

**Item 6.****Development Application: 68-80 Erskine Street, Sydney - D/2023/92**

File No.: D/2023/92

**Summary****Date of Submission:** 14 February 2023**Applicant:** RFA Architects Pty Limited**Architect:** RFA Architects Pty Limited**Owner:** The Owners - Strata Plan No. 19563**Planning Consultant:** ABC Planning**Cost of Works:** Nil**Zoning:** The site is located within land zoned as SP5 Metropolitan Centre under the Sydney Local Environmental Plan 2012. The proposed development is defined as a sex services premises which is permissible with consent in the zone.**Proposal Summary:** The proposed development application seeks permanent continuation of the use as a sex services premises known as 'City Touch' with base trading hours between 8.00am to 12.00 midnight, and extended hours between 12.00 midnight to 4.00am subject to a two (2) year trial period, Mondays to Sundays inclusive. No physical works are proposed.

The use is existing and has been in operation since 2004 for almost two decades in accordance with previous development consents, D/2003/669 (as modified) and D/2014/498 (as modified). The previous consents placed a time limited restriction on the continuation of the use for a period of five (5) years after which the use must cease. The latest consent lapsed on 27 November 2019.

The existing premise has continued to operate to date in accordance with D/2014/498, despite the expiry date of the use.

No substantiated complaints have been received by Council since the operation of the premise. Nor has there been a history of apparent non-compliance issues or

breaches apart from continued trading past the cease date of the development consent.

The application was notified for a period of 21 days between 27 February 2023 and 21 March 2023. A total of 90 properties and occupiers were notified, and no submissions were received.

The application was referred to the NSW Police on 24 February 2023 and no response was received.

Subject to conditions, the proposal is generally consistent with the objectives and applicable planning provisions in the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) and Sydney Development Control Plan 2012 (Sydney DCP 2012).

The proposed hours of operation comply with the permissible hours under the Sydney DCP 2012. It is recommended that the base hours of operation are extended from the previously approved 12.00am (midnight) to being until 2.00am (the following day), Mondays to Sundays inclusive. This will be consistent with the permissible base hours of operation within the Late Night Management Area in accordance with Section 3.15.4 of Sydney DCP 2012. However, a first trial period for operation between 2.00am and 4.00am, Mondays to Sundays inclusive, is recommended given the lapse dates of use and trial period under the previous consent, taking into consideration relevant provisions under Section 3.15.4 of Sydney DCP 2012.

The application is reported to the Local Planning Panel for determination due to the expiry of the use under the previous consent, and thus the proposal being development for the purposes of a sex services premises.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) Environmental Planning and Assessment Regulation 2021
- (iii) Heritage Act 1977
- (iv) SEPP (Transport and Infrastructure) 2021
- (v) SEPP (Biodiversity and Conservation) 2021

- (vi) Sydney Local Environmental Plan 2012  
(Gazetted 14 December 2012, as amended)
- (vii) Sydney Development Control Plan 2012 (in  
force on 14 December 2012, as amended)
- (viii) Sex Industry and Adult Entertainment Premises  
guideline (October 2013, as amended)
- (ix) City of Sydney Community Participation Plan  
2020

