

# 7.3

## MISCELLANEOUS DEVELOPMENT SEX INDUSTRY AND ADULT BUSINESS PREMISES







# Contents

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<b>Part 7</b>	<b>Miscellaneous Development .....</b>	<b>1</b>
<b>7.3</b>	<b>Sex Industry and Adult Business Premises.....</b>	<b>1</b>
<b>7.3.1</b>	<b>Objectives.....</b>	<b>2</b>
<b>7.3.2</b>	<b>Definitions .....</b>	<b>2</b>
<b>7.3.3</b>	<b>Management of sex industry and adult business premises.....</b>	<b>3</b>
7.3.3.1	Ongoing ownership/management details .....	3
7.3.3.2	Location of premises.....	4
7.3.3.3	Design of premises .....	6
7.3.3.4	Amenity .....	7
7.3.3.5	Hours of operation and size of the premises .....	8
7.3.3.6	Health and building .....	8
7.3.3.7	Safety and security .....	9
<b>7.3.4</b>	<b>Advisory notes .....</b>	<b>10</b>
	Operation without consent (unauthorised use) .....	10
	Complaints protocol .....	10
	Closure of a sex services premises.....	10
	Conditional consent .....	10
	Public health complaints .....	11
<b>7.3.5</b>	<b>Appendix 1 – Guidelines for preparing POMs.....</b>	<b>12</b>
<b>7.3.6</b>	<b>Appendix 2 – Sample Plan of Management.....</b>	<b>16</b>
<b>7.3.7</b>	<b>Appendix 3 – Health standards for sex services premises – to be addressed in the POM.....</b>	<b>19</b>





## Part 7 Miscellaneous Development

### 7.3 Sex Industry and Adult Business Premises

Section 7.3 of the DCP provides planning controls to regulate the activity of adult businesses, restricted premises and sex services premises for the benefit of operators, workers, clients and patrons, the community and Council's decision making process.

*Marrickville Local Environmental Plan 2011 (MLEP 2011) defines Sex Services Premises as, "a brothel, but does not include home occupation (sex services)".*

*MLEP 2011 defines Restricted Premises as "premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises".*

*MLEP 2011 defines sex services as "sexual acts or sexual services in exchange for payment".*

Council's controls are designed to ensure that adult businesses, restricted premises and sex services premises operate in appropriate locations, do not result in a loss of amenity or environmental impact and are designed and operated to comply with wider industry standards, regulations and this DCP.

MLEP 2011 specifically regulates where sex services premises (IN1 General Industrial zone, IN2 Light Industrial zone and B6 Enterprise Corridor zone) and restricted premises (B4 Mixed Use zone and B5 Business Development zone) may be located. It also provides restrictions on the proximity of such uses to one another.

This section of the DCP applies to all premises that provide sex services, including premises that provide 'full service' sexual intercourse (such as brothels), sex on premises venues and premises that may not provide sexual intercourse but provide other sexual services including 'relief' or body slides.

The MLEP 2011 definition of a sex services premises means a brothel; however, sex services can be undertaken in other venues incorporating payment. Section 7.3 of this DCP applies to all premises where sexual acts or sexual services are provided, including brothels; sex on premises venues (SOPV) such as swingers clubs, bondage and discipline parlours; and premises described as providing massage related services involving sexual acts or sexual services. The provisions of this section generally do not apply to escort agencies except where sex services are provided on site.

Restricted premises and adult business premises such as strip clubs which do not provide sex services are also covered by this section of the DCP.

## 7.3.1 Objectives

- O1** To appropriately regulate adult business premises, restricted premises, sex on premises venues and sex service premises.
- O2** To specify planning controls which will be used by Council to appropriately regulate and control adult business premises, restricted premises, sex on premises venues and sex services premises to minimise amenity impacts upon adjoining land uses, particularly residential and other sensitive land uses.
- O3** To ensure that premises are designed and operated in accordance with acceptable health and building controls and standards.
- O4** To safeguard public health and safety for sex industry workers and their clients, and patrons of premises by providing occupational health and safety guidelines for the premises by the operators.
- O5** To ensure sufficient separation between adult businesses, restricted premises, sex on premises venues and sex services premises to avoid a concentration of those premises in any one locality.
- O6** To ensure adult businesses, restricted premises, sex on premises venues and sex services premises are located, designed and operated in a manner that protects the amenity of the locality.

