

Item 4.**Development Application: 42 Darlinghurst Road, Potts Point - D/2023/987**

File No.: D/2023/987

Summary**Date of Submission:** 30 October 2023**Applicant:** Local Approvals**Architect/Designer:** MD+A Architects**Developer:** Asteri Holdings Pty Ltd**Owner:** Asteri Holdings Pty Ltd**Planning Consultant:** Local Approvals**Cost of Works:** \$45,000.00**Zoning:** The site is located within the E1 Local Centre under the Sydney Local Environmental Plan 2012. The proposed restricted premises is permissible with consent in the zone.**Proposal Summary:** Approval is sought for the use of the whole building as a restricted premises (adult entertainment premises) with internal alterations. An adult entertainment premises is defined as a premises that provides entertainment involving nude or semi-nude performers such as a strip club, or sells or shows restricted materials, but at which sex services or sexual activity between people does not occur.

The proposed trading hours for the premises are between 7.00am to 5.00am Monday to Sunday and public holidays.

The premises proposes to accommodate a total of 380 persons, including 12 staff members and 10 performers on site at any given time.

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.

The application was notified for 21 days between 11 January 2024 and 2 February 2024. Two submissions were received (one support and one objection). The NSW Police provided three submissions objecting to the application. Issues raised include the high risk nature of the proposed use, the likely negative social impacts, suitability of the site, insufficient plan of management, patron capacity and issues with liquor license.

The application has been amended to address issues identified by Council officers during assessment in relation to the maximum patron capacity (from 600 patrons to 380 patrons), location of the private rooms, design of the premises, plan of management and acoustic impact. These issues have been addressed through the submission of amended drawings and additional information received by the Council on 9 January, 24 April, 27 May and 16 July 2024.

As a result of the modifications made to the proposed development and subject to recommended conditions, the proposal is generally consistent with the objectives and applicable planning provisions in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. The site is considered an appropriate location for the proposed use, and the use is unlikely to have adverse impacts on the surrounding locality.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) City of Sydney Sex Industry and Adult Entertainment Premises Development Guidelines (October 2013).

Attachments:

- Attachment A.** Recommended Conditions of Consent
- Attachment B.** Selected Drawings
- Attachment C.** Plan of Management
- Attachment D.** Submissions
- Attachment E.** NSW Police Submission - February 2024 (Confidential)

Attachment F. NSW Police Submission - May 2024
Part 1 (Confidential)

Attachment G. NSW Police Submission - May 2024
Part 2 (Confidential)

Attachment H. NSW Police Submission - June 2024
(Confidential)

Recommendation

It is resolved that consent be granted to Development Application Number D/2023/987 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed restricted use (adult entertainment premises) is permissible within the E1 - Local Centre zone. The proposal, subject to conditions, is consistent with the objectives of the E1 zone.
- (B) The amended Plan of Management has adequately addressed the provisions of Section 3.15.5 (Plan of Management Requirements) and Section 4.4.6.6 (Management of Operations) of the Sydney DCP 2012.
- (C) The amended proposal generally complies with the City of Sydney Sex Industry and Adult Entertainment Premises Development Guidelines (October 2013).
- (D) The proposed hours of operation, subject to the imposition of a one-year trial period, are consistent with the objectives and in accordance with the permitted hours for a Category A premises in Late Night Management area as identified in the Sydney DCP 2012.
- (E) The proposed use as an adult entertainment premises is in keeping with the unique character of the area.
- (F) The development, subject to conditions, will not unreasonably compromise the amenity of nearby properties.
- (G) The proposal, subject to conditions, is in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 176623, Lot 1 DP 183086, known as 42 Darlinghurst Road, Potts Point. It is irregular in shape with area of approximately 335.1sqm. It has a primary street frontage of approximately 11.37m to Darlinghurst Road and a secondary street frontage of 18.39m to Kellett Way. The site is located close to the intersection of Darlinghurst Road and Roslyn Street. Levels on the site fall by 900mm from Kellett Way to Darlinghurst Road.
2. The site contains an existing two storey building with basement level which is used as a pub. There is an existing 18m high feature tower at the front of the site. The pub has been known by a number of names, including the Bank Hotel, SinCiti, Beat Bar, Leo Lounge and Hotel 42. The pub is currently vacant.
3. The subject building was designed as a local bank building by the Commonwealth Bank c1950 in a Modernist style. It is a two-storey rendered commercial building and has a distinctive rendered tower element that was used to accentuate the entry into the bank. The building is an important element in the streetscape of Darlinghurst Road and is a good example of a post-WWII bank in the Modernist style.
4. The surrounding area is characterised by a mixture of land uses, primarily being commercial, retail, licensed premises and residential developments located on adjacent streets. To the north of the site is a mixed use building with ground floor retail and backpacker's hostel above. To the south of the site is a mixed use building with ground floor retail and a licensed small bar. The past history suggests that the most recent use above relates to an unauthorised brothel, where past consents suggest it was approved as a boarding house in 1997. However the past approval history of the upper floor is unclear and could be vacant now. On the opposite side of Kellett Way to the east is a residential terrace, and a residential flat building is located in close proximity at 2 Kellett Way. To the west of the site across Darlinghurst Road are commercial premises, and a restricted premises known as 'Show Girls'.
5. The site is located within the Potts Point heritage conservation area (C51). The site is identified as a contributing building.
6. A site visit was carried out on 7 February 2024. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Darlinghurst Road



Figure 3: Neighbouring site at 49-44D Darlinghurst Road, including a backpacker's hostel with ground floor retail



Figure 4: Neighbouring site at 40-44B Darlinghurst Road, including a mixed use building with ground floor retail and a licensed small bar



Figure 5: The opposite side of Darlinghurst Road, including a strip club known as 'Showgirls' at 39-43 Darlinghurst Road



Figure 6: Site (in red), and neighbouring site at 40-40D Darlinghurst Road viewed from Kellett Way



Figure 7: Residential terrace (under construction) on the opposite side of Kellett Way



Figure 8: Residential flat building at 2 Kellett Way



Figure 9: Ground floor of the subject site looking east



Figure 10: Ground floor of the subject site looking west



Figure 11: Mezzanine level of the subject site



Figure 12: Basement of the subject site

History Relevant to the Development Application

Development Applications

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

- **D/2005/2222** – Development consent was granted on 5 June 2006 for alterations and additions to the whole of the building and change of use to a Hotel with Place of Public Entertainment licence and core trading hours of 7.00am to 12.00 midnight, 7 days, and extended trading hours between 12.00 midnight and 5.00am, 7 days, for a trial period.
- **D/2005/222/A to D/2005/2222/L** – The consent has subsequently been modified a number of times. The modifications generally relate to amendments to Condition 6 (Hours of Operation) the continuation of the trial period for extended hours between 12.00 midnight and 5.00am. Most recently, D/2005/2222/L was granted a two-year trial period which lapses on 10 November 2024. The plan of management allows for a maximum 500 patrons including staff and entertainers.
- **RD/2005/2222/A** – On 26 March 2019 the Review Panel considered a request to review the decision made in D/2005/2222/J to amend Condition 6 (Hours of Operation) to extend the trial period by 5 years (rather than 1 year, as approved). The panel upheld the decision and refused the request, as the venue was under new management a maximum of 1 year trial period was issued.
- **D/2013/1011** – Development consent was granted on 25 September 2013 for a new smoking/gaming room to the existing licenced hotel to accommodate 15 existing gaming machines on site, as well as modifications to the building facade, including new entry doors and windows. It is understood that the consent was not taken up.
- **D/2014/199** – Development consent was granted on 2 May 2014 for alterations to the ground floor of the existing pub known as SinCiti (licensed) to provide a new smoking room. Condition 2 required the hours of operation of the smoking room to be restricted to between 10.00am and 10.00pm Monday to Sunday, with a one-year trial period until 12.00 midnight.
- **D/2014/199/A and D/2014/199/B** – The consent has been modified twice to amend Condition 2 to continue the trial period, most recently on 14 February 2019 to continue the trial period for a further five years.
- **D/2014/803** – Development consent was granted on 14 August 2014 for alterations to the first floor, roof, and feature tower of the existing pub known as SinCiti to provide a new smoking room. The hours of operation were restricted to the indoor hours of the development. The consent was subsequently modified (D/2014/803/A) to delete the restriction from consuming beverages in the smoking room.
- **D/2020/480** - Development consent was granted on 7 January 2021 for alterations and additions to existing building including a 4 storey addition to total 6 storeys for use as hotel accommodation and retention of the existing ground floor pub. Condition 6 restricts the number of persons (including staff, patrons and performers) permitted in the ground floor pub at any one time to 120 persons, with a maximum of 40 persons within the 'external bar area'.

