleveland Street for sex services premises (brothel) in association with existing the existing brothel at 310-312 Cleveland Street, Surry Hills.
19. The subject application seeks to revisit the previously refused proposal and has addressed several of the reasons for refusal. Reasons for the refusal of the previous application include:
  - (a) the proposal is contrary to the relevant SLEP2012 and SDCP2012 planning controls for sex services premises including controls around location of premises in relation to residential dwellings, clustering of sex services premises.

Comment: as outlined in this report, the proposal to expand the area and number of rooms of the existing sex services premises is contrary to the relevant SLEP2012 and SDCP2012 planning controls for sex services premises.

- (b) the internal layout and Plan of Management inadequately address the maximum patron capacity of each room and the premises, how access will be managed from Goodlet Lane and the provision of a sufficient break-out area for staff.

Comment: the Statement of Environment Effects (SEE) lodged with the subject application states there will be 7 additional workers (in addition to the previous consent that provides for a maximum of 12 workers; 19 in total). The plan of management states there will be a maximum of 17 workers. The plan of management fails to outline how access will be managed from Goodlet Lane.

- (c) The application fails to demonstrate compliance with relevant planning provisions regarding accessibility.

Comment: An access report has been lodged with the application that states the site is accessible.

- (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).

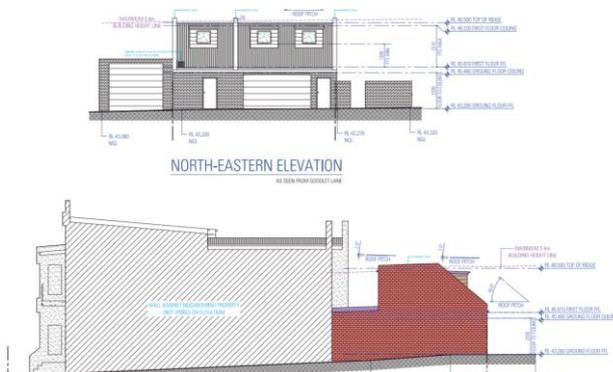
Comment: plans lodged with the application show that conservation works are proposed to the rear of the 4 terrace buildings in accordance with a heritage impact statement. Suitable conditions would be applied to a consent if the application were to be recommended for approval.

- (e) The application does not include areas for waste storage and is not accompanied by a demolition, construction and operational waste management plan.

Comment: a waste holding area is shown on the drawings lodged with the application. Construction and waste related conditions could be applied in the event the application were to be recommended for approval.

### 310 and 312 Cleveland Street

20. Development application number D/2018/742 was approved by the Local Planning Panel on 10 October 2018. Consent was granted for an extension to the existing brothel to provide for 4 additional working rooms within a new building at Goodlet Lane and a new laundry. The approval provided for a maximum of 12 sex workers to be employed at any one time. The approved works have not commenced (Figure 12 below).



**Figure 12:** Approved drawings for D/2018/742, showing a new building at Goodlet Lane that would contain additional working rooms. The approved building has not been constructed.

21. Reasons for the approval of development application number D/2018/742 include:
  - (a) the Plan of Management adequately addresses the operational, safety and security requirements of the premises;
  - (b) the proposed rear addition is of an appropriate scale and is sympathetic to the heritage conservation area;
  - (c) conditions to relocate air conditioning units to remove visual clutter from the front of the building and to enhance the contribution of the building to the heritage conservation area.
22. 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.

### **306 and 308 Cleveland Street**

23. Historic applications relate to previous uses of 306 and 308 Cleveland Street as boarding houses. The boarding houses are listed on the City's Boarding Houses inspection register.
24. 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 3 storey additions and a semi-detached 2 storey secondary dwelling fronting Goodlet Lane.
25. On 8 July 2015, development consents D/2015/793 and D/2015/795 were granted for the removal of rear boundary walls and the construction of roller doors to Goodlet Lane.
26. On 21 November 2003, development consent U03/00321 was granted to convert the existing boarding house at 306 Cleveland Street to a single dwelling.
27. 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.

### **Compliance history**

28. In April 2020, a complaint was received that the premises were operating during Covid-19 restrictions. The complainant was advised to contact NSW Police.
29. On 27 March 2020, a complaint was received that clients had been observed using the rear door to the premises during Covid-19 restrictions. The complainant stated it was their understanding that clients must use the Cleveland Street entrance to access the site. A standard response was provided to the correspondent in relation to the City's response to Covid-19.
30. On 22 January 2019, a brothel closure order was issued for 306-308 Cleveland Street. The subject application has been lodged to formalise the use of 306-308 Cleveland Street, in association with an existing brothel located within 310 and 312 Cleveland Street.