## 7.3.2 Definitions

The following terms are used in this section of the DCP:

<b>Adult business premises</b>	Premises which provide adult entertainment of a sexual nature (such as strip club premises) and which do not provide sex services.
<b>Brothel</b>	<p>Premises classed as a brothel within the meaning of the <i>Restricted Premises Act 1943</i>, other than premises used or likely to be used for the purposes of prostitution by not more than one prostitute.</p> <p>Under the <i>Restricted Premises Act 1943</i> brothel means premises:</p> <ul style="list-style-type: none"><li>(a) habitually used for the purposes of prostitution, or</li><li>(b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or</li><li>(c) that have been expressly or implicitly:<ul style="list-style-type: none"><li>(i) advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means), or</li><li>(ii) represented, as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.</li></ul></li></ul> <p>Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.</p>
<b>Disturbance</b>	In the context of this DCP, includes 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>Escort agency</b>	Premises used to arrange contacts between sex workers and clients with the intention of sexual activity taking place off-site. Sex workers may or may not be based at the premises or visit the premises to obtain work. Premises where sexual activity occurs on site will be considered a sex services premises.
<b>Performance area</b>	An area associated with strip club premises where striptease acts, tabletop or podium performances, or peepshows are performed. This includes private performance areas and peepshow booths.

<b>Plan of Management</b>	To be submitted in accordance with the requirements of this section of the DCP and in particular <b>Appendices 1 and 2</b> .
<b>Prostitution (act of)</b>	As defined in Section 20 of the <i>Summary Offences Act 1988</i> includes acts between persons that comprise sexual intercourse for payment and/or masturbation committed by one person on another for payment.
<b>Restricted material</b>	Publications classified Category 1 restricted, Category 2 restricted or RC under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> (Commonwealth).
<b>Sensitive use</b>	A child care centre, community facility, educational establishment, place of public worship, recreation area, public park, residence or any other place regularly frequented by children.
<b>Sex on premises venues (SOPVs)</b>	As adapted from NSW Health's "NSW Communicable Diseases Health and Safety Guidelines for Sex on Premises Venues" 2001, 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 etc, which accommodate sexual encounters.
<b>Sexual intercourse</b>	Defined as: (a) Sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by: (i) any part of the body of another person; or (ii) any object manipulated by another person, except where the penetration is carried out for proper medical purposes; or (b) Sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person; or (c) Cunnilingus; or (d) The continuation of sexual intercourse as defined in paragraph (a), (b) or (c).
<b>Spruikers</b>	Persons located on the public way who seek to entice customers to enter the premises.
<b>Striptease club premises</b>	Premises providing striptease acts, erotic dancing, tabletop or podium performances, private dancing, peepshows, or nude or semi nude bar/waiting staff. Sexual intercourse does not take place on site. Premises may require payment to gain entry/view the performance, and may be liquor licensed.
<b>Sex worker</b>	A person who provides sexual services in the form of acts between persons that comprises sexual intercourse for payment and/or masturbation committed by one person on another for payment.
<b>Working room</b>	A place where sexual activity occurs within a sex services premises (including SOPV) and may include an area enclosed or partially enclosed by non-structural partitions such as curtains or moveable partitions.

**NB** *In considering a development application where more than one type of use/activity on the same premises is proposed (for example, an adult bookshop with an adult entertainment lounge or SOPV), Council will assess each use separately against the relevant acts/regulations, MLEP 2011, this DCP and the proposal's merits.*

### 7.3.3 Management of sex industry and adult business premises

#### 7.3.3.1 Ongoing ownership/management details

#### Objective

- O7** To ensure the effective operation and management of sex services premises.

