

**INDEPENDENT ASSESSOR**

**Prostitution Act 1999**

BETWEEN:                               **SPRINGWOOD DEVELOPMENT PTY LTD (ACN 010 159 748)**  
Appellant

AND:                                       **LOGAN CITY COUNCIL**  
Respondent

**DECISION**

**The decision of the Independent Assessor is as follows**

1. The appeal is upheld;.
2. The failure to decide the application is replaced;
3. The application for a development permit for a material change of use of premises at 3509 Pacific Highway, Slack’s Creek located on lot 6 on registered plan 74154 for a brothel be approved subject to the following conditions:

1.       **SITE**

- 1.1      The development of the site shall comply with the provision of Council’s Local Laws, Local Planning Policies, Planning Scheme and Development Manual to the extent they have not been varied by this approval.
- 1.2      The development of the site shall comply with the provisions of the *Prostitution Regulation 2000* (“the Regulation”).

2.       **SITE PLANS**

- 2.1      The development of the site shall be in accordance with Drawing Nos SO 146 1, 2 and 3 by John Nouwens Architect as altered by this approval.

In particular the following alterations are required to be made:

- 2.1.1    A concrete pedestrian pathway with a minimum width of 1.2 metres shall be provided from the frontage of the site to the rear customer car park.
- 2.1.2    The roof of the customer car park shall be deleted.

### 3. **ROADS**

- 3.1 Access to the site is to be located to the standards and satisfaction of the Director of Development, Health and Environment and the Department of Main Roads and shall include the construction of a concrete industrial cross-over. Such access is to incorporate the construction of a two-way concrete industrial driveway slab, in accordance with IMEAQ Drawing Number R-0051.

*To be complied with prior to the commencement of the use.*

- 3.2 The bench on the footpath opposite the adjoining site to the south (lot 1 RP 213986) shall be relocated at full cost to the applicant to the satisfaction of the Director of Development, Health and Environment.

*To be complied with prior to the commencement of the use.*

### 4. **DRAINAGE**

- 4.1 A stormwater drainage system shall be constructed in accordance with the provisions of Council's Development Manual and the Queensland Urban Drainage Manual. All drainage shall be discharged at a legal point of discharge to the satisfaction of the Director of Development, Health & Environment. The design of drainage works shall make provision for:

4.1.1 All external catchments currently discharging into the site to be carried across the site with necessary easements

4.1.2 All site drainage

*To be complied with prior to the commencement of the use.*

### 5. **GENERAL ENGINEERING CONDITIONS**

- 5.1 An external works plan prepared by a qualified consulting civil engineer shall be approved prior to commencement of any works.
- 5.2 The developer shall be responsible for the full cost of any alteration necessary to electricity, telephone, water mains, sewer mains, stormwater drainage systems or easements and/or other public utility installations resulting from the development or from road and drainage works required in connection with the development.
- 5.3 No work shall be commenced on works which will ultimately revert to Council or on adjacent roads or drainage schemes until Council has been advised in writing, of the name of the responsible contractor and that the contractor has received from Council a notice of appointment of principal contractor under the provisions of the *Workplace Health and Safety Act 1995*.

### 6. **CAR PARK**

- 6.1 An off-street carparking area laid out in accordance with Drawing Nos SO 146 1 and 2 by John Nouwens Architect shall be provided for both customers and employees. Such spaces to be laid out, paved, linemarked, signposted, drained and maintained in accordance with Council's Department Manual

and current Local Planning Policy No 21 (Traffic Generating Developments) and Australian Standard 2890.1 – 1986 and Australian Standard 2890.2 – 1989.

*To be complied with prior to the commencement of the use.*

- 6.1. The staff car park shall be secured with entry available only to staff through a keyed or remote opening system. External pedestrian access for staff shall also be available as shown on Drawing No SO 146-2.

*To be complied with prior to the commencement of the use.*

## 7. FLOODING AND FILLING

- 7.1 The development of the site shall comply with Council's Local Law No. 6 in respect of flood plain management unless otherwise specified by the Director of Development, Health & Environment.

## 8. LANDSCAPE PLAN/WORKS

- 8.1 A landscape plan and documentation prepared by a corporate member of the Australian Institute of Landscape Architects in accordance with the provisions of Council's Development Manual shall be approved by the Director of Development, Health & Environment showing the proposed landscape works.

- 8.2 Landscape works shall include:

8.2.1 Carpark landscape works including landscape areas and shade trees in accordance with Section 2.11.5 of the Council's Development Manual.

8.2.2 Landscaping in the customer car park and adjoining pedestrian footpath shall be restricted to low growing vegetation, and trees with clear trunks to prevent concealment of persons and discourage loitering.

8.2.3 An automatic inground irrigation system.

8.2.4 A type 2 concrete wall, 0.15 metres minimum height, or other approved barrier erected between any landscaped area and car parking areas or driveway.

*To be complied with prior to the commencement of the use.*

- 8.3 Landscape works shall be subject to ongoing maintenance to the satisfaction of the Director of Development, Health & Environment.

- 8.4 Footpath tree planting shall be provided in accordance with Council's Development Manual.

