



SEX IN THE SUBURBS

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ABSTRACT

The *Disorderly Houses Amendment Act 1995* decriminalised the land use of brothels in New South Wales. The decriminalisation of brothel prostitution raises concerns for the community because brothels are viewed as offensive, unhealthy and corrupt. The regulation of brothels, however, is now a planning issue, not a policing issue, because brothels are now subject to local Council development approval. The land use of brothels is now subject to zoning and locational requirements. These include minimum distances from schools, churches, hospitals, and public places. However, localised planning controls for brothels differ between Local Government Areas. Brothels are defined in some Local Government Areas and are subject to local planning provisions within a Development Control Plan and Local Environmental Plan. However, some Local Government Areas do not define a brothel and categorise them as a commercial premise. There has been considerable interest in the planning provisions for the sex industry. A critical question explored in this thesis is whether differing development assessment and planning standards for brothels are appropriate in suburban Local Government Areas in Sydney.



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ABBREVIATIONS

BHSC	Baulkham Hills Shire Council
DA	Development Application
DCP	Development Control Plan
DLG	Department of Local Government
<i>EP&A Act 1979</i>	<i>Environmental Planning and Assessment Act 1979</i>
ICAC	Independent Commission Against Corruption
LEC	Land and Environment Court
LGA	Local Government Area
LEP	Local Environmental Plan
NSW	New South Wales
PCC	Parramatta City Council
PSO	Planning Scheme Ordinance
RCC	Rockdale City Council
<i>RP Act 1943</i>	<i>Restricted Premises Act 1943</i>
<i>SO Act 1988</i>	<i>Summary Offences Act 1988</i>
SREP	Sydney Regional Environmental Plan



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1.0 CHAPTER ONE *Introduction*

1.1 Problem Setting

Talk about the land use of brothels is avoided in the suburban local government area (LGA) in Sydney where I reside. Working within another LGA was where I became aware of the sex industry at a suburban level.

Planning for brothels is subject to much controversy and debate. Home to prostitutes, their work is often referred to as the oldest profession in the world. Development applications (DAs) for brothels are assessed and initially determined by planners, with final determination often subject to the decisions of local council members at a council meeting or on appeal by the Land and Environment Court (LEC).

The LGAs in Sydney, New South Wales (NSW), Australia have been chosen due to Sydney being the largest city in Australia, and NSW being one of the few Australian States that decriminalised brothels. Brothels were decriminalised in Victoria in 1994, Australian Capital Territory in 1992, and Queensland in 2000.

The land use of brothels is legal in NSW under the *Disorderly Houses Amendment Act 1995* (adopted 8 December 1995), though planning for brothels is different amongst LGAs in Sydney. The regulated health and security of approved brothels conflict with the moral values of local community members. Issues such as health and safety can be regulated from legal brothel land use.

Through the influential works of Teela Sanders (2005), and Scott Anderson (2002), the theoretical and conceptual context indicates that appropriate planning and health regulation for the sex industry will allow for the preservation of residential amenity, as attempts to impose a single standard of sexual morality is futile.



Sanders (2005, p. 10) states that “the legal status of commercial sex, historically, as falling somewhere between private pleasure and public intervention is of relevance when deciding what needs to be reviewed in the light of contemporary changes to sexual attitudes and behaviour.” It is a common belief that prostitution harms public health and the quality of life of others not involved with it. Anderson (2002, p. 748) indicates that “the extent of these problems varies across countries, in part due to differences in the regulations and social programs that govern and buffer prostitution in the developed West.” Despite these differences, prostitution has always endured self regulation and organisation, with these characteristics allowing commercial sex to manipulate changes in the law (Sanders, 2005, p. 15). The themes of assessment process for brothels (legislative, regulation, education), ethical and moral considerations (behaviour, culture, attitudes), and place sensitive planning for brothels (legislative, case studies) are embraced.

An issue fuelled throughout all LGAs is typified in the conflicting opinions of Collaery and Zadjow printed in ‘Sex industry and public policy proceedings of a conference’ (Gerull and Halstead, 1991) regarding the approval of brothels.

Bernard Collaery, Former Attorney-General Legislative Assembly, Australian Capital Territory (Collaery in Gerull and Halstead, 1991, p. 2) believes that the decriminalisation of brothels would mean that prostitution would be treated like another business; criminal sanctions would be removed and police would not regulate it. Brothels are not treated like any other business as the sensitive land use is subject to judgment in the community. Councils determining brothels provide regulations and requirements on a different level to that of an average local business, with specific regulations for brothels under planning instruments, and referrals to health, waste, traffic and the local police command.

As brothels cannot be eliminated, the decriminalisation of brothels can protect the community from adverse effects associated with prostitution. The approval of a brothel ensures the appropriate management of prostitution with controls and conditions imposed for the sex industry premise. The morality within a community may be negative towards



the approval of brothels, but the consequences of an unregulated brothel are disease, pregnancy, and physical assault that makes a sex workers occupation deemed hazardous (Bell and Gordon, 1972, p.252). Consequently, Grazyna Zajdow from the School of Social Inquiry, Deakin University, Rusden Campus Victoria, believes that it is important to legislate practically rather than fearfully as moral judgments are inherent within the issues of prostitution which do not exist for other forms of work, even in other forms of deviant work (Zajdow in Gerull and Halstead, 1991, p. 173). Zajdow (in Gerull and Halstead, 1991, p. 180) also indicates that when the land use of brothels is illegal, the dominant social control authority is the legal system where police exert control.

The conflicting arguments regarding the decriminalisation of brothels are subjective, reflecting the varying tolerance of brothels within different local communities. The argument for brothels to be made a legal land use allows for the health and safety of both sex workers and the local community to be regulated. The demand for commercial sex will always exist therefore it can be viewed that the legalisation of brothels ensures that it can be appropriately managed and monitored. In contrast, the legalisation of brothels can be viewed to encourage sexual activity associated with disease, adultery and promiscuity. It can be perceived that the availability of legalised brothels compromises the morality within a community. Even in the areas where brothels undergo an approval process, there are still brothels running without consent. Despite notices from council for these brothels being run without consent to be shut down, it could take years for the LEC to reach a decision.

The best interests for local communities are to be considered by planners assessing DAs for brothels. The effectiveness and appropriateness of policies for brothels is to be considered through the planning for brothels in different LGAs in Sydney. It will provide a greater understanding of the planners role in the assessment and determination process, and ethical and moral considerations in a community. These issues are to be questioned in the following research questions.



1.2 Research Questions

This thesis aims to examine the way in which brothels are planned in suburban LGAs in Sydney through investigating the main research question as follows:

Is planning for brothels in Sydney place sensitive?

In answering the main research question, the following sub-questions are to be explored.

- Does the assessment process for brothels differ between LGAs in Sydney?
- Do ethical and moral considerations of society influence the planning of brothels?
- Are the current LGA provisions for the planning of brothels adequate?
- What consistent approaches can be implemented throughout LGAs in Sydney to ensure appropriate locally based place sensitive policies for the planning of brothels?



1.3 Methodology

Research for this thesis has been carried out through the following research methods.

Literature Review

A literature review was undertaken to examine the history of legislation for Sydney brothels, ethical and moral considerations of society which including religious affiliations. The review of literature will primarily set the foundation in investigating key themes and issues in regard to the chosen topic. An exploration into the NSW-Sydney situation of brothel land use through a historical review of policies and trends will establish an understanding of how current legislation and regulation have been developed. The inconsistency between councils planning controls for the land use of brothels can be explained through the differing attitudes towards ethics and morality. This is focused through the main religious affiliations of the chosen case studies (as specified below) to explain the moral background and attitudes of communities. This is also examined as a factor of the planning of brothels being place sensitive.

Case Studies

Exploration of three suburban LGAs being Parramatta City Council (PCC), Baulkham Hills Shire Council (BHSC) and Rockdale City Council (RCC) will be used as case studies in comparing and contrasting the planning for brothels as place sensitive. Describing and explaining the research findings of the influences of local policies and community that affect the determination of brothels as a legalised land use.

Site inspections were undertaken in order to experience the urban and social environment of each LGA. Frequent contact was made with the duty town planners of the LGAs, and the town planners which were interviewed (as detailed in the next section). By contacting town planners of the LGAs, I was able to learn about the general characteristics of the



LGA, details about the local planning instruments, ethical and moral attitudes towards brothels, and the assessment and planning of brothels within the locality.

The development section of the council websites was comprehensively searched to investigate into development assessment procedures, DA lodgment requirements, and local planning instruments.

Maps were developed (as detailed later within this sub-chapter) to outline the suburbs within PCC, BHSC and RCC. Approved brothels in PCC and RCC were roughly indicated by yellow stars within the suburb, to illustrate the number and location of brothels within the area.

Tables were developed (as detailed later within this sub-chapter) listing local planning instruments for LGAs in Sydney. The tables identify whether the term “brothel”, “sex service premise” or no definition is identified in the local planning instruments.

Qualitative In-depth Interviews

As a result of limited literature and resources specifically regarding suburban brothels in Sydney, dependence on primary research was crucial.

By examining the way in which brothels are assessed in LGAs in Sydney, questions can be addressed through conducting qualitative in-depth interviews with people who have a planning role in a LGA, and case studies of the areas they work in. The descriptive feedback provided by the informants enhances the understanding of subjective attitudes and social reality (Flick *et al*, 2004).

Primary research data was collected through an in-depth interview with Adam Cowell, Senior Development Assessment Officer at PCC, an anonymous town planner at BHSC, and an email interview with Fiona Heretis, Development Assessment Officer at RCC. Adam Cowell and Fiona Heretis granted permission for their names and council names to



be referenced in this thesis. The interviewee at BHSC requested to be anonymous but granted permission for the council name to be referenced. In addition to these interviews taken for the purpose of this thesis, it is noted that reference has been made from a previous interview I had with Adam Cowell (2006 pers com., 19 Sep.) in relation to brothels in Harris Park, a small suburb within PCC. All of the qualitative in-depth interviews undertaken allowed for opinions, experiences and observations to be identified and interpreted for the study. The interviews were undertaken with a set of interview questions (Appendix 1, p. 91) approved by the University of New South Wales Faculty of the Built Environment Human Research Ethics Advisory Panel. When conducting the interviews, I started the conversation process through personal conversation to establish a productive interpersonal climate. In addition to the questions, a full text of probes was included for opening the interview, linking the questions, transitions, and closing the interview (Minichello *et al*, 1995).

Minichello (1995) suggests that there is flexibility in a qualitative interview as using standard protocols to regulate interviews is not inherent of the methodology of qualitative research. During the interviews I added a few additional questions to the final list of questions to probe for further information, and I did not ask a few of the questions as it seemed that they had been answered already through the linking and similar themes in questions asked. The interviews were audio recorded, transcribed and coded through a thematic analysis. The themes used for the interview are the background, history of brothels in the area, ethics and morality, and decision making.

As planners in the past have approached the research process in an objective and quantitative manner, in policy work it is considered that learning is more effective from the practice of stories and qualitative data, than from scientific experiments, as our emotional responsiveness may teach and help us see the world with clarity (Forester, 1999). Currently, qualitative research is used and “widely accepted as a legitimate tool or research (Thompson, 2006, p. 20)” with qualitative methodological approaches bridging both investigate and practice perspectives. It provides illustration into how “emotional sensitivity works as a source of knowledge, recognition and as a mode of moral vision



(Forester, 1999, p. 9).” This is a particular strength when investigating the ethical and moral considerations when planning brothels at a personal and professional perspective. The research findings from qualitative data alone such as statistics and census data would not have been as effective as qualitative in-depth interviews to deepen the sphere of investigation.

Australian Bureau of Statistics 2006 Census Data

Describing and comparing Australian Bureau of Statistics (ABS) 2006 Census data regarding the religious affiliations of PCC, BHSC, and RCC will establish the main ethical and moral attitudes and backgrounds of the general community.

The top ranked religious affiliations by percentage in the ABS 2006 Census data for PCC, BHSC, and RCC were graphed to illustrate the main religious affiliations within the LGAs to be further examined in the literature review as a basis of moral attitudes within a community.

Review of Legislation and Policies for Brothels in NSW

Superseded legislation and policies relating to this topic are reviewed in the form of the following Acts:

- *Vagrancy Act 1902*
- *Police Offences (Amendment) Act 1908*
- *Vagrancy (Amendment) Act 1929*
- *Disorderly Houses Act 1943*
- *Landlord and Tenant (Amendment) Act 1948*
- *Summary of Offences Act 1970*
- *Prostitution Act 1979*
- *Prostitution Act and Offences in Public Places Act amended 1982*
- *Disorderly Houses (Amendment) Act 1995 (DHA Act 1995)*
- *Environmental Planning and Assessment Act 1979 (EP & A Act 1979)*



Current legislation, policies and data sources relating to this topic are reviewed in the form of the following:

- *Restricted Premises Act 1943 (formerly Disorderly Houses Amendment Act) (RP Act 1943)*
- *EP & A Act 1979*
- Local Environmental Plans (LEPs)
- Development Control Plans (DCPs)
- Sex Services Premises Planning Guidelines December 2004
- *Summary Offences Act 1988 (SO Act 1988)*
- Accreditation Guidelines for NSW Sexual Health Services 2005
- Planning Scheme Ordinances (PSOs)
- NSW Legislative Assembly Hansard Bill hearings
- LEC judgments

The new Standard Instrument (Local Environmental Plans) Order 2006 (Draft LEP Template) was reviewed to examine the provisions for sex service premises. Each LGA in NSW is required to adopt the new standard instrument within the next five years. A phone conversation with a town planner at the NSW Department of Planning provided insight to what provisions LGAs are required to make in relation to sex service premises within the new standard instrument.

Planning instruments in each LGA in Sydney (as listed in Tables 1 and 2, pp. 51-55) have been examined to determine requirements provided for brothels. This was done through investigating each LGA website, NSW legislation website, or having a phone conversation with a council duty town planner. The planning instruments have been listed under tables for Sydney Outer Suburb LGAs and Sydney Inner Suburb LGAs. It indicates where definitions have been provided for “brothels”, “Sex Service Premise”, or no definition within each planning instrument.

ICAC Report

The Independent Commission Against Corruption (ICAC) website, media releases,



enquiries and reports were examined in regards to the corrupt conduct associated with the regulation of brothels in PCC. The final ICAC report was dated August 2007 and includes findings and recommendations as a result of the investigation. This has been examined into how it has affected the current and future regulation of brothels in PCC.

Maps

Suburban LGAs in Sydney have been identified according to the NSW Department of Local Government (DLG). The NSW DLG has identified Sydney to consist of “outer suburbs” and “inner suburbs”. For the purposes of this thesis, Sydney City has been categorised separately along with the outer and inner suburbs, due to the characteristics of a city compared to a suburban environment. This is also particularly due to the scale and provision of adult entertainment and Sex Service Premises within the City of Sydney differing to the outer and inner suburban areas in Sydney. The outer and inner suburb map has derived from the manipulation of NSW DLG website maps, Microsoft Paint program, Photoshop and Microsoft Word, as illustrated in Figures 1 and 2.

The suburban maps for PCC, BHSC, and RCC have been derived from LGA maps from council websites. These images have been manipulated with Microsoft Paint program, Photoshop and Microsoft Word as appropriate to this thesis, as illustrated in Figure 3, p. 58 (PCC), Figure 4, p. 70 (BHSC), and Figure 5, p. 74 (RCC). For PCC and RCC, the location of current approved brothels within a particular suburb has been provided by the interviewees. The brothels are marked out by a yellow star to illustrate the general location and sprawl of brothels in relation to the other areas of the LGA. Specific addresses of approved brothels have not been provided in this thesis, as the approximate location of current approved brothels in a particular suburb is considered adequate to illustrate the general sprawl of brothels within the LGA.

The collection of the above sources will enable a sound discussion in response to the research questions subject to this thesis.



1.4 Structure

Chapter 1

This introductory chapter provides an overview of the problem setting, aims, objectives, research methodology, and limitations to the analysis.