#### Controls

- C1** The contact details of the owner and/or operator of an approved sex services premises must be provided to Council in writing and must

include telephone number(s) and the postal address. Should the owner and/or operator change, Council must be notified in writing.

- C2** Applications for adult business premises, restricted premises, sex on premises venues and sex services premises (as defined in this section) must be accompanied by a Plan of Management (POM) outlining the management and operational arrangements, as well as other measures required to achieve the requirements of this section of the DCP (See Appendices 1, 2 and 3).

**NB** Council may exercise discretion in respect to the requirement for a POM if the development type is minor or an addition to existing premises.

**NB** A POM, once accepted by Council, will be enforced as a condition of consent.

### 7.3.3.2 Location of premises

Under MLEP 2011, sex services premises are permissible with consent in the IN1 General Industrial zone, IN2 Light Industrial zone and B6 Enterprise Corridor zone. Restricted premises are permissible with consent in the B4 Mixed Use zone and B5 Business Development zone. Those zones therefore guide the location of these activities in the LGA.

SOPVs, because of their nature, are considered a sex services premises and are therefore permissible with consent in the 1N1 General Industrial, IN2 Light Industrial and B6 Enterprise Corridor zones.

Further to this, Clause 6.14 of MLEP 2011 provides specific controls including a 200 metre separation between sex services premises (brothels). The restriction on locating near residential land or near land in a RE1 Public Recreation zone make much of the corridor land along the Princes Highway unsuitable for sex services premises.

### Objectives

- O8** To ensure adult business premises, restricted premises, sex on premises venues and sex services premises are located in appropriate areas where they do not adversely impact on the environment, and in particular upon residential occupancies or other sensitive uses.
- O9** To ensure adult business premises, restricted premises, sex on premises venues and sex services premises are discretely situated, sensitively located and are not concentrated within any one area.
- O10** To optimise the safety and security of such premises.

*Establishing cumulative impact controls is appropriate to control impacts on the neighbourhood. See the Land & Environment Court's proceeding in Shytot Pty Ltd V Marrickville Council 2004.*

### Controls

- C3** Restricted premises or adult business premises must not be located within a 75 metre radius of any entrance (used by members of the public or employees) of an existing, approved sex services premises, restricted premises or adult business premises. Council may also consider the presence of any of those premises within a neighbouring Local Government Area (LGA) immediately adjoining a site.

- C4** A sex services premises must not be located within a 200 metre radius of any entrance (used by members of the public or employees) of an existing sex services premises (to be used by members of the public or employees) which has development consent. Council may also consider the presence of any of those premises within a neighbouring LGA immediately adjoining a site.
- NB** *Where an applicant is able to demonstrate, to the satisfaction of Council, that the 75 metre or 200 metre separation is unnecessary – for instance due to a topography, or other circumstances (such as worker and/or client and patron safety) Council may consider varying the requirement or imposing suitable conditions of consent to address potential impacts. A specific variation will be required to the 200 metre standard in MLEP 2011 in accordance with Clause 4.6.*
- C5** Adult business premises, restricted premises, sex on services venues and sex services premises must not be located:
- i. Next to or directly opposite a child care centre, community facility, educational establishment, place of public worship, recreation area, public park or any other place regularly frequented by children whether these are within Marrickville LGA or within an adjoining LGA; or
  - ii. Within buildings containing a residential use (including shop top housing or live/work premises) or immediately adjacent to or directly opposite land developed for residential purposes.
- NB** *Aside from the above control at C5(ii), Council will also consider the proximity of the above sensitive uses within the wider neighbourhood in which the adult business, restricted premises, sex on premises venues or sex services premises is proposed and not just in its immediate vicinity.*
- NB** *In relation to C5(ii) Council will consider the potential impacts of the adult businesses, restricted premises, sex on premises venues and sex services premises upon the dwelling/residence, having regard to such matters as the size of the operation and number of staff and potential patrons/visitors; the design, construction and internal layout of the 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 POM.*
- C6** Council will consider the location of the proposed adult business premises, restricted premises, sex on premises venue or sex services premises and its proximity to any adult business, restricted premises, sex on premises venue or sex services premises operating in the neighbourhood and to activities with similar operating hours in the area including massage related service premises and licensed premises (such as pubs/hotels, nightclubs, or places where alcohol is served on the premises). In this regard, Council will consider how factors like traffic and car parking, safety and security and residential amenity will be affected by the proposed adult businesses, restricted premises or sex services premises.
- C7** On land zoned B6 Enterprise Corridor, a sex services premises or any part of a sex services premises (excluding access, car parking and waste storage) must not be located at street level.