8.4.1 All trees shall have a minimum container size of 25 litres.

8.4.2 Tree species shall be as approved by the Director of Development, Health & Environment.

8.4.3 Tree guards shall be installed around trees to prevent theft, vandalism or accidental damage.

*To be complied with prior to the commencement of the use.*

## 9. GENERAL CONDITIONS

9.1 Street numbers are to be displayed. Numerals are to be not less than 300mm in height. Numbers shall be illuminated with static lighting.

*To be complied with prior to the commencement of the use.*

9.2 Building colours and materials are to be unobtrusive.

9.3 Building surfaces (restricted to the façade of the building and that part of the southern side of the building visible from the Pacific Highway and restricted to a height of two metres) be treated with anti-graffiti paint.

9.4 The customer entry to the brothel shall be clearly identified from the car park.

9.5 Provision shall be made for security lighting:

- between the proposed building and the road frontage,
- in the car park,
- at access points, and
- along pedestrian footpaths and external to any proposed fencing.

9.6 External lighting shall:

- Be static,
- Have no characteristics indicating the premises are used for a brothel,
- Facilitate surveillance, and
- Be hooded and directed downwards.

9.7 Signage for the brothel shall be in accordance with the following:

- Only one sign with a maximum of one square metre and attached to the brothel.
- The sign shall only display the name of the licensee and the registered business name of the brothel.
- The sign shall not display words or images of a sexually explicit, lewd or otherwise offensive nature.

- No bunting or streamers shall be displayed.

- 9.8 Transformers or substations are to be constructed in an area specifically nominated for that purpose. No transformer is to be located within the designated landscape area required under the Planning Scheme or in this approval. All development applications for building works shall be accompanied by a certificate from the supplier stating whether or not the development requires a substation or transformer. If in the event that the building requires a substation or transformer the certificate shall also state whether the installation meets the technical requirements of the supplier.
- 9.9. No gas installation is to be located within designated landscaped areas. A designated area for a gas installation shall be indicated on the building plans. All servicing shall take place from an on-site location. Any proposed installation shall be constructed to Australian Standard AS 1596 LP Gas Storage and Handling, Australian Gas Association Code A.G.60/-1989 and the Gas Act/Regulations. If, in the event, no gas installation is required or it is deleted the area shall be turned over to on-site landscaping.

***Stephen Keim***

Independent Assessor under the Prostitution Act

18 September 2002



6. The preliminary assessment was to the broad effect that the appeal should be upheld but raised a number of issues concerning the conditions which had been imposed. The Appellant and the Respondent each responded to the preliminary assessment by documents dated 21 and 22 March 2002, respectively. Although neither party went beyond the conditions issues raised by the preliminary assessment, I formed the view that it was desirable from a concern for natural justice<sup>3</sup> to allow the parties to respond to one another's submissions in response to the preliminary assessment. Accordingly, by letters to the parties dated 2 April 2002, directions were made extending the time for decision until 5 days after receipt of further submissions<sup>4</sup> and giving the parties a further 10 days within which to make further submissions. The further submissions were dated 9 April (Appellant) and 5 April (Respondent). Because it has proved difficult to assess the further submissions and conclude these reasons within 5 days of receipt of those further submissions I have extended the time allowed to myself as Independent Assessor to make the decision a further 10 days until 24 April 2002.

### **The appeal**

7. The grounds of the appeal are expressed in the notice of appeal as follows:

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1. The assessment manager has not decided the Applicant's application during the decision making period or any extension of the period and there is thereby a deemed refusal of the application.
2. “The Assessment Manager should have approved the Applicant's application because:
  - (a) It contained all and sufficient information to permit a decision to be made;
  - (b) There has been no request to the Applicant for additional information from the assessment manager;

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<sup>3</sup> Section 64A of the Act provides that the object of the appeal provisions is to provide “for easily accessible, informal, **fair**, speedy and **just** reviews of decisions ...” (my emphasis).

<sup>4</sup> Section 64S of the Act.

- (c) The report of the Development, Health and Environment Committee of the Logan City Council dated 22 January, 2002 recommends the approval of the application subject to certain conditions;
- (d) The aforesaid Logan City Council Development, Health and Environment Committee does not indicate the application is deficient in any respect.

8. The Applicant has in all respects complied with the Integrated Planning Act and the Prostitution Act 1999 and the Prostitution Regulations 2000.”

**The assessment by the respondent**

- 9. The development application, a copy of which was received with the Notice of Appeal is dated 20 November 2001. A letter from the Respondent dated 27 November 2001 (which is identified and constitutes an acknowledgement notice pursuant to Section 3.2.3 of the *Integrated Planning Act* 1997 (“the IPA”)) acknowledges that the application was accepted on 20 November 2001 by the Respondent as a properly made application pursuant to the IPA. That acknowledgement notice states that assessment will be subject to code assessment against the codes specified in the Respondent’s Planning Scheme and in the Act. The only IDAS referral agency referred to in the letter of acceptance is the Department of Main Roads whose status is shown in the letter as a concurrence agency.
- 10. The file also contains a further letter from the Respondent to the Appellant dated 29 November 2001 purporting to be an information request pursuant to 3.3.6 of the IPA. The document suggests that the Respondent intended to make an information request. However, the documents received from the Respondent do not indicate what that information request was. The existence of a request for information can have significance with regard to the time available to the Respondent to make a decision. The information and referral stage of the IDAS process comes to an end when the referral agency responses have been received and the applicant for development approval has

finished responding to the request for information.<sup>5</sup> In this case, the referral agency, the Department of Main Roads, advised that it had no requirements with respect to the subject application by letter dated 12 December 2001. The Respondent, in the absence of a notification stage of IDAS, on the basis that the application was code assessable “as per the acknowledgement notice” had, in the absence of an extension, 20 days to make the decision.<sup>6</sup>

