

**Submission  
No 8**

## **INQUIRY INTO THE REGULATION OF BROTHELS**

**Organisation:** Ballina Shire Council  
**Name:** Mr Rod Willis  
**Position:** Group Manager, Development and Environmental Health  
**Date Received:** 7/08/2015

enquiries refer

**Stephen Rendall**  
in reply please quote

**Regulation of Brothels Inquiry**  
**Your Ref: LAC15/148**



6 August 2015

The Hon. Alister Henskens MP  
Chairperson  
Inquiry into the Regulations of Brothels in NSW  
Parliament House  
6 Macquarie Street,  
SYDNEY NSW 2000

By Email: [ROBInquiry@parliament.nsw.gov.au](mailto:ROBInquiry@parliament.nsw.gov.au)

Dear Sir

**Re: Ballina Shire Council Submission - Regulation of Brothels in New South Wales**

I refer to your correspondence dated 21 July 2015 inviting Council to make a submission in relation to the current inquiry into the Regulation of Brothels within NSW.

Ballina Shire Council would like to make the following submissions in relation to this Inquiry.

By way of background information, Ballina Shire Council is a coastal Council on the Far North Coast of NSW and has a mature demographic. With the original changes in legislation to permit the establishment of brothels within NSW, Council was initially reluctant to approve brothels generally, however by limiting the locations of brothels to the Industrial zones within the Ballina Shire it has been able to address many of the concerns of local residents.

At the January 2006 Ordinary Council meeting Council considered a Report in relation to complaints regarding the operation of brothels within Ballina Shire. This Report identified that:

*"In respect to complaints involving prostitution activities it is considered reasonable and practical to give priority to those complaints made on the basis of adverse residential amenity or inappropriate location rather than those based on commercial competition grounds".*

Council subsequently resolved in Resolution 190106(009):

*"That in relation to complaints received concerning alleged illegal brothel operations, Council appropriately manage the complaints received by giving priority to those complaints upon which Council can act in making an application to the Court under Section 17 of the Restricted Premises Act 1943.*

I have attached a copy of this Report and Resolution for your information.

Currently, the majority of complaints received in this Shire in relation to brothels are competition based. That is, the legal brothels are registering complaints against the sex workers who operate from unapproved premises, mainly motel rooms. Further, an adjoining Council has recently been made aware of the use of private premises by sex workers using holiday accommodation websites such as Air BnB.

The Select Committee is also advised that, given the current demographic of Ballina Shire, there is not the demand for additional sex services that are evident in larger populated areas such as Sydney.

At this time, Ballina Shire Council has not been in a situation where the enforcement of brothel closure notices by the cessation of utilities has been required under the provisions of Section 121ZS of the *Environmental Planning and Assessment Act 1979* (NSW) and accordingly, it is difficult for Council to comment on the appropriateness of this part of the legislation.

In relation to the matters for the Select Committee to examine and report on, Ballina Shire Council would like to make the following submissions:

**(a) Appropriate local and state government regulatory and compliance functions for brothels**

Ballina Shire Council currently has two approved brothels within the Shire, with one establishment within the Southern Cross Industrial Estate within Ballina and the second is located within the Russellton Industrial Estate in Alstonville.

These two brothels do operate in accordance with their respective development consents that were issued approximately 10 to 15 years ago. Initially, these operations were commenced without the requisite development consents and following the commencement of legal proceedings under the legislation at the time, applications were lodged and subsequently approved.

These two brothels did attract complaints initially when operating as unauthorised businesses and numerous submissions were received as part of the development assessment process. These complaints have however, been resolved and a check of Council records has not identified any complaint lodged against either business for a number of years.

When it comes to exercising regulatory and compliance functions, Ballina Shire Council utilises a standard methodology of investigation in relation to any complaint received, including brothels.

On receipt of any complaint, the matter is referred to the appropriate officer within Council and a desktop audit is conducted to ascertain what approvals or any other actions have been taken previously. On receipt of that information, and following receipt of any additional advice from senior staff as necessary, the matter is then prioritised and investigated bearing in mind the Council Resolution 190106(009) outlined above.

Any such investigation could include a site inspection (for a brothel usually conducted in mixed pairs), evidence collection, interviews of property owner(s) and witnesses. Based on the evidence available, Council would determine the appropriate avenue to implement compliance action including the use of Penalty Infringement Notices, Formal Warnings, Notices and Orders under the *Environmental Planning and Assessment Act 1979*, including Brothel Closure Notices if considered appropriate and legal action through the appropriate Court to remedy the problem/situation. Any such decision would be made in line with Council's adopted *Enforcement Policy* dated November 2013.

As previously outlined, brothel complaints generally arise from neighbours or business competitors who observe an increase in traffic visiting a particular premises or by advertisements within the local media.

