

Item 4.**Development Application: 68-80 Erskine Street, Sydney - D/2024/395**

File No.: D/2024/395

Summary**Date of Submission:** 23 May 2024**Applicant:** Brian Hollis**Owner:** The Owners - Strata Plan No.19563**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 continuation of the existing use as a sex services premises, now known as 'JK80 Gentlemen Club', with base operating hours between 10.00am and 2.00am the following day, Monday to Sunday inclusive, and extended hours between 2.00am and 4.00am, Monday to Sunday. No physical works are proposed.

The existing use has been in operation since 2004 in accordance with previous consents D/2003/951 (as modified) and D/2009/2007 (as modified). The previous consents placed a time limited restriction on the continuation of the use for a period of 5 years at a time, after which the use must cease. The latest consent lapsed on 30 August 2023.

The application was notified for a period of 21 days between 3 July and 24 July 2024. A total of 82 properties were notified and no submissions were received.

The application was referred to NSW Police who raised no objections to the proposal, however recommended that conditions of consent be included in the Notice of Determination relating to provision of CCTV and crime scene preservation.

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 operating hours comply with the permitted base and extended hours in the DCP. It is recommended that the hours between 2.00am and 4.00am, Monday to Sunday, are approved for a 5-year trial period.

No substantiated complaints have been received by Council during the operation of the premises, nor has there been a history of substantiated non-compliance issues or breaches apart from continued trading past the cease date of the development consent in 2023.

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 a sensitive 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 (Biodiversity and Conservation) 2021
- (v) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (vi) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

Attachments:

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

Recommendation

It is resolved that consent be granted to Development Application Number D/2024/395, 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.
- (B) The proposal generally satisfies the objectives and provisions of the Sydney Local Environmental Plan 2012 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, subject to conditions.
- (E) Subject to the recommended conditions of consent, the proposed development will maintain the existing level of amenity the site locality and will not result in additional adverse environmental impacts to adjoining sites. Conditions of consent are recommended to ensure the use continues to be managed in appropriate manner in accordance with 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 area of approximately 540sqm. It has a primary street frontage of 34 metres to Erskine Street and a secondary street frontage of 15 metres to Kent Street, and the site is located at the intersection of these streets.
2. The site contains an existing row of eight 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 first terrace from the east, known as 80 Erskine Street, Sydney (subject site).
3. It is noted that 70 Erskine Street (approximately 25m) to the west of the subject site is another sex services premises is known as 'City Touch' which has also been in operation since 2004. The existing sex services premise at 70 Erskine Street is of an identical scale to the existing sex services premise at the subject site.
4. The surrounding area is characterised by a mixture of land uses, primarily being high density commercial uses, including 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 located within a late-night trading area and is approximately 170 metres from Wynyard Station.
5. 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:
 - (a) 'Former "Watch House" including interiors' at 82 Erskine Street (SHR Item No. 00501 and Local Item No. I1758);
 - (b) 'Commercial building including interior' at 105A Clarence Street (Local Item No. I1715) to the east;
 - (c) 'Commercial Terrace group including interiors' at 42-50 Erskine Street (Local Item No. I1754);
 - (d) 'Former "CW Foley and Co" commercial terrace pair including interiors' at 52-54 Erskine Street (Local Item No. I1755); and
 - (e) 'Commercial Terrace group including interiors' at 62-66A Erskine Street (Local Item No. I1756) to the west.
6. The site is located within the Central Sydney locality and is not identified as being subject to flooding.
7. A site visit was carried out on 8 August 2024. Photos of the site and surrounds are provided below.