## PART 7: MISCELLANEOUS DEVELOPMENT

**NB** *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.*

### 7.3.3.3 *Design of premises*

#### Objectives

- O11** To ensure the layout and design of adult business premises, restricted premises, sex on premises venues and sex services premises minimises their impacts and “presence” in the locality.
- O12** To ensure the privacy of clients and patrons and the safety of staff, patrons and clients.
- O13** 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.
- O14** To ensure adequate and appropriate access to the premises and its facilities is provided for a person with a disability.

#### Controls

- C8** The area where an adult business premises, restricted premises, sex on premises venue or sex services premises is to be sited must be well illuminated by street lighting.
- C9** Premises must be designed so that there is only one 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. Refer to Section 2.9 (Community Safety) of this DCP for detailed objectives and controls.
- C10** The privacy of patrons and clients must be considered through the design and internal layout of the premises.
- C11** Rear pedestrian access must be limited to one only, unless it can be demonstrated to Council's satisfaction that more than one access contributes to the amenity and functional efficiency of the sex services premises and surrounding uses and does not result in safety and security concerns or visual clutter from additional signage.
- C12** A suitable waiting area must be provided to prevent queuing or loitering outside the premises.
- C13** Equitable access arrangements must be detailed in the POM and related plans/drawings for the premises. Refer to Section 2.5 (Equity of Access and Mobility) of this DCP for detailed objectives and controls.
- C14** Brothels and strip clubs must provide the following staff facilities within the premises, adjacent to and accessible from work areas, and in a secure area inaccessible to visitors:
  - i. Communal lounge or rest area with seating;
  - ii. Sanitary facilities (toilet, hand basin and shower);
  - iii. Sink with running water, water boiling facilities and fridge; and
  - iv. Staff notice board displaying details as required to fulfil requirements of the POM and WorkCover NSW and NSW Health Guidelines (**See Appendices 1 and 2**).
- C15** In addition to C14, brothels must provide:

- i. A minimum of one bathroom (toilet, shower, hand basin) for each three suites or parlours, separate from and available to all suites/working rooms. This excludes an accessible room with associated facilities designed to be used by a person with a disability; and
- ii. Storage facilities for soiled and clean linen and safe sex equipment.

**C16** For SOPV, hand basins must be located within or close to areas of sexual activity and 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.

### **7.3.3.4 Amenity**

#### **Objective**

**O15** To ensure adult business premises, restricted premises, sex on premises venues and 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**

- C17** Council will consider whether the operation of the adult business premises, restricted premises, sex on premises venue or sex services premises would cause a disturbance in the neighbourhood when considering other adult business premises, restricted premises or sex services premises operating in the neighbourhood (including those in an adjoining LGA).
- C18** Council will consider whether the adult business premises, restricted premises, sex on premises venue or sex services premises would impact on any other land use due to its hours of operation, size, signage, external lighting, traffic generation, noise or the number of employees.
- C19** To avoid visual impact and possible offence to the public, adult business premises, restricted premises, sex on premises venues and sex services premises must not display sex-related products, sex workers, performers, or nude or semi-dressed staff from windows, doors or outside of their premises.
- C20** The interior of adult business premises, restricted premises and sex services premises must not be visible from the public domain.
- C21** Where the interior of an adult business premises, restricted premises, sex on premises venues or sex services premises may be visible from neighbouring buildings, adequate measures must be taken to screen the interior of the building.
- C22** Spruikers are not permitted in the operation of any adult business premises, restricted premises, sex on premises venues or sex services premises.
- C23** Strategies for ensuring the quiet entrance and exit of clients and patrons must be addressed through the POM.
- C24** Adult business premises, restricted premises, sex on premises venues or sex services premises advertising their services in newspapers must list their principal point of entry as the address, and not rear streets or lanes to avoid confusion and contact/nuisance with surrounding residences or residential areas.