Chapter 2

Theories of ethical and moral attitudes are examined in Chapter Two. Contentious land uses within a locality such as brothels, are determined not only by planners but also influenced by politicians, the community they represent, planning regulations, and by ethics and morality. This is investigated through religious affiliations of LGAs and the ethical requirements in the planning profession.

Chapter 3

Chapter Three of this thesis is focused on the current and previous legislation for brothels in NSW. The passing of the *Disorderly Houses Amendment Act 1995*, which decriminalised the land use of brothels in NSW, is examined. The decriminalisation of brothel prostitution was to address the stereotype of brothels as offensive, unhealthy and corrupt. Current legislation and regulation provides requirements to ensure brothels are discreet, the health and safety of workers and clients are managed appropriately, and for authorities to be managed to minimise the potential for corruption.

Chapter 4

It was discovered that localised planning controls for brothels differ between LGAs. Brothels are defined in some LGAs and are subject to local planning provisions within in a Development Control Plan (DCP) and Local Environmental Plan (LEP). Some LGAs do



not define brothels and categorise them as commercial premises. In addition, some LGAs do not possess any approved sex industry land uses.

It is considered that the inconsistent regulation and provision for brothels between LGAs is reflective of the value councils place on the land use and the scale of development within the locality.

The City of Sydney is well known for its sex services premises with the iconic Kings Cross Red Light District. The number of sex services premises in the city is substantially greater than local suburban areas due to density, tourism, and the active, fast-paced night life environment typical of a city as opposed to the relaxed and sprawled suburban areas.

There has been much investigation into the planning provisions for the sex industry within the City of Sydney. It is questioned whether the differing development assessment and planning of brothels is appropriate within various suburban LGAs in Sydney where this taboo land use is subject to much public scrutiny.

Chapter Four investigates development assessment and decision making in regard to brothel applications. The regulation of brothels is a planning issue not a policing issue, as brothels in New South Wales (NSW) are subject to local council approval with councils authorised to oversee the land use of brothels. The land use of brothels is now subject to particular zoning and locational requirements, which include brothels being a certain distance from schools, churches, hospitals, and public places. Primary research was undertaken to further investigate the factors planners encounter when assessing a brothel application.

Chapter 5

The final chapter provides recommendations and summarises the conclusive findings from the first four chapters presented within this thesis in response to the research questions outlined in Section 1.2.



1.5 Limitations to the analysis

Data collected from two in-depth interviews and one email interview with town planners provided representation from three Sydney LGA authorities. The qualitative analysis allowed opinions, experiences, and observations to be identified and interpreted for the study.

A weakness of qualitative data is that it is only representative of a handful of people within the planning industry. It was also observed that the interviewees had varying levels of knowledge and experience in regard to the planning of brothels.

It would have been helpful in undertaking in-depth interviews with town planners from a larger range of Local Government Areas, including City of Sydney to allow for an increased scope of comparison. In addition, representatives from different stakeholders in the sex industry could be interviewed. This includes people such as council compliance officers, sex workers, managers of sex service premises, sexual health workers, and the community.

Due to limitations such as time, size and resources, the capacity for the above research has been narrowed for this thesis.



1.6 Definitions

The term “prostitution” is defined in many ways but essentially is the provision of sexual services in exchange for payment. The etymology of “prostitute” is from the Latin word “prostitutus” being a past derivative of “prostituere” meaning “to expose to prostitution, expose publicly” consisting of “pro” meaning “before”, and “statuere” meaning “cause to stand, establish”.

Another term which makes reference to female prostitutes is “whore”. It is derived from the Old English word “hōra” from the Indo-European root of “kā” meaning “desire”.

The terms “prostitution” and “brothel” have evolved. These definitions are slowly being replaced by “sex work” and “sex service premise” and are generally not used within the sex industry anymore.

Land uses such as brothels, massage parlours, escort services, swingers clubs, restricted premises, striptease premises and home occupation premises are included under the definition of a “sex service premise”.

A key concern in the planning of a sex service premise is the ethics and morality within society. The following chapter examines how the ethical and moral considerations of society influence the planning of brothels.



2.0 CHAPTER TWO *Ethics and Morality*

2.1 Introduction

This chapter provides a background of the ethical and moral considerations relating to society's attitudes towards brothels and prostitution.

Throughout history, prostitutes have been subject to the stigma of being criminals and a key example of immorality. Individuals and communities have maintained these past attitudes in regards to commercial sex predominantly fuelled by ethical and moral considerations.

Prostitutes in the Roman period were labeled as slaves and were considered be “rebellious women” within the community, and the Israelites viewed prostitutes as “sacrilegious” (Perkins, 1991, p. 63). Dress regulations were enforced by the Romans and Medieval Europeans so they were to appear different from other women (Perkins, 1991, p. 63). It can be considered that current views toward prostitution are generally reflective of the history and culture of patriarchy. As Christian heritage is antisexual and antihedonistic, promiscuity is not approved by society (Ericsson, 1980, p. 89). With the indulgent sexual activities being viewed negatively, ethical and moral considerations are to be addressed for the planning for brothels in current society.

Definitions

In the planning process, ethics and morality of society are also to be considered, along with the attitudes and professionalism of planners. Ericsson (1980, p. 88) states that “society and conventional morality condemn[s]” the sexual immorality of prostitution.

In order for planners to address the development assessment of brothels, ethical concerns are to be considered both from a professional perspective and the perspective of the community.



Ethics is a branch of philosophy which can generally be defined as values and actions reflecting moral choices of human conduct. Ethical standards can be in respect to whether a particular action is considered right or wrong, and whether the motive of an action is good or bad.

Ethical standards are expected in society, particularly in professional organisations. Councils provide a code of conduct for all staff members to comply with. In failure of an employee's compliance of the code of conduct, it then provides adequate reason for staff to be dismissed and the possibility of being investigated by ICAC.

In addition to ethical standards, moral considerations are a consideration in place sensitive planning as it is reflective of society's cultural and religious attitudes.

Morality can be generally defined as a system of ideas and conformity with the standards of right or good conduct. It is motivated on the ideas and attitudes of what is right and wrong, good or evil. When planning in consideration of ethical and moral attitudes, neighbourhood notification is required as part of the development assessment process. This particularly provides the opportunity for local residents to raise planning, ethical and moral concerns in objection to the development of a brothel.

As morality is reflective of religion, the main religious affiliations of the case studies of this thesis, PCC, BHSC, and RCC are investigated in regards to attitudes towards commercial sex.

Ethical and moral considerations of planners and society have been further examined throughout this thesis, with ethical standards further discussed in the following sub-chapter.



2.1 Ethics

Prejudices and beliefs are a basis in the conception and implementation of rational social and legal policies regarding sex and sexuality (Gruen & Panichas, 1997, p. v). These prejudices and beliefs come in the form of ethical attitudes in society which is the foundation to legislation and policies reflective of ethical standards. It is essential when planners assess the land use of brothels that they conduct themselves with ethical integrity with standards of professional ethics.

Professional Ethics

Professional ethics determines the conduct of a professional when encountering a situation that raises a moral issue or response. Professional ethics is a complex issue with various stakeholders involved. It is considered that ethics and conduct is an issue, but the response in addressing and resolving controversial conduct is also an issue to be considered.

Code of Conduct

An ethical code of conduct and responsibility may be implemented by a profession to stipulate what sorts of behaviour is ethical and sub-sequential penalties in violation of a code. The effectiveness of such codes of ethics is dependant on the extent to which management supports an officer with sanctions and rewards. Violations of an organisation's code of ethics usually results with the violator subject to the organisation's remedies (such as termination of employment). Certain acts that constitute a violation of a code of ethics may also violate a law or regulation with consequential punishment by the appropriate governmental department. Corrupt conduct is one instance of unethical professional behaviour.

It is important for a council to take action on any known brothels operating without development consent, or brothels in breach of development consent conditions. Due to



the varying levels of ethical and moral standards, possible opportunities may lead to the potential for corrupt conduct, particularly with the regulation of brothels. General professional ethical behaviour in councils is defined and reviewed by the ICAC.

ICAC

Section 8 of the ICAC Act addresses corrupt behaviour through defining corrupt conduct as “any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority (ICAC Website).” Examples of corrupt conduct include official misconduct, bribery, blackmail, fraud and embezzlement.

In addition to these ethical considerations, moral attitudes are an issue when assessing brothels within a locality particularly regarding religious affiliations of the community.



2.2 Morality

Moral standards are reflective of religious attitudes and expectations. This is particularly highlighted with society's general attitude towards commercial sex. Commercial sex is viewed as offensive, immoral, and socially unacceptable in indulging with paid sexual pleasure.

Carolyn Pickles (in Gerull & Halstead, 1991, p. 24), Member of Legislative Council, South Australia, believes that prostitution today can be regarded as an immoral and undesirable activity by certain members of the community. Consequently, Pickles believes that the government is to be responsible for establishing and maintaining the moral standards within the community particularly in regard to commercial sex (Pickles in Gerull & Halstead, 1991, p. 24). On the contrary, it is considered that the government cannot filter the moral standards of society to make planning less controversial. There will always be opposition of brothels, as individuals in a democratic society have the opportunity to express subjective attitudes and values fuelled by moral attitudes.

In the 1960s, jurist Lord Devlin argued that if prostitution was to be immoral, then it should be considered that promiscuity and masturbation were immoral warranting similar legal punishment (Perkins, 1991, p. 60). This was reflective of many religious ideologies particularly in accordance with teachings of Christianity.

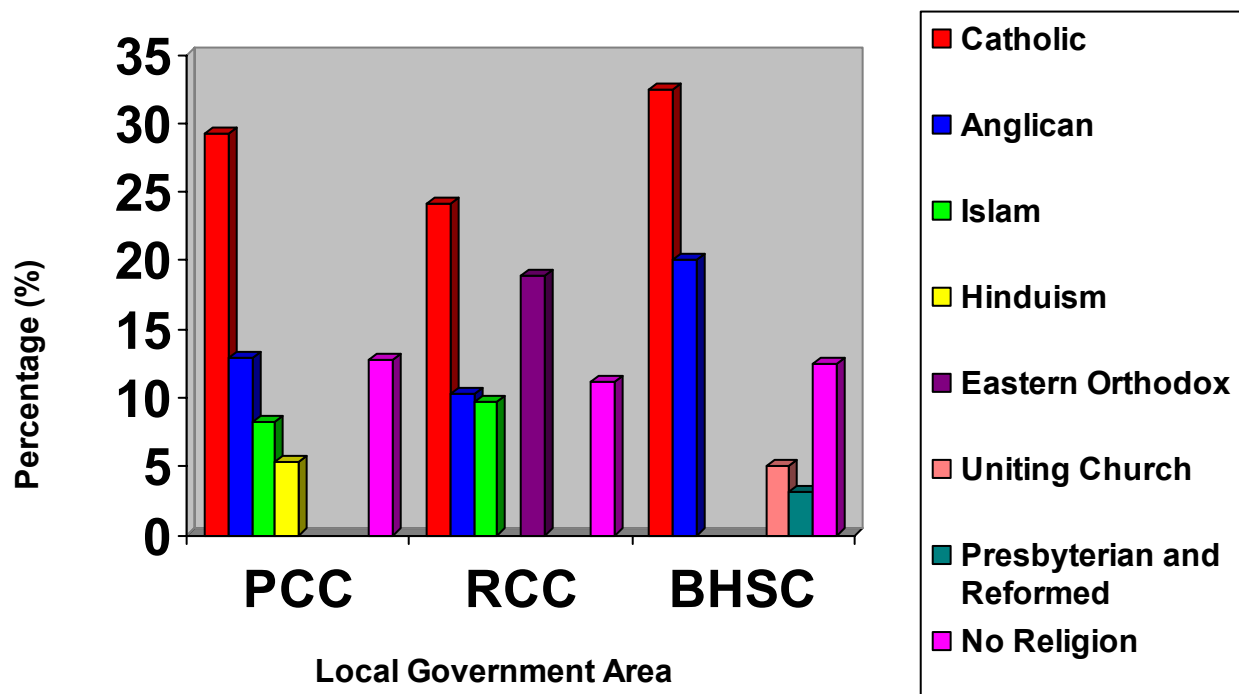
Lord Devlin's major critic, Ronald Dworkin (1978) believed that "the common morality of a society at any time is a blend of custom and convention, of reason and feeling, of experience and prejudice (Dworkin, 1978, p. 253)."

It is considered that the inconsistent planning for brothels between various LGAs in Sydney reflects differing moral values as, "legal systems work ... to maintain "law and order" but they also define the boundaries of what, in a complex and fragmented society, are the agreed social values and symbols which we decide to protect (Sanders, 2005, p.14)."



The main religious affiliations of the case studies of this thesis, PCC, BHSC, and RCC have been examined as it can be viewed as the basis of society's attitude towards commercial sex. Graph 1 illustrates that the highest percentage of religious affiliation in each of the three LGAs is Catholic, with the following results from the ABS 2006 Census data.

**Graph 1 – Religious Affiliations in
Parramatta City Council, Rockdale City Council and Baulkham Hills Shire Council**
(Source: ABS 2006 Census; Author, 2007)



In the 2006 Census, the most common responses for religious affiliation for persons usually residing in Parramatta City Council, Rockdale City Council and Baulkham Hills Shire Council were Catholic, Anglican and Eastern Orthodox. All of these religions have foundations originating from Jesus Christ.



The Catholic Church teaches that among the sins gravely contrary to chastity are masturbation, fornication, pornography, and homosexual practices (Catechism of the Catholic Church Website, 2007). Adultery, divorce, polygamy, and free union are grave offenses against the dignity of marriage. The Catholic Church believes that prostitution does injury to the dignity of the person who engages in it, reducing the person to an instrument of sexual pleasure. Corinthians 6:15-20 of the Holy Bible indicates that the one who pays sins gravely against himself, violates the chastity to which his baptism pledged him and defiles his body, the temple of the Holy Spirit. It is considered that prostitution is a social scourge. It usually involves women, but also men, children, and adolescents (with the latter two cases involve the added sin of scandal). While it is always gravely sinful to engage in prostitution, it is considered imputable for the offense can be attenuated by destitution, blackmail, or social pressure (Catechism of the Catholic Church Website).

The Anglican Church teaches that throughout the Bible, prostitution is used as a symbol of filthiness and unfaithfulness. God refers to people as prostitutes whenever they turn from him to false gods and to evil ways. In Ezekiel 23:11-12, 17-18, the Lord refers to Jerusalem as prostitutes because of their sin. The Lord declares, “in her lust and prostitution she was more depraved than her sister [Samaria]. Then the Babylonians came to her, to the bed of love, and in their lust they defiled her. ... When she carried on her prostitution openly and exposed her nakedness, I turned away from her in disgust.” Prostitution involves lust, depravity and defilement and it disgusts God, who uses it as an image for all that is disgusting. The Anglican Church teaches that the Bible also warns men not to use prostitutes. The apostle Paul asks, “Shall I then take the members of Christ and unite them with a prostitute?” Although the answer is self-evident, the reply is, “Never!” (1 Corinthians 6:15). It is unacceptable for a man to lust over a prostitute. The Anglican Church teaches that men who should reject prostitution are not confined to Christian men. It is considered impermissible and despicable for any man to have sex with a prostitute. It is believed that Jesus can forgive the sinners, by addressing the sin and loving the sinner (Lansdown, 1998).



The Eastern Orthodox Church teaches that human sexuality is a divinely given dimension of human life that finds its fulfillment in the marital relationship. It is considered that sexual differences clearly exist for reproductive purposes. A permanent relationship of sexes is marriage. The Eastern Orthodox Church believe that their scriptural and patristic evidence argue the purposes for marriage, including the satisfaction of the sexual drive. It is considered that all the dimensions of human sexuality are to be fulfilled in marriage, and the married have the moral obligation to seek the enrichment and fulfillment of their marriage in all of its aspects. The Eastern Orthodox Church considers sexual relations between persons for payment being sinful and labeled as prostitution, and the autoerotic activity judged as an improper expression of human sexuality, and as such is labeled masturbation (Harakas, 1980).