31. In 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.
32. On 18 March 2019, a complaint was received in relation to the use of Goodlet Lane by clients of the brothel. The complaint raised similar issues to those raised in objections to the previous development application (D/2018/742). That is, use of the lane by children, clients waiting in the lane for service, talking loudly late at night and rubbish being left in the lane including cigarette butts. The complaint requested that only the Cleveland Street entrance be used to access the site.

### **Economic/Social/Environmental Impacts**

33. 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 55—Remediation of Land**

34. 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.
35. A search of the City's archives indicates that the sites have historically been used for residential purposes. As such, they are unlikely to be affected by contamination. Council's Environmental Health officers have not requested any additional information in relation to site contamination.

### **State Environmental Planning Policy (Infrastructure) 2007**

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

#### Clause 101

37. 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.

### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

38. The use of 308 Cleveland Street has been changed from an approved boarding house to a brothel without consent. The operators of the site have carried out a change of use that is contrary to Clause 50(1) of the ARHSEPP2009, which states that a person must not change the use of a building containing affordable housing to another use without development consent. See discussion below in the Issues section.
39. The applicant has failed to address the provisions of ARHSEPP2009 in the subject application and has not provided any details required by Clause 50(2) of the ARHSEPP2009. In particular, the applicant has failed to address:
  - (a) whether there is likely to be a reduction in affordable housing on the land to which the application relates;
  - (b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation;

- (c) whether the development is likely to cause adverse social and economic effects on the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
40. Whilst the site is located within the designated hydrological catchment of Sydney Harbour, no works are proposed that would result in cumulative environmental impacts for the harbour and its surrounds. The development is consistent with the relevant aims of the deemed SEPP.

### **Sydney Local Environmental Plan 2012**

#### *Aims of SLEP2012 and permissible land uses*

41. The proposal expands the operations and area of an existing sex services premises that as highlighted by submissions objecting to the proposal, currently impact significantly upon the residential amenity of residential dwellings located close to the Goodlet Lane entrance to the premises. The proposal is contrary to key aims (h) and (j) of SLEP2012, which state that development must enhance the amenity and quality of life of local communities and that new development must reflect the existing or desired future character of the locality.
42. The applicant seeks consent to regularise the unauthorised change of use of a dwelling at 306 Cleveland Street and a boarding house at 308 Cleveland Street to an expanded brothel. The proposal is contrary to a key aim (e) of SLEP2012, which is to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.
43. Whilst sex services premises (brothels) are permissible with consent in the B4 Mixed Use zone, the proposal expands the operations and area of an existing sex services premises that currently impact significantly upon the residential amenity of residential dwellings located close to the Goodlet Lane entrance to the premises. As such, the proposal is contrary to a key objective of the B4 Mixed Use zone, which is to provide a mixture of compatible land uses.

#### *Clause 5.10 Heritage conservation*

44. The site is identified as a contributory item within the Goodlet Street conservation area (C63). A heritage impact statement lodged with the application recommends that conservation works be carried out to the rear elevation of the premises. Drawings lodged with the application reflect those recommendations.

#### *Clause 7.21 Location of sex services premises*

45. The proposal to expand the existing brothel from 14 to 21 rooms and to double its area into 2 adjoining buildings fails to satisfy the provisions of Clause 7.21 of SLEP2012. The provisions require the consent authority to consider whether the operation of the sex services premises is likely to cause a disturbance in the neighbourhood because of its size, location, hours of operation or number of employees and taking into account the cumulative impact of the sex services premises along with other sex services premises operating in the neighbourhood during similar hours.
46. The site is located less than 75 metres from the entrance to a site at 278-284 Cleveland Street that has approval to operate as a brothel. Whilst the brothel at 278-284 Cleveland Street has relocated to a premise at 479 Elizabeth Street, Surry Hills, the site at 278-284 Cleveland Street can be reopened and operated as a brothel without further application to Council. See discussion below in the Issues section.

**Sydney Development Control Plan 2012**

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

**2. Locality Statements – Cleveland Street Locality**

The site is located within the Cleveland Street locality.

The proposal involves works to maintain the rear heritage of the buildings that if approved, would contribute to the conservation of the contributory building within the conservation area.