Compliance Action

8. The site has previously been subject to complaints where the outcome of matter is discussed below:
 - **HBC/2021/1423** - A matter relating to the allegation that internal works were being undertaken which included the construction of a 'runway' indicating the premises could be used as a restricted premises. Advice was given to the applicant stating that the development consent does not allow the use of the premises for the purpose of adult entertainment and a separate development consent would be required. The allegation of unauthorised works was investigated, and while there was evidence of minor works which are considered exempted development in accordance with Subdivision 26 Minor building alterations (internal) under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, there was no evidence of works which would indicate the premises were being used as a restricted premises.

Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 22 November 2023. The following information was requested:
 - (a) clarification of the nature of the restricted premises as the documentation provided is unclear;
 - (b) the SEE seeks to convert the basement level into 7 private rooms. Confirmation as to whether the pub at the ground and first floor will still be operational with the proposed restricted premises. As the subject proposal seeks to remove the existing storage rooms, dry store, keg rooms and other service facilities to service the pub at the ground and first floor, further clarification is required on where these services are going to be relocated and how the site access is managed for the pub;
 - (c) an assessment against the City's Sex Industry and Adult Entertainment Premises Development Guidelines;
 - (d) an amended plan of management prepared in accordance with Section 4.4.6.6 of the DCP;
 - (e) amended architectural plans that show what facilities are proposed in each private room. Other references of waiting rooms, fixtures and equipment in all rooms including sanitary facilities, spa baths and hand basins in the Plan of Management (POM) are to be shown on the architectural plans;
 - (f) the proposal does not have a staff room for the workers. There are no details showing any stages, podiums and other performance areas on the plans;
 - (g) clarification as to how the subject application will occur with D/2020/480 if both consents become operational; and
 - (h) a waste management plan.

10. The applicant responded to the request on 9 January 2024, and submitted the following information to respond the request:
 - (a) The proposal seeks consent for the change of use of the whole building to an adult entertainment premises. The proposed maximum patron capacity is 600 persons.
 - (b) The proposed use of the premises is primarily for an adult entertainment facility from the current approved use as a pub. Notwithstanding, the proposal involves the service of alcohol, however it will not be to a quantity or scale akin to a pub. Subsequently, the keg room and services for the current pub will be located within the existing cool room located within the basement.
 - (c) The intention of the premises owner is to obtain consent to operate the adult entertainment facility on a temporary basis for a maximum of 10 years, then take benefit of the hotel development approved under D/2020/480. Upon commencement of the hotel development, the proposed adult entertainment facility will then lapse and cease operation.
 - (d) Updated architectural plans, SEE, Plan of Management and a waste management plan were provided.

11. A further request for additional information and amendments was sent to the applicant on 22 March 2024. The following concerns were raised, and amendments were requested:
 - (a) Justification for the proposed 600 patron capacity has not been provided in the Statement of Environmental Effects. It appears that the 600 person patron capacity has been based on existing and proposed toilet facilities, as outlined within the BCA report. However, the toilet facilities are also indicated as 'does not comply' in the BCA report. A significant reduction of the patron capacity is to be made.
 - (b) Significant concerns are raised relating to the placement of the private rooms in the basement and lack of passive surveillance of the hallways due to its layout. No adult entertainment premises, including private rooms should be located in the proposed basement area. The basement should be kept as back of house.
 - (c) The submitted information does not include an assessment against the City of Sydney Sex Industry and Adult Entertainment Premises Development Guidelines (October 2013).
 - (d) The submitted POM does not address Schedule 3 Late Night Trading of SDCP 2012 and additional information is required regarding security for a Category A premises.
 - (e) Additional details are to be provided to demonstrate compliance with Section 4.4.6.4 Health, Safety and Security of the DCP.

- (f) The subject premises has a hotel liquor licence that does not permit live entertainment involving strippers or table dancers on the premises. The application seeks the approval for the change of use of the whole building to a licensed restricted premises while keeping the current hotel liquor licence. Additional information is required on how the premises is going to operate as a licensed hotel with adult entertainment.
 - (g) Under the hotel liquor licence, hotels must be open to general public and food must be made available. The proposed first/mezzanine floor plan indicates there will be no seating/ dining for food service from the kitchen. Additional information is required on how the premises is going to be operated.
 - (h) A large submission has been received from the Kings Cross Local Area Command during the notification period. It is recommended that the applicant prepare a response to the submission to address the raised concerns.
12. The applicant responded to the request on 23 April 2024 and 27 May 2024, and submitted the following information to respond the request:
- (a) The proposed maximum number of patrons has been reduced to 522 people.
 - (b) The private rooms in the basement have been relocated to the mezzanine level. The proposed basement has been amended to reflect spaces for the purpose of back of house operations.
 - (c) An amended Plan of Management was provided to address the relevant sections of the DCP.
 - (d) The proposed use of the premises does not entail any hotel use. Subsequently the matters pertaining to the liquor licence are requested to be resolved separately from the proposed consent for the use of the premises.
 - (e) The applicant submitted legal advice dated 13 May 2024 to respond the NSW Police submission, advising that the liquor licence requirements for the proposal are being attended to independently from the Council DA.
13. A further request for additional information and amendments was sent to the applicant on 3 July 2024. The following concerns were raised, and amendments were requested:
- (a) The proposed patron capacity is still excessive and is not supported. It is recommended that the proposed maximum patron capacity is to be reduced to between 350 persons to 400 persons including patrons, staff and performers on site at any given time.
 - (b) An assessment against Section 3.13.3 Social Impact of the DCP is to be provided to address the potential social impact associated with the proposed development.

- (c) An updated plan of management to address all the relevant information required by Schedule 3 and Section 4.4.6.6 of the DCP, including the number of security personnel at the premises, nature and frequency of the special events, updated floor plans, detailed procedures and provisions that will be implemented to improve premises security, identification of all likely noise and vibration sources and compliance with any requirements of all relevant acoustic reports.
 - (d) An updated acoustic statement to reflect the amendments.
14. The applicant responded to the request on 16 July and 2 August 2024. The information provided is the subject of this assessment.

Proposed Development

15. The application seeks consent for the change of use of the whole building to a licensed restricted premises, being an adult entertainment premises with internal alterations:

Proposed works

Basement

- Reconfiguration of rooms including new general staff meal area, general staff amenity room, manager's office and security station, performance amenity and change room, a new kitchen, food cool room, storage, keg and alcohol storage.

Ground Floor

- Construction of two new performance stages.
- New internal seating arrangements, two dance areas, internal waiting/screening area and a new waste room.

First floor (mezzanine level)

- Construction of new internal walls to accommodate seven private rooms, a new dance area and new seating arrangements.

Use and operation

- The proposed trading hours are between 7.00am to 5.00am Monday to Sunday and public holidays.
- A maximum patron capacity of 380 including staff, security, and patrons at any given time at the premises.
- A maximum of 12 staff members including two qualified RSA staff members and seven security staff members.
- A maximum of 10 performers.
- Minimum two security guards per 100 patrons. Extra security will be used at the discretion of management. Security guards shall remain at the premises for at least 60 minutes after closing the venue.

- The premises has only one public entry/ exit point from Darlinghurst Road (excluding emergency exits).
- Security personnel will patrol the perimeter of the venue including Darlinghurst Road and Kellett Way, which will occur at 30-minute intervals and will commence at the start of business trading hours to close of business.
- Provision of CCTV within the premises and private rooms, with footage accessible to NSW Police upon request where required.
- Installation of duress buzzers in each service, personnel private room and at the manager's desk.
- The private rooms will feature translucent glass doors, enhancing visibility and safety.
- Patrols of the bathrooms and private rooms will be conducted on a regular basis, which will all occur at 30 minute intervals and will commence at the start of business trading hours to close of business.
- Patron identification scanners will be in used in accordance with agreement with King's Cross LAC.
- The premises, and no member of staff or entertainers are permitted to offer sex services on the premises. Audience participation is prohibited.
- The bar will close at 3:30am.