6. In this matter, there seems to be no dispute that the time for making a decision had expired. The acknowledgement notice is clearly to the effect that the application was code assessable. The report to the Development, Health and Environment Committee of the Respondent, which appears to indicate that there are no outstanding requests for information, states that it was created on 6 December 2001. The response of the Respondent to the Registrar indicates that the Council deferred consideration of the application on 29 January 2002. As mentioned earlier, the Appeal was lodged on 11 February 2002. Clearly, more than 20 days had expired since 6 December 2001. I am of the opinion that the Appellant was entitled to appeal against a deemed refusal.

### **JURISDICTION – CODE ASSESSABILITY**

11. In its response to the Registrar dated 27 February 2002, the Respondent appears to dispute the jurisdiction of the Independent Assessor and its own conclusion set out in the acknowledgement notice that the development application was code assessable. The application is stated in the acknowledgement notice as an Application for Development Approval for a Development Permit for Material Change of Use of Premises for a Brothel. Making a material change of the use of premises for a licensed brothel is assessable development.<sup>7</sup>
12. A material of change of use of premises for a licensed brothel in an industrial area or on strategic port land is code assessable.<sup>8</sup> Unless a local planning instrument or amendment

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<sup>5</sup> Section 3.3.20 IPA.

<sup>6</sup> Sections 3.5.1. and 3.5.7 IPA.

<sup>7</sup> Schedule 8 to IPA, Clause 5.

<sup>8</sup> Schedule 1 to *Integrated Planning Regulation* 1998, (“the IPR”), clause 3.

of a local planning instrument, in either case, made after 1 July 2000, states otherwise, such a material change of use other than in an industrial area or on strategic port land requires impact assessment.<sup>9</sup>

8. Section 63A of the Act provides that, for the application of the IPA to a development application, an industrial area is land, however described, that is designated in a planning scheme or other planning instrument under the IPA as industrial, or that is predominantly industrial in character, having regard to the dominant land uses in the area or development provisions of the planning scheme or planning instrument applying to the area. The section gives examples of ways of describing industrial areas which include “service industry” along with “heavy industry”, “general industry”, “commercial industry” etc. Section 63A provides that part 4 of the Act, which includes Section 63A, applies despite the IPA and also provides that, if part 4 of the Act is inconsistent with the IPA, part 4 of the Act prevails to the extent of that inconsistency.
9. The response of the Respondent dated 27 February 2002 states that, under the planning scheme, the proposed development is in the service industry zone. This would seem to establish clearly, for the purpose of Section 63A of the Act, that the subject site is industrial land. This also seems to establish, conclusively, that the development application is code assessable.
10. Section 64 of the Act (also part of part 4) provides that the assessment manager must refuse a development application if the application land is in or within 200 metres of the closest point of any boundary of, a primarily residential area or an area approved for residential development or intended to be residential in character; or is within 200 metres of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities; in either case, measured according to the shortest route a person may reasonably and lawfully take, by vehicle or on foot, between the application

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<sup>9</sup> Ibid, Clause 4.

land and the other land. Section 64 also provides that the assessment manager must refuse a development application if the application land is within 100 metres of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities measured in a straight line. The response to the Registrar by the Respondent dated 27 February 2002 seems to acknowledge that Section 64 has no application. It states that schools, churches and the Slacks Creek Linear Park are within close proximity to the location of the proposed brothel but acknowledges that they are “not within the prescribed limits of the Prostitution Act”.

11. In any event, the matter is dealt with in some detail in the report of the Director of Development, Health and Environment dated 6 December 2001. The report states as follows:

“The surrounding area is considered to be typical of service industry zoned land in the City. Predominant uses include retail showrooms, open air displays, light/service industry premises, vehicle repair stations, open storage and distribution/warehousing premises. As previously mentioned, the subject site is included in a Precinct 1a of Underwood/Springwood/Slacks Creek Strategy that provide for a development of a wide range of industrial and industrial related activities. In addition, the site is zoned service industry. The intent of the service industry zone provides for amongst other things, development for primarily a range of services and trades and other industrial related purposes that are characterised by a high level of public contact. It is considered that the subject site is located in an industrial area as defined under the Act as the site is zoned service industry and designated for industrial purposes under the relevant district strategy”.

The report goes on to state:

“The subject site is located (as the crow flies):

- approximately 260 metres from the nearest residential land in Collard Street, Slacks Creek;
- approximately 150 metres from the nearest parkland;
- approximately 260 metres from the nearest bikeway near Collard Street;
- approximately 320 metres from Mabel Park State High School”.

It is noted that there is no direct lawful access by vehicle or on foot from the subject land to the abovementioned. In addition Slacks Creek can only be crossed at Paradise and Park Roads. Therefore any lawful and practicable access is circuitous. The nearest lawful and practicable access to the subject site from the closest of any of the abovementioned (Mabel Park State High School) involves a distance of around 1.2 kilometres. No other nominated land uses were identified within the specified criteria”.