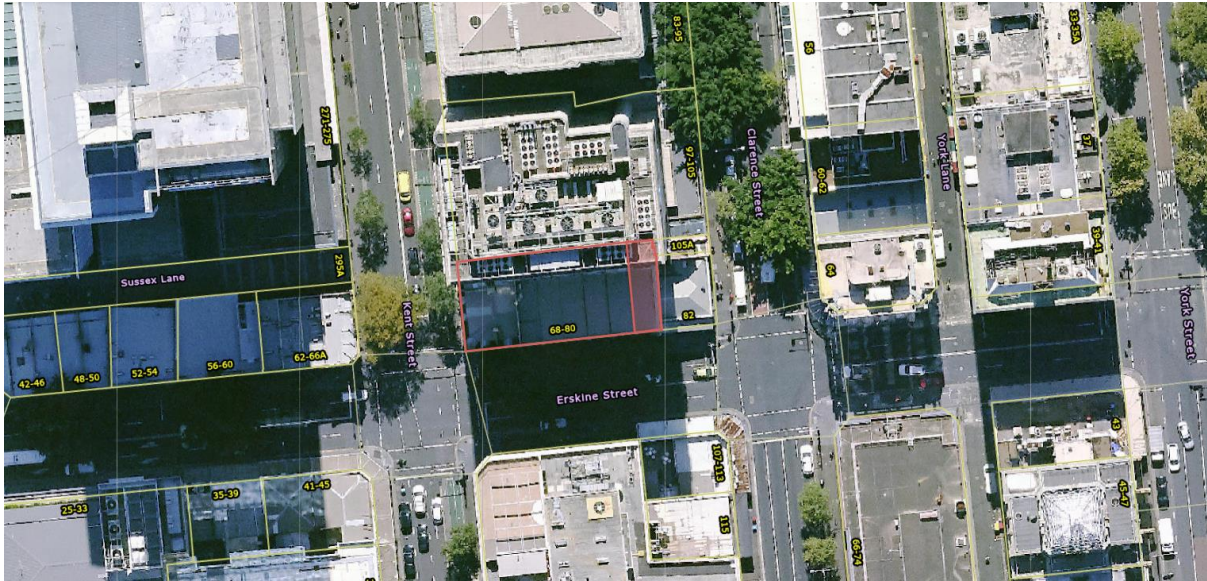


Figure 1: Aerial view of site (outlined red), the subject premises (shaded red) and surrounds

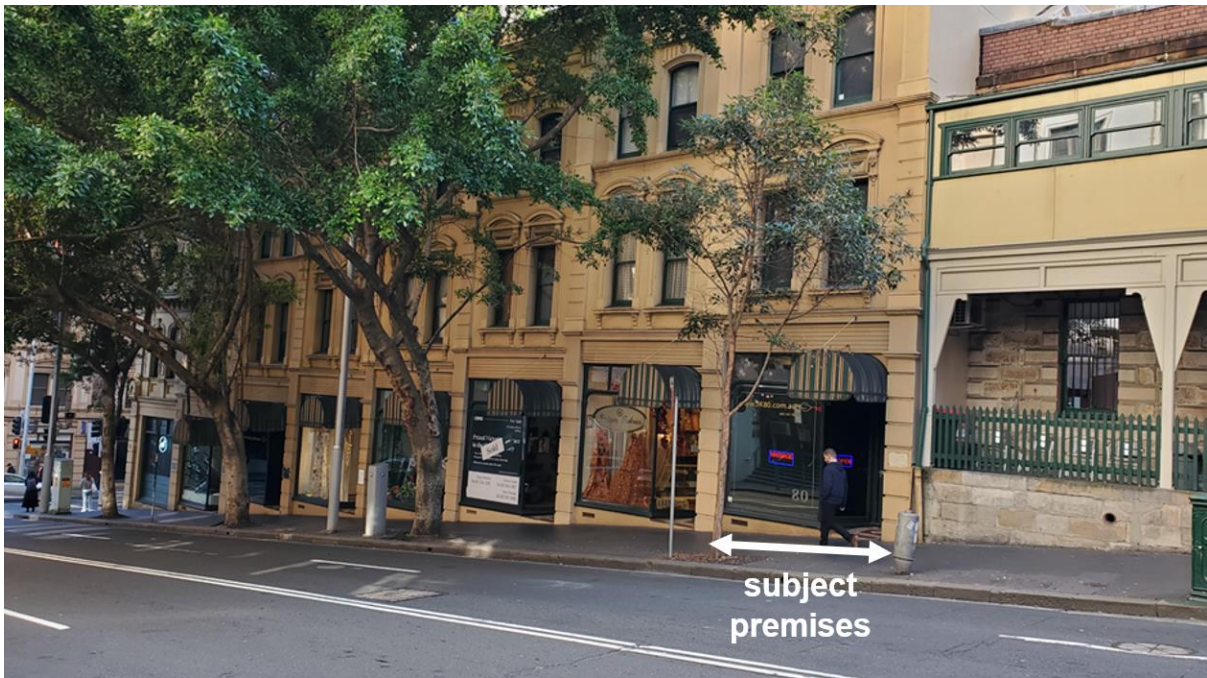


Figure 2: Collective site (68-80 Erskine Street), and the subject premises, as viewed from Erskine Street facing northwest



