

Development Control Plan No

37

# Brothels and other Sex Services Premises

**MARRICKVILLE**  
council

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# Part 1 Introduction

## 1.1 Background

This Development Control Plan (DCP) provides planning controls to regulate the activity of brothels and other sex services premises within areas of Marrickville Council for the benefit of operators, workers, patrons and the community.

This DCP replaces and repeals *DCP No. 21—Regulation of Brothels and other Premises used for Prostitution*. DCP No. 21 was developed in response to the State Government's introduction of the Disorderly Houses Amendment Act on 8 December 1995, which meant that it was no longer an offence to operate a brothel or for the owner/operator of a brothel to live on the earnings of prostitution carried out in a brothel. The legislation was aimed at improving the working conditions and health standards for prostitutes (also termed 'sex workers') as well as reducing street prostitution which was a nuisance to local residents. By legalising brothels, local Councils and Health Authorities could gain some control over the location and health and safety standards of brothels.

This DCP provides additional development controls for brothels and other places used for prostitution, and also provides new development controls for other types of sex services premises where prostitution does not occur, such as adult bookshops and sex on premises venues.

Councils may now approve a Development Application (DA) for a brothel (and other premises used for prostitution) or for other sex services premises. In the Marrickville Council area, this involves a brothel or other sex services premises owner or operator applying to Council for consent to operate (called a 'Development Consent'), and complying with Council's planning controls. These controls are contained in the Environmental Planning and Assessment Act 1979 and in the two (2) planning documents made by Council under that Act, being the Marrickville Local Environmental Plan 2001 (MLEP 2001) and this DCP.

Council's controls are designed to ensure that brothels, home occupations for sex work and other sex services premises operate in appropriate locations and do not result in a loss of amenity or environmental impact. MLEP 2001 regulates where a brothel, home occupation by one (1) sex worker, restricted premises (e.g. adult bookshops) and commercial premises (which covers all other sex services premises including sex on premises venues) may be located within the Council area. This DCP sets out the more detailed requirements for submitting a DA for a brothel or other sex services premises, what needs to be complied with, and other matters Council will take into consideration in deciding whether or not to grant consent to an application.

## 1.2 About this DCP

A DCP is a commonly used town planning document which provides detailed guidance for the design and assessment of new development, which includes the use of land. This DCP is known as "*Marrickville Development Control Plan No. 37—Regulation of Brothels and other Sex Services Premises*". It applies to brothels and any other premises which involve prostitution, and other sex services premises which do not involve prostitution.

This DCP was adopted by Council on 1 March 2005 and came into force on 14 April 2005. This DCP repeals DCP No. 21 which was in effect from 4 September 1997. It has been

introduced in order to represent best practice in the regulation of brothels and other sex services premises.

Along with setting out Council's submission requirements for Development Applications, this DCP includes objectives and controls for the location, design and operational aspects of brothels and other sex services premises.

To ensure that approved brothels and other sex services premises continue to maintain the amenity of areas in which they are located, the DCP contains requirements for the submission of Plans of Management detailing how the business will operate over time. The DCP also contains health standards aimed at improving the health and safety standards of sex workers, clients and patrons, and to reflect the purpose of the Disorderly Houses Amendment Act 1995.

### **1.3 Purpose of this DCP**

The main purpose of this DCP is to provide detailed guidelines for the regulation of brothels and other sex services premises and to include advice to applicants on the information required to be submitted with a Development Application for such uses.

### **1.4 Aims of this DCP**

The detailed aims of this DCP are to:

1. ensure that brothels and other sex services premises are appropriately regulated;
2. specify planning controls which will be used by Council to appropriately regulate and control brothel and other sex services premises uses to minimise amenity impacts upon adjoining land uses, particularly residential and other nearby sensitive land uses;
3. provide more certainty in the development control process and assist the community and applicants to understand Council's requirements relating to brothels and other sex services premises;
4. ensure that brothels and other sex services premises are designed and operated in accordance with acceptable health and building controls and standards;
5. safeguard public health and safety for sex industry workers, and their clients, and patrons of other sex services premises by providing occupational health and safety guidelines for premises;
6. ensure that sufficient safe sex information and forms of protection against sexually transmitted disease are provided (without cost) on the premises for all users;
7. provide for sufficient separation between brothels and other sex services premises so that there is not a concentration of brothels and other sex services premises in any one locality;
8. ensure that brothels and other sex services premises are designed and operated in a manner that will ensure the amenity of the locality is not adversely affected, and
9. ensure that the design and location of brothels and other sex services premises provide safe and equitable access for clients and staff.

### **1.5 Land to which this plan applies**

This DCP applies to all land within the Marrickville Council area, to which the MLEP 2001 applies. See part 1.6 of this DCP for the zones within the Council area where brothels and other sex services premises are permitted with Council consent.

## 1.6 Zoning restrictions

The use of premises as a **brothel** is permissible with Council consent in the following zones within the Marrickville Council area:

- General Business 3(A) where no part of the brothel (except for access) is located at street level
- General Industrial 4(A)
- Light Industrial 4(B).

The use of premises as a **home occupation involving sex work by not more than 1 prostitute (sex worker)** is permissible with Council consent in the following zones within the Marrickville Council area:

- Residential 2(A)
- Residential 2(B)
- Residential 2(C)
- General Business 3(A) (existing dwelling houses only)
- Neighbourhood Business 3(B) (existing dwelling houses only).

Please note that this DCP does not apply to home occupations involving sex work by not more than 1 prostitute (sex worker). Assessment of such applications will be made in respect of clause 44 of the MLEP 2001 (see Part 3 of this DCP).

The use of premises as **restricted premises** is permissible with Council consent in the General Business 3(A) zone within the Marrickville Council area.

Other types of sex services premises are not specifically defined in the MLEP 2001 and by default come under the definition of "commercial premises". The use of premises as **commercial premises** is permissible with Council consent in the following zones within the Marrickville Council area:

- General Business 3(A)
- Neighbourhood Business 3(B)
- Special Uses 5(B) Railway.

Development consent is applied for by lodging a Development Application with the Council.

## 1.7 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 in this DCP to the maximum extent possible. However, where variations are sought due to special circumstances, the extent of, and reasons for such variations, must be fully documented and submitted to Council for consideration. This should be done as part of the Statement of Environmental Effects (see Part 2 of this DCP).

## 1.8 Definitions

The following terms are used in this DCP:

**Act** means the Environmental Planning and Assessment Act 1979.

<b>Brothel</b>	means premises used for the purposes of prostitution by one or more sex workers, or premises that are intended to be used for that purpose, but does not include a dwelling or dwelling-house in which prostitution is carried out by not more than one sex worker as a home occupation.
<b>Disturbance</b>	in the context of this DCP, is interpreted as including any undue noise emanating from the operation of the premises, or from clients/patrons/customers arriving or leaving or loitering outside the premises, and from possible disturbance of surrounding premises from clients looking for the premises and disturbances caused by insufficient off street parking.
<b>Home occupation</b>	means an occupation carried on in a dwelling house, in two attached dwellings on an allotment of land, or in a dwelling in a residential flat building, by the permanent residents of the dwelling house or dwelling which does not involve: <ol style="list-style-type: none"> <li>(a) anything that would have required the registration of the building under the <i>Factories, Shops and Industries Act 1962</i> immediately before the repeal of section 11 of that Act, or</li> <li>(b) prostitution (except where the activity is carried on by not more than one prostitute in a dwelling house), or</li> <li>(c) the employment of persons other than those residents, or</li> <li>(d) 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, grit or oil, or otherwise, or</li> <li>(e) the display of goods, whether in a window or otherwise, or</li> <li>(f) 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</li> <li>(g) the sale of items (whether goods or materials) or the exposure or offer for sale of items, by retail.</li> </ol>
<b>Other sex services premises</b>	means: <ul style="list-style-type: none"> <li>• venues where sexual encounters take place on payment of an entry or membership fee (such as sex on premises venues), or</li> <li>• places which sell restricted material (as defined by "restricted premises" such as adult bookshops), or</li> <li>• places which provide entertainment of a sexual nature (such as strip clubs).</li> </ul>
<b>Prostitution</b>	(as defined in section 20 of the Summary Offences Act 1988) includes acts between persons of different sexes or the same sex that comprises sexual intercourse for payment and/or masturbation committed by one person on another for payment.