12. It seems clear, therefore, that the assessment manager was not bound to refuse the development application pursuant to Section 64 of the Act.

### **CODE ASSESSMENT**

13. The code for assessment of development applications for a material change of use for a brothel in an industrial area is set out in Schedule 3 to the *Prostitution Regulation 2000* (“the PR”).<sup>10</sup>
14. Clause 3 of the Schedule states that the purpose of the code is to seek to ensure that a licensed brothel is compatible with the form, function and amenity of the locality in which it is located and to seek to ensure the safety and security of staff of the licensed brothel. Clause 4 of Schedule 3 provides that the code is complied with if each performance criterion in column 1 of the table is complied with for the brothel. It goes on to state that a performance criterion is complied with if the acceptable solution to the performance criterion set out in column 2 opposite the criterion is complied with or the criterion is complied with in another way. This form of drafting is consistent with most codes applicable to the IDAS assessment process. The provisions of the Schedule must, of course,

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<sup>10</sup> See Section 15 of the PR.

also be read with those provisions of the IPA which provide for the application of code assessment. In particular, the IPA provides that an assessment manager's decision may conflict with an applicable code if there are sufficient grounds to justify the decision, having regard to the purpose of the code.<sup>11</sup> Further, the assessment manager may refuse the application only if the assessment manager is satisfied that the application does not comply with the applicable code and compliance with the code cannot be achieved by imposing conditions.<sup>12</sup> Accordingly, the Respondent as assessment manager (and the Independent Assessor standing in its shoes) has a very limited ability to refuse code assessable development.

15. It is useful, in my view, to set out the whole of the table contained in Schedule 3. It reads as follows:

**“TABLE**

<b>column 1 PERFORMANCE CRITERION</b>	<b>column 2 AN ACCEPTABLE SOLUTION</b>
<p><b>Car parking for clients</b> 1. Adequate car parking is provided, or available, for brothel clients.</p>	<p>Provide 1 car parking space on the brothel premises for each room in the brothel.</p>
<p><b>Car parking for staff</b> 2. Adequate secure car parking is provided, or available, for brothel staff.</p>	<p>Provide 1 car parking space on the brothel premises, that is well lit and directly assessable to an entrance to the brothel, for each 2 brothel staff members at the brothel at any 1 time.</p>
<p><b>Vehicular access</b> 3. The brothel is safely accessed by vehicular traffic.</p>	<p>Locate vehicular ingress and egress to allow-</p> <p>(a) vehicles to enter and exit the premises in forward gear; and</p> <p>(b) if the brothel shares road access, parking areas or pedestrian areas with land used for other purposes - parking, vehicle manoeuvring for the brothel to be undertaken without adversely affecting the safety of traffic using the land.</p>
<p><b>Lighting</b> 4. External lighting for the brothel is</p>	<p>Provide external lighting for the brothel that-</p> <p>(a) is static; and</p>

<sup>11</sup> Sub-section 3.5.13(2) of the IPA.

<sup>12</sup> Sub-section 3.5.13(4) of the IPA.

designed to ensure the safety and security of brothel staff and clients without adversely affecting the amenity of adjoining premises.

- (b) has no characteristic indicating the premises are used for a brothel; and
- (c) facilitates surveillance; and
- (d) is hooded and directed downwards.

### **Sign**

5. Sign for the brothel is compatible with the amenity of the locality.

Comply with each of the following requirements-

- (a) only 1 sign is displayed for the brothel;
- (b) the surface area of the sign is not more than 1 m<sup>2</sup>;
- (c) the sign displays only the name of the licensee and the registered business name of the brothel;
- (d) the sign does not display words or images that are sexually explicit, lewd or otherwise offensive;
- (e) the sign is affixed to the brothel.

### **Loitering**

7. The design of the brothel discourages loitering outside the premises.

Provide a reception or waiting area at the brothel for use by brothel clients.

### **Appearance**

8. The brothel premises are unobtrusive in appearance.

Ensure the colours and materials for the brothel premises are unobtrusive.

### **Entrances – security**

9. The staff and clients of the brothel are provided with a secure environment with the brothel premises in the vicinity of each staff or client entrance to the brothel.

Locate the staff and client entrances to the brothel in positions that facilitate surveillance.

### **Entrance – clients**

10. The clients' entrance to the brothel is clearly identified.

Ensure the entrance to the brothel makes it clear to clients which premises to enter.

### **Brothel siting and design**

11. The brothel premises are sited and designed in a way that is compatible with the character or intended character of the locality.

Comply with the requirements about the character of the locality under a planning instrument, including boundary set-back, building height and bulk, and landscaping.

### **Infrastructure**

12. The brothel premises are adequately serviced by infrastructure.

Comply with the requirements for infrastructure under a planning instrument applying to the locality, including the requirements to connect to sewerage and water.