16. Plans and elevations of the proposed development are provided below.

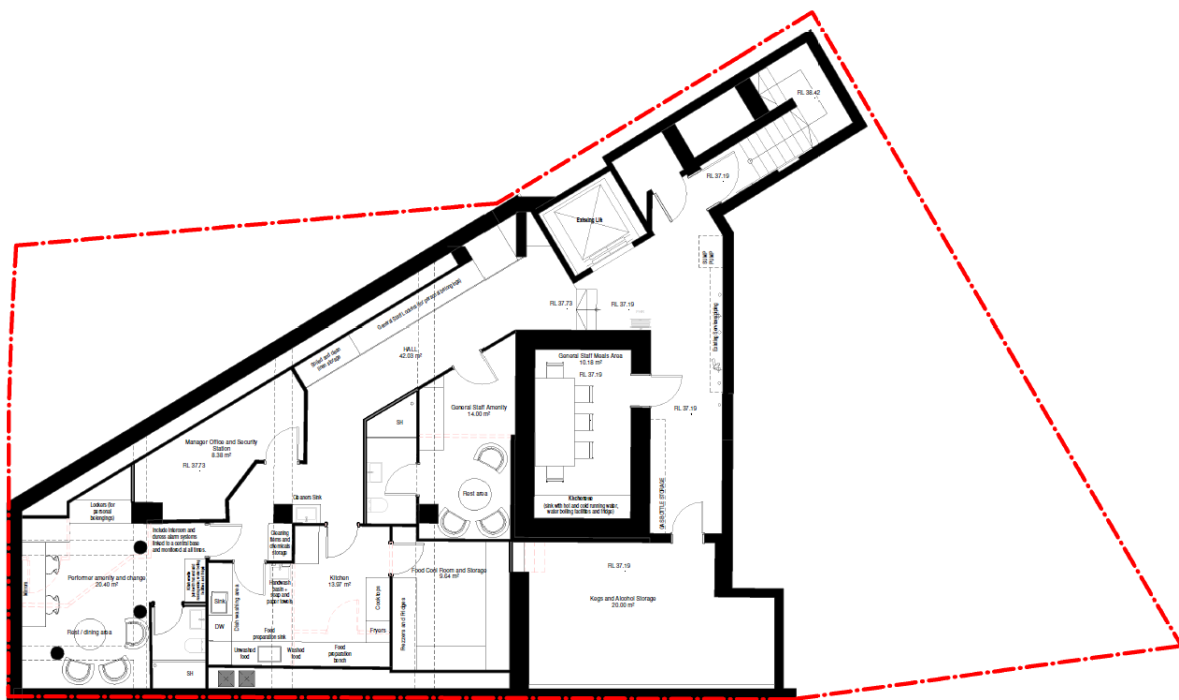


Figure 13: Proposed basement plan

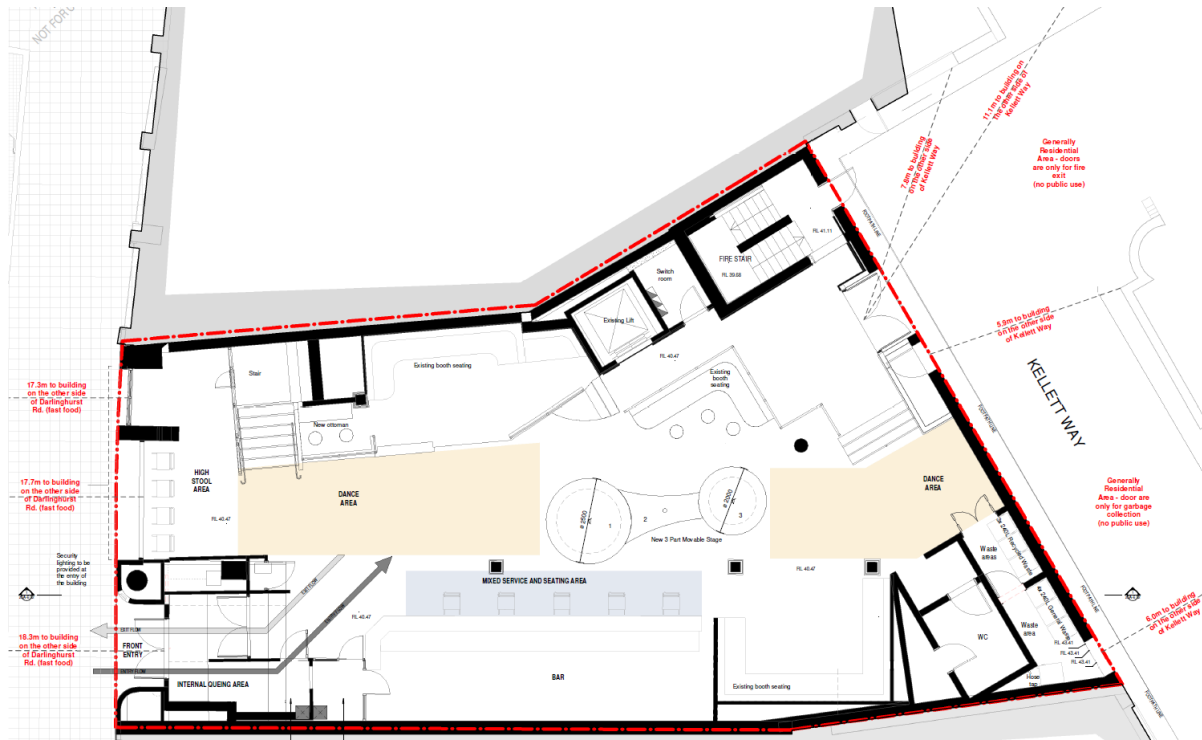


Figure 14: Proposed ground floor



Figure 15: Proposed mezzanine level

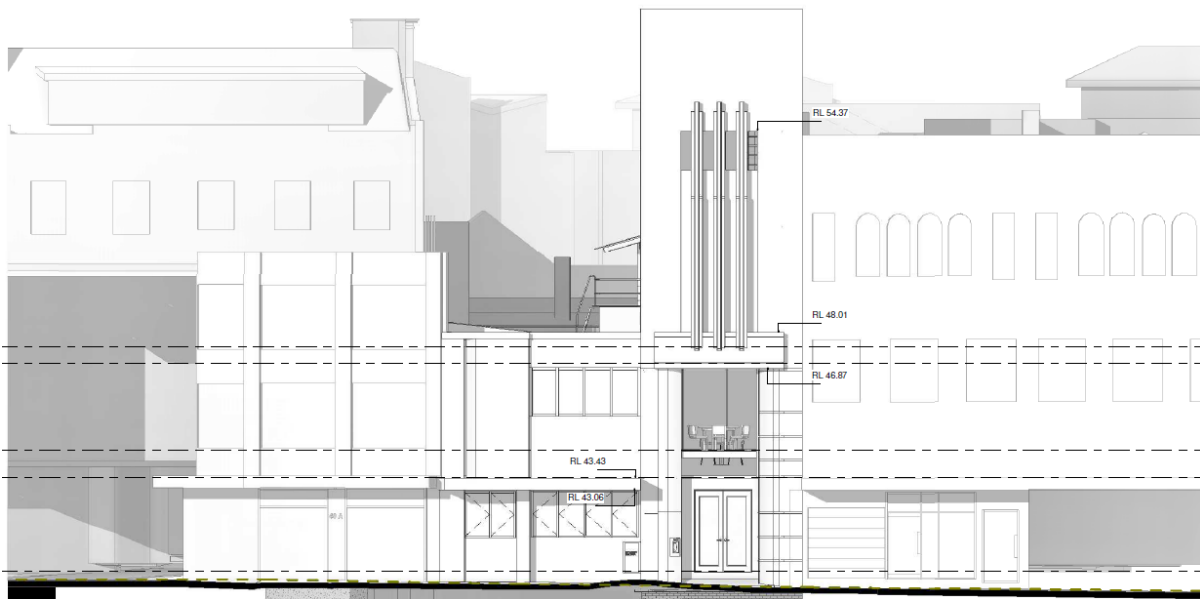


Figure 16: Darlinghurst Road Elevation (no external works proposed)

Assessment

17. 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

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

18. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
19. 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 control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

20. 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	<p>The site is located in the E1 Local Centre zone. The proposed development is defined as restricted premises and is permissible with consent in the zone.</p> <p>The proposed development is generally consistent with the objectives of the zone as it provides a different use that serves the needs of people who live in, work in or visit the area.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 22m is permitted.</p> <p>The proposed development does not change the existing height of the building.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 3:1 or 1005.3sqm is permitted.</p> <p>A floor space ratio of 1.93:1 or 648.58sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Potts Point heritage conservation area C51.</p> <p>The proposed development includes minor internal alterations which does not have a detrimental impact on the heritage significance of the heritage conservation area.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	Subject to conditions, the proposal will not create any unacceptable noise impacts to the surrounding residential and commercial premises.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	No car parking spaces are proposed.
7.21 Location of sex services premises	N/A	The proposal is not defined as a sex service premises and this clause does not apply.