Proposed working rooms facing Cleveland Street present as inactive frontages to the footpath as they are blocked out for privacy (Figure 14 below). Only one door out of 4 terraces provides access. As such, the development does not provide an active edge to enliven Cleveland Street frontage. The proposal is inconsistent with the locality statement at part (k) that encourages active uses on the ground floor including commercial, retail, professional services, café and dining and above ground uses, such as boutique accommodation, commercial, leisure and residential.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain 3.2.3 Active frontages	No	<p>Existing and proposed working rooms facing Cleveland Street present inactive frontages by blocking out windows (Figure 14 below). The proposal does not permit entry from the primary frontage through 306 and 308 Cleveland Street, retaining a single entry door to all 4 x frontages via 310 Cleveland Street.</p> <p>The development fails to positively address the street and fails to contribute to the safety and amenity of the residential streets surrounding the site and the public domain.</p>
3.9 Heritage	Yes	<p>A heritage impact statement (HIS) lodged with the application recommends conservation works be carried out to the rear of the premises. These works are listed on drawings lodged with the application.</p>
3.11 Transport and Parking 3.11.3 Bike parking and associated facilities	Yes	<p>SDCP2012 does not provide a minimum bicycle parking rate for sex services premises. 2 x bicycle parking spaces are provided at the rear of 310 Cleveland Street.</p>

3. General Provisions	Compliance	Comment
Schedule 7.8.5 Accessible car parking spaces		An accessible car parking space is provided at the rear of the premises.
3.12 Accessible Design	Yes	An access report has been lodged with the application. The report concludes that there is a step free entrance to the premises from Goodlet Lane and that accessible parking is provided. An accessible room is provided on the ground floor level with access from Goodlet Lane.
3.14 Waste	Yes	A waste bin holding area is shown at the rear of 308 Cleveland Street. If the application was to be recommended for approval, a condition would be applied in relation to waste management.
3.15 Late Night Trading Management  3.15.3 Matters for consideration	Yes	The site is located within a Local Centre Area in accordance with SDCP2012 late night trading controls.  The controls do not apply to sex services premises, however the proposal is not in keeping with the matters for consideration when used as a guide to assessment. See discussion below in the Issues section.

4.2.9 Non-residential development in B4 Mixed Uses zones	Compliance	Comment
Objectives	No	The proposal intensifies existing adverse impacts generated by the existing premises including noise and streetscape impacts. The proposal fails to ensure the residential amenity of adjoining residences and the neighbourhood.

4.2.9 Non-residential development in B4 Mixed Uses zones	Compliance	Comment
		As such, the proposal is contrary to key objectives of part 4.2.9 of SDCP2012, which are to ensure non-residential development is compatible with, and does not detract from the amenity of residential development and to ensure that any impacts generated by non-residential development are adequately managed to preserve the quality of life for residents in the area.

4.4.6 Sex industry premises	Compliance	Comment
Objectives	No	The proposal intensifies existing adverse impacts generated by the existing premises including noise and fails to ensure the residential amenity of adjoining residences and the neighbourhood.
<p>4.4.6.1 Location of Premises</p> <p>4.4.6.1(1)(b) Premises must not be immediately adjacent to or directly opposite land developed for residential purposes.</p> <p>4.4.6.1(1)(c) Premises must not be adjacent to or directly opposite a sensitive land use and within a radius of 75m of an existing, approved adult entertainment or sex industry premise.</p>	No	<p>The premises are located adjacent to and opposite to residential dwellings on Wilton and Cleveland Streets.</p> <p>The premises are located within 75m of an approved sex industry premises at 278 Cleveland Street. See discussion below in the Issues section.</p>

4.4.6 Sex industry premises	Compliance	Comment
<p>4.4.6.2 Design of Premises</p> <p>4.4.6.2(1)(a)-(d) All entrances and exits are to facilitate the privacy of staff and visitors without compromising personal safety.</p> <p>4.4.6.2(1)(b)-(d) Entrances are to be visible from public areas and not obstructed by any existing or proposed landscaping. Entrances are to be provided with adequate lighting and designed to maximise surveillance and safety.</p>	No	<p>The proposal refers to a primary entry from Cleveland Street and a secondary entry from Goodlet Lane. However, as raised in submissions, the Goodlet Lane entry is in frequent use and has been associated with anti-social behaviour within streets adjoining the site. These issues would be intensified should approval be granted to increase the number of approved working rooms from 14 to 21 and to double the area of the brothel from 2 to 4 terrace buildings. See discussion below in the Issues section.</p>
<p>4.4.6.2(2) The external appearance of the premises must ensure is not a prominent feature in the street</p>	Yes	<p>The proposal does not involve any substantial changes to the premises as viewed from Cleveland Street.</p>
<p>4.4.6.2(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 front and rear entries to the premises are clearly numbered.</p>
<p>4.4.6.2(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 do not display any material that is restricted or that is visible from the streetscape.</p>
<p>4.4.6.2(5) The interior of the premises must not be visible from any place in the public domain.</p>	Yes	<p>Windows are blocked out as viewed from Cleveland Street and Goodlet Lane. See Figure 14 below.</p>