- C25** Premises must be clearly numbered, with the number clearly visible from the street.

### **7.3.3.5 Hours of operation and size of the premises**

There are no specific controls for the hours of operation or the size of an adult business premises, restricted premises, sex on premises venue or 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 those uses.

### **7.3.3.6 Health and building**

#### **Objectives**

- O16** To ensure adult business premises, restricted premises, sex on premises venues and sex services premises comply with the relevant health and building regulations.
- O17** To promote the education of sex workers, clients and patrons of sex services premises and to encourage the operation of premises in a manner which minimises the risk of contracting sexually transmitted infectious diseases.
- O18** To ensure reasonable working conditions are provided for sex industry workers.

#### **Controls**

- C26** Proposals to which this section of the DCP applies and which involve food and beverage services must comply with the relevant NSW food safety requirements and provide statement of consistency in the Statement of Environmental Effects.

*NSW Food Act 2003 and NSW Food Regulation 2004 provide relevant standards and guidelines for food and beverages services.*

- C27** All applications to which this section of the DCP relates must comply with the requirements of the relevant public health act and regulation.

*Refer to the Public Health Act 1991 and the requirements of NSW Health for further guidance on health standards.*

- NB** *Appendix 3 specifically applies to the range of sex services premises discussed in this section and should be taken into account in all applications to which this section of the DCP relates. The list in Appendix 3 is not exhaustive and additional conditions may be imposed on any consent granted to satisfy NSW Health or Council's requirements.*

*SOPVs are encouraged to follow the principles and standards set by the Aids Council of NSW's (ACON) 'Sex on Premises Code of Practice' 2003.*

- C28** Health requirements for sex services premises must be addressed in the POM submitted with the development application.



**NB** Some of the relevant health standards are listed in **Appendix 3**.

### **7.3.3.7 Safety and security**

#### **Objectives**

- O19** To maximise the safety and security of patrons, clients and workers at all times.
- O20** To reduce the likelihood that adult business premises, restricted premises, sex on premises venues and sex services premises will be associated with criminal activities.

#### **Controls**

- C29** Details of security arrangements must be detailed in the POM (**See Appendix 1** for requirements).

**NB** See also Section 2.9 (Community Safety) of this DCP for objectives and controls relevant to surveillance, security, and design of external areas.

### 7.3.4 Advisory notes

#### **Operation without consent (unauthorised use)**

Council has a responsibility to enforce the Environmental Planning and Assessment Act 1979 (EP&A Act) to ensure adult business premises, sex services premises and restricted premises do not operate without consent. The EP&A Act allows Council to take legal action against operators of premises if they operate without consent or contrary to the consent conditions issued by Council.

#### **Complaints protocol**

Complaints concerning an unauthorised use of premises for sex services, restricted premises or adult business premises should be directed to Council's Customer Service Centre (Ph: 9335 2222).

*If the premises do not have consent to operate as an adult business premises, restricted premises or sex services premises, Council will take action to ensure 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. If it is not operating within the conditions of consent Council may take legal action to ensure that it does.*

**NB** Refer to Section 17 of the Restricted Premises Act 1943 for criteria for complaints against brothels.

#### **Closure of a sex services premises**

Council has the ability to make an application to the Land and Environment Court for premises not to be used as a sex services premises. This application is made in instances where the operations are having a negative impact on the amenity of an area.