**Restricted premises**

restricted premises means premises (other than a newsagency or pharmacy) where:

- (a) 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 accessible or available to the public, or
- (b) a business to which section 578E (Offences relating to advertising or displaying products associated with sexual behaviour) of the Crimes Act 1900 applies is conducted.

**Sensitive use**

means a child care centre, community facility, educational establishment, place of public worship, recreational area, residence, or any place regularly frequented by children (excluding shopping areas).

**Sex on premises venues (SOPVs)**

(as adapted from NSW Health's "NSW Communicable Diseases Health and Safety Guidelines for Sex on Premises Venues" 2001) means premises that gain income from entrance and/or membership fees paid for the use of premises for sex between the patrons. Typical premises include swingers clubs, sauna clubs, cruising/recreation clubs, bookshop backrooms, bondage and discipline clubs and booths with glory holes, which accommodate sexual encounters, but does not include any premises used for the purpose of prostitution.

**Sex worker**

means a person who provides sexual services which are in the form of acts between persons of different sexes or the same sex that comprises sexual intercourse for payment and/or masturbation committed by one person on another for payment.

**NOTE:** This DCP will utilise the definitions under the Marrickville LEP 2001 for any other terms not defined above.



## Part 2 Submitting a Development Application

### 2.1 Before lodging a development application

It is advisable to talk to Officers of Council's Development and Environmental Services Division prior to submitting a Development Application.

The application should aim to comply with all of the applicable planning and health/building requirements detailed in this DCP.

### 2.2 Information required with a development application

In submitting a Development Application, you must include the following written documentation and plans:

#### **WRITTEN DOCUMENTATION:**

- A completed **Development Application** form
- A **Statement of Environmental Effects** which includes the following details:
  - › Number of sex workers (if applicable) and support staff
  - › Number, size and use of the rooms/areas in the premises
  - › Hours and days of operation
  - › On site car parking
  - › Security and Lighting
  - › Description of the anticipated impact on the surrounding area due to the use of the premises as a brothel or other sex services premises
  - › Waste storage and removal including details of the contractor proposed to be employed to dispose of contaminated waste and any sharps from the site
  - › Details of food and beverage service (if proposed) and justification relative to the Food Act 2003 and Food Regulation 2004
  - › Access to and within the building and at least one (1) suite/room/booth/cubicle and its facilities which are capable of use by people with a disability (see part 3.2—Design)
  - › The name of the operator of the proposed brothel or other sex services premises
  - › Details of the current uses on adjoining properties and any other uses established on the subject property.
- A **Plan of Management**. A Plan of Management is to be submitted with the DA and should cover the operation and management of the brothel or other sex services premises in terms of such matters as: security and lighting, waste management, cleaning, dealing with anti-social behaviour, worker and client health and education, laundry arrangements and parking. **Appendix A** sets out necessary considerations to be addressed in Plans of Management.
- **Owner's Consent**: As with all Development Applications, the written consent of the owner or owners is required. It should be noted that any Development Application in a strata titled building, e.g. industrial building, must be accompanied by the written consent of the Owners' Corporation (including their seal) as well as the individual unit owner(s).
- Completed **Statement of DDA Consistency**
- Completed **DA Checklist**.

**A SERIES OF PLANS:**

The following must be included in all Development Applications:

- **Location plan (or Site Analysis Plan) (4 copies):** at scale 1:500 or larger, showing distance in metres, measured from the entrance to the building containing the brothel or other sex services premises to any residential development, places of public worship, community facilities, educational establishments, child care centres, parks and recreational areas, playgrounds, places of assembly, public buildings and licensed premises, and from any other known brothel and any known restricted premises (e.g. adult bookshop), escort agency, massage parlour, sex on premises venue, or any other sex services premises, within 75 metres of the site.
- **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 and nearby properties.
- **Detailed Floor Plans/Elevations/Sections (4 copies)** at scale 1:100 or larger showing:
  - › The use of each room of the entire building including detail of reception areas, staff areas/lounge facilities
  - › The number and location of sanitary facilities including toilets, showers and hand basins
  - › The location of supplies of condoms, lube, dental dams and other safe sex materials
  - › Details of any spas or swimming pools
  - › Entrances to, and exits from, the building
  - › Details of food preparation areas and storage areas
  - › Details of garbage and recycling storage areas
  - › Details of contaminated waste and sharps storage
  - › The location of laundry facilities
  - › Details of any proposed building alterations or additions to the premises (to be clearly identified in colour as new work). **(An application for a Construction Certificate may also be required)**
  - › Details of access arrangements for a person 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 (see detailed requirements under parts 3.2.5 and 3.2.6 of this DCP and DCP No. 31—*Equity of Access and Mobility*)
  - › Details of any advertising signs (location, size, number, colour, and content)
  - › Details of the existing and proposed external lighting
  - › The location of all windows of the proposed brothel or other sex services premises and all windows on adjoining buildings, irrespective of how the land is zoned
  - › Measures to achieve visual and acoustic privacy (i.e. to window and doors)
  - › Details of the proposed external colour scheme of the premises if proposed to change.
- **A4 reduced sized plans (6 copies)** for notification purposes.

It is recommended that applicants use the services of a registered architect, qualified town planner or other appropriate design professional in the preparation of a Development Application.

## 2.3 Notification of development applications

All Development Applications for brothels and other sex services premises will be *advertised* in the local press. Adjoining and nearby property owners and/or residents of premises who, in Council's opinion, are likely to be affected by the proposal will also be *notified* for a period of fourteen (14) days and comments invited 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.

It is important that any objection to a Development Application for a brothel or other sex services premises focuses on amenity concerns (such as the issues covered in Part 3.0 of this DCP) and not be based on moral grounds. Council is not empowered under planning legislation to refuse consent to a brothel or other sex services premises simply because it may offend certain groups in the community. Applicants and people who make a written submission in relation to a brothel or other sex services premises application will be informed of the date of the Council meeting when the report on the Development Application is to be considered by Council and will be provided with a written copy of the report.

## 2.4 Referral of development applications

Council may refer Development Applications to the following organisations in order to assist in the assessment of a proposal:

### ***NSW Police Service***

As with certain other proposals submitted to Council, Development Applications for all brothels and other sex services premises covered by this DCP are referred to the local police for a period of 14 days to invite their comment prior to determination. The Police have an advisory role only and do not determine whether the application is approved or refused. Police are consulted in order to assist Council's investigations of complaints against existing premises which have been operating without consent or investigations of complaints about approved premises. Consultation with the Police is also undertaken 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 brothel or other sex services premises.

### ***Other Referrals as Necessary***

Where Council considers it relevant and/or necessary, applications may also be referred to other organisations (such as the Sex Workers Outreach Project (SWOP) or the AIDS Council of NSW (ACON)) for external expertise or specialist advice.

### ***Referral of Law Enforcement Matters***

Should Council discover any children present within a brothel or other sex services premises, the matter will be immediately referred to the Department of Community Services (DoCS). Cases of illegal immigrants found on the premises will likewise be referred to the Department of Immigration.

## 2.5 The role of other agencies

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

### ***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 Health Guidelines for Brothels contained in **Appendix B** to this DCP.

NSW Health may periodically survey brothels to monitor compliance with the Health and Safety Guidelines for Brothels.

### ***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.

## **2.6 Consideration and determination of applications**

All Development Applications for brothels and other sex services premises will be reported to a full Council meeting and will not be determined under delegated authority unless the application is to be refused due to the submission of inadequate information.

