

Item 5.**Development Application: 38-46 Oxford Street, Darlinghurst - D/2021/1336**

File No.: D/2021/1336

Summary

Date of Submission:	15 November 2021 Amended plans submitted 17 January 2022
Applicant:	Town Planning Group
Architect/Designer:	Town Planning Group
Developer:	The trustee for Subway Vault (NSW) Unit Trust/ Sydney Sauna
Owners:	The Owners - Strata Plan No 49764; Aspen Properties (Vic) Pty Ltd; Black Mountain Properties Pty Ltd; DFV Pty Ltd; Gogo MD Pty Ltd
Planning Consultant:	Town Planning Group
Heritage Consultant:	Town Planning Group
Cost of Works:	\$0
Zoning:	The site is located in the B2 Local Centre zone. The proposed development is defined as restricted premises and is permissible with consent in the zone.
Proposal Summary:	<p>Approval is sought for alterations to existing restricted premises (sex on premises venue) known as 'Sydney Sauna' to expand to the rear lower ground floor of Lot 4B. Proposed works include two new sling rooms and a private room.</p> <p>Proposed trading hours for Lot 4B are in line with the existing venue operations and are Monday 10.00am to 1.00am, Tuesday - Thursday 10.00am to 6.00am, Friday 10.00am to 12.00am, Saturday 24 hours and Sunday 12.00am to 6.00am. No increase in patron capacity is proposed.</p>

In accordance with the Minister's Direction, development applications for the purpose of restricted premises are sensitive development and must be determined by the Local Planning Panel.

Unauthorised works have previously occurred including a new stair connecting Lot 4B to the existing restricted premises. A Building Information Certificate (BIC) is lodged with Council.

The proposal is consistent with the objectives of the B2 Local Centre zone and generally consistent with the provisions of Section 4.4.6 (Sex Industry Premises and Adult Entertainment) of the Sydney DCP 2012.

The application was notified for 42 days (extended during the Christmas period) between 29 November 2021 and 10 January 2022. There was one submission received about access to the premises from the rear laneway. Access to the rear laneway is not proposed.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy (Infrastructure) 2007

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Plan of Management

Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2021/1336 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone.
- (B) Appropriate conditions are imposed to ensure the development does not detrimentally impact on the heritage significance of the site.
- (C) The development will not adversely affect the character of the Oxford Street, Darlinghurst locality and the Oxford Street Heritage Conservation Area.
- (D) The development, subject to conditions, will safeguard neighbourhood amenity and will promote the orderly operation of the premises.
- (E) The development accords with objectives of relevant planning controls.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 848592 and Lots 6-7 SP 49764 and is commonly known as 38-46 Oxford Street, Darlinghurst. It is irregular in shape with an area of approximately 689sqm. It has a primary street frontage to the north of Oxford Street and a secondary street frontage to a private lane known as Winns Lane, which is adjacent to Norman Street. The site is located close to the intersection of Oxford Street and Burton Street.
2. The site contains a commercial building which presents as three storeys to Oxford Street and five storeys to Winns Lane/Norman Street. The existing sex on premises venue known as Sydney Sauna is located at first floor level and part of the upper ground floor level. There are retail premises at ground floor level fronting Oxford Street, with Oxford Art Factory located at the lower ground floor level, and offices on the upper level.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial to Oxford Street with hotels and residential premises also in the locality.
4. The site is a local heritage item identified as a commercial building including interior (I381). It is located within the Oxford Street heritage conservation area (C17). The site is identified as a contributing building.
5. A site visit was carried out on 17 February 2022.
6. Photos of the site and surrounds are provided below:

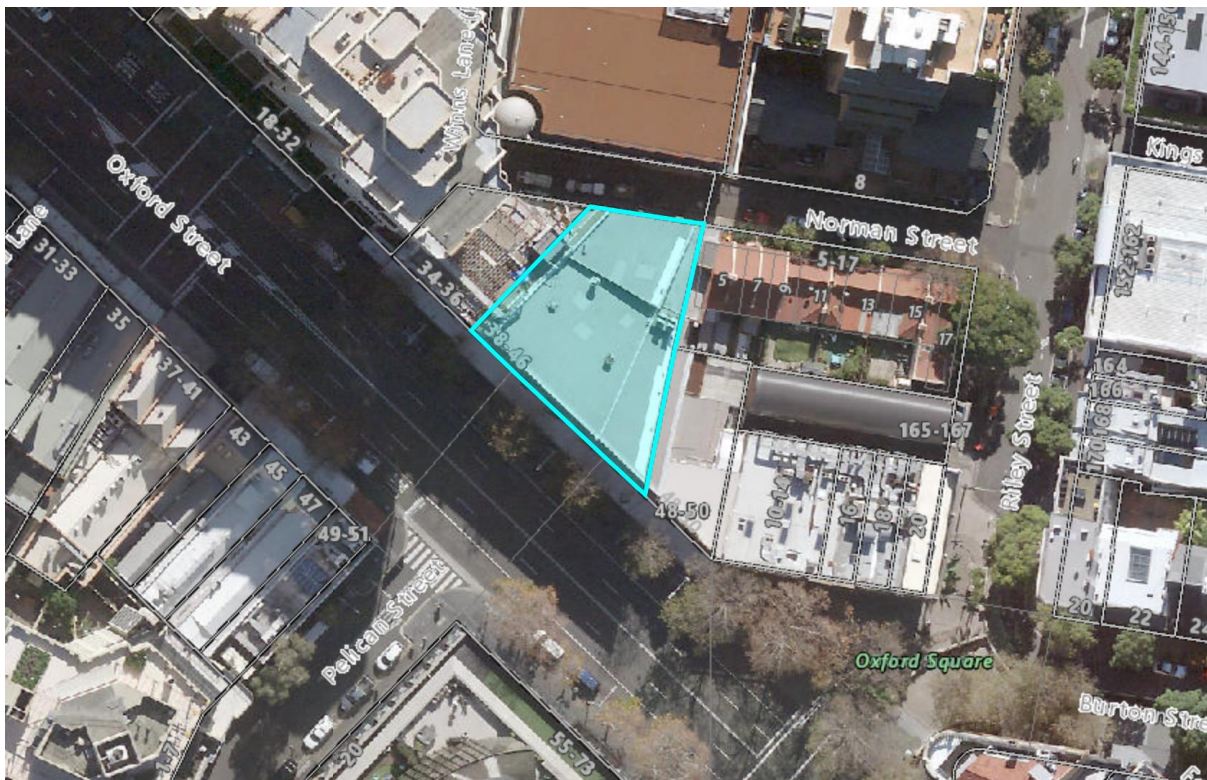


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Oxford Street



Figure 3: The site ground floor and entrance viewed from Oxford Street.



Figure 4: The site entrance viewed from Oxford Street



Figure 5: The retail tenancy, Daly Male, at the Oxford Street frontage of Lot 4 (Lot 4A)



Figure 6: The entrance to the common corridor and lift access



Figure 7: The site viewed from Winns Lane



Figure 8: The existing Lot 4B fit out



Figure 9: The stairs constructed to connect to the sex on premises above



Figure 10: Stairs connecting Lot 4B to the building's common corridor



Figure 11: Bathroom within Lot 4B

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:

- D/2020/552 - On 25 November 2020 a deferred commencement consent was granted for use as a licensed premises in association with existing sex on-premises venue 'Sydney Sauna' located within Lot 6 and 7 at the first-floor level.
 - The deferred commencement condition required the submission of an updated Plan of Management. The condition was satisfied, and the consent became operational on 12 May 2021.
- D/2016/124 – On 14 April 2016 consent was granted for alterations to existing mezzanine level for extension of first floor sex on premises venue including internal fit out.
 - Condition 3 states “This approval is limited to internal building works. The use of the premises is subject to compliance with DA-457/2002”
 - Condition 7 states “The operation of the premises must be conducted in accordance with the Plan of Management signed and dated 10/04/2013. Should there be any additional or altered activities/procedures to those specified in the approved plan of management that remain within the scope of the development consent, then the plan of management must be appropriately reviewed and submitted to and approved by Council.”
- D/2013/211 – On 11 April 2013 consent was granted for the internal re-configuration of existing bath house/ sex on premises venue known as ‘Kingsteam’
 - Condition 2 states “This approval is limited to internal building works. The use of the premises is subject to compliance with DA-457/2002”
 - Condition 12 states “The operation of the premises must be conducted in accordance with the Plan of Management signed and dated 10/04/2013. Should there be any additional or altered activities/procedures to those specified in the approved plan of management that remain within the scope of the development consent, then the plan of management must be appropriately reviewed and submitted to and approved by Council.”
 - The Plan of Management did not include the provision of alcohol within the premises.
- U02/00457 – On 14 August 2002 consent was granted for the regularisation of use of Suite 7 as a sex on premises venue and bath house.
 - Condition 2 states “That the operation of the premises must comply with the Plan of Management at all times. Council shall be advised in writing, and shall give its consent to, any modification of the Plan of Management including changes to the Management of the premises”. Section 3.19 of the Plan of Management states that “NO drugs and/or alcohol will be permitted within the premises at any time.”