The religions of Catholicism, Anglicanism and Eastern Orthodox all believe that prostitution, and people that use prostitutes, are sinful and immoral. With some factions of the community affiliated with these religions within PCC, BHSC and RCC, it therefore leads to objections of brothel applications that are fuelled by religious and moral attitudes against prostitution.

In response to these religious and moral attitudes, LGAs can take a 'proactive' level of responsiveness when taking action by confidently affirming the demands of morality forces through responding to neighbourhood complaints regarding brothels (Sharp, 2003, p. 264). Some views are that brothels should be criminalised, or that the knowledge of a brothel within a certain locality causes people to object due to moral attitudes, the history and stigma of prostitution. Brothels are a legal land use, and therefore the government "cannot legislate to control the moral values of the community" (White, 1996, p. 33), despite the conflicting standards and tolerance of community members in regard to the land use of brothels. Anderson (2002, p. 749) states that "one might now reasonably question whether these laws have a purpose beyond simply controlling some aspects of the practice – mainly those that offend middle-class sensibilities – while underwriting a moralistic disdain for those who engage in it."



The health and safety of both clients and workers can be well regulated in legal brothels, whereas it is unregulated within illegal brothels, as approved brothels provide protection for sex workers and the community (Moore, 1999, p. 13; Schofield, 1976, p. 225). Regulation and legislation ensures that both sex workers and the local community are protected from brothel related concerns such as health, security and distance from sensitive land uses. The management of public health has been effective due to the regulation of prostitution in 'private' and 'public' spaces, where technologies of control have often operated inconspicuously (Scott, 2003, p. 279).

Michael Moore, former Chair of the Select Committee on HIV, Illegal Drugs and Prostitution Legislative Assembly Australian Capital Territory, indicates that it is important "to follow the path of regulation in order to protect ... [sex] workers" (Moore in Gerull & Halstead, 1991, pp. 211-212) and that the community can be assured that health regulations are imposed on the working conditions in brothels. Once brothel prostitution was decriminalised, it is considered that the number of brothels increased. However, most of the increase is illegal brothels (Sullivan & Jeffreys, 2002).

Pickles (in Gerull & Halstead, 1991, p. 30) argues that criminal law should be restricted to preventing activities which cause harm and should not be enforced due to sexual morality. Prostitution does not cause direct harm to the community and it is considered that criminal penalties for brothel prostitution are ineffective. Prostitution has survived self-regulation and organization due to the demand of the commercial activity (Sanders, 2005, p.15). As brothels cannot be eliminated, the legalisation of a brothel can protect the community from adverse effects associated with prostitution. A brothel as a legal land use ensures the appropriate management of prostitution and the controls and conditions for the commercial premises.

Pickles (in Gerull & Halstead, 1991, p. 23) argues that prostitution is widely regarded as immoral and degrading and criminal law reflects and reinforces community standards. It is considered that some people view prostitution as immoral and an exploitative business that should not be encouraged through legalisation, and that it can have adverse effects



on a community such as public nuisance, links between prostitution and drug abuse, control by organised crime, spread of sexually transmitted disease and exploitation of the young (Pickles, C. in Gerull & Halstead, 1991, p. 30). It is considered that brothels will exist, legal or not, whether in the best interests of the community or not. The lack the tolerance in accepting this sensitive land use is what Moore argues as “society is a far more important moral issue than sexuality” (Gerull & Halstead, 1991, p. 204). The perceived non acceptance of legalised brothels within LGAs could be due to the moral standards and values within the community, though it can be questioned whether the morality reflecting lack of tolerance of brothels outweighs sexual morality.

Kolnai (2005, p. 156) views prostitution as the mutilation of sexual experiences through the subjective motivation that is purchased at the price of personal degradation. The morality within the community may be negative towards the decriminalisation of brothels, but so is the disease, pregnancy, and physical assault that deem a sex worker’s occupation hazardous (Bell & Gordon, 1972, p. 252). Consequently, Zajdow believes that it is important to legislate practically rather than fearfully, as moral judgments are inherent within the issues of prostitution, and do not exist for other forms of work, even in other forms of deviant work (Zajdow in Gerull & Halstead, 1991, p. 173). It is also considered that when the land use of brothels is illegal, the dominant social control authority is the legal system where police exert control. It is questioned whether a brothel with development consent reduces the number of illegal brothels in the area. The lack of tolerance towards brothels is reflective of the community’s moral standards and creates a perception of reduced safety within the community.

Factions of society are fuelled by ethical and moral attitudes opposed to brothels. These attitudes provide a subjective view to the decriminalisation of brothels. NSW legislation has been adopted to provide merit and objective based development assessment of brothels.



3.0 CHAPTER THREE *A NSW Legislative Context*

3.1 Introduction to a NSW legislative context

Prostitution was decriminalised in NSW in 1995. However, it is still a criminal activity in some Australian States and other countries. Legal consequences range from minor penalties to the death penalty. Until 1995, NSW was considered as one of the harshest jurisdictions in the world enforcing prostitution prohibition laws and policing practices (Perkins, 1991, p. 125).

3.2 A legislative history for brothels

Vagrancy Act 1902

The first law in NSW regarding prostitution was introduced in 1901. The *Vagrancy Act 1902* indicated that it was against the law if someone:

(sec. 4[1][c]) being a common prostitute, wanders in any street or public highway, or in a place of public resort, and in either case behaves in a riotous or indecent manner (Perkins, 1991, p.126).

The above clause indicated that the offence of misdemeanor did not enable police to enforce a penalty harsh enough for prostitutes to be discouraged from their activities.

The *Vagrancy Act* specified that “Brothel keeping” indicated that it was unlawful for anyone:

(sec. 8B) being the owner, occupier, or agent of any house, room or place, or being a manager or assistant in the management thereof, induces or suffers any female whom he knows to be a common



prostitute to be in that house, room, or place...for the purposes of prostitution (Perkins, 1991, p. 127).

It was considered that during the war years from 1915 to 1917, an attempt to eliminate street prostitution was essential to safeguard service men from disease and immorality (Perkins 1991, p. 128).

Police Offences (Amendment) Act 1908

The *Vagrancy Act* was amended by *The Police Offences (Amendment) Act* gazetted in 1908. This included the first law to identify the activity of commercial sex, indicating it was an offence for whoever:

(sec. 4[1][i]) being a common prostitute, solicits or importunes for immoral purposes any person who is in a public street, thoroughfare, or place (Perkins, 1991, p.126).

The Police Offences (Amendment) Act also indicated that it was an offence for men i.e. “pimps” who benefited from the earnings of prostitution with a penalty of fines and/or imprisonment. It is noted that the clause indicate below had a sexist tone using the choice of words ‘he’ in reference to pimps and ‘female’ in reference to a prostitute.

Vagrancy (Amendment) Act 1929

In 1929, the *Vagrancy (Amendment) Act* introduced the “consorting” law which allowed police to arrest prostitutes in brothels.

Disorderly Houses Act 1943

The NSW Government during World War II passed the *Disorderly Houses Act 1943*. This Act was established resultant of American servicemen posted in Sydney becoming victims



of deception and fraudulence by sex workers. A brothel was defined as a “Disorderly House” and prostitutes branded themselves as “Good Time Gals” (Perkins 1991, p. 131). Police that identified a premise to be a disorderly house were able to take it to the judgment of the Supreme Court to be shut down. As a result, disorderly houses became troublesome for police as identified brothels would keep moving premises between court dates.

Landlord and Tenant (Amendment) Act 1948

Women using prostitution with their homes or a rented flat as a premise for prostitution faced eviction under the *Landlord and Tenant (Amendment) Act 1948*. Municipal Councils were also able to prohibit the commercial activity of prostitution under zoning regulations.

Vagrancy Act and Disorderly Houses Act amended 1968

The *Vagrancy Act* and *Disorderly Houses Act* were amended in 1968. The *Act* was modernised to take on a non-sexist tone. Street prostitution and being suspected of working within a premise of prostitution became an offence under this *Act*. Brothels started being masked as massage parlours, with the new law making it an offence to conduct prostitution including within a premise providing massage, sauna baths, steam baths, and facilities for exercise.

Summary of Offences Act 1970

The *Vagrancy Act* was repealed by the *Summary of Offences Act 1970* which included tougher provisions for offences relating to prostitution and brothels. As a result, Perkins (1991, p.139) indicates that in 1972, prostitution-related arrests peaked for the decade.



Prostitution Act 1979

The establishment of the *Prostitution Act 1979* included provisions which did not brand the activities of prostitutes as immoral or socially unacceptable. Prior legislative provisions for the sex industry adhered to the principle that prostitution was victimless and prostitutes were considered responsible to no-one but themselves. The exception to this was when prostitutes were legally recognised as being prevented from free choice (Perkins, 1991, p. 140). The legislative changes were the first step towards decriminalisation of brothels and prostitution in Australia. It provided an international model for legislating commercial sex.

Prostitution Act 1979 and Offences in Public Places Act 1979 (amended 1982)

The *Prostitution Act 1979* and the *Offences in Public Places Act 1979* were amended in 1982 and included locality provisions for prostitution to be an offence if near a dwelling, church, school or hospital.

A parliamentary Select Committee Upon Prostitution (SCUP) was appointed by the Wran Labor Government and was resolved by Parliament in 1983. SCUP examined prostitution in Australia and made recommendations for the decriminalisation of commercial sex with legislative controls removed from criminal law and controlled as a planning matter.

The recommendations made by SCUP included the term “brothel” to be used in reference to all premises involved in prostitution. It was also suggested that regulations guiding the brothel industry was to be within the jurisdiction of the Minister for Planning and the Environment. In addition, the issue of consents was to be under the authority of local councils, and refusal of the consents to be appealed to the LEC.



Disorderly Houses (Amendment) Act 1995

The correlation between law enforcement and police corruption led to the decriminalisation of brothels in NSW under the *Disorderly Houses (Amendment) Act 1995*. This Act freed prostitutes from the stigma of being criminals.

Environmental Planning and Assessment Act 1979

Since 1995, development consent from councils is required for the land use of brothels before they are able to operate. Brothels are to comply with councils planning controls, also provided within the *EP & A Act 1979*. The purpose of planning controls ensures is to ensure that the operation of brothels is appropriate and place sensitive for the locality. Brothels are now recognised commercial premises subject to particular zoning requirements which include them being certain proximity from schools, churches, hospitals and public places (Sullivan & Jeffreys, 2002, p.1140; Rissel et al, 2003, p. 191).

The decriminalisation of brothels in NSW has changed “the way in which powers are practiced from a criminal-law approach, dominated by sporadic...policing patterns, to an approach more reliant on localised controls” (Scott, 2003, p. 289). Localised controls differ between Council areas as control over illegal brothels is not under policing control, but under the jurisdiction of the local Council. Local Councils can take unauthorised brothels to the LEC to be shut down. The regulation of brothels is now a town planning issue, not a law and order issue (Scott, 2003, p. 287; Brogden, 2001b).

Conflicting opinions over brothel decriminalisation is an issue faced throughout all Council areas. Collaery (in Gerull & Halstead, 1991, p. 2) believes that decriminalisation of brothels would mean that prostitution would be treated like any other business; criminal sanctions would be removed and police would not regulate it. It is considered that brothels are not treated like any other business as the sensitive land use is subject to community scrutiny.



The legislative provisions for the regulation and planning of brothels in NSW have “been piecemeal and very slow, over the past eighteen years (Harcourt, 1999, p.37).” This process has consequently led to current legislative provisions.



3.3 Current Legislative Provisions

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

A reform of prostitution laws was undertaken as a result of the investigation by the Royal Commission concerning police corruption in regards to the operation of brothels in 1995.

The passing of the *DHA Act 1995* specified that the land use of brothels was now decriminalised in NSW. The land use of brothels was to be regulated under the *EP & A Act 1979*, with brothels being able to be shut down through the LEC.

The *DHA Act* was renamed the *RP Act 1943* and the *DHA Act 1995* repealed in November 2002.

Under the *RP Act 1943*, a “brothel” is defined as:

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

Many LGAs have adopted this definition (as discussed in the previous chapter) within their current LEPs.

Part 3 of the *RP Act 1943* includes provisions for brothels. Clause 17 indicates requirements for applications to the LEC for premises to be closed down, and requires evidence of use of the premises as brothels.

In addition to the *RP Act 1943*, the regulation of brothels is subject to the *EP & A Act 1979*.



Environmental Planning and Assessment Act 1979

The *EP & A Act 1979* provides for regulation under the specifications of environmental planning instruments (i.e. LEPs) and development guidelines (i.e. DCPs).

Under Part 4 of the *EP & A Act 1979*, Section 79C includes criteria for assessment with legislative requirements and merit based assessment for land uses. Planners are required to address the provisions of statutory documents, policies, likely environmental, social and economic impacts of the development, suitability of the site, notification and submissions made by the public, and the public interest of the development.

Each LGA establishes a legal planning framework for local areas in the form of a Local Environmental Plan (LEP).

Local Environmental Plans

LEPs indicate particular land uses that are zoned in various categories such as prohibited, exempt, complying and development requiring consent. Detailed development standards and matters of consideration for the particular land use are also provided.

Brothels can be regulated by LGAs through LEPs. The Department of Urban Affairs and Planning advised on 16 July 1996 that LGAs had the option of limiting brothels to areas zoned for industrial purposes, if appropriate to local circumstances and locality requirements. Some LGAs also allow brothels to be permissible with development consent within commercial zones.

Under the *EP & A Act 1979*, DCPs are policies which include detailed planning guidance for land uses in relationship with the LEP.



Development Control Plans

Some LGAs have the provision of a DCP to assist the regulation of brothels. A list of DCPs for the regulation of brothels is included in Tables 1 and 2, pp. 51-55. It is considered that the majority of brothel DCPs is quite basic, with the City of Sydney Adult Entertainment and Sex Industry Premises DCP 2006 being the most thorough document which can be modeled for future DCPs.

For LGAs which do not provide specific definitions of provisions for brothels, the definition of “prostitution” is provided in the *SO Act 1988*.

Summary Offences Act 1988

When assessing DAs, the *SO Act 1988* provides the definition of “prostitution”, which has been included in many LGA LEPs or referred to by councils which do not define prostitution in their local planning instruments. Section 16 of the *SO Act 1988* indicates that it is an offence to use premises for massage or exercise premises, photographic studios and premises providing services of a like nature for the purpose of prostitution. If a premise is in breach of their development consent for a use not approved for prostitution, this clause is used by compliance sections of council to allow them with the power to issue notices, fines and/or a court order. Conditions of consent may be imposed in a development consent e.g. a massage parlour, to indicate that no prostitution or related sexual activities is to occur on the premises. Other conditions of consent that can be imposed to prevent prostitution within an approved massage parlour may include limiting hours of operation to minimise night time activity, and rather than using solid wooden doors, curtains to be used as partitions characteristic of massage parlours.

In addition to these conditions of consent, the Accreditation Guidelines for NSW Sexual Health Services 2005 includes provisions for the sexual health of sex workers and clients.



Accreditation Guidelines for NSW Sexual Health Services 2005

An aim of the Accreditation Guidelines for NSW Sexual Health Services 2005 is to provide a comprehensive approach to improve performance and quality in sexual health services by identifying issues to be considered in the provision of those services.

Local Councils can include a condition of consent to approved brothels to comply with the requirements of these guidelines to ensure the health and safety of clients and sex workers are not compromised.

For LGAs to develop further detailed policies for brothels, the Sex Services Premises Planning Guidelines (the Guidelines) has been prepared.

Sex Services Premises Planning Guidelines December 2004

History/background

The Guidelines were prepared by the Sex Services Premises Planning Advisory Panel and was established by the NSW Cabinet Office in 2002. It was administered under grant funding from the NSW Government. The Panel was a response to the Report of the Brothels Taskforce in 2001.