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, compliance with the submitted Plan of Management and other conditions deemed appropriate by Council.

## Part 3 Planning Objectives and Controls

Council will consider Development Applications for brothels and other premises used for prostitution in relation to the provisions of Clause 44 of Marrickville LEP 2001 prior to granting consent for the use of premises for prostitution. In particular, Clause 44(3) of Marrickville LEP 2001 states as follows:

*“Before granting consent for the use of premises for prostitution, the consent authority must take into consideration such of the following matters as are of relevance to the application:*

- (a) the location of the brothel or dwelling house [for home occupation sex work] and its proximity to any child care centre, community facility, educational establishment, hospital, place of public worship, recreation area or residential building, or any place regularly frequented by children,*
- (b) whether the operation of the brothel or dwelling house would cause a disturbance in the neighbourhood because of its size or operating hours, or the number of people working in it,*
- (c) the number of brothels operating in the near vicinity of the premises the subject of the application,*
- (d) whether the operation of the brothel or dwelling house would interfere with the amenity of the neighbourhood,*
- (e) whether suitable access is available, or proposed to be provided, to the brothel or dwelling house,*
- (f) whether a suitable waiting area is provided in the brothel or dwelling house so as to prevent clients loitering outside the premises,*
- (g) whether sufficient off-street parking is available or proposed to be provided, if appropriate in the circumstances,*
- (h) the design and external appearance of the building and any associated structures and their impact on the character of the surrounding built environment,*
- (i) the content, illumination, size and shape of any advertisement and distinctive external lighting, and*
- (j) whether the operation of the brothel or dwelling house would cause a disturbance in the neighbourhood when taking into account any other brothels operating in the neighbourhood”.*

Whilst clause 44 of the MLEP only applies to premises used for prostitution (including brothels), this part of the DCP contains more detailed objectives and controls that apply to all brothels and other sex services premises.

In considering an application for a brothel or other sex services premises where more than one type of sex service use on the same premises is proposed (e.g. an adult bookshop with an adult entertainment lounge SOPV), Council will assess each use separately against the MLEP 2001, this DCP and the proposal's merits.

## 3.1 Location

### Objectives

- O1 To ensure brothels and other 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.
- O2 To ensure that brothels and other sex services premises are discretely situated, sensitively located and are not prominent within an area.
- O3 To avoid the concentration of brothels and other sex services premises or potential creation of 'red light districts'.
- O4 To optimise the safety and security of brothels and other sex services premises.

### Controls for brothels and other sex services premises

- C1 The area where a brothel or other sex services premises is sited should be well illuminated by street lighting.
- C2 A brothel or other sex services premises is **not** to be located:
  - i) within a 75 metre radius (measured from any entrance to the proposal used by members of the public or employees) of any entrance of an existing brothel, massage parlour, restricted premises (e.g. adult bookshop), sex on premises venue or escort agency or where there is a current development consent for a brothel, a massage parlour, restricted premises (e.g. adult bookshop), sex on premises venue or escort agency. Council may also consider the presence of any of these premises (i.e. a brothel, a massage parlour, restricted premises, sex on premises venue or escort agency) within a neighbouring Local Government Area (LGA) immediately adjoining a site.

Where an applicant is able to demonstrate, to the satisfaction of Council, that the 75 metres separation is unnecessary—for instance due to a 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 brothel with one of the above listed uses; or

- ii) next to or directly opposite: a child care centre, community facility, educational establishment, place of public worship, recreational area, or any place regularly frequented by children (excluding shopping areas), whether these are within the Council area or within an adjoining Council area.

**NOTE 1 (for brothels and other sex services premises):** Aside from the above control at (ii), Council will also consider the proximity of the above sensitive uses within the wider neighbourhood in which the brothel or other sex services premises is proposed and not just in its immediate vicinity.

**NOTE 2 (for brothels only):** Notwithstanding the absence of "residences" in point (ii) above, Clause 44 (3)(a) of the MLEP 2001 requires Council to consider *"the location of the brothel and its proximity to any.....residential building"*. In the Business and Industrial zones in Marrickville in which brothels are permitted with development consent, there may be instances where a brothel is proposed to be located next to or directly opposite a residence, e.g. a brothel above a shop which is next door to a flat above a shop. In such situations Council will consider the potential impacts of the brothel upon the residence, having regard to such matters as: the size of the brothel and number of staff; the design, construction and internal layout of the brothel; 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.



- C3** Council will also consider the location of the proposed brothel or other sex services premises and its proximity to any brothels operating in the neighbourhood and to activities with similar operating hours in the area, including: massage parlours, adult bookshops and other restricted premises, sex on premises venues, licensed premises (e.g. pubs/hotels, nightclubs, or places where alcohol is served on the premises). In this regard, Council will consider how such factors as traffic and car parking, safety and security and residential amenity will be affected by the proposed brothel or other sex services premises. As many residential areas surround the business and industrial zones in Marrickville, it is important that Council consider the interface between different uses.

### **Additional control for brothels**

- AC1** On land zoned General Business 3(A), a brothel or any part of a brothel must not be located at street level (excluding access and car parking to meet any requirements of the Council).

**NOTE:** Street level is any part of the ground floor of the premises including its frontage to the street through to the rear section of the building at ground level.

## **3.2 Design of premises**

### **Objectives**

- O1** To ensure that the layout and design of brothels and other sex services premises is such that their impacts and "presence" in the locality is minimised.
- O2** To ensure the privacy and comfort of patrons.
- O3** 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.
- O4** To ensure adequate and appropriate access to the premises and its facilities is provided to a person with a disability.

### **Controls for brothels and other sex services premises**

- C1** Premises must be designed so that there is only one (1) visible pedestrian entrance to the premises from the front (or exposed) side of the building (if on a corner site). In instances where there is no front access and/or front access is impractical, Council will consider a side or rear pedestrian access where adequate attention has been given to safety and security matters (see part 3.8, below).
- C2** Rear pedestrian access is to be limited to one (1) only, unless it can be demonstrated to Council's satisfaction that more than one access contributes to the amenity and functional efficiency of the brothel or other sex services premises and surrounding uses and does not result in safety and security concerns or visual clutter via the need for additional signage.
- C3** The privacy of patrons must be considered through the design and internal layout of the premises.
- C4** Access for people with a disability must be provided in accordance with all relevant legislation and *Marrickville Development Control Plan No. 31—Equity of Access and Mobility* (DCP No. 31). 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.
- C5** All common areas and facilities and at least one (1) suite/room/booth/cubicle and its facilities (including a toilet/ensuite) are required to be designed to be suitable for use by people with a disability.

**Additional controls for brothels**

- AC1 A suitable waiting area must be provided inside any brothel so that people visiting the brothel do not have to wait outside the premises.
- AC2 Staff facilities must include a communal lounge or rest area and staff notice board. The notice board must contain details required to be displayed in order to fulfil requirements of the Plan of Management and WorkCover NSW and NSW Health Guidelines (see **Appendices A and B**).
- AC3 A minimum of one (1) bathroom (toilet, shower, hand basin) is to be provided for each three (3) suites or parlours (excluding the one suite and its associated facilities designed to be used by a person with a disability).

**Additional controls for sex on premises venues**

- AC4 Hand basins should be located within or close to areas of sexual activity.
- AC5 Hand basins should be provided with potable running water through a single outlet (such as push button or mixer tap), liquid antibacterial soap and single use paper towels or air dryers.

**3.3 Car parking****Objectives**

- O1 To ensure that adequate parking is provided for people working on the premises and clients/patrons using the facility so that the establishment of a brothel or other sex services premises does not give rise to car parking congestion in the street.
- O2 To ensure that the location of parking does not adversely affect the surrounding locality, particularly residential properties.
- O3 To ensure the safety and security of car parking areas.