- Condition 9 states that the hours of operation shall be restricted to between:
- | | |
|-----------|---------------------------------------|
| Monday | 10.00am to 1.00am (Tuesday morning) |
| Tuesday | 10.00am to 6.00am (Wednesday morning) |
| Wednesday | 10.00am to 6.00am (Thursday morning) |
| Thursday | 10.00am to 6.00am (Friday morning) |
| Friday | 10.00am to 12.00am (Friday night) |
| Saturday | 24 hours |
| Sunday | 12.00am (midnight) to 6.00am (Monday) |

Compliance Action

- On 6 July 2021 a Notice of Intention to give an order was issued in relation to un-approved internal works being the bounding construction between the separate Retail Shop (Daly Male) and Sex-On-Premises business (Sydney Sauna), mezzanine storage and two change rooms in Retail Shop, new/replacement internal steel stair adjoining Strata Lot 7, three remodelled bathrooms and all new fixtures and fittings.
- A building information certificate application BC/2021/108 was lodged on 15 November 2021 for "Demolition of existing internal walls, and fixtures and fittings, removal of floor coverings. Construction of internal staircase between Lot 6 and Lot 4. Alterations and additions of bathrooms and toilets at rear and shop bathroom. Installation of new fixtures and fittings and floor coverings. New over bathroom storage area and 2 change rooms. New separation wall between front shop and rear sauna extension." The application has not been determined and is awaiting the outcome of the development application.

Proposed Development

- Approval is sought for the following:
 - Alterations to the existing restricted premises (sex on premises venue) known as Sydney Sauna to expand to the rear lower ground floor of Lot 4B.
 - Proposed trading hours are Monday 10.00am to 1.00am, Tuesday - Thursday 10.00am to 6.00am, Friday 10.00am to 12.00am, Saturday 24 hours and Sunday 12.00am to 6.00am.
 - Proposed works include two new sling rooms and a private room.
- No increase in patron capacity is proposed.
- Retrospective approval for the unauthorised works including new stairs is not sought (and cannot be granted) as part of this development application. Building Information Certificate (BC/2021/108) has been submitted in respect of the unauthorised works.
- Plans and elevations of the proposed development are provided below.



Figure 12: Existing floor plan on Level 1



Figure 13: Existing floor plan to the rear of the upper ground level



Figure 14: Proposed floorplan for the rear of the lower ground floor level subject to this application, with proposed works shown in red, and works already carried out shown in blue.