*Even if a sex services premises is operating with Council consent, Council has the power under the Restricted Premises 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 determining whether to seek an Order from the Court to close down a sex services premises. 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 sex services premises have conditional consent from Council or the Land and Environment Court. Resident complaints may be a major source of feedback to Council on the workability of a sex services premises within a local area.

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#### **Public health complaints**

Public health complaints should be addressed to the Sydney South West Area Health Service (SSWAHS). Occupational health and safety issues are matters for WorkCover NSW. Joint inspections may be carried out by these organisations if necessary.

Proprietors of sex services premises should refer to the publication entitled "Health and Safety Guidelines for Brothels" (2001) available from [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

Similarly, operators of sex on premises venues should obtain a copy of the Code of Practice for Sex on Premises Venues by ACON. The Code has been developed in consultation with venues and builds on the success of the 1996 Code of Practice in accordance with NSW Health Guidelines on Communicable Diseases and the Sydney City Council Sex Industry Policy.

### 7.3.5 Appendix 1 – Guidelines for preparing POMs

#### Plan of Management

A Plan of Management (POM) is required for all development applications to which this section of the 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 will be enforced as a condition of consent and must be sufficiently detailed to answer the following questions. In this case it is likely that the POM will be refined during the development assessment process to achieve this outcome.

1. Do the requirements in the POM relate to the proposed use?
2. Do the requirements in the POM require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?
3. Can the source of any breaches of the POM be readily identified to allow for an enforcement action?
4. Do the requirements of the POM require absolute compliance to achieve an acceptable outcome?
5. Can the people the subject of the POM be reasonably expected to know of its requirements?
6. Does the POM contain complaint management procedures?
7. Is there a procedure for updating and changing the POM, including the advertising of any changes?

**NB** See for reference *Land and Environment Court proceedings in Renaldo Plus 3 Pty Ltd v Hurstville City Council [2005]* and *Procopiadis v Marrickville Council [2009]*.

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

#### Management and staff arrangements:

This should include details of:

1. The operator (manager) of the business (including phone number);
2. The owner(s) of the premises (including phone numbers);
3. The number of sex workers and support staff (as applicable);
4. The number of security guards; and
5. Any other staff.

Details must be provided about the responsibilities of each person in the workplace. Tasks identified in the POM should be allocated to a member of staff.

**NB** *If consent is granted to a development application, Council will impose a condition of consent requiring the owner and/or operator of a sex services premises to provide contact details to Council in writing.*

## Responsibility of operators

The operator of a sex services premises must be responsible for the conduct of clients and patrons, and include strategies for ensuring the quiet entrance and exit of clients and patrons in the POM.

## Access for clients

The POM must address how access and egress will be provided for people with a disability, including egress in an emergency. The POM must 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.

**NB** *Access is required to be provided in accordance with Section 2.5 (Equity of Access and Mobility) of this DCP.*

## Hours of operation

Hours of operation must be documented.

## Safe sex assurance

The POM must outline how safe sex information and condoms or dental dams will be made available to all occupants of the premises (as appropriate to the type of sex services premises). This must be available in a plain English format. Suggested strategies include:

1. Explaining how condoms or dental dams will be supplied freely and made easily accessible;
2. Prominently placing posters on safe sex information;
3. Placing adequate signage in the premises to indicate management supports a safe sex policy;
4. Providing written material explaining other means of harm minimisation for both workers and clients;
5. Including signage on the back of room/cubicle/booth doors describing cardio-pulmonary resuscitation procedures and emergency phone numbers;
6. Developing a needlestick policy in the event of staff/client injury; and
7. Explaining how premises will be kept in a clean, tidy and presentable condition at all times.

## Arrangement of appointments (sex services premises – brothels only)

The POM should outline a procedure for admission of clients by appointment only. A telephone booking is the preferred procedure.

## Restricting access

The POM must show how the premises will ensure no person under 18 years of age gains access to the premises.