Figure 3: Subject premises (No. 80) as viewed from Erskine Street facing northwest

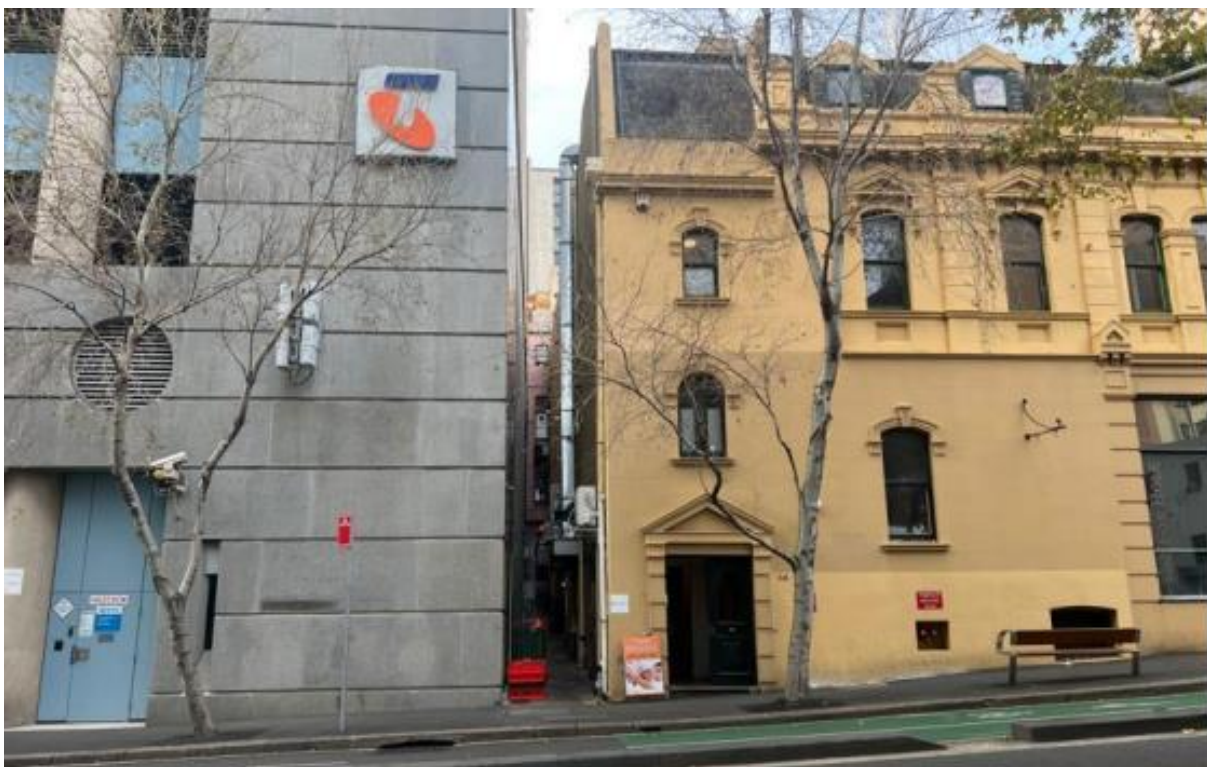


Figure 4: Rear access to the subject site from Kent Street between 97-105 Clarence Street (left) and 68A Erskine Street (right) facing east