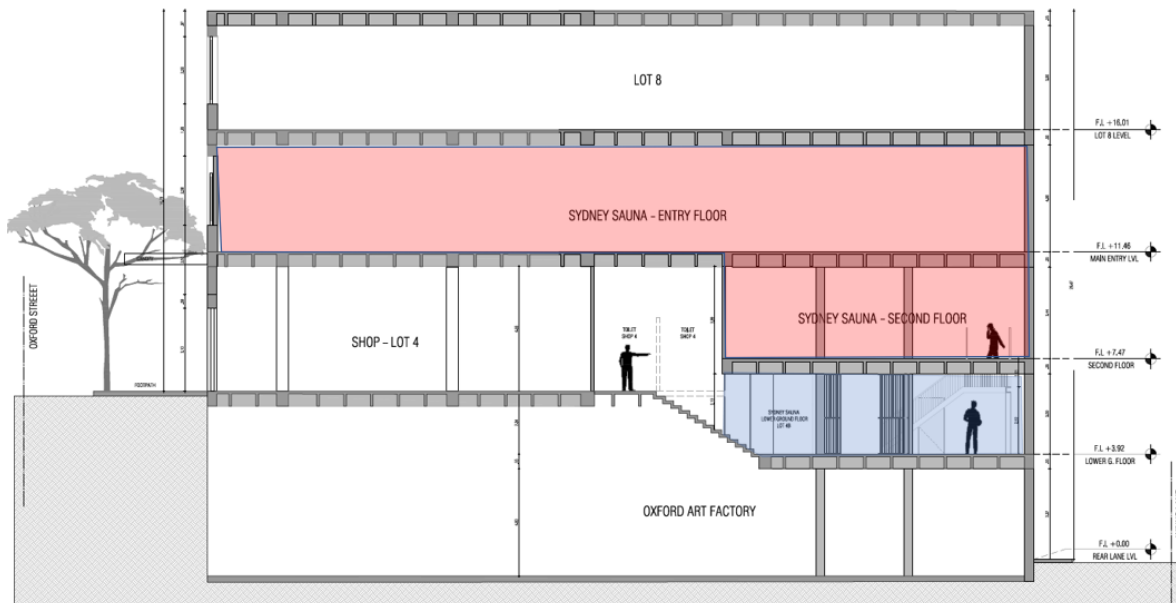


Figure 15: Section with the existing restricted premises use shown in red and the proposed use in blue

Assessment

14. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Infrastructure) 2007

15. The relevant provisions of SEPP (Infrastructure) 2007 are considered in the assessment of this development application.

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Clause 101 – Development with frontage to classified road

16. The application is subject to Clause 101 of the SEPP as the site has frontage to Oxford Street which is a classified road.
17. The proposed development satisfies the provisions of Clause 101 subject to conditions of consent, as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

Oxford Street Cultural and Creative Precinct Planning Proposal

18. The Oxford Street Cultural and Creative Precinct planning proposal is the result of a review of planning controls applying to Oxford Street. The review responds to the high level of retail vacancy, noisy road environment, underused public spaces, and the impact of the now repealed lockout laws and the Covid-19 pandemic on the land use and patronage of Oxford Street. The Planning Proposal complements the Locality Statement for Oxford Street Darlinghurst of the Sydney DCP 2012 which characterises Oxford Street as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods.
19. The proposed instrument is a matter for consideration Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979. The planning proposal was exhibited between 10 September and 4 November 2021. The outcomes of the consultation and any post-exhibition amendments are scheduled for reporting to Council and the Central Sydney Planning Committee in the first half of 2022. The planning proposal will then be referred to the Department of Planning, Industry and Environment should it be approved by Council and the Central Sydney Planning Committee.
20. The planning proposal does not have any specific implications for the use of Lot 4B as a restricted premises or the works to this tenancy.

