

**Submission
No 72**

INQUIRY INTO THE REGULATION OF BROTHELS

Name: Mr Michael Chlopicki

Date Received: 17/08/2015

As a citizen of NSW who supports an individual sexworkers' right to work independently or cooperatively with a partner from their place of residence, I am writing to make a submission to the Inquiry into the Regulation of Brothels 2015. I have observed and experienced many of the benefits of the current regulatory framework of decriminalisation.

I wholeheartedly support the current model of decriminalised sex industry regulation in NSW, with the exception of the apparent discrimination shown by the majority of local councils towards individual sexworkers and the sex industry as a whole.

This discrimination is apparent in a recent study which reveals that 39 out of 40 Sydney Metropolitan local councils either do not allow sex workers to work from home or require individual sex workers working from home to submit to a development application process. Let me ask you the following questions

- Is an individual journalist/writer required to submit to a development application to set up a home office to allow them to work from home?
- Is an individual who provides a baby sitting service to friends and family for payment required to submit to a development application process?
- Is an individual who brings a number of sexual partners to their home without any form of payment for engaging in consensual sexual activity required to submit to a development application?

If the answer to any of the above is no, then why is an individual who engages in consensual sexual activities in their own home for payment required to submit to a development application or be denied the right to do so by 39 out of 40 Sydney Metropolitan local councils?

It is also interesting to note that many Development Applications from sex industry businesses which have been declined by local councils on the basis of planning and amenity impact have been found to meet the requirements for approval by the Land and Environment Court. This is further indication that councils are not acting in the spirit of decriminalisation with regards to sex work and the sex industry.

In light of the above, I do not believe the introduction of a licensing regime for brothels would be in the best interests of the NSW community, and strongly oppose the introduction of a licensing regime as I believe that such an act would only serve to re-open the doors for police corruption, place an extra burden on legitimate sex industry operators and government, encourage organised crime, add an additional burden to police resources, increase health and safety risks for sexworkers and create a 2 tier industry by putting independent sexworkers and small operators in a disadvantaged position as a result of additional red tape.

As an alternative to introducing a licensing regime to brothels, I urge the committee to consider the inclusion of the Sex Services Premises Planning Guidelines (copy attached) into local council policy or, at the very least, encourage all local councils in NSW to follow the example of the City of Sydney and make Home Occupation (Sex Services) premises an exempt development, and for councils to maintain their current accountabilities so as not to open the door for potential police corruption and/or abuse of sexworkers by police.

Sex services premises

Planning guidelines | December 2004

Prepared by the Sex Services Premises Planning Advisory Panel

Note

This document has been prepared by the Sex Services Premises Planning Advisory Panel and represents the opinions and recommendations of the panel. This panel was administered by the Local Government and Association of NSW and Shires Association of NSW on behalf of the Department of Planning (then DIPNR).

In publishing this information, the Department of Planning is not necessarily endorsing the panel's opinions or recommendations as expressed in this document.

Sex services premises: planning guidelines

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The assessment and policy development has been framed on a state-wide basis. Councils are encouraged to consider the Guidelines as a comprehensive and informative document relative to regulating the land use of sex services premises as relevant to their local government area.

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Foreword

Regulating brothels and the fuller range of sex services premises is a relatively new issue for local government and one that can present many challenges to council officers, councillors, the sex industry and the local community.

While some councils receive very few applications for sex services premises and have had little acquaintance with the industry, others have contended with significant community interest and concern over individual development applications or proposed policy directions. For some councils, the major issue has been the considerable time and cost involved in closing illegal sex services premises which then re-establish elsewhere in a local area. These guidelines recognise these issues and the roles and responsibilities of local councils with respect to sex services premises.

Since 1995, as a result of legislative changes concerning prostitution, local government has had prime responsibility for the location and operation of sex services premises. The objectives of the 1995 reforms included upholding the health and safety of sex workers and their clients and reducing the opportunities for corruption in the control of prostitution. Before this time, such premises were controlled by the criminal justice system and handled by the NSW Police.

In 2000, five (5) years after the 1995 reforms, the Government established a Brothels Task Force to assess, amongst other matters, whether the objectives of the 1995 reforms were being achieved through planning arrangements adopted by local councils. The Task Force report found there was a need for greater assistance to be provided to councils in planning for various sex services premises, and recommended the establishment of an advisory service for councils. Subsequently the Sex Services Premises Planning Advisory Panel (initially called the Brothels Planning Advisory Panel) was established.

Appropriately regulated sex services premises can minimise amenity impacts to surrounding properties and uphold high standards of occupational health and safety which are of benefit to workers, their clients and the wider community. Local planning can provide greater clarity and certainty to the sex industry and local communities about councils' expectations for sex services premises. However councils need to ensure that planning controls allow for the fair and equitable treatment of all sex services premises.

If local planning controls are too restrictive toward sex services premises, the effectiveness of the planning system in achieving the objectives of the 1995 reforms will be undermined. Overly restrictive planning instruments force sex services premises to continue to operate illegally (especially home-based sex work) and drive the industry 'underground'. This can make sex services premises difficult for service providers to access and difficult for councils to regulate. These guidelines recognise that it is preferable for councils to allow a legal sex industry to operate in local areas than to create an industry that is forced to be 'on the run'. The guidelines present ways that councils can achieve this.

These guidelines have been prepared by the Sex Services Premises Planning Advisory Panel over a two year period and are the result of extensive research and consultation concerning local council planning approaches towards the sex industry. The guidelines aim to lead councils to best practice in planning for different types and scales of sex services premises. To this end, the guidelines present factual information on the nature and operation of the sex industry in NSW, an analysis of current planning practice concerning sex services premises, and options and strategies which will deliver improved outcomes for councils, the sex industry and the community. I commend the guidelines to councils as a comprehensive resource document to assist them in making informed decisions.



Vic Smith
Chairperson
Sex Services Premises Planning and Advisory Panel

Acknowledgements of Contributors to these Guidelines

The Sex Services Premises Planning Advisory Panel wish to acknowledge the contributions made by its members over a two year period. The Panel Members who contributed to the Panel's discussions in the preparation of the Guidelines are listed below (based on identification of membership as recommended in the Report of the Brothels Task Force, printed November 2001):-

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<i>A person with expertise in legal issues associated with planning for brothels (sex services premises)</i>	<i>Mary Macken</i>

The Panel also acknowledges the administrative assistance provided by the Local Government Association of New South Wales and Shires Association of New South Wales, over the entire period of the Panel's work, by its officers Diana Marder, Janet Frost and Melissa Burne. The Panel acknowledges the extensive research, consultation and documentation carried out by Belinda Cowdroy in preparing these guidelines. The previous work undertaken by Womerah Services in association with MG Planning and Penny Crofts from the University of NSW is also acknowledged.

Abbreviations

ACON	AIDS Council of New South Wales
AFAO	Australian Federation of AIDS Organisations
AIDS	Acquired Immune Deficiency Syndrome
BCA	Building Code of Australia
CPTED	Crime Prevention Through Environmental Design
DA	Development Application
DCP	Development Control Plan
DHA Act	Disorderly Houses Amendment Act 1995
EP&A Act	Environmental Planning and Assessment Act 1979
EPI	Environmental Planning Instrument
HIV	Human Immunodeficiency Virus
LEC	Land and Environment Court
LEP	Local Environmental Plan
PWA	Private Workers Alliance
REP	Regional Environmental Plan
RP Act	Restricted Premises Act 1943
SEPP	State Environmental Planning Policy
SSPPAP/ 'the Panel'	Sex Services Premises Planning and Advisory Panel
SWOP	Sex Workers Outreach Project
STI	Sexually Transmitted Infection
The Act	The Environmental Planning and Assessment Act 1979
<i>The Associations'</i>	Local Government Association of NSW and Shires Association of NSW
The Department	The Department of Infrastructure, Planning and Natural Resources (DIPNR)
The Minister	The Minister for Infrastructure, Planning and Natural Resources

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	Sample Fact Sheets

Executive Summary

Background

As part of the 1995 reforms by State government to prostitution laws, the Restricted Premises Act 1943, formerly known as the Disorderly Houses Act 1943 (including the Disorderly Houses Amendment Act 1995), abolished the common law offence of keeping a brothel making sex services premises a legitimate land use regulated through environmental planning instruments under the Environmental Planning and Assessment Act 1979.

The key aims of decriminalisation of the sex industry were to minimise the opportunities and temptations for corrupt conduct of officials and to protect the health and safety of sex workers and their clients.

The Ministerial Taskforce on Brothels Report 2001 found that decriminalisation had a positive effect on the health and safety of sex workers. Further that the planning system can be an effective means of regulating all sex service premises in the same manner as any other land use within a local council area.

The Sex Services Premises Planning Advisory Panel (the Panel) was established by the NSW Cabinet Office in 2002. It comprised an independent chairperson¹ and single representatives from the Department of Planning², NSW Health, State Chamber of Commerce, Local Government Association of NSW and Shires Association of NSW, one metropolitan and one non-metropolitan council, the Sex Workers Outreach Project (SWOP), Private Worker Alliance (PWA) and a legal representative with expertise in sex services planning.

The Local Government Association of NSW and Shires Association of NSW administered the Panel under grant funding from the NSW Government. The prime purpose of the Panel was to “prepare guiding principles, model LEPs and DCPs, policies and conditions” that would assist councils with planning decisions about this new land use. The Panel has provided advice to a number of councils, which referred draft Local Environmental Plans and Development Control Plans for comment, and also commissioned these guidelines.

Purpose of the Guidelines

The Panel has produced the Sex Services Premises Planning Guidelines (the Guidelines) to assist local government in decisions they make in regard to sex services premises in their areas and to outline what constitutes better practice. Better Practice in this context means achieving occupational health and safety objectives and minimising the potential for corruption and the impact of premises upon neighbourhood amenity and the environment.

Content of the Guidelines

The Guidelines document is divided into 7 parts, being:-

- Part 1: Introduction
- Part 2: The Sex Industry in NSW
- Part 3: Legislative Framework
- Part 4: Analysis of Current Practice
- Part 5: Better Practice Planning Options
- Part 6: Achieving Better Practice
- Part 7: Conclusion

¹ Appointed by (the former) Department of Urban Affairs and Planning and the Local Government and Shires Associations of NSW.

² Now named the Department of Infrastructure, Planning and Natural Resources (DIPNR)

Part 1: Introduction

Part 1 provides background information outlining the history and rationale behind decriminalisation of the sex industry in NSW, and the resulting effect on the role of councils in regulating sex services premises. Part 1 also sets out the guiding principles.

Guiding Principles

The preparation of these Guidelines is based on the belief that the following guiding principles should inform all decisions by councils regarding planning for sex services premises:-

Appropriate planning for sex services premises can provide councils with greater control over the location, design and operation of sex services premises;

Sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions;

Planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impacts of each premises;

Planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients;

Establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers;

Assumptions made of sex services premises can be factually incorrect and can lead to inappropriate policy and decision-making processes as well as continued stigmatisation of the industry. Many premises are well run, low impacting, and capable of being located where other types of similar scaled premises may be located; and

Community engagement and professional development strategies can assist the community and professionals to understand the nature of sex services premises and to recognise that they are a legitimate land use to be regulated through the NSW planning system.

A **Glossary** is also included in Part 1 providing sex industry and planning definitions used within the Guidelines, which adopt more appropriate terminology than that contained in current legislation or in common usage.

Part 2: The Sex Industry in NSW

Part 2 presents a picture of how the sex industry in NSW operates, who is involved, and how various scales and types of premises differ, as a basis to the consideration of appropriate planning mechanisms. It is necessary to understand how the sex industry operates in order to qualify the potential impacts of the different types of premises and prepare appropriate planning controls. A lack of understanding of how the industry operates has previously resulted in planning approaches based on assumptions and generalisations, causing overly restrictive or unclear planning controls that council staff have difficulty explaining and that sex industry operators find unreasonable and unnecessary. Furthermore, inequitable treatment of sex services premises relative to other land uses frustrate the intentions of the 1995 law reforms, which aimed to protect the health and safety of workers and their clients, by driving underground certain sectors of the industry which can not comply with unreasonable restrictions.

The importance of using appropriate language is explored, e.g. 'sex work' as opposed to 'prostitution' and 'sex services premises' as opposed to 'brothels'.

The roles and responsibilities of health services providers and WorkCover in administering public health and occupational health and safety provisions are also outlined.

Part 3: Legislative Framework

Part 3 details the legislative framework for the regulation of sex services premises in NSW. The two main pieces of legislation governing sex services premises are the Restricted Premises Act 1943 (RPA) which applies under certain circumstances and the Environmental Planning and Assessment Act 1979 (EP&A Act). This legislation enables sex services premises to be a lawful land use in NSW

On occasions councils may need to refer to other legislation concerning sex services premises, including the Summary Offences Act 1988, Crimes Act 1900 or the Liquor Act 1982.

Since 1995 the NSW Police no longer have prime responsibility for the regulation of sex services premises. The police cannot arrest someone for being a sex worker, nor do they have the power to close a sex services premises simply because it is a business providing sexual services. The limited police role in relation to specific sex industry laws is further outlined.

Part 4: Analysis of Current Practice

Part 4 provides an analysis of the range of current planning approaches taken by local councils in NSW in regard to sex services premises, how these approaches operate, their impact and implications under the Guiding Principles set out in Part 1. The permissibility of sex services premises under LEPs is specifically covered, together with the types of controls contained with DCPs and council policies. It also reviews councils monitoring and enforcement practices.

Although the 1995 reforms enabled councils to regulate sex services premises much the same way as other businesses, an overriding observation in respect to current planning approaches is that there has been a tendency for councils to define all sex services premises as 'brothels' as defined under the RPA. As a result, councils have not fully utilised the mechanisms available under the EP&A Act to provide effective regulation of the different scales and types of sex services premises relative to other land uses.

Whilst many councils now have graded a large number of developments under the principle of 'appropriate assessment' into those that are 'exempt', 'complying' or requiring development consent, this has not been applied to the range of sex services premises with the following results:

- it does not encourage a compliant local sex industry
- the sex industry is not treated equitably with other land uses
- it fails to acknowledge the diversity and nature of sex services premises today
- certain sectors of the sex industry are unable to comply with generic and overly restrictive planning controls, driving those sectors 'underground'. This is contrary to the intent of the 1995 reforms and to health policies at a State, national and international level
- it discourages positive relations and communication with the local sex industry, and
- it is not a cost effective and efficient means of planning and does not uphold the intentions of the 1998 reforms of the planning system, which sought to streamline the process of development approval by appropriate assessment.

Part 5: Better Practice Planning Options

Part 5 outlines well researched options for councils in planning for sex services premises. Permissible options include better practice options which reflect planning approaches that achieve the guiding principles laid out in Part 1. These approaches should be:

- non-discriminatory**, treating sex services premises in a similar manner to other commercial enterprises
- recognising the difference in type and scale** of sex services premises in planning controls
- encouraging compliance** with councils controls by ensuring the controls are relevant and not unnecessarily restrictive, and
- promoting informed opinions** in councils and the wider community to avoid stigmatisation of the sex industry, which can impact on planning processes and decisions

Ensuring these principles underpin preparing and enforcing planning provisions enables a range of benefits for councils, the community and the sex industry. These benefits may be summarised as having the outcomes of high compliance, low costs, improved health and safety conditions, minimised opportunities for corruption and broad community satisfaction.

The planning options are formatted under two systems which can facilitate appropriate assessment.

Option 1, LEP permits sex services premises without specific provisions. Under the system offer by Option 1, councils make no special provisions for sex services premises. This system facilitates appropriate assessment 'by default'. Commercial sex services premises are treated equally to other commercial land uses and home occupations involving sex work are permitted as 'exempt developments' equally to other home occupations.

However, as noted within Option 2, where home occupations are permitted as exempt development, many LEPs contain the EP&A Model Provisions 1980 definition of "home occupation", which does not permit the employment of any non-resident workers. This can create a situation where individuals involved in a home occupation, regardless of the type of home occupation, are isolated and therefore at risk of crime and violence. Councils could amend the definition of home occupation in the LEP to allow the employment of a maximum of one non-resident worker for safety reasons. A number of councils already permit this intensity of use for other home occupation and councils could permit all home occupations complying with this definition without consent.

Option 2, LEP permits a range of sex services premises. Under the system offered under Option 2, councils design provisions to permit the full range of sex services premises that currently operate in most council areas. The system outlined under Option 2 facilitates appropriate assessment 'by design'.

This system fully utilises the discretionary planning mechanisms available under the EP&A Act. Private worker home occupations may be permitted as 'exempt development', private worker home businesses may be permitted as 'complying development' (after certification by council or an authorised certifier) and commercial sex services premises may be permitted after submitting a development application to the local council.

The two planning systems offered in Part 5 have headings showing **Advantages, Disadvantages** and **When is this approach useful ?**, providing more detailed guidance to councils considering which planning approaches they may wish to adopt.

Part 5 also has a section which considers options available to councils in regard to detailed development standards for commercial sex services premises. Firstly it clarifies the difference between prohibitions and development standards, and then where development standards should be located. It then considers when a specific DCP for commercial sex services premises might be developed, and alternately, whether provision for commercial sex services premises might be incorporated into existing council DCPs. Finally, it considers options for a range of specific development standards for commercial premises such as: locational standards, separation distances, anti-clustering and advertising controls, car parking, access for people with disabilities and health related issues. Monitoring and enforcement issues relating to DCP standards are also addressed.

Part 6: Achieving Better Practice

Part 6 examines the main barriers to achieving better practice planning for the sex industry. Although many of these barriers are referred to in Parts 4 and 5, this section of the Guidelines presents greater analysis of the barriers and suggested solutions to overcoming them.

Issues covered include: adequate consultation and communication with operators of sex services, informing and educating the community, prohibitive and overly-restrictive approaches, portrayal in the media, lack of acknowledgement of wider health and safety issues and prejudice against sex workers.

Part 7: Conclusion

Part 7 acknowledges that planning for sex services premises is a relatively new issue for local government and that a body of detailed research and guidance on current and future best practice planning approaches has been absent until now. The constraints upon council resources in addressing new issues in planning are also acknowledged. However the Guiding Principles, information, options and resources extensively researched and presented in these Guidelines will assist councils to move forward on this issue and to achieve best practice planning for all types and scales of sex services premises.

APPENDICES

APPENDIX A: References

This section provides an extensive list of reference materials used in the development of these Guidelines.

APPENDIX B: Better Practice Development Control Plan Provisions for Commercial Sex Services Premises

Better practice DCP provisions have been prepared following extensive research into the effectiveness of current policy planning for commercial sex services premises and of best practice approaches. The provisions have also been informed by consultation undertaken with the sex industry and local and State government representatives. The key provisions which should be incorporated within any Commercial Sex Services Premises DCP or policy are presented here. The DCP provisions assume the preparation of a stand-alone Commercial Sex Services Premises DCP however the provisions are also capable of being incorporated into existing DCP's. In this respect some councils do not wish to create new stand alone DCPs and seek to address emerging planning issues within existing DCPs having broad coverage eg: of a group of land uses (such as a Business Lands DCP) or relating to particular localities within the Council area.

Within Appendix B are 3 sub-appendices, Appendix B1, Appendix B2, and Appendix B3:-

Appendix B1: provides a sample Plan of Management recommended for all commercial sex services premises having five or more working rooms. The suggested Plan of Management outlines the detailed management and operational arrangements of a larger commercial sex services premises to ensure that important occupational health and safety obligations are met and that the premises operate in a well-run manner that minimises amenity impacts to surrounding areas.

Appendix B2: provides a sample Contact list for councils to adapt and add and provide within their LEP or DCP

Appendix B3: provides an extract from the Restricted Premises Act 1943. Section 17 outlines how councils may make an application to the Land and Environment Court for premises not to be used as a 'brothel'.

APPENDIX C: Better Practice Development Consent Conditions for Commercial Sex Services Premises

This section provides a list of consent conditions relevant to commercial sex services premises and based in part on the provisions provided in the Best Practice Development Control Plan in Appendix B. The conditions of consent would relate to approvals in respect to commercial sex services premises only. In this regard, it is anticipated that home-based sex work (eg: home occupations or home business) would be exempt or complying development and therefore not require development consent from Council including the imposition of conditions of consent.

APPENDIX D: Better Practice Exempt Development Provisions for Home Occupations and Complying Development Provisions for Home Businesses

This section provides councils with the option of providing either a generic category of 'home occupation' or facilitates council to create a specific category of 'home occupation involving sex work'. The latter would be appropriate where councils do not wish to create the potential for all home

occupations involving one non-resident to be a form of exempt development yet wish to acknowledge the health and safety issues related to sex work. A generic definition is provided, however may be adapted to address only home occupations involving sex work.

Similar options are provided for councils to either create a generic category of 'home business' or to create a specific category of 'home business involving sex work'. The latter would be appropriate where councils do not wish to create the potential for all home businesses involving up to two non-residents to be a form of complying development, yet wish to acknowledge the health and safety issues related to sex work. A generic definition is provided, however may be adapted to address only home businesses involving sex work.

APPENDIX E: Sample Fact Sheets

This section provides two sample fact Sheets to assist councils in educating and informing the general community about sex services premises and to answer common questions that may arise from local council regulations of the various scales and types of sex services premises. Sample Fact Sheet 1 addresses Key Facts and Questions about sex services premises in general, and Sample Fact Sheet 2 addresses Key Facts and Questions about private worker home occupations and private worker home businesses.

Part 1: Introduction

1.1 Background

Laws governing prostitution vary considerably across Australian States, with corresponding implications for the regulatory roles of local government. At the time of writing, in South Australia and Tasmania prostitution is illegal, while in the Northern Territory sex services premises are illegal but prostitution is not. In Victoria, Queensland and Western Australia a strict regulatory environment prevails and has been the subject of considerable debate over the impact of these approaches in controlling prostitution.³ NSW legislation, at least in theory, is clearly progressive and is held as a model by critics of the restrictive regulatory environment in all other States.⁴ The most profound changes to NSW legislation have occurred in the past decade and have resulted in a regulatory environment where local government now has prime responsibility for regulating sex services premises.

In 1979 the New South Wales Government repealed the Summary Offences Act, including the provisions penalising street sex work ('prostitution'), enabling street sex work ('prostitution') to be undertaken without being punishable as an offence.⁵ In 1995, the *Disorderly Houses Amendment Act 1995* (the DHA Act) abolished the common law offence of keeping a brothel.⁶ This made 'brothels' a legitimate land use in NSW, which could then be regulated in the same manner as any other land use under the Environmental Planning and Assessment Act (EP&A Act). At the same time, amendments were made to the Summary Offences Act 1988 and the Crimes Act 1900. These amendments abolished the common law misdemeanor of keeping a brothel, enabled brothel owners and employees to live on earnings derived from the operation of a brothel without fear of fines or imprisonment and created restrictions on the location of street sex work.

Prior to the DHA Act, all brothels were considered to be "*disorderly houses*" and could be closed down. Even orderly, well-run brothels could be closed and the sex workers forced onto the streets.⁷ Street work was considered undesirable as it could increase the safety risks to sex workers, impede access by health and social service providers due to the difficulties of maintaining regular contact with transient workers, and create amenity concerns in local areas.

In addition, the threat of closure of a brothel, which existed under the Disorderly Houses Act, had enabled police corruption through demands being made for money or free sexual services in exchange for police enforcing the law selectively.⁸ The Royal Commission into the New South Wales Police Force conducted by the Hon Justice Wood from May 1994 to May 1997 investigated issues of corruption surrounding police operations and the prostitution industry. In May 1997 the Royal Commission Final Report found evidence "*showing a clear nexus between police corruption and the operation of brothels*".⁹ Similar findings of police corruption associated with prostitution had previously been made in Queensland under the 1987 Fitzgerald Inquiry, raising the question at that time of whether it would be preferable to control and regulate prostitution rather than attempt to suppress it.¹⁰ In June 1995, the NSW Attorney General announced a reform of prostitution laws in NSW to remove the basis for an application under the Disorderly Houses Act to close a brothel that was not otherwise disorderly. The Royal Commission noted of this reform "*in permitting well-run brothels to operate, a potential opportunity for corrupt conduct on the part of police was closed off*".¹¹ A central aspect of the Amendment Act is harm minimisation, which means upholding the health and safety of sex workers and ensuring that this is not jeopardised by government legislation and its implementation. The DHA Act sought also to overcome the hypocrisy that had existed, whereby sex services premises were

³ Smith, 2003.

⁴ Smith, 2003.

⁵ Perkins et al, 1994:78.

⁶ The Disorderly Houses Amendment Bill was assented to on 22 November 1995 following considerable debate in both Houses on the moral and religious issues surrounding prostitution. The State opposition did not oppose the amendment.

⁷ As occurred in Newcastle in the mid 1990s where many sex services premises were closed down, leading to an increase in the number of street sex workers ("*Report of the Brothels Taskforce*" – 2001, page 24).

⁸ Perkins et al, 1994: 78.

⁹ NSW Government (1997) "*Royal Commission into the NSW Police Service: Final Report – Corruption*", p 13.

¹⁰ Perkins et al, 1994: 74.

¹¹ NSW Government (1997).

recognised as legitimate businesses by some sections of government such as the taxation department yet pursued by others as unauthorised or illegal.

With the passage of the 1995 reforms, local government became the determining authority for where a 'brothel' could be located, according to Environmental Planning Instruments (EPIs) such as Local Environmental Plans (LEPs). The appropriate regulation of 'brothels' through the planning system can ensure that the health and safety of sex workers and their clients is achieved in the spirit of the DHA Act, and that amenity impacts to surrounding areas are reduced or mitigated. It may also reduce the incidence of street prostitution.

However, as Part 4 of these Guidelines demonstrates, the success of planning regulations in upholding the health and safety objectives of the 1995 reforms depends to a very large extent on the way regulations are developed, implemented and enforced by councils. Since the 1995 reforms, NSW councils have responded in various ways to the regulation of sex services premises. Some councils use planning provisions in a way that has facilitated communication with, and compliance of, the sex industry. Others seek to prohibit sex services premises across their entire area or develop planning controls that are overly restrictive, discouraging operators from establishing legal or authorised premises. Prohibitive approaches to sex services premises conflict with the intent of the DHA Act and are not supported by the NSW Government¹².

In January 2000 the NSW Attorney General and the then Minister for Urban Affairs and Planning established a Brothels Ministerial Task Force. The Taskforce was required to review the success of the legislative changes after five years of operation and to assess the need for further reforms. In particular, it was commissioned to review the regulation of brothels by local councils and assess the success of occupational health and safety programs for sex workers, their clients and the public¹³. The Task Force comprised representatives from the Cabinet Office, Attorney General's Department, Department of Local Government, Department of Urban Affairs and Planning, Ministry for Police, WorkCover NSW, NSW Health, NSW Police Service and the Local Government and Shires Associations of NSW. It consulted with local government, sex workers, and social and health workers about the implementation of the reforms.

In November 2001, the Attorney-General of NSW released the "*Report of the Brothels Task Force*". The overall findings of the report were that the 1995 reforms were still relevant and appropriate, and that regulating brothels through the planning system can be an effective means of control. The report noted that the 1995 reforms have had a positive impact on access for sex workers to health services and occupational health and safety programs, which was a key objective of the DHA Act. However, the report identified that local councils need further support to optimise the potential of the planning system in regulating 'brothels'. The Task Force made the following three key recommendations:

- establish an advisory service to assist local councils in the planning and regulation of sex services premises ('brothels')
- amend the *Disorderly Houses Act 1943* to clarify the existing law concerning the evidence needed to determine that a premises is operating as a sex services premises (brothel), and
- continue occupational health and safety programs for sex workers.

Consequently, in 2001 the Disorderly Houses Amendment (Brothels) Bill clarified the evidence needed to determine that a premises is operating as a brothel and permitted councils to use circumstantial evidence. In addition, in early 2002, a Brothels Planning Advisory Panel was established by the NSW Cabinet Office as an advisory service to assist local government by providing advice on policy or operational issues relating to sex services premises. The Local Government Association of NSW and Shires Association of NSW administered the Panel under grant funding from the NSW Government. It comprised an independent chairperson¹⁴ and single representatives from the Department of Planning¹⁵, NSW Health, State Chamber of Commerce, Local Government Association of NSW and Shires Association of NSW, one metropolitan and one non-metropolitan council, the Sex Workers

¹² Specifically, the Minister for Infrastructure, Planning and Natural Resources.

¹³ NSW Government "*Report of the Brothels Taskforce*", 2001: 2.

¹⁴ Appointed by (the former) Department of Urban Affairs and Planning and the Local Government and Shires Associations of NSW.

¹⁵ Now named the Department of Infrastructure, Planning and Natural Resources (DIPNR)

Outreach Project (SWOP), Private Worker Alliance (PWA) and a legal representative with expertise in sex services planning.

In mid 2002, shortly after the Panel first met, the name of the Panel was changed to be the Sex Services Premises Planning and Advisory Panel in recognition that there existed a broader range of premises involving sex work than what was commonly known as brothels¹⁶. The Panel has provided advice to a number of councils, which referred draft Local Environmental Plans and Development Control Plans for comment, and also commissioned these Guidelines.

In summary, the 1995 reforms under the Disorderly Houses Amendment Act were designed to protect public health and minimise opportunities for corruption. It is essential that these objectives now form the basis of all local planning for sex services premises. Further changes in 2001 clarified the evidence requirements and gave councils greater powers to close down illegal sex services premises. Opportunities exist for councils to enable legal, well-run sex services premises within their areas, with resulting benefits in terms of upholding the amenity of surrounding areas, encouraging health and safety practices, reducing appeals to the Land and Environment Court and related expenses, and facilitating a strong bilateral communication between the sex industry and councils.

1.2 Purpose of the Guidelines

The purpose of these Guidelines is to assist local government in decisions councils make in regard to sex services premises in their areas, and to outline what constitutes better practice. Better practice in this context means achieving occupational health and safety objectives, and minimising the potential for corruption and the impact of premises upon neighbourhood amenity and the environment. It includes approaches upholding the following guiding principles.

1.3 Guiding Principles

These Guidelines are based on the belief that the following guiding principles should inform all decisions regarding planning for sex services premises:

- appropriate planning for sex services premises can provide councils with greater control over their location, design and operation
- planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients
- sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions
- planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impact of each premises
- reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council, the local community and health service providers
- provision and consideration of sound information enables appropriate policy and decision-making processes, and
- engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of sex services premises and recognise that they are a legitimate land use to be regulated through the NSW planning system.

Maintaining a focus on these guiding principles can assist all parties, including councils, the sex industry and the local community, by providing clarity and consistency of regulation, minimising amenity impacts and ensuring the health and safety of workers and clients.

¹⁶ Lgov report to the NSW Cabinet Office, 2001.

1.4 Glossary

These Guidelines use the following definitions, some of which adopt more appropriate terminology than that either contained in current legislation or in common usage (see Part 2.2):

accredited certifier is a private sector professional accredited by an accreditation body under the Act to issue certain certificates and perform specified duties under the legislation¹⁷

appeal is the right of a person to challenge a decision in court, for example, a decision by a council to refuse to permit a development proposal or any condition of approval.¹⁸

B&D premises means a premises where services involving bondage and discipline or sadism and masochism are provided. These services do not always include sexual services.

brothel is a term defined in the Restricted Premises Act 1943. This term is not used within these Guidelines, except in a historical context, because it does not reflect best practice terminology (viz sex services premises) and because it fails to appropriately differentiate between different scales of sex services premises.

commercial sex services premises means premises habitually used for the purposes of sex work (i.e. prostitution as defined by the Summary Offences Act¹⁹), or that have been used for that purpose and are likely to be used again for that purpose, but does not include a dwelling or dwelling-house in which sex work is undertaken as a home occupation or home business. Premises known as brothels, massage parlours and bondage and discipline (B&D) premises may fall within this definition.

Note: This is the same as the definition of brothel under the Restricted Premises Act with the exception of the use of the more appropriate terminology of 'sex services premises' and the deletion of reference to premises used by only one worker.

complying development is routine development that is clearly defined in council's LEP, DCP or in a SEPP and capable of prompt certification by private accredited certifiers as well as by councils.

development application (DA) means an application for consent to carry out development, but does not include an application for a complying development certificate.

development control plan (DCP) means a plan prepared by councils to provide more specific, more comprehensive guidelines for types of development or for development over a specific area than what is provided in an "environmental planning instrument". DCPs are made in consultation with the council's community, and are in the form of a written statement, and may include supporting maps, plans, diagrams, illustrations and other materials. They also identify the related local environmental plan(s) or deemed environmental planning instrument.

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile, also known as a residential flat, unit or apartment.

dwelling-house means a building containing 1 but not more than 1 dwelling, commonly known as a residential house.

environmental planning instrument (EPI), means a State environmental planning policy, a regional environmental plan, or a local environmental plan, and except where otherwise expressly provided by the EP&A Act, includes a "deemed" environmental planning instrument, sometimes referred to as an environmental plan.

escort agency means a business involving the arrangement of 'sex work', where sex workers are either based off-site whilst waiting for off-site work, or at the premises whilst waiting for off-site work (at

¹⁷ For more detail, see Department of Urban Affairs and Planning (1999) "Guiding Development Better Outcomes" in References - Appendix A.

¹⁸ Ibid.

¹⁹ "the act of prostitution includes sexual activity between persons of different sexes or of the same sex that comprises 'sexual intercourse' for payment and/ or masturbation committed by one person on another for payment".

the clients' hotel, home, etc), Clients do not visit the escort agency premises. Sex workers may visit the escort agency premises when applying for work, depositing or receiving money and credit card paperwork.

Note: an escort agency would be defined as ordinary commercial land use under most Local Council planning regulations, unless 'sex work' occurs habitually on the premises or has been used for that purpose and is likely again to be used for that purpose, thus it would be defined as a sex service premises. A 'private escort' is not an 'escort agency'.

exempt developments are listed in a council's LEP or DCP, or in a SEPP as development that, because it will have minimal environmental impact, does not require consent as long as predetermined standards and requirements are satisfied.

home business means a business carried on in a dwelling house that would be a home occupation as defined under the EP&A Model Provisions 1980, except that the definition allows the employment/professional engagement of not more than two non-residents in addition to residents, (either on the site of the home business or having a base at the site).

home occupation means an occupation, as defined under the EP&A Model Provisions 1980, "carried on in a dwelling-house or in a dwelling in a residential flat building by the permanent residents of the dwelling-house or dwelling which does not involve:

- (a) the registration of the building under the *Factories, Shops and Industries Act 1962*, the employment of persons other than those residents,
- (c) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products or grit, oil or otherwise,
- (d) the display of goods, whether in a window or otherwise,
- (e) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling-house or dwelling to indicate the name and occupation of the resident) or
- (f) the sale of items (whether goods or materials) or the exposure or offer for sale of items, by retail."

illegal use means operating an activity in an area where it is prohibited to use the land for the purpose of carrying out the activity under the relevant planning instrument

massage parlour means a commercial sex services premises, but which may not provide sexual intercourse.

private escort means a sex worker who conducts a business involving the arrangement of 'sex work' not within their premises.

private worker home business means a 'home business' *where sex services are provided* in a dwelling house, and that would be a home occupation as defined under the EP&A Model Provisions 1980, except that the definition allows the employment/professional engagement of not more than two non-residents in addition to residents, (either on the site of the home business or having a base at the site).

private worker home occupation means a 'home occupation' *where sex services are provided* in a dwelling-house or dwelling, and that would be a home occupation as defined under the EP&A Model Provisions 1980 except that the definition allows the employment of one non-resident in addition to residents.

safe house for street sex workers means a commercial sex services premises where "working rooms" are rented out to street sex workers by the hour or part thereof.

sex industry includes individual workers and a range of premises which:

- provide or arrange sex work (e.g. commercial sex services premises or 'brothels', massage parlours, B&D premises, 'safe houses' for street sex workers and home-based sex work);
- arrange sexual encounters (e.g. premises venues, swingers clubs and escort agencies);
- provide erotic entertainment or sell restricted material but where no prostitution or sex work take place (e.g. strip clubs, restricted premises).

sex-on-premises venue means premises where access by patrons is gained by the payment of a membership or entrance fee, and sexual encounters occur between patrons on the premises.

Note: This type of premises is not usually a 'sex services premises' unless it is habitually used for the purposes of 'sex work' or has been used for that purpose and is likely again to be used for that purpose, then it would be defined as a 'commercial sex services premises'.

sex services include prostitution as defined by the Summary Offences Act and further explained as being sexual intercourse with, or masturbation of, another person, using any part of the body or an object. Masturbation includes the use of the hands or any part of the body to sexually stimulate another person. Sex services are often described as including "full service", "body slides" and "hand relief".

sex services premises means premises where 'sex work' occurs habitually or has been used for that purpose and is likely again to be used for that purpose.

Note: Sex services premises may include 'commercial sex services premises', 'private worker home businesses', 'private worker home occupations', 'massage parlours' or 'safe house for street sex workers'. In addition, if 'escort agencies', 'B&D premises' or 'sex-on-premises venues' habitually provide sex services on the premises they become a "sex services premises"

sex work means the provision of 'sex services' for payment

sex worker means a person who provides 'sex services' for payment

swingers club means a premises where access by patrons is gained by the payment of a membership or entrance fee, and sexual encounters may occur between patrons on the premises.

Note: This type of premises is not usually a 'sex services premises' unless it is habitually used for the purposes of 'sex work' or has been used for that purpose and is likely again to be used for that purpose, then it would become a 'sex services premises'

unauthorised use or activity means operating a business without development consent in an area where consent is required under the relevant planning instrument

underground means the operation of an activity or use which is unauthorized or illegal

working room is a room in which sex work is undertaken (also sometimes referred to as a suite or parlour).

zoning is the system of categorising land uses as prohibited, requiring consent or not requiring consent within particular areas. Zones, such as Residential or Commercial, are shown in plan form and explained in environmental planning instruments (EPIs).

Part 2: The Sex Industry in NSW

2.1 Introduction

This part of the Guidelines seeks to present a picture of how the sex industry operates, who is involved, and how premises differ, as a basis to the consideration of appropriate planning mechanisms. It is necessary to understand how the sex industry operates in order to qualify the potential impacts of different types of premises and prepare appropriate planning controls. Review of current local council planning provisions indicates that, although generally well-intentioned, many reflect a lack of understanding of the nature of sex services premises and their day-to-day operation. As a result, planning approaches can be based on assumptions and generalisations about the sex industry. This can result in overly restrictive or unclear planning controls that even council staff have difficulty explaining and those in the sex industry find unreasonable and unnecessary. These controls can also diminish the equitable treatment of sex services premises relative to other land uses. Furthermore, they may frustrate the intentions of the 1995 reforms to protect the health and safety of workers and their clients by driving underground certain sectors of the industry that cannot comply with restrictions.

2.2 Terminology and perception

Using appropriate language is important as it distinguishes between the various types of premises involving sex work and the services that sex workers provide, counters prejudice and contempt, and reduces stigmatisation of sex workers. These Guidelines therefore use the definitions identified in Part 1.4.

The appropriate term to describe a provider of sexual services, and one that is now widely applied in the sex industry and by health and other agencies associated with it, is sex worker, not prostitute.²⁰ As well as avoiding the stigma and moral imagery associated with the latter, the term sex work is important for other reasons. Firstly, the term emphasises that, although sex work is concerned with sexual behaviour, it is merely another form of work and those performing it are primarily motivated by the conditions of their work rather than by some particular sexual interest.²¹ Secondly, the term sex work denotes the provision of a broader range of sexual services than is implied by the term prostitution, and accordingly, is more accurate and useful in policy making.