Figure 5: Subject site rear access from Kent Street



Figure 6: Existing CCTV at 70 Erskine Street with subject site in background

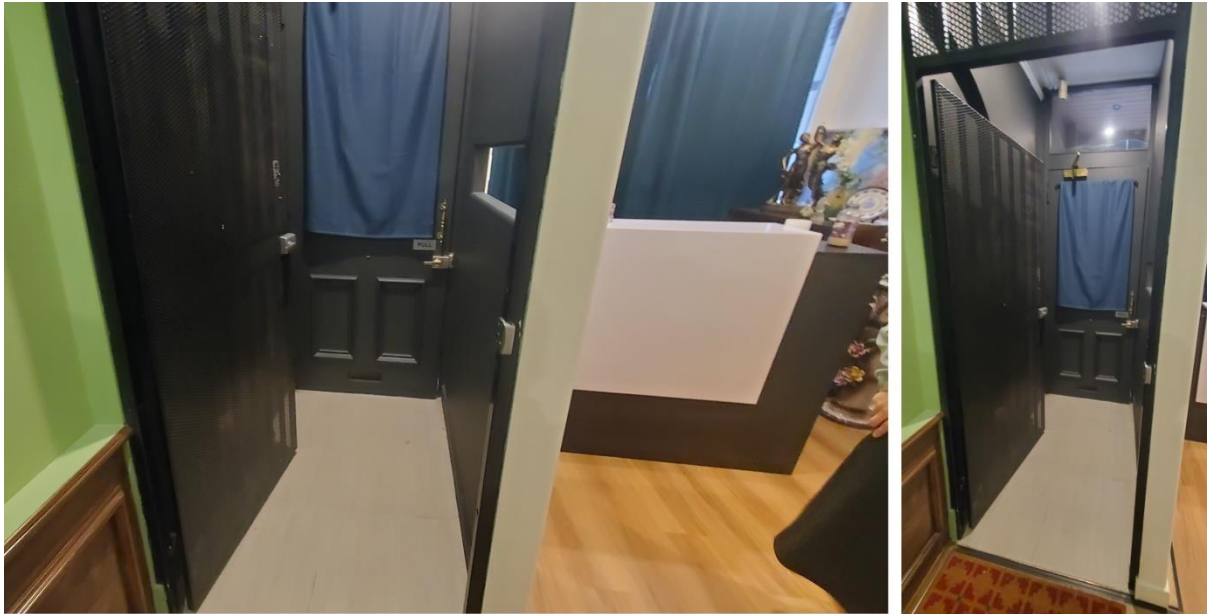


Figure 7: Internal view of entry space and front door to Erskine Street



Figure 8: Ground floor reception area



Figure 9: Ground floor waiting room



Figure 10: Management office located at basement level



Figure 11: Laundry located at basement level



Figure 12: Staff room located at ground floor

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal and the subject site.
- **D/2003/951** – Development consent was granted on 22 March 2004 for change of use for 80 Erskine Street from a 'Relaxation and Stress Therapy Centre' to a brothel for 12-month trial period.
 - **D/2003/951/A** – A Section 4.55 modification was granted on 10 May 2006 for the continued use of the premises as a brothel for a further 5 years and the deletion of condition 23 requiring the removal of a rear exit intercom.
 - **D/2009/2007** – Development consent was granted on 29 January 2010 for the continuation of the use of the premises as a brothel for a further 5 year period expiring on 29 January 2015. The approved base hours of operation were 10.00am to 1.00am (the following day), with a one year trial period granted for operation between 1.00am to 2.00am, Mondays to Sundays inclusive.
 - **D/2009/2007/A** – A Section 4.55 application was granted 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 year trial period expiring on 19 May 2013.
 - **D/2009/2007/B** – A Section 4.55 application was granted 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 5 year period expiring on 29 July 2018.
 - **D/2009/2007/C** – A Section 4.55 application was granted on 19 November 2014 for the continuation of the use for a further 5 years expiring on 19 November 2019. No changes were made to the approved hours of operation.
 - **D/2009/2007/D** – A section 4.55 application was granted on 30 August 2018 for the continuation of the use for a further 5 years expiring on 30 August 2023 No changes were made to the approved hours of operation.
 - **D/2009/2007/F** – A section 4.55 application was lodged on 20 April 2024 for continuation of the approved use. However, the application was rejected as the most recent consent at the time, being Modification D, had lapsed. The subject development application was then lodged on 23 May 2024.
9. The following applications are relevant to the nearby premises at 70 Erskine Street.
- **D/2003/669** – Development consent was granted on 29 March 2004 for change of use of the premises from a relaxation centre to a brothel including operating hours until 12.00am midnight.