16. It is equally helpful to set out the assessment of the proposal conducted by the Director of Development, Health and Environment of the Respondent contained in the document dated 6 December 2001. This also is contained in tabular form. It reads as follows:-

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<b>PERFORMANCE CRITERION</b>	<b>AN ACCEPTABLE SOLUTION</b>	<b>COMMENT</b>
<p><b>Car parking for clients</b> Adequate car parking is provided, or available, for brothel clients.</p>	Provide 1 car parking space on the brothel premises for each room in the brothel.	Complies. Six customer car parking spaces have been provided.
<p><b>Car parking for staff</b> Adequate secure car parking is provided, or available, for brothel staff.</p>	Provide 1 car parking space on the brothel premises, that is well lit and directly accessible to an entrance to the brothel, for each 2 brothel staff members at the brothel at any 1 time.	Complies. The maximum number of staff is eight. Six secure staff car parking spaces have been provided in a basement with direct access to the staff lounge.
<p><b>Vehicular access</b> The brothel is safely accessed by vehicular traffic.</p>	<p>Locate vehicular ingress and egress to allow –</p> <p>(a) vehicles to enter and exit the premises in forward gear; and</p> <p>(b) if the brothel shares road access, parking areas or pedestrian areas with land used for other purposes – parking, vehicle manoeuvring and pedestrian movement for the brothel to be undertaken without adversely affecting the safety of traffic using the land.</p>	<p>The Department of Main Roads has advised that it has no requirements with respect to the application.</p> <p>Pedestrian access should be improved and can be included as a condition of approval.</p>
<p><b>Lighting</b> External lighting for the brothel is designed to ensure the safety and security of brothel staff and clients without adversely affecting the amenity of adjoining premises.</p>	<p>Provide external lighting for the brothel that –</p> <p>(a) is static; and</p> <p>(b) has no characteristic indicating the premises are used for a brothel; and</p> <p>(c) facilitates surveillance; and</p> <p>(d) is hooded and</p>	<p>The existing lighting adjacent to the street frontage is considered to be good. This lighting is provided by existing security lighting on the subject site and adjoining land and street lighting.</p> <p>The Applicant states that the car parking area will be adequately lit without</p>

	directed downwards.	highlighting the space and external lighting will comply with the code.
<p><b>Sign</b> Sign for the brothel is compatible with the amenity of the locality.</p>	<p>Comply with each of the following requirements –</p> <ul style="list-style-type: none"> <li>(a) only 1 sign is displayed for the brothel; and</li> <li>(b) the surface area of the sign is not more than 1 m<sup>2</sup>; and</li> <li>(c) the sign displays only the name of the licensee and the registered business name of the brothel;</li> <li>(d) the sign does not display words or images that are sexually explicit, lewd or otherwise offensive; and</li> <li>(e) the sign is affixed to the brothel.</li> </ul>	<p>The Applicant states that signage will be in accordance with the code and to Council's approval.</p>
<p><b>Loitering</b> The design of the brothel discourages loitering outside the premises.</p>	<p>Provide a reception or waiting area at the brothel for use by brothel clients.</p>	<p>Two clients lounges have been provided. A bench has been placed on the footpath opposite the adjoining site to the south. It is not used in conjunction with a bus stop. It is considered that the bench could encourage loitering and therefore should be relocated.</p>
<p><b>Appearance</b> The brothel premises are unobtrusive in appearance.</p>	<p>Ensure the colours and materials for the brothel premises are unobtrusive.</p>	<p>The external appearance of the brothel is proposed to match the front part of the building.</p>
<p><b>Entrances</b> The staff and clients of the brothel are provided with a secure environment within the brothel premises in the vicinity of each staff or client entrance to the brothel.</p>	<p>Locate the staff and client entrances to the brothel in positions that facilitate surveillance.</p>	<p>Separate staff and customer car parking is provided. The staff car park is secure and has direct access to the staff lounge. The customer entrance is readily identifiable from the car park. The customer car park has good surveillance from a balcony, external staircase and extensive windows in the rear elevation. To</p>

		ensure that surveillance is enhanced, it is considered that the roof of the customer car park should be deleted.
<p><b>Brothel siting and design</b> The brothel premises are sited and designed in a way that is compatible with the character or intended character of the locality.</p>	Comply with the requirements about the character of the locality under a planning instrument, including boundary set-back, building height and bulk, and landscaping.	The premises comply with the relevant provisions of the Planning Scheme and are compatible with the character of the locality.
<p><b>Infrastructure</b> The brothel premises are adequately serviced by infrastructure</p>	Comply with the requirements for infrastructure under a planning instrument applying to the locality, including the requirements to connect to sewerage and water.	Complies. All applicable services are available.

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17. Both the Appellant and the Respondent have provided me with copies of the application and information provided in support thereof. My assessment in reading that information and in perusing the plans of the proposed development are such that I concur with the assessment of the Director of Development, Health and Environment of the Respondent so far as it relates to factual matters. In doing this, I rely both on the opinions of the Director of Development, Health and Environment and on the information provided on behalf of the Appellant particularly information provided by the Appellant’s architect/consultant, John Nouwens. However, I formed the view when making the preliminary assessment that there were a couple of matters which required further comment.
18. My first concern was with regard to that criterion which relates to signage.<sup>13</sup> Item 5 contains 5 separate requirements in its acceptable solution column. Requirements (a), (b), (c) and (e) can be effectively dealt with by the imposition of a properly drawn condition (as has been provided in a draft by the Respondent). In particular, no issues of uncertainty arise in that the contents of any such condition are applicable without any real issues of judgment