4.4.6 Sex industry premises	Compliance	Comment
4.4.6.2 (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.		
<p>4.4.6.3 Scale of sex services premises</p> <p>The consent authority may exercise discretion for an increase in the number of working rooms in a sex services premises where it can be demonstrated that the site can accommodate additional working rooms without adverse impacts, including traffic generation, noise and other amenity impacts on the surrounding area</p>	No	The proposal does not increase the number of waiting areas within the premises. Issues around anti-social behaviour at Goodlet Lane have been raised in submissions. These issues would be intensified should approval be recommended for the proposed increase in working rooms from 14 to 21 and to double the size of the premises from 2 to 4 terrace buildings. See discussion below in the Issues section.
4.4.6.4 Health, safety and security	No	Whilst the plan of management (POM) lodged with the application is detailed in relation to health and safety provisions within the premises, it does not address issues around the use Goodlet Lane to access the site. See discussion below in the Issues section
4.4.6.6 Management of operations	No	As above. See discussion below in the Issues section

## Issues

### Sex Services Premises - Planning Controls

48. Planning controls in relation to sex services premises are provided by both SLEP2012 and SDCP2012. The objectives of the controls are to minimise land use conflicts and adverse amenity impacts relating to sex services premises, to provide criteria for the location, design and ongoing management of premises and to ensure sex service premises do not interfere with the amenity of the neighbourhood in which they are located.

49. The provisions of part 7.21 of SLEP2012 state that the consent authority must consider whether the operation of the sex services premises is likely to cause a disturbance in the neighbourhood, either
  - (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.
50. The provisions of part 4.4.6.1(1)(c) of SDCP2012 state that sex industry premises must not be located within a radius of 75m of an existing, approved adult entertainment or sex industry premise or adjacent or directly opposite a sensitive land use.
51. The site is located less than 75 metres from the entrance to a site at 278-284 Cleveland Street that is an approved sex industry premise. The operators of 278-284 Cleveland Street have relocated to premises at 479 Elizabeth Street, Surry Hills. However, the premises at 278-284 Cleveland Street can be reopened and operated as a brothel without further application to Council unless the consent is surrendered.
52. Objections were received following the notification of the proposal to neighbouring properties. Of issue is the impacts the existing brothel has with regard to the residential amenity of dwellings that are located within close proximity to the rear of the subject site (see notification section below).
53. The objections state that the operators of the subject premises are associated with the sex services premises at 479 Elizabeth Street, Surry Hills that has relocated from 278-284 Cleveland Street. Evidence supporting this assertion includes that:
  - (a) both premises share a similar name (Ginza Club and Ginza Empire) and that they have similar websites; and
  - (b) a photograph dated March 2020 shows a sign on the rear entry door to the subject site at Goodlet Lane, directing clients of 306-312 Cleveland Street to 479 Elizabeth Street when the subject premises were closed.
54. The consent to operate the premises at 278-284 Cleveland Street as sex service premises has not been formerly surrendered in accordance with Clause 97 of the Environmental Planning and Assessment Regulation 2000.
55. In the event that the premises at 278-284 Cleveland Street are reopened, there will be cumulative impacts for neighbouring dwellings and the streetscape, resulting from a concentration of the sex services premises operating in the neighbourhood during similar trading hours. This outcome would be contrary to the objective of clause 7.21 of SLEP2012, which is to minimise land use conflicts and adverse amenity impacts relating to sex services premises.



**Figure 13:** Aerial image of subject site and surrounding area, showing the location of the subject premises in relation to an approved sex services premise at 278-284 Cleveland Street and a place of worship (mosque) at 328-330 Cleveland Street. Residential dwellings are located within close proximity to the rear entry to the premises with frontages to Wilton and Goodlet Streets and adjoining and opposite the site on Cleveland Street.

#### *Proximity to residential dwellings*

56. Residential dwellings are located on sites adjoining and opposite to the subject site at 304 and 314 Cleveland Street and at 295 and 297 Cleveland Street. Residential dwellings are also located on Wilton and Goodlet Streets, opposite to and near to the rear entry to the premises at Goodlet Lane. The premises are located within close proximity to a place of worship (mosque), which is approximately 45m to the east of the site.
57. Objections received following the notification of the proposal highlight impacts resulting from the existing sex services premise on the site. The proposal fails to satisfy the provisions of Part 4.4.6.1(1)(b) of SDCP2012, which state that sex industry premises must not be located immediately adjacent to or directly opposite land developed for residential purposes.