With respect to the placement of advertisements in local newspapers or on line, if a complainant identifies a specific advertisement within the Adult Services or Personal Notice Sections of local newspapers, copies of such advertisements are obtained and used in any subsequent investigation. Council does not however, proactively scan for these types of advertisements as a matter of course.

The main reason for Council not proactively investigating media advertising is that such advertisements contain a name, description, mobile telephone number and only a general location, such as a town name or area.

Investigation would then require telephone contact to be made to arrange a meeting or to ascertain a more specific location and this is not considered to be an effective use of ratepayer's money given the relatively small number of complaints Council receives in any year. Council only has limited funds and resources for the investigations of planning related complaints generally. Given the overall volume of complaints received they need to be prioritised to ensure effective use of resources and funds. The Council prioritises this work through a documented Compliance Work Plan that is adopted each year.

A check of Council records has revealed that the last resident complaint for a sex worker operating from a residential premises within Ballina Shire was received in 2013. In this instance, the complainant also referred the matter to the Managing Agent who terminated the lease before any formal action could be commenced by Council.

Council does wish to raise concerns about the increase in complaints received about itinerant sex workers who work up and down the Pacific Coast or who operate on a "Fly In Fly Out" (FIFO) basis. Some of these workers do operate from the approved brothels in Ballina and Alstonville to which Council does not have any objection, however there has been an increase in complaints alleging the use of motel rooms and now tourist and rental accommodation on a short term basis for the provision of sex services. It is acknowledged that these complaints are generally from the proprietors and operators of the legal brothels and not from the general public.

There is a difficulty in responding to complaints against a FIFO sex worker, given the following:

- (i) The vague nature of the advertisement for a specific premises that the sex worker is using;
- (ii) The short term nature of the operation, usually two to five days duration; and
- (iii) The difficulty in utilising the current legislative regime, such as Brothel Closure Notices and planning controls over motel and other accommodation premises for ongoing breaches.

By way of example, there is one particular motel within the Ballina Shire which attracts approximately 90% of competition based complaints for itinerant sex workers. The motel owners, who are not the on-site managers, do respond quickly and act proactively to discourage this ongoing activity, however this unauthorised activity continues.

The other area of concern for Council is the relative ease for an itinerant or FIFO sex worker to "set up" operations within any local government area in a motel or similar as opposed to the impact on Council resources in investigating and actioning any complaint made for that activity. An itinerant sex worker only needs to book a motel room and place an advertisement within the local media outlining date/s and that business is ready to operate. There is very little outlay for this unauthorised business to commence trading.

Conversely, as is outlined above, Council is required to undertake detailed investigations and arrange for two officers to undertake any site inspection prior to any action being able to be undertaken. Council is also required to prepare and collate all evidence to enable even a Penalty Infringement Notice to be issued. This is at significant cost to the local community with little likelihood that the cost of the investigation would be able to be recouped.

Council would be supportive of changes to the current legislation to make it more difficult for this activity to occur. Further details for the Select Committee to consider are outlined in Council's response to part (c) of this Submission.

**(b) The demarcation in local and state government roles and responsibilities; and**

Ballina Shire Council does have some concerns about the demarcation of roles between the State and local Governments in relation to brothels and their operation within New South Wales.

Currently, local Councils have the role to enforce the legislation with regards to the approval of and operation of a brothel under the provisions of a local environmental plan and any issued development consent, while the State government has a number of roles with regards to brothels, including:

- (i) the health of sex workers under the control of NSW Health;
- (ii) the potential for involvement of organised crime or criminal motor cycle gangs owning and operating the brothel itself being within the control of the NSW Police or another NSW Crime Agency; and
- (iii) The creation of planning controls and template local environmental plans by the NSW Department of Planning and Environment.

Ballina Shire Council would not be supportive of the State government divesting themselves of any of these current roles with cost shifting being passed onto local government. Currently, this Council would expect that the majority of local Councils within regional New South Wales do not have the resources or the appropriate level of expertise to make determinations in relation to:

- The cleanliness and health status of sex workers and brothel establishments; or
- The involvement of organised crime or criminal motor cycle gangs in the owning and operation of brothels.

These matters rightly are within the control of NSW Health and the NSW Police or another NSW Crime Agency and this is where this type of role must remain.

**(c) Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.**

Ballina Shire Council would like to make the following suggestions for potential reform to the current legislative regime:

- (i) A requirement for brothels and sex workers to be licensed to operate within New South Wales by an appropriate State Government Agency; and



- (ii) A legal requirement that any advertisement offering sex services, or advertisements within the Personal Notices sections of a newspaper be required to display the issued licence number (for single operators) or development consent number (for approved brothels);

*Reasons:*

To further assist Councils in the regulation of illegal brothels, it would be beneficial to restrict the ability of itinerant sex workers and the illegal brothels to display advertisements within local media.