**Controls for brothels and other sex services premises**

- C1 Parking areas, access corridors and entrances are to be well-lit and sign-posted at all times.

**Controls for other sex services premises**

- C2 On-site parking for other sex services premises shall be provided at the rate of one (1) space per 45m<sup>2</sup> up to 500m<sup>2</sup> gross floor area. For areas over 500m<sup>2</sup> refer to the car parking rates for "general business, retail shops and retail floor area" in Council's Parking Strategy (DCP No. 19).
- C3 Reduced parking requirements may be considered if it can be demonstrated by the applicant that adequate on-street car parking, public car parks 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 an adjoining residential locality or properties.

**Additional controls for brothels**

- AC1 On-site car parking shall be provided for brothels at the rate of one (1) space per two (2) working rooms (also known as suites or parlours) and shall be designed in accordance with DCP No. 19.
- AC2 Reduced parking requirements may be considered if it can be demonstrated by the applicant that adequate on-street car parking, public car parks 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 an adjoining residential locality or properties.

### **3.4 Amenity**

#### ***Objective***

- O1 To ensure that brothels and other 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 for brothels and other sex services premises***

- C1 To avoid visual impact and possible offence to the public, sex workers must not display themselves in windows, doorways or outside of a brothel.
- C2 Spruikers (staff at the door or outside the premises who encourage patrons to enter) are not permitted in the operation of any brothel or other sex services premises.

#### ***Additional control for brothels***

- AC1 So as to avoid confusion as to the address of the premises, and to avoid contact with surrounding residences or residential areas, brothels advertising of their services in newspapers are to list their principal point of entry (required under part 3.2 above, to be the front of the premises, except in certain situations) as the address, and not rear streets or lanes.

#### ***Considerations***

- There are no specific controls for the hours of operation or the size of a brothel or other 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 land uses, the approved hours of operation of surrounding land uses and any possible conflicts with these uses.
- Council will consider whether the operation of the brothel or other sex services premises would cause a disturbance in the neighbourhood when taking into consideration other brothels and other sex services premises operating in the neighbourhood (whether that brothel or other sex services premises is within the Marrickville Council area or known to be in any other adjoining Council area).
- Council will consider whether the brothel or other 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.

### **3.5 Advertising signs and structures**

#### ***Objectives***

- O1 To ensure brothel and other sex services premises advertising is discreet and does not draw attention to the use.
- O2 To ensure brothel and other sex services premises advertising does not result in visual clutter or other visual impacts upon a locality.
- O3 To minimise the potential for brothel and other sex services premises advertising to cause offence to the public.

#### ***Controls for brothels and other sex services premises***

- C1 Signage shall not display words or images which are in the opinion of the Council sexually explicit, lewd or otherwise offensive.

- C2 Signs may be illuminated, provided this would not result in impacts upon the environment or amenity of the area. No “chain” bulb, neon or “flashing sign” type lighting on premises is permitted.

### **Control for other sex services premises in Business zones**

- C3 Other sex services premises in Business zones may display a maximum of one (1) under awning sign and shall indicate only the name of the business operated and/or the address\*.

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

### **Additional controls for brothels**

- AC1 A maximum of one (1) external sign is permitted for all brothels 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 part 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 (see \*Note above).

The intention of this provision is to ensure that there is no confusion over the location of the brothel, which may result in disturbance to surrounding properties.

- AC2 Signage for brothels is to be limited in size to 0.3m x 0.6m (or other dimensions, but of equivalent surface area).
- AC3 A clearly visible street number is to be displayed to avoid disturbance to surrounding premises arising out of confusion as to the location of the brothel.

## **3.6 Waste disposal**

### **Objective**

- O1 To ensure the safe and adequate storage, handling and disposal of waste.

### **Controls for brothels and other sex services premises**

- C1 Marrickville Council does not collect trade waste. Operators are to make their own arrangements for trade waste collection, and are required to enter into a contract for the removal of waste from the premises.
- C2 All waste contaminated with bodily fluids, excretions or the like, and sharps waste is to be stored in appropriate containers suitable for collection and disposal by a trade waste contractor and in compliance with any WorkCover requirements.
- C3 Waste containers are to be stored and collected from within the site.
- C4 Applicants shall comply with the detailed requirements for waste as contained in [Appendix A](#) (and [Appendix B](#) if applicable) of the DCP. Details shall be provided in the Plan of Management.

## **3.7 Health & building**

### **Objectives**

- O1 To ensure brothels and other sex services premises comply with the relevant Health and Building Regulations.

- O2 To promote the operation of brothels and other sex services premises in a manner which will restrict the spread of diseases.
- O3 To promote the education of sex workers, patrons and clients of brothels and other sex services premises so as to minimise the risk of contracting sexually transmitted infectious diseases.
- O4 To ensure that reasonable working conditions are provided for sex industry workers.

### **Controls for brothels and other sex services premises**

- C1 Proposals which involve food and beverage service must provide justification relative to the NSW Food Act 2003 and Food Regulation 2004 in the statement of environmental effects.
- C2 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. A detailed list of health standards is set out in **Appendix B** and addresses the following matters, in summary:
- Cleanliness
  - Sanitary facilities
  - Storage and handling of waste
  - Disinfection of swimming and spa pools
  - Bars and food preparation areas (where justification has been provided to serve food or alcohol in accordance with control C1, above)
  - Equipment and systems of work that are safe and without risk
  - Lighting for checking clients
  - Information, training and supervision to ensure the health and safety of employees
  - Maintaining a safe workplace including entrances and exits to the workplace
  - Provision, storage and use of Personal Protective Equipment (PPE), and
  - Health of Sex Workers.

**NOTE 1: Appendix B** specifically applies to brothels and other premises used for prostitution but many of the health issues apply to all sex services premises and should be taken into account in all applications to which this DCP relates. Please note that this list is not exhaustive and additional conditions may be imposed on a development consent to satisfy the Health Department or Council's requirements.

**NOTE 2 (for sex on premises venues):** Sex on premises venues are encouraged to follow the principles and standards set by the AIDS Council of NSW 's (ACON's) "Sex On Premises Code of Practice" 2003.

- C3 Health requirements of all sex services premises (as listed above and detailed in **Appendix B**) must be addressed in the Plan of Management, submitted with the Development Application.
- C4 All brothels and other sex services premises must be fitted with the necessary services and facilities required under the Building Code of Australia (BCA). This includes, but is not limited to the following:
- all relevant fire safety requirements.
  - adequate lighting in accordance with Australian Standard *AS 1680- Interior lighting*.
  - ventilation requirements of the BCA.

**NOTE 1:** Under the BCA, brothels are likely to be classified as Class 5 (an office building used for professional or commercial purposes), restricted premises as Class

6 (shop) and sex on premises venues are likely to be classified as Class 9a (Assembly building).

**NOTE 2:** Sex on premises venues and other sex services premises that are classified as Class 9a (Assembly building) in the BCA are likely to require a Place of Public Entertainment approval under section 68 of the Local Government Act 1993, which should form part of the development application for the use of the premises.

## 3.8 Safety and security

### **Objectives**

- O1 To maximise the safety and security of patrons, clients and workers at all times.
- O2 To reduce the likelihood that brothels or other sex services premises will be associated with criminal activities.

### **Controls for brothels and other sex services premises**

- C1 Details of security arrangements are to be detailed in the Plan of Management (see **Appendix A** for requirements);
- C2 Design of carparks, landscaping and entry areas should facilitate casual or formal surveillance.
- C3 Carparks and entrances should be well lit and, where necessary, security staff employed.
- C4 The pedestrian entrance shall be provided at the front or exposed side of the building (if on a corner site) unless this is impractical (see part 3.2 above).
- C5 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. high intensity or excessively bright colours).
- C6 A brothel or other sex services premises should not be located in an isolated area (being an area where there are large tracts of land and reduced surveillance as a result of fewer people) unless extensive security arrangements are made.