- **D/2003/669/A** – A Section 4.55 application) was granted on 22 June 2005 for the continuation of the use for a further 5 years expiring on 22 June 2010.
- **D/2014/498** – Development consent was granted on 2 December 2014 for the continued use and operation of brothel known as 'City Touch' for a further 5 years expiring on 27 November 2019 as well as internal alterations to the ground floor of the premises.
- **D/2014/498/A** – A Section 4.55 application was granted 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/2023/92** – Development consent was granted by the Local Planning Panel on 14 February 2023 for the continuation of use and operation of 70 Erskine Street as a sex services premises on a permanent basis, including operating hours between 8.00am and 4.00am the following day, Monday to Sunday inclusive. The hours between 2.00am and 4.00am, Monday to Sunday, were approved subject to a one year trial period.

Compliance Action

10. The site is not currently subject to any ongoing compliance action or investigation and does not have a history of substantiated compliance issues.
11. It is noted that the premises has continued operating following the lapsing date of the consent on 30 August 2023.

Amendments

12. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 7 June 2024.
13. As the Statement of Environmental Effects (SEE) and Plan of Management (POM) lodged with the application were out of date or referred to the wrong application type, it was requested that a new SEE and POM be lodged to address the relevant LEP and DCP provisions. It was also requested that a site plan and existing floor plans be provided for the subject site.
14. The applicant responded to the request on 28 June 2024, and submitted the required documentation.
15. On 20 August 2024, a follow up correspondence was sent to the applicant which requested that minor inconsistencies on the floor plans be amended. The applicant responded on 21 August 2024 and provided the amended existing floor plans.

Proposed Development

16. The application seeks consent for the continuation of the existing use of the premises at 80 Erskine Street as a sex services premises, including six service rooms.
17. The premises has previously operated as 'Sirs' and now operates as 'JK80 Gentlemen Club'.
18. The proposed continuation of the previously approved use and operating hours includes:
 - Base hours: 10.00am to 2.00am (the following day), Monday to Sunday inclusive.
 - Extended hours: 2.00am to 4.00am, Monday to Sunday.
19. No physical works are included in the proposal.
20. 'As built' plans of the existing development are provided below.