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

21. 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

22. The site is located within the Kings Cross locality. The proposal is consistent with the locality statement as it supports a mix of day and night time activities along Darlinghurst Road and provides an entertainment use that contributes to the local, regional and international function of Kings Cross.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.9 Heritage	Yes	The site is located within the Potts Point heritage conservation area C51. The

Provision	Compliance	Comment
		<p>building is identified as a contributing building.</p> <p>The proposal includes minor internal alterations, with no external works proposed. The proposal was reviewed by Council's heritage specialist and no objections are raised. The minor internal works are not considered to detrimentally impact on the significance of the heritage conservation area.</p>
3.11 Transport and Parking	Yes	The proposal was reviewed by Council's Transport and Access Unit and no objection was raised.
3.12 Accessible Design	Yes	The application was accompanied by a BCA report prepared by BCA Performances. The proposal was reviewed by Council's Construction and Building Unit and no objection was raised. A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and BCA requirements.
3.13 Social and Environmental Responsibilities	Yes	The proposal was amended to address the potential social impacts of the proposed use. See further details in the 'Discussion' section below.
3.14 Waste	No	<p>The submitted Waste Management Plan does not comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p> <p>See further details in the 'Discussion' section below.</p>
3.15 Late Night Trading Management	Yes	The premises is located in a Late Night Management Area. A Category A use within this area is permitted to operate with base hours of 6.00am to 12.00 midnight, every day, with extended hours permitted 24 hours per day.

Provision	Compliance	Comment
		The proposed trading hours are between 7.00am to 5.00am Monday to Sunday and public holidays. See further details in the 'Discussion' section below.
3.16 Signage and Advertising	N/A	No signage is proposed.

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 Definitions	N/A	The proposed use meets the following definitions: Adult entertainment premises means a premises that: (a) provides entertainment involving nude or semi-nude performers; or (b) sells or shows restricted material but at which sex services or sexual activity between people does not occur. Striptease club means premises providing striptease acts, erotic dancing (including pole dancing), tabletop, or podium performances, private dancing, peepshows, or nude or semi-nude bar or waiting staff but where sex services do (not) take place on site. Note: The word 'not' is omitted from the DCP definition in error.
4.4.6.1 Location of premises	No	The site is located directly opposite land developed for residential purposes and is located within a radius of 75m of existing approved adult entertainment premises and sex industry premises. See further details in the 'Discussion' section below.

Provision	Compliance	Comment
4.4.6.2 Design of premises	Partial compliance	<p>The proposal is generally consistent with the DCP provisions relating to entrances and exits.</p> <p>However, Section 4.4.6.2(5) of the DCP requires that the interior of the premises must not be visible from any place in the public domain. The existing building contains large glazed windows at the ground floor through which the interior of the premises will be highly visible from Darlinghurst Road as illustrated in Figure 10 above.</p> <p>As such, a condition has been recommended requiring that an internal screen such as blinds or shutter curtains to be installed internally to comply with this control.</p>
4.4.6.4 Health, safety and security	Yes	<p>The amended proposal has generally been designed to comply with the health, safety and security requirements of the DCP including:</p> <ul style="list-style-type: none"> • Adequate staff facilities including sanitary facilities, rest seating area, dining area and kitchen area, and lockers to store personal belongings are provided in the basement floor. • The staff facilities are located within the premises in the basement level and is inaccessible to visitors. • CCTV cameras will be installed in the premises including entrance, emergency exit and private rooms. • The proposal includes two private stages at ground level and seven private stages in seven private rooms at mezzanine level. The proposed private stages are greater than 2.5sqm, 0.5m from the floor and a minimum of 2.5m clearance from the ceiling. • Duress alarm systems will be placed in each service area,

Provision	Compliance	Comment
		<p>personnel areas, private room and at the manager's desk.</p> <ul style="list-style-type: none"> The security staff will be responsible for screening patrons prior to entry and will be required to carry portable telecommunication devices to ensure contact with police is possible where required. <p>Furthermore, the applicant has outlined attending health, safety, security and related meetings and seminars convened by Sex Workers Out Reach Project (SWOP). It has also advised relevant cleaning schedules, waste disposal and safe disposal of sharps.</p>
4.4.6.5 Signs	No	<p>The proposal does not include any signs.</p> <p>However, the DCP requires that signage is to set out the name of the person or registered name of the business, and the words "RESTRICTED PREMISES".</p> <p>As such, a condition has been recommended requiring a sign to be designed and displayed in accordance with Section 4.4.6.5 of the DCP.</p>
4.4.6.6 Management of operations	Yes	<p>Applications for adult entertainment and sex industry premises must be accompanied by a Plan of Management describing how ongoing operations are to be managed.</p> <p>The amended Plan of Management has adequately addressed all of the requirements of the DCP and is supported by Council's Safe City Unit.</p> <p>See further details in the 'Discussion' section below.</p>

Sex Industry and Adult Entertainment Premises Guideline

23. The City of Sydney Sex Industry and Adult Entertainment Premises Guideline (October 2013) provides advice on the basic information required for those who are considering seeking consent for any type of adult entertainment and/ or sex industry premises.
24. An assessment of the proposed development against the relevant provisions within the Guideline is provided in the following sections.

Provision	Compliance	Comment
1.23.1 General	Yes	The Plan of Management states that no audience participation is permitted within the premises at all times. Performers are located on the podium stage and customers will not be allowed to access the podium stage at any time during performances.
1.23.2 Cleanliness	Yes	The Plan of Management states that the business will engage a contract cleaner on a daily basis. The managers, staff and workers attend to all other daily cleaning and maintenance and spot cleaning requirements.
1.23.3 Equipment and sex toys	Yes	No sex toys or products are proposed to be used within the premises.

Discussion

Location of Premises in relation to residential uses

25. Section 4.4.6.1 of the Sydney DCP 2012 provides specific provisions in relation to the location of adult entertainment premises. The proposal does not comply with the location provisions of the DCP as residential land uses are located immediately opposite the subject site to the east.
26. The DCP states that the location of adult entertainment premises is not suitable in locations adjacent to or opposite from residential uses or other sensitive uses. Section 4.4.6.1(c) allows for an expectation from residential occupants that their amenity, especially regarding social amenity and safety, will not be adversely impacted by the location of these premises. The provisions require that these uses should be physically separated from residential and sensitive uses by other commercial uses.
27. As shown in Figure 17 below, the premises is located close to residential uses (Being No 2 and No 42 Kellett Way) located immediately opposite the site across Kellett Way.