The Guidelines

The Guidelines include principles for councils upon which to model LEPs and DCPs, policies, and conditions for the planning decisions made in regard to Sex Service Premises. The Guidelines state that it “assists local government in decisions they make in regard to Sex Service Premises in their area and to outline what constitutes better practice. Better practice in this context means achieving occupational health and safety objectives and minimising the potential for corruption and the impact of premises upon



neighbourhood amenity and the environment (Sex Services Premises Planning Guidelines December 2004).”

The recommendations made by the Guidelines assist the planning of brothels in Sydney LGAs. They were intended to be released to all LGAs in NSW, though at present the only indication that these Guidelines have been implemented is within the City of Sydney Adult Entertainment and Sex Industry Premises DCP 2006. This is evidenced from sex service premises definitions used reflective of the Guidelines recommendations.

In order for LGAs to ensure the best planning practice is adopted for the planning of brothels, the Guidelines should be considered in preparation of the new standard LEP, and possible future DCPs.

The most recent legislative provision for brothels is the *Brothels Legislation Amendment Act 2007 (the Brothels Act 2007)*.

Brothels Legislation Amendment Act 2007

The *Brothels Act 2007* commenced on 1 October 2007 and includes special provisions relating to brothel closure orders. It gives power to LGAs to identify and close down illegally run brothels, and to close down approved brothels due to amenity complaints.

It is noted that councils previously were required to obtain direct evidence such as using private investigators to be paid to have sex in brothels suspected to be operating without development consent. The *Brothels Act 2007* allows Councils to only need circumstantial evidence through advertisements in newspapers to provide substantial evidence to a court that a premise is being used illegally for prostitution.

Councils have started implementing the *Brothels Act 2007* to discourage brothels operating without development consent, or in breach of their consent.



Ku-ring-gai is one of the first LGAs to commence enforcement of the *Brothels Act 2007*. Nick Ebbeck, Major of Ku-ring-gai LGA indicates that “illegal brothels are still a problem in Ku-ring-gai and we are keen to use these new laws to help shut them (Sydney Morning Herald 15 October 2007, p. 3).”

Through the example of Ku-ring-gai, it is noted that effective enforcement procedures are essential for the regulation of brothels through the planning system. The *Brothels Act 2007* allows for Councils to take fast and effective action against brothels operating without development consent, or approved brothels running with an adverse impact on the community.

The *Brothels Act 2007* defines a “brothel” in accordance with the *RP Act 1943*. In addition, special definitions are provided for a “brothel closure order” and “related sex uses”.

The new act includes the definition of a “brothel closure order” being:

“to cease using premises as a brothel or in respect of the use of premises as a brothel, whether or not the order also prohibits the premises being used for, or relates to the use of the premises for, any related sex uses (Brothels Act 2007).”

In addition to the provisions for a brothel closure order, the *Brothels Act 2007* has led to the amendment of the *EP & A Act 1979*, *RP Act 1943*, and *LEC Act 1979*.

If a brothel closure order is not complied with, the *EP & A Act 1979* indicates that the Local Court or the LEC is able to make a utilities order to the provider of water, electricity or gas to cease the provision of those services to the subject premises.

The *EP & A Act 1979* has also been amended by including the definition of “brothel” in section 4. It also provides enforcement measures with the inclusion of brothel closure



orders and utilities orders. In addition, new provisions are included to the proceedings related to the use of a premise as a brothel with the new enforcement measures not applying to brothels operating lawfully or to single sex workers.

Current NSW provisions for the regulation of brothels have provided LGAs the opportunity to adopt these requirements within their local planning instruments. The following chapter investigates into the planning provisions for brothels through the in-depth case studies of PCC, BHSC, and RCC.



4.0 CHAPTER FOUR *Case Studies*

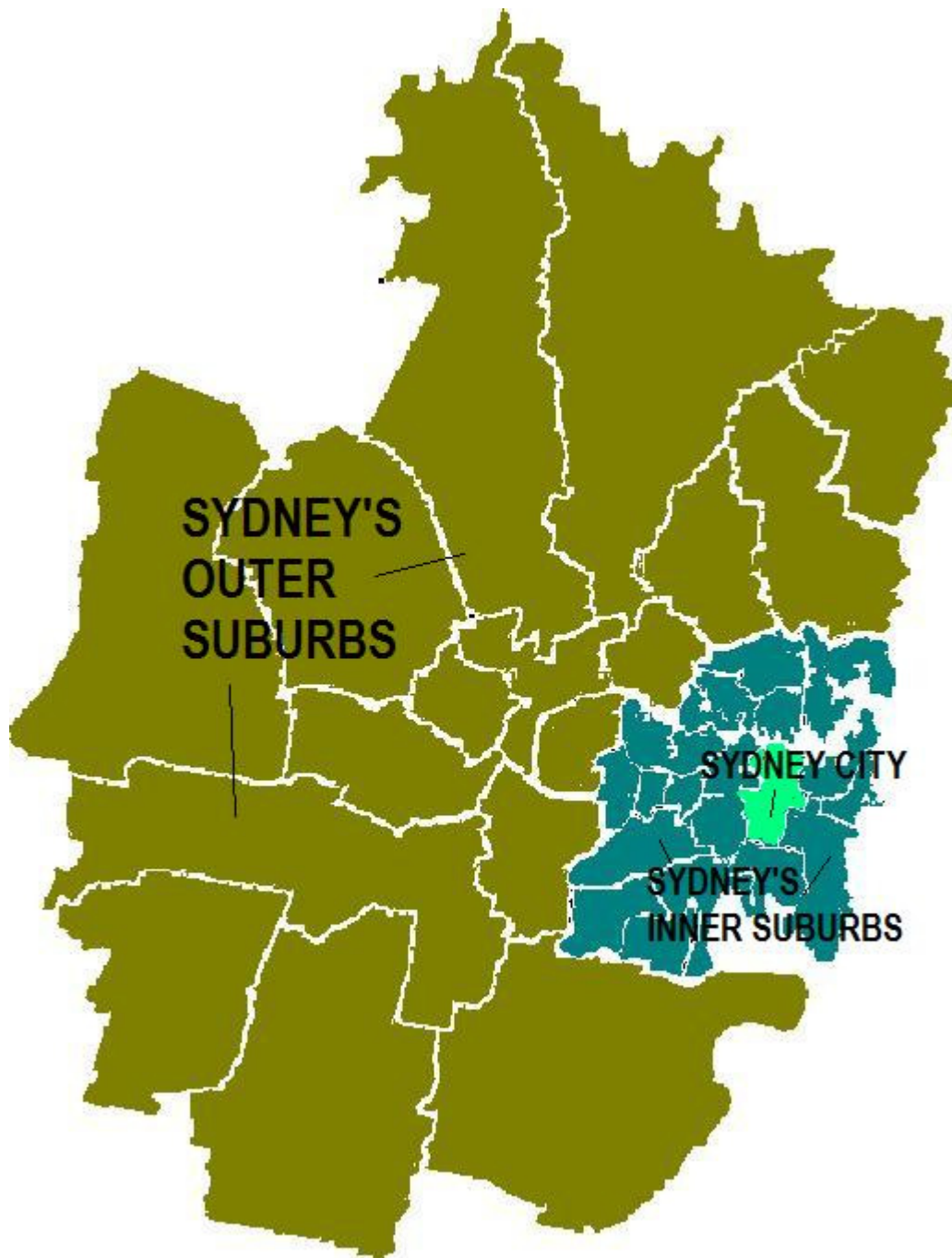
4.1 Introduction to Case Studies

The NSW DLG has defined Sydney to consist of “outer suburbs” and “inner suburbs” as illustrated in Figure 1. As indicated in the methodology, Sydney City has been identified within a separate category from the outer and inner suburbs for the purpose of this thesis. There is very limited literature focused on suburban brothels in Sydney compared to the studies and focus upon Sydney City brothels, for example, the iconic Kings Cross.

Brothels are a permissible land use in all LGAs in Sydney. It is noted that Sydney City differs from suburban areas with the characteristics and dense built environment of a city, compared to the relaxed and dispersed built environment of a suburb. With the particular focus of this thesis, it is considered that the number of adult entertainment facilities and Sex Service Premises within the City of Sydney substantially outweighs the number of brothels and adult shops within the outer and inner suburban areas in Sydney. Suburban areas in Sydney also tend to have more discreet brothel premises and discourage red light districts compared to the noticeable signage and street prostitution within Kings Cross.



Figure 1 - Sydney's Outer Suburbs, Inner Suburbs and City
(Source: Author, 2007)



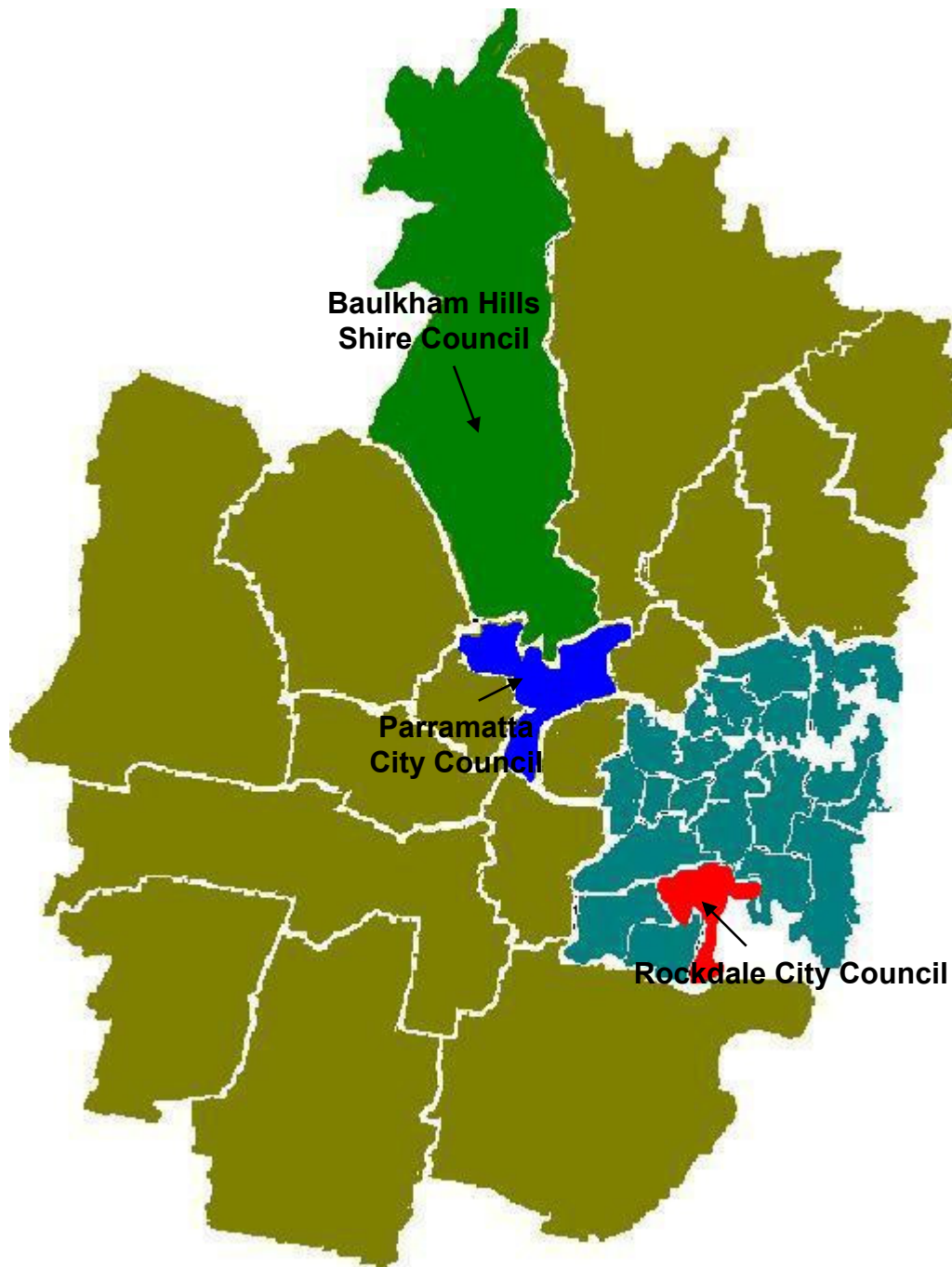
Case studies have been undertaken for three LGAs, two “outer suburbs” being PCC and BHSC, and one “inner suburb” being RCC. The case studies explore current planning provisions for brothels in the three LGAs with the examination of local planning



instruments, and qualitative in-depth interviews with a town planner representative of each LGA. Through the investigation of the case studies, it can be determined that planning provisions for brothels are sensitive to the place it is located in.

Figure 2 – Case Study LGAs

(Source: Author, 2007; DLG Website)



In examination of planning for brothels within suburbs in Sydney, the definitions provided in local planning instruments of Sydney LGAs have been listed under two tables. Table 1 lists the definitions within planning instruments in outer suburbs in Sydney, and Table 2 lists the definitions within planning instruments in inner suburbs in Sydney (including City of Sydney).

The definition of “brothel” and “Sex Service Premise” are used differently amongst LGAs in Sydney. The following tables identify the definitions provided within current planning documents used by Sydney’s outer and inner suburb areas, and Sydney City as identified previously in Figure 1. LGAs that do not identify a “brothel” or “Sex Service Premise” under their planning documents are also identified.

It is noted in Table 1 and 2, that a “brothel” is generally defined within NSW planning instruments as premises habitually used for the purpose of prostitution with one or more prostitutes.

A “Sex Service Premise” is generally defined within NSW planning instruments as premises used primarily for the provision of sex services, but does not include the home occupation (sex services).

NSW planning instruments which do not define or mention the words brothel or sex service premise are also listed. It also indicates a council’s choice in deciding not to refer to brothels within a zoned area as permissible with consent or prohibited development. In these council areas, if there is a development application lodged for a brothel, it is to be considered as a commercial premise/recreational facility.



