



## INDEPENDENT ASSESSOR

*Prostitution Act 1999*

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

AND:   **LOGAN CITY COUNCIL**  
Assessment Manager

### REASONS FOR DECISION

1. By a Notice dated 28 March 2003, Springwood Developments Pty Ltd gave notice to me as the Independent Assessor under the *Prostitution Act 1999* (“the Act”) of a Request to Change Conditions of the development approval which I had, by my decision on an appeal to the Independent Assessor, granted on 24 April 2002. The Request was that the conditions be changed in the following manner:
  - (a) By substituting an attached drawing No. SO146-6A for drawing No. SO146-2 and modifying drawings Nos. SO146-1 and SO146-3 as a consequence of the substitution; and
  - (b) In condition 6.1 of the Development Approval, by deleting the reference to drawing No. SO146-2 and replacing it with a reference to the attached drawing SO146-6A.
2. That Notice was accompanied by a letter from Messrs Melville McGregor Lawyers, dated 28 March 2003 which was received by the Registrar of the Independent Assessor (at the Prostitution Licensing Authority) on 1 April 2003.
3. However, the said lawyers forwarded a further letter, dated 14 April 2003 (received by the Registrar on 16 April 2003) which enclosed an Amended Notice to the Independent Assessor requesting a change of the conditions of the development approval. This was dated 14 April 2003. Essentially, the amendment involves the abandonment of SO146-6A and its replacement (as the replacement of SO146-2) by five drawings called (or displaying) a block

diagram, a basement parking and storage diagram, a lower level gentlemen's club drawing, a showroom (upper level) drawing and an upper level gentlemen's club drawing.

4. I shall return to what I understand are the substantive changes effected by the replacement drawings or diagrams. However, it is appropriate that questions of jurisdiction be addressed as a preliminary matter.
5. Section 64F of the *Act* under the heading, "Independent Assessor's Jurisdiction", provides that the Independent Assessor may hear and decide appeals made to the Independent Assessor under that Part, Part 4 of the *Act*. For that purpose, s. 63A of the *Act* provides that Part 4 of the *Act* applies despite the *Integrated Planning Act 1997* ("the *IPA*"). It also provides that, if Part 4 of the *Act* is inconsistent with the *IPA*, Part 4 prevails to the extent of the inconsistency. It was through the operation of s. 63A that I was able to deal with the original appeal in this matter and, in determination of that appeal, grant the application for a development permit for the material change of use of premises for a brothel subject to the conditions imposed on that occasion.
6. The jurisdiction granted by s. 64F of the *Act* is a statutory jurisdiction such that, apart from any jurisdiction necessarily implied to allow that jurisdiction to be exercised, it is restricted to that bestowed by the statute.
7. However, s. 3.5.33 *IPA* provides as follows:

**"3.5.33 Request to Change or Cancel Conditions**

(1) This section applies if –

- (a) a person wants to change or cancel a condition; and
- (b) no assessable development would arise from the change or cancellation.

(2) The person may, by written notice to the entity that decided the condition or required the condition to be imposed on or attached to the approval, ask the entity to change or cancel the condition.

(3) If the person is not the owner of the land to which the approval attaches, the request must contain the owner's consent.

(4) If the entity has a form for the request, the request must be in the form and be accompanied by the fee for the request –

- (a) If the entity is a local government – set by a resolution of the local government; or
- (b) If the assessment manager is another public sector entity – the fee prescribed under a regulation under this or another Act.

(5) The entity must decide the request within 20 business days after receiving the request.

- (6) The entity and the person may agree to extend the period within which the entity must decide the request.
- (7) To the extent relevant, the entity must assess and decide the request having regard to –
  - (a) the matters the entity would have regard to if the request were a development application; and
  - (b) if submissions were made about the application under which the condition was originally imposed – the submissions.
- (7A) Also, if a building referral agency gave advice about an aspect of the application the subject of the request, the assessment manager must have regard to the opinion of the agency about the change before deciding the request.
- (8) The entity must give the person written notice of its decision.
- (9) If the entity is a concurrence agency or the court, the entity must give the assessment manager written notice of any change or cancellation.
- (10) A changed condition or cancellation takes effect from the day the notice is given to the person.
- (11) Subsections (5) and (6) do not apply if the entity is a court.”