Similarly, the appropriate term to describe premises involving sex work is sex services premises rather than 'brothel', as it enables a distinction between the type and scale of premises involving sex work, ranging from dwellings where sex work is carried out by individual sex workers to large premises operated as commercial businesses. The impact on amenity is substantially different depending on the particular type and scale of premises and is therefore also more accurate and useful in policy-making.

The use of preferred terminology does not affect the application of relevant legislation, although consideration should be given to changing the terminology used in current legislation. It is simply more helpful from a policy position to use terms that more accurately describe particular premises and services and are morally neutral.

2.3 A profile of the sex industry

The sex industry in NSW consists of a variety of premises and services established to meet the different needs of sex industry clients. Businesses vary in size, services offered, cost, location, working conditions and clientele. The largest concentrations in the State occur in metropolitan Sydney, Newcastle and Wollongong.²² However, sex services premises are scattered throughout Sydney's suburbs and also exist in the major towns of regional areas.²³ The most common form of sex services

²⁰ The Hon. Ian Cohen in Hansard Extract 13 December 2001, NSW Legislative Council. Disorderly Houses Amendment (Brothels) Bill, second reading.

²¹ Perkins et al, 1994: 7.

²² Perkins et al, 1994: 148.

²³ Perkins et al, 1994: 148.

premises is a small to medium size business run by an owner/manager who employs 3-6 other workers.²⁴ Other businesses include single or partnership sex workers in home occupation settings. These private sex workers can be found in all suburbs of Sydney and throughout the state. Private sex workers do not contravene prostitution legislation but may be in breach of local council regulations, which have not permitted sex services businesses in residential zones.

The sex industry is an umbrella term for both sex services premises and other sex services as outlined below. Only sex services premises providing sex services on-site are covered by these Guidelines. Other sex-related services such as escort agencies, strip clubs and street work are not covered by these guidelines, as they do not constitute sex services premises. This distinction is explained further below. The sex industry as a whole is outlined here to provide an overall context to sex services premises.

2.3.1 Commercial sex services premises

Commercial sex services premises include medium (e.g. 5-10 working rooms) to large-scale (e.g. 10-20 working rooms) premises often established in commercial or industrial areas. Most provide specific services at a fixed price for a set period of time and have both regular and 'drop-in' clients.²⁵ Sex workers in commercial sex services premises may see an average of approximately 20 to 25 clients per week with a great deal of fluctuation between 'good weeks' (38 clients on average) and 'bad weeks' (13 clients on average).²⁶ Workers are employed to work in shifts, and share their shift with other workers depending on the size of the establishment, its location, operating hours and day of the week.²⁷ Premises may employ a receptionist, manager and security. Commercial sex services premises may range from large premises with lavish interiors and other facilities such as saunas and spas, to more basic premises, and they may include bondage and discipline (B&D) premises offering sexual services.²⁸

2.3.2 Small commercial sex services premises

Small commercial sex services premises of approximately 2-4 working rooms often establish in either residential or commercial areas, with or without council consent. Those operating in most residential areas are usually doing so discreetly but without development consent, as the use is usually prohibited in residential zones under council planning provisions. Most small commercial sex services premises provide specific services at a fixed price and have both regular and 'drop-in' clients. Workers are employed to work in shifts and may, but not usually, reside on the premises. The smaller scale of premises may preclude the employment of specialist security personnel.²⁹ Small commercial sex services premises provide an alternative to working in a larger commercial sex services premises, and some workers claim that it provides them with greater control over their choice of clients and working hours/conditions, and that working in smaller premises enables them to retain a larger proportion of the proceeds.³⁰

2.3.3 Home businesses involving sex work

A home business involving sex work (private worker home business) usually involves a resident private sex worker and other co-workers who do not necessarily reside on the premises. Such home businesses are often established in residential premises in commercial or residential areas. These businesses are notably different from commercial sex services premises. Private sex workers generally see fewer clients than sex workers in commercial sex services premises, and the time private workers spend with clients is usually flexible. Clients are usually regular and are received by appointment only.

²⁴ www.swop.org.au

²⁵ www.swop.org.au

²⁶ Lovejoy et al, 1991; Philpot et al, 1991; Philpot et al. 1988 (as cited in Harcourt, C (1994) "Prostitution and Public Health in the Era of AIDS") in Perkins et al, 1994:220.

²⁷ Perkins et al, 1994: 161.

²⁸ Perkins et al, 1994: 161.

²⁹ www.swop.org.au

³⁰ Perkins et al, 1994:124.

2.3.4 Home occupations involving sex work

Home occupations involving sex work (private worker home occupations) usually involve the residents, and up to one non-resident sex worker, who work in a flat or house or rented residence, either in a residential or commercial area. Appointments are made by telephone, and services and prices are fixed by negotiation. Most private sex workers see regular clients seeking a discreet and private experience.³¹

Private sex workers, particularly those who work alone from home or in private escort work, are at a high risk of violence, especially female private sex workers. Safety issues are overcome to a large extent by maintaining extensive phone networks with peers, working in pairs, and establishing a regular clientele. Furthermore, developing strategies to avoid conflict or violence to the sex worker and to ensure no disturbance is caused in the neighbourhood is an important part of a sole worker's modus operandi.^{32 33}

2.3.5 Escort services

Premises providing escort services are usually established in either residential or commercial areas, and operate as an office (escort agency premises). In most cases, appointments are made by phone, and services and prices are fixed by negotiation. The services are usually not provided at the escort service centre or base, but provided off-site in a hotel or client's home. The sex workers are either based at the escort agency premises or visit that premises to obtain work.

Escort services can include escort agencies, private escort workers and any sex worker undertaking escort work. An escort agency providing sexual services on the premises is regarded as a sex services premises for the purposes of these Guidelines. Alternatively, the sex workers are either based at the escort agency premises for off-premises work, or work on call but may visit the premises when initially applying for work, or to deposit or retrieve money and credit card paperwork. Under this arrangement, the escort agency is defined as an ordinary commercial land use under most local council planning regulations.

2.3.6 Massage parlours

Massage parlours are a type of commercial sex services premises. Massage parlours can include small (2-4 working rooms) or large (10-20 working rooms) premises and are usually established in residential or commercial areas. They will usually advertise as a "massage service" however may offer sexual services, or sexual services may be negotiated on a case by case basis in the working room. Clients, owners and staff and, to some extent, the wider community, do not consider the services as prostitution, nor the premises to be a sex services premises, as penetrative sex is not openly offered. However, under the law they are technically a sex services premises.

The operators of these premises may not identify as sex services premises or recognise the need for council consent.³⁴ This makes it important for council information to be clear, readily accessible to the sex industry and translated into different community languages. Massage premises may have regular or drop-in clients, and may employ a receptionist, manager and security on the premises.³⁵

2.3.7 Street sex workers

Street sex workers have a high profile in the community, however they represent a very small percentage of the sex industry³⁶. Most work is in areas where street work is well established, with an

³¹ www.swop.org.au

³² Perkins, 1994: 162.

³³ "Working for yourself has a lot to offer in terms of work conditions and control, but there can be problems too if you aren't careful. I tried to keep a low profile in the neighbourhood to avoid problems with the council, police or other residents of the area. None of my neighbours ever complained about me; in fact I doubt they even knew I was working from home since I only saw four to six clients a week...I only ever had one guy turn up without an appointment- he'd obviously got my address previously and I gave him such a roasting that he never came back" Roxy Blain in Perkins et al 1994:119.

³⁴ Pers comm SWOP representative 20.02.04 and further comments by submission dated 14 May 2004.

³⁵ www.swop.org.au

³⁶ www.swop.org.au

estimate of 120 workers in total working on any one night.³⁷ Street workers solicit clients who may be either on the street or in cars. Clients of street sex workers indicate that they visit street workers rather than commercial sex services premises because they prefer to be able to choose the worker and negotiate directly, providing a sense of anonymity to the exchange, and also that the services can be faster and cheaper.³⁸ Soliciting involves an active approach or offer to someone to purchase a sexual service, and services and prices are established by negotiation. Street sex work and soliciting is legal in NSW, with the exception of soliciting in licensed premises or in, or within view of, a church, school, hospital, or dwelling.³⁹

Sex work arising from soliciting usually occurs in a 'safe house', hotel, car or laneway. Violence is a serious issue for street workers, especially when the sex work occurs in clients' cars, rather than in hotels or in a 'safe house'⁴⁰ which provide safer environments for undertaking sex work. Safe houses can also overcome the conflict that can occur between police and street sex workers, as often police are under constant pressure from residents, businesses and local councils to keep sex workers away from areas.⁴¹

A study undertaken by NSW Health, in association with inner city sexual health centres and the Sex Workers Outreach Project (SWOP)⁴² highlights some differences between street work and work undertaken in commercial sex services premises (i.e. 'brothels' or 'parlours'). The study indicates the higher drug use (77%) of street sex workers compared to parlour sex workers (7%), lower rates of condom use, and higher rates of hepatitis B and C infection. A significant proportion (75%) of street workers experience violence at work. While there will always be workers who prefer the monetary rewards and flexibility of street sex work, the findings of this and other studies (see Perkins, 1994) demonstrate that the work conditions, health and safety and social support for street sex workers are far less satisfactory than for those working in sex services premises. These findings highlight the need for councils to support, rather than hinder, the establishment of well run, safe and discreet sex services premises within local areas. Premises at a fixed address also overcome the difficulties experienced by health and outreach service providers in reaching a transient street-work sector of the industry.

2.3.8 Safe house premises for street sex workers

Safe houses provide a safe haven for street workers to work in, providing rooms rented to sex workers, who usually solicit for work on the street, or their clients for the purpose of providing sexual services. Rooms are rented on a short-term basis and provide Personal Protection Equipment (PPE) in the form of condoms, gloves and lubricant. The sex workers are not employed 'in-house', nor do they live on the premises.⁴³ These businesses operate with a manager and receptionist on duty to improve safety and security for both sex workers and their clients.

2.3.9 Sex-on-premises venues

Sex-on-premises venues are premises that gain income from entrance and/or membership fees paid for the use of the premises for sex between clients. Typical premises include swingers, bondage and discipline (B&D) premises or clubs and sauna clubs that accommodate sexual encounters.⁴⁴ Premises may not always provide a sexual service, particularly in the case of B&D premises specialising in role-playing. These premises may not identify as a sex services premises and, as a result, may not recognise the need for council consent.⁴⁵

2.3.10 Strip clubs

Strip clubs are premises providing striptease, or nude, semi-nude, erotic, tabletop, podium dancing, or peepshows. Payment may be required to gain entry to/view the performance and the club may have a

³⁷ Harcourt et al, 2001: 84

³⁸ SWOP unpublished research.

³⁹ Summary Offences Act, 1988.

⁴⁰ Perkins, 1994: 147; Harcourt et al, 2001: 84, 88.

⁴¹ Harcourt et al, 2001: 85

⁴² Harcourt et al, 1998: In association with inner city sexual health centres and the Sex Workers Outreach Project (SWOP).

⁴³ South Sydney City Council (2000) "South Sydney Sex Industry Policy".

⁴⁴ Ibid.

⁴⁵ www.swop.org.au

liquor licence. Strip clubs are not sex services premises unless sex work habitually occurs on the premises.

2.3.11 Restricted premises (Adult bookshops)

Restricted premises such as adult bookshops sell restricted print and other sexually explicit material. In legal terms, they are premises where publications classified Category 1 restricted, Category 2 restricted or RC under the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth are shown, exhibited, displayed, sold or otherwise made available to the public. A restricted premises does not include a newsagency or pharmacy, nor any premises where prostitution or sexual intercourse occurs.

2.4 Sex services premises - Summary

In summary, of the various sex industry sectors listed above, the following are premises generally regarded as sex services premises and therefore are clearly the subject of these Guidelines:

- commercial sex services premises (2.3.1)
- small commercial sex services premises (2.3.2)
- massage parlours (2.3.6)
- home business involving sex work (2.3.3)
- home occupation involving sex work (2.3.4)
- safe house premises for street sex workers (2.3.8)

The single characteristic distinguishing all of these is the provision of sexual services within the premises. In some cases, premises providing entertainment such as strip clubs (erotic dancing etc), sex-on-premises premises venues or Restricted premises (selling restricted material), may also offer sexual services and, where this is the case, these premises would also be regarded as sex services premises. Depending on whether or not sexual services are offered on the premises, the following premises may or may not (respectively) be the subject of these Guidelines:-

- Escort agency;
- Sex on premises venues
- Strip clubs
- Restricted premises

Sex services premises accord with the definition of 'brothel' under the Restricted Premises Act 1943. However, as discussed previously in these Guidelines, the use of the term 'sex services premises' avoids the negative stereotypes associated with the word 'brothel' and facilitates recognition of a wider range of premises providing sexual services.

As with any other business, laws concerning tax, industrial relations, occupational health and safety, workers compensation, criminal law, licensing, anti-discrimination and public health are also relevant to sex services premises.⁴⁶

2.5 Who is involved with the sex industry?

There are 3 main groups of people involved with the sex industry:-

- Sex workers
- Clients of sex workers
- Health service providers

2.5.1 Sex workers

The majority of sex workers choose to work in the sex industry because of the flexibility and range of options that the industry provides. Sex workers have varying attitudes towards the industry, and factors such as education, access to services and attitudes of friends, employers and clients all affect

⁴⁶ swop.org.au.

workers' impressions of the industry, in the same way as with any other client service industry.⁴⁷ To work within the law in NSW, sex workers need to be 18 years of age.⁴⁸

The number of people working in the sex industry at any given time is difficult to estimate accurately, however the Sex Workers Outreach Project (SWOP) estimates that there are approximately 10,000⁴⁹ sex industry workers in NSW. 60% of these workers work in commercial sex services premises, with the remaining 40% working privately or on the street.⁵⁰ Despite a common perception of many people in the community that sex work is exploitative of women, it is clear from research and consultation that there are a variety of reasons for entering the sex industry. For most sex workers, the decision to undertake sex work is purely an economic one, just as it is for the majority of the community who undertake paid work.

Contrary to popular opinion and impressions given by the media, 'pimping' and drugs have a low incidence in most sectors of the sex industry (excluding street sex work).⁵¹ As with any other business, workplaces and operators vary in their approach to employment practices and workers' rights. Some sex workers report unfair dismissals, fines and bonds being kept, poor OH&S, and breaches of privacy and of other legislation. There have been a small number of cases of trafficking in people for the purposes of sexual servitude, where migrant sex workers are brought to Australia to work under unreasonable contracts, or deceptively coerced into the sex industry.⁵²

Also contrary to public perception, accounts by numerous sex workers reveal a high degree of personal satisfaction in their choice of work, with greater confidence and assertiveness, financial security, independence and a better understanding of men and women often cited as key benefits (see Perkins et al: 1994: 124; Bailey, 2003: pp 114,129, 157, 178). Many workers find the hardest part of sex work is the immense public stigma attached to the occupation⁵³, which affects them socially, economically and emotionally.⁵⁴ This stigma is experienced by workers in their relations with local councils, due to unreasonable restrictions placed on them by councils with respect to their occupation, lack of knowledge or assistance shown by council staff during planning enquiries, and compliance actions that actively pursue unauthorised sex services premises. As further sections of these guidelines indicate, one of the most significant problems in the sex industry is the lack of power workers can exercise over even the most basic working conditions - to work legally and without fear.

The popular image of a sex worker is that of a teenager or very young woman. Another assumption is that sex workers come from deprived, poverty-stricken backgrounds, however information from SWOP indicates the diversity of backgrounds and life stages of sex workers. For example, the average age of sex workers is 26, approximately 23% of workers in NSW are married, and a significant number have children who they are supporting. Approximately 16% of sex workers are currently students, and many workers are engaged in part-time work whilst their children are at school or to augment other work.⁵⁵ Workers in private situations tend to be older than street or parlour workers, and are usually experienced sex workers who have chosen to work independently after many years of working in commercial sex services premises. Their clients tend to be middle-aged to elderly businessmen, who prefer a more discreet encounter to attending a commercial sex services premises ('brothel') and who are regular callers.⁵⁶ Many male and transsexual sex workers also work privately.⁵⁷

Roberta Perkins and others in *"Sex Work and Sex Workers in Australia"* (1994) dispel many of the myths surrounding sex workers and their motivations for undertaking sex work. Perkins investigated the lives of female sex workers from surveys made over a period of eight years (1986-1994). She states that:

⁴⁷ www.swop.org.au

⁴⁸ www.swop.org.au

⁴⁹ SWOP submission dated May 2004.

⁵⁰ NSW Government (2001) *"Report of the Brothels Taskforce"*: 25.

⁵¹ Perkins et al, 1994: 159.

⁵² See www.scarletalliance.org.au *"Submission to Parliamentary Joint Committee on the Australian Crime Commission Inquiry into Trafficking in Women - Sexual Servitude"* (September 2003).

⁵³ Perkins, 1994: 124.

⁵⁴ See also - Scarlet Alliance and the Australian Federation of AIDS Organisations (1999) *"Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers from Discrimination"*, September 1999.

⁵⁵ SWOP submission May 2004.

⁵⁶ Perkins, 1994: 149.

⁵⁷ Male and transsexual sex work is examined in detail in Perkins, 1994: 175.

“What these sources demonstrate is that sex workers’ lives outside prostitution are not fundamentally different from those of other women. Prostitutes are not the purveyors of disease that many people assume them to be, and neither are most of them drug addicts. Where differences do exist, as in their criminal record and in the extent to which they are victims of sexual assault, these are not outcomes of sex work itself but occur most often outside prostitution and are a response to others’ perceptions of prostitutes”.

Perkins points out that many of the criminal records of sex workers arise from fines imposed upon them when sex work was illegal. Regarding health issues, Christine Harcourt in *“Prostitution and Public Health in the Era of AIDS”* (1994) notes that there is still no documented case of a female sex worker in Australia receiving or transmitting HIV infection during sexual intercourse with a client. Furthermore, there has been a decline in the rate of other sexually transmitted infections (STIs) in sex workers over the past decade.⁵⁸ Most sex workers value their health and have been instrumental in educating clients and peer sex workers about safe sex practices.⁵⁹ Australia has the lowest rate of HIV-AIDS amongst sex workers in the world, due to the voluntary development of a strong safe sex culture within the sex industry, promoted by sex worker organisations in each state and territory.⁶⁰

In recent years, groups representing the interests of certain sectors of the sex industry have emerged to support workers and participate in policy reform concerning the regulation of sex services premises. During the 1990s, a number of private sex workers formed advocacy groups in response to unsatisfactory working conditions experienced in some commercial sex services premises. The Private Worker Alliance (PWA) was formed in 2000 and is a network of independent sex workers in NSW, including those who work from home or in small collectives. The PWA seeks the accommodation of privacy, health and safety needs of sex workers in NSW laws and regulations. It has been active in recent years lobbying for reasonable and equitable planning controls that acknowledge the range in scale of sex services premises and allow home-based sex work in local areas.

In 2003 the Adult Business Group (ABG) was established to represent the interests of some commercial sex services premises operators and owners in NSW, and it has around 20 members, who are mainly Sydney-based owners of premises. The ABG is a central contact point for government and other organisations to reach owners/operators of sex services premises in order to ensure that they are consulted on policy matters.

2.5.2 Clients of sex workers

Clients of sex workers are primarily male and married or in stable relationships, although heterosexual couples are becoming more common as attitudes change.⁶¹ Research undertaken by Frances Lovejoy and Roberta Perkins indicates that 50% of clients are between 26 and 40 years of age and a large proportion are middle aged or elderly. Of all married clients, more than half have been married for over 10 years. Approximately 40% of clients have children.⁶² Clients come from a diversity of ethnic and cultural backgrounds and include aged or widowed pensioners, people who struggle to form conventional relationships, people with disabilities and those who are lonely, or in need of increased and/or different types of sexual fulfillment.⁶³ None of these groups of people fall under the label of ‘undesirables’, which community groups often assert are attracted to a sex services premises. As with sex workers, clients of sex workers are often portrayed negatively, as lamented by one client in Jacquelynne Bailey’s (2003) *“Conversations in a Brothel”*.

“The fact is that society looks down on us as dirty or sleazy just for being near prostitutes. As customers we are seen to be part of a sleazy underworld which exploits women. But this is an environment where everyone is respected and not judged”.

⁵⁸ In Perkins et al, 1994: 216.

⁵⁹ Pers comm. PWA 5.03.04.

⁶⁰ Australian Federation of AIDS Organisations Submission of Western Australian Prostitution Control Bill, February 2003. See www.afao.org.au. SWOP note that the very low rate of HIV-AIDS amongst sex workers in Australia is due in particular to the rapid action of sex workers themselves in developing peer uptake of condom use in the earliest days of the HIV-AIDS epidemic.

⁶¹ www.swop.org.au

⁶² Private Worker Alliance, Fact Sheet October 2001.

⁶³ Bailey, 2003: 12, 21-22.

Sex industry lobbyists, sex workers and clients assert that sex work undertaken by consenting adults for payment should not be subject to the moral condemnation levied at it by communities, the media, and local councils. They argue that there is a need to view sex work as neutrally as we would any other service business.

2.5.3 Health service providers

2.5.3 (i) NSW Health

NSW Health is responsible for addressing public health issues in sex services premises, promoting awareness of HIV-AIDS and other STIs, and providing a range of sexual health services. NSW Health has primary responsibility for dealing with complaints related to public health issues in sex services premises and for monitoring the health standards set out in the publication *“Health and Safety Guidelines for Brothels in NSW”* (2001).⁶⁴ These guidelines contain provisions for the protection of public health in regard to the premises such as food, pools/spas, waste management, ventilation, lighting and noise, together with practices carried out in the premises such as examination of clients, availability of information regarding Sexually Transmitted Infections (STIs) and access to the means of preventing STIs. NSW Health is also active in lobbying government for appropriate regulatory responses to sex services premises focusing on harm minimisation.

2.5.3 (ii) Sex Workers Outreach Project

The Sex Workers Outreach Project (SWOP) was established by NSW Health in 1990 as a project of the AIDS Council of NSW, and is funded predominantly by NSW Health. The project aims to minimise the transmission of sexually transmitted infections (STIs) and HIV-AIDS in the NSW sex industry, as well as providing a range of health, safety, support and information services for sex workers, management, clients and partners of sex industry workers. Prior to the existence of SWOP, the Australian Prostitutes Collective (APC), established in 1983, provided sexual health advocacy and advice to the sex industry.

SWOP works directly with approximately 750 sex services premises throughout NSW to achieve acceptance and maintenance of safe sexual and drug use behaviour. Services provided by SWOP are confidential and free of charge, and extend to women, men and transgender sex workers in NSW. SWOP seeks to reach workers in commercial sex services premises, private situations, those on the street, in B&D premises, strip clubs and other areas where commercial sex may be available in NSW. SWOP is active in lobbying for law and health reform, developing resources for all workers including those of non-English speaking background, and conducting training programs. SWOP works closely with many local councils and operators of sex services premises to ensure that the intention of the 1995 reforms to ‘prostitution’ laws is achieved, and to monitor the effectiveness of the reforms in practice. SWOP asserts that despite the cogent rationale for decriminalisation, sex industry reforms have not achieved effective regulation of the sex industry.⁶⁵

The National Strategy on HIV-AIDS, recognised globally as a model public health response, recognises the important role of sex worker initiatives such as SWOP in health promotion, and seeks to expand this role. It is important that planning controls do not create barriers to access by outreach services by establishing prohibitions or requirements that are difficult for premises to comply with, forcing sectors of the industry to operate underground.

2.5.3 (iii) WorkCover

WorkCover is responsible for administering legislation relating to the health, safety and welfare at work of all employees and other people at the workplace under the Occupational Health and Safety Act, 2000 and Occupational Health and Safety Regulation 2001. In conjunction with NSW Health, WorkCover actively promotes health and safety, and the prevention of workplace injury and illness in the sex industry. WorkCover periodically monitors businesses’ compliance with relevant legislation by sending inspectors to the workplace.

⁶⁴ NSW Health and WorkCover NSW (2001).

⁶⁵ www.swop.org.au

2.5.4 Outreach and support service providers

Various service providers, in particular SWOP, and many of the specialist sexual health services, provide outreach, clinical and interpreting services and immigration referral, and develop specific resources for sex workers from a non-English-speaking background. Other significant service providers to sex workers include the Gender Centre and the NSW Users and AIDS Association.

A much wider network exists of State, Federal and international organizations such as the United Nations (through the UN Declaration of Commitment on HIV/AIDS, 2001) with the aim of protecting the rights, health and safety of all workers including sex workers. The Australian Federation of AIDS Organisations (AFAO) and the AIDS Council of NSW (ACON) specifically argue for the rights of sex workers.

The Scarlett Alliance is the peak national organisation representing sex workers, and it lobbies actively for law reform in various Australian states in conjunction with the Australian Federation of AIDS Organisations. In 2000, the Scarlett Alliance and AFAO produced a document entitled "*Principles for Model Sex Industry Legislation*" (see References - **Appendix A**) which sets out a series of principles for law reform based on optimising human rights, occupational health and safety, and working conditions.

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Part 3: Legislative Framework

3.1 Introduction

This Part of the Guidelines details the legislative framework for the regulation of sex services premises in NSW, however it does not constitute a professional legal opinion. Subsequent Parts of the Guidelines provide detail on the way in which the NSW planning system is currently used to regulate sex services premises (Part 4) and how it could be used more effectively (Part 5).

In summary, the two main pieces of legislation governing sex services premises are the Restricted Premises Act 1943 (RP Act), which applies under certain circumstances and the Environmental Planning and Assessment Act 1979 (EP&A Act). Sex services premises are also subject to other State government legislation.

3.2 Restricted Premises Act 1943 (formerly Disorderly Houses Amendment Act)

In mid 1995, following the Royal Commission investigations into the connection between police corruption and the operation of sex services premises, the Government announced that a reform of prostitution laws in NSW would be undertaken. The *Disorderly Houses Amendment Act 1995* (DHA Act) which followed, was responsible for decriminalising 'brothels', while related amendments to other Acts enabled 'living off the earnings' of a 'prostitute'. With the passage of the legislation, a 'brothel' or sex services premise became a land use to be regulated by a local council under the EP&A Act.⁶⁶ The DHA Act also provided a mechanism for local councils to apply to the Land and Environment Court to close a 'brothel', as explained further in this section.

In November 2002, the Disorderly Houses Act (May 1943) was renamed the Restricted Premises Act 1943 No 6 and the Disorderly Houses Amendment Act (December 1995) was repealed. The Restricted Premises Act (RP Act) provides a definition of 'brothel' and contains the provisions that enable councils to take action to close a 'brothel' that is causing a significant disturbance in a local area. The RP Act defines a 'brothel' as:

"premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely again to be used for that purpose. Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution."

In terms of the relationship between the RP Act and the EP&A Act, case law has assisted in reinforcing that the Acts have complementary roles.⁶⁷

Part 3 of the RP Act contains the provisions for 'Brothels'. Section 16 establishes that a Disorderly House declaration cannot be made solely on the grounds that premises are a 'brothel'. Section 17 contains the criteria under which an application to the Land and Environment Court can be made for premises to be closed down, and Section 17A establishes the evidence that may be used to establish that premises are being used as a 'brothel'. Section 17 is discussed further in Part 3.3.2.

3.3 Environmental Planning and Assessment Act 1979

Sex services premises can be regulated under the Environmental Planning and Assessment Act 1979 (EP&A Act) in the same manner as any other land use within a local council area. The Act provides for more detailed regulation to be prepared under the provisions of environmental planning instruments (EPIs), which are statutory planning documents, together with development guidelines (DCPs etc), which are policy documents.

⁶⁶ Smith, 2003.

⁶⁷ *Southside Business Centre v Rockdale City Council* as cited in Crofts, P in Womerah Services and MG Planning Pty Ltd (2003) "Planning Guidelines for Sex Services Premises".

3.4 Environmental planning instruments

Environmental Planning Instruments (EPIs) include State Environmental Planning Policies (SEPPs), Regional Environmental Planning Policies (REPs) and Local Environmental Plans (LEPs).

At present there are no SEPPs or REPs relating specifically to sex services premises. However, the NSW Government has made amendments to other State policies concerning the permissibility of sex services premises, including SEPP 4 - Development Without Consent and Miscellaneous Exempt and Complying Development and SEPP 22 - Shops and Commercial Premises.

SEPP 4 allows certain types of land uses and minor alterations to buildings without the need for council consent, but Amendment No. 9 to SEPP 4 excluded 'brothels' and alterations to 'brothels'. Two reasons were given for the amendment. First, by removing sex services premises from SEPP 4 councils could undertake an environmental impact assessment of the proposal via the submission of a development application. Second, the amendment sought to maintain the integrity of SEPP 4, which is to permit development of minor environmental significance without consent.⁶⁸ Sex services premises were not considered to be minor development, although much more is known today of the range in type and scale of sex services premises.

Similarly SEPP 22 - Shops and Commercial Premises allows commercial premises to undergo a change of use from one commercial use to another, even if the proposed change of use is prohibited in that zone under another planning instrument. SEPP 22 was amended to prevent this type of change of use where the proposed use is a sex services premises, in order to permit local councils to consider the merits of a premises via submission of a development application.

3.4.1 Local Environmental Plans (LEPs)

The most common means of regulating sex services premises has been via an LEP prepared by a local council under the EP&A Act and approved by the Minister for Planning (State Government). An LEP establishes the legal framework for planning in local areas. It zones land for particular land uses, establishes the categories of development (e.g. exempt, complying, requiring development consent), sets development standards and lists additional matters for consideration for particular development types or places.

LEPs must not be inconsistent with SEPPs or REPs or with Ministerial directions under section 117 of the Act. At the present time, there are no 117 Directions or Departmental Circulars issued to NSW councils in regard to preparing LEPs for sex services premises, however the Department has provided advice following the introduction of the 1995 legislative reforms. This advice has consistently held that the Department would not support local plans seeking to introduce a blanket prohibition on 'brothels' in local areas.

On 29 December 1995 the then Department of Urban Affairs and Planning⁶⁹ wrote to all local councils advising of the commencement of the Disorderly Houses Amendment Act 1995 on 8 December 1995. The advice noted that "as a result, it is no longer a criminal offence to keep a brothel" and that "brothels are now a legitimate land use which can be regulated through local environmental plans (LEPs)". In regard to council plan-making functions, the Department advised that:

where 'brothels' are not prohibited by an LEP, council may consider a development application for a 'brothel' in the same way as for other permissible development (i.e. it can include the term 'brothel' in the list of permissible uses and the 'Definitions' of the LEP)

if a 'brothel' is not specifically defined in an LEP it would generally come under the definition of "commercial premises"

blanket prohibition of 'brothels' through LEPs will have the effect of making the establishment of a 'brothel' illegal under planning law and this is not supported by the Department "as it contradicts the intent of the Government's amendments to the DHA, may result in increased street prostitution and could encourage attempts to corrupt council staff"⁷⁰, and

⁶⁸ Letter from the Department of Urban Affairs and Planning (now DIPNR) to General Managers, all NSW councils, 15 February 1996.

⁶⁹ Now the Department of Infrastructure Planning and Natural Resources (DIPNR).

⁷⁰ Letter from the Department - reiterated to council on 15 February 1996 (advice on Amendment No. 9 to SEPP 4) and 16 July 1996.

'brothels' are more suitable in commercial and industrial areas that are not adjacent to schools or facilities frequently used by children⁷¹.

On 16 July 1996 the Department advised councils that they had the option of limiting 'brothels' to areas zoned for industrial purposes. It noted that "Councils now have more scope in nominating which areas are suitable for the location of brothels".⁷² The advice noted that the Department would not object if 'brothels' were restricted to industrial areas, if that is appropriate to the local circumstances. This advice was in response to community concerns about the possibility of 'brothels' being located in shopping centres. Therefore, councils could restrict 'brothels' to industrial areas that are not adjacent to schools or facilities frequently used by children. However, the Department restated that the Minister does not support the blanket prohibition of 'brothels' throughout a local government area, as this was contrary to the intention of the 1995 legislative changes to 'prostitution' laws.⁷³

A major overhaul of the EP&A Act occurred in 1998 and provided a system of 'appropriate assessment' to ensure that approval requirements reflect the nature and scale of developments.⁷⁴ Councils are able to categorise development into 'exempt' (i.e. no application is required), 'complying' (i.e. development complies with pre-established standards) and that of development requiring formal consent by submission of a development application.

3.4.2 Development Control Plans (DCPs)

DCPs are policy documents prepared under the EP&A Act to provide detailed planning guidance for land uses and support the provisions of an LEP. A DCP may include controls for matters concerning location, building design, access for people with a disability, car parking, amenity and the like. There is considerable scope for DCPs to regulate development, including inserting specific criteria over and above that included in an LEP with which development should comply.

On 15 February 1996, the Department advised NSW councils that, where 'brothels' are not prohibited by an LEP, a DCP cannot be used to prohibit 'brothels' as it would be contrary to s.72 (3) of the Environmental Planning and Assessment Act 1979 which requires that a DCP "...generally conform to the provisions of the LEP...". Decisions by the Land and Environment Court also support this advice.⁷⁵

3.4.3 Development assessment

Assessing Development Applications (DAs) under Part 4 of the EP&A Act provides a further mechanism for consent authorities to regulate the operation of sex services premises. In considering a DA, a consent authority is required to take into consideration relevant matters specified in section 79C of the Act as well as its own statutory and policy documents.

Section 79C of the EP&A Act contains broad assessment criteria in order to permit a merit based assessment process.⁷⁶ It requires a consent authority to consider amongst other matters:

- the provisions of any LEP and DCP
- the likely impacts of the development (environmental, social and economic)
- the suitability of the site for the development
- any submissions made by the public, and
- 'the public interest'.

⁷¹ Letter from the Department of Urban Affairs and Planning (now DIPNR) to General Managers, all NSW councils, 29 December 1995.

⁷² Letter from the Department of Urban Affairs and Planning (now DIPNR) to The General Manager, all NSW councils, 16 July 1996.

⁷³ Letter from Department of Urban Affairs and Planning (now DIPNR) to the General Manager, all NSW councils, 16 July 1996.

⁷⁴ NSW Department of Urban Affairs and Planning (now DIPNR) (2001) "Guiding Development Better Outcomes", Practice Note (September 1999).

⁷⁵ Letter from the Department of Urban Affairs and Planning (now DIPNR) to the General Manager, all NSW councils, 15 Feb 1996.

⁷⁶ NSW Department of Urban Affairs and Planning (now Department of Infrastructure, Planning and Natural Resources) "Guiding Development Better Outcomes - Interpreting section 79C, matters for consideration" (August 2001).

The Land and Environment Court has concluded that the matters listed in section 79C are not the only matters a consent authority may consider, and that the scope of development assessment is only limited by the objectives of the EP&A Act.⁷⁷

A key issue in assessing DAs for sex services premises is determining the impacts of a sex services premises. Section 79C requires consideration of the likely impact of development on the natural and built environments, however the definition of environment is very broad and *'includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings'*.

The Department of Planning, Infrastructure and Natural Resources *Guiding Development* practice note *"Interpreting section 79C - matters for Consideration"* provides further guidance on the types of impacts which may be considered having regard to best practice and recent appeals in the Land and Environment Court. Economic impact is raised in the context of residents' concerns about the loss of property value if a sex services premises is approved in the neighbourhood, although this is not generally a matter to which councils and the Land and Environment Court have been able to give much weight. However, the issue most commonly raised is social impact, and it is pertinent to examine this aspect of development assessment in further detail having regard to recent case law.

Section 79C(1)(b) of the EP&A Act refers to the need for a consent authority to consider the *"social and economic impacts in the locality"* of the development proposal. As the words imply, this subsection is not concerned with broad social and economic effects of the development proposal, but with its effects in the *locality*. The Department's practice note states that questions that might be asked in regard to social impact relate to the interaction between the new development and the existing community include:

- is it an appropriate location and a compatible use?
- are there health and safety issues?
- will the proposal generate a need for community services and facilities?
- will people be displaced or will existing social networks be affected?
- does the proposal threaten the local community's desired future character for the locality?⁷⁸

A dimension of social impact relating to sex services premises is moral concerns. In regard to this matter, the Land and Environment Court (LEC) has generally confirmed that it is *"not a court of public morals"* and that *"questions of morality do not arise directly out of planning and environmental matters"*.⁷⁹ In *Liu, Lonza & Beauty Holdings Pty Limited v Fairfield City Council* the Court (Murrell, A.J) rejected the council's submission that community standards and views on the morality of sex services premises ('brothels') were a relevant social matter for the council to consider in determining a DA. She noted that matters of morality could not, of their own be assumed as 'public interest' matters:

"The appropriate legal vehicle for any regulation of morality is the criminal law. In New South Wales both prostitution and brothel operation have recently been "decriminalised". It could not be in the public interest that local councils or this court now assume the mantle of moral arbiter".⁸⁰

However, Murrell found that while morality per se was irrelevant, the demonstrable social effect of a particular brothel use was a relevant consideration under the EP&A Act.

With regard to social impact in the form of amenity considerations, in the majority of cases the Court requires clear evidence of the potential for impact⁸¹. In the recent appeal of *Xiao Ping Ai v Newcastle City Council*, the Council put forward a number of perceived impacts. This case involved the use of a dwelling house in a mixed-use area for the purpose of a sex services premises where the subject site

⁷⁷ *Carsens v Pittwater Council*, November 10, 1999 as cited in Guiding Development Better Outcomes *"Interpreting section 79C, Matters for consideration"*.

⁷⁸ NSW Department of Urban Affairs and Planning (August 2001) now Department of Infrastructure, Planning and Natural Resources.

⁷⁹ Talbot J in *Dennis v Parramatta City Council* – (1981) 43 LGRA 71.

⁸⁰ NSW LEC, unreported, 23 December 1996.

⁸¹ Crofts, P (2003) *"Land and Environment Court Sex Services Planning Case Summaries"*.

was adjoined on both sides by residential dwellings. The Council's claims of amenity and social impacts included that:

- intoxicated people might come to the sex services premises ('brothel') from time to time
- the proposed sex services premises might lower the standard or tone of the area
- safety issues likely to be caused by those attending the sex services premises
- people might knock on the wrong door, and
- the sex services premises would diminish the value of properties.

The Commissioner found no evidence for the majority of the claims and, after carefully weighing the potential impacts, concluded "*that these have not reached a threshold that would cause me to refuse the application*".⁸²

A broad concept of social impact has also been applied by the Court, and has allowed subjective, intangible social impacts in a locality to be considered. In *Perry Properties P/L v Ashfield Municipal Council (No 2)* the Court considered the issue of amenity and noted that the concept of "amenity" in a town planning context "*transcends merely physical content*".⁸³ Further, the Court noted that paragraph (b) of s 79C gives effect to a wide scope of "*likely impacts*" of a proposed development, including environmental, economic and social impacts, and does not refer to the term "amenity". The Court interpreted this to mean that under section 79C(1)(b) of the EPA Act, a consent authority has a wider scope to consider the social impacts in the locality and is not limited to those impacts that adversely affect the amenity of the neighbourhood. In the '*Report of the Brothels Taskforce*' (2001) legal advice on this case provided by Brian Preston SC stated that

*"It might be argued that this more recent approach accords better with the Department's Guide to section 79C....which requires consideration of matters that are internal and make the community what it is, including social cohesion, community structure, values and beliefs, and a sense of place and community".*⁸⁴

The issue of social impact was again raised in *Dixon & Anor v Burwood Council*.⁸⁵ In this case, the Court accepted that "*the concept of amenity itself is wide and flexible and can include the subjective perception of residents in relation to the locality in question.*" On appeal, Justice Pain held that the Commissioner was correct in taking into account the values of the Greek Orthodox religion, including the conservative moral and sexual standards, when considering whether there was a detrimental social impact resulting from the development. Justice Pain stated that '*It seems to me there are circumstances where a social impact resulting from strongly held religious or cultural views resulting in behavioural changes in relation to a brothel can be relevant in terms of assessing social impact*'.