By way of an example and to support the Council's submissions, a check of the Northern Star newspaper's webpage was conducted on Thursday 30 July 2015. This check revealed that there were 11 advertisements offering sex services but only three advertisements were for approved brothels. The remaining eight advertisements provided only:

- Name
- Town location;
- Description of the services provided, including the offer of "in house" services, which is a use that would require the formal development consent of the local Council; and
- Contact mobile telephone number.

Should this submission be favourably considered, the formal licensing of a single sex worker or brothel proprietor wishing to advertise a service would effectively remove the illegal sex workers and brothel's capacity to advertise their services in the public media.

The Council is aware of similar legislation in Victoria where a license number is required to be displayed in advertisements within *Sex Work Act 1994 (VIC)* and the *Sex Work Regulations 2006 (VIC)*.

Under that Victorian legislation, the Business Licensing Authority is the place where people:

- register as running exempt escort or exempt brothel businesses;
- apply to become registered as an Approved Manager of a brothel or renew an approval; and
- lodge applications for licences if they want to run a brothel or escort agency.

The licensing scheme started in June 1995 and the Business Licensing Authority is an independent statutory authority.

The BLA can refer relevant matters to the police, WorkCover, the Australian Taxation Office, the Department of Immigration and Ethnic Affairs, Consumer and Business Affairs Victoria and any other body.

Inspectors from Consumer and Business Affairs have powers to enter the workplace that are the same as the police.

Consumer and Business Affairs Victoria and the police can take disciplinary action against licensees at the Victorian Civil and Administrative Tribunal (VCAT). (Authorised local government officers can also do this.)

Ballina Shire Council would submit that a similar registration and licensing system be favourably considered for New South Wales.

- (iii) A requirement for criminal history checks on brothel proprietors as part of any licensing process by the appropriate State Government Agency;

*Reasons:*

Ballina Shire Council has received a number of complaints and allegations alleging the involvement of organised crime and criminal motor cycle gangs in the owning and operation of brothels in the northern rivers area of New South Wales.

This information has been passed onto the appropriate Agencies within the NSW Police, including local detectives and Strike Force Raptor.

If you have any enquiries in regard to this matter please contact Council's Compliance Coordinator, Mr Stephen Rendall on 0 [REDACTED] during office hours, Monday to Friday.

  
Yours faithfully

[REDACTED]  
Rod Willis  
**Group Manager**  
**Development and Environmental Health**

Encl: Resolution 190106(009)

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**Handling of Complaints Associated With Alleged Unauthorised Establishment of Brothels Within Ballina Shire - 190106(009)**

**RESOLVED:** (K. Johnson/D. Wright )

That in relation to complaints received concerning alleged illegal brothel operations, Council appropriately manage the complaints received by giving priority to those complaints upon which Council can act in making an application to the Court under Section 17 of the Restricted Premises Act 1943.



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## Handling of Complaints Associated With Alleged Unauthorised Establishment of Brothels Within Ballina Shire

### **Introduction**

Council has been receiving an increasing number of complaints about the establishment of unauthorised brothels within the Shire. The intent of this report is to seek direction from Council as to the level of action that Council wants to take in responding to these complaints in the most effective and resource efficient way.

In 2002 Council amended its Local Environmental Plan (LEP) and introduced Development Control Plan No. 10 – Brothels (DCP No.10) to provide local planning controls applicable to this form of land use. Prior to the introduction of these local planning controls, the State Government advised Councils in NSW that brothels were a legitimate land use that should be permitted in suitable locations and could not be prohibited from all zones within a local government area. Accordingly, the Ballina Local Environmental Plan 1987 (BLEP) and DCP No. 10 permit brothels in designated “general industrial” precincts within the industrial zone and prohibit this use in all other locations within the Shire. Council’s DCP No. 10 – Brothels contains planning controls specific to the siting and establishment of such uses.

For the purpose of the BLEP, “brothel” and “prostitution” is defined as follows:

*“brothel”* ....means premises habitually used by one or more prostitutes for the purpose of prostitution, or that have been used for that purpose and are likely to be used again for that purpose, and includes any premises where the act of prostitution occurs irrespective of whether other services or businesses are being provided or carried out.

*“prostitution”*.... means the offering by a person of his or her body to a person of the same or different sex for sexual gratification in return for payment or other reward, and includes:

### **Report**

The overwhelming majority of complaints being received are made by or on behalf of the proprietor of a lawfully established brothel in the Southern Cross Industrial Estate. These complaints relate to brothels allegedly being operated from either rental residential properties or from motel units. It is understood that the main reason for making such complaints relate to a perceived lack of enforcement by Council of relevant legislation resulting in unauthorised brothels having an unfair commercial advantage.