- 8. I am of the opinion that s. 3.5.33 *IPA* is capable of applying in its terms to the Independent Assessor as an entity which has decided a condition or required a condition to be imposed on or attached to a development approval. Therefore, a person may apply to the Independent Assessor to exercise the jurisdiction provided by s. 3.5.33.
- 9. What is not clear is the precise manner in which s. 3.5.33 applies to the Independent Assessor. To the extent that s. 63A provides that Part 4 of the Act prevails over the *IPA*, the predominant part of that modification is to substitute the Independent Assessor for the court in respect of planning appeals related to code assessable material changes of use for the purposes of a brothel. It is certainly arguable, therefore, that, for requests to change or cancel conditions of such development approvals, references in s. 3.5.33 to “the court” should be read as references to “the independent assessor”. This would have the effect that the obligation to decide the matter within 20 business days unless otherwise agreed in subsections (5) and (6) would not apply as a result of the effect of subsection (11) of s. 3.5.33. Perhaps, more importantly, such a reading of the section has the effect that, pursuant to subsection (9), there is an express requirement to give written notice of any change or cancellation to the assessment manager. One might think that that would, of necessity, need to apply.
- 10. It would also seem appropriate, whether as a matter of strict statutory requirement or not, that the Independent Assessor should apply, so far as is possible, the procedure set out for deciding

appeals contained in Division 7 (s. 64P and following) of Part 4 of the Act. Accordingly, I proceeded to determine this matter on a tentative basis by way of preparing a preliminary assessment and I then allowed the parties, including the local government as assessment manager, an appropriate period of time within which to make written submissions about the preliminary assessment and further time to respond to one another's submissions. The details are set out below. The result of the preliminary assessment was that, primarily because of certain vagueness and lack of definition in the plans upon which I was asked to make the assessment, the requested changes to the conditions contained at least a possibility of assessable development resulting from the changes so as to preclude the availability of the jurisdiction to approve the changes pursuant to s.3.5.33 IPA.

11. None of the submissions received from the parties raised any criticism of or objection to my tentative views expressed in the preliminary assessment on these issues. Rather, the response of the applicant was to take the findings on board and supply further plans responding to the criticisms of the earlier plans and clarifying those matters which had led to the preliminary conclusions. In these circumstances, in order to understand the further changes to the proposal, it is useful to set out the reasoning by which I had arrived at those conclusions.

Accordingly, the relevant paragraphs of the preliminary assessment are set as follows:

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- 1) *Firstly, I am satisfied that the application (in its amended form) involves a request to change a condition of a development approval. It is clear from the decision made on 24 April 2002 that condition 2, under the heading “Site Plans”, conditioned the approval that it would be in accord with drawings numbered SO146-1, 2 and 3 by John Nouwens Architect, albeit, as otherwise altered by the development approval. Condition 6.1 of the development approval provides that an off-street car parking area laid out in accordance with drawings numbered SO146-1 and 2 by John Nouwens Architect would be provided for both customers and employees.*
- 2) *A pre-condition to the jurisdiction provided by s. 3.5.33 IPA being available is the requirement in subsection (1)(b) of the section that no assessable development would arise from the change or cancellation. The meaning of this requirement was considered by Quirk DCJ in Rhema Management Services Pty Ltd v Council of the Shire of Noosa<sup>1</sup> where His Honour stated that the requirement should be understood to mean “that the proposed changes to any condition of approval would not give rise to a form of development that is so different to the original as to require independent assessment as ‘assessable development’ within the meaning of [the IPA]”. His Honour’s approach has been followed elsewhere in the Planning and Environment Court*

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<sup>1</sup> [2000] QPELR 15.

including by Wall QC DCJ in Rose Bay Developments Pty Ltd v Bowen Shire Council & Anor<sup>2</sup> I agree with that approach.