These legal precedents are case specific, and the findings should not be taken out of context and applied universally. They are discussed here only to provide an insight into how the court has viewed social and moral issues to date. The cases indicate that, while there is some latitude in the interpretation, there must be sufficient evidence of social impact for, as with any judicial process, the absence of evidence will always substantially diminish a case before a court. In this context, it is not appropriate for councils to make broad assertions such as that a sex services premises, by virtue of the activities taking place, creates a moral offence and, therefore, social impact.

Furthermore, planning for sex services premises is a relatively new issue for local government and the LEC. Case law has reflected a somewhat shifting pendulum on the issue of social impact, however, as council knowledge and understanding about the nature of sex services premises increases, it is possible that questions of impact may be dealt with more effectively at the local level without the need for escalation to the LEC.

⁸² Commissioner Watts in *Xiao Ping Ai v Newcastle City Council* [2004] NSWLEC 17 revised – 19/01/04.

⁸³ As quoted in NSW Government (2001) "*The Report of the Brothels Taskforce*": 43.

⁸⁴ As quoted in the "*Report of the Brothels Taskforce*":45.

⁸⁵ [2002] NSW LEC 190.

3.5 Implementation and enforcement

One of the most significant issues for local councils is illegal sex services premises operating in their areas. Councils have been frustrated that, after costly and time consuming court cases to close illegal sex services premises, the premises have simply re-opened elsewhere in a local area.

The regulation of sex services premises may be enforced under the *Environmental Planning and Assessment Act 1979* (EP&A Act) or the *Restricted Premises Act 1943 No 6* (formerly *Disorderly Houses Amendment Act 1943*). The two Acts provide complementary regimes that can be used in conjunction to regulate and control the inappropriate use of premises as a sex services premises ('brothel'). However, different evidentiary requirements exist in relation to the different regimes under the two Acts. One pertinent distinction is the requirement under the Restricted Premises Act (section 17(3)) of "*sufficient complaints*" in relation to the operation of a sex services premises. No such requirement exists for action brought under the EP&A Act.⁸⁶

3.5.1 Enforcement under the EP&A Act

Councils can ensure the proper implementation and enforcement of the EP&A Act under Part 6 of the Act. A local council may issue an order under section 121B(1) of the EP&A Act to close an unauthorised or illegal sex services premises, to require the operator to submit a development application or to comply with the conditions of the development consent for the premises. This is the same procedure for all land uses in a council area. The operator may appeal the order to the Land and Environment Court, which may revoke, confirm or modify the order. If the operator does not appeal and refuses to comply with the order, the council may prosecute in a local court or the Land and Environment Court. The council, or any other person, may apply to the Land and Environment Court to remedy or restrain a breach of the Act, which includes the unauthorised or illegal operation of a sex services premises.

3.5.2 Enforcement under the Restricted Premises Act

A local council may also take action under the Restricted Premises Act 1943 to close a sex services premises even if it is operating lawfully under the EP&A Act. This extra tier of enforcement provisions available to councils to regulate sex services premises is over and above that available for all other land uses.

Under Section 17 of the RP Act, a council may make an application to the Land and Environment Court for an order to close a sex services premises ('brothel' under the RP Act). However, a council cannot make this application unless it has received sufficient complaints about the sex services premises to warrant making the application. The complaints must have been made by:

- residents of the area in which the sex services premises is situated who live in the vicinity of the sex services premises
- residents of the area in which the sex services premises is situated who use, or whose children use, facilities in the vicinity of the sex services premises, or
- occupiers of premises that are situated in the area in which the sex services premises is situated and in the vicinity of the sex services premises.

The council's application must state the reasons why the sex services premises should be closed by the Court, and must be based on whether one or more of the following criteria under Section 17 of the Act exist:

- the sex services premises is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities
- the operation of the sex services premises causes a disturbance in the neighbourhood when taking into account other sex services premises 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

⁸⁶ NSW Government (2001) "*Report of the Brothels Taskforce*": 76.

- sufficient off-street parking has been provided if appropriate in the circumstance
- suitable access has been provided to the sex services premises
- the operation of the sex services premises causes a disturbance in the neighbourhood because of its size and the number of people working in it, and
- the operation of the sex services premises interferes with the amenity of the neighbourhood.

The test for the council is therefore two-fold. First, it must demonstrate that there have been sufficient complaints against the premises by the relevant people identified in the RP Act, and second, the complaints must be based on the reasons as outlined above. In making its determination, the Court must consider the matters under Section 17 and any other matter it considers relevant.

Section 17 is important as it allows members of the public to lodge a complaint if a sex services premises is causing problems in relation to noise, parking, sanitation or other matters. It does not allow antagonistic groups, who believe that prostitution should be illegal, to take a case to close down a sex services premises. Ordinarily, an isolated single complaint would also not be sufficient. Having regard to the nature of the use, even a discreet, unobtrusive and inoffensive sex services premises may attract the occasional complaint. This would not be sufficient for the purposes of an application to close a sex services premises under the DH Act. Some repetition or continuity of complaint would ordinarily be required and must also be substantiated.⁸⁷

3.5.3 Evidentiary requirements

The ability to establish that a premises is operating as a sex services premises for the purposes of commencing enforcement action under either the EP&A Act or RP Act depends on the particular definition of sex services premises within an environmental planning instrument. However, most planning instruments adopt the definition contained in the RP Act, sometimes with minor amendments. The definition at present requires that the premises have not only been used for the purposes of 'prostitution', but that this use is habitual. Evidence of habitual use for 'prostitution' can be either direct or circumstantial.

3.5.3 (i) Direct evidence

Direct evidence could be obtained from persons who have used the services of sex workers ('prostitutes') on the premises, or from sex workers who work or have worked at the sex services premises. This may be from customers of the sex services premises or a private investigator who is employed for the purpose of obtaining this evidence. It is possible (albeit unlikely) that sex workers who have worked at the premises might be prepared to provide a statement. Alternatively, these persons could be subpoenaed to give evidence of the enforcement action at the trial. Direct evidence could also be obtained by way of admissions found in letters to the council or to other persons, or in a record of interviews.⁸⁸

3.5.3 (ii) Circumstantial evidence

The *Disorderly Houses Amendment (Brothels) Act 2001* established that councils could rely upon circumstantial evidence in seeking to prove that premises are being used as a sex services premises (brothel). This evidence could be used to make application to the Land and Environment Court under Section 17 of the DH Act or the Environmental Planning and Assessment Act 1979 to close down a sex services premises. The effect of the amendment was to give greater powers to councils to investigate sex services premises and to assist them in satisfying the Court that the premises are used as such.

A note to the Section 17A established that the following might be used as circumstantial evidence of the premises being used for prostitution:

- persons leaving or entering the premises including the number of people frequenting the premises, frequency of visits and the gender of visitors
- advertising in papers, directories, internet and signage on the premises

⁸⁷ NSW Government (2001) "*Report of the Brothels Taskforce*": 20.

⁸⁸ Legal Advice from Brian Preston, SC as appended to the "*Report of the Brothels Taskforce*": 26.

- appointments with persons at the premises such as use of advertised telephone numbers or other contact details
- information of use for prostitution such as books and accounts
- arrangements of premises, furniture and equipment or articles.

The Amendment Act explicitly states that articles or equipment facilitating or encouraging safe sex practices do not, on their own, constitute evidence that the premises are used as a sex services premises ('brothel'). This clarification was to ensure that sex workers are not drawn to jeopardise their health and safety, or that of their clients, by refusal to keep an adequate supply of safe sex equipment on the premises. However, concerns have nonetheless been raised with the use of circumstantial evidence, as discussed further in the review of current practice under Part 4.

3.6 Other related legislation

On occasion councils may need to refer to other legislation concerning sex services premises including the following:

3.6.1 Summary Offences Act 1988

The Summary Offences Act 1988 defines 'prostitution', and many councils have incorporated this definition in their LEPs. Although the primary tools for regulating sex services premises are the EP&A Act and RP Act, the Summary Offences Act nonetheless stipulates that it is an offence to use any premises for massage or exercise premises, photographic studios and premises providing services of a like nature for the purpose of 'prostitution' (Section 16). Other offences under the Act are:

- living on the earnings of sex work involving another person, unless the person owns, manages or is employed in, the sex services premises (Section 15)
- coercing another person into sex work (Section 15A)
- advertising the use of premises for the purpose of sex work (Section 18) and advertising for a sex worker (Section 18A)
- a street sex worker seeking out a client or clients in an area which is near or within view from a dwelling, school, church or hospital (Section 19)
- clients soliciting another person for the purpose of sex work in a road or road related area, near or within view from a dwelling, school, church or hospital or in a school, church or hospital (Section 19A), and
- taking part in sex work in, or within view from, a school, church, hospital or public place, or within view from a dwelling or in a vehicle, under the same proximity criteria (Section 20).

3.6.2 Crimes Act 1900

The Crimes Act, amongst other matters, defines sexual intercourse, outlines offences for child (under 18 years old) sex work and places restrictions on the display of offensive material in restricted premises.

3.6.3 Liquor Act 1982

The Liquor Act makes it an offence to allow sex work in licensed premises. A sex services premises should therefore not be permitted to serve alcohol or obtain a liquor license.

3.7 Police Role

NSW Police no longer has prime responsibility for the regulation of sex services premises. The police cannot arrest someone for being a sex worker, nor do they have the power to close a sex services premises simply because it is a business providing a sexual service. However, as with councils, the police may also use the RP Act to close a sex services premises ('brothel') if it is disorderly (i.e. causing demonstrable impact or disturbance).⁸⁹ The police role in relation to specific sex industry laws is now limited to the following:

⁸⁹ SWOP: www.swop.org.au

where street sex workers solicit and work in prohibited areas
advertising and use of massage premises as sex industry businesses
soliciting, sex work and 'indecent' stripping on licensed premises
investigating any criminal offence including harassment and sexual assault, and
the age of sex workers (they must be at least 18 years old to be employed, or engaged by a client)⁹⁰

In some police regions, Police Sex Worker Liaison Officers (PSWLO) have been established to assist sex workers in their dealings with the NSW Police. Liaison Officers can assist workers with outstanding warrants, harassment and assault by partners, clients, employers or other workers, physical and sexual assault, and other matters.⁹¹

⁹⁰ SWOP: www.swop.org.au. Note: SWOP advise that to their knowledge, the first two dot points listed have rarely been used in the past 15 years

⁹¹ SWOP: www.swop.org.au

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Part 4: Analysis of Current Practice

4.1 Introduction

This Part provides an analysis of the range of current planning responses in local councils in NSW with regard to sex services premises, how these approaches work, their impact and their implications for the guiding principles set out in Part 1. Specifically, it covers the permissibility of sex services under LEPs, together with the types of controls contained in DCPs and council policies. It also reviews council monitoring and enforcement practices in regard to sex services premises.

Councils have responded in various ways to the 1995 reforms, which enabled sex services premises to be regulated in much the same way as other businesses. However, an overriding observation in respect to current practice has been the tendency for councils to regard sex services premises as the singular land use of 'brothels' and have incorporated the definition of brothel contained in the RP Act in their planning documents. As a result, councils have not fully utilised the mechanisms available under the Environmental Planning and Assessment Act to provide effective regulation of the different types and scale of sex services premises that exist. As further sections of these Guidelines demonstrate, this impacts on the level of compliance of sex services premises with council controls and the delivery of health and outreach services to the industry.

A key feature of the environmental planning system operating in NSW is appropriate assessment, which ensures that planning requirements reflect the nature and scale of developments.⁹² Whilst councils have now graded a large number of developments into those that are 'exempt', 'complying' or requiring development consent, this has not been applied to the range of sex services premises with the following results:

- it does not encourage a compliant local sex industry
- the sex industry is not treated equitably with other land uses
- it fails to acknowledge the diversity and nature of sex services premises today
- certain sectors of the sex industry are unable to comply with generic and overly restrictive planning controls, driving that particular sector 'underground'. This is contrary to the intent of the 1995 reforms and to health policies at a State, national and international level
- it discourages positive relations and communication with the local sex industry, and
- it does not uphold the intentions of the 1998 reforms to the planning system, which sought to streamline the development, and planning system.

The *'Report of the Brothels Taskforce'* (2001), in reviewing the planning responses of local councils since the 1995 reforms to the Disorderly Houses Act, acknowledged a number of these implications in stating:

"Local councils should be encouraged to consider the range of brothel types and their impacts when determining appropriate locations and planning controls. If local planning controls are too restrictive, the effectiveness of the planning system in achieving the objectives of the reforms will be undermined".⁹³

In a limited number of cases, councils have identified different types and scale of sex services premises. One council developed a Sex Industry Policy that attempted to identify the various components of the sex industry and provide controls for different premises. The policy covered 'Safe House Brothels' for street workers, 'Commercial Brothels', 'Local Business Brothels', 'Private Sex Worker Home Business Brothels', 'Sex on Premises Venues' and 'Restricted Premises'. No other council has introduced a similar system of differentiated controls, although aspects of this policy have been instructive to other councils.

⁹² Department of Urban Affairs and Planning, *"Guiding Development Better Outcomes"* Practice Note (September 1999).

⁹³ NSW Government (2001) *"Report of the Brothels Taskforce"*: 15

4.2 Local Environmental Plans

Different sex services premises generally fall into three broad groups:

- **commercial sex services premises**, which typically include premises of small (<5 working rooms) medium (e.g. 5-10 working rooms) or large (e.g. 10-20 working rooms) scale, where workers are employed on shifts and which provide services to both regular and drop-in clients;
- **home-based sex work**, where sex services are provided in either a single residential house or flats or apartments in residential areas. These include home occupations and home businesses; and
- **other sex industry premises**, being premises where sex work habitually occurs.

These groups reflect the fact that planning practice to date has rarely addressed any more detailed breakdown of sex services premises. In fact, in most cases council planning controls address only the first group - commercial sex services premises.

The analysis of current practice is discussed below in terms of these 3 broad areas (refer sections 4.2.1, 4.2.2 and 4.2.3), with respect to local environmental plans (LEPs).

4.2.1 Commercial sex services premises

Three broad approaches have occurred in the definition and regulation of this type of sex services premises through LEPs:

- specific prohibition
- recognition as 'commercial' premises; and
- specific provisions for commercial sex services premises.

4.2.1 (i) Specific prohibition

Contrary to the intention of the 1995 reforms, Government advice issued to each council (see Part 2), and the findings of the *'Report of the Brothels Taskforce'* (2001), some councils continue to try to prohibit sex services premises (brothels). However, rather than discourage these premises, or prompt their relocation to other areas, prohibition is more likely to encourage their continued illegal operation. Prohibition drives the local sex industry underground and can make access by health service providers more difficult. Further, it creates inconsistency across councils, with operators in some council areas able to operate legally while others in adjoining council areas are unable to do so. This can result in imbalance in the sex industry as illegal operators have lower set-up costs and overheads and do not therefore compete on a level playing field with legal premises. Legal premises are reportedly finding it harder to stay financial due to taxes, insurance, workers' compensation and council requirements.⁹⁴ The creation of a two-tiered industry comprised of legal and illegal operators can lead to animosity within the industry itself, with legal operators aggrieved that illegal operators are able to continue to operate. Legal operators will often report illegal operators to council, perpetuating the animosity between businesses.⁹⁵

4.2.1 (ii) Recognition as commercial premises

Where LEPs do not specifically define 'brothels' and state where they are permitted or prohibited they generally fall under the definition of commercial premises and are permitted in zones where other commercial premises are permitted. This approach is often employed where insufficient issues about the sex industry have been raised to warrant a policy response. This may be because it is not visually apparent or because the uses have not generated complaints or issues for local communities. In some cases, councils adopt this approach because they are reluctant to canvass the issue of sex services premises due to community sensitivities. Under this approach, commercial sex services premises may not be regulated by specific standards in an LEP and are not usually regulated by provisions in a DCP.

⁹⁴ Pers comm. Adult Business Group representatives 20.02.04.

⁹⁵ As raised in consultations and in media articles.

4.2.1 (iii) Specific provisions

This approach recognises commercial sex services premises as a category of land use distinct from other land uses within a council area. In this instance, LEPs separately define a commercial sex services premises (although most currently refer to the use as a brothel), specify through zoning provisions where they may be located, and may contain other special provisions regarding the location, design and siting of the premises. Many councils that have defined commercial sex services premises within their LEPs have also prepared DCPs to provide further detailed guidance on the design and operational aspects of the premises.

Most LEPs that specifically regulate commercial sex services premises restrict them to industrial areas on the assumption that, in such locations, they would be least likely to cause amenity impact to nearby communities or potential offence to the general public. From an applicant's perspective, industrial areas are also potentially less controversial and provide the space and physical layout conducive to meeting certain council controls e.g. car parking and access for people with a disability. They may also offer cheaper rentals.⁹⁶ However, the practice of permitting commercial sex services premises in industrial areas raises safety and accessibility issues as these areas are often isolated, singular in purpose and devoid of activity after hours. This issue is examined further in Part 5 of the Guidelines.

Some councils allow commercial sex services premises in commercial zones, but then impose further restrictions on the location in the form of detailed development standards. For instance, some LEPs state that the commercial sex services premises must not be located at street level or that they must be a certain distance from another commercial sex services premises or sensitive land use including: a place of worship, school, community facility, child care, hospital, any place regularly frequented by children and even a railway station, bus stop and taxi stand. The inclusion of additional development standards can make it difficult for operators to obtain development consent despite the fact that councils have the ability to vary development standards under the provisions of State Environmental Planning Policy No 1 (SEPP 1).⁹⁷

4.2.2 Home-based sex work

The intent of the 1995 reforms was that all types of sex services premises would be regulated under the EP&A Act, including private workers operating out of residential dwellings.⁹⁸ The appropriate regulation of home-based sex work is important, as private workers are estimated to comprise approximately 40% of the sex industry.⁹⁹ A small number of local councils recognise variation in the types of sex services premises and identify home occupations/home businesses involving sex work as distinct from commercial sex services premises. However, in general, very few councils incorporate provisions for home-based sex work into their planning and most prohibit 'brothels' of any kind in residential zones. This practice is questioned by research on private worker home occupations conducted in 2003 under the supervision of Eva Cox (Senior Lecturer, Humanities and Social Sciences Dept) by the University of Technology Sydney. The key objectives of this research was to determine whether there was any awareness of sex workers in two specific council areas and whether home-based sex work had any amenity effect on the neighbourhood. Both areas had some blocks with sex workers working from home. Respondents were selected from residents in various blocks with and without sex workers.¹⁰⁰

There were three key findings of that research:

1. There was limited awareness of home business generally, with some respondents citing the benefits of home businesses for neighbourhood safety and most respondents stating that they did not think home businesses always needed to seek or receive council approval;
2. There was no awareness of home-based sex workers in either council area; and
3. The presence of such workers appeared to have no impact on the resident's perception of crime.

⁹⁶ Pers comm. Adult Business Group representatives 20.2.04.

⁹⁷ SEPP 1 permits variation of a control which can be demonstrated to be unreasonable or unnecessary in the circumstances of the case. SEPP 1 seeks to provide flexibility in the planning system and to permit minor departures from a development standard where the overall merits of the proposal are satisfactory.

⁹⁸ NSW Government (2001) *Report of the Brothels Taskforce*: 13.

⁹⁹ Ibid.

¹⁰⁰ UTS Students' Research on Home Occupations: Lauren Jamieson, Nov 2003 (unpublished)

The inability of home-based sex work to become a legal use under local planning requirements raises a number of health and safety issues identified in the 2001 *'Report of the Brothels Taskforce'*, but which most councils have ignored.

Current council approaches affecting home-based sex work fall into four categories:

- specific prohibition
- generic prohibition
- permissible with development consent; and
- exempt Development.

4.2.2 (i) Specific prohibition

The most common planning response of councils towards home-based sex work is their specific prohibition.

Councils usually prohibit home-based sex services from being carried out, either as a home occupation or home business, by excluding the act of prostitution as a home occupation in their LEPs. Home occupation involving sex work is commonly defined as a brothel or commercial premises only permissible in certain zones, usually industrial areas. Industrial areas are unsuitable for sex work undertaken by one or two sex workers, as they are often isolated, poorly served by public transport and raise safety issues. The larger scale of industrial premises is unsuited to small sex worker businesses and is inconsistent with their clients' needs for a discreet encounter in a residential setting. When added to the inherent advantages of undertaking a small-scale operation from home, rather than leasing premises, it is unlikely that private workers would establish in industrial areas in compliance with council controls.

Information from the sex industry and local councils suggests that most home-based sex services premises operate illegally until they are moved on, and then set up elsewhere. So prohibition does not deter private workers, although they live in fear of being closed down¹⁰¹ or subjected to stand-over tactics in the same way they were subjected to police corruption before the 1995 reforms. In addition, the relocation process can frustrate the achievement of health and safety objectives, as ties with key health service providers can be severed. Blanket prohibition of home-based sex work is not in the spirit of the 1995 reforms.

4.2.2 (ii) Generic prohibition

In some cases, definitions prepared by councils do not specifically exclude home-based sex work, but do not allow home occupations or home businesses of any kind where the activity involves customers or clients visiting the site. These definitions do not specifically discriminate against home-based sex work, but this is a restrictive approach, which could be contrary to both contemporary employment trends, including increased work-from-home options, and increased government support for small business.

4.2.2 (iii) Permissible with development consent

Development consent would allow the use of residential premises for a home occupation involving sex work, provided council approval is first obtained through a development application. However there are very few instances of this approach.

In 1997, one council recognised home occupations involving sex work as a distinct sector of the sex industry by permitting *"home occupations which involve prostitution"* with development consent in a single residence, but not in a residential flat or unit. However, these provisions were not effective in encouraging a legal home occupation sector of the sex industry within the council area. No DAs for these premises were received despite the presence of these types of sex services premises within the council area. On the other hand, the council has not received any complaints about residences being

¹⁰¹ Pers comm. PWA representatives 5.03.04.

used for sex service purposes, which suggests that, whilst the use is occurring illegally, it is without impact.

Requiring a DA for home-based sex work is not supported by the sex industry, health organisations and other groups e.g. the Sex Workers Outreach Project (SWOP) because the DA process exposes details of sex workers, including their addresses, making them vulnerable to various forms of abuse and violence. These groups argue that processes revealing the identity of the sex worker do not encourage compliance by this sector of the sex industry.

4.2.2 (iv) Exempt development

Exempt development is development that has a minor environmental impact and does not require the consent of council through a DA. Exempt development must comply with pre-set criteria within a council's Exempt and Complying Development Control Plan or under State Environmental Planning Policy No 60¹⁰². Some councils allow home-based sex work as exempt development.

If home-based sex work or a home occupation is permitted as exempt development, the same rules apply to it as they do to all other home occupations and other exempt developments. An important aspect of all home occupations is that they must not cause amenity impacts in the zone, and the use is monitored primarily on this basis. Uses having an impact would ordinarily come to the attention of council when a neighbour complains. If, on investigation by council, amenity impacts are either confirmed or are in conflict with any other of the exempt development criteria, then it is prohibited and must cease.

Depending on the provisions of each council, there may be an opportunity for an applicant to submit a DA for a higher intensification of use (e.g. a home business) if the home occupation criteria cannot be met. However, as discussed previously, requiring a DA raises safety issues for sex workers and is unlikely to be complied with. In any event, private sex workers operating from home are likely to have minimal, if any, amenity impact. It is in their interests to be a low-key and discreet activity, as their clients need privacy and anonymity, and the workers want to ensure that neighbours do not complain to council. It is important to note that exempt development is still subject to the use of the orders powers under the EP&A Act if the development causes an impact in the locality. Further, councils have additional powers to seek the closure of a home occupation involving sex work under the Restricted Premises Act (see Part 2).

Two approaches have emerged where councils have permitted home occupations as exempt development, identified separately as Specific and Non-Specific approaches.

(a) Specific approaches

Specific approaches clearly identify home-based sex work as a form of exempt development. However, to date only one council has used this approach.

In its LEP that council provides a legal definition of a home business which permits a home business to be carried out only by the permanent residents of the dwelling house or dwelling provided that the residents comply with a number of criteria aimed at ensuring there is no interference with the amenity of the neighbourhood. That council's DCP for Exempt and Complying Development specifies additional requirements for home businesses, including that a home business "*may include a home occupation brothel use but with no more than one resident sex worker*". Whilst specifically allowing home-based sex work is a progressive approach, sex workers, sex worker service providers, and support organisations have expressed concerns about imposing restrictions without evidence of them being necessary. Sole private workers working from home face significant personal safety risks as a result of their vulnerability to respondents to advertisements in newspapers. Private workers, particularly those who work alone from home or in private escort work, are at high risk of violence. Limitations placed on the number of resident sex workers are discriminatory if these restrictions are not also applied to other home occupations.¹⁰³

¹⁰² Applies to the following metropolitan Councils only: City of Campbelltown, Parramatta and Ryde and applies to a large number of regional Councils. All other metropolitan and regional Councils not covered by SEPP 60 have prepared their own exempt and complying development provisions.
¹⁰³ PWA submission dated 14 May 2004

(b) Non-specific approaches

In the approach taken by some councils, the generic definition of a home occupation enables home-based sex work to be carried out as a form of exempt development. Many councils adopt the definition contained in the Model Provisions 1980 and defined in Part 2 of these Guidelines.

Where the definition in the Model Provisions (or similar) prevails, home occupations involving sex work are permissible where other home occupations may occur, namely in residential and commercial zones. This is a non-discriminatory approach that treats home occupations involving sex work in the same manner as all other home occupations. The definition does not include any limit to the number of residents who may carry out the home occupation, and the overriding criterion is that the activity must not interfere with the amenity of the neighbourhood. Under this definition, a number of private sex workers could work from residential premises, provided they are permanent residents of the dwelling house or dwelling and do not cause amenity impacts. However, this definition does not permit non-resident workers, and sex industry lobbyists and health organisations argue that, for safety reasons, a resident worker should be permitted to employ, or work with, a companion worker.

Some councils provide for non-residents in their generic definition of home occupation. Under this type of definition, an additional sex worker who does not reside on the premises can be employed in addition to the permanent residents.

Councils subject to *State Environmental Planning Policy (SEPP) No. 60 - Exempt and Complying Development* also permit home occupations in a dwelling as exempt development, without any exclusion of those involving sex work.¹⁰⁴ The provisions for home occupations under SEPP 60 are similar to the Model Provisions' definition. Similarly, under SEPP 60 a number of sex workers can undertake sex work from the premises, provided they are permanent residents of the dwelling and do not result in a disturbance in the neighbourhood. However, again, the provisions under SEPP 60 do not permit non-resident workers.

Councils differ in where they choose to allow home occupations of any kind as exempt development. Many councils allow home occupations in single residences as exempt development, however some councils do not allow home occupations of any kind in residential flats or other higher density residential developments unless approval is first obtained from the council. This requires lodging a DA, and council notifying surrounding property owners of the DA and advertising it in the local paper. For reasons stated earlier, private sex workers operating from residential units are unlikely to comply with this approach, as it places their safety at risk. Further, the loss of privacy may impact on the worker's ability to retain clients to whom privacy and confidentiality are paramount in their decision to visit a private worker.

(c) Exempt development and sensitive lands

Under many council LEPs, and under the provisions of SEPP 60, exempt development provisions do not apply to certain sensitive lands, including those that contain an item of environmental heritage or are situated in a heritage conservation area.¹⁰⁵ Older, inner city areas in Sydney can have large numbers of heritage-listed properties and whole suburbs identified as conservation areas. This means that the ability for home occupations involving sex work to qualify as exempt development may be limited in some local council areas.

Some councils have attempted to overcome the heritage limitations on all forms of exempt development by incorporating special provisions into their LEPs. For example, one council has incorporated a 'minor works' provision, which does not require development consent for works in a heritage conservation area or to a heritage item if, in the opinion of the council, the proposed

¹⁰⁴ See definitions of 'dwelling' and 'dwelling house' in Part 1.0.

¹⁰⁵ Clause 76 (2) of the EPA Act specifies that development is exempt development if it may be carried out on land to which the provision applies but not on land that is critical habitat or a wilderness area. The State Government have approved numerous Council LEPs which specify that exempt development cannot occur on heritage affected land and this is also the approach taken under SEPP 60 - Exempt and Complying Development and SEPP 4 - Development Without Consent and Miscellaneous Exempt and Complying Development.

development is of a minor nature and will not adversely affect the significance of the heritage item or conservation area.

4.2.2 (v) Home-based sex workers and non-resident workers

Some private sex workers operate in small collectives from residences. This may include resident workers, together with one or two non-resident workers, conducting a home business within residential premises. This is a safer and more cost effective arrangement than renting commercial premises, and it offers sex workers the advantages of greater flexibility in working hours and more control over their work environment and pay than may be available in local commercial sex services premises. Collectives presently exist illegally in many council areas, yet evidently without impact or complaint from neighbours. There are currently no known planning approaches in place by which home-based sex work employing non-resident workers can occur legally in local areas without development consent.

Private workers, health and outreach service providers (e.g. PWA and SWOP) argue that greater acknowledgement needs to be made of the smaller sectors of the sex industry, such as those employing non-residents and therefore not complying with the exempt development criteria applying to home occupations. They argue that this type of home business enables new sex workers to benefit from peer-based education about health and safety practices and other aspects of working from home, such as resolving client conflict and conducting a discreet business.

4.2.3 Other sex industry premises

Few councils recognise and prepare planning controls for other categories of sex services premises, with the exception of one council, which recognises:

- “Safe House Brothels”, where street soliciting by sex workers occurs, in order to reduce sex work occurring in cars, laneways, parks or other public spaces that present a safety risk to workers and may cause public offence. These brothels are defined as commercial premises and are permissible in the Business and Mixed Use zones. That council’s LEP also allows these premises in other zones, if it can be demonstrated on the merits of the case, that the development is consistent with the zone objectives. Other provisions in regard to location, access/egress, design, parking and health considerations are contained in the council’s Sex Industry Policy.
- “Local Business Brothels” are included under the definition of local business involving permanent residents and a maximum of two other persons (either on the site of the business or having a base at the site). The use is permissible only with development consent in the Business and Mixed Use zones under the LEP. Other provisions are, again, contained in the council’s Sex Industry Policy. In this council area example, local business brothels have demonstrated that they can operate, given appropriate location, design and operational restrictions, with a minimum impact on residents and other businesses.¹⁰⁶
- “Sex on Premises Venues” are included in the definition of commercial premises under the LEP and are permissible in the Business and Mixed Uses zones. In many cases, sex-on-premises venues are *not* sex services premises, in that the business derives its income from paid entry of patrons to the premises where consensual sexual encounters may take place with other patrons. Some of these venues *may* employ sex workers, however the businesses are not operated on the same basis as a ‘brothel’ or commercial sex services premises. Other provisions, once again, are contained in the council’s Sex Industry Policy.

In summary, these three types of sex services premises are included into either the definition of commercial premises or local business under the council’s LEP. They are not separately defined under the LEP and are able to locate wherever other commercial premises or local businesses are permissible. Each is then described and regulated at a more detailed level under the council’s Sex Industry Policy. This approach is meritorious, as it is non-discriminatory at a statutory level while providing opportunities to consider the amenity and design considerations of each specific type of premises under policy provisions. In addressing a range of sex services premises, the council’s Sex

¹⁰⁶ Submission on the draft Marrickville LEP and DCP by the Manager Strategic Planning, South Sydney Council as discussed in the report to Marrickville Council Development and Environmental Services Meeting No. 02/02 – 5 March 2002.

Industry Policy also has an educative role in promoting community and professional awareness on the nature of the local sex industry.

4.3 Development Control Plans and other council policies

Where commercial sex services premises are specifically identified in an LEP, including in the definitions and zoning, some councils have DCPs to provide further detail on their design and operation in order to support the provisions of the LEP. Where the use is simply regarded as another type of commercial land use, councils do not generally have a DCP. This is often the case in areas that either have few sex services premises or have not experienced any issues with this land use.

As with LEP approaches, policy responses vary between councils. Some councils have DCPs that are highly prescriptive in focus and apply controls universally across all categories of sex services premises. As a result, certain types of commercial sex services premises are unable to comply, particularly smaller premises without the capital to undertake the requirements specified in the DCP. However, some councils have worked with their local sex industry and communities to develop policies, which aim to encourage sex services premises to become legal businesses. This has assisted those councils to regulate a variety of sectors of the industry and implement the intentions of the 1995 reforms.

Commercial sex services premises

As noted, commercial sex services premises have had the most attention in local policy-making to date, and there are a number of key policy areas covered in DCPs.

4.3.1 (i) Location

In addition to regulating the areas where commercial sex services premises may be established under the LEP, councils often regulate the location of commercial sex services premises by applying more detailed development controls.¹⁰⁷

(a) Prohibiting ground floor/street level location

Where commercial sex services premises are permitted in commercial or business zones, many councils prohibit any part of the premises at ground or street level, although some councils may allow this, provided it is not in a shop-front location. This is intended to prevent the premises from offending the public, however some councils also apply this control to premises in industrial areas, which are not places that most groups in the community visit regularly.

Precluding premises from ground level can affect disability access unless a lift or other device is installed, and many councils have not sufficiently considered the implications of this. Apart from equity considerations, this can place the council and owner/operator of the premises at risk of a complaint being made and sustained under the provisions of the Disability Discrimination Act (DDA) 1992. Although the DDA provides a mechanism for an applicant to present a case of unjustifiable hardship, this does not indemnify the council, or the operator, against a legitimate complaint. In this regard, the arguments presented in an applicant's submission may not be considered satisfactory to the Human Rights and Equal Opportunity Commission, and in this situation, both council and the applicant may be liable for the penalties under the DDA.

Councils should not use the issue of disability access as a reason to discount a commercial zone as a potentially suitable location for commercial sex services premises. Rather, councils should identify any design limitations of otherwise suitable commercial zones and consider options for their appropriate location and design. Some suggested options are addressed in Part 5 of the guidelines and the better practice DCP provisions in **Appendix B**.

One council permits commercial sex services premises at street level in business zones, but only behind another tenancy that is not a commercial sex services premises or other sex industry use, and if it is not internally linked to the front tenancy. However, this requirement impacts on the viability of

¹⁰⁷ Although sometimes these controls are expressed as development standards in an LEP.

commercial sex services businesses, resulting in few DAs. Other Sydney councils permit commercial sex services premises at street level provided they are not in a shop-front location, however it is difficult to judge the success or otherwise of these controls because few DAs have been lodged, and a number of those have been refused.

Notwithstanding this, SWOP claims that there are numerous commercial sex services premises operating at ground floor level in many parts of NSW, and community concerns have not been raised. For instance, commercial sex services premises occur in the ground floor levels of terrace houses in the mixed use/business zones throughout parts of Surrey Hills, Kings Cross and Darlinghurst.¹⁰⁸

(b) Relationship to other land uses

Many DCPs identify a range of potential conflicts to be considered when assessing applications for commercial sex services premises, however do not usually identify the reasons for their inclusion or how they can be identified, assessed and mitigated. DCP provisions appear to be founded on an assumption that there is an inherent conflict between a commercial sex services premises and places such as child care centres, schools, hospitals, recreational facilities, sports fields and cultural centres, as well as businesses with similar operating hours such as a hotel or bar. Although most of these are listed in Section 17 of the Restricted Premises Act, their existence does not, on its own, imply the suitability or otherwise of a particular commercial sex services premises. They are merely some of the matters the Court *may* take into account.¹⁰⁹ Specifically identifying these other uses in relationship with sex services premises can create an impression in the minds of the public that it ought to be concerned about the location of a commercial sex services premises in their proximity when no such evidence may exist. In addition, there may be other land uses that are not listed on which commercial sex services premises may have an impact.

Some councils prescribe a separation distance in their DCPs between commercial sex services premises and these places, either through numerical provisions or written statements such as “must not be within view”. Other councils have no provisions at all.

While there is no overall consistency in the use of separation distances, distances are often prescribed of either 50 or 100 metres from residential uses and 200 metres from, for example, places of worship, hospitals, and places regularly frequented by children, including schools, playgrounds, child care centres, and day care centres. A separation distance of between 50 and 200 metres is also often prescribed from transport nodes, bus stops, railway stations and the like.

Written statements of separation from licensed premises, hotels and the like are also used, but it is not common for planning provisions to prescribe a numerical distance from these uses. Some council policies include controls that prohibit commercial sex services premises adjacent to licensed premises. This appears to be aimed at ensuring that intoxicated persons do not frequent commercial sex services premises late at night and cause a disturbance to the premises and the amenity of surrounding areas. However, operators and workers in commercial sex services premises do not generally receive clients who are so intoxicated as to potentially cause a disturbance in the locality or jeopardise the safety of workers or the security of the premises. Many medium to large scale commercial sex services premises employ receptionists who screen clients through intercoms and camera surveillance prior to permitting entry. Further assessment is then made of the client whilst the appointment is being made. In addition, many premises employ a floor manager and security staff to control any incidents that may arise. Smaller commercial sex services premises with fewer workers and no receptionist are inherently more careful and for this reason, many only take clients by appointment only.

Members of the public visiting some places such as a church or hospital may be more susceptible to impact from a commercial sex services premises than visitors to other places, because people visit those places for different reasons, such as quiet reflection and healing. However, even in these instances, it is important to consider the merits of the proposed commercial sex services premises, as provisions in regard to the design, siting, signage, general appearance and operation of the premises can reduce the potential for, and extent of, any impact. Most premises are discreet and not identifiable and, as a result, would have no impact.

¹⁰⁸ SWOP submission dated May 2004.

¹⁰⁹ Further, for the Court to close down a ‘brothel’ it must also have been the subject of complaints.

It is difficult to gauge the success of separation distance controls as DAs for many commercial sex services premises are refused by councils for other reasons. However, in some cases the Land and Environment Court has varied the standard, and permitted development that encroaches upon the prescribed separation distance. In the recent matter of *Xiao Ping Ai v Newcastle City Council* residential properties adjoined the proposed commercial sex services premises, which was prohibited under the council's DCP. However, the Court found that, despite not meeting the numerical location requirements under Newcastle City Council's DCP, there were no significant adverse environmental impacts "either actual or apprehended" that would warrant refusal of the DA.¹¹⁰

Imposing a separation distance between a commercial sex services premises and public transport services is considered to be unjustified and inequitable to sex workers and their clients who use public transport, potentially late at night. Furthermore, the Land and Environment Court has not accepted that proximity to public transport is sufficient grounds for rejecting a DA for a commercial sex services premises, if the basis for the rejection is that children use public transport. In *Perry Properties P/L v Ashfield Municipal Council*, the Court adopted a practical approach to this issue, considering the hours of operation, the size of the commercial sex services premises and the likely behaviour of sex workers and clients at a local bus stop. It concluded that no issues would arise from the close proximity of the commercial sex services premises to the bus stop.¹¹¹ Furthermore, other DCP requirements can ensure the commercial sex services premises is discreet so that children would, to all intents and purposes, be unaware of it, particularly as the activity occurs indoors. In addition, there is no evidence to suggest that the behaviour of clients attending a commercial sex services premises poses a safety risk to children (see Part 2 of the guidelines).