**Attachments:**

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

## Recommendation

It is resolved that consent be granted to Development Application Number D/2023/92 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 development is consistent with the objectives of the SP5 Metropolitan Centre Zone as it promotes the primary role of the zone as a centre for employment, contributes towards commercial opportunities, as well as the diversity of compatible land uses within Sydney.
- (B) The proposal generally satisfies the objectives and provisions of the Sydney Local Environmental Plan 2012 including Clause 7.21 (Location of Sex Services Premises), and subject to conditions, will not create adverse amenity impacts nor cause disturbance in the neighbourhood.
- (C) The proposal is consistent with the relevant objectives of the Sydney Development Control Plan 2012.
- (D) The proposal is consistent with the permissible hours of operation of Section 3.15.4 of Sydney Development Control Plan 2012 and accords with Section 4.4.6 of Sydney Development Control Plan 2012 for sex services premises.
- (E) Subject to the recommended conditions of consent, the proposed development will maintain the existing level of amenity currently obtained for the site locality and adjoining sites and will not result in additional adverse environmental impacts. Conditions of consent are recommended to ensure the use continues to be managed in appropriate manner in accordance safe practices and the procedures outlined within the endorsed Plan of Management.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 101 DP 626245, known as 68-80 Erskine Street, Sydney. It is rectangular in shape with an area of 540sqm. The site is located on the northern side of Erskine Street, between Kent and Clarence Streets.
2. The site contains an existing row of eight (8) 3-storey brick terraces with basement, known as the 'Watch House' terraces identified as both a State and local heritage item (State Heritage Register (SHR) Item No. 00223 and Local Item No. I1757). The subject premises is the third terrace from the west, known as No. 70 Erskine Street, Sydney (subject site).
3. The subject site has a long-standing historic use as a sex services premises since 2004 known as 'City Touch'. City Touch comprises staff facilities within the basement level, a reception, managers office, sex worker bathroom and two (2) waiting rooms on the ground floor, and a total of six (6) working rooms on the first and second floors of the terrace. Customer access to the site is via the main entry at Erskine Street. A separate access is provided for sex workers, deliveries, and emergency egress at the rear of the premise via the basement and accessway that connects to Kent Street.
4. It is noted that five (5) terraces (approximately 25m) to the east of the subject site is another sex services premises is located at No. 80 Erskine Street, known as 'Sirs for Massage' which has been in operation since 2004. The existing sex services premise at No. 80 Erskine Street is of an identical scale to the existing sex services premise at the subject site.
5. The Watch House terraces are not located within a heritage conservation area. A number of State and local heritage items are located within the site locality, adjoining the terraces to the east and across Kent Street to the west. These heritage items include the 'Former "Watch House" including interiors' at 82 Erskine Street (SHR Item No. 00501 and Local Item No. I1758) and 'Commercial building including interior' at 105A Clarence Street (Local Item No. I1715) to the east; 'Commercial Terrace group including interiors' at 42-50 Erskine Street (Local Item No. I1754), 'Former "CW Foley and Co" commercial terrace pair including interiors' at 52-54 Erskine Street (Local Item No. I1755) and 'Commercial Terrace group including interiors' at 62-66A Erskine Street (Local Item No. I1756) to the west.
6. The site is located within a late-night trading area and is approximately 170m from Wynyard Station. The surrounding area is characterised by a mixture of land uses, primarily being retail and food and drink uses located on the ground floor with commercial offices or hotel accommodation on the floors above. There are no existing residential uses within the immediate vicinity of the site. The site is not located within a Special Character Area.
7. A site visit was carried out on 23 March 2023. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds, subject premises outlined in red



Figure 2: Site viewed from Erskine Street facing north, subject premises outlined in red



Figure 3: Site shopfront and primary entry from Erskine Street



Figure 4: Rear access to the subject site from Kent Street between 97-105 Clarence Street (left) and 68A Erskine Street (right) facing east



**Figure 5:** Subject site main entrance from Erskine Street and waiting rooms at ground floor



**Figure 6:** Basement level of the subject site showing staff facilities





**Figure 7:** Basement level of the subject site showing staff entry and egress from Kent Street and stair access to the ground floor



**Figure 8:** Rear accessway from Kent Street facing east to the subject site



Figure 9: Rear accessway to the subject site facing west towards Kent Street



Figure 10: Existing commercial developments surrounding the site viewed from Clarence Street facing west

## History Relevant to the Development Application

### Development Applications

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

- **D/2003/669**

Development consent was granted on 29 March 2004 for the change of use of the premises from a relaxation centre to a Brothel with ground floor retail.

- **D/2003/669/A**

A Section 4.55(1A) modification application was approved on 22 June 2005 to continue the use of the premises for an additional 5 years until 22 June 2010.

The approved trading hours under D/2003/669 (as modified) permitted operation of the premises until 12.00midnight.

- **D/2014/498**

Development consent was granted on 2 December 2014 for the continued use and operation of brothel known as 'City Touch' and internal alterations to the ground floor of the premises.

Condition 2 of D/2014/498 restricted the use to a period of five (5) years which lapsed on 27 November 2019.

Condition 3 of D/2014/498 restricted the base hours of operation to between 8.00am and 1.00am the following day, Mondays to Sundays inclusive. Extended hours between 1.00am and 3.00am, Mondays to Sundays inclusive, was granted subject to a one (1) year trial period from the date of the consent, which expired on 2 December 2015.

- **D/2014/498/A**

A Section 4.55(1A) modification application was approved on 13 December 2016 to modify the approved internal works including amendments to the proposed reception area, modifications to Condition 26 requiring provision of an internal staff bathroom at the ground floor level, and modifications to Condition 28 in relation to a security gate system to restrict access to the basement staff area.

- **D/2014/498/B**

A Section 4.55(2) modification application was lodged on 24 July 2020 for the proposed continued use and operation of the brothel. A letter requesting the application be withdrawn was issued to the applicant on 11 August 2020. The proposal sought to amend the Condition 3 of the consent which lapsed on 27 November 2019. The application was subsequently withdrawn on 14 August 2020.

- **D/2022/1095**

On 21 October 2022, a development application was lodged to seek permanent consent for the use as a brothel with base operating hours between 8.00am to 12.00midnight and extended hours between 12.00midnight and 4.00am subject to a two (2) year trial, Mondays to Sundays inclusive.