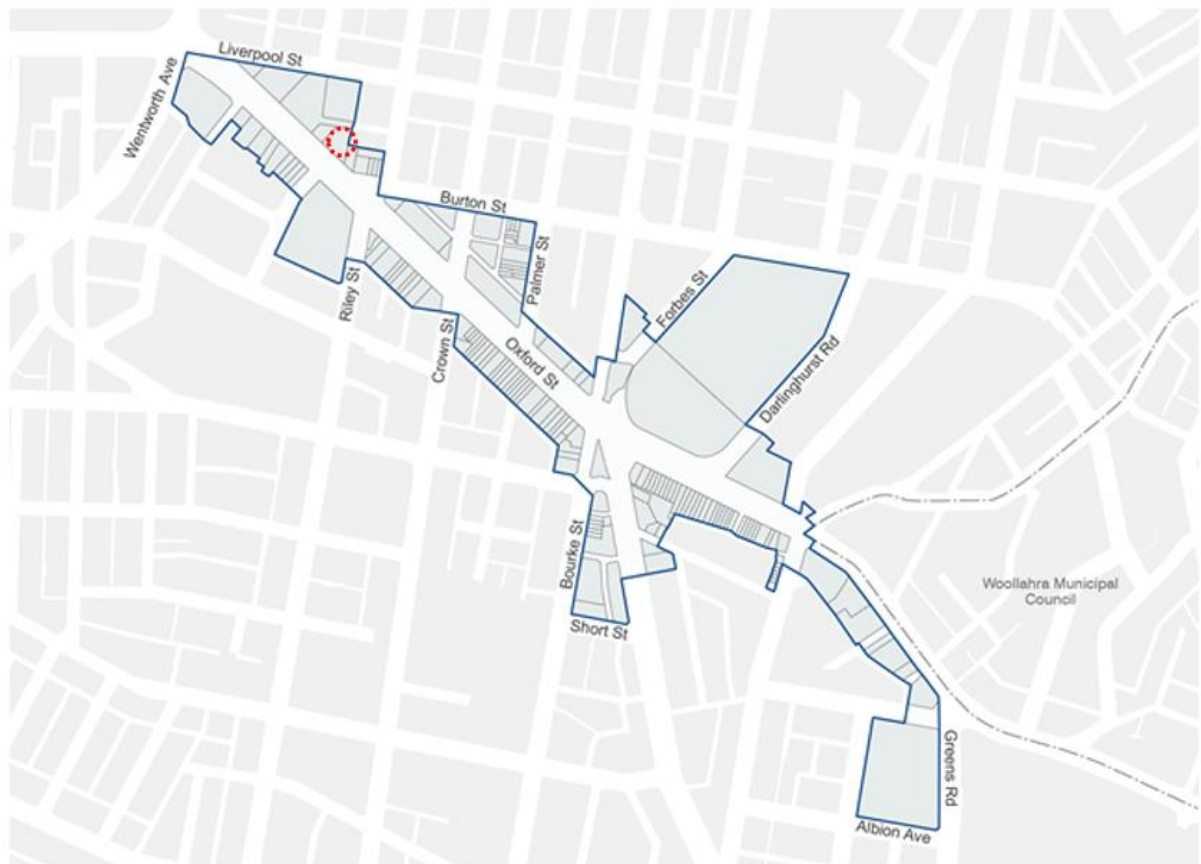


Figure 16: The Oxford Street Cultural and Creative Precinct (blue). Site outlined in red.

Local Environmental Plans

Sydney Local Environmental Plan 2012

21. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B2 Local Centre zone. The proposed development is defined as a restricted premises and is permissible with consent in the zone. The proposal is consistent with the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 15m is permitted. The internal building works are within the height limit and the proposed development does not exceed the height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 2.5:1 is permitted. The proposed development does not result in a change to the FSR of the site.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is a local heritage item and located within a heritage conservation area. The proposed building will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item. Unauthorised work that has occurred to the rear windows is discussed under the Discussion heading below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	N/A	There are no specific maximum parking controls for restricted premises. No parking spaces are proposed.
7.21 Location of sex services premises	N/A	The proposal is not defined as a sex services premises and the clause does not apply.

Development Control Plans**Sydney Development Control Plan 2012**

22. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

23. The site is located within the Oxford Street, Darlinghurst locality. Subject to recommended standard operating conditions the proposal will be consistent with the unique character and the design principles of the locality, being consistent with Oxford Street as a 24 hour entertainment precinct.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	The site is a local heritage item and located within a heritage conservation area. The proposed building work will not have any detrimental impacts on the heritage significance of the heritage conservation area and the heritage item. Unauthorised work to the rear windows is discussed under the Discussion heading below.
3.12 Accessible Design	No	The entry lobby to the restricted premises is located at Level 1 on the western edge of the building via stairs from Oxford Street.

Provision	Compliance	Comment
		<p>There is also a lift accessed via a common corridor at the Oxford Street ground level. This lift is also used by the offices on the upper level. This lift provides access to the back of house space on the eastern side of the restricted premises tenancy on Level 1, and due to the split level design of Level 1 the operator does not currently use this lift for access for people with disabilities.</p> <p>The expansion of the restricted premises into Lot 4B, located at lower ground floor level, is connected to the levels above by stairs, and access for people with disabilities is not provided.</p> <p>The proposal is acceptable as the existing access arrangements are to be maintained, there is no increase in patron capacity proposed, and Lot 4B is a small area in comparison with the overall tenancy.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The existing building entry is clearly visible, unobstructed, and easily identifiable from Oxford Street.</p> <p>Due to the nature of the premises, there is no passive surveillance from the restricted tenancy to the streets below.</p>
3.14 Waste	Conditioned to comply	<p>The applicant's Plan of Management includes the storage of waste bins in Winns Lane.</p> <p>Council's Waste Management Unit have advised that storing bins within the street is not permitted, and that waste is to be stored and collected from within the premises.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development and that the Plan of Management be amended to reflect this requirement.</p>
3.15 Late Night Trading Management	No	Refer to the Discussion heading below.
3.16 Signage and Advertising	Yes	No additional signage is proposed.