Using numerical separation controls raises a number of issues. First, the control is arbitrary, and while it may provide some comfort to councils and the community by being a measurable prescriptive standard, it is not an accurate gauge of the acceptability of commercial sex services premises. Second, the separation distance is artificially constructed and has no foundation or planning basis. Under Section 17 of the RPA the Court will only consider inter alia "whether the brothel is operating near or within view from a church, hospital..." and not a specified distance. Similarly, the Summary Offences Act, which regulates the soliciting of clients by street workers, and would arguably have most reason to be prescriptive in term of distances given the less discreet nature of this form of sex work, simply states that soliciting must not take place "near or within view from a dwelling, school, church or hospital". Thus, prescribing numerical limits to a commercial sex services premises under a local council DCP control may be excessive.

Rather than creating policy controls based on assumptions of incompatibility with a wide range of land uses, a more appropriate approach would be to assess the compatibility of a proposed commercial sex services premises with surrounding uses on a case-by-case basis. Councils should assess DAs on merit, examine the evidence for potential conflict between different land uses and, if appropriate, apply conditions of consent to address any conflicts. At the DA stage, the applicant would need to demonstrate the compatibility of the proposed commercial sex services premises with surrounding uses and how any potential impacts will be mitigated. Furthermore, councils could consider requiring a Plan of Management to be submitted with DAs for larger commercial sex services premises, outlining how the premises will be managed in the future (see **Appendix B**).

(c) Anti-clustering provisions

Some councils have anti-clustering provisions, which are controls requiring separation between commercial sex services or other sex industry premises (e.g. massage parlours, escort agencies or restricted premises). This provision is intended to distribute commercial sex services premises across a wider area rather than allowing them to cluster and either create or expand "red light districts". One council, which initially required a 100 metres separation between premises, later reduced this to 75 metres measured from any existing commercial sex services premises to any point(s) of client access and/or egress to the proposed premises.

Councils often require separation distances varying from 50 to 500 metres between different commercial sex services premises, however a distance of 200 metres is common, but the manner in

¹¹⁰ [2002] NSW LEC 123 (23/01/04).

¹¹¹ [2000] NSW LEC 188 (21/9/00)

which the measurement is made also varies greatly. Other councils express the separation distance in statements, for instance a proposed commercial sex services premises must “*not be located in proximity to another brothel so as to create a concentration of this type of use*” or must not be “*in line of sight of any other brothel*”. In other cases, an LEP or DCP may simply require “consideration” of other commercial sex services premises in the neighbourhood without clarifying why this should occur and what needs to be considered.

Despite gaining popularity in recent years, anti-clustering controls are not appropriate or necessary as a generic control for all councils. Few areas have a high concentration of sex industry premises and many councils receive few, if any, DAs for commercial sex services premises. It is inappropriate to apply an anti-clustering provision unless genuine impacts emerge from the clustering of commercial sex services premises. Furthermore, implementing these provisions concerns health agencies, which have observed its impact on the sex industry. This issue is explored in further detail in Part 5.0 of the guidelines.

4.3.1 (ii) Disability access

Existing DCPs or policies for commercial sex services premises, rarely address issues regarding disability access, although some DCPs refer to separate council policies which specifically address this issue.

As outlined previously, council LEPs prohibiting a street level location create the potential for a physical barrier to people with a disability. The Human Rights and Equal Opportunity Commission (HREOC) advised one council that:

- a commercial sex services premises is clearly a place that the public is entitled to enter or use and is covered by the Disability Discrimination Act (DDA) 1992
- failure to provide access to, and use of, the commercial sex services premises, by not having appropriate toilets and other facilities, makes an owner/operator of a commercial sex services premises liable to a DDA complaint
- Councils are liable to a DDA complaint in respect to providing development or building approval in relation to the premises
- if a council requires a commercial sex services premises to operate out of premises either above or below street level, but then fails to require access for people with a disability, the council could be subject to a successful complaint lodged against the commercial sex services premises owner/operator
- if a council applies a DCP which specifically requires an above or below ground location but then fails to apply another council DCP regulating access to premises it is particularly liable, and
- the DDA covers access to, and use of, premises, including areas such as bars, lounge rooms, bathrooms and toilets. Common areas and at least one suite and its facilities in a commercial sex services premises should be accessible to a person with a disability.

As is clear, HREOC have confirmed that a commercial sex services premises is a place that the public or a section of the public is entitled to enter and use. Councils should be aware of the implications of this in placing limitations on the location of commercial sex services premises at ground floor level in commercial and industrial areas. The alternative to allowing a ground level location is to enforce the provision of access in all situations, which for reasons of building design, heritage or cost is not always practical, or for councils to accept an “Unjustifiable Hardship” argument under the DDA. However, as discussed earlier, a council’s acceptance of a claim of unjustifiable hardship still exposes both council and a building owner/occupier to potential challenge under the DDA. Part 5 of the Guidelines outlines options to address this issue.

4.3.1 (iii) Car parking

As with all commercial uses, depending on the scale of activity, commercial sex services premises can generate demand for car parking and have the potential to impact upon surrounding land uses by the take-up of on-street parking. However, anecdotal evidence suggests that many clients of sex services

premises travel by taxi to ensure their anonymity, especially to premises in residential areas where it is more difficult to justify attendance compared to a commercial area.¹¹²

Council DCPs and policies vary in regard to car parking requirements for commercial sex services premises within current council DCPs or policies, but a common practice is prescribing parking rates based on the number of employees and/or rooms. Generally 1 space per 2 sex workers or employees is required¹¹³ however, since the number of sex workers may vary at any point in time, as it would in a retail or commercial business, and is not usually specified on a development consent, a rate based on floor area or rooms provides more certainty to all parties. This enables parking to be calculated in accordance with the DA plans that, if approved, are then referenced in Condition No 1 on a development consent. This approach can make both assessment and enforcement easier.

An alternative approach is for councils to prescribe the parking rate applying to other commercial or business premises, to a commercial sex services premises, on the basis that the parking demands are similar.¹¹⁴

Separate parking is often required for the manager, receptionist and staff of a commercial sex services premises, however, as clients are sporadic and there is also down-time while rooms are being serviced, there are times when fewer sex workers are employed on the premises than the number of rooms available. Therefore, some of the parking could be shared between Manager/receptionists and sex workers. Furthermore, not all sex workers drive to work and, as mentioned, many clients travel to premises by taxi to protect their anonymity. In addition, commercial sex services premises frequently operate outside normal business hours. Thus any overflow parking from client or management needs could be met in surrounding streets without creating parking conflicts with other land uses, in either industrial areas or commercial centres. Public transport available in many commercial areas may also discourage employees and clients from driving.

Suggested parking provisions are included in **Appendix B** to these Guidelines.

4.3.1 (iv) Plans of Management (POM)

A POM outlines the management and operational arrangements of the premises to ensure the premises operate in a manner that upholds health and safety considerations and minimises impacts upon the surrounding area.

Some councils have DCP provisions relating to the operation of commercial sex services premises requiring premises to submit a Plan of Management (POM) for council approval, either through a DCP requirement or conditions of development consent. Other councils require POMs for commercial sex services premises, even though they may not require it in their DCPs.

Councils now request POMs for a number of land uses, particularly those with late night hours, other circumstances departing from normal business operations or relate to large-scale uses. The *'Report of the Brothels Taskforce'* (2001) stated that a POM is a valid requirement of an applicant for a commercial sex services premises. However, some issues have emerged regarding the preparation and enforcement of POMs, highlighting the need for council requirements to be reasonable and not discourage operators from lodging a DA. This issue is addressed in further detail in Part 5 of the Guidelines.

4.3.1 (v) Other aspects of business operations

A number of council policies contain provisions relating to waste management. Some councils refer to the waste arising from the premises as 'contaminated waste' however care should be taken in using this term. Other council policies regard the waste arising from premises as commercial waste, which is managed in the same manner as other commercial waste. Appendix B contains best practice DCP provisions for waste management in commercial sex services premises.

¹¹²Director, Development and Environmental Services Marrickville Council - Report to the Marrickville Development and Environmental Services Committee 02/02 - 5 March 2002.

¹¹³Ibid.

¹¹⁴Ibid.

4.3.1 (vi) Occupational Health and Safety issues

The *'Report of the Brothels Taskforce'* placed a strong emphasis on the importance of occupational health and safety (OH&S) issues with the introduction of the Disorderly Houses Amendment Act in 1995. In commenting on the success of this Act, the report noted that the decriminalisation of prostitution has had a positive impact on access for workers to health services and occupational health and safety programs and recommended the continuation of OH&S programs for sex workers. OH&S programs are conducted by SWOP, ACON, the state network of sexual health clinics and other organisations.

In a few cases, councils incorporate health and safety matters into Development Control Plans in an effort to reflect a comprehensive approach to the regulation of commercial sex services premises, and promote the health and safety aspects of the DHA Act. Although well intended, this practice has raised a number of issues related to the over-regulation of OH&S matters and the degree to which they should remain solely the domain of NSW Health and WorkCover NSW. This issue is discussed further in Part 5 of the Guidelines.

4.3.1 (vii) Advertising signs and structures

Advertising signs and structures relating to any land use have the potential to create visual clutter, detract from a streetscape and cause public offence. As with all premises, controls are required for commercial sex services premises, to ensure the design, placement, number of signs and appearance of signs are appropriate in the locality. The content of signage for some commercial sex services premises has the potential to be offensive and should be controlled, although other non-planning legislation also regulates the content of all advertising material. In particular, advertising premises specifically for purposes of "prostitution" is an offence under the Summary Offences Act.

Many councils have similar controls on advertising signs and structures, though the numerical standards on the sizes of signs differs. Some common controls include:

- a limit of one sign per premises indicating only the name of the business and/or the address
- limitation on size (e.g. 0.3x 0.6 or similar)
- may or may not be illuminated
- "chain" bulb or flashing signs are generally prohibited, and
- the sign is not permitted to display words or images that are, in the opinion of council, sexually explicit, lewd or otherwise offensive.

Suggested DCP provisions for advertising signs and structures are addressed further in these Guidelines (refer Part 5 and **Appendix B**).

4.3.1 (viii) Design of premises

Commercial sex services premises should be designed to meet the needs of sex workers and their clients, including those with a disability, and be compatible with the design of the surrounding built environment.

Many current policies do not consider the design of premises in detail, although several include controls requiring staff areas, an adequate client waiting room, an internal design providing for the privacy of workers and patrons, the provision of visible pedestrian entrances and ensuring the premises have disability access. These controls can assist councils in ensuring certain aspects of the design of premises contribute to their ability to minimise impacts on surrounding areas. Other design controls can support health and safety objectives and uphold strategies for Crime Prevention through Environmental Design (CPTED). Better practice DCP provisions for such aspects are included in **Appendix B**.

4.3.1 (ix) Amenity

Commercial sex services premises, as with any premises, have the potential to generate amenity impact on the surrounding area, and cause concerns to adjoining properties, particularly where the premises are of large scale, operate late in the evening and are in close proximity to residences. Potential impacts include noise, traffic, signage, parking and visual impact - the same as for other commercial uses.

Some council DCPs address 'Amenity' as an individual consideration and impose limitations on the hours of operation and/or numbers of workers, prohibit spruikers and establish other performance measures to protect neighbour privacy and amenity. Other councils attach amenity-based objectives to all other specific provisions of the DCP.

Councils need to consider the local conditions and character of their areas and the nature of commercial sex services premises in setting any specific standards for amenity. Many commercial sex services premises operate during the early evening and at night when other commercial and industrial premises are less likely to be operating. This may reduce the amenity impacts of commercial sex services premises by reducing the overall level of activity in an area, and decrease the potential for parking problems. In mixed-use areas, where there are residential premises, late night operations by large-scale premises may create noise and parking problems, though the evidence to date does not suggest this is the case. Many patrons of commercial sex services premises seek to maintain their anonymity and for this reason are unlikely to draw attention to themselves by creating noise and disturbance. As mentioned previously, many patrons travel by taxi to premises thus reducing the potential for parking related conflicts. POMs and DCPs can also address noise and parking impacts, as can DA conditions of consent. Given that most premises are discreet, visual impact is likely to be minimal, particularly where DCP controls cover matters such as signage and external appearance.

4.3.2 Home-based sex work

As discussed previously, council statutory approaches to home-based sex work vary greatly. Some councils specifically prohibit home occupations involving sex work. Others prohibit home occupations of any kind involving clients visiting the premises. Some allow home occupations for sex work with development consent and others allow them as exempt development not requiring council consent.

4.3.2 (i) Development with consent

As noted earlier, few councils appear to require development consent for a home occupation involving sex work.

One council allows one sex worker to operate in a dwelling house with development consent. In its DCP, that council provides a list of planning matters to be addressed in assessing development applications including home occupations involving sex work. The list is modelled on the considerations listed in Section 17 of the Restricted Premises Act whilst containing other, practical requirements, such as the need for a clearly visible street number to minimise potential amenity impacts. SWOP advises that it is unaware of any DAs having been lodged.

Another council allows applicants of home-based sex work to submit a development application where they do not strictly comply with the exempt development criteria for 'home business'. The matters the council considers include the following:

- no on-site parking is required, although council may seek an order to close a private sex worker home business if the lack of on site car parking results in a significant loss of amenity associated with off site car parking in the neighbourhood
- a clearly visible street number must be displayed
- a maximum of one, non-illuminated, sign of certain dimensions may be provided and must not contain words or images, which are sexually explicit, lewd or otherwise offensive
- the premises are to provide a safe indoor waiting area for clients, and
- the premises must comply with other criteria to ensure they "*discreetly blend into the streetscape*" e.g. clients are to arrive by appointment only and not to queue in the street; the outside

appearance of the premises is not to be unduly different from other dwellings e.g. windows not blacked out; and the outside of the dwelling is not to suggest the use of the premises.

Premises are also required to comply with that council's generic "*Code of Conduct for all Home Businesses*". Though well-intentioned, some of these criteria are unnecessary in a home occupation e.g. the inclusion of a waiting area for clients. Clients of private home-based sex workers are received by appointment and scheduled to allow an interval between clients to ensure their privacy and anonymity.

Requiring development consent for home-based sex work is discouraged due to the unlikelihood of private workers complying with this requirement.

4.3.2 (ii) Exempt development provisions

Home occupations of any kind, which are exempt, must still comply with pre-set criteria in a council's Exempt and Complying DCP or under SEPP 60 in order to be classed as exempt.¹¹⁵ As discussed earlier, one council specifically identifies a 'private worker home business brothel' as exempt development. That council provides a series of documents, ranging from statutory plans and policy through to advisory documents providing information for all concerned (applicants, the community, council staff, councillors) as to relevant criteria for exempt development.

To qualify as exempt development, the private worker home business is required to conform to the requirements of each of the following documents:

- the generic definition of 'Home Business' in the LEP
- the exempt development provisions in the council's Exempt and Complying DCP, and
- the council's Code of Conduct for Home Businesses.

Under that council's Exempt and Complying DCP a 'home business' of any kind cannot occupy more than 10% of the floor area of any storey within the dwelling and is required to comply with the Building Code of Australia classification for the particular class of building. Where the home business changes the classification of a building, a DA is required. Furthermore, where the home business involves sex work, it is limited to only one resident worker. The practice of limiting a home business involving sex work to one worker is discouraged due to the health and safety implications addressed earlier and discussed further in Part 5.

That council's Code of Conduct for Home Businesses is a generic document for all home businesses conducted within the council area. The council encourages all home businesses to retain a copy at the dwelling at all times to ensure compliance and to provide a ready source of information concerning the rights and responsibilities of residents.

In addition to the above policy documents, the council has a Sex Industry Policy which makes specific reference to "*Private Sex Worker Home Business Brothels*". The Policy establishes guidelines which articulate exempt development criteria to assist operators to understand and achieve the exempt development criteria in the Exempt and Complying DCP. As exempt development does not require the consent of council, assessment under the Sex Industry Policy would only be applied to 'private sex worker home business brothels' where a DA is submitted.

4.3.3 Other premises

As mentioned earlier, few councils differentiate planning controls to provide locations for sex services premises of different type and scale. The '*Sex Industry Policy*' of one council covers a range of sex industry categories, some of which are not sex services premises, including restricted premises and escort agencies. In addition to commercial premises and home occupations involving sex work, the other types of sex services premises covered by the Sex Industry Policy include:

¹¹⁵ Applies to the following metropolitan Councils only: City of Campbelltown, Parramatta and Ryde and applies to a large number of regional Councils. All other metropolitan and regional Councils not covered by SEPP 60 have prepared their own exempt and complying development provisions.

- Safe House Brothels
- Local Business Brothels, and
- Sex on Premises Venues.

The broad statutory permissibility of these uses under that council's LEP was examined in the first half of this part of the guidelines. The Sex Industry Policy provides more detailed policy provisions to support the LEP for these premises. Each of the above are required to comply with the general controls set out for all sex industry types under the Sex Industry Policy, together with specific controls for each type of premises.

4.3.3 (i) Safe House Brothels

In this example, the council had recognised the need for 'safe house brothels' located in close proximity to areas used for street soliciting by sex workers to prevent prostitution occurring in cars, laneways, parks or other public areas. However, it states that 'safe house brothels' should not be located adjacent to, opposite or near predominantly residential uses. Other requirements of that council's DCP are that:

- if located in a lane, the whole lane and the entrance/ exit of the premise should be well lit at night, and have good opportunities for passive surveillance
- the premises shall be located in areas of high pedestrian activity that are "alive and active" late at night, usually on or close to arterial roads
- they must only be located in buildings where the premises have independent and exclusive entry/exit to the street
- the design and operation of the premises must comply with the health standards in the DCP and submit a Plan of Management for council approval, and
- 1 car parking space per 50m² is required, however this may be waived on merit.

As mentioned earlier in these Guidelines, the need for councils to prepare provisions for 'safe house brothels' only arises where street work is established within a certain area. Areas of Sydney, Newcastle and Wollongong currently have areas where street soliciting takes place (see Part 2). Allowing for the establishment of 'safe houses' is encouraged in such areas, as these premises can address the health and safety needs of workers by providing a room with appropriate lighting, safe sex supplies and an improved level of safety and security for both sex workers and their clients. The use of fixed premises reduces the need to use a client's car or public space for sex work.

4.3.3 (ii) Local business brothels

As mentioned earlier, very few councils differentiate planning controls to provide locations where small-scale sex services premises might locate, without impact upon neighbours. Under one council's LEP, 'local business brothels' fall under the definition of 'local business' and, as with all other local businesses can be operated with development consent with a maximum of 2 non-resident sex workers in addition to the residents of the dwelling. That council's Sex Industry Policy establishes that 'local business brothels' may, in certain circumstances be able to be located within a dwelling in the Business or Mixed Uses zone. However, due to the amenity tests of the LEP, the council does not permit these premises in a residential flat building in any zone.¹¹⁶

The Policy places an emphasis on ensuring that 'local business brothels' blend into the streetscape. For instance, premises are to provide a safe, indoor waiting area for clients, and the external appearance is not to differ from other premises in the street e.g. by windows being blacked out or by use of an exterior red light.

The Sex Industry Policy does not prescribe any parking for 'local business brothels', however it states that "council may seek an order to close such premises if the lack of on site car parking is resulting in a significant loss of amenity associated with off site car parking in the neighbourhood". No parking impacts have arisen from the operation of 'local business brothels' in this council area. Other provisions of the Policy for a 'local business brothel' include a requirement for a clearly visible street

¹¹⁶ South Sydney Council Sex Industry Policy (2000), page 14.

number and a limit of one, non-illuminated sign of certain dimensions and which is not offensive in its words or images.

4.3.3 (iii) Sex-on-premises venues

Sex-on-premises venues, such as swingers, saunas and same sex clubs, are rarely operated as 'prostitution' businesses, and in this regard, they may not constitute a 'sex services premises' (refer to definitions in Part 1).

In the example of the council given in the previous sub-section, council's Sex Industry Policy contains few additional requirements for a sex-on-premises venue to the general planning controls required to be met by all types of sex industry premises. The only additional requirement is the provision of 1 parking space per 20m² in line with clubs, however this can be waived on merit.

It is not anticipated that councils need to develop specific provisions for sex-on-premises venues. However, a Plan of Management may address the specific issues arising from such premises. NSW Health, ACON and SWOP can assist with information on occupational health and safety and health policies and procedures for sex-on-premises venues (see **Appendix A** - References).

4.4 Monitoring and enforcement

Councils have monitoring and enforcement roles for all land uses and activities occurring in local areas involving a number of potential activities including:

- investigating complaints about the operation of premises
- monitoring the environmental performance of premises over a defined time period to ascertain whether they should continue to operate in the future
- carrying out inspections of building works required under the EP&A Act and Regulations
- carrying out inspections of commercial services premises to ensure that premises operate in accordance with conditions of the development consent
- investigating unauthorised premises and seeking to restrain this breach of the EP&A Act by requiring a development application to be submitted, and
- investigating illegal premises and taking action to restrain this breach of the EP&A Act by seeking to have the use cease.

Enforcement actions undertaken by councils in respect to sex services premises cause dissatisfaction both for councils, which lament the costly and time consuming processes involved, and for operators of sex services premises, who feel they are being unfairly targeted by council enforcement actions. A number of issues have emerged for both councils and sex workers as a result of current monitoring and enforcement practices and are outlined below.

4.4.1 Issues experienced by councils

Illegal operators within their local areas frustrate many councils. In some instances, councils appeal to the Land and Environment Court and obtain an order from the Court for the closure of the premises. However, the illegal operator often simply moves premises, thereby forcing the council to start the lengthy and costly Court process all over again.¹¹⁷ In this regard, some operators have little capital outlay in premises— a few massage tables, towels, a couch and safe sex equipment - and can relocate easily and quickly.

The inability to restrict, or place prohibitions on the actual operators of the premises under the EP&A Act has prompted some councils to call for a licensing approach similar to that of other States, including Victoria and Queensland. However, the NSW Government continues to reject the licensing model as ineffective. Experience in those states has demonstrated that licensing has not delivered the level of control anticipated and, more importantly, has frustrated health and safety programs. As a result, approaches involving licensing are objected to by community organisations including the Scarlet Alliance and the Australian Federation of AIDS Organizations (AFAO), which have prepared

¹¹⁷ Private Member Statement by Mr B O'Farrell (Ku-ring-gai Electorate – Deputy Leader of the Opposition) NSW Parliament Hansard (Legislative Assembly – 18 June 2003).

detailed submissions opposing it (see www.scarletalliance.org.au, www.afao.org.au).¹¹⁸ In Queensland and Victoria, in order to protect their privacy, few operators of sex services premises have applied for registration. However, the industry continues to operate illegally, demonstrating that the licensing approach does not produce compliance, or deter operators. Access initiated by peer-based projects and health agencies is frustrated as they cannot then reach, and maintain contact with, operators of premises which are 'driven underground' or are 'on-the-run' from regulators. Unlicensed workers are also vulnerable to corrupt conduct on the part of licensing authorities.¹¹⁹

Tasmania is now attempting to introduce the same legislation and this is vigorously opposed by AFAO.¹²⁰ Furthermore, critics of the restrictive regulatory environment in other states, and in fact abroad, hold NSW as the national and international model for sex services premises legislation.¹²¹

4.4.2 Issues experienced by sex workers

Issues which have been experienced by sex workers are discussed under separate headings below.

4.4.2 (i) Private sex workers

Private sex workers operating from residential properties, who are usually prohibited from doing so by council planning controls, live and work with much uncertainty and perceived fear of being discovered and reported or of having to accede to demands for free sexual services in exchange for not being reported to the authorities. In this regard, private workers see little difference between the control and opportunity for corruption existing under the current planning controls of many councils to that which previously existed under the police control of sex work.¹²² Council enforcement actions have the potential to rupture the extensive, yet fragile, network of support which exists between private workers and which contributes to their excellent health record in NSW.¹²³ When private workers are closed down by council, they lose contact with their peers who do not benefit from the safe sex education provided by more experienced workers. All of these circumstances would be largely avoided if private workers could operate legally under local planning provisions as home occupations or home businesses rather than being actively pursued for closure by councils. This issue is addressed in further detail in Part 5 of the Guidelines.

4.4.2 (ii) Inconsistency in council enforcement actions

Concerns have been raised by operators of sex services premises with the treatment of both authorised compared to unauthorised sex services premises, and sex services premises compared to other land uses.

Operators of sex services premises claim that some councils enforce regular and detailed inspections of approved sex services premises, and yet take no action to close down known, unauthorised premises within their areas. The operation of unauthorised premises creates competition for authorised ones, who charge higher fees to recover the costs spent on fire upgrades and other matters to comply with council controls. As noted earlier in these guidelines, this imbalance in the industry creates animosity between operators.¹²⁴

Operators of sex services premises, sex industry lobby groups and health agencies have also raised concern about the level of monitoring of, and enforcement action with, sex services premises relative to other premises. They claim that in some instances councils target sex services premises for regular inspections, and issue fines for minor departures from conditions of consent or Plans of Management, which does not occur with other premises. For instance, some Plans of Management include a commitment to detailed occupational health and safety matters derived from the NSW Health and WorkCover document "*Health and Safety Guidelines for Brothels*" (2001). Although the NSW Health and WorkCover Guidelines seek voluntary compliance, some councils initiate micro-level compliance

¹¹⁸ Pers comm. AFAO representative, 23.04.04, www.afao.org.au, www.scarletalliance.org.au.

¹¹⁹ Smith, 2003.

¹²⁰ Pers comm AFAO representative 23.04.04.

¹²¹ Ibid. See also Stewart (2003).

¹²² Pers comm. SWOP representative 20.02.04. Pers comm. PWA representatives 05.03.04.

¹²³ Pers comm. PWA representatives 05.03.04.

¹²⁴ As raised in consultations and in media articles.

actions against sex services premises. For some years now, the low rates of transmission of STIs within the NSW sex industry has been achieved by voluntary compliance with safe sex strategies.¹²⁵ Council compliance action and a 'hard stick' approach devalues this, reduces individual worker self-esteem and individual responsibility and is not in the spirit of the NSW Health and WorkCover approaches and Guidelines.¹²⁶ The practice of councils seeking to regulate detailed health and safety aspects through Plans of Management and conditions of development consent is not supported by health agencies such as SWOP and other industry bodies, which see this as being the jurisdiction of WorkCover NSW and NSW Health.¹²⁷ The appropriate use of Plans of Management is considered further in Part 5.

4.4.2 (iii) Monitoring/enforcement action

Concerns have been raised with the way in which councils conduct inspections of premises and the impact this can have upon businesses and individual sex workers. Council officers seeking to undertake monitoring/compliance actions often simply arrive at premises unannounced. This does not respect either the legitimacy of the business or the importance of privacy/confidentiality for both the sex workers and their clients. Another concern is with multi-agency raids on premises that have escalated in scale and nature. Often council officers join forces with other agencies such as the Australian Federal Police, Department of Immigration, local police and others, and are accompanied by a media reporter.¹²⁸ In so doing, council officers gain a level of access in excess of that available to them under the Environmental Planning and Assessment Act. Where the raids discover no illegal activities, council may then proceed to use the evidence obtained against the premises, even though their powers of access have been enhanced beyond those available in the Act. The negative reporting in the media about the raid further entrenches negative community attitudes towards sex workers, perpetuates stereotypes, linking all sex workers with the exploitation of women, and reduces sex worker self esteem. It also reduces the propensity to protect public health through promoting/practicing safe sex.¹²⁹

4.4.2 (iv) Use of circumstantial evidence

As previously noted, many current planning approaches seek to prohibit private sex workers from operating in residential premises. However, at the same time, the monitoring and compliance approaches of some councils involve the active pursuit of private workers by council officers who are directed to proceed on the basis of advertisements in local papers and telephone books.¹³⁰ In doing so, many councils seek to rely on circumstantial evidence to establish that premises are used as a 'brothel'.¹³¹ Under Section 17A(c) of the RPA, this evidence may include appointments with the sex worker made through the use of telephone numbers, or other contact details that are publicly advertised. Private workers conduct all of their appointments by telephone, and it is critical that details of the service and fees are negotiated by phone to ensure there is no conflict between the expectations of workers and clients. The use of telephone appointments as evidence inhibits the ability for sex workers to screen and negotiate with clients. It may also limit access by health service providers to sex workers for health education, as they may not admit to offering sexual services out of fear of compliance action.

The prohibition of private work and active monitoring and enforcement by some councils against this sector of the sex industry force workers to be secretive and keep a low profile. As a result, they may see fewer clients and, in charging higher fees per client to compensate, may feel pressured to engage in unsafe sex. Further, they may be reluctant to keep adequate safe sex supplies on the premises through fear that these items may be used as evidence of the illegal use of the premises. Section 17A(3) of the Restricted Premises Act 1943 simply implies that, on its own, the presence of safe sex articles does not indicate that premises are used as a sex services premises ('brothel'). This does not diminish private workers fears, as it does not prohibit regulatory bodies from using these items as evidence in combination with other forms of evidence.

¹²⁵ Pers comm. SWOP representative, 20.02.04. Pers comm. PWA representatives 5.03.04 and submission dated 14.05.04.

¹²⁶ Pers comm. SWOP representative, 20.02.04. Pers comm. AFAO representative 23.04.04.

¹²⁷ Pers comm. SWOP representative, 20.02.04. Pers comm. ACON and AFAO representatives 23.04.04.

¹²⁸ Pers comm. SWOP representative, 20.02.04.

¹²⁹ Ibid.

¹³⁰ Pers comm. PWA representatives, 05.03.04.

¹³¹ A 'brothel' includes premises operated by one worker under the Restricted Premises Act.

Similar concerns about the use of circumstantial evidence exist for operators of other types of sex services premises, particularly those which are either unable to comply with overly-restrictive council requirements, or aware of their council's adversarial approach to development applications and cannot afford a court appeal. These operators may not keep sufficient supplies of condoms or have posters and other information on safe sex on the premises due to fear of discovery and regulatory action.

Council monitoring and enforcement processes, therefore, have the potential to undermine the positive work of community-based organisations such as the AIDS Council of NSW, Australian Federation of AIDS Organisations, SWOP (part of ACON), and the Private Worker Alliance and individual sex workers. However, councils rarely, if ever, appear to consider the implications of their actions on the structure and operation of the sex industry, and the wider threats to public health. It is for this reason that current council approaches are raising significant concerns for health service providers in their attempts to address the spread of HIV-AIDS and other STIs.¹³² This issue is examined further in Parts 5 and 6 of the Guidelines.

¹³² Pers comm. ACON representative, 23.04.04.

Part 5: Better Practice Planning Options for Sex Services Premises

5.1 Introduction

This Part outlines options for councils in planning for sex services premises. As noted earlier, attempting to exclude sex services premises from a council area is not permissible, is contrary to the intent of the 1995 reforms, and does not uphold the guiding principles set out in Part 1, in particular those concerning discrimination against the sex industry and upholding the health and safety requirements of sex workers. Better practice options reflect planning approaches that achieve the guiding principles set out in Part 1. Such planning approaches should:

- **be non-discriminatory**, treating sex services premises in a similar manner to other commercial enterprises
- **recognise the difference in type and scale** of sex services premises in planning controls
- **encourage compliance** with council controls by ensuring the controls are relevant and not unnecessarily restrictive, and
- **promote informed opinions** in councils and in the wider community to avoid the stigmatisation of the sex industry, its workers and clients, which can impact on the planning process.

Ensuring these principles underpin preparing and enforcing planning provisions potentially enables the following benefits for councils, the community and the sex industry:

- **a high rate of voluntary compliance** with council controls, leading to a reduction in the need for council action and enforcement costs and a reduction in concerns amongst the sex industry for aspects of current compliance regimes of some councils
- **a low level of complaint** from surrounding property owners about medium to large scale premises due to an applicant applying for development consent and being subject to its conditions concerning amenity, hours of operation, parking etc.
- **reduced appeals to the Land and Environment Court** as a result of DAs being approved at a local level and having controls that are relevant to the real impacts, clear in their intent, and at reasonable cost to an applicant
- **improved public health outcomes** by appropriate regulation which recognises the difference in scale and potential impact of premises. This will ensure that premises *can* comply, resulting in an authorised and legal industry rather than one driven underground and thereby more difficult for health service providers to access
- **improved safety of sex workers** by improving locational choices and operating conditions for premises, particularly for private worker home-based sex work, and for commercial sex services premises which are capable of locating in commercial zones, and
- **minimising opportunities for corruption**, which was one of the key reasons for the 1995 legislative reforms, by removing the illegal status of or the unreasonable restriction on the use of premises that can allow corruption to occur undetected.

The next section outlines the options for addressing sex services premises in council LEPs. This is followed by options for establishing development standards for these premises either in an LEP or a Development Control Plan, when a DCP might be appropriate and appropriate controls to include. Finally, options for improving the monitoring and enforcement roles of council are addressed.

5.2 Options for LEP provisions

This section considers the options available to councils with regard to permissibility of sex services premises in their LEPs. The need to prepare provisions for safe house sex services premises would be limited to those areas of the state where street work occurs e.g. Darlinghurst, some areas of

western Sydney, Newcastle and Wollongong. Advice should be obtained from the Sex Workers Outreach Project (SWOP) on this issue.¹³³

These Guidelines offer two planning system options which can facilitate appropriate assessment and regulation of sex services premises.

Option 1 - LEP permits sex services premises without specific provisions, whereby council makes no special provisions for sex services premises.

This planning approach facilitates appropriate assessment “by default”. Commercial sex services premises are treated equally to other commercial land uses, and home occupations involving sex work are permitted as ‘exempt developments’ equally to other home occupations.

Option 2 - LEP permits a range of sex services premises, whereby council designs provisions to permit the full range of sex services premises currently operating in most council areas. This system facilitates appropriate assessment “by design”.

This system fully utilizes the discretionary planning mechanisms available under the EP & A Act. Private worker home occupations may be permitted as ‘exempt development’, private worker home businesses may be permitted as “complying development” (after certification by council; or by an accredited certifier) and commercial sex services premises may be permitted after submitting a development application to the local council.

Within each option are sections on both the advantages and the disadvantages of the various approaches, and also a section on when the particular approaches would be most useful, in order to provide detailed guidance to councils considering which planning approaches they may wish to adopt.

¹³³ See contact information in Appendix B.

5.2.1 OPTION 1: LEP permits sex services premises without special provisions

Under this option, councils would not make any specific provisions for sex services premises under their planning instruments and policies, but rather would consider the planning implications of such activities under generic land use terms such as commercial uses, home occupations and home businesses.

When councils choose this approach the only regulation that applies to commercial sex services premises is the application of environmental planning law and merit considerations of each proposal at the time.

This approach can be improved by adopting definitions of home occupation and home business which permit non-resident workers in addition to residents, enabling better occupational health and safety outcomes for all home-based workers.

5.2.1(i) Advantages

- this approach does not discriminate against any scale of sex services premises relative to other land uses;
- commercial sex services premises are able to locate where other commercial uses are permitted. This approach reduces the temptation to treat the sex industry, for example, by limiting commercial sex services premises to inappropriate zones such as industrial zones;
- home occupations involving sex work are able to exist equally to other home occupations by default. This minimizes the controversy which is often otherwise the result of pro-active approaches seeking to specifically permit home occupations involving sex work;
- if an LEP treats sex services premises equally to other land uses, then the associated costs of regulating sex services is minimized;
- enacts the intentions of the 1995 sex industry law reforms by default.

5.2.1 (ii) Disadvantages

- this approach does not assist in educating professionals and the community that all types and scales of sex services premises are legitimate land uses under the EP&A Act
- in the absence of a specific DCP which ensures that the design and operation of a commercial sex services premises minimise impact on surrounding areas, council officers are not provided with adequate guidance to assess a development application for this type of use, and to explain to the public relevant planning criteria for assessment of these types of uses.
- commercial sex services premises exist in many local areas but are operating 'underground' as a result of uncertainty of the planning requirements, and fear of negative action being taken by councils upon enquiry;
- when councils make no specific provisions for sex services premises then the public may be unaware of council's role in regulating all scales and types of sex services premises and the irrelevance (in most cases) of moral objections to policies and proposals.

5.2.1 (iii) When is this approach useful?

This approach is most suited to councils where there is a broad acceptance by council and residents that sex services premises are just another type of land use that warrants no special consideration.

With regard to home occupations involving sex work, including the definition of home occupation contained in the EP&A Model Provisions 1980 in the council's LEP is generally meritorious as it does not discriminate between home occupations undertaken for sex work compared to other home occupations, and does not place a limit on the number of resident workers which is important from a health and safety perspective. To protect the health and safety of home-based sex workers, and to better reflect the demographics of all types of home occupations, councils may choose to consider using a similar generic definition to that provided by the EP&A Model Provisions 1980 as contained in Appendix D to these Guidelines which would allow all home occupations to employ one non-resident worker in addition to the resident worker(s).

Due to the characteristics of some small and regional councils, larger commercial sex services premises may not be appropriate in the local area. In these areas councils may not have received any development applications for commercial sex services premises, nor experienced any complaints or compliance issues because existing local sex services premises are discreet. The status quo for these smaller sex services premises is retained by this approach, as they are able to be assessed and authorized on merit, or permitted without consent as private worker home occupations.

Generally speaking, even though sex industry issues may not be obvious in a council area, it could still be appropriate to undertake strategic planning activities to assess the zones most appropriate for different scales and types of sex services premises using the suggestions in these guidelines. Care must be taken to ensure that strategic planning activities do not compromise the privacy rights of home-based sex workers. The preparation of LEP controls for sex services premises will not, contrary to popular myth, encourage the sex industry to move to a particular council area, as like any business, the industry is based on supply and demand together with a range of other locational factors, and will locate accordingly.¹³⁴

¹³⁴ See www.swop.org.au

5.2.2 OPTION 2: LEP permits a range of sex services premises

The 'Brothels' Taskforce noted that the most effective method of reducing the number of illegal sex services premises is by councils developing planning instruments that identify areas where sex services premises are compatible with other land uses.¹³⁵ Further, that councils should be encouraged to develop appropriate planning controls based on the likely impacts of different types of sex services premises in particular areas. The Taskforce report noted that, while commercial 'brothels' may not be appropriate in some local government areas (LGAs), it is likely that all have locations where small 'brothels' and 'home business brothels', could operate without significant amenity impacts.

The Environmental Planning and Assessment Act (EP&A Act) provides the potential to permit different sex services premises as exempt development (e.g. home occupations), potentially complying development (e.g. home business) and development requiring development consent (e.g. other commercial premises).

This option supports better practice principles, and has substantial advantages where it is appropriate.

5.2.2 (i) Advantages

- councils acknowledge sex services premises as legitimate land uses
- recognition under the LEP provides a basis for preparing detailed development control provisions for commercial sex services premises under a DCP, setting standards to ensure that the design and operation of premises minimise amenity impacts upon surrounding areas
- facilitates better use of the NSW planning system by having a graduated response
- provides opportunities to include the local sex industry in planning approaches and can facilitate an open and constructive relationship between council and owners/operators of sex services premises, improving the likelihood of compliance with council regulations and ongoing communication with health service providers and peer educators
- can achieve the guiding principles in Part 1 provided that a responsible approach is taken in preparing regulations for each type and scale of sex services premises, and
- provides opportunities to test appropriate controls and, if controls have negative impacts, to review and either amend or remove them.

5.2.2 (ii) Disadvantages

- commercial sex services premises might be treated as 'different' land uses, often as a result of assumptions and stereotypes about how they operate. They may be perceived as warranting segregation from other land uses or needing special controls such as security guards and Plans of Management, which can amount to over-regulation. The reality is that many commercial sex services premises have similar impacts to other service-related premises and many have fewer impacts, due to the imperative to run a discreet operation, and
- complying development options for home business may raise a number of considerations related to the objectives of the residential zone and the suitability of home businesses, however the lack of complaints where such businesses already operate suggests many amenity concerns are unfounded.