A request for additional information was issued on 26 October 2022 requesting provision of Strata owner's consent for the proposal. The application was withdrawn on 19 January 2023.

The subject application seeks the same development that was previously proposed under D/2022/1095. Strata owner's consent for the proposal was submitted with the subject development application.

### **Relevant Development Applications at No. 80 Erskine Street**

9. The following applications at the neighbouring site at No. 80 Erskine Street (located approximately 25m from the subject premise) are relevant to the current proposal.

- **D/2009/2007**

On 29 January 2010, development consent was granted for the continuation of the use of the premises as a brothel for a further five (5) year period. (The change of use of the premise as a brothel was approved under D/2003/951 on 22 March 2004). The approved base hours of operation were 10.00am to 1.00am the following day, with a one (1) year trial period granted for operation between 1.00am to 2.00am, Mondays to Sundays inclusive.

- **D/2009/2007/A**

Section 4.55(1A) was approved on 19 May 2011 for a further extension of the operating hours of the premise from 1.00am until 4.00am the following day, Mondays to Sundays inclusive, subject to a two (2) year trial period (lapsed on 19 May 2013).

- **D/2009/2007/B**

Section 4.55(2) was approved on 29 July 2013 for the continuation of the trial period operating hours between 1.00am and 4.00am, Mondays to Sundays inclusive, subject to a five (5) year period (lapsed on 29 July 2018).

- **D/2009/2007/C**

Section 4.55(2) was approved on 19 November 2014 for the continuation of the use as a brothel for a further five (5) years (lapsed on 19 November 2019). No changes were made to the approved hours of operation.

### **Compliance Action**

10. The site is not currently subject to an ongoing compliance action or investigation. It is however noted that the premise has continued operating following the lapsing date of the consent.

## Amendments

11. Following a preliminary assessment of the proposed development, on 9 March 2023 clarification was sought from the applicant for the proposed scope given minor discrepancies between the submitted accompanying documents. The Plan of Management prepared by ABC Planning in consultation with Urban Realists Planning and Health Consultants dated November 2013 references proposed internal works to the ground floor for a new staff bathroom, while the accompanying Statement of Environmental Effects prepared by ABC Planning states no physical works are proposed.
12. The applicant responded on 9 March 2023 and confirmed the proposal includes no physical works. The reference in the Plan of Management referred to internal alterations which have been already completed under D/2014/498/A.
13. Given the minor discrepancy, the date of the Plan of Management, and nature of the works already completed, it was considered that a revised Plan of Management was not necessary, and the error could be addressed by way of an appropriate condition (no approval is granted for any physical works).
14. The assessment as follows is based on the original set of documents submitted with the subject application.

## Proposed Development

15. The application seeks consent for the continued use and operation of the existing sex services premises (brothel) known as 'City Touch'.
16. Specifically, the proposal seeks the following:
  - Permanent consent for the use as a sex services premises.
  - Proposed hours of operation between:
    - Base hours: 8.00am to 12.00midnight, Mondays to Sundays inclusive.
    - Extended hours: 12.00midnight to 4.00am the following day subject to a two (2) year trial period, Mondays to Sundays inclusive.
  - It is noted that an additional hour of operation between 3.00am to 4.00am (subject a trial basis) is sought beyond the previously approved hours of operation under development consent D/2014/498 (as modified). This is sought to align with the approved trading hours of the nearby brothel located at No. 80 Erskine Street.
  - No physical works or signage are included in the subject application.
  - Apart from the above, no changes are proposed to the existing operation, number of working rooms or number of employees.
17. As built floor plans and south elevation of the existing development are provided below.