**NOTE:** The assistance of the NSW Police Service may be sought when assessing this particular aspect of an application.

- C7 Business security surveillance equipment shall be installed throughout the premises with cameras located in every major area of activity, particularly public entries, hallways, stairs and car parking areas.
- C8 The equipment shall be located in a central location (such as a reception or cash register area) and monitored by the manager of the premises.
- C9 Surveillance data shall be recorded, labelled with times and dates and kept for a minimum of one (1) month.
- C10 Surveillance footage shall be made available to the Police and Council officers on request.

### **Additional control for brothels**

- AC1 All premises are to have an alarm or intercom in each room that is used for sexual activity. These alarms are to connect back to a central base (such as reception) that is to be monitored at all times.

## Part 4 Additional Matters for Applicants to Note

### 4.1 Legal age for a sex worker and clients

The legal age for a sex worker is 18 years of age. A sex worker under the age of 18 years is considered by law to be a 'child', however they cannot be charged with working as a child prostitute. However child protection laws give powers to police and community services to take action to protect children who they think may be 'at risk' of harm<sup>1</sup>.

Changes to the age of consent laws under the New South Wales Crimes Act 1900 in 2003 lowered the age of male clients of male sex workers in line with the age of male and female clients of female sex workers. Therefore, the **male and female clients** of both **male and female sex workers**, need to be 16 years of age. The Plan of Management (see [Appendix A](#)) must outline how the premises will comply with Age of Consent laws.

### 4.2 Ongoing ownership/management detail updates

If consent is granted to a Development Application, Council will impose a condition of consent requiring the owner and/or operator of a brothel or other sex services premises to provide contact details to Council in writing. These contact details will include the telephone number(s) and the postal address of the owner and/or operator of a brothel or other sex services premises. Should the owner and/or operator change, Council must be notified in writing. If changes are needed to other aspects of the brothel or other sex services premises use such as the hours of operation, number of rooms, signage or other matters, either a new Development Application or a modification to the existing development consent will be required. Council's Development and Environmental Services Division should be contacted for advice on this matter.

### 4.3 Responsibilities of operators

The operator of a brothel or other sex services premises shall be responsible for the conduct of clients and patrons, particularly those leaving the premises. Strategies for ensuring the quiet entrance and exit of clients are to be addressed through the submitted Plan of Management (see [Appendix A](#)) and could include:

- For brothels, admission of clients should be by appointment only. A telephone booking would be the preferred procedure.
- For other sex services premises, clients be advised to leave the premises quietly and consider others. Signs to this effect could be placed on the exit door(s) to the premises.

<sup>1</sup> Information from the Sex Workers Outreach Project at [www.swop.org.au](http://www.swop.org.au).





## Part 5

## Other Council Procedures Regarding Brothels and Other Sex Services Premises

### 5.1 Operation without consent (unauthorised use)

Council has a responsibility to enforce the Environmental Planning and Assessment Act 1979 to ensure that brothels and other sex services premises do not operate without consent from Council. This Act allows Council to take legal action against operators of brothels and other sex services premises if they operate without consent or contrary to the consent conditions issued by Council.

### 5.2 Complaints protocol

Complaints concerning an unauthorised brothel or other sex services premises should be directed to Council's Citizens' Service Centre (Ph: 9335 2222).

If the premises do not have a consent to operate as a brothel or other sex services premises, Council will investigate the matter and will take action to ensure that the use is ceased or that it obtains the appropriate consent. If the premises does have consent for a brothel or other sex services premises Council may still investigate to ensure it is operating within the conditions of the consent. If it is not operating within the conditions of consent Council may take legal action to ensure that it does as explained under part 5.1 above

#### ***Council may request Court to order closure of brothel***

Even if a brothel premises is operating with Council consent, Council has the power under Section 17 of the Restricted Premises Act 1943 (formerly the Disorderly Houses Act 1943), to make an application to the Land and Environment Court to have the use ceased if it believes that there is suitable justification. Section 17 of the Restricted Premises Act 1943 lists several considerations that the court must consider.

However, Council cannot act solely on moral objections and will fully investigate a complaint prior to seeking an Order from the Court to close down a brothel. Council will consider taking action where evidence is submitted to Council's satisfaction that the premises is causing sufficient disturbance to the neighbourhood to warrant an application to the Land and Environment Court.

#### ***Conditional consent***

Many brothels and other sex services premises have conditional consent from Council, with a trial period for an initial 12 months. Resident complaints may be a major source of feedback to Council on the workability of a brothel or other sex services premises within a local area.

**Appendix D** in the DCP contains an extract from the Restricted Premises Act 1943 which sets out some criteria for complaints against brothels, which can be considered by the court for an order to close the premises. Complaints should be directed to Council's Citizens' Service Centre, but may only be kept confidential if you believe that your physical safety is at risk.

### **Public health complaints**

Public health complaints should be addressed to the local Area Health Service for Marrickville (South West Central Sydney Area Health Service). Occupational health and safety issues are matters for WorkCover NSW. Joint inspections may be carried out by these organisations if necessary. Proprietors of brothels should refer to the publication entitled *“Health and Safety Guidelines for Brothels”* (2001) available from the WorkCover web site at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au). Similarly, operators of sex on premises venues should obtain a copy of the NSW Health publication entitled *“NSW Communicable Diseases Health and Safety Guidelines for Sex on Premises Venues”* (2001).

### **5.3 Closure of a brothel**

As explained above in part 5.2—*Complaints Protocol*, in addition to the powers in the Environmental Planning and Assessment Act 1979, 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 1943. This application is made in instances where brothel operations are having a negative impact on the amenity of an area.

## Appendix A: Guidelines for Preparing Plans of Management

### **Plan of Management**

A Plan of Management (POM) is required for all Development Applications to which this DCP relates. The POM outlines the management and operational arrangements, as well as other measures required to achieve the requirements of this policy. The POM is to be signed by the proprietor of the business, any manager of the business, and the owner of the premises.

The POM is to contain details of the following matters as a minimum:-

**Management and Staff Arrangements:** This should include details (including contact phone numbers) for:

- the operator (manager) of the business
- the owner(s) of the premises
- number of sex workers and support staff (as applicable)
- number of security guards
- any other staff and their exact role.

Details must be provided about the responsibilities of each person in the workplace. In this regard, tasks that have been identified in the Plan of Management should be allocated to a member of staff.

**Access for Clients:** The POM should address how access and egress will be provided for people in a wheelchair or with other access needs, including egress in an emergency (e.g. fire). The POM should stipulate a protocol (in the event that less than the full extent of facilities are accessible) outlining how access to rooms and facilities will be provided when required by a client with a disability.

**NOTE:** Access is required to be provided in accordance with part 3.2 of this DCP.

**Hours of Operation:** Hours of operation are to be documented.

**Safe Sex Assurance:** The POM shall outline how safe sex information and condoms, dams etc are to be made available to all occupants of the premises (as appropriate to the type of brothel or other sex services premises). This should be available in a plain English format.

Suggested strategies include:

- How condoms, dental dams, etc are to be supplied freely and made easily accessible;
- Posters on safe sex information being prominently placed;
- Adequate signage being placed in the premises to indicate that management supports a safe sex policy;
- Provision of written material re: other means of harm minimisation for both workers and clients;
- Signage on the back of room/cubicle/booth doors describing cardio-pulmonary resuscitation procedures and emergency phone numbers;
- Development of a needlestick policy in the event of staff/client injury; and
- How premises are to be kept in a clean, tidy and presentable condition at all times.

**Arrangement of Appointments (Brothels Only):** The POM should outline a procedure for admission of clients by appointment only. A telephone booking would be the preferred procedure.

**Restricting Access:** In this section the POM should show how it would ensure that no person under 18 years of age gains access to the premises.