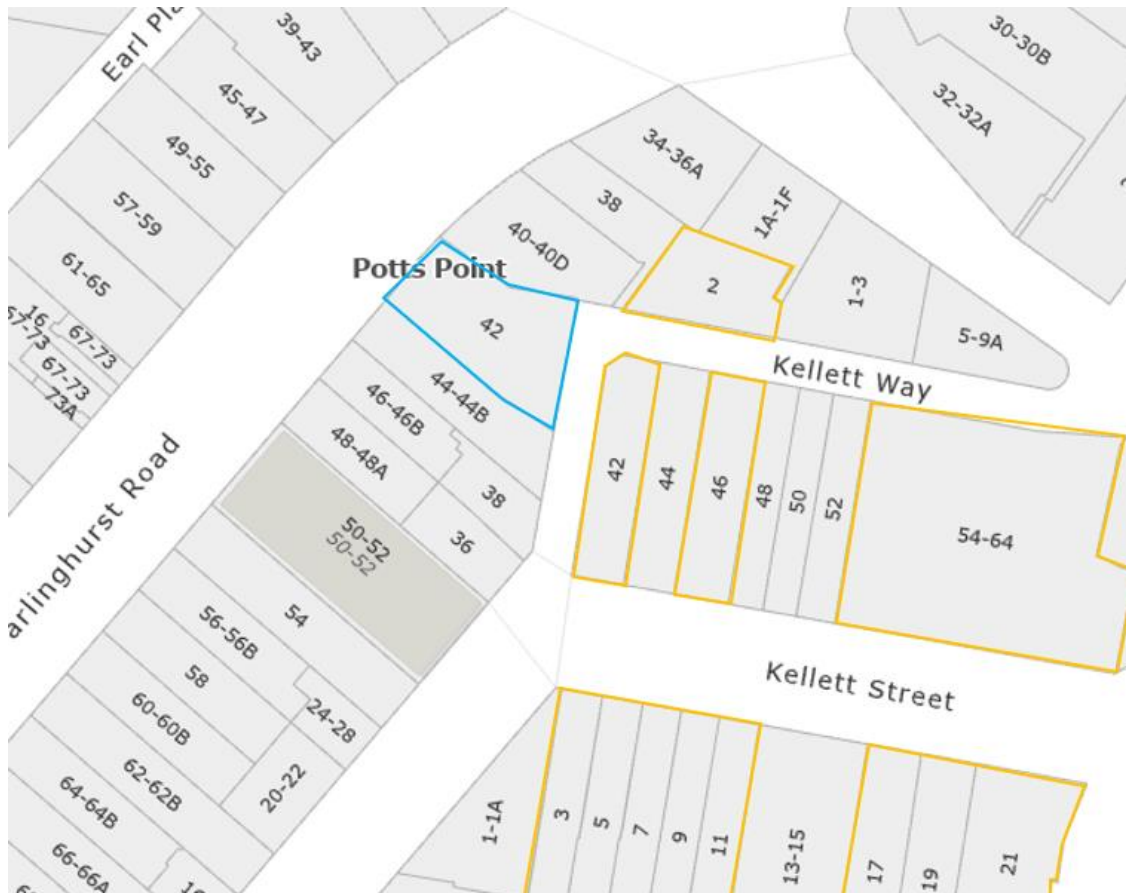


Figure 17: A location plan indicating the subject site in blue and the residential uses in orange

28. It should be noted that another adult entertainment premises at 13-15 Kellett Street, Potts Point was approved by Court (D/2019/1135) on 10 January 2022, also known as Williams v Council of the City of Sydney (No 2) [2022], where the site is located within a residential area and surrounded by residential uses. This approved adult entertainment premises is located approximately 70m south of the subject site.
29. It is also noted that there are no residential dwellings within the subject building. The subject site is located on the main street, being Darlinghurst Road of the Potts Point/Kings Cross area. The area comprises a number of commercial, retail and late night venues including adult entertainment. The proposed use is permissible within the E1 Local Centre zone and is consistent with the objectives of zone.
30. In addition, the submitted POM states that the premises has only one public entry/exit point from Darlinghurst Road to minimise any potential impacts onto the residential areas to the east, and the access on Kellett Way will only be used as an emergency exit. The POM also states that security personnel will patrol the perimeter of the venue including Darlinghurst Road and Kellett Way, which will occur at 30-minute intervals and will commence at the start of business trading hours to close of business. Between 12.00 midnight and 7.00am, the use of the premises shall not result in LA10 noise level in any octave band exceeding the background noise level at the boundary of any affected residential property.

31. Council's Health, Safe City and Licensed Premises teams have all reviewed the proposal and the submitted Plan of Management (POM) and consider it to be acceptable. Through the implementation of the POM and suitable conditions regarding noise, health, management and safety, the operation of the premises is considered unlikely to cause a disturbance in the neighbourhood and is supported in this instance, despite the non-compliance with the location provision of the DCP.

Location of Premises in relation to adult entertainment or sex industry premises

32. Section 4.4.6.1 of the DCP states that adult entertainment and sex industry premises must not be located within a radius of 75m of an existing, approved adult entertainment or sex industry premise as measured from the centre of the primary access to the proposed and existing premises.
33. There are seven existing or approved brothels, and two adult entertainment premises located within a 75 metre radius of the subject premises, these include:
- (a) 39-43 Darlinghurst Road, Potts Point - Adult entertainment premises known as "Showgirls" and a maximum patron capacity of 200 persons. The site is located approximately 20m opposite the subject site across Darlinghurst Road.
 - (b) 34-36A Darlinghurst Road, Potts Point - Use of first floor as brothel. The site is located approximately 20m north of the subject site.
 - (c) 56-56B Darlinghurst Road, Potts Point - Use of first and second floor as brothel. The site is located approximately 45m south of the subject site.
 - (d) 60-60B Darlinghurst Road, Potts Point - Use of third and fourth level as brothel. The site is located approximately 75m south of the subject site.
 - (e) 13-15 Kellett Street, Potts Point - Use of ground floor as adult entertainment premises known as the Dollhouse Nightspot and a maximum patron capacity of 180 persons. The site is located approximately 70m south of the subject site.
 - (f) 20-22 Kellett Street, Potts Point - Use of the premises as a brothel. The site is located approximately 60m south of the subject site.
 - (g) 48 Kellett Street, Potts Point - Use of the premises as a brothel. The site is located approximately 30m east of the subject site.
 - (h) 50 Kellett Street, Potts Point - Use of the premises as a brothel. The site is located approximately 30m east of the subject site.
 - (i) 44-44B Darlinghurst Road, Potts Point - Use of the premises as a brothel. The site is adjacent to the subject site to the south.



Figure 18: A location plan showing the existing brothels (in red) and adult entertainment premises (in yellow) within a 75m radius of the premises

34. It should be noted that there are existing adult entertainment premises (13-15 Kellett Street, Potts Point) and sex industry premises (34-36A Darlinghurst Road, Potts Point) that have been approved under SLEP 2012 and SDCP 2012. These premises also do not comply with Section 4.4.6.1 of the DCP regarding the 75m radius control. There are two adult entertainment premises located within 75m radius of the subject site.
35. While these premises are within a 75m radius of the site, the POM for the proposed premises requires there be only one public entry/exit point from Darlinghurst Road and the exit on Kellett Way will only be used as an emergency exit. As such, the potential impacts to the adult entertainment premises (13-15 Kellett St) and sex industry premises (20-22, 48 and 50 Kellett Street) are considered minimal.
36. There is also an existing adult entertainment premises (39-43 Darlinghurst Road) and several sex industry premises (34-36A, 44-44B, 56-58B and 60-60B Darlinghurst Road) located within 75m radius of the site on Darlinghurst Road, however the existing developments along Darlinghurst Road comprise a number of commercial, retail and late night venues including adult entertainment.

37. The POM for the proposed premises states that the management of queues will be in accordance with online ticket sales and bookings, which will involve staggered entry times to ensure an even flow of patrons to the site and minimising excessive numbers of patrons in the internal queuing area and public domain at busy times. Patrons will be guided by security and staff to leave the venue in staggered groups when necessary to prevent congestion. The bar will close at 3:30am, and the music will be gradually altered to pacify patrons for a smoother dispersal. Security staff will patrol the footpath directly outside the venue and will be trained in crowd management.
38. Subject to compliance with the POM, the proposal will not result in a cumulative adverse impact of these adult entertainment venues and sex industry premises on the surrounding area and is supported in this instance, despite the non-compliance with the location provision of the DCP.