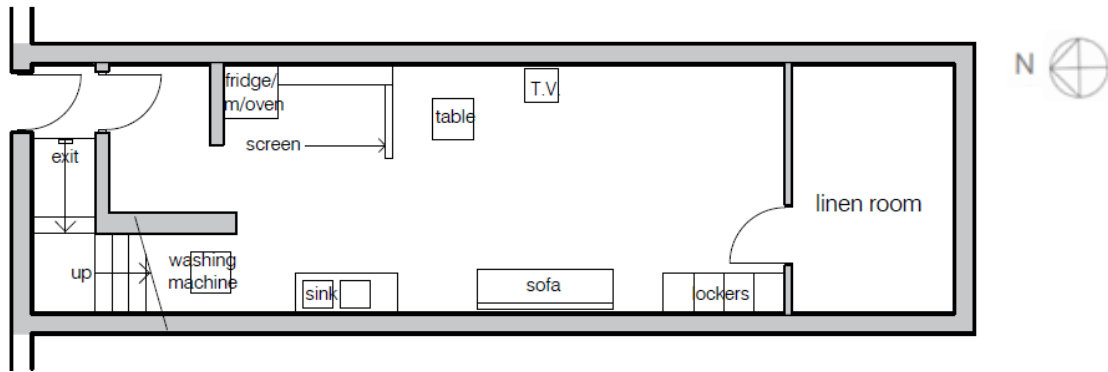


Figure 11: Existing basement floor plan

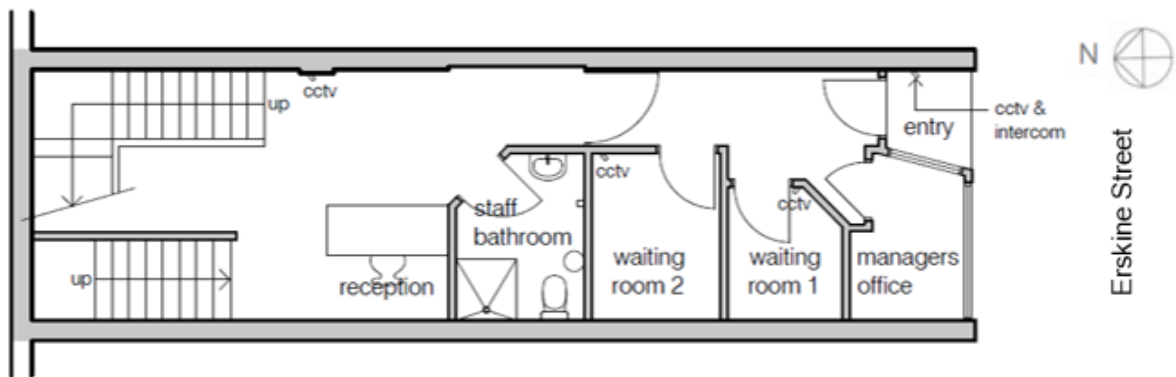


Figure 12: Existing ground floor plan

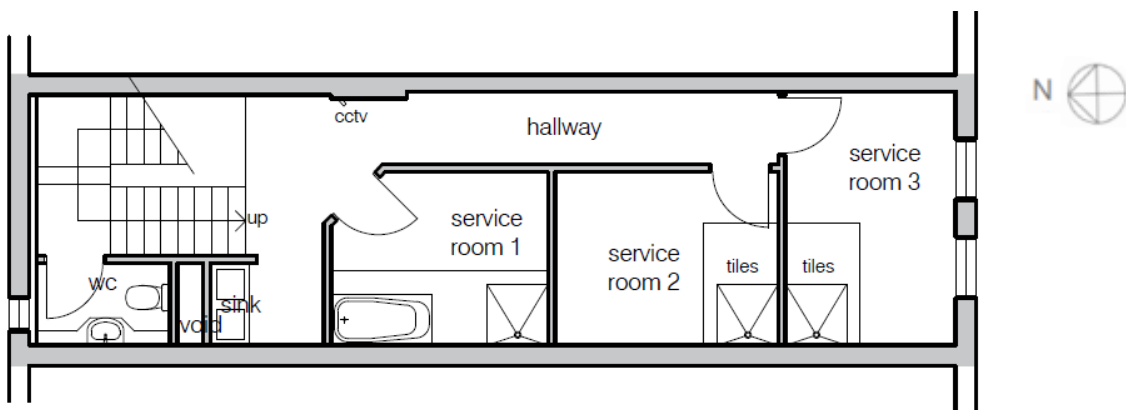


Figure 13: Existing first floor plan

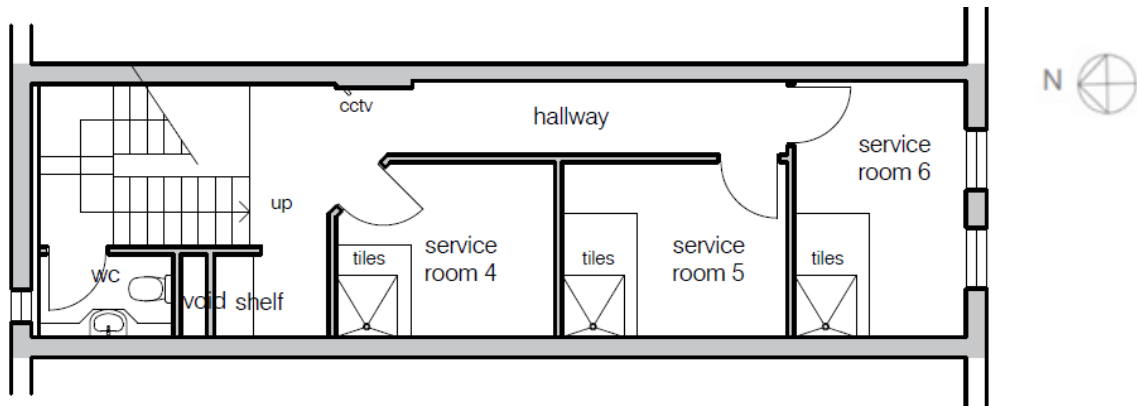


Figure 14: Existing second floor plan



Figure 15: Existing south elevation to Erskine Street

### Assessment

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

### Heritage Act 1977

19. The subject site is listed as an item known as the 'Watch House' terraces on the State Heritage Register under the Heritage Act 1977 (SHR 00223). The site is not located within a heritage conservation area.