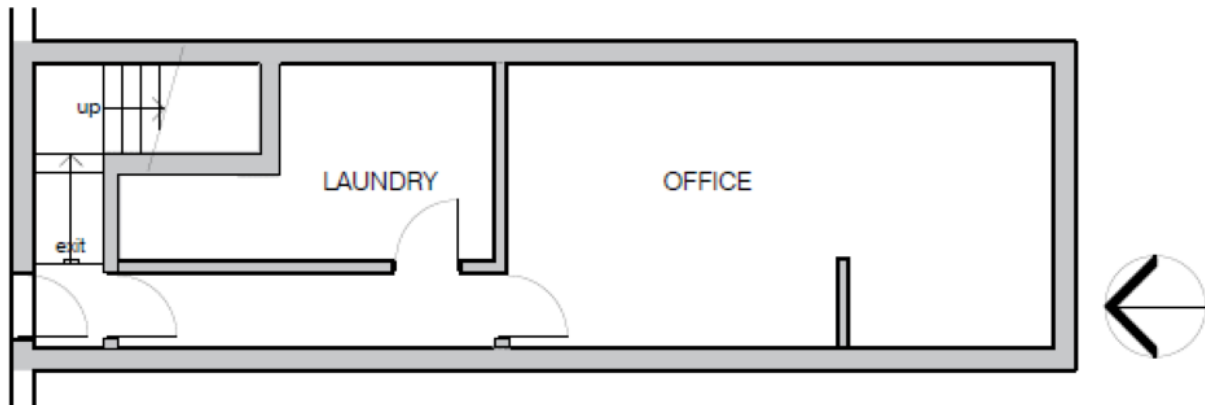


Figure 21: Existing basement floor plan

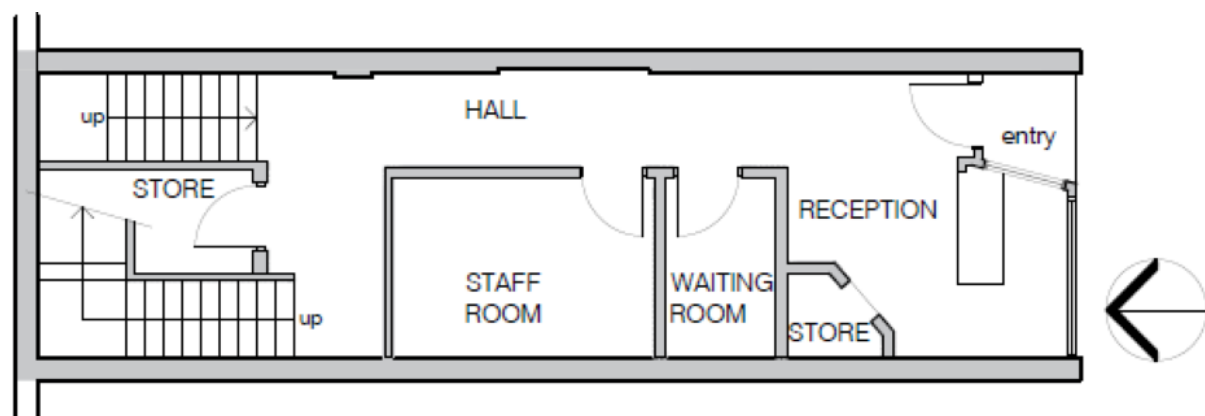


Figure 22: Existing ground floor plan

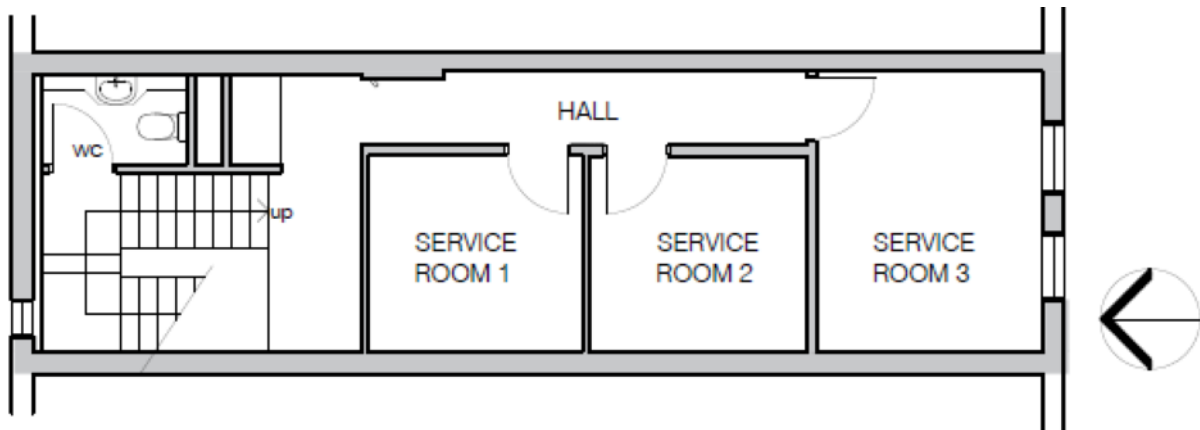


Figure 23: Existing first floor plan

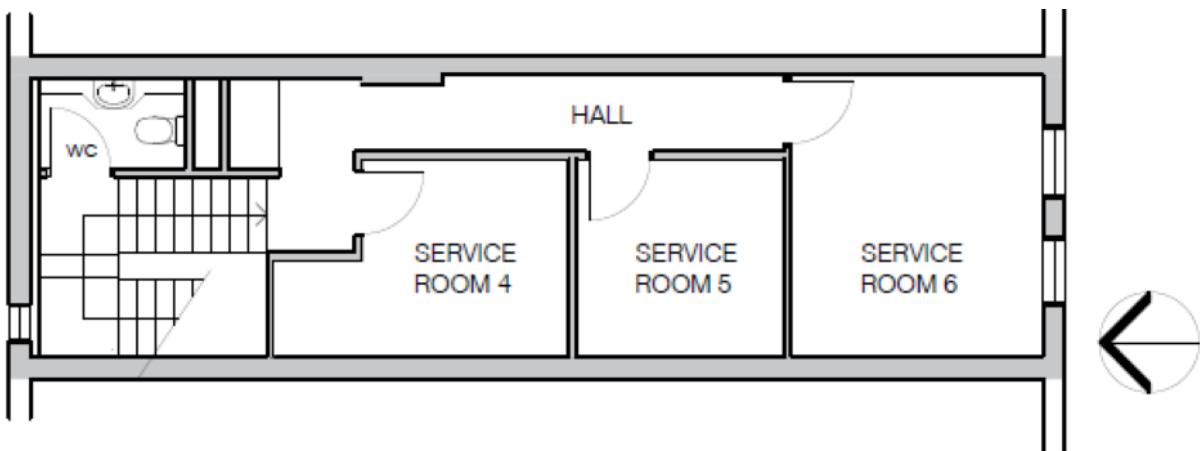


Figure 24: Existing second floor plan



Figure 25: Existing Erskine Street elevation

Assessment

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

Heritage Act 1977

22. 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.
23. Standard Exemption 21 under Subsection 57(2) of the Heritage Act 1977 stipulates that a change of use does not require approval under the Act.