Table 1 - Current Brothel definitions provided for Sydney's Outer Suburb Areas

(Source: Author, 2007)

Planning Instrument	Definitions		
	Brothel	Sex Service Premise	No Definition
Auburn LEP 2000	✓	-	-
Bankstown LEP 2001	✓	-	-
Bankstown DCP 2005 Part D14 Brothels	✓	-	-
Baulkham Hills Shire Council LEP 2005	-	-	✓
Blacktown LEP 1988	✓	-	-
Blacktown DCP 2006 Part E Chapter 6 – Brothels in industrial zones	✓	-	-
Camden LEP-45 1989	✓	-	-
Camden LEP-46 1989	✓	-	-
Camden LEP-47 1990	✓	-	-
Camden LEP-48 1992	✓	-	-
Camden LEP-74 1996	✓	-	-



Camden DCP 2006 Part F Chapter 2 – Brothels	✓	-	-
Campbelltown (Urban Area) Local Environmental Plan 2002	-	-	✓
Fairfield LEP 1996	✓	-	-
Fairfield City Wide DCP 2006 Chapter 9.4.6 - Brothels	✓	-	-
Holroyd LEP 1991	✓	-	-
Holroyd DCP No. 25 – Brothels 1997	✓	-	-
Hornsby Shire LEP 1994	-	-	✓
Ku-ring-gai PSO as amended 30 March 2007	✓	-	-
Ku-ring-gai DCP 42 – Regulation of brothels	✓	-	-
Liverpool DCP 36 – Brothels	✓	-	-
Parramatta LEP 2001	✓	-	-
Parramatta DCP – Regulation of Brothels	✓	-	-
Penrith LEPs	-	-	✓
Pittwater LEP 1993	-	-	✓



Ryde PSO gazetted up to 4 August 2006	✓	-	-
Standard Instrument (Local Environmental Plans) Order 2006 (Draft LEP Template)	-	✓	-
Sutherland Shire LEP 2006	✓	-	-
Sutherland Shire DCP 2006 Chapter 9, Section 5 – Brothels and Sex Shops	✓	-	-
Warringah LEP 2000	✓	-	-

Table 2 - Current Brothel definitions provided for Sydney's Inner Suburb Areas and Sydney City

(Source: Author, 2007)

Planning Instrument	Definitions		
	Brothel	Sex Service Premise	No Definition
Ashfield LEP 1985 (<i>it is noted that the word 'Brothel' is referred to but no definition is made</i>)	✓	-	-
Botany LEP 1995	-	-	✓
Burwood PSO (amended 12 September 2007 (<i>it is noted that the word 'Brothel' is referred to but no definition is made</i>))	✓	-	-



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Canterbury PSO amended January 2005	-	-	✓
Concord PSO amended 28 February 2005	-	-	✓
Drummoyne LEP 1986	✓	-	-
Hunters Hill LEP No. 1	-	-	✓
Hurstville LEP 1994	-	-	✓
Hurstville DCP No. 1 & 2 (<i>it is noted that the word 'Brothel' is referred to but no definition is made, but the definition of "restricted premises" is made</i>)	-	-	✓
Kogarah LEP 1998	✓	-	-
Lane Cove LEP 1987	✓	-	-
Leichhardt LEP 2000 (<i>it is noted that the it also defines "sex shops"</i>)	✓	-	-
Manly LEP 2006 (<i>it is noted that the word 'Brothel' is referred to but no definition is made, though it notes that amendments for the control of Brothels are not complete</i>)	✓	-	-
Marrickville LEP 2001	✓	-	-
Mosman LEP 1998	✓	-	-



North Sydney LEP 2001 (<i>it is noted that the word 'Brothel' is not noted, but the definition of "restricted premises" is made</i>)	-	-	✓
Randwick LEP (<i>it is noted that the it also defines "restricted premises"</i>)	✓	-	-
Rockdale LEP 2000	✓	-	-
Rockdale DCP 36 – Brothels	✓	-	-
South Sydney LEP 1998	-	-	-
Standard Instrument (Local Environmental Plans) Order 2006 (Draft LEP Template)	-	✓	-
Strathfield PSO	✓	-	-
Strathfield DCP 2005 Part G – Provisions for the establishment of Brothels	✓	-	-
Sydney LEP 2005	✓	-	-
Waverley LEP 1996	-	-	✓
Willoughby LEP 1995	✓	-	-
Woollahra LEP 1995	-	-	✓

As evidenced from the above 2 tables, the majority of the planning instruments in Sydney inner and outer suburb LGAs refer to the term “brothel”. For the purpose of this thesis,



reference is to be made to the term “brothel” rather than “Sex Service Premise” as this is a current term used within NSW planning instruments.

At present, only the City of Sydney Adult Entertainment and Sex Industry Premises DCP 2006 and Standard Instrument (Local Environmental Plans) Order 2006 have employed the term “Sex Service Premise”. It is noted that most LGAs refer to the term “brothel”, with some LGAs not even defining a brothel or sex industry related use.

The NSW Department of Planning gazetted the Standard Instrument (Local Environmental Plans) Order 2006 on 31 March 2006. Over the next five years, all LGAs are to adopt this standard instrument to put in order a new LEP, with the flexibility in providing requirements reflective of local issues. This standard instrument will also allow all LEPs in NSW LGAs to be consistent with planning language and zoning classifications.

Currently, there is an upcoming amendment to the standard LEP instrument pending with the Minister of Planning which will include an amended definition of Sex Service Premises.

The Department of Planning has no official position for Sex Service Premises to be implemented throughout all LGAs, but LGAs will have to provide areas where Sex Service Premises are permissible. The definition of “Sex Service Premises” is to be adopted throughout the new LEPs.

The requirements of the standard LEP instrument are a forward direction for the planning of brothels (“Sex Service Premises”). It allows for a more consistent planning practice and provides definitions and zoning specifications for uses regarding the sex industry. This is of benefit particular to LGAs which do not currently define the specific land use of brothels, and assess them under the classification of a “commercial premise” / “recreation facility”.

Planners assessing brothels have more guidance when planning for brothels and other sex industry uses when there is a specific definition and zoning provided for the use.



Councils determining brothels as a legal land use provide regulations and requirements on a different scale to that of an average local commercial premise. This includes specific regulations for brothels under NSW and LGA specific planning instruments, internal health, waste and traffic referrals, and external referral to the local police command.

The regulation of brothels within PCC is provided through local planning instruments with reference made to the term “brothel”. It is noted that the regulation of brothels in PCC has recently been highlighted in the media with an ICAC investigation into corrupt conduct associated with the regulation of brothels in Parramatta. The planning of brothels in PCC is examined in the following sub-chapter.



4.2 Parramatta City Council

Background

Brothels in PCC were historically recognised within the town centre of Harris Park. Adam Cowell (2006, pers com., 19 Sep.), Senior Development Assessment Officer at PCC states that “Harris Park is one of those little towns that have traditionally suffered from its proliferation of brothels” with illegally operated brothels introduced into residential areas of Harris Park which operated “long into the night and into the early hours of the morning...[changing]... the amenity of the streets (Brogden, 2001b)”. Harris Park once included one street where ten illegal brothels once operated in as identified by John Brogden (2001a), ex-NSW Opposition Leader. When the ten illegal brothels were in operation, residents of Harris Park organised their own civil action by flashing torches in the eyes of clients coming in and out of the premises (Brogden, 2001a). PCC has a history of residents expressing their subjective moral concerns in regard to brothels both in the past when brothels were illegal and currently as legal uses with consent from council. Cowell (2007, pers com., 18 Sep.) believes that it is important for brothels to be a legal land use so they are not pushed underground that leads to the crime and abuse of workers making the regulation of brothels hard to manage.

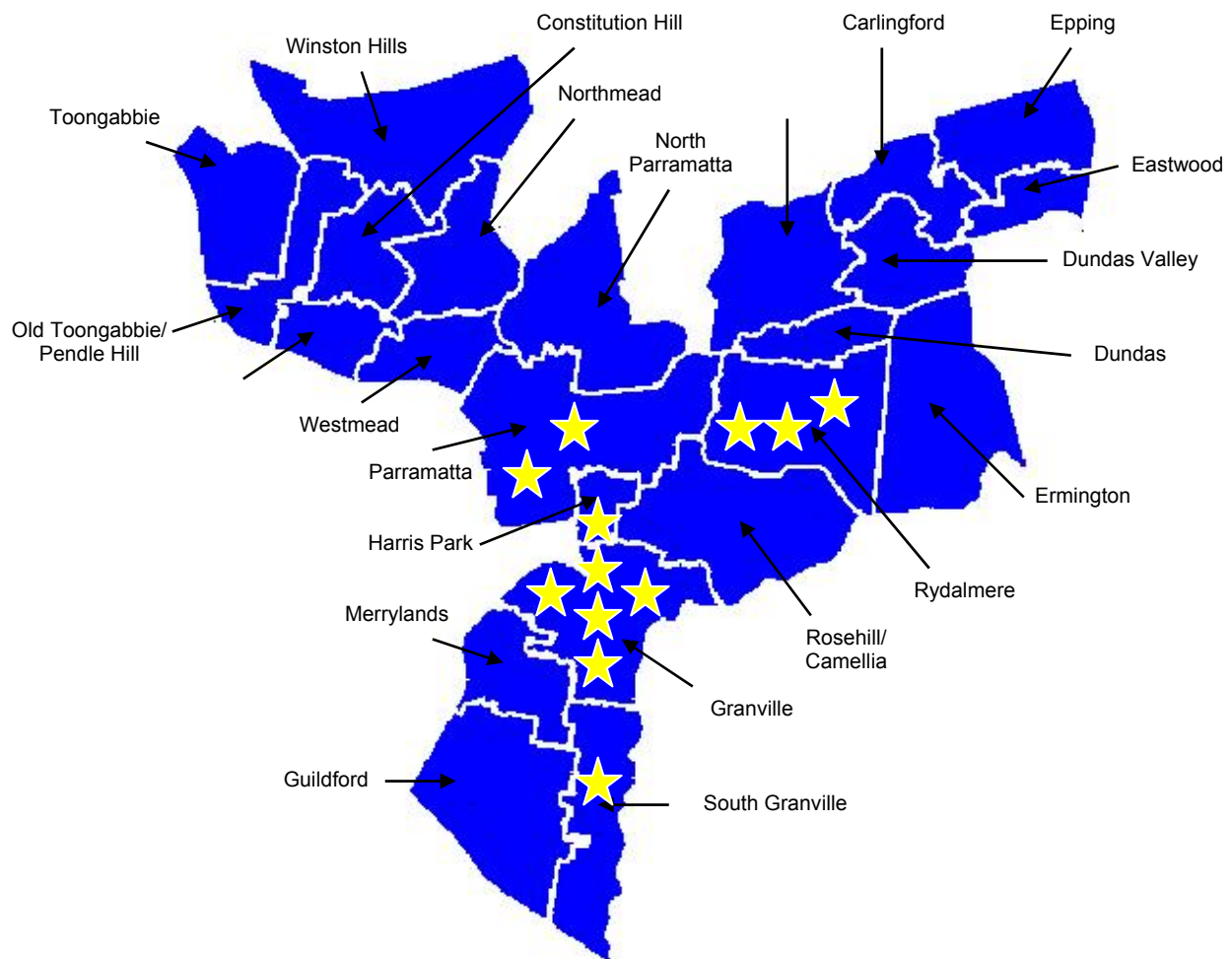
Current local provisions for brothels

As brothels in NSW are a permissible land use with consent, PCC has twelve premises approved for the use of a brothel throughout the LGA. Also known as Sydney’s second Central Business District, PCC provides for brothels as permissible uses in commercial and industrial zoned areas as indicated in Figure 2 – Approved brothels in Parramatta City Council.



Figure 3 – Approved Brothels in Parramatta City Council

(Source: Author, 2007; Parramatta City Council)



In addition to State legislation, PCC provides local planning instruments for the regulation of brothels within the various localities in the LGA. These planning instruments are further discussed below and include the Parramatta Regulation of Brothels 1997, Parramatta LEP 2001 (Draft Amendment) (Brothels, Bushland and Trees), Parramatta LEP 2001, Sydney Regional Environmental Plan 28 – Parramatta (SREP 28 – Parramatta), Parramatta DCP 2005, Harris Park DCP, and Parramatta City Centre DCP.



Parramatta Regulation of Brothels 1997

The aims of the Parramatta Regulation of Brothels 1997 are as follows:

- i. Provide more certainty in the development control process and assist the community and applicants to understand Council's requirements relating to brothels*
- ii. To nominate the location requirements and development standards for brothels which reflect broad community attitudes and expectations*
- iii. To provide appropriate guidelines for brothels which will ensure that such area at a reasonable distance from residential occupancies and other nominated sensitive land uses, and will not have a detrimental impact on the amenity of the host neighbourhood*
- iv. To provide appropriate guidelines which will discourage a concentration of brothels in close proximity to one another*
- v. To identify appropriate health and hygiene standards relating to the management of brothels*
- vi. To ensure adequate consideration is given to safety issues*

The above aims are appropriate for the locality of PCC. Aims ii and iii allow for the place sensitive planning of brothels to ensure the planning for brothels reflect broad community attitudes and expectations and to ensure the location of brothels will not have a detrimental impact on the amenity of the neighbourhood. The regulation is reflective of the aims to include information on how to submit a DA for brothels, DA notification and advertising requirements, and referrals for comment. The regulation also includes information for specific requirements, development and health standards for brothels. It is considered that this document is quite small and is does not thoroughly reflect the indicated aims. It is also noted that the majority of the regulation is only relevant to commercial zoned areas, with only a small section dedicated to brothels in industrial areas. This regulation limits the guidance provided for planners when assessing brothels.



The requirements for separation distances from sensitive land uses in the regulation have been superseded by the separation distances identified in the Parramatta LEP 2001 (Draft Amendment) (Brothels, Bushland and Trees). These new separation distances have generally increased from previous requirements.

Parramatta LEP 2001 (Draft Amendment)

The aims of the Parramatta LEP 2001 (Draft Amendment) amend the provisions for brothels, bushland and trees. The aims relevant to the regulation of brothels are as follows:

- i. To clarify and increase the separation distance between brothels and residential areas*
- ii. To remove brothels from development that is permissible from certain areas of the 4 Industrial Zone and also the 3A Centre Business Zone*
- iii. To introduce additional controls over brothel signage and visibility*

The above aims provide amendments to include more detailed separation distances from residential and sensitive land uses. Some industrial areas in South Granville, Granville, Clyde, and Guildford have been specified to ensure brothels are excluded from those areas. The draft amendment to Parramatta LEP 2001 provides for a more detailed place sensitive regulation for brothels, in addition to the provisions already listed in Parramatta LEP 2001.

Parramatta LEP 2001

The Parramatta LEP 2001 provides the planning objectives applying to specific parcels of land. The LEP indicates the types of development that legally require development consent to be granted by Council. The development standards include stipulated



objectives and controls regarding zoning, height, floor space ratios, landscaping, overshadowing, and heritage and conservation areas.

Part 3, Section 24 of Parramatta LEP 2001 (Appendix 2) provides specific development standards for brothels. The development standards specified include requirements for separation distances from sensitive land uses, and the matters a consent authority must consider when determining an application for a brothel.

Under the LEP, a brothel is defined as premises habitually used for the purpose of prostitution or that are designed for that purpose. Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

It is noted that the Standard LEP instrument will amend the above provisions and definitions within the next five years.

SREP 28 – Parramatta

SREPs cover issues such as urban growth, commercial centres, extractive industries, recreational needs, rural lands, and heritage and conservation. SREP 28 was made under the *EP & A Act 1979* and provides the framework for detailed local planning by PCC.

The land covered by SREP 28 – Parramatta is known as the Parramatta Primary Centre. This land is predominantly within the City of Parramatta and partly within the City of Holroyd.

Part 11, Section 79 of SREP 28 – Parramatta (Appendix 3) provides specific requirements for the consent authority to consider when determining a DA for the purpose of a brothel.

SREP 28 and Parramatta LEP 2001 is associated with the Parramatta DCP 2005, Harris Park DCP, and Parramatta City Centre DCP, which provide guidelines on detailed aspects of development.



Parramatta DCP 2005, Harris Park DCP, and Parramatta City Centre DCP

The DCPs guide development approvals through detailed provisions and environmental standards for new development in PCC. The provisions are not legally binding but are seriously considered in the assessment of DAs through merit based assessment.

There are no specific regulative requirements for brothels within the DCPs. General planning principles for the locality are considered in the assessment for brothels to ensure the planning of brothels is consistent with the development standards and objectives within the DCPs.

Parramatta Notification DCP 2004

Parramatta Notification DCP 2005 ensures that owners and occupiers of land are notified of development occurring on adjoining and adjacent properties and are provided with opportunities to participate prior to final decisions being made. Where there is a DA for a brothel, properties on the opposite side of the street, notification letters will be sent to schools, aged persons residential developments and churches in the nearby vicinity. A brothel is to be notified for 21 days, with letters sent to adjoining neighbours, advertised in local newspaper and PCC website, a notification sign placed on the site, exhibited at the central library, and letter to public authorities which may have an interest.

In addition to local planning instruments for brothels, ethical and moral considerations are a factor when determining DAs for brothels in PCC.

Ethical and Moral Considerations

It is considered when residents make a submission in objection to a brothel application, that they don't quite understand what the impacts are on them as a community, the residents just think it's immoral and therefore should not be approved (Cowell, 2007, pers com., 18 Sep.). There is a fear in the community in regard to brothels, though proper education may allow residents to be aware of the impacts for workers, clients and the community with an approved brothel compared to that of an illegal brothel.