Late Night Trading Management

39. The premises is located in a Late Night Management Area. A Category A use within this area is permitted to operate within the base hours of 6.00am to 12.00 midnight, every day, with extended hours permitted 24 hours per day.
40. The proposed trading hours are between 7.00am to 5.00am Monday to Sunday and public holidays. The proposed trading hours comply with the extended hours in the DCP.
41. Section 3.15.4 of the DCP requires trial periods to be applied for the extended trading hours. As such, the proposed trading hours between 12.00midnight and 5.00am is supported subject to a one-year trial, allowing Council to monitor the operation of the premises. A renewal application should be lodged 30 days prior to the expiry period.
42. As detailed in the NSW Police comments further in this report, concern is raised in regard to the high risk nature of the proposed use and proposed hours of operation, which the Police submit leads to an increase in criminality in and around licensed premises.
43. Section 3.15.3 of the DCP outlines matters for consideration, which include, amongst others, the following:
 - (a) The location and context of the premises, including proximity to residential and other sensitive land uses and other late night trading premises;
 - (b) The specific nature of the premises, its activities and the proposed hours of operation;
 - (c) The likely impact on the amenity of surrounding sensitive land uses, including noise, and the ability to manage the impacts;
 - (d) The size and patron capacity of the premises;
 - (e) Submission of a plan of management that demonstrates a strong commitment to good management of the operation of the business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain;
 - (f) Measures to be used for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises.

44. The site was previously approved as a pub with a maximum patron capacity of 500 persons. The proposal seeks consent for the change of use to an adult entertainment premises. The proposal was amended to reduce the patron capacity significantly from 600 to 380 persons including staff, security, and patrons at any given time at the premises. The proposed use is permissible within the E1 Local centre zone and the proposed trading hours complies with the permissible hours in the DCP. The amended POM demonstrates commitment to good management of the operation of the business and increased security measures have been implemented to safeguard the community.
45. The proposal is accompanied by a Plan of Management which was amended to comply with the relevant controls of Schedule 3 and Section 4.4.6.6 of the DCP, including:
- (a) At least two security staff members for every 100 patrons, or provision of seven security staff per 380 patrons.
 - (b) Extra security will be used at the discretion of management. Security guards shall remain at the premises for at least 60 minutes after closing the venue.
 - (c) The premises has only one public entry/ exit point from Darlinghurst Road (excluding emergency exits).
 - (d) Security personnel will patrol the perimeter of the venue including Darlinghurst Road and Kellett Way, which will occur at 30-minute intervals and will commence at the start of business trading hours to close of business (Refer to Figure 19 below regarding the external security patrol areas).
 - (e) Patrols of the bathrooms and private rooms will be conducted on a regular basis, which will all occur at 30 minute intervals and will commence at the start of business trading hours to close of business.
 - (f) Provision of CCTV within the premises and private rooms, with footage accessible to NSW Police upon request where required.
 - (g) Installation of duress buzzers in each service, personnel private room and at the manager's desk.
 - (h) The private rooms will feature translucent glass doors, enhancing visibility and safety.
 - (i) Patron identification scanners will be in used in accordance with agreement with King's Cross LAC.
 - (j) The management of queues will be in accordance with online ticket sales and bookings, which will involve staggered entry times to ensure an even flow of patrons to the site and minimize excessive numbers of patrons in the internal queuing area, and to ensure minimal queuing on the public domain.
 - (k) The premises, and no member of staff or entertainers are permitted to offer sex services on the premises. Audience participation is prohibited at busy times.
 - (l) All entry doors within the development should remain closed at all times, exclusive of patron ingress and egress.

- (m) Where appropriate, acoustic seals on entry doors from the bounding roads (Darlinghurst Road and Kellett Way) should be installed to reduce overall noise spill from internal activity to external areas.
- (n) The use of the premises shall not result in the LA10 noise level being emitted from the licensed premises exceeding the background noise level in any octave band (from 31.5 Hz to 8KHz centre frequencies inclusive) by more than 5dB between 7.00am and 12.00 midnight at the boundary of any affected residential property.
- (o) Between 12.00 midnight and 7.00am, the use of the premises shall not result in LA10 noise level in any octave band exceeding the background noise level at the boundary of any affected residential property.

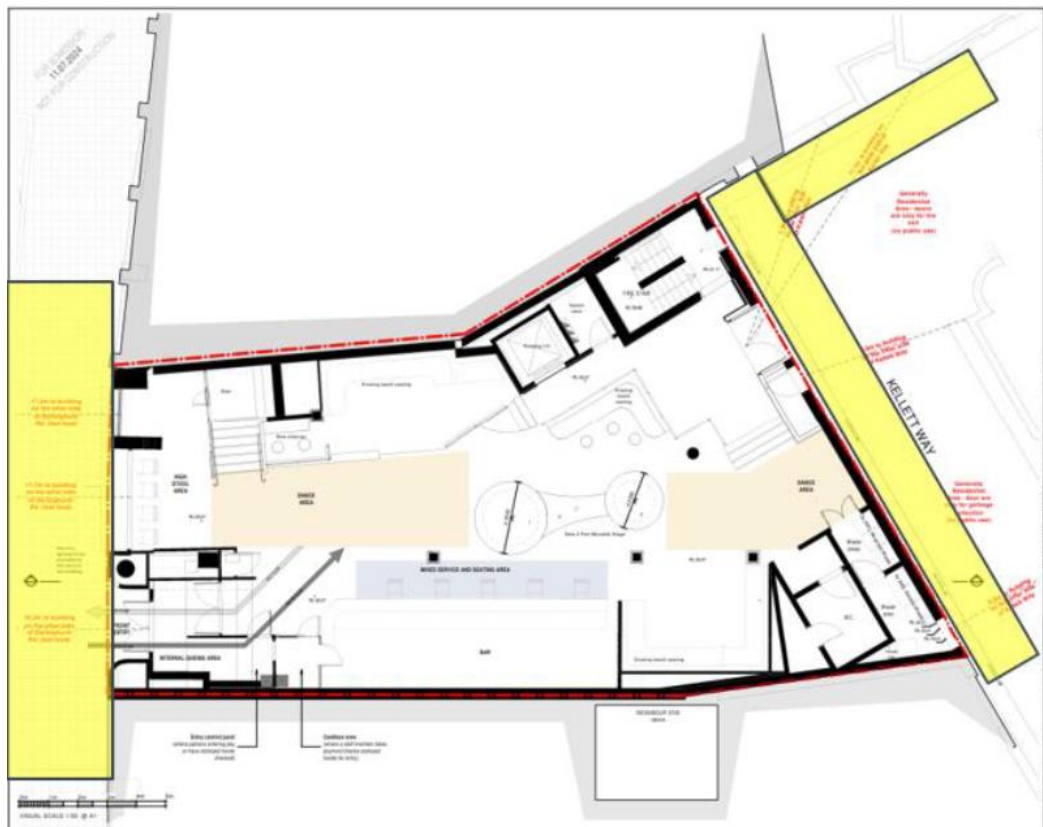


Figure 19: External security patrol areas are highlighted in yellow

46. The proposal was reviewed by Council's Health, Safe City and Licensed Premises who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the recommended conditions in Attachment A.

Social impact and patron capacity

47. Section 3.13.3 of the DCP requires that social impacts are to be addressed in the Statement of Environmental Effects accompanying a development application. At a minimum, the Statement of Environmental Effects is to consider:
- (a) the potential social impacts;
 - (b) the scale of those impacts;

- (c) the likely extent of those impacts including when and where they might occur;
 - (d) outcomes of any discussions with affected people or groups; and
 - (e) any measures to maximise the positive impacts and eliminate or minimise negative impacts.
48. As detailed in the NSW Police comments further in this report, concern is raised with regard to the high risk nature of the proposed adult entertainment use, the patron capacity, the potential social impacts and the cumulative impact that would negatively impact the Kings Cross precinct. In particular, the Police advise that adult entertainment premises are widely regarded as prone to illegal activity such as drug use/dealing, organised crime and corruption and the proposed development would create an increased risk of anti-social behaviour, and public and domestic violence in the immediate vicinity of the site.
49. The SEE was amended to provide an assessment of the social impacts of the proposed development. The assessment concludes the proposed change of use to a licensed restricted premises will not result in any undue negative social impact upon the subject site and adjoining public domain. The proposed use of the premises may potentially give rise to attracting intoxicated members of the public, and potential acoustic nuisance to adjacent land uses. However, the scale of the potential impact is considered limited, is consistent in the context to the subject site and the commercial nature of the Kings cross late night entertainment precinct within which the subject site is located and can be managed by conditions of consent.
50. The abovementioned potential impacts are likely to occur during late night trading hours and may occur as patrons exit the premises upon closure of the venue, as such, the POM was amended to increase the security ratio to at least 2:100 patrons. There will be no entry/exit on Kellett Way to protect the residential area to the east. Security personnel will undertake regular patrols of the perimeter of the venue along Darlinghurst Road and Kellett Way at a 30-minute interval during business trading hours. Security guards shall remain at the premises for at least 60 minutes after closure of the venue. The premises will include CCTV cameras, identification scanners and metal and weapon detection devices to safeguard the community. In addition, the POM was amended to include the adoption of alcohol harmonisation and crowd management procedures which will minimise disturbance within the local neighbourhood.