24. Notwithstanding this, the proposal does not include any physical works nor change of use, and as such does not require any 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

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

25. 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.
26. 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

27. 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 'sex services premises' and 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	Yes	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	Yes	No physical works are proposed as part of the application. The existing building

Provision	Compliance	Comment
		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 00223 and Local Item I1757).</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 7 Local provisions – general

Provision	Compliance	Comment
7.21 Location of sex services premises	Yes	<p>The existing premises has been in operation since 2004. Whilst it is noted that the site is located on the same block as another sex services premises, both have been in operation for over two decades and have not resulted in any substantiated adverse impacts or compliance issues. The subject proposal will not result in any additional impacts beyond that which currently exists.</p> <p>The premises has generally demonstrated good management to date without any substantiated compliance issues and 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). 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

28. 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

29. 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 premises and hours of operation will not have any significant adverse heritage impacts on the heritage item.
3.14 Waste	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	<p>The premises is located in a Late Night Management Area and is considered most closely categorised, and has been assessed in the past, as a Category B premises. 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"> • Base hours: 6.00am to 2.00am. • Extended hours: 24-hours subject to a trial period. <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>

Provision	Compliance	Comment
		<p>The proposal seeks trading hours of:</p> <ul style="list-style-type: none"> • Base hours: 10.00am to 2.00am, Monday to Sunday inclusive. • Extended hours: 2.00am to 4.00am subject to a 5 year trial period, Monday to Sunday. <p>The proposed hours between 10.00am and 2.00am the following day are recommended for approval on a permanent basis in accordance with the base house in the DCP. The extended hours between 2.00am and 4.00am are permitted, subject to a 5 year trial period from the date of this consent.</p> <p>A modification application may be lodged to request a renewal of the extended hours in accordance with this section.</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 compliance	<p>The proposal complies with clause (a) and (b) of this section.</p> <p>The existing premises is not located in a building that contains a residential dwelling, nor immediately adjacent or directly opposite land developed for residential purposes.</p> <p>Whilst it is noted that the premises is located within a radius of 75m of another existing approved sex services premises at 70 Erskine Street, both premises have been in operation since 2004.</p> <p>Furthermore, the sex services premises at 70 Erskine Street was recently approved by the Local Planning Panel</p>

Provision	Compliance	Comment
		on 14 February 2023 to continue its operation on a permanent basis, while acknowledging that the subject premises (No. 80) was operating under a valid development consent at the time.
4.4.6.2 Design of premises	Yes	<p>No changes are proposed to the shopfront of the subject site. The existing entrance and exits of the premises are consistent with Section 4.4.6.2(1) of the DCP which requires the design to facilitate privacy of staff and visitors without compromising personal safety, adequate lighting, maximised surveillance and safety.</p> <p>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. The building number is displayed on site in accordance with clause (3) and is clearly visible from Erskine Street (see Figure 4). The interior of the premises is not visible from the public domain.</p>
4.4.6.3 Scale of sex services premises	Yes	Six service rooms are considered to be an appropriate scale for this sex services premises. The premises maintains a staff room and staff facilities generally comply with section 4.4.6.3 of the DCP, subject to conditions.
4.4.6.4 Health, safety and security	Yes	<p>The 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 Unit.</p> <p>Upon inspection of the site by Council Officers, it was found that the premises is generally compliant with section 4.4.6.4 of the DCP, however was missing duress alarms which must be located in each service room. The staff on site during the site inspection were made aware of the need for duress alarms, and a condition of consent is recommended to ensure duress alarms are installed in each service room.</p> <p>The premises maintains internal security cameras and is in accordance with this</p>