#### *Streetscape impacts*

58. Existing and proposed working rooms facing Cleveland Street present inactive frontages by blocking out windows (Figure 14 below). The proposal does not permit entry from the primary frontage through 306 and 308 Cleveland Street, retaining a single entry door to 4 x frontages via 310 Cleveland Street.
59. The development fails to positively address the street and fails to contribute to the safety and amenity of the residential streets surrounding the site and the public domain.

**Late night trading**

60. The expanded brothel is proposed to operate in accordance with approved hours of operation for the existing brothel. That is, between 10:30am and 12.00 midnight, Sunday through to Thursdays; and 10.30am and 2:00am the following day on Fridays and Saturdays.
61. The late night trading controls do not apply to sex services premises, however the proposal is not in keeping with the matters for consideration provided by the controls when used as a guide to assessment.
62. The site is located within a Local Centre Area in accordance with SDCP2012 late night trading controls. The existing hours are consistent with the hours of operation for Category C unlicensed premises that allow for indoor trading between 7.00am and 2.00am the following day.
63. Notwithstanding this, the proposal fails to satisfy the matters for consideration for late night trading premises at part 3.15.3 of SDCP2012, including:
  - (a) that the location and context of the premises is inappropriate, with consideration of its proximity to residential land uses;
  - (b) that the specific nature of the premises and its activities will result in significant impacts for neighbouring dwellings with consideration of the issues raised in public submissions. Impacts on the residential amenity of dwellings including noise have not been addressed by the plan of management that does not extend to the areas outside of and surrounding the premises;
  - (c) the contribution the premises makes to street activation and vibrancy of an area at night, noting windows are blocked out and the premises provides a passive street frontage to Cleveland Street.
  - (d) the size and patron capacity of the premises, noting the proposal involves increasing the number of approved working rooms from 14 to 21 and expanding the area of the premises from 2 to 4 terrace buildings;
  - (e) the submission of a plan of management that demonstrates a strong commitment to good management, particularly in relation to managing potential impacts on adjoining and surrounding land uses and the public domain; and
  - (f) that measures have not been provided to ensure adequate safety, security and crime prevention in the public domain immediately adjacent to, and generally surrounding, the premises.
64. The proposal fails to satisfy the Character Statement for Local Centre Areas set out at Schedule 3.1.3 of SDCP2012, including that:
  - (a) careful consideration must be given to the residential context of the area and existing hours of other late night trading premises in close proximity, noting residential dwellings are located within close proximity to the rear entry to the premises and that there is an approved brothel located within close proximity to the site;

- (b) late night trading hours are acceptable where it is considered that the use:
    - (i) will have minimal impact on residential amenity;
    - (ii) will not contribute to the clustering of high impact premises; and
    - (iii) that in some locations in Local Centres it may be appropriate for low impact venues, to trade until 2.00am (such as small bars) but only where entry and egress to the premises is onto a main street and not a residential laneway or area.
65. The proposal fails to demonstrate the premises can comply with the City's Guidelines for "Sex Industry and Adult Entertainment Premises, which state at part 1.4 that:
- (a) Effective good management and operation of adult entertainment and sex industry premises is fundamental to limiting any detrimental impact on the amenity of the neighbouring premises, in reducing the impact on the character of the area, and for ensuring the safety and security of all staff and visitors. A Plan of Management can assist in identifying the potential impacts and the measures to be taken to reduce these, and in clearly defining responsibilities and procedures.

### Planning principle

66. The City's planning policies relating to sex services premises are clearly established, noting the subject proposal is assessed as being contrary to those controls. In addition, the Land and Environment Court (LEC) provides a planning principle that can be considered when assessing the appropriateness of a brothel's location. The planning principle gives objective based considerations that have been used as a guide to assessment.
67. In *Yao v Liverpool City Council* [2017] NSWLEC 1167 the LEC requires that when considering whether to grant consent for a development application for a "sex services premises" a consent authority should take into consideration 12 x matters as are relevant to the development application:
- (i) the proximity to any sensitive land uses, such as, but not exclusively educational establishments, places of public worship, child care centres etc
  - (ii) the proximity to any premises used for residential accommodation
  - (iii) paths of travel for different members of the community near the premises
  - (iv) the hours of operation
  - (v) signage
  - (vi) means of access to the premises
  - (vii) safety of patrons and employees
  - (viii) streetscape appearance
  - (ix) the existing or anticipated character of the area
  - (x) car parking and public transport access
  - (xi) social impact
  - (xii) impacts of clustering multiple sex services premises

**Comment**

68. The first consideration (i) uses similar wording to the provisions of part 4.4.6.1(c) of SDCP2012, which is that sex services premises should not be located adjacent or directly opposite to sensitive land uses. These include places of public worship.