- 3) *Whether the requested changes to the conditions give rise to assessable development requires, for its determination, a substantive consideration of the proposed changes. The comparison of the dimensions shown on the block diagram with drawings numbered SO146-1 and SO146-2 indicates changes in dimensions in that the brothel part of the building which previously measured 20m x 20m, now, on the upper level measures 32m x 22.5m and, on the lower level, measures 46.2m x 22.5m. The reference to “gentlemen’s club” rather than “brothel”, I have assumed, is not meant to indicate a different use but rather what might be thought to be a more polite description of the same use. The drawing entitled “upper level gentlemen’s club” appears to show broadly similar activities although arranged in a different layout. There is some change in terminology in that what may have previously been called “amenities area” is now called “cinema”. And what was a main lounge is now called “staff lounge” and there is provision for a staff terrace. The diagram still appears to provide for four rooms to be used for prostitution purposes although one is now described as a “De Lux” room. The diagram still shows a non-brothel use at the front of the site although it is identified as a “showroom” whereas previously it was identified more broadly as an industrial tenancy. The diagram showing the “lower level gentlemen’s club” shows more rooms than previously. There are four rooms shown as gentlemen’s specialty rooms; there is a lounge room, sauna, game room and pool room as well as a disabled room and some private rooms including a private waiting room. Previously, the lower level of the brothel had been shown as simply involving an amenities area, a fifth room and a client lounge room with a pool table.*
- 4) *The basement parking and storage diagram shows some 24 parking spaces including two spaces dedicated to disabled parking and an area for parking motor bikes. Storage areas are also shown. The basement parking appears from the block diagram as being on the lower level at the front of the site towards the front of the lower level of the gentlemen’s club and below the showroom. The basement parking and storage area previously included a proposed workshop area with some brothel staff secure parking at the rear. What is not clear to me from the five diagrams is which parking areas are intended to be staff parking and what methodology is proposed to ensure the security of that staff parking. Also, what is not clear from the diagrams is the extent to which that basement parking is exclusively available to the brothel use and to what extent that basement parking is to be used for the industrial non-brothel uses proposed elsewhere on the site.*
- 5) *To a significant degree, the question as to whether the proposed changes to conditions give rise to assessable development is answered in the present matter by reference to the code by which code assessable development of this kind is made assessable. The code is contained in Schedule 3 to the Prostitution Regulation 2000 (“the PR”). The Code was set out fully in paragraph 15 of my Reasons for Decision in the appeal by Springwood Development Pty Ltd by which the development permit was granted.*
- 6) *The main issues which appear to arise in respect of the alternative plans from a consideration of the PR relate to car parking for clients; car parking for staff; and vehicular access. (The increased size of the brothel use per se does not seem to raise questions of assessable development.) As to the performance criterion which relates to car parking for clients, the drawing showing the internal layout of the lower level of the brothel shows five car parks for use for parking by clients<sup>3</sup>. This is in a similar area to where some six car parks were shown in Drawing No. SO1046-2. Since the acceptable solution is to provide one car parking space on the*

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<sup>2</sup> [2001] QPELR 340.

<sup>3</sup> At least, this appears to be what the diagram portrays. The original has been “chopped” slightly in the photocopying process and the words are only partially decipherable.

brothel premises for each room in the brothel, the reduction of one car park does not seem to be of great significance in terms of assessable development arising from the change proposed to the conditions.