In taking a proactive response to these complaints, in November last year Council wrote to all motel owners and real estate agents within the Shire advising of the complaints received, the local planning regulations in relation to brothels and requesting their co-operation and careful scrutiny in assisting to prevent the unauthorised established of brothels from within residential and holiday accommodation premises. Council has also prepared a succinct and ‘plain English’ information sheet outlining Council’s planning regulations in

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establishing a brothel which is to be used when carrying out investigations and for interested persons considering establishing a brothel.

The investigation of each complaint takes a considerable period of time and is very resource hungry. Typically these investigations involve more than one staff member (preferably both male and female, but can not always be arranged) and often numerous return visits. The private nature of the brothel operations and itinerant sex workers make the investigation of these complaints difficult to substantiate often requiring more 'detective' type investigation to obtain necessary evidence and usually outside of normal working hours.

Section 17 of the Restricted Premises Act 1943 establishes the procedure and circumstances in which Council can make application to the Land and Environment Court to serve an order to cease the use of a premises as a brothel. A copy of Section 17 is **attached**. Section 17(3) sets out the limited source of complaints upon which Council can act in making an application to the court in relation to a brothel. Section 17(5) sets out those matters the Court can only take into consideration in making an order. Of course, Council can also commence proceedings in the Land and Environment Court to remedy a breach of the Environmental Planning and Assessment Act in relation to an unauthorised use of a premises for the purpose of a brothel.

Given the significant resource implications in investigating complaints relating to illegal prostitution activities it is considered appropriate to practically manage the complaints received by giving priority to the nature and source of complaints upon which Council can act under Section 17 of the Restricted Premises Act. Essentially this means complaints made only by residents living near to the brothel on the grounds that the brothel is operating near or within view of a church, school etc. or a place regularly frequented by children and/or causing disturbance to the neighbourhood amenity will be given priority. It was on this basis that Council was successful in its only application to the Land and Environment Court several years ago in closing an illegal brothel operating in Racecourse Road in close proximity to a number of residential premises. Evidence supplied by residents living nearby and providing 24 hour surveillance as to the amenity impacts and nature of the operations is particularly important in a successful application to the Court. In respect to complaints involving prostitution activities it is considered reasonable and practical to give priority to those complaints made on the basis of adverse residential amenity or inappropriate location rather than those based on commercial competition grounds.

Should Council not wish to have these brothel complaints managed in this manner then it will need to firstly address the resourcing implications currently limiting Council's ability to effectively deal with all such complaints.

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## **RECOMMENDATION**

That in relation to complaints received concerning alleged illegal brothel operations, Council appropriately manage the complaints received by giving priority to those complaints upon which Council can act in making an application to the Court under Section 17 of the Restricted Premises Act 1943.



## New South Wales Acts (Point-in-Time)

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### RESTRICTED PREMISES ACT 1943

**17 Application to Land and Environment Court for premises not to be used as a brothel**

**Working Date: 3 February 2004**

Select Date:

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#### 17 Application to Land and Environment Court for premises not to be used as a brothel

- (1) The Land and Environment Court may, on application by a local council, make an order that an owner or occupier of premises that are a brothel and that are situated within the area of the council is not to use or allow the use of the premises for the purpose of a brothel.
- (2) The local council must not make an application in relation to a brothel unless it is satisfied that it has received sufficient complaints about the brothel to warrant the making of the application.
- (3) The complaints must have been made by:
  - (a) residents of the area in which the brothel is situated who live in the vicinity of the brothel, or
  - (b) residents of the area in which the brothel is situated who use, or whose children use, facilities in the vicinity of the brothel, or
  - (c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel.
- (4) The application must state the reasons why the local council is of the opinion that the operation of the brothel should cease based on one or more of the considerations referred to in subsection (5) (a), (b), (c), (d), (e) or (f).
- (5) In making an order under this section the Land and Environment Court is to take into consideration only the following:
  - (a) whether the brothel is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities,

(b) whether the operation of the brothel causes a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood or other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise and vehicular and pedestrian traffic,

(c) whether sufficient off-street parking has been provided if appropriate in the circumstances,

(d) whether suitable access has been provided to the brothel,

(e) whether the operation of the brothel causes a disturbance in the neighbourhood because of its size and the number of people working in it,

(f) whether the operation of the brothel interferes with the amenity of the neighbourhood,

(g) any other matter that the Land and Environment Court considers is relevant.

(6) This section extends to premises within an area that is not a local government area and in that case a reference to a local council is to be read as a reference to the prescribed authority for the area.

(7) In this section,

"church",

"hospital" and

"school" have the same meanings as in the *Summary Offences Act 1988*.

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