The SDCP2012 provisions state that brothels should be separated from sensitive land uses by a minimum of one non-sensitive land use. Whilst the mosque is located within close proximity to the brothel (45m), there is sufficient separation between the mosque and the existing brothel including several non-sensitive land uses. The development satisfies consideration (i) of the planning principle.

69. The proposal does not satisfy the second consideration (ii) of the planning principle and the provisions of part 4.4.6.1(b) of SDCP2012 in relation to the proximity of the premises to premises used for residential accommodation.

As outlined elsewhere in this report, the premises are located within close proximity to residential dwellings that have frontages to Wilton and Goodlet Streets. Public submissions have raised issues in relation to the impacts of the existing premises, with the proposed expansion considered to result in additional impacts for those dwellings. In particular, the use of the entry to the premises from Goodlet Lane with associated noise, waste and anti-social behaviour impacts within the laneway.

70. The proposal does not satisfy the third consideration (iii) of the planning principle, (paths of travel for members of the community). Submissions objecting to the proposal raise issues in relation to the use of the rear lane by community members including children as an alternative pedestrian route to Cleveland Street (from east to west) to travel to the nearby Inner West High School that is being constructed and as an area used by children for play.

The application states that the primary entry to the premises is at Cleveland Street and that the Goodlet Lane entry is secondary entry to the premises. However, submissions objecting to the proposal highlight that the Goodlet Lane entry is in common use and that this impacts upon the residential amenity of nearby dwellings and streets.

The Plan of Management lodged with the application comprehensively covers the management of activities within the site, however does not adequately address mitigation of streetscape impacts or how the Goodlet Lane entry will be used as accessible entrance only.

71. With regard to the fourth consideration (iv) of the planning principle, the proposal does not seek to extend the existing hours of operation for the premises that are between 10.30am and 12.00 midnight, Sunday to Thursday and between 10.30am and 2.00am the following day on Friday and Saturday.

Whilst the late night trading provisions of SDCP2012 do not apply to sex services premises, the site is within a Local Centre Zone, permitting late night trading up to 2.00am. As outlined elsewhere in this report, these hours would not be considered acceptable in relation to the expansion of the existing premises in that the intensification of the existing use will have significant impacts on the residential amenity of nearby dwellings.

72. The fifth consideration (v) of the planning principle is not addressed given no signage is proposed.

73. As outlined above in (iii), the Plan of Management lodged with the application does not adequately address mitigation of streetscape impacts or how the Goodlet Lane entry will be used as accessible entrance only. If approved, the proposal would intensify existing impacts for the amenity of neighbouring dwellings that are significant. The development fails to satisfy consideration (vi) of the planning principle in relation to the means of access to the premises.
74. The Plan of Management lodged with the application is comprehensive in relation to the management of patrons and employees within the premises, however does not adequately address mitigation of streetscape impacts or how the Goodlet Lane entry will be used as accessible entrance only. As such, the development fails to satisfy consideration (vii) of the planning principle in relation to safety.
75. The requirement for windows to be obscured for privacy and the proposed expansion of the brothel into 2 adjoining terrace buildings doubles the extent of inactive frontage to Cleveland Street and fails to satisfy considerations (viii) in relation to streetscape appearance.



**Figure 14:** Windows facing Cleveland Street are blocked out and defensive, and fail to provide an active frontage to the site.

76. The proposal fails to satisfy consideration (ix) of the planning principle in relation to the existing and anticipated character of the area and the provisions of part 4.4.6.1(b) of SDCP2012 in relation to the proximity of the premises to any premises used for residential accommodation. As outlined above, the premises are located within close proximity to residential dwellings on Wilton and Goodlet Streets and if approved, would significantly impact upon the residential amenity of the locality.

77. An access report lodged with the application concludes that there is a step free entrance to the premises from Goodlet Lane and that accessible parking is provided. An accessible room provided on the ground floor level. The site is well serviced by public transport. As such, the proposal satisfies consideration (x) in relation to car parking and public transport access.
78. The proposal fails to satisfy considerations (xi) and (xii) of the planning principle in relation to social impacts and the impacts of clustering of sex services premises as per the provisions of part 4.4.6.1 of SDCP2012. As outlined above, the site is located within 75m of a site that is approved to operate as a brothel and the operation of the existing premises has social impacts that would be exacerbated by the proposal to intensify the number of working rooms and expand the premises from 2 to 4 terrace buildings.
79. For the reasons provided above, the proposal fails to satisfy the majority of the objective based considerations provided by the LEC planning principle for the location of brothels that have been used as a guide to assessment.