- 7) In addition, as previously mentioned, there are some 22 ordinary car parks; two car parks reserved for disabled parking and a park for motor bikes in the basement parking area. It is not clear, however, whether these car parks are to be shared with the non-brothel uses on site. Further, the basement parking and storage area is to occupy some of the space which was previously dedicated to brothel staff secure parking. The performance criterion which relates to car parking for staff requires adequate secure car parking available for brothel staff. The acceptable solution suggests that one car parking space that is well lit and directly accessible to an entrance to the brothel be provided for each two brothel staff members at the brothel at any one time. Clearly, there are a plethora of available car parks but I am unable to obtain any indication from the five diagrams as to which of the various car parks are intended to be used by staff.
- 8) In *Reasons for Decision* handed down in Leach v Gold Coast City Council<sup>4</sup>, I expressed the view that the performance criteria relating to car parking for clients and car parking for staff in the schedule to the PR were not satisfied by providing a bank of car parking which could be drawn upon by clients of the brothel, staff of the brothel and the customers or staff associated with another use on the broader industrial site. In Leach v Gold Coast City Council, a requirement was imposed that car parking which was closest to an entrance and which was covered by electronic video surveillance at all relevant times be reserved by clear sign labelling for brothel staff. I also required that, at least the minimum amount of car parking required for brothel clientele be reserved by appropriate sign posting.
- 9) It appears to me that, unless clear proposals are provided either through clarification of the drawings or diagrams proposed to form part of the conditions or by additional words proposed to be added to the conditions to provide similar clarification, the amendment to the conditions requested is likely to result in various failures to comply with the code contained in schedule 3 to the PR. Such failures to comply would, in my opinion, constitute development sufficiently different to that subject to the existing development permit as to cause assessable development to arise from the proposed changed conditions. Such circumstances would preclude the jurisdiction to grant the requested changes pursuant to s. 3.5.33 IPA.
- 10) The performance criterion with regard to vehicular access contained in the code merely states that the brothel must be safely accessed by vehicular traffic. The acceptable solution is more detailed and makes reference to a need to locate vehicular ingress and egress to allow vehicles to enter and exit the premises in forward gear. Apart from a requirement for a condition requiring improvements to pedestrian access, neither the assessment manager nor the Department of Main Roads had any concerns with regard to the issue of vehicular access on the hearing of the appeal which gave rise to the development permit. The basement parking shown in the basement parking and storage diagram shows provision for the basement parking to be accessed and exited in one flow through stream. This actually seems to be an improvement by reference to the acceptable solution. However, until the issue of dedicated clientele and staff parking is resolved, it is difficult to ascertain whether there are difficulties or otherwise with regard to vehicular access.
- 11) Section 64(1)(d) of the Act provides that the assessment manager must refuse a development application if more than five rooms in the proposed brothel are to be used for providing prostitution. This does not mean that no brothel can contain more than five rooms. The clear intention of the paragraph is to restrict the size of the brothel operation associated with any

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<sup>4</sup> Handed down on 24 July 2002.

*development approval to what might be called five working rooms. Rooms used for the ancillary purposes of a brothel such as staff recreation rooms; customer waiting rooms; and rooms used for the storage or washing of linen would seem to fall outside the concept of being “used for providing prostitution”. It may even be possible that a brothel may, without offending the prohibition, have one or more standby rooms available to be used for the purpose of providing prostitution when one or more of the main rooms to be used for that purpose are off line because of maintenance, redecoration or refurbishment. That is, it may be possible to read the restriction as requiring that no more than five rooms in the proposed brothel are to be used for providing prostitution at any particular time.*

- 12) It is tolerably clear from the drawings numbered SO146-1, 2 and 3, particularly, SO146-2 that only five rooms were to be used for the purpose of providing prostitution in that other rooms and spaces shown in the drawing were clearly identified as having purposes of an ancillary nature. The same matters do not emerge as clearly from the five drawings intended to replace drawing number SO146-2. The drawing showing the upper level gentlemen’s club appears to show four rooms intended to be used for providing prostitution including the “De Lux” Room No. 5. The diagram showing the lower level has a number of rooms whose purposes are more difficult to discern. For example, it is not clear to me from a simple reading of the diagram what purpose is to be served by the four rooms described as “gentlemen’s specialty rooms”. Similar comments can be made with regard to two rooms shown as private rooms. I have assumed that the room marked as disabled room is intended to be the fifth of the five rooms intended to be used for providing prostitution. As can be seen from this limited discussion, the possibility that the changed conditions may give rise to a situation where more than five rooms in the proposed brothel are to be used for providing prostitution gives rise to a possibility that assessable development would arise from the proposed change. Further, the possibility is not only of assessable development but assessable development in respect of which an assessment manager (and, in its place, the Independent Assessor) would be obligated to refuse a development application pursuant to s. 64 of the Act.*
- 13) It may well be the case that clarification can be provided either by more detailed notations on the five proposed substitute diagrams or by the addition of further words to the proposed changed conditions which would make it possible for the proposed physical changes to be achieved to the proposed construction of the brothel without the possibility of assessable development arising from the proposed changes to the conditions. At the present time, however, based on the present level of information, I am inclined to the view that the requested changes should be refused on the basis that such changes would give rise to assessable development.*
- 14) Subsection 3.5.33(3) IPA requires the owner’s consent to a request for amendment if the person seeking the changes by written notice is not the owner of the land. While the documentation associated with the appeal may have confirmed that the appellant, Springwood Development Pty Ltd, is the owner of the land, that is not clear from the documentation presently before me. If the application is to proceed beyond the stage of preliminary assessment, then confirmation should be provided that the applicant for the change to conditions is in fact the owner of the land.*
- 15) Subsection 3.5.33(4) IPA requires that the request must be in the prescribed form and accompanied by the prescribed fee for the request if the entity (in this case the Independent Assessor) has a particular form. In the case of an entity other than a local government, the fee must be prescribed under a regulation pursuant either to the IPA or another Act of Parliament. Item 15 in Schedule 2 to the PR prescribes a fee of \$750.00 payable on lodging a Notice of Appeal to the Independent Assessor. I am of the opinion that the application to change a condition of a development permit is a different application. Accordingly, there appears to be no prescribed fee. Equally, the matter of an appropriate form has not received previous consideration. The form chosen by the applicant for the change is appropriate. Accordingly, the requirements of subsection (4) are satisfied.*