Acoustic impacts

51. An acoustic letter prepared by Acoustic Logic was submitted with the application which states the premises will comply with the relevant noise criteria.
52. The acoustic letter refers to the previous approvals for the use of the premises as a pub, and states that the reduction from 500 patrons to 380 patrons would have a significant positive impact on the overall airborne noise impact of the venue on surrounding noise sensitive receivers. The letter states that the proposed use is considered to generate lower noise levels from amplified music when comparing to the previously approved pub, therefore at a worst case, the noise levels generated by the amplified music within the proposed operation would be equal to the noise levels generated by the approved operation.

53. In addition, the letter recommends that all entry doors within the development should remain closed at all times, exclusive of patron ingress and egress. Any required amplified music systems supplementary to the existing speaker system should be appropriately vibration isolated as to not induce structure-borne noise, and details of this system should be provided to an acoustic consultant for review.
54. The acoustic letter was reviewed by Council's Health and Building team and is generally supported, appropriate noise conditions have been included in the notice of determination.

Waste Management

55. A waste management plan was submitted to accompany the application. The proposal was reviewed by Council's waste management team and the submitted waste management plan is insufficient.
56. The waste storage area is insufficient for the maximum daily patronage and hours of operation of the business. The current architectural plans show that the waste storage area is only able to hold 3 x 240 recycling bins and 3 x 240 general waste bins, which is insufficient given the proposed 380 patron capacity.
57. To address the above, a condition has been recommended requiring the waste storage area to be enlarged to provide for two days of waste storage based on the proposed development floor space and waste generation rates for pub /clubs as per Council's Guidelines for Waste Management in New Developments 2018. A review of the floor plan illustrates that adequate space is available near the bin room for this reconfiguration.

Liquor License

58. In the first submission received from the NSW Police, objections were raised regarding compliance with the current liquor license which prohibits 'live entertainment involving strippers or table dancers'. The Police reported that a previous attempt by the applicant to remove this condition was refused by the Independent Liquor and Gaming Authority in 2016.
59. The applicant provided legal advice dated 13 May 2024 stating that liquor license requirements would be addressed separately from the Council's Development Application (DA) process. They requested that these objections be set aside and resolved through the Liquor and Gaming Authority's process, allowing development consent to be granted.
60. As noted in NSW Police's third submission, the liquor license condition restricting adult entertainment has since been removed. Nevertheless, the requirement for an application to comply with the Liquor Act was removed some years ago, and a consent authority can approve a development consent that does not comply with the Liquor Act. As such, compliance with Liquor Act is not a factor that is considered in the assessment of this DA.

Consultation

Internal Referrals

61. The application was discussed with Council's:
 - (a) Construction and Building Unit;
 - (b) Environmental Health Unit;
 - (c) Licenced Premises Unit;
 - (d) Heritage and Urban Design Unit;
 - (e) Safe City Unit;
 - (f) Transport and Access Unit;
 - (g) Tree Management Unit; and
 - (h) Waste Management Unit.
62. The issues raised in the referral responses have been discussed elsewhere in this report. See further details in the 'Discussion' section above.

External Referrals

NSW Police

63. The application was referred to NSW Police for comment.
64. The Kings Cross Police Area Command do not support the application due to the likely negative social impacts, suitability of the site, insufficient plan of management, no justification on the proposed patron capacity and compliance with the current liquor license. The full submission is provided in Attachment E.
65. The NSW Police provided a submission on 2 February 2024 objecting to this application on the following basis:
 - (a) **Issue:** The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, in accordance with Clause 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.

Comment: The likely impacts associated with the proposed development and mitigation measures and conditions are outlined in the report and are considered acceptable. The proposal has been amended to reduce the patron capacity significantly and is accompanied by a detail POM and acoustic letter that is supported by Council's Health, Safe City and Licensed Premises Unit. Subject to conditions, the proposal will not negatively impact the locality.
 - (b) **Issue:** The site is not suitable for the proposed development and is inconsistent with Clause 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

Comment: The site is a permissible use with consent in the E1-Local Centre zone. As a result of modifications and subject to recommended conditions, the proposal is generally consistent with the objectives and applicable planning provisions in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. The site is considered an appropriate location for the proposed use, and the use is unlikely to have adverse impacts on the surrounding locality.

- (c) **Issue:** The proposal is not in the public interest and is inconsistent with Clause 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Comment: The proposal is in the public interest for the reasons outlined throughout the report. The proposed use is a permissible use in the E1 zone and is consistent with the objectives of the zone. The proposal has been assessed against the relevant controls in Sydney LEP 2012 and DCP 2012 and is shown to be acceptable.

- (d) **Issue:** The proposed use without any change to the premises liquor licence type and authorisation and any continued sale or supply of liquor would be contrary with the premises current liquor licence type, conditions, and authorisations, specifically Section 15 Liquor Act 2007, hotel primary purpose test provisions.

Comment: As discussed above, compliance with Liquor Act is not considered in the assessment of this DA. Appropriate liquor licence will be required from NSW Liquor and Gaming prior to operation of the premises.

- (e) **Issue:** The proposal is inconsistent with the aims of the Plan under Clause 1.2(h) of the Sydney LEP 2012 to enhance the amenity and quality of life of local communities.

Comment: Through the implementation of the POM and the recommended conditions regarding noise, health, management and safety, the operation of the premises is unlikely to diminish the amenity and quality of life of local communities. Furthermore, the proposal is consistent with Clause 1.2(f) of the LEP by providing different services that meets the needs of residents, works and visitors, and Clause 1.2(i) by providing mixed-use centres to promote the economic strength of those centres.

- (f) **Issue:** The proposal relies on unauthorised works that have been carried out to the premises, and these works do not exhibit design excellence and detract from the significance of the heritage item which is inconsistent with Clause 6.21 (Design Excellence) and Clause 5.10 (Heritage conservation) of the Sydney LEP 2012 and Section 3.9 (Heritage) of the Sydney DCP 2012.

Comment: As discussed above, the allegation of unauthorised works was investigated, and while there was evidence of minor works, these are considered exempt development in accordance with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. In addition, the current proposal was reviewed by Council's heritage specialist and no objections were raised.

- (g) **Issue:** The proposed use as an adult entertainment premises is inconsistent with the provisions of Section 4.4.6.1 (Location of Premises) of the Sydney DCP 2012 due to its proximity to residential uses and other sex industry premises.

Comment: The proposal does not fully comply with this DCP provision. However, there are no residential dwellings within the subject building. The POM requires that the only public entry/exit for the premises is via Darlinghurst Road, which protects the residential amenity across Kellett Way to the east. The proposal is accompanied by a detailed POM which demonstrates commitment to good management of the operation of the business and is supported by Council's Licensed Premises unit and Safe City Unit.

- (h) **Issue:** The proposal is shown to be inconsistent with the following objectives of the Zone E1 Local Centre zone of the Sydney LEP 2012, the zone the subject site is located.

Comment: The objectives of the E1 Local Centre zone are:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To maximise public transport patronage and encourage walking and cycling.

The proposal is consistent with the objectives of the E1 Local Centre zone. The proposal provides a different use that serves the needs of the community and encourages investment in the local development that generates employment opportunities.

- (i) **Issue:** It is considered that the proposed development is not substantially the same as the original consent as the proposal includes the change of use.

Comment: The subject application is a development application, not a modification application. Therefore the 'not substantially the same' test is not applicable.

- (j) **Issue:** The proposed development by way of its scale, character and operation are likely to have significant and unacceptable impacts.

Comment: The proposal has been amended significantly to reduce the patron capacity from 600 persons to 380 persons. The POM has been amended to include increased security ratio, regular patrols of the internal and external areas of the premises, noise and acoustic management, and complies with the relevant controls in the DCP. Through the implementation of the POM and suitable conditions regarding noise, health, management and safety, the operation of the premises is unlikely to cause significant and unacceptable impacts in the neighbourhood.