#### **Affordable Rental Housing SEPP 2009**

80. The use of 308 Cleveland Street has been changed from an approved boarding house to a brothel without consent. The operators of the site have carried out a change of use that is contrary to Clause 50(1) of the ARHSEPP2009, which states that a person must not change the use of a building containing affordable housing to another use without development consent.
81. The applicant has failed to address the provisions of ARHSEPP2009 in the subject application and has not provided any details required by Clause 50(2) of the ARHSEPP2009. In particular, the applicant has failed to address:
  - (a) whether there is likely to be a reduction in affordable housing on the land to which the application relates;
  - (b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation;
  - (c) whether the development is likely to cause adverse social and economic effects on the general community;

#### **Other Impacts of the Development**

82. The proposed development is capable of complying with the BCA.
83. It is considered that the proposal to significantly increase the floor area and working rooms of the existing premises will result in significant detrimental impacts for the locality.

#### **Suitability of the site for the Development**

84. The proposal is of a nature that is not in keeping with the overall function of the site, considering the rear entry to the premises that is in frequent use, is in a residential setting.

85. The development is contrary to Section 4.4.6.1 that seeks to avoid the clustering of approved sex services premises within a 75 metre radius of each other, and that seeks to separate residential uses from sex services premises. The development is contrary to the controls by substantially increasing the number of working rooms, sex workers on site and increasing the number of buildings occupied from 2 to 4. The site is therefore not suitable for the proposed development.

### Internal Referrals

86. The application was referred to the City's specialists for comment. The City's Safe City specialists advised that:

- (a) a 'one way' system should be implemented to reduce the likelihood of congestion, or interaction between clients entering and leaving the premises.

Comment: whilst the application states that the Cleveland Street entrance is the 'primary' entry and that the Goodlet Lane entry is the 'secondary' entry, the Goodlet Lane entry is in frequent use, and has been associated with impacts on the residential amenity of neighbouring dwellings.

The applicant has failed to provide a plan of management that addresses the impacts of the proposal on the amenity of neighbouring dwellings and the locality. As such, a 'one way' system is unlikely to be able to be implemented.

87. The City's Surveyor has advised that:

- (a) Site consolidation should be considered in the event fire doors are not installed at each boundary opening, noting that a NCC report recommends doors be installed.

88. The City's Health and Building specialists recommended conditions of consent that would be applied in the event the application was recommended for approval.

### External Referrals

#### NSW Police

89. The application was referred to NSW Police for comment. NSW Police do not support the proposal on the following basis:

- (a) an increase in patronage of the business may have a significant detrimental effect on the amenity of the surrounding area due to increased pedestrian traffic, associated noise and anti-social behaviour;
- (b) Cleveland Street Surry Hills is a major traffic thoroughfare with no on-street parking and therefore it would be expected to increase competition for available parking spots on the nearby streets;

- (c) there would be one manager on site to cover what is essentially four distinct terraces. The design of the entire complex would inhibit a rapid response to an emergency or threat to a staff member in a remote working room. This places an unacceptable risk to the workplace safety of vulnerable staff; and
- (d) there are no means outlined in the proposal to mitigate these issues.

### **Notification, Advertising and Delegation**

- 90. In accordance the Community Participation Plan 2019 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 11 May 2020 and 2 June 2020.
- 91. A total of 513 properties and occupants were notified and 14 submissions by way of objection were received. The objections raise the following issues:

*The proposal is contrary to the relevant SLEP2012 and SDCP2012 controls*

- (a) The proposal is contrary to the relevant SLEP2012, SDCP2012 and the City's Guidelines for "Sex Industry and Adult Entertainment Premises with regard to residential amenity and clustering of brothels.
- (b) A previous application was refused last year on the following grounds that 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.
- (c) The operators of the premises encourage clients to visit another brothel at 479 Elizabeth Street, Surry Hills. The business that was previously at 278 Cleveland Street has relocated to that address.

A photograph is provided, taken on 27 March 2020, of a sign pasted on the back door at Goodlet Lane, directing clients of the brothel to their other brothel along Elizabeth street.

Response - The applicant has failed to demonstrate that the premises can be operated in a way that will not result in any significant additional impacts for the amenity of neighbouring dwellings noting the cumulative impacts of the brothel in its existing configuration are significant. The submitted plan of management does not address how the impacts on the residential amenity of neighbouring dwellings will be addressed and it is possible an approved brothel at 278 Cleveland Street may be reactivated.

The proposal fails to demonstrate the premises can comply with the City's SLEP2012 and SDCP2012 Planning controls and Guidelines for "Sex Industry and Adult Entertainment Premises, which state at part 1.4 that a Plan of Management can assist in identifying the potential impacts and the measures to be taken to reduce these, and in clearly defining responsibilities and procedures.