**Control of Antisocial or Violent Behaviour:** The POM should include what strategies are to be taken to deal with inappropriate behaviour in the establishment. Relevant qualifications of security staff should be included, to ensure that they can appropriately deal with such behaviour.

**Sale and Supply of Drugs:** As well as clearly outlining that the sale and supply of drugs is strictly prohibited, this section of the POM should also include strategies to be implemented to ensure that this does not happen.

**Safety and Security:** Measures to ensure the safety of both staff and clients both within the premises and external of the premises must be detailed. The POM should identify how the operator is to ensure that employees/ workers are "safe", how they should handle clients and/or patrons who behave in an unacceptable manner, including reporting to police etc. It should address such aspects as:

- Management and monitoring of people entering the premises;
- Monitoring use of areas and rooms;
- Maintaining a current list of police and emergency service numbers in the staff room and reception;
- Maintenance of an incident book on the premises which can be accessed by the police as and when required;
- Location of video surveillance cameras, monitor and the arrangements for management and monitoring of this system.
- Safety and alarm systems in place and the person who has responsibility for these systems;
- The licensed security firm(s) who have been employed to patrol the premises, where they will be likely to be patrolling, for what purpose, and for what time periods (duration at any one time and how often).

**Injuries and Compensation:** The Workers Compensation Act 1987 requires employers to obtain and maintain in force a policy of workers compensation insurance. The same Act also requires employers to display Occupational Health and Safety (OH&S) information in the workplace. The POM should show where such information will be displayed.

**Management of Waste:** The POM should demonstrate that adequate facilities have been provided for the storage of waste in accordance with NSW Health and WorkCover NSW Guidelines for brothels (see [Appendix B](#)) and the requirements of part 3.6 of this DCP. This would include a key showing different types of storage receptacles and proposed locations on the plans.

Arrangements for the effective disposal of clinical waste must be addressed. This would include the servicing of sharps, bins, as well as the disposal of other contaminated waste. Bins for contaminated waste and Sharp Safes for discarded injecting equipment should be provided in every room and/or area of activity.

The Management Plan should nominate the contractor to be employed to remove waste from the premises (including waste contaminated with bodily fluids, excretions or the like, as well as sharps).

**Presentation of the Premises:** The strategies in this section would demonstrate actions for general upgrading and ongoing maintenance of the condition of the premises including painting, floor coverings, furnishings, furniture (bed etc), linen and blankets, pillows etc.

**Cleanliness of the Premises:** In this section, the applicant should demonstrate how they are proposing to keep the inside of the premises in a clean and tidy condition, ranging from general housekeeping to the laundering of bed linen. Options might include:

- A daily cleaner
- Washing and drying facilities provided on the premises
- Engaging a commercial laundry contractor. In this case a copy of agreement should be provided as an annexure to the Plan of Management.

**Access for Council Officers and Other Regulatory Staff:** This section should detail how Council staff and other authorised persons will be provided with access to the premises.

**NOTE:** The NSW Occupational Health and Safety Guidelines state that "the workplace must allow entry to authorised persons from Council (planning, health and building), WorkCover NSW, NSW Department of Health, unions, the Sex Workers Outreach Project or other relevant health services".

**Liaison:** It is suggested that in addition to Council Officers, you liaise with S.W.O.P (Sex Workers Outreach Project), the local Police and Health Workers in the preparation of the Plan of Management. Contacts for these organisations are contained in [Appendix E—Where to Get Further Information](#).

## Appendix B: Health Standards for Brothels—To Be Addressed in the Plan of Management

NSW Health and WorkCover NSW have developed detailed guidelines known as "*Health and Safety Guidelines for Brothels in NSW*" (2001) which address the key occupational health and safety responsibilities for those involved in the sexual services industry. Under NSW legislation, employers and their representatives (brothel proprietors, i.e. owners and managers in commercial brothels 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 brothel proprietors and the individual sex worker in a home occupation to obtain a full copy of the *Guidelines*. These can be obtained from:

**WorkCover**  
 Publications Hotline: 1300 799 003  
 Web site: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

The following health guidelines are extracted from the NSW Health & WorkCover *Guidelines* and are to be addressed in the Plan of Management submitted to Council with the Development Application.

### **Cleanliness**

The premises should be kept in a clean condition at all times. Spot cleaning should be carried out by staff. Particular attention should be paid to the following areas:

#### **Showers, baths and toilets**

Regular physical cleaning with water and detergents are generally required to control mould problems. The proprietor should ensure that baths and showers are cleaned regularly or more frequently if necessary, for example immediately following blood or body substance spills.

Soap and single use towels should be provided at all hand basins in the premises.

#### **Linen**

The proprietor should provide:

- clean bed linen or clean bed covers; and
- clean towels for the use of individual clients and staff.

All linen, including towelling, which comes into contact with clients should be changed immediately after use.

#### **Cleaning of linen and laundry facilities**

Although commercial laundering is recommended, the following steps will assist in minimising health risks associated with linen:

- linen should be washed as soon as practicable;
- at least two receptacles should be provided in the laundry for the separate storage of clean linen and used linen;
- wash linen by category in a hot water wash (that is a water temperature of 71 degrees Celsius) using laundry detergent; and
- thoroughly dry all items of linen after washing.

Guidelines for both thermal and chemical washes can be obtained from Australian Standards (AS/NZS 4146: 2000).

## **Sanitary facilities**

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

Hand washing facilities should be located in toilets and as close as possible to sexual activity areas for use by clients. Hand washing facilities should also be located in areas used by staff for cleaning.

Hand basins should be provided with:

- clean running water;
- liquid soap; and
- single use paper towels/air dryers.

## **Storage and handling of waste**

Provision must be made for the disposal of used condoms, dams, gloves, soiled tissues and the like in the rooms where sexual services are provided to clients. Preferably use bins with sliding lids to eliminate odours.

If contaminated sharps e.g. needles are used in a brothel, then non-reusable sharps containers which comply with Australian Standard AS 4031 should be provided for their disposal. The *NSW Health Department Waste Management Guidelines 1998* provide advice on separating waste products for disposal.

Final disposal of waste must be in accordance with the requirements of the relevant local and NSW authorities.

## **Disinfection of swimming and spa pools**

Poorly maintained pools and spas (including Jacuzzis) can put people at risk of infection.

It is recommended that swimming and spa pools comply with the NSW Health Department's *Public Swimming Pool and Spa Pool Guidelines 1996* and "*Protocol for Minimising the Risk of Cryptosporidium Contamination in Public Swimming Pools and Spa Pools (1999)*".

A "spa bath" is a domestic type bath filled with a water recirculation system and/or an air injection system. A water heater may be incorporated in the system, but a water filter is not required. Spa pools should be drained regularly so they can be satisfactorily cleaned and refilled with fresh water.

Spa pools should be provided with a system of automatic analysis and dosage control equipment that maintains the level of disinfectant.

Officers of Council and NSW Health may carry out periodic tests to ensure the spa and pool water is suitable for bathing purposes. All swimming or spa pools must be disinfected by a method recommended by the NSW Health Department. These methods include the use of chlorine; bromine; salt water chlorination; or ozone.

Tests shall be done on every swimming or spa pool before the pool or spa is opened each day, and every four (4) hours when the pool or spa is in use. A log book of the pool or spa water quality must be kept by the proprietor and may be inspected by Council's officers.

Swimming and spa pools must comply with the NSW Health Department's "*Public Swimming Pool and Spa Pool Guidelines*". The proprietor must keep on the premises an accurate kit used for testing of pool water. The kit must be able to determine the concentration of:

- free chlorine, total chlorine, and combined chlorine;
- total bromine; or
- baquacil; and
- Ph
- reserve alkalinity

The guidelines recommend that a spa (jacuzzi) or pool be equipped with effective water circulation systems, filter and continuous disinfectant systems. The water temperature must not exceed 38 degrees Celsius and signs should be displayed restricting bathing to 20 minutes at this temperature.