5.2.2 (iii) When is this approach useful?

This approach would be appropriate for the majority of NSW councils. It would see councils establishing their expectations for sex services premises rather than engaging in time-consuming, costly actions to close down illegal premises only for them to re-open elsewhere. It provides the basis for all scales of premises to be established legally, and reflects the guiding principles outlined in Part 1.

The complying development option presented for home businesses involving sex work would be most suitable for councils that already permit other home businesses or commercial uses in their residential zone as a form of complying development.

¹³⁵ NSW Government "Report of the Brothels Taskforce", 2001: 11.

5.2.3 OPTION 2A: LEP permits private worker home occupations as exempt development

Councils could permit home occupations involving sex work as a form of exempt development under their LEP. The activity is well suited to the exempt development provisions under the EP&A Act as it is low key, discreet and unlikely to have any amenity impacts upon surrounding residents. It has already been demonstrated that the activity can occur in residential areas without impact, as demonstrated by the lack of complaints in councils where home-based sex work is known to operate. As discussed in Part 4, some councils already permit home occupations involving sex work as a form of exempt development but others specifically prohibit a home occupation involving 'prostitution' as a form of exempt development. This is considered to be discriminatory.

Even where home occupations are permitted as exempt development, many LEPs contain the Model Provisions' definition of home occupation, which does not permit the employment of any non-resident workers. This can create a situation where individuals involved in a home occupation, regardless of the type of home occupation, are isolated and therefore at risk of crime and violence¹³⁶. Councils could amend the definition of home occupation in the LEP to allow the employment of a maximum of one non-resident worker for safety reasons. A number of councils already permit this intensity of use for other home occupations, and councils could permit all home occupations complying with this definition without consent.

If council decided to allow the employment of one non-resident in a home occupation, the following definition, which is an adaptation of that contained in the Model Provisions, could be used:

'home occupation' means an occupation carried on in a dwelling-house or dwelling by the permanent residents of the dwelling-house or dwelling which does not involve:

- *registering the building under the Factories, Shops and Industries Act 1962*
- **employment of more than one person other than those residents**
- *interference with the amenity of the neighbourhood by the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products or grit, oil or otherwise*
- *displaying goods, whether in a window or otherwise*
- *exhibition of any notice, advertisement or sign, other than a notice, advertisement or sign exhibited on that dwelling-house or dwelling to indicate the name and occupation of the resident, or*
- *selling items, whether goods or materials, or exposing or offering items for sale by retail.*

The exempt development criteria for a home occupation involving sex work would ensure that, once this activity no longer required development consent from council, adequate criteria are prescribed for the activity to ensure it has no, or minimal, impact on the surrounding area. Simply put, the approach involves a change in the way home occupations, including those involving sex work, are regulated by council. It would not relinquish council control over this type of home occupation, as the use still needs to comply with the specified criteria under an Exempt and Complying LEP or DCP, is still subject to enforcement action under the EP&A Act 1979 and, in addition, has the potential of closure under section 17 of the RP Act 1943.

As part of the process of verifying home occupations as exempt development, some Councils require a letter advising the location of the premises, a description of the proposed hours of operation, staff details, area of the dwelling to be used, delivery of equipment/stock, waste disposal, parking and signage. If the home occupation complies with all necessary criteria, some councils notify acceptance of the home occupation by letter of acknowledgement. It is unlikely that private workers would comply with this requirement since their address and other details would therefore be placed on a public record and potentially accessible to the public. However, the onus is on applicants to ensure they comply with the exempt development provisions. Council also has a responsibility to ensure that

¹³⁶ NSW Health Department letter dated 6 February 2004 (copy provided to PWA) notes that in the past the NSW Health has included advice to councils which have sought comment in respect of local government planning for brothels that, inter alia, "allowing at least 2 sex workers in home occupation brothels is desirable from an occupational health and safety perspective." Copy of correspondence provided by PWA.

information on exemptions is readily available in plain English. This is a preferable approach from the perspective of private worker anonymity and safety, and is more likely to achieve compliance by this sector of the industry.

As with all home occupations, work that causes disturbance or amenity impacts quickly comes to the attention of neighbours and then Council. If investigation demonstrates that there are clear amenity impacts, the premises would not fall within the definition of a home occupation, which explicitly requires no disturbance to amenity, and would be prohibited in the zone. Council could then take action to have the use closed down. However, as previously discussed, there is no evidence that home occupations involving sex work have any more potential for impact than other home occupations.¹³⁷

Councils seeking to permit home occupation sex services premises as exempt development should consider the land that may be excluded from the benefit of these provisions under the LEP. As discussed in Part 4, some Councils list additional lands to those specified in the EP&A Act as being unsuitable for all exempt and complying development, including land which has heritage conservation significance. Certain inner city areas in Sydney would be particularly affected in this way. In these instances, it may be appropriate for Councils to consider including a new 'Minor Development' clause, as discussed in Part 4 of the guidelines, which could apply to exempt and complying development involving home occupations. The clause would work by permitting these activities, which by their nature do not generally affect heritage qualities, as exempt or complying development within heritage affected sites or areas. This would ensure that a DA is not required to be submitted for home occupations or that they are not prohibited in instances where there is no potential for impact on the significance of a heritage item or conservation area.

5.2.3 (i) Advantages

- treats home occupations involving sex work the same as other home occupations
- upholds the guiding principles set out in Part 1, provided a maximum of one non-resident worker, in addition to the residents, is permitted to be employed for safety and security reasons
- an effective list of key development standards such as those defined in the Model Provisions can be prescribed, and augmented by additional criteria (see example in **Appendix D**), and
- if the use causes a disturbance, council has recourse to action through both the EP&A Act and the RPA, including closure.

5.2.3 (ii) Disadvantages

- members of the public have no opportunity to comment on the use of premises which, although unlikely to be noticeable or have any impact in themselves, may lead to initial negative reaction to the exhibition of a draft planning approach, and
- councils are unable to fully monitor home occupations involving sex work and gauge the impacts of this new approach, however if complaints are received, then this is a form of monitoring. It must be said, however, that councils do not do this for other home occupations presently exempt under council LEPs.

5.2.3 (iii) When is this approach useful?

This approach would be useful in all council areas. Private worker home occupations would be treated the same as other home occupations as a fundamental principle of equity, as any issues of amenity impact on locality can be addressed through normal planning processes.

¹³⁷ As mentioned in Part 4, the key findings of the UTS research on private worker (home business) showed that residents have a limited awareness of home business generally, with some respondents citing the benefits of home businesses for neighbourhood safety and most respondents stating that they did not think home businesses always needed to seek or receive council approval. This research also showed residents had no awareness of home businesses that provide sexual services and that the presence of such businesses appeared to have no impact on the resident's perception of crime. (Jamieson, Nov 2003)

5.2.4 OPTION 2B: LEP permits private worker home occupations as complying development or requires a DA

Councils could permit private home worker occupations involving sex work as a form of complying development or permit them subject to approval of a DA, however this approach has not been successful to date (see Part 4). It does not meet the principle of equity of treatment supported in these Guidelines, and there are no real advantages to this Option. Apart from the perception that council may believe it has knowledge and control of private worker home occupations of at least the ones that have applied for consent, there would appear to be no known advantages. On the other hand, there are significant disadvantages. The sex industry and health organizations, for all the reasons identified below as disadvantages, are strongly opposed to this approach.

5.2.4 (i) Advantages

There are no known advantages.

5.2.4 (ii) Disadvantages

- sex workers are unlikely to comply with it, as a DA or Complying Development Certificate reveals sex workers' addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises. As a result, home occupations would continue to exist illegally within council areas, which is to be discouraged as it keeps them 'underground' and isolated from sex worker peer support and health services¹³⁸
- it is inequitable as there is no evidence that home-based sex work has any more impact than other home occupations e.g. an architect working from home, accountant, tax agent, photographer etc
- the low, or negligible, impact does not warrant a DA, which involves considerable cost and time and raises the possibility of neighbour objections, and
- it drives home occupations underground with most of them operating unauthorized. This then provides opportunities for corruption, which the Disorderly Houses Amendment Act 1995 specifically sought to redress.¹³⁹

¹³⁸ The Report of the Brothels Taskforce (2001) stated (p.12):

"The identification of individual sex workers through the development application process is also contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001."

¹³⁹ Advice from the Sex Workers Outreach Project and the Private Worker Alliance as discussed in the report to the Marrickville council Development and Environmental Services Committee Meeting 02/02, 5 March 2002, is that for instance, situations have been reported where men claiming to be council officers demand free sexual services or financial benefits in return for not disclosing unauthorised home occupations.

5.2.5 OPTION 2C: LEP permits private worker home businesses as complying development

As discussed in Part 4, there are currently no known planning approaches in place by which private worker home businesses can occur legally in local areas without development consent. This raises an issue for small collectives of workers involving the permanent resident/s and one or two other non-resident employees, who conduct sex work from residential premises. Although not complying with the home occupation criteria because of the employment of non-residents, the use remains discreet and low impacting. Sex industry and health representatives argue that, on this basis, a formal DA, involving advertising and notification of the premises, should not be required for this small-scale sex services use.

This option for complying development conducted by small collectives of sex workers in a residential dwelling may be a preferred option in regional or rural settings where councils may decide commercial sex services premises are unsuitable in the local area.

An alternative to requiring a DA could be for councils to consider using 'complying development' provisions under the EP&A Act to address an additional category of land use known as 'home business' either generally, or specifically to cover home businesses involving sex work. Unlike exempt development, in the case of complying development an application has to be submitted, either to council or a private certifier for assessment against pre-determined standards, and receive a Complying Development Certificate with standard conditions for the development. However, an application for complying development is not the same as a DA. Under the EP&A Act, complying development does not have to be notified to neighbours or advertised in the local paper unless a council DCP requires public notification for complying development (Clause 85A EPA Act).¹⁴⁰ Where councils choose to permit home businesses as a form of complying development, it is suggested this not be notified or advertised in order to ensure compliance by sex workers. This would uphold the guiding principles articulated in Part 1.

In formulating complying development provisions, a definition and development standards could be inserted for a new generic category of a "home business", or alternatively a specific category of "home business involving sex work". This is a matter for each council to consider, however a base definition which would be appropriate is:

"home business means a business carried on in a dwelling house and that would be a home occupation except that it involves the employment of not more than two persons other than the residents concerned either on the site of the business or having a base at the site"

5.2.5 (i) Advantages

- addresses the range of sex services premises that exist in local areas, upholding the guiding principles identified in Part 1
- acknowledges a sector of the sex industry that will otherwise continue to occur illegally in residential areas due to the costs associated with locating in a commercial zone and the inappropriateness of industrial zones
- may encourage a legal local industry and provide greater security to sex workers. Council recognition of the legitimacy of the use ensures sex workers and clients negotiate on a level playing field about the nature of the service, rather than the client deriving advantage from the illegality of the activity. This sense of balance is important from the perspective of upholding safe sex practices¹⁴¹
- home businesses involving sex work could be covered by a set of complying development criteria (see example in **Appendix D**)
- the use is low key and unlikely to cause amenity impacts. It remains residentially-based, conducted by the permanent resident or residents of the dwelling house in the same manner as a

¹⁴⁰ Complying development provisions specify only that where building works are proposed neighbours must be informed in writing 2 days before any "site works, building or demolition begins", however there are no requirements to undertake such notification for the commencement of an activity or new land use within the premises.

¹⁴¹ Pers comm. SWOP 20.02.04.

'home occupation' however, unlike a 'home occupation', may involve up to 2 non-resident workers, and

- if problems arise, council can take action under the EP&A Act and/or RPA and also seek to review the continued permissibility of the use as a form of complying development.

5.2.5 (ii) Disadvantages

- few other similar activities, with the exception of a 'bed and breakfast', are currently permitted in residential areas as complying development. There is perhaps in fact more need for a private worker home business to be low impacting than other home businesses due to the need of private workers to provide a discreet service which upholds the privacy and anonymity of clients, and
- it may create a precedent and pressure for other non-residential uses in residential areas contrary to the objectives of the residential zoning in most council LEPs.

5.2.5 (iii) When is this approach useful?

The EP&A Act states that development cannot be complying development if it is carried out on land containing a heritage item, while SEPP 60, SEPP 4 and individual council LEPs may set other restrictions e.g. disallowing it in conservation areas. Some other aspects of note regarding complying development certificates under the EP&A Act are that:

- a council or accredited certifier must not refuse to issue a complying development certificate if the proposal is in accordance with the regulations
- application must be determined within 7 days after lodgment, and
- there is no right of appeal against the determination of a complying DA.

At present, many councils do not permit home businesses of any kind as complying development, and most only permit a very limited range of non-residential uses with development consent in residential zones. Councils could consider home business involving sex work as a form of complying development in recognition of the special health and safety issues confronting sex workers, and the demonstrated low impact that they have in local areas. If councils decide this option is appropriate, suggested complying development standards for this use are contained in Appendix D to these guidelines.

It is not recommended that private worker home businesses be permissible in residential units. In this regard, although many cooperatives would have a low impact even in these situations, the presence of up to four workers in a denser, residential environment increases the potential for, and increased intensity of, any amenity impacts. Although all workers would be unlikely to receive clients at the same time, there is still the potential for increased movement of people to and from the residential unit, and noise, particularly in the evenings. In dense inner city areas, parking issues may also arise. These issues are reduced for single dwelling houses not sharing access with other residences, and where there may be potential for parking to be provided on site or in the surrounding area which, if a low density zone, is likely to have fewer residential flat buildings.

5.2.6 OPTION 2D: LEP permits commercial sex services premises

Council LEPs could define commercial sex services premises and prescribe the zones in which they are permissible, bearing in mind the issues discussed in Part 4, particularly those related to industrial locations. An appropriate definition for a commercial sex services premises to insert in an LEP would be as follows:

commercial sex services premises means premises habitually used for the purposes of sex work (i.e.: prostitution as defined by the Summary Offences Act¹⁴²), or that have been used for that purpose and are likely to be used again for that purpose, but does not include a dwelling or dwelling-house in which sex work is undertaken as a home occupation or home business. Premises known as brothels, massage parlours and bondage and discipline (B&D) premises may fall within this definition.

Note: This is the same as the definition of brothel under the Restricted Premises Act with the exception of the use of the more appropriate terminology of 'sex services premises' and the deletion of reference to premises used by only one worker.

Activities falling into this definition would require the consent of council in zones where they are permissible.

5.2.6 (i) Advantages

- councils acknowledge commercial sex services premises as a legitimate land use to be regulated under their planning provisions
- it provides a basis for detailed development control provisions in a DCP, thereby minimising amenity impacts upon surrounding areas and ensuring that premises meet other standards; and
- it can provide opportunities for the local sex industry to be included in planning approaches and facilitate open and constructive communication between the council and operators of sex services premises, maximising the chances of compliance.

5.2.6 (ii) Disadvantages

- commercial sex services premises or brothels are separately defined as distinct from other commercial uses and are frequently prohibited in commercial zones as they are not seen as similar to other commercial uses, but rather are often confined to industrial areas, and
- commercial sex services premises are often viewed as warranting special regulations such as security staff and Plans of Management, which can amount to over-regulation when the reality is that most have similar impacts to other service related uses.

5.2.6 (iii) When is this approach useful?

The most appropriate zone for commercial sex services premises is generally a commercial zone for the following reasons:

- provides a safer environment than industrial areas, as many other activities in these zones are open outside regular business hours (e.g. restaurants, cafes, bars etc), which contributes to the passive surveillance of an area
- in most cases, public transport is available
- many operators of commercial sex services premises prefer this location for the reasons mentioned above and also because of greater passing trade and proximity to services such as doctors and chemists and to other late night uses which can be mutually supportive¹⁴³, and
- councils currently allowing commercial sex services premises in commercial areas do not report any notable amenity impacts arising from them¹⁴⁴. Although individual DAs for commercial sex services premises in commercial zones might, from time-to-time, attract objections or raise issues, this does not mean that all commercial sex services premises in these zones are problematic.¹⁴⁵

¹⁴² "the act of prostitution includes sexual activity between persons of different sexes or of the same sex that comprises 'sexual intercourse' for payment and/ or masturbation committed by one person on another for payment".

¹⁴³ Pers comm. Adult Business Group 20.02.04.

¹⁴⁴ The 'Report of the Brothels Taskforce' raise the issue of commercial zones being problematic for the location of sex services premises

¹⁴⁵ SWOP 2004 – Small commercial sex services premises (which have under 5 rooms) could also be allowed in business or mixed use zones

One issue councils may need to address in considering the location of commercial sex services premises in commercial or mixed-use zones, is the relationship to surrounding residential premises. Residential development now occurs frequently in commercial areas, fulfilling the Government's urban consolidation objectives and in response to property market forces. In recent years, the growth of regional and sub-regional centres has seen the evolution of multi-storey residential towers. These developments often have a ground level retail/commercial uses, a commercial podium and a residential tower. The potential for a commercial sex services premises to establish at ground floor level within a residential 'tower' development would depend on the development standards in an LEP or DCP, however controls may be specified to ensure that the use is discreet, low impacting and well run. Councils would need to consider the appropriateness of the use in the commercial podium, having regard to DCP provisions governing location, design and operation, and conditions of consent. A Plan of Management could be a useful regulatory tool in regard to these locations.

Some councils limit commercial sex services premises to industrial areas, however industrial zones are often inappropriate for the following reasons:

- they are essentially singular in purpose, isolated from other uses, mostly devoid of activity after hours, and have none of the casual surveillance of commercial areas, thereby posing a safety threat to sex workers and their clients, particularly at night
- public transport after regular business hours is often non-existent
- unlike commercial sex services premises, which may be suitable in other zones within a council area, industrial uses by their nature are usually unsuitable in any other zone
- some local government areas do not have industrial areas, and
- it can present an unreasonable restriction to a use which is service-based, not industrial or high impacting. Many premises are well run, discreet and generally well suited to commercial areas, particularly small to medium sized commercial sex services premises. Being relegated to industrial areas decreases the economic viability of these premises and reinforces the myth that all commercial sex services premises must be isolated from other commercial type uses.

However, industrial zones may be appropriate for larger types of commercial sex services premises with numerous rooms and car parking demands, or which cater for groups or are combined with an entertainment function. In this regard, the potential amenity impacts of traffic, car parking and late night activity would be likely to be reduced by locating in an area not in close proximity to other uses, especially residential. Councils with industrial zones could undertake a safety audit of these zones to determine which may be appropriate for the location of commercial sex services premises. In particular, smaller industrial zones, limited in area, and close to mixed-use or commercial areas with after-hours activity and public transport, may be suitable.

If councils decide that certain industrial zones within their areas are an appropriate location for commercial sex services premises, then operators should be required to demonstrate at the DA stage that adequate attention is given to detailed safety and security matters. Providing appropriate lighting and other design and operational aspects can greatly improve the safety of premises.

5.3 Special provisions or development standards for commercial sex services premises

This section considers the options available for councils in regard to detailed development standards for commercial sex services premises, which can be located either in LEPs or in a specific DCP for commercial sex services premises. First, it clarifies the difference between prohibitions and development standards, and then where development standards should be located. It then considers when a specific DCP for commercial sex services might be developed, and alternatively, whether provision for commercial sex services premises might be incorporated into existing council DCPs. Finally, it considers options for a range of specific development standards.

In regard to LEPs, councils need to ensure clarity between **prohibitions** and **development standards**. Prohibitions are provisions in an LEP which state that, in regard to sex services premises, they shall not be carried out on land in a particular zone. Development standards are provisions, which set out development standards which must be considered when assessing a development application, e.g. separation distances between sex services premises or other sensitive uses, car parking. A development standard can be varied under the provisions of SEPP 1 where it can be shown to be unreasonable or unnecessary in a particular circumstance.¹⁴⁶

5.3.1 Where should development standards be located?

It is generally considered better practice for LEPs to establish the permissibility of various land uses in a council area and DCPs to provide the detailed controls or standards for other aspects of development e.g. design, operation, location, siting, car parking, signage and other matters. This would be an appropriate approach to take for commercial sex services premises, as it ensures that all matters concerning location, design and operation of premises are considered on equal footing in determining the merits of a proposal.

Some councils include the list of matters for consideration contained in the RP Act (see **Appendix B**) in the 'Special Provisions' section of an LEP. However, this is simply a list of matters the Land and Environment Court may take into consideration when making a decision about whether a sex service premises should be closed down. It does not infer that all premises have these impacts. If councils intend to prepare a DCP for commercial sex services premises, it is not necessary to list all the RPA considerations in an LEP, as they do not offer any objectives, rationale or clear guidance on the matters listed. Furthermore, a DCP is likely to be more comprehensive and useful as a guide in assessing a proposal. If councils do not intend to prepare a DCP for commercial sex services premises and require a core list of issues to consider when assessing a DA, including the Restricted Premises Act 1943 (RP Act) considerations in an LEP may be appropriate for councils. In this instance, where it is intended to permit commercial sex services premises in commercial zones, the reference to 'any place frequented by children' in the RP Act considerations should be amended to include the words 'excluding commercial areas'. This is to ensure there is no misunderstanding of the zoning provisions. However, a properly written DCP is likely to be more comprehensive and useful as a guide in assessing a DA.

5.3.2 Should there be a DCP for commercial sex services premises?

Many councils prepare DCPs for specific land uses or issues e.g. rural lands, different housing types (e.g. dwelling houses, residential flat buildings, town houses and the like) child care centres, schools, restaurants, medical centres/hospitals, heritage issues, outdoor advertising, car parking and so on. It would therefore not be unusual or discriminatory against the sex industry for councils to prepare a DCP specifically addressing commercial sex services premises.

Councils should evaluate and decide whether a policy response is necessary in their areas. This could take the form of a stand-alone DCP for commercial sex services premises or incorporating provisions within an existing DCP e.g. those covering all business uses or applying to a particular area such as a Town Centre.

¹⁴⁶ The legal advice from Brian Preston contained in the appendix to the Report of the Brothels Taskforce (2001) outlines the issues surrounding of SEPP 1 objections in further detail.

In small council areas or those where the sex industry has had little or no visible presence, there may be no imperative to prepare a DCP, especially where other, more pressing issues warrant staff resources. However, some councils may need to develop a DCP yet will be reluctant to do so because they may be perceived as 'encouraging' commercial sex services premises or because they have concerns about the extent of public reaction.

For councils that intend to permit home occupations involving sex work as a form of exempt development and home businesses involving sex work as a form of complying development, there is no need to cover these uses within a sex services premises DCP. This is because home occupations and home businesses would not require development consent through a DA and so would not be assessed for compliance against council controls, including the Commercial Sex Services Premises DCP. All of the council standards for home-based sex work would be contained in the LEP and the Exempt and Complying DCP.

5.3.2 (i) Advantages of having a DCP

- provides guidance on the council's expectations and standards for commercial sex services premises
- can be an important educative document by establishing the background to sex services premises becoming a legitimate and legal land use, and clarifying council's role in regulating them. It can demystify the sex industry, outline the framework of State Government support for upholding the health and safety issues associated with sex work, and emphasise the important equity considerations concerning the sex industry. This can make council's position much clearer when a DA is received for a commercial sex services premises and may reduce the level of contention arising (at least in more rational community groups)
- can list the types of information required to be submitted with a DA and how a commercial sex services premises will be assessed, therefore providing clarity to applicants and council staff in the development assessment process
- without a DCP, assumptions might be made about the impacts of the use rather than relying upon a document which has researched best practice and consulted with industry representatives about the nature of the local sex industry, and
- development assessment staff in councils without DCPs have often sought guidance from councils which have a DCP, indicating that there is a need for council to be responsive to the types of land uses occurring in their areas and to support the professional needs of their staff.

5.3.2 (ii) Disadvantages of having a DCP

There are no known disadvantages.

5.3.2 (iii) When is this approach useful?

Because of the regulatory practices of some councils to date, representatives of the sex industry and support groups are wary of planning approaches encouraging the preparation of a specific DCP for commercial sex services premises, fearing it will only lead to over-regulation of the industry. They note that over-regulation can drive the industry further underground and affect the success of health and other outreach programs.

However, sensibly prepared DCPs, based on the guiding principles set out earlier in these guidelines, can be a positive tool for councils and the sex industry. They can provide an educative resource and clear guidelines on the factual, rather than assumed, potential amenity impacts of commercial sex services premises. **Appendix B** contains better practice DCP provisions for a commercial sex services premises, and **Appendix C** contains better practice development consent conditions for commercial sex services premises.

5.3.3 Preparing a DCP

As has been noted, the only sex services premises that might require a separate DCP are commercial sex services premises, and if councils decide to prepare a DCP it would include parlours and other premises where sex work is habitually undertaken.

5.3.3 (i) Matters to include in a DCP

In drafting DCPs, councils should not make provisions so restrictive that they discourage operators of sex services premises from seeking to become authorised land uses under local planning provisions. Overly-restrictive provisions may lead to the continuation of unauthorised and illegal uses under local planning controls, with corresponding risks to the standards of premises, working conditions and sex worker access to health and safety programs. As discussed previously, premises driven underground by restrictions and prohibitions can present barriers to access by health service providers and social workers.

If councils decide to prepare a DCP, the next question is what to include in the provisions. Some DCPs have been comprehensive in their listing of considerations for DAs lodged for commercial sex services premises. However, issues have emerged from this, including:

- a tendency to include irrelevant material that is the jurisdiction of other external organisations or other legislation, e.g. some public health matters, and which may undermine the voluntary guidelines prepared by organisations such as NSW Health and WorkCover
- over-regulation of the sex industry by restrictive development control provisions which, when combined and strictly enforced, can severely restrict the potential for commercial sex services premises to locate in particular areas. For instance, requiring a commercial sex services premises to be located a certain distance from sensitive land uses *and* a certain distance from other commercial sex services premises *and* not at ground level can effectively sterilize commercial centres as a potential location. This forces commercial sex services premises to industrial areas which, as mentioned previously, can be unsuitable locations for safety and other reasons, and
- requiring a detailed Plan of Management for all premises at DA stage, and requiring premises to adhere strictly to them following development consent, when many of the matters included are generally finalised only when consent has been provided.

Matters which should be covered by DCPs generally include:

- a background to council regulation of sex services premises
- aims and objectives of the DCP and legal citations
- information council requires to be submitted with a commercial sex services premises DA
- controls (performance or prescriptive or both), which council will use to assess a commercial sex services premises DA
- advisory details to applicants e.g. council complaints protocol, closure of sex services premises under Section 17 of the DHA Act, and the like, and
- an appendix containing other materials e.g. guidelines for preparing Plans of Management, useful contacts and information and extract from the Restricted Premises Act (Section 17).

5.3.3 (ii) Matters not to include in a DCP

The following matters should not generally be included in a DCP:

- provisions for home occupations and home businesses involving sex work (if councils decide these uses should not require consent or assessment under the DCP), as these would be covered by separate criteria in the Exempt and Complying DCP
- provisions for premises which are not 'sex services premises' and usually fall into the category of 'commercial premises', or 'club' (sex on premises venues) under an LEP¹⁴⁷
- detailed public health matters that are the jurisdiction of NSW Health and WorkCover NSW), and
- reference to other legislation with very limited relevance to council's planning and regulatory functions, such as the Weapons Prohibitions Act and Public Health (Skin Penetration) Regulation 2000).

¹⁴⁷ Note that in respect to health and safety matters, sex-on-premises Venues are covered by guidelines prepared by relevant health agencies e.g. the AIDS council of NSW (see References - Appendix A). Escort agencies and adult bookshops do not usually provide sex services on the premises, however where they do (and meet the definition of 'sex services premises') they would be subject to any Sex Services Premises DCP prepared by council.

5.3.4 No separate DCP but providing for commercial sex services premises in existing council DCPs

Rather than having a specific DCP for commercial sex services premises, councils may incorporate provisions for sex services premises into existing DCPs to avoid creating additional planning policies. This approach can ensure that commercial sex services premises are not highlighted as being different or special land uses requiring an individual policy response yet still provides for the incorporation of policy provisions and some educative function, through existing DCPs.

5.3.5 Development Standards

Where councils choose to include development standards specific to commercial sex services premises, development standards including location standards, separation distances, anti-clustering controls, and standards for car parking, are suggested. The various standards are discussed in the following pages, including advantages and disadvantages of each, and where the various approaches would be most appropriate.

5.3.6 Location Standards

These standards are generally located in an LEP, and many LEPs which permit commercial sex services premises in commercial or business zones prohibit any part of the premises at ground or street level.¹⁴⁸ This can create physical barriers in regard to disability access and, unless a lift or other device is installed, as identified in Part 4.3.1 (ii) not only raises equity issues but also potential liability issues for both council and a business owner. Equitable access is more relevant than is often assumed by councils because, although clients with a disability will often request call-out visits by sex workers, where the person has a carer or lives in a group home or an institution, it may be preferable for them to visit a commercial sex services premises to ensure their own privacy.

Councils should not use the issue of disability access to prohibit commercial sex services premises in commercial zones as, for other reasons such as safety and accessibility to public transport, these areas may be appropriate for such premises. Access issues exist for places like a dentist's or architect's office where they are located at the first floor however, unlike commercial sex services premises, these businesses may find suitable premises at ground floor level in business zones. Councils are encouraged to explore other options to enable commercial sex services premises to have disability access, and these are addressed further in the better practice DCP provisions in **Appendix B**.

There are several options available to councils in regard to ground or street level location for commercial sex services premises.

5.3.6 (i) Disallowing ground floor location in an LEP but ensuring access for people with a disability is provided in all cases.

a) Advantages

- there is minimal opportunity for any potential offence to be caused to the public, and
- the public is unlikely to be aware of the use.

b) Disadvantages

- an applicant may submit an argument for "Unjustifiable Hardship" under the DDA, however this still exposes both council and an applicant to potential challenge by a person with a disability
- unlike other businesses that may find suitable premises at ground floor level, it provides no alternative locations to operators of commercial sex services premises in business zones, and
- councils would be setting a benchmark for access for every other first floor or sub-floor use in the future, in order to promote consistency of approach.

¹⁴⁸ This can occur either as an LEP or DCP provision.

c) Where would this approach be appropriate?

If councils wish to implement this option, it would be most suitable in commercial areas where allotments and premises are large and can be reasonably expected to provide lift access.

A development standard or prohibition disallowing a ground floor location is not warranted in industrial areas that have low pedestrian activity and little opportunity to cause potential offence.

5.3.6 (ii) No restrictive development standard in the LEP but performance criteria in a DCP

This option would not prohibit a ground floor location under the LEP but enable a merit assessment through the provisions contained in a DCP.

a) Advantages

- simple design details and finishes can be used to ensure that the commercial sex services premises is not identifiable. For instance, many commercial businesses currently have window dressings such as blinds, frosted glass and the like to screen them from direct pedestrian view e.g. legal offices, dentists, accountants etc, and
- the applicant could detail the proposed measures in a DA.

b) Disadvantages

- in many commercial areas it is desirable to have 'active frontages' to ensure the viability and vitality of an area and promote safety through passive surveillance. The installation of screening devices would inhibit this objective.

c) When would this approach be appropriate?

This approach may be suitable in areas oriented to office and commercial uses rather than retail uses. Councils could consider whether appropriate precincts exist in their areas, however would need to be mindful of the safety and streetscape implications of such an approach.

5.3.6 (iii) No LEP provisions but DCP permits a ground level use, however not in a shop-front location.

A suggested DCP provision for this option is included in **Appendix B** and would enable a ground floor location, not in a shop-front location and subject to compliance with other criteria.

a) Advantages

- criteria can be clearly articulated to ensure the activity is not visible from the street frontage and may be less noticeable than some commercial sex services premises situated above the street level
- allowing a commercial sex services premises behind another use is a logical alternative location as a commercial sex services premises can continue to remain discreet
- it demonstrates council preparedness to encourage premises to be accessible to all people
- contrary to public concerns there is no evidence that permitting commercial sex services premises to occupy ground floors in business zones leads to a proliferation of premises or DAs¹⁴⁹
- evidence shows that it is workable, particularly in larger premises that can be adapted to meet council controls, and
- no complaints have arisen from premises at this location¹⁵⁰.

b) Disadvantages

There are no known disadvantages

c) When is this approach useful?

This option, although presenting constraints to operators of commercial sex services premises, does provide some choice in location while demonstrating a council's acknowledgement of the need to address barriers to the accessibility of commercial sex services premises.

¹⁴⁹ Report to Marrickville council Development and Environmental Services Committee 5 March 2002.

¹⁵⁰ As reported to Marrickville council Development and Environmental Services Committee 5 March 2002.

5.3.7 Separation distances

An LEP may prescribe a development standard which sets a separation distance between a commercial sex services premises and a 'sensitive use' such as a church, hospital, school, any place frequented by children and the like. Alternatively, a separation distance may be covered by a policy provision in a DCP. Part 4 examined the issues surrounding development standards and identified that various distances are used. The decision as to whether to apply a numerical control is a matter for each council to decide for itself, having regard to the issues discussed in Part 4, and if it is decided that separation standards are required, there are several options available to councils.

5.3.7 (i) A separation distance as an LEP development standard

This would entail councils selecting a defined distance to be maintained between a commercial sex services premises and a 'sensitive' use, however there is no town planning basis for any particular standard.

If councils decide that a development standard is appropriate, then a suggested means of measuring the distance would be from the building entrance of the commercial sex services premises to the closest point on the property boundary of the 'sensitive use'. This is because commercial sex services activities occur indoors and the front door is where clients are received and greeted by a sex worker. In terms of the sensitive use, the closest point on the property boundary is suggested because some uses have curtilage or outdoor areas e.g. school playgrounds likely to be frequented by the users.

a) Advantages

- the standard is measurable in terms of the location of a commercial sex services premises from certain land uses, and
- the council is bound to consider the compliance of the proposal with the development standard in the LEP before determining the development;

b) Disadvantages

- the standard assumes that a commercial sex services premises creates inherent conflicts with sensitive uses sufficient to warrant their separation. There is no evidence for this assumption and many commercial sex services are discreet and able to co-locate with other uses
- a separation standard is somewhat arbitrary, is not based on any town planning research, and may not be an accurate gauge of acceptability
- in having a separation distance standard, council is articulating what it considers to be acceptable, but at the same time building community expectations for the enforcement of these controls which may limit its perceived flexibility to respond to the merits of each case. Review of appeals to the LEC indicates that several councils have gone to appeal primarily on the basis of non-compliance with this standard. Therefore, notwithstanding that the standard can be varied if the overall merits of a proposal are satisfactory, the fact that councils have been prepared to go to Court over a breach of the standard indicates the weight that can be placed on it. Since the Court will look at the real evidence of impact, councils should be careful to maintain a balanced approach to the implementation of such standards. A performance based rather than prescriptive approach may allow councils the necessary flexibility to respond to each situation
- in many areas, prescribing a separation distance can work to sterilize areas for commercial sex services premises. This is contrary to the intent of the 1995 reforms and should not be used by councils to veto the ability for applicants to achieve development consent and thereby become an authorised activity, and
- the distance can be varied either through SEPP 1 if it is a development standard, and therefore does not provide certainty to the community as is its presumed intent.

Imposing a separation distance between a commercial sex services premises and public transport services is unjustified and inequitable. Sex workers and users of commercial sex services premises should be able to use public transport in the same manner as other people, and there is no evidence to suggest that a well-designed and operated commercial sex services premises is in conflict with a transport-related use.

5.3.7 (ii) A separation distance in a DCP

Where councils intend to use a separation distance, this is considered a preferable way of implementing the control as it provides greater discretion to councils to vary the control than would an LEP, where a SEPP 1 objection must first be lodged and supported by the council. A policy provision regarding separation distances is also therefore placed on equal footing with other aspects of the DCP and not given special status as is implied by the status of a development standard in an LEP. If this option is pursued, the separation distance should be measured in the same way as set out above for a development standard. The general advantages and disadvantages of the use of a separation distance are also outlined above in option 5.3.5 (i).

5.3.7 (iii) A non-numerical separation standard

Instead of imposing numerical separation distance, this option would use words to define the separation standard. Some councils use this control currently, and this approach could use terminology requiring that a commercial sex services premises *“not be within a reasonably direct view from”* the sensitive use or prescribe that a commercial sex services premises not be located *“next to or directly opposite”* a certain use. The clause could be contained in an LEP or DCP, however a DCP would be the appropriate mechanism for reasons outlined previously regarding discretion and placing the provisions on equal footing with other provisions.

This approach is considered preferable to having a prescriptive control as the potential impacts can be assessed on the basis of the proven or real proximity of sensitive uses rather than artificially constructed notions of proximity and level of impact. Furthermore, the control would be more easily defended on a common sense basis and thus provides less potential to be waived as unnecessary or unreasonable. The suggested wording should councils wish to include such a provision is included in the DCP provisions contained in **Appendix B**.

5.3.8 Anti-clustering controls

Anti-clustering controls may exist as development standards in an LEP or policy provisions in a DCP, and current practice indicates that both occur, although inclusion in a DCP is the most common. Anti clustering provisions aim to avoid creating or expanding ‘red light districts’ by setting a separation distance between a commercial sex services premises and another commercial sex services premises or other sex industry use.

5.3.8 (i) Advantages

- provides some certainty to council and the community about controls to mitigate the proliferation of commercial sex services in any one area
- ensures areas where residential uses occur, such as in mixed use zones, are not adversely impacted by a number of late night venues in the one locality.

5.3.8 (ii) Disadvantages

- well run, discreet commercial sex services premises do not necessarily need to be separated from other commercial sex services or sex industry uses
- numerical separation distances are somewhat arbitrary and may not relate to the impact of a use upon the surrounding area as the use may have more or less impact
- lacks flexibility and precludes a merit based approach. In particular, applying a separation distance between commercial sex services premises and between commercial sex services premises and another ‘sex industry’ premises such as an adult book shop can make it impossible for a commercial sex services premises to establish in otherwise suitable areas
- ‘like’ uses cannot congregate, thereby minimising opportunities for them to have similar opening hours that support safety objectives by providing casual surveillance
- sex workers report that clustering creates a level of tolerance and understanding in the community in regard to accessing other local businesses such as pharmacies, doctors, and shops, and
- if it is believed that commercial sex services premises cause offence, clustering them in one area as a precinct with a known character or identity may be preferable to scattering them premises

throughout an area. People can then choose to avoid these areas, whereas it may be harder for them to avoid these premises if they are scattered throughout an area.

5.3.8 (iii) When is this approach useful?

As there are no red light districts in most council areas, councils should only consider introducing an anti-clustering control where the following situations exist:

- where problems or issues have emerged from the clustering of existing commercial sex services premises
- where commercial sex services premises are beginning to cluster in one area located in close proximity to, and likely to impact negatively upon, the amenity of a nearby residential area or a high concentration of residential uses e.g. in a mixed use or CBD area, or
- where commercial sex services premises are proliferating in a locality and affecting the land use mix or economic base of an area.

Anti-clustering provisions are not warranted in industrial areas since the impact of any commercial sex services use is usually minimal in these areas.

If councils identify a need for an anti-clustering control, it is important to be clear on how the distance is to be measured, and suggestions are provided in respect to this in **Appendix B**. Furthermore, it is important to ensure flexibility in implementing the control in instances where an applicant can demonstrate that the separation distance is unnecessary. This is also addressed in the provisions in **Appendix B**.