- (k) **Issue:** The proposal provides inadequate staff facilities and is inconsistent with the provisions of Section 4.4.6.4 (Health, Safety and Security) of the Sydney DCP 2012.

Comment: The proposal has been amended to relocate the private rooms in the basement to the mezzanine floor. Adequate staff facilities have been provided in the basement level including sanitary facilities, a rest area with seating, a dining area with food preparation and storage areas, kitchen facilities for lockers to store personal belongings. The proposal has been reviewed by Council's Safe City Unit and no objections were raised.

- (l) **Issue:** The proposed hours of operation are inconsistent with Kings Cross special precinct 3:30am cessation of alcohol statutory requirement which is distinct from the provisions of Section 3.15 (Late Night Trading Management) of the Sydney DCP 2012.

Comment: As discussed above, compliance with Liquor Act is not a consideration in the assessment of this DA. A 3.30am cessation of liquor service does not prohibit the proposed use. Nevertheless, the submitted POM also states that the bar will be closed at 3:30am.

- (m) **Issue:** Insufficient information is provided addressing how the proposed use will comply with the premises liquor licence type and licence authorisations, namely as a hotel licence with a minor's area authorisation.

Comment: As discussed above, compliance with Liquor Act is not a factor that is considered in the assessment of this DA. Appropriate liquor licence will be required from NSW Liquor and Gaming prior to operation of the premises.

- (n) **Issue:** The submitted Plan of Management has not adequately addressed the provisions of Section 3.15.5 (Plan of Management Requirements) and Section 4.4.6.6 (Management of Operations) of the Sydney DCP 2012.

Comment: As discussed throughout this report, the POM has been amended to address relevant provisions of Section 3.15.5 and Section 4.4.6.6 of the DCP. The POM has been reviewed by Council's Safe City Unit and Licensed Premises Unit and no objections were raised.

- (o) **Issue:** Insufficient information is provided addressing the potential social impacts of the proposed use, in particular to adjoining residential uses, in accordance with Section 3.13 (Social and Environmental Responsibilities) of the Sydney DCP 2012.

Comment: The SEE has been amended to provide an assessment of the potential social impacts of the proposed use and is considered acceptable. The patron capacity has been reduced significantly from 600 to 380 persons. In addition, the POM also requires that the only entry/exit of the premises is from Darlinghurst Road, which minimises any potential impacts to the residential areas to the east.

66. On 4 May 2024, the NSW Police provided a further revised submission based on the amended package (see Attachments F and G). This revised submission reiterates the objections raised in the first submission as detailed above, with the following additional objections:

Issues:

- (i) The proposed patron capacity of the premises has no basis in law and does not comply with relevant building code and fire safety regulation.
- (ii) A total of 93 annexures supporting the objections. The annexures includes a decision from the Independent Liquor and Gaming Authority - which refuses the application by the Bank Hotel for the revocation of the liquor licence condition that does not permit live entertainment involving strippers or table dancers on the premises, as dated 31 January 2016; decision on the Bada Bing nightspot where the subject applicant is the director; decision on the Dream Girls night club which demonstrates bad management leading to suspension of licence, and news articles regarding other crime related activities in relation to entertainment use/strip club, in particular high risk of shooting, robbery, drug use or dealing, alcohol-fuelled violence and organised crime and corruption.

Comment: The proposal has been amended further to reduce the patron capacity to 380 persons. A detailed POM has been submitted which demonstrates commitment to good management of the operation of the business and is supported by Council's Safe City Unit and Licensed Premises Unit. The proposal is also accompanied by a BCA report and is supported by Council's Construction and Building Unit.

While the annexures provided by the police relate to other strip clubs containing criminal elements, it is insufficient to assert that because illegality has taken place at those premises, it follows that the same will occur at the proposed strip club. Nevertheless, the extended trading hours between 12.00midnight and 5.00am of the premises is recommended to be subject to a one-year trial, allowing Council to monitor the operation of the premises.

67. On 6 June 2024, the NSW Police provided a further email stating that a meeting was held between the police and the applicant on 5 June 2024. This correspondence is provided in Attachment H. The following additional information was provided:

Issues:

- (i) Police raised certain criminal history of the applicant which they believe is relevant to the current application. The applicant pleaded guilty to one count of bribing a police officer and was sentenced to imprisonment for two years with a non-parole period of nine months.
- (ii) The applicant was subject to certain Liquor and Gaming NSW regulatory complaints as the director of the operator (lessee) of Bada Bing Nightspot (adult entertainment premises - strip club), following numerous incidents of crime and disturbance during late trading hours at the Bada Bing, resulting in a decision to reduce the extended licensed trading hours of the Bada Bing, and the temporary imposition of a liquor licence condition (which has since been removed) on the premises of 42 Darlinghurst Road, subject of this application, being: 'No live entertainment involving strippers or table dancers is to be permitted on the premises (the Adult Entertainment Condition)' because of police and the Authorities concerns that the Police application in respect of Bada Bing may result in a change of business practices at the Bank Hotel.

Comment: There are no 'good character' provisions required in a DA assessment and the above concerns are not planning related matters for assessment under 4.15 of the Environmental Planning and Assessment Act 1979.

Advertising and Notification

68. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 21 days between 11 January 2024 and 2 February 2024. A total of 284 properties were notified and two (2) submissions were received (one in support and one objecting).

69. The submissions raised the following issues:

- (a) **Issue:** Consideration should be given to improving the amenity of the building facing Kellett Way and to ensure that the frontage to Darlinghurst Road considers the historical significance of the building by modifying the existing building entrance door to reflect its original modernist architecture while maintaining the discreet nature of the building's operations.

Response: No physical works are proposed to the external facade of the building.

- (b) **Issue:** The operator and specific use applied for at the premises has no track record of operation and should be limited in its late-night trading to the Base Hours. The extension of late-night trading to the Extended Hours should only be considered in the future when the operator and venue has a proven track record of managing the facility in a way that demonstrates their ability to control impacts and manage the facility and its customers

Response: The extended trading hours between 12.00midnight and 5.00am is supported subject to a one-year trial in accordance with Section 3.15.4 of the DCP, allowing Council to monitor the operation of the premises.

- (c) **Issue:** This venue has dual street frontages and should have ingress and egress (except for emergencies and material loading) off Darlinghurst Rd to ensure the impacts of customers attending the site does not bleed into the highly residential and earlier trading rules of Kellett Way and Kellett St. The Kellett Street doors should be alarmed and not for customer use.

Response: The POM requires that the premises has only one public entry/exit point from Darlinghurst Road to minimise any disturbance to the residential area to the east. The access point on Kellett Way will only be used as an emergency exit. In addition, security personnel will patrol the perimeter of the venue including Darlinghurst Road and Kellett Way, which will occur at 30-minute intervals and will commence at the start of business trading hours to close of business.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

70. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
71. Credits have been applied for the most recent approved use of the site as a food and drink premises (including pubs, nightclubs and bars). While an adult entertainment premises use is not specified in the land use tables in the City of Sydney Development Contributions Plan 2015, the plan requires the consent authority to use the occupancy rate for the most similar use from the tables, in this case which is also a pub. A contribution has been calculated based on the additional GFA generated in the basement.
72. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate

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

73. The site is located within the residual land affordable housing contribution area and the contribution requirement applies to new or more intensely used floor area. As the proposed development includes alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, a 1% contribution is required at a rate of \$11,176.22 per square metre of total non-residential floor area 119.98sqm totalling \$13,409.23. A condition of consent is recommended requiring payment prior to the issue of a construction certificate

Relevant Legislation

74. Environmental Planning and Assessment Act 1979.

Conclusion

75. Approval is sought for the use of the whole building as a restricted premises (adult entertainment premises) with internal alterations and a patron capacity of 380 people including staff, security, and patrons at any given time at the premises. The proposed trading hours are between 7.00am to 5.00am Monday to Sunday and public holidays.
76. The proposed use as an adult entertainment premises is considered to be in keeping with the unique character of the area.
77. The proposal is generally consistent with the objectives and provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. Instances where the proposal varies from the DCP controls have been assessed as acceptable.

78. The amended proposal generally complies with the City of Sydney Sex Industry and Adult Entertainment Premises Development Guidelines (October 2013).
79. The development, subject to conditions, will not unreasonably compromise the amenity of nearby properties.

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