## Control of antisocial or violent behaviour

The POM must include strategies to deal with inappropriate behaviour. Relevant qualifications of security staff must be included to ensure 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 must also include strategies to ensure this does not happen.

### Safety and security

Measures to ensure the safety of staff and clients within and outside the premises must be detailed. The POM must identify how the operator will ensure staff are safe and how they must handle clients and/or patrons who behave unacceptably, including reporting to police. It must show:

1. How people entering the premise will be managed and monitored;
2. How the use of areas and rooms will be monitored;
3. That a current list of police and emergency service numbers will be in the staff room and reception;
4. That an incident book will be on the premises that can be accessed by the police;
5. The location of video surveillance cameras and the arrangements for management and monitoring of this system;
6. Safety and alarm systems and the person who has responsibility for these systems;
7. The licensed security firm(s) 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 must show where this information will be displayed.

### Management of waste

The POM must demonstrate that adequate facilities have been provided for the storage of waste in accordance with NSW Health and WorkCover NSW Guidelines for Health and Safety for Brothels (**See Appendix 3**) and the requirements of Section 2.21 (Site Facilities and Waste Management) of this DCP. This includes 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 includes 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 must be provided in every room and/or area of activity.

The POM must 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 POM must demonstrate actions for general upgrading and ongoing maintenance of the condition of the premises including painting, floor coverings, furnishings, furniture, linen and blankets or pillows.

### Cleanliness of the premises

The POM must demonstrate how the applicant will 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:

1. A daily cleaner;
2. Washing and drying facilities provided on the premises; and

3. Engaging a commercial laundry contractor. In this case a copy of agreement should be provided as an annexure to the POM.

### **Access for council officers and other regulatory staff**

This section must detail how Council staff and other authorised persons can access to the premises.

*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, applicants liaise with S.W.O.P (Sex Workers Outreach Project), NSW Police and health workers when preparing the POM.

## 7.3.6 Appendix 2 – Sample Plan of Management

The following is an example of a POM. It is provided as a guide only, and applicants should refer to **Appendix 1** to ensure 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**
  - Operating 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, contacting the necessary authorities.
  - Overseeing 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 rooms are left presentable after use. This includes changing linen as required, emptying waste bins
  - 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 10.00am- 12.00 midnight 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 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 will 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 will be kept at the front desk.
- Good lighting of the front door and passageways will be maintained.

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

The above strategies for safety and security should help to prevent antisocial 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.

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- 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 will 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.

### **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 will 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 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 STIs)
- 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 noticeboard in the main area will display information for sex workers and clients, such as HIV, STIs and OH&S information etc. The noticeboard 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 will be held for harm minimisation (which may include self defence, street awareness, 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.
- The Floor Manager will ensure 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.

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- *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, two parking spaces will be provided on site and ample on-street parking is close by.*

**15. Illegal Activities on Premises**

- *Management will not tolerate any illegal activities and will contact the police if necessary. Signs will 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:.....**

### 7.3.7 Appendix 3 – Health standards for sex services premises – to be addressed in the POM

#### Health standards for sex services premises

NSW Health and WorkCover NSW have developed *Health and Safety Guidelines for Brothels in NSW (2001)* to address key occupational health and safety responsibilities for those involved in the sex services industry. Under NSW legislation, employers and their representatives (brothel proprietors, 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 sex services premises proprietors to obtain a full copy of the *Guidelines*. They can be obtained from:

*WorkCover Publications Hotline: 1300799003*  
*Web site: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)*

The following health guidelines are extracted from the NSW Health and WorkCover NSW *Guidelines* and must be addressed in the POM.

#### Cleanliness

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

##### Showers, baths and toilets

Regular physical cleaning with water and detergents are generally required to control mould problems. The proprietor must ensure 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 must be provided at all hand basins in the premises.