*16) Subsection 3.5.33(7) requires that the Independent Assessor assess and decide the request having regard to the matters that one would have regard to if the request were a development application and, if submissions were made about the application under which the condition was originally imposed, those submissions. Since the original appeal related to code assessable development only, no submissions were received or considered for the purposes of that original appeal. As I have indicated previously, the key matters requiring consideration on the original appeal were the matters raised by the code contained in schedule 3 to the PR. Those issues arising in respect of the code have already been discussed earlier in this preliminary assessment, particularly, in the context of the question whether assessable development would arise from the proposed change. The substantive matters discussed in that context would also appear to be the same substantive matters arising for consideration in assessing and deciding the request itself. That is, if the applicant can resolve those issues apparently giving rise to assessable development in the proposed changes, then it is likely that assessment of the changes as against the code will result in a favourable determination. However, as presently advised, the changes appear to raise matters which give rise to assessable development. At the same time, they appear to give rise to aspects of the development which either fail to comply with the code or fail to comply with s. 64(1)(d) of the Act. My preliminary assessment is, as presently advised, that the assessment of the request for a change to conditions pursuant to subsection 3.5.33(7) should be answered in the negative.*

*17) This seems to complete my preliminary assessment of the request for a change to the conditions of the development permit. My preliminary view is that the requested change would give rise to assessable development and so no jurisdiction exists in the Independent Assessor to grant the requested change. Those same factors would require a negative decision when assessing the proposed changes as against the code and the Act.”*

12. The solicitors for the applicant forwarded a letter dated 29 May 2003 (received by the registrar on 30 May 2003) enclosing certain submissions on behalf of the applicant in response to the Preliminary Assessment. Those submissions in turn enclosed two colour drawings being sheets 1 and 2 showing the lower and upper level of the brothel and five revised drawings showing (and entitled), respectively: Brothel (lower level); Showroom (upper level); Brothel (upper level); Basement Parking (brothel clients – showroom and document storage customers); and block site plan. Neither the colour drawings nor the revised drawings contain an author’s reference number so they will be marked, respectively, in the case of the colour drawings, Exhibits 1A and 1B and in the case of the revised drawings Exhibits 2A to 2E.

13. The submissions on behalf of the applicant responded to the issues raised in the Preliminary Assessment in a number of respects. With regard to the issue of staff parking, submissions stated as follows:

*“The staff parking is labelled as such on the revised drawing sheet 1 (Exhibit 2A) showing car parks numbered 1-8 as staff secured parking. For security there is a remote controlled gate indicated at the entrance to the brothel staff car parking area. There is also a security camera in the car park area. The area will be adequately lit and have a secure entrance directly accessible to the brothel via the rear staircase shown in the drawing.”*

14. Exhibit 2A reflects the statements in the submission. On the basis of those changes, the staff car parking would satisfy the criterion contained in the Code.