<sup>13</sup> Item 5 in Schedule 3.

or interpretation being required.<sup>14</sup> However, requirement (d) of item 5 is that the sign does not display words or images that are sexually explicit, lewd or otherwise offensive. If that requirement were to be dealt with by condition, the matter may require interpretation and judgment. Such a condition may fall short of “clear objective standards ... which are capable of producing a result about which every man must agree if he knows the facts and figures and has made his calculations correctly”<sup>15</sup> (gender specific language in the original). Accordingly, I raised with the parties whether, to be valid, a condition dealing with requirement (d) of item 5 (that is, which avoids uncertainty and lack of finality) would require some form of specification of the contents of the proposed sign including the name of the licensee and the registered business name of the brothel. I sought assistance from the Appellant and the Respondent with regard to this aspect of the matter in the preliminary assessment.

19. The other matter that concerned me at the time of the preliminary assessment was whether the draft conditions of approval had been sufficiently traversed as between the Appellant and the Respondent so as to resolve any issues as to whether any of the conditions, not flowing directly and immediately from the requirements of the code, can be said to be irrelevant to or an unreasonable imposition on the development or not reasonably required in respect of the development.<sup>16</sup> In this respect, it is useful to set out the whole recommendation (including conditions of the Director of Development, Health and Environment contained in the document dated 6 December 2001). It reads as follows:

“

The location of the proposed brothel complies with recent changes to the Prostitution Act and complies or can comply with the requirements of the Prostitution Regulation 2000. It is considered that the appearance and layout of the proposed brothel is discreet and unobtrusive and would have little or no detrimental effect on the amenity of the area.

**IT IS RECOMMENDED:-**

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<sup>14</sup> *King Gee Clothing Company Pty Limited v The Commonwealth* (1945) 71 CLR 184; *Mt Marrow Blue Metal Quarries Pty Ltd v Moreton Shire Council* [1995] QPLR 182.

<sup>15</sup> *King Gee Clothing Company Pty Limited v The Commonwealth*, above, at 198, per Dixon J.

<sup>16</sup> Section 3.5.30 of the IPA.

Council approve a development permit for a brothel on the site, subject to the following conditions including compliance qualifications and the Applicant, Department of Main Roads and the Prostitution Licensing Authority be advised accordingly.

## 2. **SITE**

- 1.1 The development of the site shall comply with the provision of Council's Local Laws, Local Planning Policies, Planning Scheme and Development Manual to the extent they have not been varied by this approval.
- 1.2 The development of the site shall comply with the provisions of the Prostitution Regulation 2000.

## 2. **SITE PLANS**

- 2.1 The development of the site shall be in accordance with Drawing Nos SO 146 1, 2 and 3 by John Nouwens Architect as altered by this approval.

In particular the following alterations are required to be made:

- 2.1.3 A concrete pedestrian pathway with a minimum width of 1.2 metres shall be provided from the frontage of the site to the rear customer car park.
- 2.1.4 The roof of the customer car park shall be deleted.

## 3. **ROADS**

- 3.1 Access to the site is to be located to the standards and satisfaction of the Director of Development, Health and Environment and the Department of Main Roads and shall include the construction of a concrete industrial cross-over. Such access is to incorporate the construction of a two-way concrete industrial driveway slab, in accordance with IMEAQ Drawing Number R-0051.

*To be complied with prior to the commencement of the use.*

- 3.2 The bench on the footpath opposite the adjoining site to the south (lot 1 RP 213986) shall be relocated at full cost to the Applicant to the satisfaction of the Director of Development, Health and Environment.

*To be complied with prior to the commencement of the use.*

## 10. **DRAINAGE**

- 4.1 A stormwater drainage system shall be constructed in accordance with the provisions of Council's Development Manual and the Queensland Urban Drainage Manual. All drainage shall be discharged at a legal point of discharge to the satisfaction of the Director of Development, Health & Environment. The design of drainage works shall make provision for:

10.1.1 All external catchments currently discharging into the site to be carried across the site with necessary easements

10.1.2 All site drainage

*To be complied with prior to the commencement of the use.*

## 11. GENERAL ENGINEERING CONDITIONS

- 5.1 An external works plan prepared by a qualified consulting civil engineer shall be approved prior to commencement of any works.
- 5.2 The developer shall be responsible for the full cost of any alteration necessary to electricity, telephone, water mains, sewer mains, stormwater drainage systems or easements and/or other public utility installations resulting from the development or from road and drainage works required in connection with the development.
- 5.3 No work shall be commenced on works which will ultimately revert to Council or on adjacent roads or drainage schemes until Council has been advised in writing of the name of the responsible contractor and that the contractor has received from Council a notice of appointment of principal contractor under the provisions of the Workplace Health and Safety Act.

## 12. CAR PARK

- 6.1 An off-street carparking area laid out in accordance with Drawing Nos SO 146 1 and 2 by John Nouwens Architect shall be provided for both customers and employees. Such spaces to be laid out, paved, linemarked, signposted, drained and maintained in accordance with Council's Department Manual and current Local Planning Policy No 21 (Traffic Generating Developments) and Australian Standard 2890.1 – 1986 and Australian Standard 2890.2 – 1989.  
*To be complied with prior to the commencement of the use.*
- 6.1. The staff car park shall be secured with entry available only to staff through a keyed or remote opening system. External pedestrian access for staff shall also be available as shown on Drawing No SO 146-2.  
*To be complied with prior to the commencement of the use.*

## 13. FLOODING AND FILLING

- 7.1 The development of the site shall comply with Council's Local Law No. 6 in respect of flood plain management unless otherwise specified by the Director of Development, Health & Environment.