Section 4 – Development Types

4.4.6 Sex industry premises and adult entertainment

Provision	Compliance	Comment
Definitions	N/A	<p>The DCP defines the use as a 'Sex on premises venue', which means a premises that gains income from an entrance or membership fee paid to use the premises for sex between the clients but are not premises where sex services take place, or are arranged in exchange for payment. Sex on premises venues include swingers clubs and sauna clubs that accommodate sexual encounters.</p> <p>'Sex industry premises' means:</p> <p>(a) sex service premises, and</p> <p>(b) premises used for sex between clients, but where sex services do not take place in exchange for payment, for example, sex on premises venues or swingers clubs.</p>
4.4.6.1 Location of premises	No	Refer to discussion below.
4.4.6.2 Design of premises	Conditioned to comply	<p>The design is maintained and generally compliant with the DCP provisions in relation to the design of the entrance and external appearance of the venue. There is no display of restricted material visible from outside of the premises.</p> <p>The DCP requires that the interior of the premises must not be visible from any place in the public domain, and that where the interior is visible from neighbouring buildings, adequate measures are to be taken to screen the interior of the building. Unauthorised works have occurred to the rear windows, and this is discussed further below under the Discussion heading.</p>
4.4.6.3 Scale of sex services premises	N/A	The premises are not defined as a sex service premises.

Provision	Compliance	Comment
4.4.6.4 Health, safety and security	Yes	The layout of the premises is maintained and is generally compliant with the DCP provisions with respect to the provision of a secure entry, health and safety, and design of sexual activity areas. The proposed slings are able to comply with the BCA and relevant Australian Standards.
4.4.6.5 Signs	Yes	No additional signage is proposed.
4.4.6.6 Management of operations	Yes	The submitted Plan of Management is consistent with the DCP requirements.

Discussion

Location of Premises

24. Section 4.4.6.1 of the Sydney DCP 2012 provides controls for the location of Sex Industry Premises. They must not be located within buildings containing a residential use, immediately adjacent or opposite land developed for residential use. They must not be within a radius of 75m, as measured from the building entrance, of an existing approved adult entertainment or sex industry premises.
25. There are no residential land uses within the building, however there are residential uses immediately adjacent the rear of the premises at 5-17 Norman Street (residential terraces), and on the opposite side of Oxford Street at 55-73 Oxford Street (mixed use development with residential tower). These are shown in the figures below.
26. There is one approved restricted premises (strip club) located within the 75m radius at 37-41 Oxford Street, on the opposite side of Oxford Street.
27. The proposed use of Lot 4B as a restricted premises (sex on premises venue) is acceptable as the location of the sex-on premises venue is established, and access will be via the existing entry from Oxford Street, that is not altered by the proposal.