In Cowells opinion (Cowell, 2007, pers com., 18 Sep.), if an application for a brothel turns out to have numerous objections, the local councilors will get involved and often put out the recommendation based on their own moral or personal opinions, and what seems to be non planning reasons to make the decisions even though the planners may have recommended approval in some situations. Cowell (2007, pers com., 18 Sep.) notes that he has not seen a councilor recommend approval of a brothel where staff has recommended refusal.

When a brothel application goes before the elected council it can often be political. Cowell (2007, pers com., 18 Sep.) believes that all contentious land uses would be similarly determined, as there would be more social concern and the council more likely to favour the side of the residents and make a moral decision more likely than the would with another non-contentious DA. It is known that councilors generally do not have any planning backgrounds, yet are the decision makers for large and contentious forms of planning and development in the LGA. It can be considered that in forming a recommendation to determine a development, they take on the recommendations of council planners, resident objections, and their own personal judgment towards the development. As councilors represent the LGA they live in, it can be considered that may be representative of the religious affiliations noted in Chapter 2. Therefore, moral judgments and attitudes from religious backgrounds may affect the determination of development, particularly the contentious land use of brothels.

In terms of ethical considerations made in PCC, a code of conduct is provided for all employees to comply with. In concern with the regulation of brothels, planners and compliance officers are subject to an appropriate code of conduct. In principle, it is important that when a planner assesses an application for a brothel to go on site with other people. Cowell (2007, pers com., 18 Sep.) indicates that an ethical situation that a planner may face, is to not recommend refusal of an application because a planner does not like the brothel operators. From his personal experience he had an application for an extension of a brothel premise. During the time of assessment, the press revealed that



immigration had come and done a raid for illegal immigrants. Cowell believes that he had to make the ethical decision to approve the extension of brothel, as he indicated that he was “not approving the use of the brothel for the operator, I’m approving the land as a brothel... as a planner I accept it’s a legal land use (Cowell, 2007, pers com., 18 Sep.).”

Cowell also indicates that it is important that an ethical planner is to be more onerous when being professionally upfront, not to take bribes, to always account for how to deal with the applicant and parties, particularly taking more file notes than for other applications. By taking these considerations into account, it would protect the planner, as well as the applicants or objectors. It is also important for a planner to work closely with the compliance team to make sure there is no history of the site to make “the assessment easier and more open (Cowell, 2007, pers com., 18 Sep.).”

PCC provides a legal support team and peer review process that provides a double check for compliance officers and planners in the assessment of brothels. Cowell (2007, pers com., 18 Sep.) feels that the current procedures for the regulation of brothels are effective, though “in the Parramatta situation this year, one errant person came in and did the wrong thing, and we weren’t going to stop that regardless (Cowell, 2007, pers com., 18 Sep.).” PCC could have provided more checks in the process which could have stopped the corrupt activity earlier, but Cowell believes that it still would not have stopped the “actual corruption activity occurring in that particular case (Cowell, 2007, pers com., 18 Sep.).”

The recent investigation was undertaken by the ICAC into the corrupt conduct associated with the regulation of brothels in PCC.

The ICAC found that the Mr. Fryar, Team Leader, Compliance Services at PCC sought and obtained regular payments \$40,000 and sexual services from various women who were working as brothel operators or prostitutes from unauthorised premises within the Council’s area, in return for not taking any action against the unauthorised use of the premises for prostitution (ICAC Report, August 2007). The Team Leader, Compliance Services at PCC gave some brothel operators prior warning to when an inspection by



Council was planned. Commissioner Cripps stated that “Although Mr. Fryar deliberately manipulated the system, it had elements that gave him the opportunity to act corruptly without detection for several years (ICAC Media Release, 22 August 2007).”

The ICAC report made ten recommendations assist PCC improve its systems and minimise and prevent similar future conduct. These recommendations include that PCC should upgrade its systems so that an officer cannot close a matter after undertaking an inspection, and should create a thorough review and audit system for the compliance function, supervised by a high-level manager.

The regulation of the prostitution industry in NSW was also examined by the ICAC investigation. Recommendations were made to the Minister for Planning and the Attorney General which included that the corruption risks associated to the regulation of brothels by local councils are to be reviewed with the development of appropriate strategies to control these risks.

It was also recommended that Mr. Fryar be prosecuted under the Crimes Act 1900 (NSW) for corruptly receiving benefits, and under the ICAC Act for giving false or misleading evidence after he admitted that he deliberately gave false information to the Commission about when he first began accepting money from people using premises to provide sexual services. (ICAC Media Release, 22 August 2007)

This example of corrupt conduct can be taken aboard by all LGAs. The recommendations by the ICAC can be imposed throughout the regulation of brothels throughout all council areas, and particular within PCC.

Ethical and moral considerations are factors that influence the attitudes and regulation of brothels in PCC. These considerations are also factors in the assessment process of brothels.



Assessment Process for Brothels

The assessment for brothels in PCC depends on the level of community involvement. Subsequent to notification procedures of the DA, if an application for a brothel receives four or more submissions in objection to the development, it will go to a monthly council meeting to be determined by local councilors. If there are less than four submissions, planners will generally determine brothel DAs on the merits of the application with the straight forward process to approve or refuse the application based on the merits of the operation, siting, design and suitability of the site for the use of a brothel (Cowell, 2007, pers com., 18 Sep.).

Local council members only have influence in the decision making process if a brothel application does not go to court. “In the end scenario, if [brothel applications] are appealed, I don’t think [local councilors] have much influence at all (Cowell, 2007, pers com., 18 Sep.).” Cowell believes that brothel applications “tend to get funneled through court processes rather than other applications purely because the proponents often rightly anticipate that there is a concern in the political environment (Cowell, 2007, pers com., 18 Sep.).” Councilor input is part of a democratic process, but the decisions made are appealable to the LEC. This process also is a factor for planners to make ethical decisions as they are to be prepared to be cross examined with their recommendations in court with valid planning grounds if the application is appealed.

A factor in consideration of the assessment process for brothels includes the place sensitive planning for brothels.

Place Sensitive Planning for Brothels

As planning is for people and places, brothels are determined sensitive to the locality and community. As indicated in PCCs local planning instruments, the planning for brothels have been provided in commercial and industrial areas where it is less likely to impact residential areas and other sensitive land uses. Aims of specific regulations for brothels



also provide planners to assess an application for a brothel by merit depending on the locality, amenity and community in the area.

The theory of place sensitive planning for brothels appears logical, but in reality, “councilors are more reluctant to support brothels and so the court supports them... we’ve got a system...[that]...tends not to necessarily take account of local issues.” (Cowell, 2007, pers com., 18 Sep.).” It is important that a planner, elected council, or the LEC being the authority in determination of a brothel, takes into account local issues of an area to ensure place sensitive planning.

In regard to how brothel applications are determined in NSW, Cowell states that “in some particular areas where you know the gut feeling that a brothel might not be as desirable just purely because maybe the demographics or the feel of an area or the character of an area, is less distinguishable to a court than local planners or local council, and it’s a shame that the court process takes that on board (Cowell, 2007, pers com., 18 Sep.).”

The place sensitive planning of brothels allows development to be compatible within the existing planning environment. A LGA which does not have any approved brothels in its locality is BHSC, a LGA which adjoins PCC. The factors that reflect this place sensitive planning is further discussed in the following sub-chapter.



4.3 Baulkham Hills Shire Council

Background

There are no approved brothels in BHSC as indicated by an anonymous town planner (Anonymous, 2007, pers com., 3 Oct.) at BHSC. BHSC as illustrated in Figure 4 is characterised with bushland and a curvilinear street pattern developed with a range of residential, rural-residential, and rural development. The low to medium density built environment is known for its relaxed and friendly community.

BHSC is also known as the 'Hills District' and Sydney's 'bible-belt' comprising of many conservative middle-class residents. It is known for having many churches affiliated with Christianity, and is particularly known for the area which includes the well recognised Hillsong Church.

Since there are no approved brothels in BHSC a brothel could only operate illegally (Richardson, 2001). The illegal land use of brothels can be taken to the LEC on the grounds that it is an unauthorised activity without development consent from Council and does not meet the objectives under Baulkham Hills LEP 2005.

Current local provisions for brothels in BHSC are further discussed after Figure 4.



Figure 4 – Baulkham Hills Shire Council

(Source: Author, 2007; Baulkham Hills Shire Council)



Current local provisions for brothels

BHSC takes an 'evasive' approach by avoiding an official and definitive stand on the land use of brothels (Sharp, 2003, p. 264). This evasive attitude is evident through a lack of documentation indicating that the land use of brothels is a 'prohibited development'. It is also noted that no definition of a 'brothel' is provided under BHSC planning instruments. The lack of textual evidence regarding brothels being an illegal land use could suggest BHSC's hesitant stance in clearly defining this contentious land use. Anonymous town planner at BHSC indicates that if a brothel is located in an appropriate place and a permissible land use they would certainly have to consider it (Anonymous, 2007, pers com., 3 Oct.). As there is no specific definition of a brothel, BHSC views it under the definition of a commercial premise. Under Baulkham Hills LEP 2005, a commercial premises is defined as a building or place used as an office or for other business or commercial purposes. Therefore a brothel is permissible in any zone in which a commercial premise is permissible with consent, with commercial zones located in every suburb in BHSC.

Ethical and Moral Considerations

The ethical and moral considerations in BHSC can be a reflection of the area known as the 'bible-belt' of Sydney comprising of conservative middle-class residents. As indicated in Chapter 2, there is a high residential population with religious affiliations to the Catholic and Anglican Church. As there have been no applications for brothels lodged in BHSC there is no current evidence of the community objecting to brothels on ethical and moral grounds. A factor to be considered in ethical and moral considerations would be with the planners assessing DAs.

If given the opportunity to assess a brothel application, planners "would have to consider their religious viewpoints, or whether or not they would consider if it was an application they could fairly deal with... considering the services that are provided... most people would have that viewpoint that they would have to think about being comfortable dealing



with that type of application (Anonymous, 2007, pers com., 3 Oct.).” It is essential that planners deal with a contentious DA with no personal judgments or concerns that may lead towards a biased merit based assessment.

BHSC has social plans that identify needs groups within the Shire but anonymous town planner at BHSC does not see how demographics of the area would impact brothel applications (Anonymous, 2007, pers com., 3 Oct.). This assumption is considered incorrect as the demographics of a community affects the social and urban environment in which the council plans for.

As there have been no applications for brothels in BHSC, the assessment process for brothels is hypothetical.

Assessment Process for Brothels

BHSC has enquiries for brothels but “within Baulkham Hills Council, we don’t get any applications for that type of use (Anonymous, 2007, pers com., 3 Oct.).” An explanation in why BHSC does not receive any applications for brothels is that “people... are aware that they may not be supported (Anonymous, 2007, pers com., 3 Oct.).”

Anonymous town planner at BHSC (2007, pers com., 3 Oct.) indicates that if brothels were to be assessed they “are definitely a sensitive land use. I would be very concerned about where they are located.” Through interviewing this anonymous town planner, and having a phone conversation with a duty planner, it was clear that there was limited knowledge they had for the planning provisions for brothels due to the lack of experience. If a brothel application were to be lodged, it would be a concern in how the application would be assessed if council planners had limited knowledge. The new standard LEP instrument will include provisions which may allow the council planners to have more detailed guidance when planning for brothels. It would also be of benefit for council planners to be educated in the planning for brothels when potentially faced with the lodgment of a brothel application or to answer counter enquiries adequately.



The only brothels in BHSC are illegal ones. The BHSC compliance section takes action towards an average of 10 illegal brothels a year (Anonymous, 2007, pers com., 3 Oct.). There would be no problems with massage parlours posing as brothels, as along with no approved brothels in BHSC, there are also no approved massage parlours or other sex industry land uses. If a brothel is known to be operating without consent, compliance officers “would issue a notice and an order... We have had a few [brothels] which I know have moved to a different premise and started up the business further down the street, or a few blocks away, and we’ve had to move a few of them a few times in a row (Anonymous, 2007, pers com., 3 Oct.).” There are issues with the relapse of illegal brothels that have been issued notices, though it is considered that illegal brothels will always exist in a community if the market is there. In regard to place sensitive planning for brothels in BHSC, it is the reputation that the council has which leads to brothel applications not being lodged.

Place Sensitive Planning for Brothels

As BHSC does not “get any [applications for brothels], I would assume that people here think that there’s none here so maybe it isn’t the best place to try and set up (Anonymous, 2007, pers com., 3 Oct.).” The fact that there are no approved brothels in BHSC is reflective of place sensitive planning as the council has the reputation for brothel operators to not lodge brothel applications with council.

The place sensitive planning for brothels in RCC is evident where brothels have been approved by the LEC. Planning for brothels in RCC is investigated in the following sub-chapter.



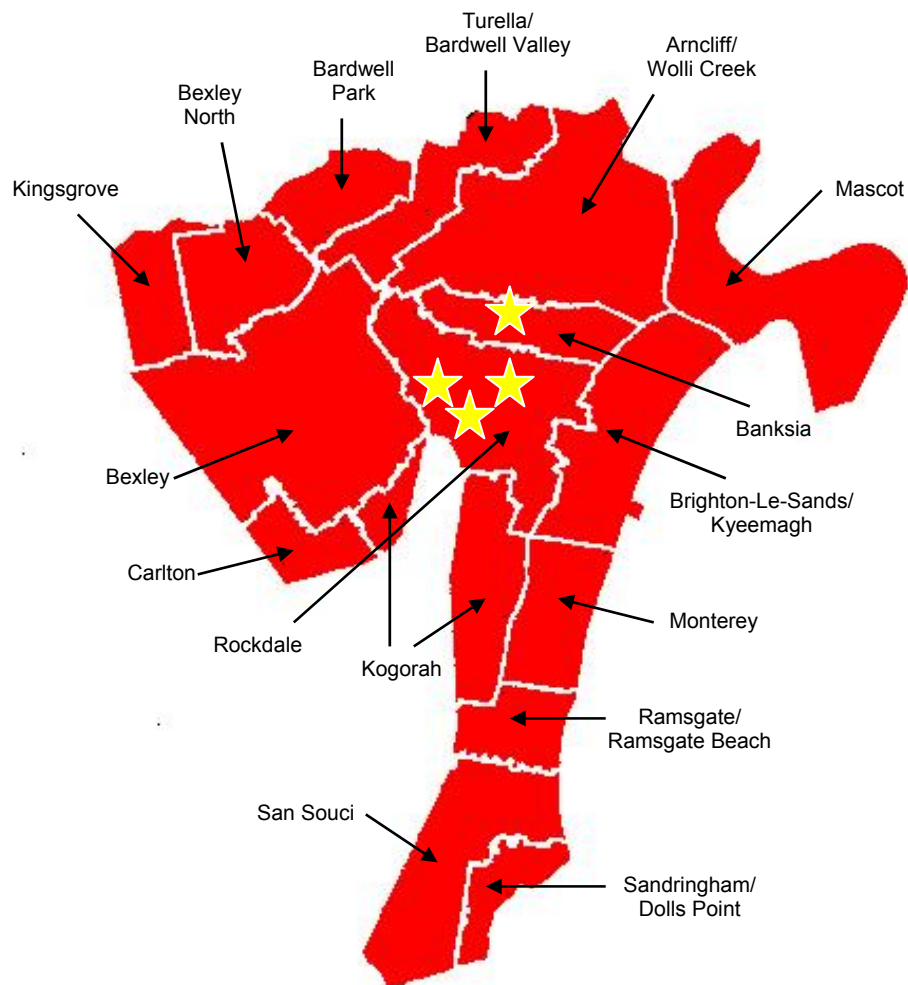
4.4 Rockdale City Council

Background

Rockdale City Council (RCC) currently has four premises approved by the LEC for the use of a brothel. Fiona Heretis, Development Assessment Officer at RCC acknowledges that brothel “controls vary from council to council” (Heretis, 2007, pers com.) with the four court approved brothels in RCC located in industrial and commercial areas as illustrated in Figure 5.