*Suitability of the site for the proposed use*

- (d) The proposal results in a 'mega brothel', turning Cleveland Street and Goodlet Lane into a red light district and restricting the variety of other businesses within the local area limiting value to the community.

- (e) The brothel would be better suited to an industrial area, where residents would not be impacted.
- (f) The proposal will affect students walking to the Inner City High School as Goodlet Lane is a safe lane for walking and riding to the school. Students attending that school will be using the bus stop currently situated directly outside these premises. The proposal will also affect a nearby place of worship.
- (g) Goodlet lane not only serves as a walkway for pedestrians but also a place where children can ride their bicycles and play.

Response - The development would have substantial impacts for the residential amenity of neighbouring dwellings and neighbouring streets as a result of increasing the number of working rooms, sex workers on site and increasing the number of buildings occupied from 2 to 4. The site is assessed as being unsuitable for the proposed development.

#### *Impacts on residential amenity*

- (h) The proposal to expand the existing brothel should be refused with regard for the impacts resulting from the operation of the existing brothel. These include:
  - (i) Constant noise from the intercom and the slamming of the metal door “back entrance” facing Goodlet lane. The brothel uses the laneway as their main entrance to the business rather than the entrance on Cleveland Street;
  - (ii) Brothel workers and clients hanging around and smoking in the laneway, talking loudly on their mobile phones or to each other in the middle of night, especially on the weekends. Loud chatting and laughing noise after 2.00am from the working girls;
  - (iii) Clients sitting in their cars around either end of Goodlet Lane between Wilton street and Perry Street, heavier traffic along Goodlet lane in the middle of the night. Carloads of men parking along the street playing loud music as they wait for their friends to return from the brothel;
  - (iv) Loud noise from staff rolling their 4-wheel rubbish skip down Wilton Street to the corner of Cleveland Street, for collection; and
  - (v) Waste discarded in Goodlet Lane including food that has led to an increase in rats in the area, empty drug satchels, syringes and Viagra packets littering Goodlet Lane adjacent to the entrance of this Brothel.

Response - The development is recommended for refusal on the basis that it will exacerbate existing impacts on residential amenity and that the site is unsuitable for an expanded brothel use.

#### *Parking impacts*

- (i) Cars and Uber cars constantly blocking the Street, dropping and collecting the working girls and clients;
- (j) On-street parking spaces being used by the brothel's visitors, resulting in parking pressure for residents; and

- (k) Cars blocking and parking across driveways and laneways.

Response - The development is recommended for refusal as outlined in this report.

*Impacts on the existing buildings and streetscape*

92. The development lacks details on what is actually to be built. The DA is of poor standard with a lack of information.
93. The building is heritage listed and we should be restoring the terraces to their heritage look. Previous works were completed without approval and quality of previous works was poor, resulting in streetscape impacts.

Response - Drawings lodged with the application show that suitable conservation works are proposed to the rear of the existing buildings. Notwithstanding this, the application is recommended for refusal for the reasons outlined elsewhere in this report.

### **Public Interest**

94. 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.

### **S7.11 Contribution**

95. The development would generally be subject to the payment of a S7.11 contribution in the event it were recommended for approval. Notwithstanding this, the application is recommended for refusal for the reasons outlined elsewhere in this report.

### **Relevant Legislation**

96. Environmental Planning and Assessment Act 1979.

### **Conclusion**

97. The application proposes the expansion of an existing brothel that currently has significant impacts on the residential amenity of neighbouring dwellings, primarily in relation to the use of Goodlet Lane for entry and associated noise, parking and waste impacts for the residents of dwellings facing Wilton and Goodlet Streets.
98. The brothel proposes to increase the number of working rooms from 14 to 21 and to increase the number of workers from 12 to 19. The proposal does not seek to expand the existing hours of operation that are between 10:30am and 12.00 midnight, Sunday through to Thursdays and between 10.30am and 2:00am the following day on Fridays and Saturdays.

99. The development is located approximately 60 metres to the east of an approved brothel at 278-284 Cleveland Street and adjoins and is opposite to residential dwellings on Cleveland, Wilton and Goodlet Streets. The proposal is contrary to the relevant planning controls set out at Section 4.4.6.1 of the Sydney Development Control Plan 2012 in the applicant has failed to demonstrate the development will not have any adverse impacts on the character and amenity of the surrounding area, this being contrary to the provisions of Clause 7.21 of the Sydney Local Environmental Plan 2012.
100. The application seeks consent to regularise the unauthorised change of use of an approved boarding house at 308 Cleveland Street, resulting in a loss of affordable housing within the locality.
101. The application was notified and advertised for 21 days and 14 submissions by way of objection were received.
102. 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**

Director City Planning, Development and Transport

Adrian McKeown, Senior Planner.