It is recommended that a towel or non-slip mat be placed at the base of the spa or pool.

### ***Bars and food preparation areas***

Where approved by Council as part of the brothel all bars and food preparation areas must be constructed and operated in compliance with the Food Act 1989 and the Food Hygiene (General) Regulations 1992.

The following precautions will minimise risks associated with food and drink related illness:

- Before handling food or drink utensils wash hands thoroughly.
- Make sure that all perishable food and drink items are refrigerated at 4 degrees Celsius or below.
- Ensure that food and bar contact surfaces like counters and benches are cleaned regularly with hot water and an approved cleaner.

### ***Equipment and systems of work that are safe and without risk to health***

A hazard means anything (including work practices or procedures) that has the potential to harm the health or safety of a person. A risk is a chance or possibility of danger, loss, injury or other adverse consequences. Safe work practices and procedures must be put in place to eliminate or control the risk. In this regard, the NSW Health and WorkCover NSW Guidelines should be referred to in full to devise appropriate risk management approaches.

Risk can be controlled by providing reasonable length shifts with adequate rest breaks for workers. It may also include, for example, setting up adequate controls such as screening of clients on admission to the premises. In addition, employers may need to set up security systems (such as 'panic buttons') so that employees are not at risk of harm through violence from clients.

Employers should also ensure:-

- Availability of good lighting for physical examination of clients to detect any visible evidence of sexually transmitted infections (STIs). Before any sexual encounter each client should be examined by the sex worker to detect any visible evidence of STIs.
- The examination of clients should not be seen as an alternative to, or as lessening the need for, observing safe sex practices. It is recommended that a 320 lux lighting level be used (Australian Standards - AS/NZ 1680.2.5:1997) and a rotating light or lamp head. The worker can refuse to engage in a sexual practice where the worker believes that they are at risk of acquiring an STI. Any client with evidence of an STI should be referred for medical consultation;
- Provision of safe equipment including beds, bondage equipment and apparatus; and
- Risk assessments are conducted (see Guidelines in full).

### ***Information, training and supervision to ensure the health and safety of Employees***

The provisions of the OH&S legislation mean that the practice of safe sex must be the basis on which the workplace operates.

The proprietor must provide such information to sex workers as is necessary, to enable them to perform their work in a manner that is safe. Such information might address: safe sex; STIs-including HIV infection and hepatitis A and B; blood borne infections including hepatitis C; cleaning of equipment; and first aid. The proprietor must take reasonable steps to ensure that such information provided at the workplace for the benefit of clients or sex workers is medically accurate.

Workers should also be provided reasonable access by staff from Sex Workers Outreach Project (SWOP), sexual health services or other relevant health services.

If a sex worker has difficulty communicating in the English language, the proprietor must provide the information in a language with which the sex worker is familiar. SWOP and the Livingstone Road Centre can provide more assistance in this regard. See [Appendix E](#) for further information.

The proprietor must ensure that all new sex workers are well informed of the need and proper use of personal protective equipment such as condoms, dams and water based lubricants and that ongoing education regarding safe sex practices is provided.

The employer must provide appropriate induction and refresher training. One of the key topics to be covered here would be the prevention of HIV and STIs (SWOP literature and videos, and WorkCover's *Code of Practice: HIV and other blood-borne pathogens in the workplace* would be helpful)

### ***Maintaining a safe work place, including safe entrances and exits to the workplace***

Employers are legally responsible for ensuring that their premises meet the required standards of local and state fire laws. Following and initial fire safety assessment, employers should regularly monitor that:

- passageways, entrances and exits are kept clear and that exits are easily identified by clear signage
- fire extinguishers, suitable for different types of fires, are provided, and that their location and means of operation is known to all employees;
- evacuation procedures are known to all employees and emergency drills carried out on a regular basis.

In addition, there must be adequate general maintenance of all work buildings and structures. This should cover for example, electrical safety and maintenance of floors to avoid trip and slip hazards.

### ***Provision, storage and use of Personal Protective Equipment (PPE)***

The proprietor must provide an adequate supply of PPE and ensure it is adequately maintained, where appropriate. This includes condoms, dams, gloves, water-based lubricants and other personal protective equipment such as towels and linen free of charge to workers. Where a person is employed as a sub-contractor and is registered as a proprietary limited company they should provide their own work equipment and PPE.

The employer should ensure that PPE is easily accessible to the worker at the time of meeting the client or be freely available in every room. Condom vending machines are not permitted as a means of supply. A variety of condoms of different size and thickness should be provided for use on the premises. Only condoms and dams which comply with Australian Standards should be supplied.

The proprietor must ensure that all new sex workers are well informed of the need to use condoms, dams, and water based lubricants, and well-instructed in their use. The proprietor must also ensure that ongoing education regarding safe sex practices is provided.

To prevent premature deterioration, condoms and dams should be stored away from light and heat. All sex workers should wash their hands with soap and water after the disposal of condoms and dams. Condoms should be checked to ensure they have not passed their expiry (use by) date.

Equipment such as sex aids which have the potential for contact with another person's body fluids should be covered by a new condom for each partner. The condom must be removed and discarded after each use, and the equipment cleaned according to the manufacturer's instructions.

Employers must also ensure that the PPE provided is used correctly and not used beyond their expiry date.

### ***Health of sex workers***

It is recommended that provision be made for regular staff health monitoring. Employees have a right to be consulted on the choice of doctors. The employer should pay for the medical check and for the employee's time while undergoing medical examination. Sex workers should attend a sexual health centre or private doctor for



sexual health assessment, counselling and education appropriate to individual needs. Frequency of assessment is a matter for determination by the individual sex worker in consultation with his/her clinician.

Sex workers should be immunised against hepatitis B and in some cases hepatitis A following consultation with a medical practitioner or their local health service.

Evidence of attendance for sexual health tests should not be used as an alternative to safe sex practices. Sexual health certificates do not imply freedom from STDs nor should sexual health certificates be shown to clients.

### ***Other matters addressed by the NSW Health and WorkCover NSW Guidelines***

In addition to the matters outlined above, within this DCP, the *Guidelines* address a range of other occupational health and safety matters for brothels including: legal rights and duties; risk management; working conditions; occupational overuse syndrome; violence in the workplace; drugs, alcohol and smoking in the workplace; pregnancy; first aid; accident reporting; workers compensation and injury management. As stated above, it is therefore important that brothel owners /operators and individual private sex workers obtain a full copy of the *Guidelines*.

## Appendix C: Sample Plan of Management

The following is an example of a Plan of Management. It is provided as a guide only, and applicants should refer to **Appendix A** to ensure that all requirements are met in respect to their individual proposal.

### PLAN OF MANAGEMENT

#### 1. Management and Staff

- *Sex Workers: Two (2) full time and two (2) part time*
- **Door Manager**
  - *The operation of a front security door*
  - *Seeing that the client arrives and leaves the premises in an orderly and quiet manner.*
  - *Addressing any disagreements between workers and clients*
  - *Contacting the police if needed*
  - *Ensuring that if any person looks underage, they are asked to provide I.D before entering the premises.*
  - *In case of an emergency, ensuring the necessary authorities are contacted.*
  - *To oversee emergency procedures e.g. evacuation of premises.*
- **Floor Manager**
  - *Accepting and confirming appointments*
  - *Seeing that the worker and clients are supplied with safe sex needs*
  - *Ensuring that rooms are left presentable after use. This includes changing linen as required, emptying waste bins, etc*
  - *Maintaining coffee, tea, milk supplies for workers.*
  - *Keeping walkways clean and accessible.*
  - *Maintaining common areas such as kitchens, and bathrooms throughout the shift.*
  - *Acting under instructions of the Door Manager in times of emergencies*
  - *Working in conjunction with the Door Manager to see that all practices are carried out, to ensure health, safety and security standards are met.*