15. On the issue of client car parking and its appropriate separation, at least conceptually, from car parking for other uses, the submission states as follows:

*“The basement parking area is shown on revised drawing 4 (Exhibit 2D). This drawing indicates parks 1–8 and the motor cycle park area for use by showroom and document storage customers only. Each of these car parking areas is directly accessible via the driveway. Car park numbers 9-24 inclusive are for brothel clients only. These parks are separated from parks 1-8 and the motor cycle area by a wall at the rear of those parking spaces. Given this car parking arrangement, it is submitted that the brothel can be safely accessed by vehicular traffic.”*

16. Again, reference to Exhibit 2D reflects the statements made in this submission. As such, the now proposed arrangement would appear to satisfy those criteria relating both to car parking for clients and vehicular access. In terms of numbers of car parks, the amount of car parking is quite generous. It would still be necessary, in my opinion, that some form of signposting indicate that those car parks intended to be for brothel customers are identifiable as such both by customers of the brothel and customers of the other uses on the site.

17. On the issue of ambiguity as to whether more than five rooms were intended to be used for prostitution purposes, the submission responds as follows:

*“The revised drawing sheets 1 (exhibit 2A) and 3 (exhibit 2C) show five rooms numbers 1 (disabled) on the lower level sheet 1, and rooms 2, 3, 4 and 5 (deluxe) on the upper level sheet 3 as available for prostitution. All other rooms shown in the brothel are marked and identified as specific purposes other than for use as prostitution. Rooms labelled Gentlemen’s Specialty Rooms shown on the plan of the lower level which was enclosed with amended notice to the Independent Assessor, have been deleted and the rooms previously marked “Private Rooms” on those plans have been clarified as being Client Private Waiting Rooms (shown as rooms A, B and C on the revised drawing sheet 1). The room previously labelled as “disabled room” on the plans enclosed with the amended notice to the Independent Assessor in the plan of the lower level is now clearly shown as room 1 (disabled) on the revised plan and that room is intended for use for prostitution. Collectively, the revised drawing sheets*

1 to 5 show that there is a maximum of five only rooms available for use for prostitution in the proposed brothel.”

18. The clarification provided in the statement appears to be confirmed by reference to Exhibits 2A and 2C. In particular, on Exhibit 2A, there is a note indicating that rooms A, B and C are “Client Private Waiting Rooms”. These changes and clarification satisfy my concerns, expressed in the preliminary assessment, that the proposed changes to the original proposal may have involved the possibility that more than the five rooms permitted by s.64(1)(d) of the Act may have been contemplated by the plans submitted.
19. In terms of the concern raised in the preliminary assessment with regard to whether the application for changes to the conditions was made with the consent of the owner of the land, the submissions referred to and enclosed a copy of a current title search from the Natural Resources and Mines Department (formerly the Titles Office) showing the applicant for the changes, Springwood Developments Pty Ltd, the owner of the estate in fee simple to Lot 6 on Registered Plan 74154. The relevant dealing (the transfer to the applicant) No. 705216735 was registered on 26 November 2001. The date of the search is 29 May 2003. This satisfies the concerns raised in the preliminary assessment with regard to that matter.
20. The submissions concluded as follows:

“Overall, having regard to the above, it is submitted that the revised drawings enclosed herewith confirm that the proposed changes to the conditions comprising the amended and revised drawings comply with the code. It is submitted that the proposed changes do not mean there is an assessable development.”
21. Certainly, subject to any further submissions received, the contents of the submission, Exhibits 1 and 2 and the copy of the current title search, if accepted as a further amendment for the Application for Changes to Conditions, answered the concerns raised in the preliminary assessment and brought the proposed changes within the jurisdiction provided by s.3.5.33 IPA. In particular, treating Exhibits 1 and 2 and the submissions as the basis of an amended application, the Application for Changes to Conditions no longer meant that

assessable development would arise from the change. Similarly, on the same basis, on a substantive consideration, there was nothing to indicate that the changed conditions would lead to non-compliance with the code in the PR.

22. The assessment manager, Logan City Council, had in fact responded to the preliminary assessment by letter dated 26 May 2003 received by the registrar on the same day as the submissions (and amended drawings) of the applicant. The assessment manager indicated that it was not opposed to change and indicated that the original proposed changes in drawing No. SO146-6A would have been generally acceptable. In fact, the Council stated that the car parking layout, vehicular pedestrian access and location of the reception were considered to be superior to the approved plan of development. However, the assessment manager raised the same concerns as had been expressed in the preliminary assessment in the following terms:

“Council supports the independent assessor’s comments in regard to the replacement drawings. In particular it is considered that the size and number of rooms is significantly larger than that approved. In addition, the drawings are considered to be unacceptable as they contained errors and inconsistencies and do not satisfactorily show the overall development of the site. In particular, there appears to be major discrepancies between certain drawings. For example, the Showroom (upper level) drawing shows a length of 52 m compared to 32 m in the block diagram. The block diagram shows the lower level Gentlemen’s Club as having a length of 46.2 m, compared to only 30.2 m in the basement parking diagram. It is unclear whether the five employee car parking spaces are provided within the building. The stairs between the upper and lower levels of the brothel do not appear to be consistent. No provision has been made for a pedestrian pathway as required in Condition No. 2.”