5.3.9 Car parking

Car parking standards are contained in DCPs and, when formulating them, councils need to consider car parking requirements in the context of the zones in which commercial sex services premises are to be permitted. Some considerations include:

- site constraints, particularly in inner city areas
- on-street and public parking availability in the vicinity
- likely hours of operation and the ability to use parking vacated by other premises operating within conventional business hours, and
- public transport availability and frequency, particularly in industrial areas.

Councils have the option of applying car parking rates based on:

- a m² floor measurement of the total area of the commercial sex services premises
- the number of working rooms, or
- the number of sex workers.

As discussed in Part 4, a rate based on the number of rooms or the total floor area can be tied to the submitted DA plans and provide more certainty than a rate based on the number of workers. In particular, a commercial sex services premises operator may not know how many workers will be employed at the time of submitting the DA and whether these will be part-time or full-time workers. Alternatively, councils could apply the parking rate used for other commercial premises since a commercial sex services premises would have similar parking demands as other service-related uses. Better practice provisions to assist in assessing car parking are included in **Appendix B**.

5.3.10 Advertising signs and structures

It is important for all commercial sex services premises to have a readily identifiable street number to avoid any potential disturbance to surrounding premises arising out of confusion as to the location of the commercial sex services premises. It is also reasonable to allow basic signage at the property frontage indicating only the name of the business without indicating that it is a commercial sex services premises. Where primary pedestrian access is from the rear of the site e.g. from a car park it may be appropriate for a second sign to be provided indicating the name of the business and the street number of the address to avoid confusion as to the location of the premises.

The suggested DCP controls in **Appendix B** have regard to the need to be able to both identify premises and minimise the impact of any signage. The numerical restrictions used should be considered on a local basis by councils and modified where appropriate.

5.3.11 Health issues

Previous sections have indicated that it is not appropriate to include detailed health provisions within a DCP. Some councils have incorporated the detailed NSW Health and WorkCover NSW *Guidelines* into their DCPs. The following issues have arisen from this approach:

- the over-regulation of premises by council compliance teams. In this regard, instances have emerged where premises have been targeted by councils for regular inspections and fines issued for minor departures from health standards contained in a DCP or an applicant's Plan of Management. This was not the intent of the *NSW Health and WorkCover Guidelines*, which were prepared as voluntary guidelines only, not mandatory controls
- the guidelines could be amended at some point in the future e.g. to reflect new medical knowledge or health and safety standards. However, it can take some months to amend a DCP, creating the risk that sex workers may not be consulting the most recent medical, health and safety information
- NSW Health and WorkCover already have a regulatory role in respect to public health and OH&S matters and issue penalties under relevant Acts. The Guidelines are based on voluntary compliance by the sex industry however state that NSW Health and WorkCover NSW may periodically survey sex services premises to monitor the degree of compliance
- some health and safety matters extend well beyond local government responsibility and jurisdiction and their inclusion in a council DCP may assist in escalating prejudice or community fear towards commercial sex services premises and workers. For example, statements in one council policy specify the need to immunise sex workers against hepatitis A and B and also provide guidance on how sex workers can identify common signs of disease in clients. This is considered to be unnecessary in a council policy and is adequately covered in the NSW Health and WorkCover NSW Guidelines, and
- including highly detailed health and BCA matters such as spa and swimming pool requirements, ventilation, lighting and standards for bar and food preparation areas is unnecessary since all these matters are addressed in DA assessment procedures or through conditions of development consent. Furthermore, including these other matters can detract from the key planning issues in the DCP and make it less concise and user-friendly.

Rather than including matters covered by the NSW Health and WorkCover Guidelines in a DCP, a simple reference to the Guidelines is sufficient, supporting the voluntary intent of the Guidelines and ensuring that sex workers and their clients refer to the most up-to-date information.¹⁵¹ It also ensures the DCP remains focused on matters within local government jurisdiction, and that it remains concise and user-friendly. **Appendix B** contains appropriate basic health and building provisions councils could incorporate in a Commercial Sex Services Premises DCP.

5.3.12 Operational matters

As discussed in Part 4, councils need to exercise care in ensuring DCPs are not overly prescriptive in respect to the operation of sex services premises relative to other land uses. The better practice DCP provisions in **Appendix B** outline suggested requirements for certain operational aspects of premises such as waste management, and Plans of Management.

A Plan of Management can be effective in providing council with further information on the actual operation of the premises at the DA stage and ensuring that operators are aware of their responsibility to maintain well-run premises after receiving development consent. However, a POM should generally only be required for medium to large-scale commercial sex services premises, as small-scale premises are usually discreet and low impacting by nature. Some issues in regard to requiring and enforcing POMs include:

¹⁵¹ Pers comm. SWOP representative, 20.02.04.

- it requires operators/owners to have forward-knowledge at the DA stage of detailed aspects of how the business will operate when, as with any business, arrangements for cleaning, security and the like may change when the use commences
- some councils believe that security and personal safety are a particular issue for sex industry premises when there is no evidence of this except where the premises are limited to locating in industrial areas.
- some councils require POMs to commit to the use of security guards, which may pose an unjustified expense on an applicant when other measures may be more appropriate
- information in POMs, provided by applicants in good faith, is used by some councils as a basis for micro-level compliance actions including issuing regular fines.¹⁵² However, health and safety matters required in POMs by some council DCPs are sourced from the NSW Health and WorkCover Guidelines which are, as indicated previously, intended as voluntary guidelines only
- POMs lack flexibility, and if an aspect of the business operation changes from that specified in the POM lodged with the DA and referenced by condition of consent, an applicant would technically be required to modify the consent under S96 of the EPA Act. This may again elevate the use of the premises in the public domain, leading to a time consuming and costly approval process. Where councils intend to require POMs, they should provide some in-built flexibility over the way in which matters are satisfied.¹⁵³ Alternatively POM requirements should be simple, easy to achieve and cost effective for applicants (see POM in **Appendix B**), and

5.3.13 Related changes to other DCPs

Provisions included in a Commercial Sex Services Premises DCP should flow through to other related DCPs such as those for Car Parking and Access for People with a Disability. This can ensure consistency between council policies.

¹⁵² Pers comm. SWOP representative 20.02.04.

¹⁵³ For instance, the cleaning of linen should be able to change from on-site laundering to a commercial contract, without the need to submit an application to modify the consent under Section 96 of the EP&A Act.

Part 6: Achieving Better Practice

6.1 Introduction

A range of barriers exist to achieving better practice planning for sex services premises, and many of these have been raised in the discussion in Parts 4 and 5. This Part of the guidelines examines the main barriers to achieving better practice planning and presents suggested solutions to overcoming them.

The main barriers include:-

- inadequate consultation throughout the planning process, with all those concerned (6.2);
- inadequacy of information about council requirements (6.3);
- negative attitudes towards the sex services industry, associated with lack of information about councils' role with respect to regulating the industry (6.4);
- overly restrictive and prohibitive planning approaches (6.5);
- use of simplistic and negative accounts, and inappropriate terminology in the media with respect to (6.6)
- lack of acknowledgement of broader health and safety issues (6.7);
- prejudice against sex workers (6.8), and
- inadequate monitoring practices and inconsistency in enforcement (6.9).

6.2 Adequate consultation

Consultation includes involving people in planning processes so that policies contain appropriate information and reflect the concerns of groups in the community. For some years now, best practice public participation in planning has identified the need to involve marginalised or underrepresented groups, such as those with a disability, non-English speaking background, youth and the elderly, within the community. The continued stereotyping of the sex industry by the public, and the difficulties faced by operators of sex services premises under local planning approaches, clearly identifies this industry as a marginalised group and warrants its input in policy-making.

To date there have been very few active approaches to representatives of the sex industry to seek their input in the initial stages of policy research and preparation.¹⁵⁴ Sex industry groups tend to respond to policies only when hearing about them in the press or when placed on exhibition, which is often at an advanced stage of the policy preparation process. Even when a policy is advertised for public comment, some sex workers may be reluctant to have input through fear of recriminations by the public. Sex workers who attend forums and public meetings seeking to participate in the debate risk their personal safety and can be verbally, and in some cases physically, abused by an antagonistic public.¹⁵⁵ This raises the need for councils to consider appropriate and non-threatening forums for private workers to participate in consultation processes. Positive local connections with the sex industry will have considerable benefits for council in preparing informed and relevant policy that is more likely to gain compliance. Further, having contacts in the local sex industry to which it may turn for advice may enable more conciliatory and effective enforcement actions. Consultation is also needed with NESB operators of sex services premises, who find it particularly difficult to communicate with councils in obtaining clear and helpful planning advice.

6.2.1 Suggested solutions

To ensure adequate consultation is carried out councils should:-

- seek early advice from SWOP and local sexual health clinics on policy making and other matters concerning the sex industry. SWOP has contacts with over 750 sex services premises in NSW together with individual workers, representative groups such as the Private Worker Alliance and

¹⁵⁴ Pers comm. SWOP representative and pers comm. Adult Business Group representatives, 20.02.04.

¹⁵⁵ Private Worker Alliance letter to Diane Beamer, Minister Assisting the Minister for Infrastructure, Planning and Natural Resources, 2 March 2004.

the Adult Business Group, together with State Government authorities. SWOP can provide councils with advice and resources to assist in understanding and appropriately regulating the sex industry (see www.swop.org.au)

- engage an appropriate facilitator to liaise with appropriate agencies and sex industry contacts to conduct workshops with local sex workers to enable their participation in preparing policies. These workshops would need to ensure the confidentiality and privacy of participants and provide a safe, non-threatening environment. Assurances would need to be provided to sex workers that there would be no negative council enforcement actions as a result of information provided by participants.
- Council should ensure that any information collected is made available to participants and SWOP for feedback to ensure it does not compromise the health, safety and privacy of individual sex workers. SWOP and the PWA may be able to offer advice on the appropriate conduct of such a workshop
- build local partnerships to foster a collaborative approach and create opportunities to find mutually acceptable solutions. This can be achieved by engaging all the necessary stakeholders, such as members of the sex industry, businesses, residents, health care providers and relevant community organisations, in a joint effort to achieve effective regulation of the industry. This approach is not new and is proving valuable to address sensitive and complex social issues e.g. the Government's Drug and Community Action Strategy, local Crime Prevention Strategies, homelessness issues and the like.¹⁵⁶

6.3 Adequate communication with operators of sex services premises

Communication involves providing adequate information, advice and resources to enable people to both make informed decisions and be fully aware of council requirements in regard to sex services premises.

A key problem for operators of sex services premises is access to reliable, accurate and non-prejudiced information from councils about their planning requirements.¹⁵⁷ Lack of access to resources written in plain English and translated into several community languages can create barriers to operators complying with council requirements. If information is not available, or is suppressed, operators remain uncertain as to the reception they will receive from council and the length of time and cost involved in achieving consent. If information is widely available and council planning requirements for sex services premises are clearly and simply stated, it is more likely that operators of commercial sex services premises would seek to become authorized by submitting a DA.

6.3.1 Suggested solutions

To ensure communication about planning requirements is informative and adequate, councils should:-

- use the Fact Sheets in **Appendix E** to provide information to potential applicants, the community and others about council's regulations for different sex services premises
- consult with SWOP, the local industry via SWOP, the PWA, and with health agencies when preparing policies
- develop a 'Sex Services Premises Approvals Kit', similar to those that some councils have for residential and other categories of development, to guide prospective applicants through the approval process. The kit could have case studies of successful commercial sex services premises approvals and council relations. The kit should be written in plain English and translated into several languages
- take a holistic approach to providing information and identify other contacts to assist and support the sex industry as council does with other businesses in its area. For instance, council could provide information on SWOP services, small business web sites and links to Australian Taxation and WorkCover web sites.
- identify strategies to engage NESB sex workers and provide information to these groups. These could include:

¹⁵⁶ www.swop.org.au

¹⁵⁷ Pers comm. SWOP 20.02.04.

- preparing articles for local NESB newspapers
- identifying council employees who speak a language other than English who could assist with planning enquiries about sex services premises
- ensuring staff are aware of the protocol for obtaining interpreter services within council
- identifying different community groups to invite to participate in policy-making and to become a channel for information on planning for sex services and health matters, and
- preparing information in different languages to appear on council's web site with links to other web sites e.g. SWOP, which has resources in different languages.

6.4 Informing and educating the community

A key problem for those preparing policies on sex services premises is the ability to communicate to the local community the advantages of regulating sex services. More often than not, negative community attitudes to the sex industry are evident, and can present a significant barrier to best practice planning due to their degree of influence on decision-making in local government. Many individuals and groups perceive sex work as immoral, and that it is councils' responsibility to close down sex services premises rather than approving DAs or formulating new policies. A review of submissions to councils on sex services planning matters demonstrate that negative attitudes in the community are strongly underpinned by the following stereotypes of, and generalizations about, the sex industry:

- it attracts criminal elements and presents a safety risk to the community
- it is associated with drugs, and 'pimps'
- it attracts intoxicated people who will cause a disturbance in the area
- only "undesirable" people frequent sex services premises
- sex work exploits women and encourages 'sex slavery'
- there will be an 'explosion' of sex services premises if council approves a particular DA
- it undermines the family values of an area
- it is offensive to all community groups and undermines the moral fabric of the community
- it has negative impacts on children/adolescents
- it degrades the 'tone' or character of the area, and
- it affects property values.

To some extent, community fears regarding sex services premises are understandable in the absence of appropriate information about the sex industry and the role of councils in regulating it. Fear of the unknown underpins many negative reactions to either individual DAs or new council policies regarding sex services premises, as it sometimes does for other local planning issues.¹⁵⁸

6.4.1 Suggested solutions

To better inform and educate the community about the sex services industry and councils' responsibilities, councils should consider:-

- hosting public information evenings on regulating sex services premises with guest speakers from SWOP, PWA, DIPNR and local sexual health services
- providing information e.g. 'Fact Sheets' (see **Appendix E**) on council web sites, advising people why council is involved in planning for sex services premises and the benefits of council involvement
- attaching a 1 page 'Fact Sheet' about sex services premises to letters notifying residents about a DA for a commercial sex services premises. This could include information about council's regulatory role in assessing DAs and the matters council will/will not consider in determining the application
- preparing an Implementation and Communication Strategy if a council decides to prepare a DCP or policy for sex services premises, as such a strategy can be crucial to whether the council adopts the DCP or policy. The Strategy should identify how consultation will occur and how

¹⁵⁸ For example State Environmental Planning Policies Nos. 5 and 10, the State Government urban consolidation policy, planning for bushfire protection, and the like.

council will address any negative community reactions and other obstacles to the progression of the policy. It could include:

- councillor briefings at various stages of preparing the DCP to ensure that all are aware of the key provisions prior to exhibiting the draft plan;
- appropriate key staff briefings to ensure they are fully informed about the key provisions of the DCP and why council has prepared it, in order to provide a clear and consistent message to the public;
- preparing information that emphasises the guiding principles in Part 1 and the wider regulatory context in which council operates
- producing a 'Frequently Asked Questions' brochure and placing it on council's web site and public notice boards, in association with SWOP
- a media strategy, including Mayoral press release for a range of newspapers, guidelines for radio interviews and readily accessible 'Facts sheets' (see examples in **Appendix E**) that can be given to newspaper reporters, community groups and individuals. Having this information readily available can be crucial in ensuring the council can defend its position on a draft policy and do so in a timely manner before misinformation is given too much media attention
- providing a telephone info-line for the duration of the exhibition, and
- engaging a Sex Industry Liaison Officer (SILO) with sex industry expertise and who is familiar with local council planning and appropriate provisions for sex services premises, depending on resources and the number of sex services premises in an area. It may be feasible to engage a SILO on a short-term basis whilst council is researching and preparing a local policy for sex services premises. This person could also be an appropriate media spokesperson.

6.5 Prohibitive and overly-restrictive approaches

As discussed in parts 4 and 5, overly-restrictive planning approaches create barriers to better practice, as they do not encourage the local sex industry to submit a DA or to otherwise comply with council requirements. This creates a two-tiered sex industry consisting of the operation of approved and unapproved businesses.

Issues by home-based sex workers include:

- that most councils have failed to acknowledge that private workers operating from home are very different in scale and nature to commercial sex services premises. Yet if councils categorise all sex services premises as 'brothels' they apply generic controls to all types of sex services premises irrespective of the different scale and likely potential impacts of each. These councils then restrict all 'brothels' to commercial; and/or industrial areas which is tantamount to banning home-based sex work.¹⁵⁹
- that where councils have specifically allowed home-based sex workers they have discriminated against them by restricting them to working alone or requiring that they submit a Development Application.

These practices impede occupational health and safety objectives and are counter to the guiding principles set out in Part 1 of these Guidelines.

Operators of commercial sex services premises are discouraged from attempting to become authorised due, in part, to the following aspects of current practice:

- the imposition by councils of unreasonable requirements such as Plans of Management for small operators, the costs involved with submitting supporting information with a DA (e.g. a POM, a Statement of Environmental Effects) together with council fees, some of which are discriminatory against sex services businesses (e.g. a higher advertising fee is charged by one council). Operators of premises may already have significant overheads as a result of discrimination in other areas of their business such as higher rents and advertising fees¹⁶⁰
- the possibility of council refusal of a DA, despite the merits of the proposal and the adequacy of information submitted. Though a number of operators of commercial sex services premises appeal a determination in the Land and Environment Court, many more do not, as this course of action is

¹⁵⁹ Crofts, Penny 2003, "Not in My Neighbourhood: Home businesses (sexual services) and council responses"

¹⁶⁰ Pers comm. Adult Business Group representatives 20.02.04.

very costly. The strong possibility of the refusal of a DA therefore leads many operators to avoid the costs involved in taking a chance and submitting an application in the first place

- unreasonable delays in the DA process due to council requirements that all sex services premises be considered at a council meeting, external referrals be made to the Police etc, which impose a burden on operators who may be paying rent on a premises yet not allowed to operate¹⁶¹
- LEP and DCP provisions which taken in combination (e.g. prohibition on a ground floor location, separation from certain uses etc) may sterilize an area from the ability to locate a commercial sex services premises. In addition, such controls may discourage existing operators (who do not comply with certain controls, yet have no impact) from coming forward and seeking to formalise their use, and¹⁶²
- rigorous monitoring and enforcement action in respect to approved commercial sex services premises involving the active pursuit of individual premises, issuing of fines for minor departures from the conditions of consent or Plans of Management can make it difficult for individual business to continue to operate.¹⁶³

Similarly, prohibitive controls create barriers to better practice because, rather than deterring sex services premises, they force them 'underground'. This makes it very difficult for councils to regulate sex services premises, creates difficulties for health agencies to enable health and safety standards for clients and workers to be met, and fails to provide a rational response to community concerns. Furthermore, this approach provides opportunities for corruption by government representatives, extortion and coercion by larger operators, and costly and time-consuming enforcement actions for councils.¹⁶⁴

Prohibitive and overly restrictive approaches also have other implications for the sex industry, particularly in respect to its structure and practices. Restrictive controls, significant and costly DA processes and the possibility of refusal have tended to discourage all but the operators of larger premises from submitting a DA.¹⁶⁵ Operators of larger premises can usually afford the cost of submitting a DA and any ensuing LEC appeal. As a result, the industry is characterised by a small number of larger sex services premises.¹⁶⁶ This structure affects the employment choices for workers, who are limited to working predominantly in either the larger sex services premises under conditions established by their operators, or, where they do not have the business skills or desire to operate a private worker home occupation, on the street. As examined in Part 2, street work can be more dangerous for workers and result in reduced opportunities for health and social support. Providing opportunities for smaller scale sex services premises to operate legally in local areas (the same as other home occupations/home businesses), provides greater choice of working environment for sex workers, and reduces the need to engage in street work.

Enforcement actions against premises may also change the structure of the industry. The inability to become a legal land use and the fear of detection can increase the chances of sex workers turning to private escort work, operating out of hotels or clients' houses, or street work, both of which pose significantly more risks to the personal safety of the worker. Similarly, premises forced to close and relocate may down-scale to enable the business to be more mobile or more viable. In this instance, operators of commercial sex services premises may seek to reduce costs by employing only sex workers without vital support staff such as receptionists, who screen clients and supervise the premises.¹⁶⁷ In addition, private workers in this situation can lose contact with their peers and with health agencies,¹⁶⁸ whose support on safe sex issues has contributed to the very low rates of HIV-AIDS in the sex industry to date. Sex worker access to health services is encouraged by the NSW HIV-AIDS Strategy.¹⁶⁹

Prohibitive and restrictive planning controls and adversarial enforcement actions also perpetuate perceptions that the industry is illegal, which gives the client the upper hand in demanding unsafe sex

¹⁶¹ Ibid.

¹⁶² Pers comm. SWOP representative 20.02.04

¹⁶³ Pers comm. SWOP representative 20.02.04.

¹⁶⁴ Pers comm. SWOP representative, 20.02.04.

¹⁶⁵ Pers comm. ACON representative 23.04.04.

¹⁶⁶ Pers comm. ACON representative, 23.04.04.

¹⁶⁷ Pers comm. SWOP representative 20.02.04.

¹⁶⁸ Pers comm. PWA representatives, 05.03.04.

¹⁶⁹ AFAO Submission to the Minister for Police and Emergency Services, on the Prostitution Control Bill 2002, by Don Baxter Executive Director AFAO, February 2003.

or making other demands of workers. The opposite is a culture of acceptance that the activity is a legitimate land use, regulated by councils and other government agencies, bound by sets of rules and operating under normal commercial circumstances.¹⁷⁰

6.5.1 Suggested solutions

To ensure better practice planning approaches are achieved, councils should:-

- encourage voluntary compliance with council controls by preparing reasonable and relevant controls in accordance with these guidelines
- recognise the difference in scale and potential impact of premises and graduate requirements from developments which are exempt to those requiring development consent. This will ensure that premises *can* comply, increasing the potential for an authorised and legal sex industry rather than one which is driven underground
- use standard forms for the Statement of Environmental Effects and any Plan of Management, so that smaller operators do not need to engage planning consultants and are not discouraged from applying for development consent. **Appendix B** contains a draft Plan of Management which can be used by commercial sex services premises operators
- develop a clear compliance protocol so sex workers know what their rights are and when they can refuse entry to officers. This also ensures that council officers know the rules and can minimise opportunities for corruption where rules are unclear, and
- provide information on the council's web site about how operators can achieve an authorised and legal business.

6.6 Portrayal in the media

Media portrayal of sex workers can be very damaging to the sex industry and assist in perpetuating negative impressions of the industry within the wider community. Importantly, it can have implications for the health and safety of workers. Often the media use simplistic arguments and incorrect terminology when referring to sex services premises. For example, the term 'illegal brothel' is often used when it is simply unauthorised. At other times, sensationalist reporting such as occurred recently with premises in Bondi Junction, can be factually incorrect, further damaging the sex industry.¹⁷¹

Terminology affects client perceptions of sex services. It may lead some clients of sex workers to believe incorrectly that sex work is illegal and that they may make demands of the worker, including to practice unsafe sex. When the debate about sex work escalates in the media, it can also affect the self-esteem of workers, who lament the lack of public acceptance of the industry, despite their efforts in regard to safe sex, protecting public health and not impacting on surrounding amenity. This situation may also lead to risk taking, such as the practice of unsafe sex.¹⁷²

6.6.1 Suggested solutions

In order to ensure fair and equitable media coverage, councils should:-

- develop an implementation and communication strategy for any new planning policy for sex services premises (as discussed above), and
- be proactive with the media, preparing information, obtaining statements of support from key government agencies to strengthen the approaches taken by individual councils and responding to negative and/or inaccurate media reporting to avoid continuing stigmatization of sex workers.

¹⁷⁰ Pers comm. SWOP representative, 20.02.04.

¹⁷¹ For instance, a recent media article claimed that private sex workers had taken over a number of units within a residential flat building in Newland Street Bondi Junction and were operating from these units. However, far from accommodating a number of private workers in unrelated businesses, the premises were actually a well-known parlour "Michelle's" (1985), which claims to have 35 sex workers. An advertisement in the *Sydney Weekly Courier* (7.04.04) supplies the phone number, website and address of the establishment, which is not how private workers would operate. The basis of home-based private sex work is that the premises are not known as a sex industry location.

¹⁷² Pers comm. SWOP representative, 20.02.04.

6.7 Lack of acknowledgement of wider health and safety issues

As noted in Part 2, Australia has the lowest rates of HIV-AIDS in the sex industry in any country due to the positive work of community based organisations such as the AIDS Council of NSW, Australian Federation of AIDS Organisations, SWOP, the Private Worker Alliance and individual sex workers. To date, the pressing social, health and safety issues surrounding planning for sex services premises have not been adequately acknowledged by local councils. Few councils seem aware of the health and outreach programs that support the industry. Further, there is an overall lack of appreciation of how the industry self-regulates or that the majority of premises are well-run, low impacting and maintaining high health and cleanliness standards.¹⁷³

Councils do not appear to investigate properly the full ramifications of planning controls and practices on both the sex industry and the wider community.¹⁷⁴ For instance, councils seeking to drive sex work from one area witness it flourishing in another area.¹⁷⁵ Councils restricting sex services premises to industrial areas create potential issues of safety for workers and their clients. Councils prohibiting certain sectors of the sex industry ultimately drive them underground, potentially severing critical ties with health service providers and with peer-based support. The use of circumstantial evidence against operators of illegal premises may discourage these operators from keeping significant quantities of safe sex supplies and other materials on the premises.

These and other aspects of council approaches to the sex industry are causing serious concerns for health service providers in their attempts to address the spread of HIV-AIDS and other STIs.¹⁷⁶ Health organisations advise of the importance and urgency of regulatory actions in the context of public health. They advise that HIV-AIDS is not simply an issue for the homosexual population and the spread of HIV-AIDS is already a serious issue in the Asia-Pacific region. Significant numbers of Australian workers are employed overseas, and return to Australia, visiting the sex industry in both countries, without necessarily practicing safe sex. Rather than sex workers being a health threat to the rest of society, itinerant workers and the general public, especially condom-resistant clients and others who are much less health conscious than sex workers, continue to pose a major health threat to sex workers. Health and outreach organisations warn that with the current paradigms of regulatory and attitudinal non-support for well run, legal sex services premises, it is only a matter of time before HIV becomes a greater issue for the sex industry and the heterosexual population. Those groups argue that what is preventing an epidemic is not good policy but time.¹⁷⁷

6.7.1 Suggested solutions

To better acknowledge and inform their communities about health and safety considerations councils should:

- examine their policies and practices in the context of the impact upon the health and safety of workers, residents, and visitors
- use the information and resources in these guidelines, and
- seek further information/advice from SWOP, ACON and sex industry groups such as the Private Worker Alliance and the Adult Business Group about relevant health and safety issues.

¹⁷³ Much of the low incidence of HIV and other STIs in NSW of sex workers and their clients is achieved through the voluntary uptake of safer sex practices by sex workers. Through hands-on peer education one sex worker shows another how to check a client and how to identify communicable diseases. The common practice of providing only 'doubles' at first gives newer workers practical safe sex support in the bedroom. Sex workers also often provide second opinions helping fellow workers to confirm the presence of an STI in a client. The practice of one worker asking another worker for a second opinion provides the opportunity for a more experienced worker to show a newer worker how to confidently refuse service to a client with an STI. In such potentially dangerous situations one worker can teach another how to keep in control of the situation, and refer the client to the nearest sexual health clinic without upsetting the person. For both social health and sexual health reasons, home-based workers of any profession should not be forced to work without a companion worker. PWA and SWOP submission 2004.

¹⁷⁴ Evidenced by the fact that council staff questioned about how a separation distance or anti-clustering control was derived, have indicated that it was taken from the policies of other councils and did not arise from any research or analysis.

¹⁷⁵ For example in the suburb of Northbridge, Perth, where conscientious approaches to the closure of sex services premises has simply resulted in their establishment in other areas. Pers comm. AFAO representative 23 April 2004.

¹⁷⁶ Pers comm. ACON representative, 23.04.04.

¹⁷⁷ Pers comm. SWOP representative 20.02.04.

6.8 Prejudice against sex workers

Prejudice against sex workers, which does not recognise the legality and value of sex work or the skills and abilities of sex workers, exists in the general community, affecting a worker's ability to both secure loans, child care, housing and employment, and to conduct a business. Persuasive moral arguments condemning sex workers can be effective in undermining workers' self esteem and recognition of their legal rights. Arguments may include the notion that sex workers are 'carriers of disease' in society. These attitudes, when internalised by sex workers, coupled with prejudice from regulatory authorities, lead to low reporting rates of violence against sex workers. Further, workers who feel alienated from society may feel little or no responsibility to act for the general good of the public in upholding safe sex and other health practices.¹⁷⁸ As long as workers in the sex industry continue to be highly stigmatised,¹⁷⁹ they will continue to under-use services and may fail to report unsatisfactory working conditions.

Prejudice creates barriers to best practice, as it can frustrate the achievement of equality in planning controls and decision-making processes for sex services premises compared to other land uses.¹⁸⁰ Further, it may force workers to conduct business under circumstances that do not uphold their personal safety (e.g. private workers) or which make it difficult for access by health service providers (e.g. illegal premises which are driven 'underground').

6.8.1 Suggested solutions

To better plan without prejudice, councils should:-

- prepare community education programs including those outlined above (refer 6.4.1)
- make use of these guidelines and 'Fact Sheets' (see **Appendix E**) as a basis for training and information sessions in councils
- develop appropriate planning policy and practices providing information contained in these guidelines, and
- make information readily available to the sex industry and wider community to indicate that council treats sex services premises the same as any other land use and encourages compliance with its planning requirements.

6.9 Monitoring and enforcement

Part 4 identifies a number of areas in which current monitoring and enforcement actions of councils are proving unsatisfactory to both councils and the sex industry, and rather than reiterating the concerns, this section presents some better practice options to address them.

6.9.1 Illegal operators

The most effective way for councils to reduce the number of illegal operators and the difficulties presented by their forced mobility within local council areas is to draft planning provisions that enable operators to conduct well-run premises within a reasonable choice of localities. For instance, commercial sex services premises are currently prohibited in many commercial areas, despite the suitability of these areas on town planning grounds. More reasonable planning controls would also demonstrate the council's acceptance of sex services premises as a legitimate land use and would be more likely to encourage a compliant local sex industry.

Establishing areas where sex services premises can operate legally is widely accepted by the NSW Government and was recommended in the Report of the Brothels Taskforce in 2001. 'Fact Sheets' on council requirements and the compliance actions that will result if these are not met would also assist local sex services businesses to understand their responsibilities.

¹⁷⁸ Perkins et al (1994): 308.

¹⁷⁹ Perkins et al (1994): 308.

¹⁸⁰ For instance, it has been observed that some councils refuse all development applications for sex services premises as a matter of course. This reflects prejudice and inequality of treatment of the sex industry compared to other land uses and should be discouraged.

6.9.2 Private workers

Appropriate options to address the compliance issues surrounding private workers include:

- allowing private worker home-based sex work to become a legal land use in local areas (see earlier sections and the exempt and complying provisions in **Appendix D**), and
- establishing clear written compliance protocols so that private workers are aware of the steps councils will take to enforce compliance under the Environmental Planning and Assessment Act, including when the worker may refuse access. A suggested approach is included in **Appendix B - Better Practice Development Control Plan Provisions**, which would also reinforce the roles and responsibilities of council officers under the EP&A Act and minimise the risk of corruption arising in instances where rules are unclear.

6.9.3 Consistency in council enforcement action

Consistency in enforcement is essential to ensure that the sex industry is not discriminated against relative to other businesses, that councils' requirements are upheld in regard to all commercial sex services premises, and that there are no opportunities for corruption by council staff. Greater consistency can be encouraged by the following options:

- encouraging *all* scales and types of sex services premises to become authorised land uses by creating the circumstances where this can occur through appropriate LEP and DCP provisions
- developing a clear monitoring and compliance protocol listing the monitoring/compliance roles of council, frequency of inspections, what is to be inspected on the premises and for what reasons. This protocol should include all premises councils inspect regularly to ensure equitable treatment of commercial sex services premises with other commercial premises

6.9.4 Circumstantial evidence

Options to address the concerns about circumstantial evidence include those identified in Part 5 (refer 5.3.11), and in particular having a clear compliance protocol indicating how access to premises will occur. Other options to address these concerns include:

- where multi-agency inspections must occur and council officers are involved, the council should carry with it relevant information such as fact sheets on how premises may become authorised in the event that no criminal actions are discovered and how the workers can contact appropriate health and outreach services such as SWOP. This would ensure the council is taking a pro-active role in facilitating compliance and assisting in connecting workers with health agencies, and
- overcoming the risks identified to private worker health and safety arising from the fear of circumstantial evidence being used against them by enabling this sector of the sex industry to become a legal land use.

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Part 7: Conclusion

Local councils have significant powers in regulating sex services premises, which, since 1995, have been recognized as legitimate businesses by government. These include planning powers to approve, restrict or to prohibit them in some areas and power to seek their closure if they are operating illegally and/or with adverse impact upon local areas. However, councils do not have the power to prohibit sex services premises totally from their areas. Appropriate regulation of these premises through the planning system can ensure not only that amenity impacts to surrounding areas are reduced or mitigated but also that the health and safety of sex workers and their clients is achieved in the spirit of the relevant legislation. It may also reduce the incidence of street prostitution.

With council's powers comes a range of responsibilities towards the sex industry including:

- fair and non-discriminatory treatment of all sectors and scales of the sex industry in planning policies governing location, operation, design and ongoing monitoring
- engagement of the sex industry in consultative programs and processes including in the preparation of new policies affecting the industry
- acknowledging the importance of health and safety programs for sex workers and the direct implications of planning and enforcement approaches upon these programs, and upon sex workers and their clients
- acknowledging the human rights and equity issues underpinning the fair treatment of sex workers and defending those rights, as councils would for other community groups, in council forums, the media and other avenues where these groups may be victimised
- acknowledging the need to develop skills in understanding the nature and operation of the sex industry
- educating council staff and councillors to understand the sex industry and to understand the role of local government in regulating it
- acknowledging sex workers as comprising part of the community who are entitled to receive reliable, accurate and helpful information from their local governing body and to be fairly heard in planning meetings, and
- establishing an open, transparent and consistent planning and enforcement process.

These guidelines analyse current practice and the extent to which this achieves satisfactory outcomes for the sex industry, the council and the community. In the majority of cases, effective regulation has not been realised, resulting in a number of implications, not least of which is costly and protracted Land and Environment Court appeals brought by both council and by applicants of sex services premises. Current practice is also assessed with respect to its implications to the health and safety of sex workers and their clients, which was a central tenet of the 1995 reforms to 'prostitution' law. As indicated in Parts 4 and 5 of the guidelines, overly restrictive or prohibitive policies are counterproductive, as they force sex workers underground, making it more difficult for them to seek information and health services.

These guidelines present options and strategies for councils to ensure that the health objectives of the 1995 reforms are not undermined and sex workers may operate under safe workplace conditions. In Part 6 they address a number of barriers to the achievement of better practice in planning for sex services premises and outline the strategies councils could employ to overcome these barriers.

It is acknowledged that planning for sex services premises is a relatively new issue for local government, and that a body of detailed research and guidance on current and future best practice planning approaches has been absent until now. The constraints upon council resources in addressing new issues in planning are also acknowledged. However, the guiding principles, information, options and resources extensively researched and presented in these guidelines will assist councils to move forward on this issue and to achieve best practice planning for all types and scales of sex services premises.

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APPENDIX A
References

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APPENDIX A – References

Note to References:

Several State government organisations have changed name in recent years. The following list of references recognises the original author, in order to facilitate research and enquiry into the source material used in the preparation of these guidelines. For instance, publications by the former Department of Urban Affairs and Planning (DUAP) are so referenced, and do not appear under the current organisational name of Department of Infrastructure, Planning and Natural Resources (DIPNR).

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NOTE: Additional information to the above and including letters, draft journal articles, submissions, research papers and the like was also provided from the member of the Sex Services Premises Planning and Advisory Panel and the Local Government Association of NSW and Shires Association of NSW.

Special thanks is extended to the PWA for the extensive resources provided to assist in researching the issues surrounding private home based sex work.

APPENDIX B

**Better Practice Development Control Plan
Provisions for Commercial Sex Services Premises**

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Sex Services Premises Planning Guidelines

**Better Practice Development Control Plan Provisions
for Commercial Sex Services Premises**

These better practice DCP provisions relate to commercial sex services premises and **not** to home occupations or home businesses involving sex work. It is not recommended that home-based sex work (including home occupations and home businesses) be required to submit a development application due to the risks to sex worker health and safety, as outlined in the Guidelines. Home-based sex work including home occupations and home businesses are addressed in the suggested Exempt and Complying Development criteria in **Appendix E**.

The following better practice DCP provisions have been prepared following extensive research into the effectiveness of current policy planning for commercial sex services premises and of best practice approaches. The provisions have also been informed by consultation undertaken with the sex industry and local and State government representatives. The key provisions, which should be incorporated within any Commercial Sex Services Premises DCP or policy, are presented here, with advice to Councils shown in brackets and italics throughout e.g. [*Councils may choose to...*]. The following DCP provisions assume the preparation of a stand-alone Commercial Sex Services Premises DCP however the provisions are also capable of being incorporated into existing DCP's. In this respect, some councils choose not to create new stand alone DCPs but rather seek to address emerging planning issues within existing DCPs that have a broad coverage of planning matters e.g. of a group of land uses (e.g. a Business Lands DCP) or relating to particular localities within the Council area.

An appropriate structure for a Commercial Sex Services Premises DCP would include the following components:

- Part 1.0** Introduction
- Part 2.0** Submitting a Development Application
- Part 3.0** Planning Objectives and Controls
- Part 4.0** Advisory Matters

APPENDICES

- Appendix B1 Plan of Management Requirements
- Appendix B2 Further Information and Contacts
- Appendix B3 Extract from The Disorderly Houses Act – Section 17

Many councils already have standard templates for DCPs and suggestions are offered for some, but not all, elements of a DCP to allow councils to insert paragraphs as appropriate.

Appendix C contains better practice development consent conditions for commercial sex services premises, which based in part on the provisions suggested in **Appendix B**.

Provisions for Part 1.0: Introduction

1.1 Background

[Councils should refer to Part 1.1- Background of the Sex Services Premises Planning Advisory Panel's Sex Services Premises Planning Guidelines, including the objectives of the 1995 reforms to prostitution legislation, the 2001 Brothels Taskforce Report, and the emergent roles and responsibilities of local government. The health and safety imperatives of the planning for commercial sex services premises should be clearly articulated].

1.2 About this DCP

A Development Control Plan or DCP is a commonly used town planning document providing detailed guidance for the design and assessment of new development, which includes the use of land. This DCP is known as *[insert details]*. It applies to commercial sex services premises, which includes any place where sex work is undertaken in accordance with the definition of 'prostitution'. This can include places traditionally known as 'brothels' or parlours, and 'safe houses' for street sex workers *[delete 'safe houses' if street work is not carried out in Council area]* and any of the following places if sex work (i.e. 'prostitution') is carried on in the premises: massage parlours, sex-on-premises venues, escort agencies, and any other similar place. This DCP does not apply to home-based sex work including home occupations and home businesses (see clause 1.6, below).

This DCP repeals *[if it repeals an existing DCP e.g. a "Brothels DCP"]*. It has been introduced in order to follow better practice in the regulation of commercial sex services premises. Together with setting out Council's submission requirements for development applications, this DCP includes objectives and controls for the location, design and operational aspects of commercial sex services premises.

This DCP was approved by Council under the Environmental Planning and Assessment Regulation 2000 on *[insert date]* and came into effect on *[insert date]*.