20. An exemption under Section 57(2) of the Heritage Act 1977 was granted on 6 April 1990 for the carrying out of the following activities for the nominated properties. The subject site is included in this blanket exemption under Section 57(2) of the Heritage Act.
- (a) Change of use;
  - (b) Strata subdivision;
  - (c) Maintenance of any item (building, works, relics or places) on the site, where maintenance means the continuous protective care of existing fabric;
  - (d) Minor repairs where minor repair means the repair of materials and includes replacement of minor components such as individual bricks, where these have been damaged beyond reasonable repair or are missing. Replacements should be of the same materials, colour, texture, form and design as the original it replaces; and
  - (e) Alterations to the interior of a building which are of a minor nature and will not adversely affect the significance of the building as an item of the environmental heritage.
21. Notwithstanding, the proposal does not include any physical works nor change of use, and as such does not require any further approval under the Heritage Act 1977. The proposal therefore does not constitute as Integrated Development under Division 4.8 of the Environmental Planning and Assessment Act 1979.

## **State Environmental Planning Policies**

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

22. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

#### **Clause 2.48 Determination of development applications – other development**

23. The proposal does not include any physical works. The proposal is not subject to Clause 2.47 or Clause 2.48 and a referral to Ausgrid is not required.

#### **Clause 2.100 – Development within or adjacent to interim rail corridor**

24. The application is not subject to Clause 2.97, 2.98 or 2.101 as it:
- (a) Does not involve a new level crossing adjacent to any rail corridors, the conversion into a public road, or likely significant increase in the total number of vehicles or trucks using a level crossing as a result of the development.
  - (b) Is not on land that is within or adjacent to a rail corridor or interim rail corridor.
25. The application is not required to be referred to Transport for NSW (TfNSW).



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

### Clause 2.119 – Development with frontage to classified road

26. The site does not have a frontage to a classified road and is therefore not subject to Clause 2.119 of the SEPP.

## Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

27. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
28. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

29. 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 SP5 Metropolitan Centre zone. The proposed development is defined as a sex services premises which is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Not applicable	No physical works are proposed as part of the application. The existing building height is not altered by the application.
4.4 Floor space ratio	Not applicable	No physical works are proposed as part of the application. The existing building floor space ratio is not altered by the application.

**Part 5 Miscellaneous provisions**

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is identified as both a State and local heritage item known as the Watch House terraces (SHR Item No. 00223 and Local Item No. I1757).</p> <p>A Heritage Impact Statement was not submitted with the application. Based on the proposal not seeking consent for any physical works and having regard to the previous consent D/2014/498 (which did include physical works), , the submission of a Heritage Impact Statement was not considered to be necessary in this instance.</p> <p>The proposal does not involve any physical works and therefore does not result in any detrimental impacts on the heritage significance of the subject heritage item or surrounding heritage items. The proposal is keeping with the heritage conservation provisions of Clause 5.10 of Sydney LEP 2012.</p>

**Part 6 Local provisions – height and floor space**

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Objective 6.21B Application of Division 6.21C Design Excellence	Not applicable	The proposed development does not involve any physical works or external alterations. The design excellence provisions pursuant to Clause 6.21 of Sydney LEP 2012 is not applicable.

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.21 Location of sex services premises	Yes	The objectives of Clause 7.21 of Sydney LEP 2012 seek to minimise land use

Provision	Compliance	Comment
		<p>conflicts and adverse amenity impacts relating to sex services premises.</p> <p>The existing premise has been in operation since 2004. Whilst it is noted that the site is located within 25m of another sex services premise, both of these premises have been in operation for the past 19 years. No changes are proposed to the previously approved size, number of employees or operations of the premise. The subject application is not considered to result in any additional intensification or cumulative impacts beyond that which currently exists.</p> <p>The premise has generally demonstrated good management to date without any substantiated complaints. Council's Safe City Unit raised no objections to the proposal, subject to recommended conditions.</p> <p>The existing sex services premises is not located in the same building as a dwelling and complies with Clause 7.21(3).</p> <p>Overall, the continued operation of the premise is considered in keeping with the objectives of this clause.</p>

## Development Control Plans

### Sydney Development Control Plan 2012

30. 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

31. The site is not located within a Special Character Area.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	As noted above, no building works are proposed as part of this application. The proposed continuation of the sex services