## 14. LANDSCAPE PLAN/WORKS

- 8.1 A landscape plan and documentation prepared by a corporate member of the Australian Institute of Landscape Architects in accordance with the provisions of Council's Development Manual shall be approved by the Director of Development, Health & Environment showing the proposed landscape works.
- 8.3 Landscape works shall include:

8.2.1 Carpark landscape works including landscape areas and shade trees in accordance with Section 2.11.5 of the Council's Development Manual.

8.2.5 Landscaping in the customer car park and adjoining pedestrian footpath shall be restricted to low growing vegetation, and trees with clear trunks to prevent concealment of persons and discourage loitering.

8.2.6 An automatic inground irrigation system.

8.2.7 A type 2 concrete wall, 0.15 metres minimum height, or other approved barrier erected between any landscaped area and car parking areas or driveway.

*To be complied with prior to the commencement of the use.*

8.3 Landscape works shall be subject to ongoing maintenance to the satisfaction of the Director of Development, Health & Environment.

8.4 Footpath tree planting shall be provided in accordance with Council's Development Manual.

8.4.4 All trees shall have a minimum container size of 25 litres.

8.4.5 Tree species shall be as approved by the Director of Development, Health & Environment.

8.4.6 Tree guards shall be installed around trees to prevent theft, vandalism or accidental damage.

*To be complied with prior to the commencement of the use.*

## 15. GENERAL CONDITIONS

9.1 Street numbers are to be displayed. Numerals are to be not less than 300mm in height. Numbers shall be illuminated with static lighting.

*To be complied with prior to the commencement of the use.*

9.9 Building colours and materials are to be unobtrusive.

9.10 Building surfaces and fencing are to be treated with anti graffiti paint.

9.11 The customer entry to the brothel shall be clearly identified from the car park.

9.12 Provision shall be made for security lighting:

- between the proposed building and the road frontage,
- in the car park,
- at access points, and
- along pedestrian footpaths and external to any proposed fencing.

9.13 External lighting shall:

- Be static,
- Have no characteristics indicating the premises are used for a brothel,
- Facilitate surveillance, and
- Be hooded and directed downwards.

9.14 Signage for the brothel shall be in accordance with the following:

- Only one sign with a maximum of one square metre and attached to the brothel.
- The sign shall only display the name of the licensee and the registered business name of the brothel.
- The sign does not display words or images of a sexually explicit, lewd or otherwise offensive nature.
- No bunting or streamers are to be displayed.

9.15 Transformers or substations are to be constructed in an area specifically nominated for that purpose. No transformer is to be located within the designated landscape area required under the Planning Scheme or in this approval. All development applications for building works shall be accompanied by a certificate from the supplier stating whether or not the development requires a substation or transformer. If in the event that the building requires a substation or transformer the certificate shall also state whether the installation meets the technical requirements of the supplier.

9.9. No gas installation is to be located within designated landscaped areas. A designated area for a gas installation shall be indicated on the building plans. All servicing shall take place from an on-site location. Any proposed installation shall be constructed to Australian Standard AS 1596 LP Gas Storage and Handling, Australian Gas Association Code A.G.60/-1989 and the Gas Act/Regulations. If in the event no gas installation is required or it is deleted the area shall be turned over to on-site landscaping.

## **FURTHER ADVICE TO APPLICANT**

### **In relation to the application, the applicant be further advised:**

1. A licence for the brothel shall be obtained from the Prostitution Licensing Authority.
2. The following development permits under the Integrated Planning Act are required to be approved:

- Building Works
- Plumbing and Drainage

**The applicant and owner be further advised:-**

It is the owner's and occupants responsibility under the Environmental Protection Act 1994 to advise the Chief Executive of the Environmental Protection Agency, of any Notifiable Activity conducted on the site or contamination or suspected contamination which may cause a hazard to human health or the environment within 30 days of becoming aware of the operation of a Notifiable Activity on the site or of any contamination or suspected contamination. The Chief Executive, pursuant to the Act, is empowered to require that the development complies with the provisions of the Act, including the preparation of site investigation reports and if necessary the remediation of the site at the owners expense."

20. In their submissions in response to the preliminary assessment, the parties satisfied me that there had been time to consult with regard to the contents of the conditions. By agreement, the parties urged a slight amelioration of the requirement to use anti-graffiti paint required by general condition 9.3. It was acknowledged by the Respondent that the likelihood of graffiti on the building was low and that the use of such paint need only occur on the façade of the building and the southern side of the building up to a height of two metres.

Accordingly, I find that condition 9.3 should be amended so that it reads:

- "9.3 That building surfaces (restricted to the façade of the building and that part of the southern side of the building visible from the Pacific Highway and restricted to a height of two metres) be treated with anti-graffiti paint".

21. At the very end of its submissions dated 5 April 2002, the Respondent made the following comment:

"I have attached a consolidated version of Council's conditions including Council's requirement for a contribution towards mobile security cameras."