#### 2. Hours of Operation

*Proposed hours are 10am- 12am seven days a week.*

#### 3. Admission by Appointment Only

*To enhance safety and security and minimise disturbance to the neighbourhood, admission is by telephone appointment only. The Floor Manager will also confirm each appointment.*

#### 4. Access for People with a Disability

*The premises are accessible for people with a disability, both from the street in front of the premises and from the car parking, accessed from the rear of the premises. The premises contain one (1) suite with facilities (including toilet) suitable for use by people with a disability.*

#### 5. Safety and Security

*To ensure the safety of workers and clients the following strategies are to be undertaken:*

- *An electronic steel mesh security door at the main entrance will allow monitoring of all who enter or leave the premises, to the benefit of both sex workers and clients.*
- *An intercom system to each room will ensure that the worker can alert the front desk to any problem that may arise with a client.*
- *The Security firm is.....[Detail the name, phone number and address of security service]*
- *The Security firm will supply and install an adequate system which will be a 24 hours, back to base system.*
- *Police contact details are to be kept at the front desk.*
- *Good lighting of the front door and passageways is to be maintained.*

#### 6. Control of Antisocial or Violent Behaviour

*The above strategies for safety and security should help to prevent anti-social behaviour from becoming a disturbance in the neighbourhood. The following additional measures are to be employed.*

- *Clients will be advised to leave the premises quietly and consider others. Signs to this effect would be on the exit door to the premises.*
- *An Incident Register will be maintained to provide a record of any notable occurrence such as where persons are threatening to staff or engaging in other behaviour which causes a disturbance.*
- *A Room Register will monitor the use of each of the rooms by worker/client by a sign-in system.*
- *Security firm and Police to be involved when required.*

#### 7. Emergency Procedures in Case of Fire or Disaster

*The door Manager is responsible for opening the security door and contacting emergency services. The floor Manager is responsible for opening other emergency exits and for directing a safe passage out.*

*continued...*

**8. Health and Safety including Safe Sex Assurance**

To achieve optimum health and safety and ensure access to safe sex supplies, the following will be undertaken:

- Good Lighting is to be provided in all rooms for checking clients.
- Immunisation of staff will have been carried out for Hepatitis A & B and vaccination for Tetanus.
- Safe Sex supplies including condoms, lubricants, dental dams, rubber gloves and other safe sex equipment required, will be available to sex workers free of charge.
- All safe sex supplies will be kept in a storage facility that is cool, and not exposed to sunlight. Storage facilities will be located in the parlours and also the main storage area administered by the Floor Manager.
- Management will liaise with the relevant authorities to ensure that necessary health and safety standards are adhered to, and ensure that updated information on safety issues is made available (eg. on new strains of STDs)
- Spot cleaning is to be done where necessary to maintain hygiene
- Fire extinguishers are to be accessible.

**9. Worker and Client Health and Education**

The following will be undertaken to ensure sufficient safe sex education of workers and clients:-

- A Notice board in the main area will display information for sex workers and clients, such as HIV, STDs and OH&S information etc. The notice board will also contain notices from: the police on current investigations; current referral information for sex workers to sexual health clinics, needle exchange, SWOP and other relevant agencies.
- Space will be provided for agencies to carry out educational or other meetings with sex workers and management.
- Client education material is to be displayed in the bedrooms including signs promoting safe sex, use of condoms etc.
- All sex workers will be required to view a video produced by SWOP "Getting on Top of Health and Safety in the NSW Sex Industry".
- All sex workers will be required to read a handbook on all aspects of procedures during contact with clients.
- Staff training is to be held for harm minimisation (which may include self defence, street awareness, etc), needle stick injury, etc.
- Staff will be required to attend training sessions on CPR, or other necessary sessions run by SWOP or the Livingstone Road Health Centre.

**10. Restricted Access**

To ensure that persons under 18 years of age are not granted access, the following will be undertaken:

- Proof of Age shall be requested of sex workers or clients if Management cannot determine their age. Otherwise access is to be denied.
- Workers will not be permitted to bring friends into the premises without permission of the Management.

**11. Cleanliness and Presentation of Premises**

- At the end of each shift, the worker using the suite is to be required to clear all wastes, vacuum the floor area and wipe used flat surfaces with disinfectant.
- It will be the responsibility of the Floor Manager to ensure that: shower cubicles in each suite are cleaned, bedrooms are checked after each client; general areas are clean and presentable, with attention to the kitchen, bathrooms, and toilets being cleaned as a daily priority.
- General maintenance of the property will be attended to when required.

**12. Waste Disposal**

- The EPA Guidelines will be followed for the disposal of contaminated waste
- The waste service will be.....[Detail name, address and phone number of service]
- A 240 litre wheelie bin which is lockable, coloured and marked "contaminated waste" will be used for contaminated waste.
- The contaminated waste bin will be stored behind the garage area with access via a locked gate.
- Access to the bin area will only be given to the waste disposal company employed.

**13. Laundry Arrangements**

- A large capacity washing machine and clothes dryer will be installed to cover the requirements of the business.
- Linen will be washed and dried on a daily basis.

**14. Parking**

- In accordance with plans submitted to Council, 2 parking spaces will be provided on site and there is also ample on-street parking close by.

**15. Illegal Activities on Premises**

- Management will not tolerate any illegal activities and will contact the police if necessary. Signs are to be displayed to address this issue.

**16. Access for Council Officers and Other Regulatory Staff:**

Council staff and other authorised persons will be provided with access as required.

SIGNED :-

.....(Owner)

.....(Operator/Manager)

DATE:.....

## Appendix D: Extract From the Restricted Premises Act 1943

### **Section 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*.

## Appendix E: Where To Get Further Information

In preparing your Development Application documentation, and particularly the Plan of Management, the following organisations can provide further assistance.

Organisation	Service provided	Contact details
Marrickville Council	Planning and health and building advice	<b>Address:</b> 2-14 Fisher Street, Petersham 2049 <b>Ph:</b> 9335 2222 <b>Fax:</b> 9335 2029
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 Marrickville area: <ul style="list-style-type: none"> <li>Livingstone Road Centre, Marrickville</li> </ul> <b>Ph:</b> 9560 3057
NSW Health- Better Health Centre	Provides information, guidelines and educational material.	<b>Address:</b> 73 Miller Street, North Sydney, NSW, 2060 <b>Ph:</b> 9391 9000
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.	<b>Ph:</b> 9206 2000
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 have produced a video and guidebook <i>"Getting on Top of Health and Safety in the NSW Sex Industry"</i> . 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 brothels and premises used for prostitution.	<b>Address:</b> 69 Abercrombie Street, Chippendale NSW 2008 <b>Ph:</b> 9319 4866 <b>Fax:</b> 9310 4262
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.	<b>Address:</b> Level 10, Centennial Plaza, Building C, 300 Elizabeth Street, SYDNEY 2000 (CBD Regional Office) <b>Ph:</b> 13 10 50 (Assistance Service) <b>Fax:</b> 9287 5491 <b>Email:</b> <a href="mailto:contact@workcover.nsw.gov.au">contact@workcover.nsw.gov.au</a> <b>Website:</b> <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>
South Eastern Sydney Public Health Unit- Zetland	Provides information, guidelines and educational material	<b>Ph:</b> 9382 8333
The Gender Centre	Provides information, guidelines, educational material and advocacy on gender issues.	<b>Address:</b> 75 Morgan Street, Petersham NSW 2049. <b>Ph:</b> 9569 2366 <b>Fax:</b> 9569 1176 <b>Email:</b> <a href="mailto:gendercentre@one.net.au">gendercentre@one.net.au</a> <b>Website:</b> <a href="http://www.gendercentre.org.au">www.gendercentre.org.au</a>
Australian Federation of AIDS organisations	Document: <i>"A Guide to Best Practice Occupational Health and Safety in the Australian Sex Industry"</i>	<b>Ph:</b> 9281 1999