Provision	Compliance	Comment
		premises (permanent use) and hours of operation will not have any significant adverse heritage impacts on the existing Watch House terrace.
3.15 Late Night Trading Management	Yes	<p>The premises is located in a Late Night Management Area. The premise is considered most closely categorised, and has been assessed in the past, as a Category B premise. In accordance with Section 3.15 of Sydney DCP 2012, permissible indoor late-night hours of operation for Category B premises are:</p> <ul style="list-style-type: none"> <li>(a) Base hours: 6.00am to 2.00am.</li> <li>(b) Extended hours: 24-hours subject to a trial period.</li> </ul> <p>It is noted that Section 3.15 of Sydney DCP 2012 stipulates that Category A, B and C premises does not include the sex service premises use. Notwithstanding, consideration is given to the permissible hours outlined under Section 3.15 as a guide to ensure consistency for businesses operating within the Late Night Management Area.</p> <p>The proposal seeks trading hours of:</p> <ul style="list-style-type: none"> <li>(c) Base hours: 8.00am to 12.00midnight, Mondays to Sundays inclusive.</li> <li>(d) Extended hours: 12.00midnight to 4.00am subject to a two (2) year trial period, Mondays to Sundays inclusive.</li> </ul> <p>Refer to assessment under the heading 'Discussion' below.</p>
3.16 Signage and Advertising	Not applicable	No signage is proposed as part of the subject application.

## Section 4 – Development Types

### 4.4 Other Development Types and Uses

#### 4.4.6 Sex industry premises and adult entertainment

Provision	Compliance	Comment
4.4.6.1 Location of premises	Partial	<p>The existing premise is not located in a building that contains a residential dwelling, nor immediately adjacent or directly opposite land developed for residential purposes. The proposal complies with Section 4.4.6.1(1)(a) and (b) of Sydney DCP 2012.</p> <p>Whilst it is noted that the premises is located within a radius of 75m of another existing approved sex services premise at No. 80 Erskine Street, both premises have been in operation since 2004. The subject application does not seek any physical works, nor amendments to staff, size or intensification of the use. The proposal generally complies with the locational requirements stipulated under Clause 4.4.6.1 of Sydney DCP 2012.</p>
4.4.6.2 Design of premises	Yes	<p>No amendments are proposed to the design of the existing premise which is considered acceptable by Council's Safe City Unit.</p> <p>The existing entrance and exits of the premises are consistent with Section 4.4.6.2(1) of Sydney DCP 2012 which requires the design to facilitate privacy of staff and visitors without compromising personal safety, adequate lighting, maximised surveillance and safety.</p> <p>The exterior of the building is unchanged by the proposal and upon inspection of the site, does not attract undue attention. A condition of consent is recommended to maintain discretion of the use and ensure the existing exterior of the building and shopfront remains the same.</p> <p>The building number (No.70) is displayed on site in accordance with Section 4.4.6.2(3) and is clearly visible from Erskine Street (refer to Figure 3 above).</p> <p>The interior of the premises is not visible from any place in the public domain.</p>

Provision	Compliance	Comment
4.4.6.3 Scale of sex services premises	Yes	<p>The existing scale of the sex services premises was considered and assessed as acceptable under D/2014/498 (as modified).</p> <p>No changes are sought under the subject application to the existing number of working rooms, noise, traffic generation or intensity of the use that would result in additional amenity impacts on the surrounding area.</p>
4.4.6.4 Health, safety and security	Yes	<p>The existing premises is considered to have appropriate health, safety and security measures for staff and visitors and is considered acceptable by Council's Safe City Unit and Environmental Health Specialist.</p> <p>It is noted that health, safety and security measures including operable CCTV, intercom systems, duress alarms, lockable staff facilities, rest areas, separate storage areas and lockers, were in place when the site was inspected.</p>
4.4.6.5 Signs	Yes	<p>No additional signs or amendments to existing signs are proposed as part of the subject application.</p> <p>The existing building number sign (No. 70) on the shopfront window will be remain unchanged by the subject application.</p>
4.4.6.6 Management of operations	Yes	<p>A Plan of Management prepared by ABC Planning in consultation with Urban Realists Planning and Health Consultants was submitted with the application. The Plan of Management is in keeping with the standards set out under the City of Sydney Sex Industry and Adult Entertainment Premises Guideline, in particular Section 1.18 which outlines additional health and cleanliness standards for all types of brothels.</p> <p>The Plan of Management satisfactorily addresses staff training, premises security, CCTV, worker safety, sharps waste management, worker amenities and incident responses. Furthermore, the Plan of Management also includes details</p>

Provision	Compliance	Comment
		<p>on the prevention of sexually transmitted infection, worker induction, infection controls and provision of safe sex equipment to clearly and adequately guide all staff, including cleaning staff.</p> <p>Council's Late Night Trading Unit, Environmental Health Unit and Safe City Unit advised the proposal is acceptable subject to recommended conditions. Appropriate conditions to ensure compliance with the Plan of Management, including surveillance systems and operational requirements are recommended accordingly.</p>