22. The document contained provision for a contribution of \$30,000. This appears to be the very first mention of such a condition or requirement by either party in the proceeding before me. I have no material before me which constitutes a justification for such a condition although one might surmise that evidence may be available in some cases to make such a condition both reasonable and relevant. I was surprised that such a proposal would be raised at such a late stage in circumstances where the parties had been given a chance to "make such further submissions in response to the submissions of the other party as that

party considers appropriate”.<sup>17</sup> In light of the statutory object that appeals of this kind be, inter alia, “speedy”<sup>18</sup>, I have formed the view that I should not give any further leave to allow the Respondent to place material before me to justify the proposed condition 9.10. I find that the proposed condition is not supported on the evidence before me and does not meet the requirements of s.3.5.30 of the IPA<sup>19</sup>.

23. I return to the issue of possible unlawfulness due to uncertainty of the third dot point of clause 9.7 of the conditions which reads as follows:

“ Signage for the brothel shall be in accordance with the following:

...

- The sign does not display words or images of a sexually explicit, lewd or otherwise offensive nature.”

21. The submissions of both the Appellant and the Respondent addressed the issue raised in the preliminary assessment. The Appellant argued that the uncertainty issue could be addressed by making the signage subject to the further approval of the Respondent. The Respondent pointed out that signage was operational work pursuant to the IPA.<sup>20</sup> While 3.1.2 of and Schedule 8 to the IPA do not expressly make this aspect of operational work assessable development, the Respondent’s submissions pointed out that this was achieved by the Respondent’s Planning Scheme<sup>21</sup>. Accordingly, another approval process does exist between the grant of the planning consent and the installation of the signage.

22. It is not, however, the imposition of a further approval process which prevents the third dot point of clause 9.7 of the draft conditions from being void for uncertainty. Rather, it is clear from the words of the Code contained in the Table of Schedule 3 to the PR that the condition

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<sup>17</sup> Part of directions contained in letter dated 2 April 2002 to parties.

<sup>18</sup> Section 64A of the Act.

<sup>19</sup> See text associated with footnote 16 above.

<sup>20</sup> Section 3.1.5 provides:

“operational work” means –

...

(d) placing an advertising device on premises; ...”

<sup>21</sup> Schedule 10 to the IPA provides that assessable development is development specified in Schedule 8, part 1 to the IPA or development not specified in Schedule 8, part 1 but declared under the planning scheme for the area to be assessable development. See also s. 1.3.2 for the definition of development which includes operational work.

can hardly be drafted any other way and still be in accord with the column 2 acceptable solution for performance criterion 5 of the code which relates to signage. Subparagraph (c) of the acceptable solution requires that the contents (wording) of the sign comprise only the name of the licensee and the registered business name of the brothel constituting the use at the premises. It is clear that the name of the licensee and of the registered business name is very likely to change from time to time. It would therefore be impossible to approve, as part of approving the material change of use, signage containing the name of a licensee or the registered business name neither of which are currently associated with the use. Indeed, it was envisaged as part of the approval process in this case that the licence from the Authority would be obtained after the approval of the material change of use was obtained.<sup>22</sup> Thus, at this stage, even the name of the first licensee and, therefore, the contents of the signage is unknown. Therefore, it is not consistent with the contents of the acceptable solution as a whole to attempt to avoid what might, otherwise, appear to be unacceptable uncertainty in the conditions by approving the contents of the signage in advance.

23. It also appears to be that, by specifying the third dot point of condition 9.7 in the precise terms of the acceptable solution contained in the PR, one does, in any event, achieve legal certainty. This is not the form of certainty envisaged by Dixon J. with its mechanical application of mathematical algorithms. Rather, it is certainty achieved by application of the legal contents contained in the acceptable solution. If the Respondent or any other person<sup>23</sup> is of the view that either the condition or the acceptable solution is not complied with by a particular sign on the brothel at this site, then an application to the court can resolve the matter.
24. For the above reasons, I have concluded that the appeal should be upheld. The failure to decide the appeal should be replaced by a decision approving the application for material

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<sup>22</sup> See the recommendation of the Director of Development, Health and Environment of the Respondent under the heading: "Further Advice to " set out in para. 19 above.

<sup>23</sup> See s.4.1.21 of the IPA: "Any person may bring proceedings in the court for a declaration about –

...

(c) the lawfulness of land use or development."

change of use subject to conditions as discussed in these reasons. I have recorded the decision including the conditions in a separate document. In setting out the conditions in the decision, I have made minor changes to punctuation and to forms of expression. I am of the view that these changes make no substantive difference to the conditions as set out earlier in these reasons. I have also deleted from the formal decision the recommendations as to certain advices to be given to the Appellant as to further permits to be obtained. The appellant should, of course, remain aware of those other steps which need to be taken before the use the subject of the development permit becomes lawful. As well as those matters deleted from the recommendation to the Respondent, there are, of course, those conditions which are expressly required to be complied with prior to the use commencing.

25. In accord with the Act,<sup>24</sup> each party to the appeal must bear its own costs and it is unnecessary to make any order in that regard.

***Stephen Keim***

Independent Assessor under the Prostitution Act  
18 September 2002

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<sup>24</sup> Section 64R.