##### Linen

The proprietor must 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 must 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 must be washed as soon as practicable;
- At least two receptacles must be provided in the laundry for the separate storage of clean linen and used linen;
- Linen must be washed by category in a hot water wash (that is a water temperature of 71 degrees) using laundry detergent; and
- All items of linen must be dried after washing.

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

### 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 must be located in toilets and as close as possible to sexual activity areas for use by clients. Hand washing facilities must 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, bins with sliding lids should be used to eliminate odours.

If contaminated sharps are used in a brothel, non-reusable sharps containers which comply with Australian Standard AS 4031 Non-reusable containers for the collection of sharp medical items used in health care areas should be provided. NSW Health's *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.

Swimming and spa pools must comply with NSW Health Guidelines.

*Refer to 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).*

Spa pools must be drained regularly so they can be satisfactorily cleaned and refilled with fresh water. Spa pools must 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 NSW Health. Those methods include the use of chlorine, bromine, salt water chlorination or ozone.

Tests must be done on every swimming or spa pool before the pool or spa is opened each day, and every four 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.

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;
- Baquacil;
- Ph; and
- 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 and signs must 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 sex services premises all bars and food preparation areas must be constructed and operated in compliance with the relevant food safety requirements.

*Refer to 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 all perishable food and drink items are refrigerated at four degrees or below.
- Ensure 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 employees are not at risk of harm through violence from clients.

Employers must 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 in accordance with the relevant Australian Standards 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.
- Safe equipment including beds, bondage equipment and apparatus must be provided.
- Risk assessments must be conducted (see Guidelines in full).

*See Australian Standards - AS/NZ 1680.2.5:1997 Interior Lighting*

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

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

The proprietor must provide information to sex workers as is necessary to enable them to perform their work in a manner that is safe. 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 information provided for the benefit of clients or sex workers is medically accurate.

Workers must 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 English, the proprietor must provide the information in a language with which the sex worker is familiar. SWOP and the NSW Sexual Health Services at the Livingstone Road Centre in Marrickville can provide more assistance.

The proprietor must ensure 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 NSW'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 their premises meet the required standards of local and State fire laws. Following and initial fire safety assessment, employers must 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; and

- Evacuation procedures are known to all employees and emergency drills carried out on a regular basis.

In addition, adequate general maintenance of all work buildings and structures must 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 PPE such as towels and linen, all provided free of charge to workers. Where a person is employed as a sub-contractor and is registered as a proprietary limited company they must provide their own work equipment and PPE.

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

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

Equipment such as sex aids which have the potential for contact with another person's body fluids must 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 ensure the PPE provided is used correctly and not used beyond their expiry date.

### **Health of sex workers**

Provision should be made for regular staff health monitoring. Employees have a right to be consulted on the choice of doctors. The employer must pay for the medical check and for the employee's time while undergoing medical examination. Sex workers must 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 must 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 must not be used as an alternative to safe sex practices. Sexual health certificates do not imply freedom from STIs nor should sexual health certificates be shown to clients.

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

In addition to the matters outlined within this DCP, the *Guidelines* address 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. Brothel owners /operators and individual private sex workers must obtain a full copy of the *Guidelines*.

### Guidelines and resources relevant to sex industry and adult business premises

<i>A Guide to Best Practice Occupational Health and Safety in the Australian Sex Industry</i>	Australian Federation of AIDS Organisations.
<i>Code of Practice for Sex On Premises Venues</i>	AIDS Council of NSW (ACON)
<i>Getting on Top of Health and Safety in the NSW Sex Industry</i>	SWOP
<i>Health and Safety Guidelines for Brothels 2001</i>	WorkCover NSW
<i>Protocol for Minimising Risk of Cryptosporidium Contamination in Public Swimming Pools and Spa Pools (1999)</i>	NSW Health
<i>Public Swimming Pools and Spa Pool Guidelines June 1996</i>	NSW Health
<i>Sex on Premises Code of Conduct</i>	ACON
<i>Skin Penetration Code of Best Practice September 2001</i>	NSW Health
<i>Waste Management Guidelines 1998</i>	NSW Health