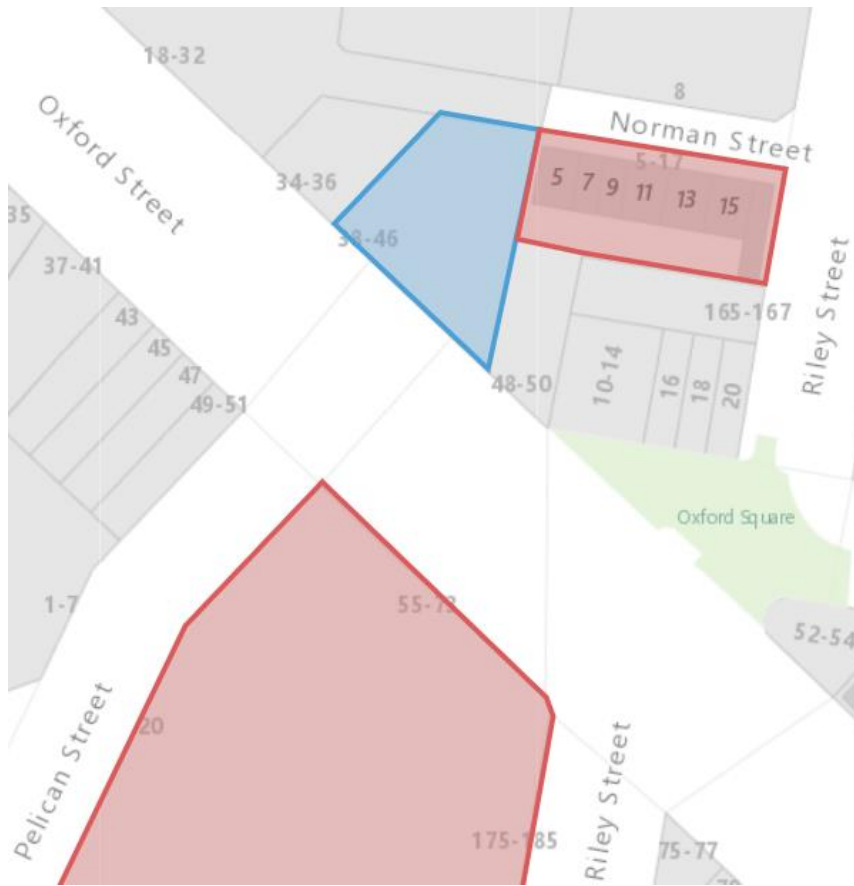


Figure 17: The site (blue) and adjacent residential uses (red)



Figure 18: Residential terraces at 5-17 Norman Street



Figure 19: Mixed use development on the opposite side of Oxford Street (number 55-73)

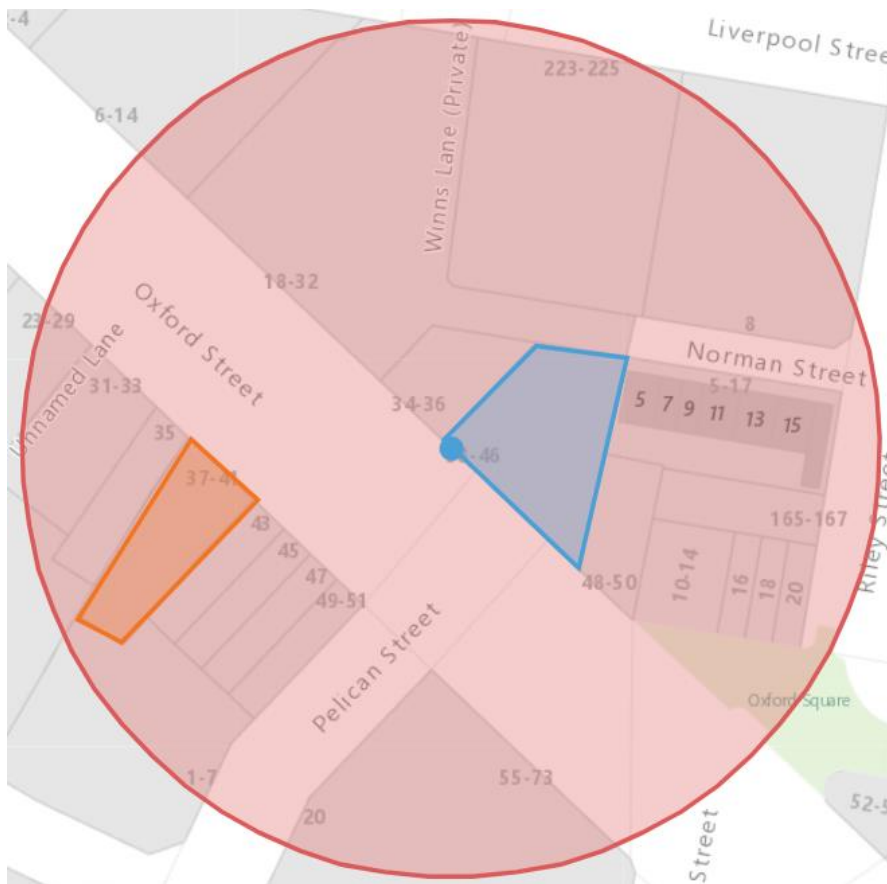


Figure 20: The other restricted premises (orange) within a 75m radius of the site