1.3 Purpose

The main purpose of this Plan is to provide detailed guidelines for the regulation of commercial sex services premises and to include advice to applicants on the information required with a development application for this use.

1.4 Aims of this DCP

The detailed aims of this DCP are to:

- a) specify planning controls to be used by Council to regulate and control commercial sex services premises appropriately to minimise amenity impacts upon adjoining land uses;
- b) assist the community and applicants to understand Council's requirements for the design and operation of commercial sex services premises;
- c) prescribe the information to be submitted with a development application for a commercial sex services premises;
- d) support the health and safety initiatives of NSW Health and WorkCover NSW in regard to sex workers and their clients;
- e) ensure the design and location of commercial sex services premises provide safe and equitable access for clients and staff.

1.5 Land to which this Plan applies

This DCP applies to *[councils to insert details- whole of LGA?]*

1.6 Development to which this DCP Applies

This DCP applies to all development applications and related applications (including Section 96 modifications and Section 82A Reviews of Determination) for commercial sex services premises. It

does **not** apply to home occupations carried out as exempt development or to home businesses carried out as complying development. Home occupations and home businesses involving sex work are covered by separate requirements in Council's Exempt and Complying DCP.

1.7 Zoning Restrictions

[councils to insert details]

1.8 Relationship to Other Plans

This DCP supplements the provisions of *[insert LEP]* which is the main statutory document governing development in *[insert Council area]*. The following other DCPs should also be referred to in the preparation of a development application *[modify as required]*:

- DCP for Disability Access and Mobility
- Car Parking DCP
- Waste Management DCP *etc*

1.9 Variation of requirements

This DCP sets out a range of objectives and specific controls aimed at achieving the objectives. Applicants are encouraged to comply with the controls to the maximum extent possible. However, where variations are sought due to special circumstances, the extent of, and reasons for the variations must be addressed in the Statement of Environmental Effects submitted with the development application. Where a development application is for a small commercial sex services premises or local business sex services premises, Council has the discretion to vary the car parking and other requirements having regard to the generally small scale of these uses.

1.10 Definitions

“commercial sex services premises” means premises habitually used for the purposes of sex work (i.e. ‘prostitution’ as defined by the Summary Offences Act¹⁸¹), or that have been used for that purpose and are likely again to be used for that purpose, but does not include a dwelling or dwelling-house in which sex work is undertaken as a home occupation or home business. Premises known as ‘brothels’, massage parlours and bondage and discipline (B&D) premises may fall within this definition.

“complying development” is routine development that is clearly defined in council’s LEP or a DCP (or a SEPP) and capable of prompt certification by private accredited certifiers as well as by councils.

“development application” (DA) means an application for consent to carry out development, but does not include an application for a complying development certificate.

“exempt developments” are listed in council’s LEP or DCP (or a SEPP) as development that, because it will have minimal environmental impact, does not require consent so long as predetermined standards and requirements are satisfied.

“sensitive use” means a childcare centre, community facility, school, place of public worship, residence, or any place frequented regularly by children for recreational or cultural activities (excluding shopping areas).

“sex industry” includes individual workers and a range of premises which:

- provide or arrange sex work (e.g. commercial sex service premises or ‘brothels’, massage parlours, B&D premises, ‘safe houses’ for street sex workers and home-based sex work);
- arrange sexual encounters (e.g. sex-on-premises venues, swingers clubs and escort agencies);
- provide erotic entertainment or sell restricted material but where no prostitution or sex works take place (e.g. strip clubs, restricted premises).

¹⁸¹ “The act of prostitution includes sexual activity between persons of different sexes or of the same sex that comprises ‘sexual intercourse’ for payment and/or masturbation committed by one person on another for payment”.

“sex on premises venue” means premises where access by patrons is gained by the payment of a membership or entrance fee, and sexual encounters occur between patrons on the premises.

Note: This type of premises is not usually a ‘sex services premises’ unless it is habitually used for the purposes of ‘sex work’ or has been used for that purpose and is likely again to be used for that purpose, then it would be defined as a ‘commercial sex services premises’.

“sex services” include ‘prostitution’ as defined by the Summary Offences Act and further explained as being: sexual intercourse with, or masturbation of, another person, using any part of the body or an object. Masturbation includes the use of the hands or any part of the body to sexually stimulate another person. Sex services are often described as including “full service”, “body slides” and “hand relief”.

“sex services premises” means premises where ‘sex work’ occurs habitually or has been used for that purpose and is likely again to be used for that purpose

Note: Sex services premises may include ‘commercial sex services premises’, ‘private worker home businesses’, ‘private worker home occupations’ or ‘safe house for street sex workers’. In addition, if ‘escort agencies’, ‘B&D premises’ or ‘sex on premises venues’ or ‘massage parlours’ habitually provide sex services on the premises they become a “sex services premises”

“sex work” means the provision of ‘sex services’ for payment

“sex worker” means a person who provides ‘sex services’ for payment

“working room” means a place where sex work is undertaken (also sometimes referred to as a suite or parlour).

Provisions for Part 2.0: Submitting a Development Application

2.1 Information to be submitted with a Development Application.

A development application must include the following written documentation and plans:

Written Documentation:

- A completed development application form
- Owner's consent
- A Statement of Environmental Effects which includes the following details:
 - Number of sex workers and details of support staff (e.g. receptionist, security etc);
 - Number, size and use of the rooms in the premises;
 - Hours and days of operation of the premises;
 - On site car parking;
 - Security and lighting;
 - Description of the anticipated impact on the surrounding area;
 - Waste storage and removal and details of compliance with this DCP;
 - Access for people with a disability and details of compliance with this DCP; and
 - Current uses on adjoining properties and any other uses established on the subject property.
- A Plan of Management detailing the operation and management of the premises (use form in Appendix A)
- Completed DA Checklist *[Most Councils have generic DA checklists which may be used].*

A Series of Plans:

- **Location Plan (or Site Analysis Plan)** (4 copies): *[Where Councils intend applying numerical separation distances for a commercial sex services premises from a sensitive use or another commercial sex services premises, the following should be required]:* Location Plan at a scale of 1:500 or larger, and show distance in metres, measured from the entrance to the building containing the commercial sex services premises to the nearest point on land containing a residential use, place of public worship, community facility, educational establishment, child care centre, park and recreational area, playground, place of assembly and licensed premises, and from any other known commercial sex services premises, restricted premises (e.g. adult bookshop), escort agency or massage parlour, within X metres of the site.

[Councils who do not intend specifying a separation distance could still request a Site Analysis Plan to indicate the presence of such uses within the vicinity of the site, to assist Council assessment of potential impacts]

- **Site Plan** (4 copies) at scale 1:100 or larger showing:-
 - The location of the existing building upon the site;
 - The boundaries of the site;
 - Surrounding streets and lanes;
 - All entrances and exits from the site;
 - Location, number and layout of parking spaces;
 - The type of land uses carried out on adjacent land and nearby properties.
- **Detailed Floor Plans/Elevations/Sections** (4 copies) at scale 1:100 or larger showing:
 - The use of each room including staff areas, reception areas etc;
 - All sanitary facilities including toilets, showers and hand basins;
 - Details of any spas or swimming pools;
 - Entrances to, and exists from, the building;
 - Details of food preparation areas;
 - Details of contaminated waste storage;
 - Any on-site laundry facilities;
 - Any proposed building alterations or additions (**a Construction Certificate Application may also be required**);
 - Proposed external colour scheme, if intended to change;
 - Access for people with a disability including: accessible entry/exits, sanitary facilities and

- showers; pathway and circulation details to common areas and facilities and to designated accessible suite(s) capable of use by a person with a disability;
- Details of any advertising signs or structures (location, size, number, colour and content); and
 - Details of existing and proposed external lighting;
 - **Reduced A4 sized plans** (X copies) for notification purposes.

As with many development applications for larger premises and/or those where building works are proposed, it is recommended that applicants use the services of a registered architect and qualified town planner in the preparation of a development application.

2.2 Notification of Development Applications

All development applications for commercial sex services premises will be advertised in the local press. Adjoining and nearby property owners and/or residents of premises who, in the Council's opinion are likely to be affected by the proposal will also be notified for a period of fourteen (14) days and invited to comment on the proposal. A notice will also be placed on the subject site notifying people of the proposal. Council will take into consideration any submissions or objections received in the determination of the application.

[Councils to modify above to suit local notification and advertising requirements]

It is important that any objection to a development application for a commercial sex services premises focus on amenity concerns (such as the matters covered by this DCP) and not be based solely on moral grounds. A commercial sex services premises is a legitimate land use to be regulated under planning legislation and it is not at council's discretion to refuse an application simply because it may offend certain groups in the community.

2.3 The Role of Other Organisations

Other agencies have a role to play in ensuring the health and safety standards of commercial sex services premises, as set out below:

2.3.1 NSW Health

NSW Health has primary responsibility for dealing with complaints related to public health and for monitoring health standards as set out in the NSW Health and WorkCover NSW document "*Health and Safety Guidelines for Brothels in NSW*" (2001).

2.3.2 WorkCover NSW

WorkCover NSW has responsibility for administering the legislation relating to the health, safety and welfare at work of all employees and other people at the workplace under the Occupational Health and Safety Act 2000 and Occupational Health and Safety Regulation 2001.

2.3.3 NSW Police Service

Council may seek NSW Police advice on, or may refer certain applications (e.g. large commercial sex services premises) to Police to gain an appreciation of any safety and security issues in the neighbourhood so that appropriate safety and security measures are included in the proposed commercial sex services premises. In some cases Police may be requested to assist with a formal Crime Prevention Through Environmental Design risk assessment in accordance with the NSW Department of Infrastructure, Planning and Natural Resources (2001) guidelines "*Crime Prevention and the Assessment of Development Applications*".

2.4 Consideration and Determination of Applications

[Councils could insert details on how they will determine applications for commercial sex services premises e.g. will some be determined under delegated authority? Which ones will be reported to Council's Planning Committee?]

Council will consider each development application on its merits, and in this regard, applicants should endeavour to achieve full compliance with the aims, objectives and controls of this DCP.

Any consent granted to a development application will be conditional, and will usually involve requirements in respect to hours of operation and other conditions as deemed appropriate by Council.

Provisions for Part 3.0 - Planning Objectives and Controls

3.1 Location

Objectives

- a) To ensure commercial sex services premises are located in appropriate areas where they do not impact adversely on the environment, and in particular upon residential occupancies or other sensitive uses;
- b) To ensure that commercial sex services premises are discreetly situated, sensitively located and are not prominent within an area;
- c) To optimise the safety and security of commercial sex services premises and their users; and
- d) To avoid the concentration of commercial sex services premises in any one area *[this objective to be used where anti-clustering provisions are appropriate- See Part 4.0 and 5.0 of the Panel's Guidelines]*.

Controls

3.1.1 Commercial sex services premises proposed to be situated at ground or street level on land zoned *[insert commercial or business zone name]* must comply with the following criteria:

- I. must be located behind another tenancy which is not a commercial sex services premises;
- II. must be separately and independently operated from the front tenancy;
- III. must not be internally linked to the front tenancy;
- IV. must not share access, egress, toilet and other sanitary facilities with the front tenancy;
- V. satisfactory side or rear access must be provided if there is no passageway from the street which is separate to the front tenancy; and
- VI. access for people with a disability must be provided in accordance with this DCP.

3.1.2 The area where the premises are to be located should be well illuminated by street lighting.

[if councils wish to impose anti-clustering controls and/or separation from 'sensitive uses' the provisions in 3.13(i) and (ii) would be appropriate (see commentary in Parts 4 and 5 of the Panel's Guidelines). Councils wishing to impose a specific separation distance from a sensitive use e.g. 50, 100, 200 metres should refer to Part 5.0 of the Panel's Guidelines].

3.1.3 A commercial sex services premises is **not** to be located:

- I. within X metres *[Councils to determine]* of the entrance to a building which is an existing known commercial sex services premises or other known sex industry use (measured from the building entrance of the proposed commercial sex services premises). Council may also consider the presence of any sex industry use within a neighboring Local Government Area (LGA) immediately adjoining a site.

Where an applicant is able to demonstrate, to the satisfaction of Council, that the X metres separation is unnecessary, for instance due to the topographical (land level) change, or other circumstances, Council may give consideration to varying the requirement. Council may also give consideration to varying the requirement where it is satisfied that appropriate conditions of consent may be imposed that would satisfactorily address potential impacts arising from the proximity of the commercial sex services premises with other commercial sex service premises or sex industry use; and

- II. next to or directly opposite: a child care centre, community facility, school, hospital, place of public worship, or any place frequented by children for recreational or cultural activities (excluding shopping areas) and dwelling house whether these uses are within the Council area or within an adjoining Council area.

Note 1: A residential dwelling is not referred to in the above provision as in the business and industrial zones there may be instances where a commercial sex services premises is proposed to be located next to or directly opposite a dwelling e.g. a commercial sex services premises located above a shop next door to a dwelling situated above a shop. In such situations, Council will consider the potential impacts of the commercial sex services premises upon the dwelling, having regard to such matters as: the size of the commercial sex services premises and number of staff; the design, construction and internal layout of the commercial sex services premises; the proposed hours of operation including whether these are in accordance with other approved late night venues in the immediate vicinity of the site and other details of the use as contained in the Plan of Management.

- 3.1.4 Consideration will also be given to the location of the proposed commercial sex services premises and its proximity to any other commercial sex services premises in the locality, and to activities with similar operating hours including: other sex industry uses, licensed premises (e.g. pubs/hotels, nightclubs, or places where alcohol is served on the premises). In this regard, Council will consider how factors such as traffic and car parking, safety and security and residential amenity will be affected by the number of late night premises in the locality.

3.2 Design of Premises

Objectives

- a) To ensure that the layout and design of commercial sex services premises is such that their potential impacts and “presence” in the locality is minimised;
- b) To ensure the privacy and comfort of patrons;
- c) To ensure the design and external appearance of the premises and any associated structure(s) do not have an adverse impact on the architectural character of the surrounding built environment; and
- d) To ensure adequate and appropriate access to the premises and its facilities is provided to a person with a disability.

Controls

- 3.2.1 Premises must be designed so that there is only one (1) visible pedestrian entrance to the premises from the front of the building (or from the primary street access if premises are located on a corner). In instances where there is no front access and/or front access is impractical, a side or rear pedestrian access may be considered where adequate attention has been given to safety and security matters (see section 3.8 below).
- 3.2.2 Rear pedestrian access is to be limited to one (1) access point only, unless it can be demonstrated to Council’s satisfaction that more than one access contributes to the amenity and functional efficiency of the premises and surrounding uses and does not result in safety and security concerns or visual clutter via the need for additional signage.
- 3.2.3 A suitable waiting area must be provided inside the premises for clients who arrive without an appointment.
- 3.2.4 The privacy of patrons must be considered through the design and internal layout of the premises.
- 3.2.5 Access for people with a disability must be provided in accordance with all relevant legislation and *[insert Council’s DCP/Policy for Access]*. In particular, the Disability Discrimination Act (DDA) requires that the principal entrance(s) to premises (to which the public is entitled to enter) need to be designed and constructed to provide equitable treatment of users and to meet minimum standards of grade, doorway width and connectivity.

- 3.2.6 All common areas and facilities and at least one (1) suite and its facilities (including a toilet/ensuite) are required to be designed to be suitable for use by a person with a disability.
- 3.2.7 Staff facilities must include a communal lounge or rest area and staff notice board for the display of health and safety information.
- 3.2.8 A minimum of one (1) bathroom (toilet, shower, hand basin) which is accessible to all working rooms (i.e. is not an ensuite to one of the rooms) is to be provided at a rate of one per each three (3) working rooms. This does not include the one suite and its associated facilities for use by a person with a disability.
- 3.2.9 Design of new buildings and alterations and additions shall be compatible with the surrounding built environment or desired future neighbourhood character in terms of bulk, scale, form, finishes/colours.

3.3 Car Parking

Objectives

- a) To ensure that adequate parking is provided for people working on the premises and clients using the facility so that the establishment of a commercial sex services premises does not give rise to car parking congestion in the street;
- b) To ensure that the location of parking does not adversely affect the surrounding locality, particularly residential properties; and
- c) To ensure the safety and security of car parking areas.

Controls

- 3.3.1 On site car parking shall be provided for commercial sex services premises at the rate of one (1) space per two (2) working rooms and shall be designed in accordance with Council's Car Parking DCP.
[or as considered appropriate by Councils- see Part 4.0 of the Guidelines].
- 3.3.2 Parking areas, access corridors and entrances are to be well lit and sign-posted at all times.
- 3.3.3 Reduced parking requirements may be considered if it can be demonstrated by the applicant that adequate on-street car parking and/or public transport services exist close to the premises and any public transport services operate at the times at which the premises are proposed to be open. It will also be necessary to demonstrate that a variation to the requirements in the provision of less on-site parking, will not adversely affect the amenity of any adjoining residential locality or properties.

3.4 Amenity

Objective

- a) To ensure that commercial sex services premises do not cause a disturbance in the neighbourhood because of their scale (including the number of sex workers and support staff), operating hours or any other factor.

Controls

- 3.4.1 To avoid visual impact and possible offence to the public, sex workers must not display themselves in windows, doorways or outside of a commercial sex services premises.
- 3.4.2 To ensure the privacy of patrons and ensure no potential offence is caused to adjoining or surrounding premises, the interior of a commercial sex services premises must not be visible from adjoining or surrounding premises or the public domain.

- 3.4.3 Spruikers (staff at the door or outside the premises who encourage patrons to enter) are not permitted in the operation of a commercial sex services premises.
- 3.4.4 A Plan of Management (POM) must be submitted for premises having five (5) or more working rooms (see Appendix A).

Considerations

- There are no specific controls for the hours of operation or the size of a commercial sex services premises. Council will exercise its discretion in relation to such matters in the circumstances of the case taking into consideration the nature of surrounding uses, the approved hours of operation of surrounding land uses and any possible conflicts with these uses.
- Council will consider whether the commercial sex services premises would impact on any other land use due to its hours, size, signage, external lighting, traffic generation, noise, the number of employees and the like.
- An owner/operator can minimise parking related amenity impacts in a locality by utilising a number of strategies including:
 - Advising each appointment made by phone of where appropriate parking is located;
 - Noting appropriate parking in the advertisement in the paper; and
 - A sign on the building (if appropriate)

3.5 Advertising Signs and Structures

Objectives

- a) To ensure advertising is discreet and does not draw attention to the use;
- b) To ensure advertising does not result in visual clutter or other visual impacts upon a locality; and
- c) To minimise the potential for advertising to cause offence to the public.

Controls

- 3.5.1 A maximum of one (1) external sign per premises is permitted and shall indicate only the name of the business operated and/or the address*.

Where primary pedestrian access is from the rear of the site e.g. from a car park (and subject to Council's assessment of the safety aspects of allowing rear access under clause 3.2.2 above), a second sign may be provided on the site indicating only the name of the business operated and the street number or address. The intention of this provision is to ensure that there is no confusion over the location of the commercial sex services premises, which may result in disturbance to surrounding properties.

*** Note:** Advertising premises specifically for the purposes of prostitution is an offence under the Summary Offences Act.

- 3.5.2 The advertising sign is to be limited in size to 0.3 x 0.6 metres (or other dimensions, but of equivalent surface area).
- 3.5.3 Signs may be illuminated, provided this would not result in impacts upon the environment or amenity of the area. No "chain" bulb or flashing signs are permitted on the premises.
- 3.5.4 The sign shall not display words or images, which are in the opinion of the Council sexually explicit, lewd or otherwise offensive.
- 3.5.5 A clearly visible street number is to be displayed on the premises to avoid disturbance to surrounding premises arising out of confusion as to the location of the premises.

3.6 Waste Disposal

Objective

- a) To ensure the safe and adequate storage, handling and disposal of waste; and
- b) To ensure the storage of waste does not detract from the amenity or streetscape of an area.

Controls

- 3.5.6 Arrangements must be made [*Note to Councils- either with the council, if Council collects trade waste or a contractor, if Council does not collect trade waste*] for the removal of trade waste from the premises.
- 3.5.7 A waterproof waste bin must be provided in each working room and must be capable of being cleaned. Disposable plastic liners should be used in waste bins.
- 3.5.8 Waste bins are to be stored and collected from within the site, and in accordance with Councils Waste Management DCP [*if Council has such DCP*]. Plans submitted with the development application must show the proposed location of waste bins on the site.
- 3.5.9 Waste bins must be adequately screened or otherwise stored so as not to detract from the streetscape or presentation of the premises when viewed from public areas.

Advisory Note

Applicants are advised to consult the NSW Health and WorkCover “*NSW Health and Safety Guidelines for Brothels in NSW*” (2001) concerning the safe storage and handling of waste, including contaminated waste. The NSW Health Department’s Waste Management Guidelines 1998 provide further detailed advice on separating waste products for disposal.

3.7 Health and Building Matters

Objectives

- a) To ensure commercial sex services premises comply with relevant health and building regulations;
- b) To promote the operation of commercial sex services premises in a manner which will maintain current high levels of public health;
- c) To promote the education of sex workers and their clients so as to minimise the risk of contracting sexually transmitted infectious diseases; and
- d) To ensure that reasonable working conditions are provided for sex workers.

Controls

- 3.7.1 All applications to which this DCP relates shall comply with the requirements of the Public Health Act 1991 and the requirements of the New South Wales Health Department.

Important Note: The NSW Health and WorkCover NSW “*Health and Safety Guidelines for Brothels in NSW*” (2001) provide detailed advice on how occupational health and safety requirements can be met. The following controls in this DCP represent the minimum standards which council will seek to ensure are achieved in all commercial sex services premises. However it is the responsibility of the commercial sex services premises owner/operator to ensure that the NSW Health and WorkCover NSW Guidelines are satisfied in the design and ongoing operation of the premises.

- 3.7.2 The premises must be kept in a clean condition at all times, in particular showers, baths and toilets. Details must be provided as to the arrangements for this within the submitted Plan of Management.
- 3.7.3 Clean linen must be provided for the use of each client, including bed linen, bed covers and towels for the use of individual clients and staff.

3.7.4 At least two receptacles must be provided either in the laundry or other readily accessible area of the premises for the separate storage of clean linen and used linen. Details of the location of these receptacles must be shown in the submitted development application plans.

3.7.5 Facilities or arrangements must be provided for the cleaning of linen including either the use of commercial laundering, or on-site facilities.

Advisory Note: The NSW Health and WorkCover NSW Guidelines provide specific advice for the on-site cleaning and should be consulted by the owner/operator.

3.7.6 Sanitary facilities, including toilets and hand basins, must be provided in accordance with the requirements of the Building Code of Australia, Part F.

3.7.7 Adequate supply and storage of Personal Protective Equipment (PPE) including condoms, dams, gloves and water-based lubricants must be provided within the premises. All PPE must be available free of charge to workers and their clients.

3.7.8 A notice board must be provided in the staff lounge or kitchen and must contain details on worker health and safety as required by the NSW Health and WorkCover NSW *"Health and Safety Guidelines for Brothels in NSW"* (2001). This would safe sex information, procedures for the cleanliness of the premises, OHS matters etc and the like.

3.7.9 All commercial sex services premises must be fitted with the necessary services and facilities required for Class 5 Buildings (an office building used for professional or commercial purposes) under the Building Code of Australia (BCA). This includes, but is not limited to the following: -

- fire safety requirements;
- adequate lighting in accordance with *Australian Standard AS 1680- Interior lighting*; and
- ventilation requirements.

3.7.10 Swimming pools and spa pools provided within a commercial sex services premises shall comply with the NSW Health Department requirements including those contained in the Department's publication *"Public Swimming Pool and Spa Pool Guidelines"*.

Advisory Note for Sex-on-Premises Venues

A sex-on-premises venue is a premises that gains income from entrance and/or membership fees paid to enter premises where sexual encounters can occur. This can include swingers clubs, bondage and discipline clubs or houses and sauna clubs. Specific guidelines have been prepared to address this type of sex industry premises including:

- NSW Health (2002) *"The NSW Communicable Diseases Health and Safety Guidelines for sex-on-premises Venues"*; and
- AIDS Council of NSW (ACON) (2003) *"Sex on Premises Code of Practice"*.

3.8 Safety and Security

[Where councils have adopted policy provisions or a DCP for Crime Prevention Through Environmental Design (CPTED) applicable to all development applications in the Council's area, the following section can be condensed and reference made to the existing Council CPTED policy or DCP as appropriate].

Objectives

a) To maximise the safety and security of sex workers, other staff, clients and the general public at all times by ensuring the development upholds the principles of Crime Prevention Through Environmental Design (CPTED) including the following:

- I. *Surveillance*- ensuring that people can see what others are doing;
- II. *Access Control* – making it clear where people are permitted to go or not go;
- III. *Territorial Reinforcement*- reinforcing the belief that the area is protected; and
- IV. *Space Management/Maintenance*- ensuring the space is well cared for.

Controls

The following controls are based on the concept of Crime Prevention Through Environmental Design (CPTED) and whilst for the purposes of this DCP they relate to commercial sex services premises, they are generic controls that could apply to any type of development. Under Section 79C (1) (b) of the Environmental Planning and Assessment Act, Council is required to consider the likely social impacts of any development. This includes matters of safety and security, and accordingly these matters are addressed below.

Siting of Buildings and Structures

- 3.8.1 Commercial sex services premises should not be located in isolated areas (being areas where there are large tracts of land and reduced surveillance as a result of fewer people) unless adequate safety and security arrangements are in place.
- 3.8.2 The pedestrian entrance to a building must be easily recognisable and provided at the front of the building unless this is impractical (see clauses 3.2.1 and 3.2.2 above).
- 3.8.3 New buildings or alterations and additions to existing buildings should avoid the creation of recesses in the building form, as these can become potential entrapment spots where intruders may hide. In existing developments to which no new works are proposed, appropriate lighting should illuminate existing entrapment spots.
- 3.8.4 Opportunities to provide surveillance of vehicle routes, outdoor car parks and access to car parks must be maximised. This should be achieved by a building layout with windows overlooking these areas, provided there is no reduction in privacy or potential for offence (see 3.4.2, above), or electronic surveillance where casual surveillance cannot be provided.
- 3.8.5 In new developments, parking spaces should be arranged in a grid pattern rather than a herringbone configuration, which reduces surveillance.

Blind Corners

- 3.8.6 Pathways must be direct (i.e. straight) and blind corners avoided (including on stairs, in corridors or in other situations where movement can be predicted). If blind corners cannot be avoided then they must be treated with mirrors to improve sightlines.
- 3.8.7 All barriers beside pathways must be low in height or visually permeable (i.e. 'see-through') including landscaping, fencing and the like.

Lighting

- 3.8.8 The pedestrian entrance to the building must be well lit but not to the extent where it becomes a prominent feature in the streetscape (e.g. by high intensity lighting or the use of excessively bright colours). Details must be provided with the development application.
- 3.8.9 Lighting must be used in all outdoor car parks and in all vehicular and pedestrian accessways to and from the development. Details of the lighting including its location must be provided with the development application.
- 3.8.10 External lighting should be vandal resistant by being high mounted and/or protected and must be directed towards access/egress routes rather than towards buildings (including the subject or neighbouring buildings).

Landscaping

- 3.8.11 Landscaping must not conceal the building entrance from the street or obstruct site lines between the building and the street.
- 3.8.12 Any proposed plantings must not create opportunities for entrapment spots or the concealment of intruders.

Security Measures

- 3.8.13 All premises are to have either an intercom or a duress alarm in each room that is used for sexual activity. Alarms are to connect back to a central base (such as reception) that is to be monitored at all times.
- 3.8.14 External storage areas, including waste storage, must be secured to avoid creating hiding places or potential entrapment spots for victims and unauthorised access to the premises by potential offenders.
- 3.8.15 Any security grilles used on windows must be openable from inside in case of emergency.
- 3.8.16 All intruder alarm systems, security screens, door and window locks and intruder resistant materials used in the development should comply with relevant Australian Standards.

Advisory Note:

The employment of building supervisors or security guards should be considered, especially in areas where surrounding premises do not have similar operating hours e.g. industrial areas.

Materials and Maintenance

- 3.8.17 New development must not create large blank walls facing or abutting the street. If unavoidable, the wall must be modulated (e.g. by incorporating a slight recess) to avoid the creation of a large flat surface susceptible to graffiti.
- 3.8.18 Developments required to submit a Plan of Management (POM) must detail the maintenance aspects of the land use such as protocol for the fast repair or cleaning of damaged or vandalised property and for regularly checking and maintaining light fixtures and promptly replacing these if broken or faulty.

Provisions for Part 4.0 - Advisory Matters

4.1 Legal age of a sex worker and clients

The legal age for a sex worker is 18 years of age.¹⁸² Age of Consent laws under the New South Wales Crimes Act, 1900 mean that the age of clients of sex workers are different for male and female sex workers. For male sex workers, male clients need to be 18 years of age and female clients 16 year of age. For female sex workers male and female clients both need to be 16 years of age.

4.2 Unauthorised use of premises (i.e. operation without consent)

Council has a responsibility to enforce the provisions of the Environmental Planning and Assessment Act 1979 to ensure that commercial sex services premises do not operate without consent from Council. The Act allows Council to take legal action against operators of commercial sex services premises if they operate without development consent or contrary to the development consent conditions issued by Council.

¹⁸² Information from the Sex Workers Outreach Project – www.swop.org.au

If the premises do not have a consent to operate as a commercial sex services premises, Council will investigate the matter and require that the use is ceased or that it obtains the appropriate consent. If the premises have consent Council may still investigate to ensure it is operating within the conditions of the consent and if it is not, enforce compliance with the conditions of consent.

4.3 Illegal uses (i.e. operation of a prohibited use)

As with other land uses, under Council's zoning provisions commercial sex services premises are prohibited from operating in certain areas. Where a commercial sex services premises operates in such areas it is doing so in breach of the EP&A Act and is an illegal land use. Council has the power to close down illegal uses by serving an order under the Environmental Planning and Assessment Act requiring that premises cease to be used for the illegal use. If owners of premises fail to comply with the order, then Council can initiate proceedings in the Land and Environment Court to have the premises closed down.

4.4 Other provisions enabling closure of commercial sex services premises

In addition to the powers under the Environmental Planning and Assessment Act, Council also has the ability to make an application to the Land and Environment Court for a premises not to be used as a "brothel" under Section 17 of the Restricted Premises Act (RPA) 1943. This application is made in instances where a "brothel" is having a negative impact on the amenity of an area and has been the subject of sustained and genuine complaint by surrounding residents or occupiers of premises. It is important to note that under the RPA a 'brothel':

"means premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose. Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution."

The above definition includes a home occupation or home business involving sex work and as such Council may also apply to have such uses closed down if they are causing an impact. In this regard, the fact that home occupations and home businesses are exempt and complying development under Council's local planning controls, does not affect the application of Section 17 of the RPA Act. Furthermore, for commercial sex services premises requiring a development application, even where they are operating with Council consent, Council can still make an application to the LEC under Section 17 to have the use ceased if it believes that there is suitable justification. Section 17 lists several considerations that the Court must consider. These are contained in Appendix C to this DCP. However, Council cannot act solely on moral objections and must fully investigate a complaint prior to seeking an order from the Court that the premises be closed down.

4.5 Complaints and Investigation Protocol

Complaints concerning all sex services premises (commercial sex services premises, home occupations and home businesses) should be directed to *[insert appropriate Council section e.g. Customer Services, Compliance Team etc]*. Council will investigate a complaint, and take appropriate action generally in accordance with the following steps: *[or refer to Council's Complaints Procedures document]*

Step 1: Document particulars of the complaint and complainant.

Step 2: Determine if the use is authorised (i.e. has development consent or complying development certificate or is exempt), unauthorised (i.e. does not have development consent or complying development certificate), illegal (i.e. prohibited in the zone) or having a significant impact and has been the subject of complaints.

Step 3: Make telephone contact with the appropriate person e.g. owner/operator of the premises to discuss the nature of the complaint and arrange an inspection. For non-residential premises, an inspection may occur following provision of written notice (Section 188C EP&A Act) or if the owner or occupier grants consent for entry to the premises. Council powers of entry to

residential uses are more limited (see Section 118J EP&A Act) however again, the occupier may provide permission for Council entry.

Step 4: Inspect premises and:

- If the use is authorised but operating outside of conditions of consent, advice will be issued to the owner to comply with conditions of consent, and confirmed by a letter.
- If the use is unauthorised but is permissible in the zone, Council will require the use to cease temporarily and request the submission of a development application or application for complying development to Council.
- If the premises are illegal, Council will advise the owner/operator of the same, and that the use must cease as it is prohibited in that zone.

Note: It may be necessary for Council to gather evidence to establish that the use is a sex services premises and is therefore illegal. Council may use either direct evidence, or circumstantial evidence. The types of circumstantial evidence that Council may rely upon are listed in Section 17A of the Restricted Premises Act.

- If the use is having substantial impact, Council will assess the basis to the complaints and gather evidence (having regard to the matters under Section 17 of the Restricted Premises Act- see Appendix C of this DCP).

Step 5: Following a site inspection, documentation will be issued in accordance with EPA Act provisions. This may include a letter advising an owner to comply with the conditions of consent or it could involve Council issuing a notice of a proposed order.

Step 6: Where the owner/occupier does not comply with the terms of the notice of proposed order within the time frame indicated, Council will serve an order under the EPA Act that the premises comply with the conditions of consent (applicable where a development consent has already been granted) or cease to be used as a sex services premises. Where the owner/occupier does not comply with an order, Council will take legal action to have the premises closed down.

In instances where the site inspection and complaints indicate that the use is having significant detrimental impact under Section 17, Council will make application to the LEC.

Other organisations will be contacted regarding certain other complaints, as follows:

Organisation	Issue/Complaint
NSW Health (relevant Area Health Service)	Public health complaints
WorkCover NSW	Occupational health and safety issues
Department of Community Services	Children within commercial sex services premises
Department of Immigration	Suspected illegal immigrants on the premises
NSW Police	Criminal matters (e.g. sexual assault, violence)

APPENDICES

Appendix B1	Plan of Management for Commercial Sex Services Premises
Appendix B2	Further Information and Contacts
Appendix B3	Section 17 Restricted Premises Act

APPENDIX B1

Plan of Management for Commercial Sex Services Premises

What is a Plan of Management (POM)?

A Plan of Management (POM) outlines the detailed management and operational arrangements of a commercial sex services premises to ensure that important occupational health and safety obligations are met and that the premises operate in a well-run manner that minimises amenity impacts to surrounding areas. A POM is required for all commercial sex services premises having five or more working rooms (i.e. rooms where sexual activity takes place). The proprietor of the business and any manager of the business must sign the POM.

PLEASE PROVIDE DETAILS ON ALL OF THE FOLLOWING

1. Management and Staff Details:

Name _____ Phone (Daytime) _____ - Mobile _____ Address _____ _____ Key responsibilities of the Proprietor _____ _____ _____

Name _____ Phone Daytime) _____ Mobile _____ Address _____ _____ Key responsibilities of the Manager _____ _____ _____

Is a separate Door Manager (to Manager of the Premises) employed? YES/NO What are the key responsibilities of the Door Manager? _____ _____
Is a Receptionist employed? YES/NO What are the key responsibilities of the Receptionist? _____ _____ _____ _____

If no Manager, Door Manager or Receptionist who will admit clients and supervise premises (sex workers not included)?

2. Details of the Operation and Management of the Premises:

How will you minimise impacts to the surrounding area, in terms of:

Parking: *How will clients know where to park?*

Noise: *How will you minimise noise from the premises, how will you ensure that clients leave the premises in a quiet manner etc?*

Access for People with a Disability: *Outline how access and egress will be provided for a person with a disability, which includes a person in a wheelchair or with other access needs. The POM must also address egress in the case of an emergency.*

Restricting Access: *Outline how a person under 18 years of age will be restricted access to the premises.*

Safety and Security: *Because many commercial sex services premises operate late at night when other businesses are closed and/or are located in industrial areas, the safety of staff and clients both within and outside the premises must be addressed, having regard to the following:*

Management and monitoring of people entering the premises:

Location of emergency service numbers within the premises:

Safety and alarm systems in place and the person who has responsibility for these systems:

Safe Sex Assurance: *Outline how condoms, dams etc and safe sex information is to be made available to all occupants of the premises, including for persons of Non-English speaking background.*

Maintenance: *It is important for safety and security reasons that there are procedures in place to ensure the fast repair or cleaning of damaged or vandalised property and for regular checking and maintaining of light fixtures. Detail who is responsible for general maintenance of the premises and checking of systems.*

Cleanliness of the Premises: *Outline how it is proposed to keep the inside of the premises in a clean and tidy condition.*

Who is responsible for changing linen and cleaning workrooms after each client?

Who is responsible for overall cleaning of the premises?

*I agree to ensure that the premises are operated in accordance with this Plan of Management. I agree to notify the Council if any of the details in this Plan of Management change. **Note:** Council may determine that the changes require a formal amendment to the Plan of Management under Section 96 of the Environmental Planning and Assessment Act (modification of a development consent).*

Signature of Proprietor (Owner of Business)

Date

Signature of Operator or Manager

Date

Any Questions? If you need more information or advice, please call our Customer Service Centre on *[insert number]*. We also recommend that you discuss your proposal with one of our Planning Officers before submitting a development application.

- End of Plan of Management -

Please see over for advisory matters

Advisory Matters

NSW Health and WorkCover NSW have developed detailed guidelines known as “*Health and Safety Guidelines for Brothels in NSW*” (December 2001) that address the key occupational health and safety responsibilities for those involved in the sexual services industry. Under NSW legislation, employers and their representatives (sex service premises proprietors i.e. owners and managers in commercial sex services premises and the principal sex worker in a home occupation setting) have certain duties with regard to their employees and to other people visiting the workplace. Employees have a range of rights as well as certain responsibilities under the law.

It is the responsibility of sex services premises proprietors and the individual sex worker in a home occupation to obtain and comply with the *Guidelines*. These can be obtained from:

WorkCover Bookshop
400 Kent Street, Sydney, NSW, 2000.
Client Contact Centre: 13 10 50
NSW Health Department
73 Miller Street, North Sydney, NSW, 2060
Telephone: 9391 9000

The Guidelines cover the following matters:-

- ◆ Legal rights and duties
- ◆ Working conditions
- ◆ Personal protective equipment (PPE)
- ◆ Health and safety of others
- ◆ Occupational Overuse Syndrome
- ◆ Violence in the workplace
- ◆ Drugs, alcohol and smoking in the workplace
- ◆ Pregnancy
- ◆ First Aid
- ◆ Employees' rights
- ◆ Employees' duties
- ◆ Workers compensation
- ◆ Injury Management
- ◆ Information and resources
- ◆ Cleanliness
- ◆ Cleaning of linen and laundry facilities
- ◆ Sanitary facilities
- ◆ Storage and handling of waste
- ◆ Disinfection of swimming and spa pools
- ◆ Bars and food preparation area
- ◆ Complaints related to Sexually Transmitted Infections (STIs)
- ◆ Other public health risks

Liaison: It is suggested that in addition to Council Officers, you liaise with SWOP (Sex Workers Outreach Project), and health workers in the preparation of the Plan of Management. Contacts for these organisations are attached.