## Discussion

### Continuation of the Use and Late Night Trading Management

32. As outlined under the heading 'History Relevant to the Development Application' above, the existing premise has been operating as a sex services premise since 2004 (D/2003/669, as modified). From 2014, the premise operated with the base hours of 8.00am to 1.00am with extended trading between 1.00am to 3.00am, Mondays to Sundays inclusive (D/2014/498, as modified).
33. It is noted that Section 3.15.4 and Section 4.4.6 of Sydney DCP 2012 does not stipulate the requirement for time limited consents for sex services premises. Historically, time limited consents permitting the use for a period of five (5) years was applied to both D/2003/669 and D/2014/498. This was to enable Council to review any potential long term environmental impacts on the locality of the area including any views expressed by the Police, number and nature of any substantiated complaints regarding the operation of the premise given the initial change of use to a sensitive use.
34. The premise traded in accordance with the approved hours lawfully for a period of approximately five (5) years, and has continued to trade without consent for an additional period of approximately four (4) years. Notwithstanding the continued use as a sex services premises past the expiry of the previous consent on 27 November 2019, the premise has generally demonstrated good management and safe practices, adhered to the procedures outlined within the Plan of Management, with no substantiated complaints received by the City, since the commencement of its operation almost two decades ago.
35. The premises is located within a Late Night Management Area. The use of the premises is considered most closely categorised as a Category B premises. The permissible indoor late night trading hours for a Category B premises use pursuant to Section 3.15 of Sydney DCP 2012 are:
  - (a) Base hours: 6.00am to 2.00am.

- (b) Extended hours: 24-hours subject to a trial period.
36. The proposal seeks trading hours of:
- (a) Base hours: 8.00am to 12.00midnight, Mondays to Sundays inclusive.
- (b) Extended hours: 12.00midnight to 4.00am subject to a two (2) year trial period, Mondays to Sundays inclusive.
37. Section 3.15.4(3) states that premises seeking extended trading hours beyond the base hours may be permitted at the initial application stage on a trial period. Pursuant to Section 3.15.4(8) extended hours are permitted up to two (2) hour increments per trial period.
38. Section 3.15.4(9) of Sydney DCP 2012 envisages continuous trial periods to be consecutively applied upon successful completion of each duration - commencing with a first trial period of one (1) year, second trial period of two (2) years, then third and subsequent trial periods of five (5) years. Section 3.15.4(7) of Sydney DCP 2012 stipulates that a new application must be lodged to either renew existing trial hours or to seek an extension of trading hours at the completion of a trial period.
39. The proposed hours of operation are consistent with the permissible hours for a Category B premise within a Late Night Management Area, with the exception of the proposed duration of the trial period of two (2) years.
40. The proposal seeks an additional hour of trade between 3.00am to 4.00am beyond that which was previously approved on a trial period basis (which lapsed on 2 December 2015).
41. Pursuant to Section 3.15.4(9), the extended hours are considered to constitute a new first trial period as the initial trial hours lapsed more than seven (7) years ago and the renewal/ extension of trading hours did not occur in accordance with Section 3.15.4(7).
42. Council's Safe City Unit, Late Night Trading Unit and Environmental Health Unit raised no objections to the permanent continuation of the existing use or trading hours, subject to recommended conditions.
43. The proposal was also referred to the NSW Police on 24 February 2024. No response was received, which is taken to be no objection.
44. No submissions were received during the public notification period between 27 February and 21 March 2023.
45. In light of the above, it is considered that the continuation of the sex services premises use on a permanent basis is acceptable subject to recommended conditions. However, amendments to the proposed hours of operation are recommended for consistency within the late night trading locality and to align with the permissible base and extended hours stipulated under Section 3.15 of Sydney DCP 2012. It is thus recommended that the premise be restricted to the following hours of operation:



- (a) Base hours: 8.00am to 2.00am, Mondays to Sundays inclusive.
- (b) Extended hours: 2.00am to 4.00am, Mondays to Sundays inclusive, subject to a one (1) year trial period. The trial period will allow Council to assess any potential impacts associated with an additional hour of trade between 3.00am to 4.00am, as well as continue to review the management performance of the premise.