Unauthorised Works

28. Unauthorised works have previously been carried out, including:
- (a) the provision of stairs to connect to the level above
 - (b) new bathrooms
 - (c) a sling room in the middle of the Lot 4B tenancy
 - (d) privacy measures to the windows facing Winns Lane
 - (e) works to the retail tenancy in Lot 4A facing Oxford Street including preventing access between Lot 4A and Lot 4B
29. A Building Information Certificate (BC/2021/108) was lodged simultaneously with the application for the works already carried out. The application has not been determined and Council's Building Surveyors are awaiting the outcome of the development application. The Building Information Certificate does not approve the works, but rather it confirms that compliance action won't be taken.
30. The works to the rear windows detract from the significance of the heritage item and Council's Heritage Specialist has recommended that they be removed, and traditional windows be reinstated.



Figure 21: Unauthorised works to the rear windows of the site



Figure 22: The rear elevation as of August 2020

Figure

31. Section 4.4.6.2(5) and (6) of the Sydney DCP 2012 requires that the interior of the premises must not be visible from any place in the public domain, and that were the interior is visible from neighbouring buildings, adequate measures are to be taken to screen the interior of the building. Unauthorised works have occurred to the rear windows that currently ensure there is no visibility into the premises from the public domain or neighbouring buildings. However, the works to these windows are unacceptable from a heritage perspective, and therefore a condition is recommended requiring new measures be installed that ensure there is no visibility into the premises, but providing a suitable heritage outcome described below.
32. A deferred commencement condition is recommended that requires the following to occur prior to the consent commencing:
 - (a) details of privacy measures prepared in consultation with a Heritage Consultant are to be submitted to ensure there is no visibility into the premises from the public domain and neighbouring buildings; and
 - (b) the approval of the Building Information Certificate.
33. A condition is also recommended that requires the removal of the unauthorised works to the rear windows and reinstatement of traditional windows prior to an Occupation Certificate being issued.

Hours of Operation

34. The premises are located in a Late Night Management Area and the use is defined as a category B premises.
35. Section 3.15.4 of the DCP permits base trading hours of 6am to 2am the following day, with potential extended trading hours of 24 hours per day. In accordance with Section 3.15.4(8) of the DCP, a premises seeking extended trading hours may be permitted up to two additional operating hours per trial period.
36. The existing trading hours of the venue are:
 - Monday: 10am to 1am
 - Tuesday – Thursday: 10am to 6am
 - Friday: 10am to 12am
 - Saturday: 24 hours
 - Sunday: 12am until 6am the following Monday
37. The trading hours are not proposed to change and the patron capacity is 100 patrons within the licensed area and 200 within the total venue.
38. The hours of operation between 2am and 6am are beyond the base hours of the DCP. The hours of operation have previously been approved on a permanent basis to the existing areas of the restricted premises (sex on premises venue). A review of Council's records indicates that the premises is well managed. It is recommended that the approved hours for Lot 4B are consistent with the hours for the existing premises, on a permanent basis.

Consultation

Internal Referrals

39. The application was discussed with:
- Council's Building Services Unit;
 - Environmental Health Unit;
 - Licensed Premises Unit;
 - Heritage Specialist;
 - Safe City Unit;
 - Surveyors; and
 - Waste Management Unit.
40. They advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

NSW Police

41. The application was referred to NSW Police for comment.
42. No response was received.

Advertising and Notification

43. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 42 days (extended during the Christmas period) between 29 November 2021 and 10 January 2022. A total of 162 properties were notified and 1 submissions were received.
44. The submissions raised the following issues:
- (a) **Issue:** No objection subject to no access or egress through the rear to Winns Lane/Norman Street.
- Response:** The only entry for both patrons and staff is via Oxford Street.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

45. The development is not subject to a Section 7.11 development contribution as it does not result in a net increase in the worker population across the site.

Relevant Legislation

46. Environmental Planning and Assessment Act 1979.

Conclusion

47. Having regard to all of the above matters, the proposed development will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site, and is in the public interest, subject to appropriate conditions of consent being imposed.
48. The proposed development generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012 and, subject to conditions, is acceptable.
49. A deferred commencement condition has been recommended relating to the removal of unauthorised works to the rear windows, provision of measures to prevent visibility into the premises, and relating to the approval of the Building Information Certificate relating to the unauthorised works.

ANDREW THOMAS

Executive Manager Planning and Development

Matthew Girvan, Senior Planner