23. The applicant had forwarded its submissions (and altered drawings) to the assessment manager. By letter dated 5 June 2003, the assessment manager responded further as follows:

“Council considers the proposal to be generally acceptable subject to the provision of the following matters:

- Aisle width and length of staff car parking bays to be in accordance with Council’s Policy for Traffic Generating Developments.
- Disabled car park to be relocated.
- Basement supports in accordance with Fig 5.1 AS 2890.1.
- Pedestrian pathway as required in condition No. 2.
- A minimum three metre wide landscaped area along the Pacific Highway road frontage.
- Exit stairs from upper level brothel to basement.”

24. The applicant responded further by letter addressed to the Prostitution Licensing Authority dated 6 June 2003. Relevantly, the applicant said:
- “In relation to the Council’s comments in that letter relating to the revised drawings, we confirm on behalf of our client that they are agreeable to all of the dot points referred to in that letter. The matter raised by Council will be incorporated in the final engineering and architectural drawings. The only question in relation to those points raised by the Council is that whilst the disabled car park is to be relocated, Council have not indicated the exact new location required.”
25. The assessment manager subsequently indicated, orally, to the Registrar of the Tribunal that it wished to make no further comments.
26. It follows from the above, that the approach to jurisdiction and, in particular, the application of s.3.5.33 IPA to decisions on appeals by the Independent Assessor set out in the above extracts from the preliminary assessment has not been challenged by either party to the current application. I remain of the opinion that the said section 3.5.33 is applicable to such decisions.
27. I am of the opinion that, in the absence of objection from the assessment manager, I should grant all necessary leave to the applicant to amend his application for changes to the conditions of the existing approval as are necessary to allow the drawings comprising Exhibits 1 and 2 as explained by the submissions of the applicant dated 29 May 2003 to constitute the application for changes to the approval.
28. I am of the opinion that I should grant the application subject to the caveats contained in the letter of the assessment manager to the solicitors for the applicant dated 5 June 2003. In doing so, I make a finding that the application as so amended does not give rise to assessable development. As a result, I have jurisdiction to receive and deal with the application for an amendment to the conditions of the approval, pursuant to s.3.5.33 IPA.
29. Accordingly, the decision of the Independent Assessor shall be as follows:
- “(a) Paragraph 2.1 of the Conditions of the Approval are amended as follows:
- (i) Delete: “in accordance with drawing No. SO1461, 2 and 3 by John Noueens, Architect”;

(ii) Insert in the place of the deletion: “generally in accordance with the drawings comprising Exhibits 1A and 1B and the revised drawings comprising Exhibits 2A to 2E (in each case, as described in the reasons of the Independent Assessor dated 10 July 2003) as explained by the submissions on behalf of the applicant dated 29 May 2003; and subject to the matters set out in the letter from G.R. Keller, Chief Executive Officer, Logan City Council to Craig Lee, Melville McGregor Lawyers, dated 5 June 2003 and the facsimile transmission from the said solicitors to the Prostitution Licensing Authority dated 6 June 2003”.

(b) By amended Clause 6.1 of the Conditions:

(i) Delete “in accordance with drawing Nos SO1461 and 2 by John Noueens, Architect”;

(ii) Insert in place of the deletion: “generally in accordance with Exhibits 2A and 2D”.

(c) That both parties have liberty to apply upon notice in writing to the other.”

30. I request the Registrar for the Independent Assessor to forward a copy of these Reasons, including the decision set out in the preceding paragraphs to the parties as soon as possible. I direct that the decision take effect from Monday, 21 July 2003.

**STEPHEN KEIM**  
**(Independent Assessor)**  
**Chambers**  
**10 July 2003**