Other Resources:

1. **NSW Health** (2002) “*NSW Communicable Diseases Health and Safety Guidelines for sex-on-premises Venues*”. [copies available from NSW Health Ph: 9391 9000]
2. **AIDS Council of NSW (ACON)** (2003) “*Sex on Premises Code of Practice*”. [copies available from ACON Ph: Freecall 1800 063 0600]
3. Edler, David (undated) “*Occupational Health and Safety in the Australian Sex Industry*”. [copies available from the **Scarlett Alliance** Ph: (02) 6239 6098]

APPENDIX B2

Further Information and Contacts

Organisation	Service provided	Contact details [councils to update]
Council <i>[insert details]</i>	Planning and health and building advice	Address: Ph: Fax: Website:
NSW Sexual Health Services	These centres are part of the NSW Department of Health and provide assistance with all matters relating to sexual health.	Those providing services to the <i>[insert Council]</i> area: Address: Ph: 9560 3057
NSW Health/Public Health Units	Provides information, guidelines and educational material.	[Insert details for nearest health service or Public Health Unit] Address: Ph:
AIDS Council of NSW (ACON)	ACON is a community-based organisation that provides HIV/AIDS information and services. They can provide specialist advice on sex-on-premises venues.	Website: www.acon.org.au
Sex Workers Outreach Project (SWOP)	SWOP has a wide range of resources and information to assist sex industry business operators in completing development applications and in developing Plans of Management. SWOP has produced a video and guidebook "Getting on Top of Health and Safety in the NSW Sex Industry". This contains health and safety information for the sex industry in the form of 'scenarios' conveying clear messages. This information should be used as an educative tool in all sex services premises.	Postal Address: PO Box 1354 Strawberry Hills 2012 Freecall: 1800 622 902 (outside Sydney) Email: info@swop.org.au Website: www.swop.org.au
WorkCover Authority	WorkCover is part of the NSW Government and provides information on work conditions and standards and has OH+S resources for the sex industry.	<i>[insert details of nearest WorkCover agency]</i> <i>Example:</i> Address: 400 Kent Street, Sydney NSW 2000 Ph: 9370 5000 Fax: 9370 5999 Email: contact@workcover.nsw.gov.au Website: www.workcover.nsw.gov.au
The Gender Centre	Provides information, guidelines, educational material and advocacy on gender issues.	Address: 75 Morgan Street, Petersham NSW 2049. Email: gendercentre@one.net.au Website: www.gendercentre.org.au
Australian Federation of AIDS Organisations (AFAO)	Document: "A Guide to Best Practice Occupational Health and Safety in the Australian Sex Industry"	Postal Address: PO Box 51, Newtown, NSW 2042 Website: www.afao.org.au
The Private Worker Alliance (PWA)	The PWA offers peer support, and sex worker rights advocacy. It offers expert advice to councils and higher levels of government on the implementation of best practice planning, especially for the small business sector of the sex industry. Alliance members and their supporters hold an extensive collection of documents regarding sex worker rights to equality.	Email: pwa_nsw@yahogroups.com

APPENDIX B3

Section 17 Restricted Premises Act

Extract of Section 17 from Restricted Premises Act 1943 No 6

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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APPENDIX C

Better Practice Development Consent Conditions for Commercial Sex Services Premises

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APPENDIX C

Sex Services Premises Planning Guidelines **Better Practice Conditions of Development Consent for Commercial Sex Services Premises**

Application of the conditions of consent

The following consent conditions are relevant to commercial sex services premises and based in part on the provisions provided in the Better Practice Development Control Plan in **Appendix B**. They relate only to approvals in regard to commercial sex services premises, as it is anticipated that home-based sex work (e.g. home occupations or home business) would be exempt or complying development and therefore not require development consent or therefore the imposition of conditions of consent.

WARNING: The conditions of consent and advisings presented below do not represent a complete list of conditions of consent for a commercial sex services premises. In addition, they may not be current at the date of use by councils as a result of legal advice, changes to legislation or advice from the Department of Planning, Infrastructure and Natural Resources on better practice implementation of consent conditions. Councils will need to make their own enquiries to ensure the following conditions remain correct at the date of use, and make any necessary amendments to the conditions

Instructions for Use

The conditions of consent presented below should be used in accordance with the following instructions:

1. Councils will need to add their own standard conditions regarding BCA, engineering, and other technical matters, particularly if building works are proposed as part of the development application. The advice from other Council Departments e.g. traffic and parking, health and building and the like will usually assist here. Some prompts are provided within the conditions listed below.
2. The following is not a finite list of conditions councils can impose in relation to commercial sex services premises, as additional conditions may be needed to address issues arising from a particular proposal. In this regard, individual merit assessment is the basis of environmental assessment and a generic list of conditions cannot cover every situation. There might also be a need for councils to ensure compliance with the provisions of the Commercial Sex Services Premises DCP where these have not been met in the submitted development application plans.
3. As the following is a generic list of conditions for commercial sex services premises, councils should delete those that may not be relevant to a particular proposal.
4. Councils should refer to Section 80A - Imposition of conditions of the Environmental Planning and Assessment Act for information on when conditions of development consent can be imposed and the prescribed conditions of consent for certain types of consents.

Terms of the Approval

The development approved under this consent shall be used for *[insert use i.e. commercial sex services premises]* and no other purpose.

Reason: To confirm and clarify the terms of councils approval.

The proposed development being carried out strictly in accordance with the details set out on the submitted plans numbered XX and dated XX, the Statement of Environmental Effects dated XX

and prepared by XX, and on the Development Application form, except as otherwise provided by the conditions of this consent.

Reason: To confirm and clarify the terms of councils approval.

The use must not commence until after compliance with the conditions of development consent.

Reason: To ensure compliance with the conditions of consent of the council's approval.

Hours of Operation

4. The hours of operation are restricted to those times listed below:

e.g.

Weekdays	am	to	XX
Thursday	am	to	XX
Saturdays	am	to	XX
Sundays and Public Holidays	am	to	XX

Public Health and Safety

[Councils to insert prescribed fire safety and BCA conditions under the EP&A Act 1979, as amended]

[Councils to insert their standard conditions for BCA matters e.g. natural/mechanical ventilation, toilet and hand basins, internal lighting and the like]

5. The development shall comply with all of the relevant health standards under Clause XX of Development Control Plan *[insert number]* - Commercial Sex Services Premises.

Reason: To ensure that the development complies with appropriate public health standards in the public interest.

6. The premises must be kept in a clean condition at all times, in particular showers, baths, toilets, kitchens and waste storage areas.

Reason: To ensure that the development is of a satisfactory standard of health and cleanliness, in the public interest.

7. Swimming pools and spa pools provided within a commercial sex services premise shall comply with the NSW Health Department requirements including those contained in the Department's publication "*Public Swimming Pool and Spa Pool Guidelines*".

Reason: To ensure that the development is of a satisfactory standard of health and cleanliness, in the public interest.

Access and Mobility

8. The development shall comply with access and mobility requirements of Council's Access and Mobility DCP, Australian Standard 1428 Parts *[insert relevant parts]* and the Building Code of Australia. Prior to occupation of the building, a compliance certificate certifying compliance with these requirements is to be obtained.

Note: Compliance with the Australian Standards and BCA can still leave a building professional or building owner in contravention of the Federal Disability Discrimination Act.

Reason: To ensure compliance with the provisions of relevant legislation requiring adequate access and mobility for a person with a disability.

Car Parking

9. In accordance with the approved plans, a minimum of *[insert no.]* of car spaces shall be provided on site.

Reason: To confirm and clarify the terms of Council's approval.

10. All parking bays are to be permanently marked out on the pavement surface.

Reason: To encourage the use of the proposed on-site parking facilities and minimise kerbside parking in surrounding areas as a result of the proposed development.

11. A sign must be clearly displayed at the *[insert road]* street frontage of the premises indicating the availability of car parking at the rear.

Reason: To encourage the use of the proposed on-site parking facilities and minimise kerbside parking in surrounding areas as a result of the proposed development.

12. Parking areas, access corridors and entrances are to be well-lit and sign-posted at all times.

Reason: To encourage the use of the proposed on-site parking facilities and minimise kerbside parking in surrounding areas as a result of the proposed development.

[Councils to insert standard conditions on car parking dimensions, designation of visitor and disabled spaces, signposting, loading areas etc as appropriate].

Signage and property identification

13. A maximum of one (1) external sign of dimensions 0.3 x 0.6 metres (or other dimensions, but of equivalent surface area) may be provided at *[insert part of the building]* and shall indicate only the name of the business operated and/or the address. The sign shall not display words or images, which are in the opinion of the Council sexually explicit, lewd or otherwise offensive.

Note: Advertising premises specifically for the purpose of prostitution is an offence under the Summary Offences Act.

Reason: To protect the streetscape and amenity of the surrounding area and ensure no potential offence is caused to the community by the contents of the sign.

[Guidelines Note: Where primary pedestrian access is from the rear of the site e.g. from a car park, councils may wish to permit a second sign, subject to the satisfactory performance of the premises with safety considerations- Refer to Commercial Sex Services Premises DCP] OR where councils usually seek separate development consent for signage.

14. No advertising sign or structure shall be erected on, or in conjunction with, the proposed development without prior development consent unless the advertisement is exempt development under Council's Exempt and Complying Development Control Plan.

Reason: To ensure development consent is granted for the advertising sign or structure prior to its erection on the site.

15. A clearly visible street number is to be displayed on the building exterior and shall be visible from the road frontage to the site.

Reason: To ensure that the property can be readily identified by visitors, motorists and emergency services and that there is no confusion about the location of the commercial sex services premises, which may result in disturbance to surrounding properties.

16. There is to be no display or sale of goods on the footpath.

Reason: To ensure the use is confined to the boundaries of the premises and to ensure the amenity of the surrounding area.

Amenity

17. All garden or lawn areas on the site shall be kept free of parked vehicles, garbage, trade waste or other extraneous material and be permanently maintained.

Reason: To ensure the site is properly maintained in the interest of preserving the visual amenity of the neighbourhood.

18. Management shall ensure that the behaviour of patrons entering and leaving the premises does not affect the amenity of the neighbourhood detrimentally. In this regard, management shall be responsible for the control of noise and litter generated by patrons of the premises. If so directed by Council, management is to employ private security staff to ensure that this condition is complied with.

Reason: To ensure the premises do not adversely affect the amenity of the surrounding area by causing a disturbance.

19. Sex workers must not be visible from outside a commercial sex services premises.

Reason: To ensure the premises does not cause potential for offence to the community.

20. Any amplified music shall not exceed [add noise level appropriate in the council area]

Reason: To uphold the amenity of the surrounding area by ensuring that disturbance is not caused by noise impacts arising from the use of the premises.

21. The premises must be operated in accordance with the submitted Plan of Management (POM).

Reason: To ensure the premises are well-run, encourage a satisfactory and safe environment for sex workers and their clients, and that the operation of the premises does not cause a disturbance in the local area.

22. The interior of a commercial sex services premises must not be visible from adjoining or surrounding premises or the public domain.

Reason: To ensure the privacy of patrons and sex workers and that no potential offence is caused to persons in adjoining or surrounding premises.

23. Spruikers (staff at the door or outside the premises who encourage patrons to enter) are not permitted in the operation of a commercial sex services premises.

Reason: To protect the amenity of the surrounding area.

24. Sound generated from the premises shall not cause the noise levels to exceed [insert dBA] above background noise levels when measured at [insert relevant point e.g. boundaries of the site, affected property etc].

Reason: To uphold the amenity of the surrounding area by ensuring that disturbance is not caused by noise impacts arising from the use of the premises.

External Appearance

25. The external appearance of the building shall be in keeping with the character of the surrounding local area.

Reason: To ensure the streetscape and amenity of the surrounding area are upheld.

Safety and security

Safety of workers

26. In each room used for sexual activity there shall be an alarm or intercom connected to a central base that is monitored at all times.

Reason: To ensure the premises provide for the safety and security of sex workers when they are with clients.

27. A manager, receptionist or other non-sex worker staff must be on the premises at all times when the premises are operating.

Reason: To ensure the safety and security of the premises and all sex workers within when individual sex workers are occupied with clients.

Lighting

28. External lighting shall be provided at [*identify location- refer to Better practice DCP and circumstances of the proposal/site*] to provide safe pedestrian access,

Reason: To ensure the safety of persons accessing the premises.

29. All external lighting shall comply with Australian Standard 4282- 1997 '*Control of the obtrusive effects of outdoor lighting*'.

Reason: To ensure appropriate lighting is provided without causing a nuisance to adjoining and surrounding development.

30. Lighting must be used in all outdoor car parks and in all vehicular and pedestrian accessways to and from the development.

Reason: To ensure the safety of persons accessing the premises.

31. The pedestrian entrance to the building must be well lit but not to the extent where it becomes a prominent feature in the streetscape (e.g. by high intensity lighting or the use of excessively bright colours).

Reason: To ensure the safety of persons accessing the premises without adversely affecting the streetscape.

32. External lighting must be vandal resistant by being high mounted and/or protected and must be directed towards access/egress routes rather than towards buildings (including the subject or neighbouring buildings).

Reason: To ensure the safety of persons accessing the premises.

Landscaping and Potential Entrapment Points

33. Landscaping must not conceal the building entrance from the street or obstruct site lines between the building and the street.

Reason: To ensure the safety and security of the premises and persons utilising the premises.

34. Any proposed plantings must not create opportunities for entrapment spots or the concealment of intruders.

Reason: To ensure the safety and security of the premises and persons utilising the premises.

35. External storage areas, including waste storage, must be secured to avoid creating a place where an offender may hide and prevent access to the building.

Reason: To ensure the safety and security of the premises and persons utilising the premises.

Security Installations

36. Any security grilles used on windows must be openable from inside in case of emergency.

Reason: To ensure the safety and security of the premises and persons utilising the premises without comprising the ability to exit the premises in the case of an emergency.

37. All intruder alarm systems, security screens, door and window locks and intruder resistant materials used in the development should comply with relevant Australian Standards.

Reason: To ensure the effectiveness of security devices by ensuring they comply with relevant current standards.

Access to the Premises

38. The only access to the premises for clients shall be from [add street name] Street.

Reason: To ensure clarity as to where people are permitted to go and not go on the site in accordance with better practice safety guidelines, and to minimise disturbance to surrounding properties.

Occupational Health and Safety

39. Clean linen must be provided for the use of each client, including bed linen, bed covers and towels for the use of individual clients and staff.

Reason: To ensure the premises provide an adequate standard of health protection for sex workers and their clients.

40. At least two receptacles must be provided either in the laundry or other readily accessible area of the premises for the separate storage of clean linen and used linen. Details of the location of these receptacles must be shown on the submitted development application plans.

Reason: To ensure the premises provide an adequate standard of health protection for sex workers and their clients.

41. Facilities or arrangements must be provided for the cleaning of linen including either the use of commercial laundering or on-site facilities.

Reason: To ensure the premises provide an adequate standard of health protection for sex workers and their clients.

42. Adequate supply and storage of Personal Protective Equipment (PPE) including condoms, dams, gloves, water-based lubricants and other personal protective equipment must be made available within the premises free of charge to workers.

Reason: To ensure the premises maintain high standards of public health.

43. A staff notice board must be clearly positioned in the staff room or kitchen and shall be used for the display of details on worker health and safety as required by the NSW Health and WorkCover NSW *“Health and Safety Guidelines for Brothels in NSW”* (2001). This would include safe sex information, rules for the cleanliness of the premises, OHS matters etc contact details for relevant health and sexual health services for sex work staff.

Reason: To promote the health and well-being of all employees in accordance with the NSW Health and WorkCover NSW “Health and Safety Guidelines for Brothels” (2001).

44. If sharps (i.e. needles) are used in a commercial sex services premises, non-reusable sharps containers complying with Australian Standard - AS 4031 should be provided. Sharps must be disposed of in accordance with the Environmental Protection Authority’s requirements.

Reason: To promote the health and well-being of all persons working within or visiting the premises in accordance with the NSW Health and WorkCover NSW “*Health and Safety Guidelines for Brothels*” (2001).

45. Appropriate lighting in accordance with the standards contained in NSW Health and WorkCover NSW “*Health and Safety Guidelines for Brothels*” (2001) must be provided in each working room.

Reason: To promote the health and well-being of all persons working within or visiting the premises in accordance with the NSW Health and WorkCover NSW “*Health and Safety Guidelines for Brothels*” (2001).

Waste Management

46. A waterproof waste bin must be provided in each working room and must be capable of being cleaned. Disposable plastic liners should be used in waste bins.

Reason: To ensure waste removal facilities are readily accessible to areas where sex work is undertaken and upholds the health and safety of those present in the premises.

47. Waste bins are to be stored and collected from within the site, and in accordance with Council’s Waste Management DCP *[if council has such DCP]*.

Reason: To ensure the amenity of the surrounding area is not adversely affected by waste storage and removal arising from the use of the premises.

48. Waste bins must be adequately screened or otherwise stored so as not to detract from the streetscape or presentation of the premises when viewed from public areas.

Reason: To uphold the streetscape amenity of the area.

Advisings

You will now need to have regard to the following additional matters:-

- (a) The classification of the building pursuant to the Building Code of Australia is 5.
- (b) This decision does not ensure compliance with the Disability Discrimination Act and the applicant should therefore investigate their liability under that Act.
- (c) You are advised that changes to the external configuration of the building, changes to the site layout, internal changes to the proposed building or any changes to the proposed operation of a use MAY require the submission of an application under Section 96 of the Environmental Planning and Assessment Act 1979 to modify the development consent.
- (d) Under NSW workplace health and safety legislation, sex service premises owners and operators have certain duties with regard to employees, sub-contractors and other visitors in the workplace. Employees and contractors also have a range of rights and responsibilities under the law. Your attention is drawn to the Occupational Health and Safety Act 2000 and Occupational Health and Safety Regulations 2001. To assist in meeting your responsibilities towards the occupational health and safety of the sex services premises, you are advised to consult the NSW Health and WorkCover NSW “*Health and Safety Guidelines for Brothels*” (2001) or contact WorkCover on Ph: 13 10 50.
- (e) Owners/operators of commercial sex services premises have a responsibility to uphold the requirements of the Public Health Act 1991. The NSW Department of Health is responsible for investigating public health

related complaints about sexual service premises. To assist in meeting your responsibilities towards the public health matters in commercial sex services premises, you are advised to consult the NSW Health and WorkCover NSW "*Health and Safety Guidelines for Brothels*" (2001) or contact NSW Health.

- (f) The legal age for a *sex worker* is 18 years of age. Age of consent laws exist under the New South Wales Crimes Act 1900 and should be consulted by the owner/operator of a commercial sex services premises.
 - (g) Various outreach services are available providing a range of health, safety, support and information services for sex workers, management, clients and partners of sex service workers. The Sex Workers Outreach Project (info@swop.org.au) can assist here.
 - (h) If video cameras are to be used in or around the premises, you should investigate your responsibilities under the Video Surveillance Act.
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APPENDIX D

Better Practice Exempt Development Provisions for Home Occupations and Complying Development Provisions for Home Businesses

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APPENDIX D

BETTER PRACTICE EXEMPT DEVELOPMENT PROVISIONS FOR HOME OCCUPATION

Insert following into Exempt Development DCP

Home Occupation

Guidelines Note: Councils could either create a generic category of ‘home occupation’ or create a specific category of ‘private worker home occupation’. The latter would be appropriate where councils do not wish to create the potential for all home occupations involving a non-resident worker to be a form of exempt development yet wish to acknowledge the occupational health and safety issues related to sex work. A generic definition is provided below, however this may be adapted to address only private worker home occupations.

Description

A home occupation is the use of an existing lawful dwelling-house or dwelling by its permanent residents and a maximum of one other in the conduct of the occupation.

Definition

“home occupation” (as defined in [insert details] Council LEP) means an occupation carried on in a dwelling-house or dwelling which does not involve:

- (a) the registration of the building under the Factories, Shops and Industries Act 1962,
- (b) the employment of more than one person other than those residents,
- (c) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products or grit, oil or otherwise,
- (d) the display of goods, whether in a window or otherwise,
- (e) the exhibition of any notice, advertisement or sign, or
- (f) the sale of items (whether goods or materials) or the exposure or offer for sale of items, by retail”.

Development Standards and Requirements

If the home occupation satisfies all of the following development standards then it is Exempt Development and does not require Council consent. If “no” is answered to **any** of the below, the home occupation is prohibited and cannot occur in this location. [Note to councils: If councils allow proposals not strictly complying with exempt development criteria to submit a DA, then this can be indicated here].

General		Complies? Yes/No
(a)	the home occupation does not involve the registration of the building under the Factories, Shops and Industries Act 1962.	
(b)	the home occupation does not involve the employment of more than one (1) person other than those residents.	

Continued over page

(c)	no interference is caused with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products or grit, oil or otherwise.	
(d)	there is no display of goods, whether in a window or otherwise.	
(e)	there is no notice, advertisement or sign exhibited on the premises.	
(f)	no items are exposed or offered for sale by retail (whether goods or materials).	
Specific		Complies? Yes/No
(g)	The dwelling house or dwelling must provide a clearly visible street/unit number.	
(i)	The appearance of the premises is not unduly different from any other dwelling houses in the street, or other dwellings when viewed from common areas within a building containing multiple tenancies (eg: windows should not be blacked out).	
(j)	Nothing is to be visible from outside the dwelling house or dwelling (eg: the resident sex worker, articles or products) that would suggest the premises are used for the purpose of sex work.	

BETTER PRACTICE COMPLYING DEVELOPMENT PROVISIONS FOR HOME BUSINESS

Insert following into Complying Development DCP

Home Business

Guidelines Note: Councils could either create a generic category of complying development known as 'home business' or create a specific category of 'private worker home business'. The latter would be appropriate where councils do not wish to create the potential for all home businesses to be a form of complying development yet wish to acknowledge the occupational health and safety issues related to sex work. A generic definition is provided below, however it may be adapted to address only private worker home business.

Description

Home business is the use of an existing lawful dwelling house by its permanent residents and a maximum of two others in the conduct of a business.

Definition

"home business (as defined in [insert details] Council LEP) means a business carried on in a dwelling house and that would be a home occupation except that it involves the employment of not more than two persons other than the residents concerned (either on the site of the business or having a base at the site)"

Development Standards and Requirements

If the home business satisfies all of the following development standards then it is Complying Development and a Complying Development Certificate may be issued. If "no" is answered to **any** of the above, the proposal is **not** Complying Development and consent must be refused.

General		Complies? Yes/No
(a)	The site meets the requirements of the Environmental Planning and Assessment Act 1979 in Part __ of this DCP. <i>[Guidelines Note: Exempt and Complying DCP's will make reference to the requirements of the Act for Complying Development]</i>	
(b)	The site meets the requirements of the <i>[insert relevant LEP]</i> .	
(c)	The use (<i>i.e.: home business</i>) is permissible with consent in the zone in which it is to be located.	
Specific		Complies? Yes/No
Siting		Complies? Yes/No
(a)	The use is carried on within the external walls of the dwelling.	
(b)	The use is undertaken only by the permanent residents of the dwelling and a maximum of two (2) others.	
(c)	The maximum number of work rooms is four (4).	
(d)	The property is not strata titled.	

Design		Complies? Yes/No
(e)	The kitchen flooring and benches are of impervious material.	
(f)	A refrigerator is provided and can maintain food at below 5 degrees Celsius.	
(g)	A fire extinguisher and fire blanket are located in the kitchen.	
Work Rooms		Complies? Yes/No
(h)	Each workroom is provided with natural light and ventilation (either natural or mechanical ventilation) in accordance with BCA requirements.	
(i)	No key release dead locks are installed on the working room doors.	
Bathrooms		Complies? Yes/No
(j)	The dwelling contains a minimum of 1 bathroom (having toilet, shower and hand basin) per 3 workrooms.	
Signage		Complies? Yes/No
(k)	No signage is installed to advertise the premises.	
Emergency Alarms		Complies? Yes/No
(l)	Approved (AS 3786) single station detector systems connected to a permanent 240v electricity supply with battery operated back-up device are provided to all working rooms and hallways on each storey of the building not already provided with an alarm.	
Amenity		Complies? Yes/No
(m)	The premises receive clients between the hours of 9am and 10pm daily.	
(n)	Clients are received by appointment only.	
(o)	The street number of the premises is clearly visible from the street both during daylight and evening hours.	
(p)	A sign is erected on the inside face of the exit doors directing clients to leave the premises in a quiet manner to minimise potential impact on surrounding premises.	
Operation		Complies? Yes/No
(q)	Does not involve the sale of goods, by retail, from the site.	
(r)	Does not require registration, or have existing registration under the Factories, Shops and Industries Act 1962.	

Health and Building		Complies? Yes/No
(s)	Requires no building works to be undertaken.	
(t)	Complies with the Building Code of Australia.	

Guidelines Note: No parking requirements are established for a complying development home business, as this is dependent on each council area. For instance some councils in inner city areas may not require dwellings to provide resident parking in all situations. It should be noted that once parking is included as a development standard for the purposes of a home business, it is not negotiable. That is, if a home business does not comply with the parking standards, it cannot be approved. Councils therefore need to adjudicate whether it is appropriate to allow a home business generally, or to simply allow a specific type of home business eg: sex services, which has the potential for lower parking requirements. This is because not all workers would be expected to be present at the one time, clients are often locals who walk to the premises and many clients would come by taxi or, in inner city areas, potentially public transport.¹⁸³

¹⁸³ Pers comm. Private Worker Alliance (PWA) 5 March 2004.

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APPENDIX E

Sample Fact Sheets

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APPENDIX E - Sample Fact Sheets

Sample Fact Sheet No. 1

Key Facts and Questions: Sex Services Premises

What are sex services premises?

Sex services premises are places where sex work (or 'prostitution') occurs. Sex services premises may include: commercial scale 'brothels', small sex services premises, private worker home businesses, private worker home occupations, 'safe houses' for street sex workers. Sex services premises are not usually places which provide entertainment such as erotic dancing or sell restricted material (eg: adult bookshops).

Important Note: If you are operating, or intend to operate a premises that may be considered a sex services premises, it is important to check Council's requirements in full.

Why does Council regulate sex services premises?

Changes to State prostitution laws in 1995 enabled the legal operation of a sex services premises (i.e.: a 'brothel'). These changes meant that it is no longer an offence to operate a sex services premises and also that councils can not totally prohibit sex services premises from their areas. Local councils could now regulate sex services premises as they do every other land use. Many councils have responded to these legislative changes by preparing local planning controls. Planning controls can ensure that sex services premises operate in appropriate locations and do not result in a loss of amenity or create adverse social and environmental impacts in areas. Planning controls can also ensure premises operate in a manner which upholds required standards of health, safety and amenity for those employed in, or visiting, a sex services premises. The preparation of appropriate planning controls for sex services premises is encouraged by the Department of Infrastructure, Planning and Natural Resources, the NSW Cabinet Office, WorkCover NSW, NSW Health, the Local Government Association of NSW and Shires Association of NSW and other agencies.

What are the controls on sex services premises?

*[Councils should insert here the appropriate controls that apply to **commercial sex services premises**, including which zones these uses are permitted to operate within/ where a DA is required to be submitted, and if the council has policies affecting such use, eg a DCP, this should also be mentioned]*

Home occupations and home businesses involving sex work

*[Councils should insert here the appropriate controls/exemptions that apply to **home occupations and home businesses involving sex work**, as relevant to the council area, including what controls apply, and whether such uses are considered as exempt or complying development]*

Can I comment on a sex services premises?

Yes. As with DAs for other proposals, when Council receives a DA for a commercial sex services premises it will notify those property owners and/or tenants who, in the Council's opinion, may be affected by the proposal. Council will consider any comments received by the public in deciding whether to grant an approval to the commercial sex services premises. Different procedures exist for commenting on home based sex work and these are discussed in a separate fact sheet [Fact Sheet No. 2].

Consideration of DAs for sex services premises will be assessed against the planning criteria in the EP&A Act and Council's LEP and DCP. It should be noted that such planning considerations do not extend to consideration of the character of the proposed operator.

What other organisations are involved with sex services premises?

As with any other business, laws concerning tax, privacy, industrial relations, occupational health and safety, privacy, workers compensation, criminal law, licensing, anti-discrimination and public health are also relevant to sex services premises. NSW Health, WorkCover NSW and the Sex Workers Outreach Project (SWOP) – funded by NSW Health, all seek to uphold health and safety standards and other workplace conditions with respect to sex services premises. A much wider network of State, Federal and international legislation, policies and advocacy aimed at protecting the rights and health and safety of a range of marginalised people at risk of HIV/AIDS including sex workers also exists. This includes the Australian Federation of AIDS Organisations (AFAO), the AIDS Council of NSW (ACON) and the United Nations (through the UN Declaration of Commitment on HIV/ AIDS, 2001).

Frequently Asked Questions

Will Council's planning controls attract sex services premises to the area?

Preparing planning controls for sex services premises does not mean that new premises will be attracted to open up in the Council area. As with other land uses, a number of factors, including a local demand for services, determine where a sex services premises operates. Furthermore, Council's planning controls for sex services premises establish a number of criteria which must be complied with in order for premises to operate.

What about moral issues?

Moral issues should not influence the exercise of Council's functions, no matter how strongly people feel about the issue. As a regulatory body, Council has a duty of care to ensure that sex services premises are appropriately located and designed and that sex workers are treated in the same manner as any other group in the community. Taking a 'hard stick' approach and seeking to close down sex services premises does not discourage premises, it merely drives them 'underground', making it difficult for Council to regulate and for health service providers to access. Operators of commercial sex services premises have a right to submit a development application to Council for approval of their premises, to seek Council advice on where they may locate in the Council area, and to participate in planning processes, as is the same for other members of the community. As with any applicant, operators of commercial sex services premises whose DA is refused by Council can also appeal to the Land and Environment Court.

Will approval of sex services premises attract 'undesirables' and crime to an area?

Clients of sex workers are primarily married or in stable relationships.¹⁸⁴ They also include aged or widowed pensioners, people who struggle to form relationships, people with disabilities and those who are lonely, or in need of increased and/or different types of sexual fulfillment. None of these groups of people represent 'undesirables'. It is not in the interests of operators of sex services premises to admit clients who are drunk, rowdy or otherwise pose a threat to sex workers, the security of the premises or to the amenity of the surrounding area. Operators of sex services premises use various procedures to 'screen' clients who are not regulars - such as through questioning via telephone bookings, camera surveillance and/ or intercoms at front doors and initial interviews by a receptionist. There is no evidence that sex services premises have any greater potential to attract 'undesirables' or crime to an area than any other business.

Don't sex services premises exploit women?

Despite the common perception that sex work ('prostitution') exploits women, it is clear from research that for most sex workers, the decision to undertake sex work is purely an economic one – the same as for the majority of the community who undertake paid work. Accounts by numerous sex workers reveal a high degree of personal satisfaction in their choice of work, with greater confidence and assertiveness, financial security and independence being key benefits.¹⁸⁵ As with any other business, workplaces and operators vary in their approach to employment practices and workers rights. There have been a small number of cases of trafficking in people for the purposes of sexual servitude, where migrant sex workers are brought to Australia and deceptively coerced into the sex industry.¹⁸⁶ Appropriate regulations can reduce the likelihood of exploitation by increasing the accountability of operators of sex services premises, increasing access to these workplaces by other service providers, and enabling a social environment where sex workers may be more empowered to report any instances of exploitation or abuse in their workplace.

What about the impacts on children and other groups in the community?

There is no evidence that commercial sex services premises have any impact upon children or other groups in the community. Most sex services premises are low key, discreet activities, as clients value their anonymity and operators of premises seek to minimise disturbance in the area. Council planning controls governing the location, appearance and design of sex services premises further ensure that premises are designed to be discreet and well run. Under State legislation premises are not permitted to advertise the provision of sex services on the premises.

Where can I get further information on sex services premises?

Further information can be obtained from Council, SWOP (Ph: 9319 4866 or www.swop.org.au), and the Department of Infrastructure, Planning and Natural Resources (Ph: 9762 8000 www.DIPNR.nsw.gov.au).

¹⁸⁴ SWOP website: www.swop.org.au

¹⁸⁵ Perkins, Roberta et al (1994), page 124 and Bailey, 2003 "Conversations in a Brothel", pages 114,129,157 and 178.

¹⁸⁶ See www.scarletalliance.org.au "Submission to Parliamentary Joint Committee on the Australian Crime Commission Inquiry into Trafficking in Women- Sexual Servitude" (September 2003).

Sample Fact Sheet No. 2

To be used by councils where the council allows Home-based Sex Work as Exempt and Complying Development

What is home-based sex work?

Home-based sex work involves a private sex worker or workers providing sexual services ('prostitution') from residential premises. Home-based sex work may be either a 'home occupation' or a 'home business' under council planning controls, depending on how many workers are involved. A 'home occupation' is the use of a dwelling-house (i.e.: a single residence) or dwelling (eg: a residential flat or apartment) by the permanent residents and a maximum of **one (1)** other person. A 'home business' is the use of a dwelling-house by the permanent residents and a maximum of **two (2)** other people. *[Councils to modify text depending on what provisions adopted for home-based sex work]*

Important Note: If you are operating, or intend to operate, a premises that may be considered a home occupation or home business, it is important to check Council's requirements in full.

Why does Council regulate home-based sex work?

Changes to State prostitution laws in 1995 enabled the legal operation of 'brothels' (sex services premises). These changes mean that it is no longer an offence to operate a sex services premises, including for private workers to carry out home-based sex work. Councils can now regulate home-based sex work as a form of 'home occupation' or 'home business', similar to other types of home-based activities. Council planning controls ensure that home-based activities (including those involving sex work) operate in appropriate premises and do not result in a loss of amenity or create adverse social or environmental impacts.

What are the controls on home-based sex work?

Under the Council's LEP, the *[insert name of LEP]*, **home occupations** and **home businesses** of any kind do not require the submission of a development application (DA) to Council. However, an activity must comply with the definition of either a 'home occupation' or a 'home business' as relevant under the Council's LEP *[insert name of LEP]* and must also comply with the provisions under Council's '*Exempt and Complying DCP*'. Exempt and complying development includes minor scale activities which do not require the submission of a formal DA, as explained below.

If the home-based sex work involves the permanent residents (and up to one other person) and it meets all of the **exempt development** requirements for a '**home occupation**' under Council's '*Exempt and Complying DCP*' then there is no need for any type of application or approval from Council. If it **does not meet all of the requirements**, then the business is not a home occupation and will either be prohibited in the area, or may be able to be carried out as complying development subject to meeting the relevant criteria and to being certified (further explained below). To qualify as a 'home occupation', the home-based sex work *must not* do certain things, including:

- Involve the employment of more than one (1) person other than the residents;
- Interfere with the amenity of the neighbourhood eg: by noise, vibration, car parking etc;
- Display goods or have an advertising sign; and
- Sell goods by retail.

To ensure residential amenity, the home occupation *must* comply with the following:

- Provide a clear street or unit number;
- Not be unduly different in appearance from any other residence; and
- Not have anything visible from outside the premises to suggest its use for sex work.

If the home-based sex work involves the permanent residents and up to two other people, and it meets all of the **complying development** requirements for '**home business**' under Council's "*Exempt and Complying DCP*", then a formal DA is not required. If it does not meet all of the requirements, then the business is not a home business and may be prohibited. People choosing to conduct sex work as a home business must submit an application for complying development to Council or a private certifier, for the issue of a Complying Development Certificate. To be complying development, a home business involving sex work *must* meet the Council's general requirements for all complying development.

Frequently Asked Questions

Why is no DA required for home-based sex work?

The NSW Government published its *“Report of the Brothels Taskforce”* in 2001. The Taskforce found that home-based sex workers are unlikely to submit a DA to Council because it reveals their identity and location, making them susceptible to various forms of abuse and violence. The Taskforce recommended that council planning controls consider allowing home-based sex work where other home occupations are permitted in the council area, due to the limited potential for any amenity impacts. Reasons for no DA being required for home-based sex work include:

- The activity is low key and discreet by nature, with anonymity being important to ensure the privacy of clients and sex workers, and to avoid neighbour complaint;
- Sex workers may not seek to submit a DA because they do not wish to risk their privacy and safety, choosing or being forced by default instead to work ‘underground’;
- Occupational health and safety considerations for sex workers and their clients may be compromised where sex workers are forced to operate ‘underground’ through not having obtained DA consent, as this also makes them difficult to be accessed by health agencies;
- Potential for opportunities for corruption result from the inability of sex workers to comply with the requirements of for a DA;
- Requiring a DA for home-based sex work has in practice to date been ineffective, as no DAs have actually been submitted for home-based sex work;
- Other home-based activities do not require a DA to be submitted to Council;
- In council areas where home-based sex work is carried out with or without consent, there have been no complaints from residents;
- If the activity causes disturbance, Council has the power to investigate, or close down the use, despite the lack of requirement for a DA.

Why does Council allow more than one sex worker per residence?

The extraordinarily low incidence of HIV/AIDS and other STIs within the sex industry in NSW is an outcome of practice-based peer education. Any proposal denying the private workers the opportunity to work together fundamentally undermines occupational health and safety objectives, and the Australian National HIV/AIDS Strategy. Council considers that, based on evidence to date, there is no adverse impact on amenity through permitting sex workers to operate in pairs.

Do other organisations support this policy of no DA for home-based sex work?

There are compelling health and safety reasons for not requiring a DA for home-based sex work. The Australian Federation of AIDS Organisations (AFAO) and the AIDS Council of NSW (ACON) support allowing home-based sex work as exempt or complying development, and support allowing more than one worker for safety reasons.

Can I comment on home-based sex work?

As with all home occupations and home businesses which do not require a DA, Council does not advertise or notify adjoining residents of the proposed activity. Most home-based sex work currently exists without residents even being aware of it. However if a home occupation or home business involving sex work caused a disturbance in the neighbourhood, then Council can take action.

How would Council enforce its requirements if no DA is required?

Councils now exclude a large number of activities from the need for a DA where the activities have minimal impact and where simple numerical standards and criteria can be complied with. The onus is on the property owner or person operating the home occupation or home businesses to meet these criteria or risk closure. Where the activity causes a disturbance to the amenity of the area, Council may be advised, and would take appropriate action, which may include closure.

What about the impact on children?

There is no evidence that clients of sex workers present a safety risk to children or any other members of the community. Home-based sex work does not involve the frequency of clients envisaged by many people, and is very discreet in nature, with the admission of clients by appointment only. Sex workers, like others, value their safety and screen out clients that may pose a safety risk to themselves or their residential premises. It is against the law for children to be in a premises whilst sex work is taking place. The Sex Worker Outreach Project (SWOP www.swop.org.au) provides very clear advice to sex workers on such matters.

Will multiple sex workers operating from home turn blocks of residential units into mini brothels?

This scenario is unlikely to occur with the operation of home-based sex work for a number of reasons. Firstly, neither the client nor the private sex worker wishes the premises to be known as a sex services business. In fact, the success of the home-based sex work business depends on this, as the clients require their visit to be discreet.

Secondly, if a proliferation of sex workers in a single block of units, and associated disturbances to amenity did occur, Council could be advised to take appropriate action, which may include the closure of premises. As specified above, a prerequisite of home-based sex work is that it must NOT cause amenity impacts.

Won't Real Estate prices be affected by allowing sex work nearby?

Home-based sex work, conducted under Council's "Exempt and Complying DCP" does not create amenity impacts nor does it involve modifying the dwelling in any way that would change the character or appearance in the neighbourhood. The resident sex workers live and work in the neighbourhood, and may also own their own home, and they too wish to see the neighbourhood prosper.

Where can I get further information on home-based sex work?

Further information can be obtained from Council [*insert Council contact details*], SWOP (Ph: 9319 4866 or www.swop.org.au), the Private Workers Alliance (Email: pwa_nsw@yahoo.com), and the Department of Infrastructure, Planning and Natural Resources (Ph: 9762 8000 www.DIPNR.nsw.gov.au).