Figure 5 – Approved Brothels in Rockdale City Council

(Source: Author, 2007; Rockdale City Council)



Current local provisions for brothels

In addition to State legislation, RCCs local planning instruments provided for the land use of brothels within the various localities in the LGA. These provisions are discussed below and include RCC DCP 36 – Brothels and Rockdale LEP 2000.

RCC DCP 36 – Brothels

The aims of RCC DCP 36 – Brothels are as follows:

- i. provide standards and criteria for the development of brothels in addition to those contained in Rockdale Local Environmental Plan 2000 (Amendment No. 1), and*
- ii. provide for sufficient separation between brothels so that there is not a concentration of brothels in any one locality, and*
- iii. limit the size of brothels, and*
- iv. ensure that brothel development is operated in a manner that will ensure the amenity of the locality is not adversely affected, and*
- v. ensure that the design and location of brothel developments provides safe access for clients and staff*

The above aims indicate that the DCP provides for separation distances for brothels to ensure a red light district is not formed, it also provides for the place sensitive planning for brothels under aim iv to ensure the operation of a brothel development will not adversely affect the amenity of the locality.

Brothels have been defined under RCC DCP 36 as the premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose. Premises may constitute a brothel even though they are used by only one prostitute for the purposes of prostitution.

The DCP provides for specific requirements for the location, development standards, size of premises, parking, advertising, health and building requirements and access.

Information has also been provided for lodging a brothel DA.



Rockdale LEP 2000

Part 1, section 24 of Rockdale LEP 2000 provides specific provisions for brothels. This section indicates separation distances and matters of consideration of the consent authority determining the application.

Under Rockdale LEP 2000, a brothel means premises habitually used for the purposes of prostitution, including premises used by only one person for the purposes of prostitution. The definition of a brothel is a condensed version of the definition provided in DCP 36 – brothels.

Similar to other LGAs, ethical and moral considerations in regard to planning for brothels are an issue in RCC.

Ethical and Moral Considerations

Heretis states that brothels are “the oldest profession in the world. I can see how some factions of society would have a problem with it, but in my opinion a lot of the time that is based on their own moral and religious beliefs more than anything (Heretis, 2007, pers com.).” Moral and religious beliefs fuel strong subjective opinions regarding objective planning matters. It can be viewed that “certain councils try their hardest to stop brothels going ahead regardless as to whether it’s a good proposal or not (Heretis, 2007, pers com.).” This is reflective to ethical and moral standards for place sensitive planning within a community. Heretis does not agree with people who object to a brothel application on religious and ethical grounds particularly if the proposed brothel is located appropriately in a non offensive location and is appropriately managed (Heretis, 2007, pers com.).

Heretis believes that “certain religious groups perceive brothels as wrong from a religious point of view (Heretis, 2007, pers com.).” It is considered that the general community is not aware of the positive aspects of legalised brothels and the detrimental lack of health and security for clients and prostitutes within illegal brothels. “I’d prefer to have brothels



permitted and legally operating properly than having illegal operations in secret locations (Heretis, 2007, pers com.)”

As a planner, Heretis (2007, pers com.) believes that an ethical implication faced when assessing brothel applications is to consider objections based on other peoples ethical and religious beliefs when not agreeing with their opinions. RCC Statement of Ethics (Appendix 4) is provided for staff to act in accordance with. The ethical and moral attitudes of the planning for brothels inevitably affect the development assessment process.

Assessment Process for Brothels

Heretis (2007, pers com.) indicates that there would be less than five brothel applications received each year at RCC. All brothel applications lodged at RCC are to be considered at a full council meeting therefore councilors determine the approval or refusal of brothel DAs.

All applications for brothels undergo public notification in RCC. Heretis believes that “certain councils ... over notify during the public notification process and as a result many objections are received (Heretis, 2007, pers com.).”

Brothel DAs are often a good opportunity for councilors to impress the community they represent with their decisions, as there is often quite a lot of objection by the community (Heretis, 2007, pers com.). In regards to the determination of brothels, Heretis believes “that planners should have the final say in these types of applications, as we are specially trained to look at all the planning and amenity issues, which we do, whereas councilors represent the community, and I consider that communities can be biased and base their objections on their own moral and religious beliefs (Heretis, 2007, pers com.).” The policy that all brothel applications are to go to a council meeting, with the development proposal to be determined by councilors, ensures representation of the community. However, as brothels are a planning issue, the determination by councilors who do not have planning expertise seems to be negligent with good planning for RCC.



Place Sensitive Planning for Brothels

Heretis states that “it is appropriate to regulate and permit brothels in suitable locations away from sensitive land uses such as schools, childcare centres and churches (Heretis, 2007, pers com.).” RCCs local planning instruments provide detailed distance separation requirements from sensitive land uses and specifies zoned areas where brothels are a permissible use with consent.

It can be viewed that “politicians generally make the final decision on such controversial applications and their decisions are generally based on the wants of the community, which is not always a fair decision (Heretis, 2007, pers com.).” Despite planning advice sometimes being disregarded with the final determination of brothels at a council meeting, the decisions are made to be place sensitive to the locality and representative of the community.

The place sensitive planning of brothels between PCC, BHSC and RCC are evaluated, compared and contrasted in the following sub-chapter.



4.5 Evaluation

Planning for brothels in PCC, BHSC and RCC are affected by ethical and moral considerations of the community, councilors, and planners.

The decision making for brothels differs between the three case study areas. Brothel DAs at PCC are assessed under delegated authority if there are less than four submissions, which then are presented at a council meeting for determination by councilors. BHSC does not have any applications for brothels lodged so the decision making for brothels can not be evaluated. All brothel DAs at RCC are presented at a council meeting and determined by councilors. This inconsistency amongst council reflects varying development and determination standards amongst LGAs.

The planning for brothels in PCC, BHSC and RCC are impacted by ethical and moral concerns of the community, councilors and planners. Each community has religious affiliations which strongly affect the judgments of local elected councilors. Planners and compliance officers are affected by ethical standards and a code of conduct within each LGA.

The current LGA provisions for the planning of brothels at PCC, BHSC and RCC are considered not adequate for the locality. PCC and RCC provide definitions and specific sections for the provision of brothels, however BHSC does not even mention the word 'brothel' throughout any of BHSCs local planning instruments. It is considered that the new standard LEP instrument to be adopted by all NSW LGAs within the next five years will ensure LGAs include provisions for sex service premises. It is up to the individual LGA to develop a DCP specific for the development of brothels. Considering the lack of brothel applications lodged in BHSC, a DCP for brothels would not be necessary. However the provision of a brothel definition and section within the LEP to provide detailed distance separation requirements and zones where brothels are permissible with consent/prohibited. These requirements would ensure that the planning for brothels is more accurate than compared to brothels being defined under a commercial premise. The DCP



regulation for brothels in PCC and RCC require an update to be consistent with a brothel now being defined as a sex service premise.

Planning for brothels within PCC, BHSC and RCC is reflective of the locality. PCC and RCC providing zoned areas for brothels within industrial and commercial zones ensure that the local residential amenity is not compromised. Distance separation requirements makes certain that the operation of brothels does not adversely impact upon sensitive land uses such as churches, childcare centres and schools. BHSC having no approved brothel applications is reflective of the 'bible-belt' suburban community. With no brothel applications being lodged indicates that brothel operators are aware of the reputation and environment of BHSC not favouring brothel applications.

There are many contrasting elements to the planning of brothels between LGAs in Sydney as evidenced by the case studies of PCC, BHSC and RCC.

The following final chapter restates the research questions of this thesis and provides a conclusive discussion of how chapters one to four have examined the way in which brothels are planned in suburban LGAs in Sydney.



5.0 CHAPTER FIVE *Recommendations and Conclusion*

5.1 Recommendations

Recommendations have been made subsequent to the examination of moral and ethical attitudes towards brothels, past and current legislative provisions for the regulation of brothels, and in-depth case studies of PCC, BHSC and RCC. These following recommendations outline possible improvements in the planning for brothels for LGAs in Sydney, with LGA specific recommendations delineated for PCC, BHSC and RCC.

Recommendations for the regulation of brothels in Sydney

- ❖ Provide Development Assessment town planners and compliance officers information and training on current and upcoming legislative provisions and recent court cases regarding proposed brothels
- ❖ Develop a formal brothel code of conduct for all council officers dealing with illegal, approved or proposed brothels. This is to include the following:
 - A policy for more than one council officer (preferable for both a manager and compliance officer to accompany a Development Assessment Officer) to attend site inspections or any meetings with a brothel owner/operator
 - Officers to frequently update managers on the status of the illegal, approved or proposed brothels
 - Compulsory detailed file-notes for all communication made in regards to the brothel
 - Training council officers about the brothel code of conduct
- ❖ Provide pre-lodgment meetings for brothel applications to allow the effective communication of brothel development standards between council officers and brothel owners/operators



- ❖ Provide language translators for non-English speaking applicants. It is noted that Sydney is a very multicultural city. The provision of language translators ensures the effective and adequate communication to all brothel owners/operators about NSW and LGA specific development standards and regulation of brothels. The advertising of DAs would be of benefit to be circulated within local newspapers of different languages. In addition, consideration is to be made to provide translation of notification letters.
- ❖ Develop a group of both strategic and DA planners at council to develop appropriate zonings and development standards for brothels. This may also include input from the Sex Services Premises Advisory Panel, liaison with the City of Sydney (that has developed a model DCP), NSW Health, SWOP (Sex Workers Outreach Project), Scarlet Alliance (the Australian Sex Workers Association), and the Crime Prevention Officer at the local police command.
- ❖ Brothel applications to be spread out amongst council officers due to the following:
 - Increase the number of council officers for brothel operators/owners to contact. This may reduce the potential for corrupt conduct as it will reduce the opportunity for a non-professional relationship to be formed between council officers and reoccurring brothel operators/owners
 - Ensure that all council officers have knowledge and experience in the regulation and assessment of brothels, particularly when answering duty enquiries. This will ensure consistent development advice is provided to brothel operators/owners.
- ❖ Ensure all LGAs are aware of the Sex Services Premises Planning Guidelines December 2004. Recommendations made within this document are to be considered in the amendments or creation of LGA specific brothels regulation and planning.



- ❖ Educate the community about the decriminalisation of brothels and the unregulated consequences of illegal brothels.

In addition to the above recommendations for the regulation of brothels in Sydney, LGA specific recommendations have been made for PCC, BHSC and RCC.

Recommendations for the regulation of brothels in PCC

Resultant of the case study undertaken on PCC to include examination of local planning instruments and in-depth qualitative interview with Adam Cowell, Senior Development Assessment Officer at PCC, the following recommendations have been made to improve the planning and regulation of brothels in addition to recommendations made for the regulation of brothels in Sydney.

- ❖ Update the current DCP for the regulation of brothels
 - Update definitions to be consistent with definitions provided in the standard LEP instrument
 - To be consistent with distance separation and brothel zoning amendments to the Parramatta LEP 2001
 - To provide more guidance and information for DA applicants including the provision of a template for a Plan of Management (Appendix 5)
 - Provide maps clearly indicating the zones and areas in which brothels are permissible including the radius of distance separation from sensitive land uses within the locality. The illustrations will allow brothel owners/operators to be aware of PCCs specific distance separation requirements, and provide additional guidance for officers assessing DAs.
- ❖ LEP 2001 and SREP 28 provisions
 - Provide specific brothel regulation design standards specified for both industrial and commercial zoned areas



- Clearly indicate in each zoning whether a brothel is permissible or prohibited development
- ❖ DCP provisions
 - For the Harris Park DCP, City Centre DCP and DCP 2005 to have consistent definitions and is reflective of brothel standards indicated in LEP 2001 and SREP 28

Recommendations for the regulation of brothels in BHSC

The case study undertaken on BHSC has included the examination of local planning instruments and in-depth qualitative interview with an anonymous town planner at BHSC. The following recommendations have been made to improve the planning and regulation of brothels in addition to the recommendations made for the regulation of brothels in Sydney.

- ❖ LEP 2005 provisions
 - Provide brothel definitions within the LEP instrument
 - Provide distance separation and areas zoned for brothels
 - Provide maps clearly indicating the zones and areas in which brothels are permissible including the radius of distance separation from sensitive land uses within the locality. The illustrations will allow brothel owners/operators to be aware of PCCs specific distance separation requirements, and provide additional guidance for officers assessing DAs.

Recommendations for the regulation of brothels in RCC

The case study undertaken on RCC has provided examination of local planning instruments and in-depth qualitative interview with Fiona Heretis, Development Assessment Officer at RCC. The following recommendations have been made to improve



the planning and regulation of brothels in RCC in addition to recommendations made for the regulation of brothels in Sydney.

- ❖ Update the current DCP – 36 for the regulation of brothels
 - Update definitions to be consistent with definitions provided in the standard LEP instrument
 - To be consistent with distance separation and brothel zoning amendments to the Rockdale LEP 2000
 - To provide more guidance and information for DA applicants including the provision of a template for a Plan of Management (Appendix 5)
 - Provide maps clearly indicating the zones and areas in which brothels are permissible including the radius of distance separation from sensitive land uses within the locality. The illustrations will allow brothel owners/operators to be aware of RCCs specific distance separation requirements, and provide additional guidance for officers assessing DAs.
- ❖ LEP 2000 provisions
 - Provide specific brothel regulation design standards specified for both industrial and commercial zoned areas
 - Clearly indicate in each zoning whether a brothel is permissible or prohibited development
- ❖ Review notification procedures to investigate whether the number of notification letters appropriately inform or excessively inform local residents of a proposed brothel development

Resulting from these recommendations, conclusions can be made in response to the research questions for this thesis.



5.2 Conclusion

The following restated research questions and answers have resulted from the investigation into the research questions for this thesis is outlined in Section 1.2. The four research sub-questions explored are as follows, with the response to the main research question, *'is planning for brothels in Sydney place sensitive?'* subsequently outlined :

Research Sub-questions

- **Does the assessment process for brothels differ between LGAs in Sydney?**

The assessment process for brothels differs between LGAs in Sydney. This is evident particularly in Chapter 4 of this thesis that examines the different provisions for the regulation and planning of brothels in PCC, BHSC and RCC.

The varied assessment process for brothels is also highlighted by the different definitions between LGA planning instruments. Consequently, brothels are assessed under the definition of a “brothel”, “Sex Service Premise” or a “Commercial Premise.” This results in the inconsistent approach of the way in which proposed brothels are examined during the development assessment process.

There are three authoritative bodies in the determination of proposed brothels. Proposed brothels are either subject to the recommendations made by council planners under delegated authority, councilors at a council meeting and/or appealed at the LEC.

Each brothel application is different and therefore assessed to suit the specific site and locality under LGA specific development standards. The differing assessment processes are due to the different merit assessment considerations varying amongst the different types of development proposals for brothels. The assessment process for brothels is also affected by the differing ethical and moral considerations within the various LGAs. This leads to the following question:



- **Do ethical and moral considerations of society influence the planning of brothels?**

Ethical and moral attitudes of society view brothels as immoral therefore should be criminalised and not encouraged. The conflicting arguments within LGAs regarding the decriminalisation of brothels reflect subjective arguments which reflect the varied tolerance towards brothels. The argument for brothels to be approved ensures the health and safety of sex workers and the local community due to the appropriate regulation of brothels. Despite moral and ethical concerns, the land use of brothels will inevitably exist as there is demand for commercial sex within society. It can be viewed that the legalisation of brothels will ensure that the land use is appropriately monitored and managed. In contrast, moral attitudes may view the approval of brothels as encouraging indulgent sexual activity that is associated with disease, adultery, promiscuity and immorality. Factions in society feel that the availability of legalised brothels compromises the morality within a community. It is considered that even in areas where brothels are a legal land use, there are still brothels running without consent. Despite notices from Council for these uses to be shut down, it could take years for the Land and Environment Court to reach a decision.

The decision to approve brothels within an LGA is reflective of the social and built environment, moral standards and decision making of the authoritative body. Local elected councilors representing the community have the potential to make subjective and moral decisions as a result of no expertise and experience in town planning.