## Consultation

### Internal Referrals

46. The application was discussed with the following internal units:

- (a) Council's Environmental Health Unit;
  - (i) Council's Environmental Health Specialist advised the proposal is acceptable subject to recommended standard noise condition.
- (b) Council's Licensed Premises and Late Night Trading Unit;
  - (i) Council's Late Night Trading Specialist advised the proposal is acceptable subject to recommended conditions relating to surveillance, hours of operation and the Plan of Management.
- (c) Council's Heritage and Urban Design Unit;
  - (i) Although no physical works are proposed to subject State and local listed heritage item, for completeness, the proposal was discussed with Council's Heritage Specialist. No objections were raised.
- (d) Council's Safe City Unit;
  - (i) The premises was inspected by Council's Safe City Specialist on 23 March 2023. During the site inspection it was noted that:
    - i. Health, safety and security measures including operable CCTV were in good working order;
    - ii. Intercom systems and duress buzzers to working rooms were accessible to the reception;
    - iii. No internal locking devices on service room doors;
    - iv. The entry to the premises was monitored and managed appropriately by staff; and
    - v. A break room, kitchenette, separate lockers and sanitary facility for workers.

- (ii) The proposal is supported by Council's Safe City Specialist subject to recommended conditions. These conditions relate to the management and operation of the premise, including continued registration of the sex service premise on Council's database, compliance with Section 4.4.6 of Sydney DCP 2012 and Sex Industry and Adult Premises Development Guidelines 2012, lighting, health information and sharps waste disposal equipment.
- (e) Council's Building Compliance Unit;
- (i) Council's Building Compliance Unit confirmed the premise did not have any apparent non-compliance issues or breaches since its operation (apart from continued trading past the expiry of the time limited development consent on 27 November 2019 (D/2014/498, as modified)).

## External Referrals

### NSW Heritage Council

47. The proposal does not involve any physical works nor change of use and does not require any further approval under the Heritage Act 1977. The proposal is not Integrated Development under Division 4.8 of the Environmental Planning and Assessment Act 1979 and does not require concurrence or referral to the delegate of NSW Heritage Council.

### NSW Police

48. The application was referred to NSW Police for comment on 24 February 2023. No response was received.

## Advertising and Notification

49. In accordance with the City of Sydney Community Participation Plan 2022, the proposed development was notified for a period of 21 days between 27 February 2023 and 21 March 2023. A total of 90 properties were notified and no submissions were received.

## Financial Contributions

### Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000

### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

51. The site is located within the Central Sydney affordable housing contribution area. The proposed development does not comprise the demolition of existing floor area nor subsequent creation of floor area for the same purpose. The proposal also does not result in a change of use of existing floor area from other than residential accommodation to residential accommodation, tourist or visitor accommodation. As such, the development is not subject to an affordable housing contribution under Clause 7.13 of the Sydney LEP 2012.

## Relevant Legislation

52. Environmental Planning and Assessment Act 1979
53. Environmental Planning and Assessment Regulation 2021
54. Heritage Act 1977
55. SEPP (Transport and Infrastructure) 2021
56. SEPP (Biodiversity and Conservation) 2021
57. Sydney Local Environmental Plan 2012
58. Sydney Development Control Plan 2012

## Conclusion

59. The proposed application seeks permanent continuation of the existing use as a sex services premise known as 'City Touch', with the base trading hours between 8.00am to 12.00 midnight, and extended hours between 12.00midnight to 4.00am subject to a two (2) year trial period, Mondays to Sundays inclusive. The proposal does not include any physical works or changes to the previously approved size, number of employees or operations of the premise.
60. The development is consistent with the objectives of the SP5 Metropolitan Centre Zone of Sydney Local Environmental Plan 2012 as it promotes the primary role of the zone as a centre for employment, contributes towards commercial opportunities, as well as the diversity of compatible land uses within Sydney.
61. The proposal is consistent with the objectives and applicable planning provisions in the Sydney Local Environmental Plan 2012 including Clause 7.21 (Location of Sex Services Premises), and subject to conditions, will not create adverse amenity impacts nor cause disturbance in the neighbourhood.
62. The proposal generally satisfies the relevant provisions of Sydney Development Control Plan 2012:
  - (a) Subject to conditions, the proposal is consistent with the permissible hours of operation of Section 3.15.4. Given the long history of the development and good management of the premises (demonstrated by no substantiated complaints), and to achieve consistency of hours of operation within the Late Night Management Area, it is recommended that the base hours operation is extended to 2.00am the following day. The extended hours of operation between 2.00am to 4.00am is recommended to be subject to a one (1) year trial period (instead of a two (2) year trial as proposed).
  - (b) The proposal is consistent with the objectives and provisions of Section 4.4.6 of Sydney Development Control Plan for sex services premises.
63. The premise is to operate in accordance with the management and safety procedures outlined within the endorsed Plan of Management.

64. Subject to the recommendation of this report, and the imposition of conditions in Attachment A, the proposed permanent continuation of the use as a sex services premise will not result in any additional intensification, cumulative or adverse environmental impacts on the surrounding area beyond that which currently exists, and is therefore recommended for approval.

**ANDREW THOMAS**

Executive Manager Planning and Development

Jessica Joseph, Specialist Planner