Provision	Compliance	Comment
		<p>section. However, there is no security camera located at the rear as stated in the Plan of Management. Conditions of consent are recommended to ensure security cameras are installed where required. It is noted that while the Police did not raise any objection to the proposal, it was requested that conditions be included relating to surveillance cameras. This is to ensure they are properly installed and maintained.</p>
4.4.6.5 Signs	Yes	<p>No additional signs or amendments to existing signs are proposed as part of the proposal.</p>
4.4.6.6 Management of operations	Yes	<p>An amended Plan of Management 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. The Plan of Management satisfactorily addresses staff training, premises security, CCTV, worker safety, sharps waste management, worker amenities and incident responses.</p> <p>The Plan of Management also includes details 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.</p> <p>Appropriate conditions to ensure compliance with the Plan of Management, including surveillance systems, duress alarms and operational requirements are recommended.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
5.1 Central Sydney	Yes	The proposal is in accordance with the general objectives of the Central Sydney locality.

Discussion

Time Limited Consents and Continuation of the Use

30. As outlined under the heading 'History Relevant to the Development Application' above, the existing premise has been operating as a sex services premises since 2004.
31. It is noted that Section 3.15.4 and Section 4.4.6 of Sydney DCP 2012 do not stipulate the requirement for time limited consents for sex services premises. Historically, time limited consents permitting the use for a period of 5 years have been applied to both D/2003/951 and D/2009/2007 (as modified). 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.
32. As the consent is not required to be time limited, the continuation of the use as a sex services premises can be approved on a permanent basis, including operating hours between 10.00am and 2.00am (the following day), Monday to Sunday inclusive. The hours between 2.00am and 4.00am, Monday to Sunday, are recommended to be approved on a trial basis.
33. For reference, Section 3.15.4(3) of Sydney DCP 2012 states that premises seeking extended operating hours beyond the base hours may be permitted on a trial basis.
34. Section 3.15.4(9) of Sydney DCP 2012 further permits continuous trial periods to be consecutively applied upon successful completion of each duration - commencing with a first trial period of one year, second trial period of two years, then third and subsequent trial periods of 5 years.
35. Considering that the premises has been utilising the extended hours since May 2011, the extended hours are considered to be a continuation of previous trial periods. As such, the extended hours between 2.00am and 4.00am, Monday to Sunday, are recommended to be subject to a 5-year trial period.

Consultation

Internal Referrals

36. The application was discussed with Council's;
 - (a) Environmental Health Unit;
 - (b) Licenced Premises Unit; and

(c) Safe City Unit.

37. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

NSW Police

38. The application was referred to Sydney City Police Area Command who provided comment on 23 August 2024.
39. No objection was made to the proposal. However, it was requested that conditions relating to surveillance cameras and crime scene preservation are included in the Notice of Determination. These conditions have been included where appropriate.

Advertising and Notification

40. In accordance with the City of Sydney Community Participation Plan 2023, the proposed development was notified for a period of 21 days between 3 July 2024 and 24 July 2024. A total of 82 properties were notified and no submissions were received.

Financial Contributions

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

41. The Central Sydney Development Contributions Plan 2020 applies to the site. However, as the cost of the development is less than \$250,000, a contribution is not payable.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

42. As the development is development for purposes other than residential accommodation that will result in the creation of no additional gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

43. Environmental Planning and Assessment Act 1979.
44. Heritage Act 1977.

Conclusion

45. The proposed application seeks permanent continuation of the existing use as a sex services premises, with the base trading hours between 10.00am and 2.00am, Monday to Sunday inclusive, and extended hours between 2.00am and 4.00am, Monday to Sunday. The proposal does not include any physical works.
46. The proposal generally satisfies the relevant provisions of the City's controls. The development is consistent with the objectives of the SP5 Metropolitan Centre Zone, and is generally consistent with the locational requirements and operating hours controls.
47. The premise is to operate in accordance with the management and safety procedures outlined within the endorsed Plan of Management.
48. The operating hours between 10.00am and 2.00am (the following day), Monday to Sunday inclusive, are recommended to be approved on a permanent basis. The extended hours between 2.00am and 4.00am, Monday to Sunday, are recommended to be permitted on a trial basis, beginning with a 5 year trial from the date of this consent.
49. Subject to the imposition of conditions in Attachment A, the proposed continuation of the use as a sex services premises will not result in any additional impacts on the surrounding area beyond that which currently exists. Therefore, the proposal is recommended for approval.

BILL MACKAY

A/Executive Manager Planning and Development

Callum Byrnes-Krickl, Planner