In addition to recommendations made for LGAs in Section 5.1 of this thesis, the best interests of local communities are to be considered through the planning of an LGA. This includes increased involvement of council planners when DAs are presented and determined by councilors at council meetings. Councilors are to be educated and trained about the benefits of legalised brothels, and to highly consider the planning merits of a brothel application when making a determination. Planners are to be objective in the



planning of brothels, as they should be aware that any recommendations made for a proposed brothel should be backed up with valid planning grounds if cross examined in court.

In addition to ethical and moral considerations for the planning of brothels, the following question investigates the sufficiency of current LGA provisions for brothels.

- **Are the current LGA provisions for the planning of brothels adequate?**

Current provisions for the planning of brothels are not adequate within LGAs in Sydney. The current LGA provisions for the planning of brothels potentially can be improved by the standard LEP template to be adopted by all LGAs within the next five years. Councils are suggested to use City of Sydney as a model LGA that has provided appropriate resources in creating a policy for the place sensitive planning for the sex service premises and adult entertainment industry.

It is noted that above question is thoroughly examined in the previous sub-chapter of this thesis, Section 5.1 – Recommendations. Section 5.1 suggests improvements that can be made for the planning of brothels within LGAs in Sydney. Particular focus on three LGAs is resultant from the in-depth case studies of PCC, BHSC and RCC. By identifying the weaknesses of current LGA provisions from Chapter 4, the implementation of these recommendations made in Section 5.1 can improve current LGA provisions for the planning of brothels. This is further highlighted in the following question:

- **What consistent approaches can be implemented throughout LGAs in Sydney to ensure appropriate locally based place sensitive policies for the planning of brothels?**



Similar to the previous question, this question is thoroughly answered in the previous sub-chapter of this thesis, 5.1 – Recommendations, which includes improvements that can be implemented for the planning of brothels within LGAs in Sydney.

Recommendations for the planning of brothels within LGAs in Sydney include the provision of information and training of council officers with current and upcoming legislative provisions and recent court cases regarding proposed brothels. A formal brothel code of conduct when dealing with illegal, approved or proposed brothels, with brothel applications to be spread out amongst council officers to reduce the opportunity for corrupt conduct. Pre- lodgment meetings for brothel applications are suggested with the provision of language translators for non-English speaking applicants to ensure communication is effective for all residents and brothel owners/operators. In addition, the combination of strategic and DA planners at council will improve the development of appropriate zonings and development standards for brothels. All LGAs are to be made aware of the Sex Services Premises Planning Guidelines December 2004, and it is noted that the community should be educated about the decriminalisation of brothels and the unregulated consequences of illegal brothels.

The response to the four research sub-questions have assisted in the answer of the following main research question:

Main Research Question

Is planning for brothels in Sydney place sensitive?

Through the examination of the different planning for brothels throughout various LGAs in Sydney, it can be identified that the planning for brothels in Sydney is place sensitive. Planning for brothels is place sensitive and should be specifically defined by each LGA. It is important for planning to respond to the locality, but fundamental aspects for the regulation and assessment of brothels should be considered throughout each LGA (as indicated in Section 5.1).



Currently each LGA in Sydney uses different definitions and development standards in the assessment of brothels. This is due to each LGA in Sydney having different social and urban environments, which impacts upon sensitive planning requirements specific to the place.

Fundamental approaches and development standards for brothels should be consistent throughout LGAs and criterion of the EP & A Act 1979 allows flexibility for the particular characteristics of each Council reflective of place sensitive planning for brothels. Fundamental regulations should be consistent so that basic provisions are provided for the regulation and planning for brothels considering that the land use of brothels is legal and permissible subject to Council's specific zoning requirements. The overriding consideration for all LGAs is that the brothel operates in a discreet manner consistent with the amenity of the neighbourhood.

The implications for planners in regard to the way in which brothel applications are assessed in LGAs in Sydney is to bear out an objective assessment of brothels subject to the provisions of adequate local planning instruments for brothels. Planners should consider ethical and moral considerations of the community to ensure the planning of brothels is sensitive to the specific place. It is essential that valid planning grounds are thoroughly investigated to provide an appropriate recommendation for a proposed brothel.

The regulation and planning of brothels is sensitive to a specific place and requires fundamental planning approaches to ensure a consistent approach in the planning of brothels throughout LGAs in Sydney.



APPENDICES

1. In-depth Interview Questions (*Source: Author, 2007*)

A. BACKGROUND

1. To start off this interview, could you please state your name and position you have at [council name]?
2. How long have you worked with the development assessment section in the local government?
3. How long have you worked with development assessment at [council name]?
4. How long have you assessed applications for brothels at [council name]?
5. How are brothels defined in [council name]?
6. From a **professional** perspective, what are your thoughts about brothels being a legal land use in NSW?
7. How about your thoughts about this from a **personal** perspective?
8. How do you feel about the way brothel applications are determined in NSW? Do you agree with the determination process? Disagree? Think it could be done better? Who should have more say – planners or councilors representing the community?
9. And how about the way brothel applications are determined in [council name]?



10. Does this differ from previous council areas you have worked at? If so, how?
11. How do you feel about brothels being considered as a sensitive land use? Sensitive politically? Sensitive in the community? Sensitive amongst other businesses?
12. What other sensitive land uses would there be in [council name]?
13. Does [council name] have any other sex industry related land uses other than brothels?
14. What are they?

For the purposes of this interview, *brothels are defined as a premise with one or more prostitutes.*

B. HISTORY OF BROTHELS IN THE AREA

15. How many brothel applications would [council name] receive a year?
16. How many brothels are you aware of that have approval from council in [council name]?
17. How many of brothel applications are you aware of that have been (or on average), refused?
18. Are you aware of any illegal brothels in [council name]?
19. What planning policies and regulations are provided for the land use of brothels in [council name]?



20. Does [council name] encounter problems with brothels posing as massage parlors?

21. What planning provisions does your council have in regard to those land uses?

22. How are these applications determined?

C. ETHICS AND MORALITY

23. What are the ethical implications you face as a planner assessing these applications?

24. What code of conduct is expected from you in [council name] when dealing and assessing the land use of brothels?

25. How does your personal ethical and moral background impact on the assessment of brothels?

26. How do you feel the ethical and moral background of the local council members, management and politicians affect in the decision making of brothels?

27. How about the ethics and morality of the community?

28. How do the demographics of the local community impact their thoughts towards brothels in [council area]?



D. DECISION MAKING

Planning

29. Could you please comment about the decision making process for the land use of brothels in regard to planning for the community in [council name]?
30. What are the reasons used in approving a brothel?
31. What are the reasons used in refusing a brothel?
32. How does the compliance section deal with the illegal use of brothels?
33. What current procedures does [council name] have to shut down these illegal brothels?
34. Do you feel the procedures are effective? If not, what procedures could be done better?
35. How does that differ to action taken in the past?
36. Do you feel that the community should be more aware of the land use of brothels or is it in the better interests of them to not be informed?

Politics

37. What involvement do local council members or politicians have in influencing the decision-making processes and determinations of brothels?
38. What are your thoughts on their involvement?



39. How do you feel about the fact that planning for brothels is not only a planning issue but also a political issue?

40. Are you aware of or have you been involved in any development applications where politics overruled the planning objectives for brothels? If yes, could you give an example?

E. REGULATION AND LEGISLATION

41. What NSW legislation are you aware of that exists for the planning of brothels?

42. What is your opinion of existing planning policies and regulations for brothels?

43. Do you think there should be changes in the existing planning policies and regulations for brothels? DCP & LEP zoning

44. Do you agree with the decriminalization of brothels?

45. Do you think that the decriminalization of brothels promotes greater community acceptance of brothels, as it is a law/legal matter?

46. Have you ever gone to court in regard to a brothel development application? If so, what was the application about and what were the issues raised?

Is there anything else that you would like to add that may be helpful to the examination of this topic?



2. Part 3, Section 24 of Parramatta LEP 2001 (Source: PCC, 2001)

24 Brothels

(1) Regardless of any other provision of this plan, premises shall not be erected or used for the purpose of a brothel where they are located:

- (a) on any land zoned residential or within 100 metres of any land zoned residential, or
- (b) near or within view from any church, hospital, school, community facility or public open space or from any other place regularly frequented by children for recreational or cultural activities, or
- (c) within 50 metres of a public transport facility, being a railway station entrance, bus stop, taxi rank, ferry terminal or the like.

(2) In determining an application to carry out development for the purpose of a brothel, the consent authority must consider the following matters:

- (a) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood because of its size, location, hours of operation, clients or the number of employees and other people working in it,
- (b) whether the operation of the brothel will be likely to interfere with the amenity of the neighbourhood,
- (c) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood involving similar hours of operation,
- (d) any other environmental planning instruments that the consent authority considers relevant.



3. Part 11, Section 79 of SREP 28 – Parramatta (Source: PCC, 2005)

79 Brothels

In determining an application to carry out development for the purpose of a brothel, the consent authority must consider the following:

- (a) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood because of its size, location, hours of operation or clients or the number of employees and other people working in it,
- (b) whether the operation of the brothel will be likely to interfere with the amenity of the neighbourhood,
- (c) whether the operation of the brothel will be likely to cause a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood involving similar hours of operation,
- (d) any other environmental planning instruments that the consent authority considers relevant.



4. **RCC Statement of Ethics (Source: RCC, 2000)**

STATEMENT OF ETHICS

The following seven principles of public life for Rockdale City Council guide us in achieving the highest ethical standards of behaviour.

Selflessness

We will make all our decisions based solely on what is in the public interest.

Integrity

We will do what we say we will do. However, we will not put ourselves under any financial or other obligation to any person or organisation when we perform our public duties.

Objectivity

When carrying out public duties, including making public appointments, awarding contracts, recommending individuals for rewards and benefits, or making determination on development applications and planning matters we will make all those decisions based on merit.

Accountability

We are accountable for our decisions and actions to the public and submit ourselves to the scrutiny appropriate to our office.

Openness

We will be open about all the decisions and actions that we take. We will give reasons for our decisions and restrict information only when the wider public interest clearly demands it.

Honesty

We have a duty to publicly declare any private interests we may have which conflict with our public duties and will resolve any conflicts so that the public interest is protected at all times.

Leadership

We will promote and support these principles by our own example to others.



5. Plan of Management for Commercial Sex Services Premises*(Source: Sex Services Premises Planning Guidelines, December 2004)*

Sex Services Premises Planning Guidelines

Plan of Management**What is a Plan of Management (POM)?**

A Plan of Management (POM) outlines the detailed management and operational arrangements of a commercial sex services premises to ensure that important occupational health and safety obligations are met and that the premises operate in a well-run manner that minimises amenity impacts to surrounding areas. A POM is required for all commercial sex services premises having five or more working rooms (i.e. rooms where sexual activity takes place). The proprietor of the business and any manager of the business must sign the POM.

PLEASE PROVIDE DETAILS ON ALL OF THE FOLLOWING**1. Management and Staff Details:****Proprietor (Owner of the Business)**

Name _____ Phone (Daytime) _____ -

Mobile _____

Address _____

Key responsibilities of the Proprietor

Manager/Operator (Where not the same as proprietor)

Name _____ Phone Daytime) _____

Mobile _____

Address _____

Key responsibilities of the Manager

Support Staff

Is a separate Door Manager (to Manager of the Premises) employed? YES/NO

What are the key responsibilities of the Door Manager?

Is a Receptionist employed? YES/NO

What are the key responsibilities of the Receptionist?

If no Manager, Door Manager or Receptionist who will admit clients and supervise premises (sex workers not included)?



2. Details of the Operation and Management of the Premises:

How will you minimise impacts to the surrounding area, in terms of:

Parking: *How will clients know where to park?*

Noise: *How will you minimise noise from the premises, how will you ensure that clients leave the premises in a quiet manner etc?*

Access for People with a Disability: *Outline how access and egress will be provided for a person with a disability, which includes a person in a wheelchair or with other access needs. The POM must also address egress in the case of an emergency.*

Restricting Access: *Outline how a person under 18 years of age will be restricted access to the premises.*

Safety and Security: *Because many commercial sex services premises operate late at night when other businesses are closed and/or are located in industrial areas, the safety of staff and clients both within and outside the premises must be addressed, having regard to the following:*

Management and monitoring of people entering the premises:

Location of emergency service numbers within the premises:



Safety and alarm systems in place and the person who has responsibility for these systems:

Safe Sex Assurance: Outline how condoms, dams etc and safe sex information is to be made available to all occupants of the premises, including for persons of Non-English speaking background.

Maintenance: It is important for safety and security reasons that there are procedures in place to ensure the fast repair or cleaning of damaged or vandalised property and for regular checking and maintaining of light fixtures. Detail who is responsible for general maintenance of the premises and checking of systems.

Cleanliness of the Premises: Outline how it is proposed to keep the inside of the premises in a clean and tidy condition.

Who is responsible for changing linen and cleaning workrooms after each client?

Who is responsible for overall cleaning of the premises?

I agree to ensure that the premises are operated in accordance with this Plan of Management. I agree to notify the Council if any of the details in this Plan of Management change. Note: Council may determine that the changes require a formal amendment to the Plan of Management under Section 96 of the Environmental Planning and Assessment Act (modification of a development consent).

Signature of Proprietor (Owner of Business) Date

Signature of Operator or Manager Date

Any Questions? If you need more information or advice, please call our Customer Service Centre on [insert number]. We also recommend that you discuss your proposal with one of our Planning Officers before submitting a development application.



- End of Plan of Management -

Please see over for advisory matters

Advisory Matters

NSW Health and WorkCover NSW have developed detailed guidelines known as “*Health and Safety Guidelines for Brothels in NSW*” (December 2001) that address the key occupational health and safety responsibilities for those involved in the sexual services industry. Under NSW legislation, employers and their representatives (sex service premises proprietors i.e. owners and managers in commercial sex services premises and the principal sex worker in a home occupation setting) have certain duties with regard to their employees and to other people visiting the workplace. Employees have a range of rights as well as certain responsibilities under the law.

It is the responsibility of sex services premises proprietors and the individual sex worker in a home occupation to obtain and comply with the *Guidelines*. These can be obtained from:

WorkCover Bookshop

400 Kent Street, Sydney, NSW, 2000.

Client Contact Centre: 13 10 50

NSW Health Department

73 Miller Street, North Sydney, NSW, 2060

Telephone: 9391 9000

The Guidelines cover the following matters:-

- ❖ Legal rights and duties
- ❖ Working conditions
- ❖ Personal protective equipment (PPE)
- ❖ Health and safety of others
- ❖ Occupational Overuse Syndrome
- ❖ Violence in the workplace
- ❖ Drugs, alcohol and smoking in the workplace
- ❖ Pregnancy
- ❖ First Aid
- ❖ Employees' rights
- ❖ Employees' duties
- ❖ Workers compensation
- ❖ Injury Management
- ❖ Information and resources
- ❖ Cleanliness
- ❖ Cleaning of linen and laundry facilities
- ❖ Sanitary facilities
- ❖ Storage and handling of waste
- ❖ Disinfection of swimming and spa pools
- ❖ Bars and food preparation area
- ❖ Complaints related to Sexually Transmitted Infections (STIs)
- ❖ Other public health risks

Liaison: It is suggested that in addition to Council Officers, you liaise with SWOP (Sex Workers Outreach Project), and health workers in the preparation of the Plan of Management. Contacts for these organisations are attached.

Other Resources:

1. **NSW Health** (2002) “*NSW Communicable Diseases Health and Safety Guidelines for sex-onpremises Venues*”. [copies available from NSW Health Ph: 9391 9000]

2. **AIDS Council of NSW (ACON)** (2003) “*Sex on Premises Code of Practice*”. [copies available from ACON Ph: Freecall 1800 063 0600]

3. Edler, David (undated) “*Occupational Health and Safety in the Australian Sex Industry*”. [copies available from the **Scarlett Alliance** Ph: (02) 6239 6098]



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