

20 REPORTS FROM OFFICERS - ENVIRONMENTAL SERVICES DIRECTOR

20.1 REVIEW OF POLICY ON SEX SERVICES PREMISES (BROTHELS) IN WILLOUGHBY

ATTACHMENTS:	1. MAP OF APPROVED SEX SERVICES PREMISES IN WILLOUGHBY 2. SURVEY OF SEX SERVICES PREMISES IN WILLOUGHBY AND OTHER LGAS
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CITY STRATEGY LINK:	6.1.1 A COUNCIL THAT IS OPEN AND HONEST AND REPRESENTS ITS CONSTITUENTS
MEETING DATE:	4 NOVEMBER 2013

Purpose of Report

This report responds to the Consequential Motion of the Council Meeting dated 22 July 2013 following consideration of a development application for a sex services premises (brothel) at 6 Cleg Street, Artarmon, which required a report to be prepared reviewing Council's Policy on sex services premises (brothels).

This report reviews the location of sex services premises in the City and the existing Sex Services Premises Policy and recommends that Council amend Willoughby Local Environmental Plan 2012 to prohibit future sex services premises (brothels) in the industrial zones of the City.

Background

At the Council Meeting of 22 July 2013, Council refused Development Application 2013/92 for the use of 6 Cleg Street, Artarmon as a sex services premises and also resolved, as a Consequential Motion:

"That a report be prepared reviewing Council's Brothels Policy and adjustments to the DCP in relation to the location of brothels in Willoughby"

At the next Council Meeting, being 12 August 2013, a Consequential Motion was also carried as follows:

"The Council write to the Premier calling for the introduction of the annual licensing of brothels by the State Government, and highlighting the fact that:

- i) Industrial areas are no longer suitable for brothels given the changing nature of such areas now including more child care centres;*
- ii) Sex workers who work extended hours are more at risk working in industrial areas; and*

- iii) *There needs to be more interagency co-operation in the identification and closure of illegal brothels".*

In accordance with this Consequential Motion, a letter has been sent to the Premier. Council is currently awaiting a response.

Review of Council's Sex Services Premises Policy

1) Approved sex services premises in the City of Willoughby

There are 9 approved sex services premises in the City as shown on the location plan at Attachment 1 and detailed in the Survey of sex services premises in Willoughby and other local government areas (LGAs) at Attachment 2.

In summary the sex services premises are located as follows:

- Artarmon Industrial Area - 3
Note: As abovementioned, the continued use of 6 Cleg Street as a sex services premises was refused by Council and is now the subject of a Land and Environment Court Appeal.
- Hampden Road, Artarmon (Business zone) - 2
- Chatswood (Business zone) - 2
- Willoughby (Business zone) - 1
- North Willoughby (Business zone) - 1

There are no approved sex services premises in the East Chatswood Industrial Area.

The closest two sex services premises in the Artarmon Industrial Area are 60 Whiting Street and 90 Hotham Parade – being approximately 175m measured by radius or as the crow flies.

The closest two sex services premises in the City of Willoughby are 161 Victoria Avenue, Chatswood, and 350 Penshurst Street, North Willoughby – being approximately 40m measured by radius or as the crow flies. These two sex services premises led to the existing provision in WLEP 2012 (and WLEP 1995 preceding) requiring 100m separation between sex services premises.

The approval of sex services premises has been spread out since 1995:

1995	1
1997	1
2000	1
2001	1
2003	2
2004	1
2007	1
2008	2
Total	10

No sex services premise has been approved by Council in the last five years.

2) Approved sex services premises in other local government areas

The total number of sex services premises approved in neighbouring LGAs and other regional centres as advised, are as follows:

• Ku-ring-gai	-	2
• Lane Cove	-	0
• North Sydney	-	3
• Ryde	-	2
• City of Sydney	-	56
• Parramatta	-	20

3) WLEP 2012 and WDCP controls on sex services premises

With the passing of the Disorderly Houses Amendment Act (DHAA) 1995, Willoughby City Council adopted planning controls for the regulation of brothels, (new sex services premises), within Willoughby City which were gazetted in 1998 under WLEP 1995 and the previous DCP 21 – Brothels, now Section G.1 of the consolidated WDCP. In 2006 Council amended WLEP 1995 to introduce the 100m distance requirement between sex services premises, due to concern with possible clustering of the uses in the local business zones (in particular Penshurst Street).

These controls are designed to ensure that sex services premises operate in appropriate locations and do not result in a loss of amenity or create adverse social and environmental impacts.

Similarly to WLEP 1995, under WLEP 2012, sex services premises are permissible with development consent in the B2 Local Centre, B3 Commercial Core, IN1 General Industrial and IN2 Light Industrial zones.

WLEP 2012 Clause 6.19 Location of Sex services premises states:

“6.19 Location of sex services premises

- (1) *Development consent must not be granted for the purpose of sex services premises unless the consent authority has considered the following:*
 - (a) *the distance between the premises and any place of public worship, school, community facility, hospital or medical centre or any other place in the vicinity of the premises that is regularly frequented by children.*
 - (b) *whether the operation of the premises could cause a disturbance in the neighbourhood, taking into account the location of any other sex services premises operating in the neighbourhood,*
 - (c) *whether sufficient off-street parking will be provided,*
 - (d) *whether the premises will be accessed by a separate entrance,*
 - (e) *whether the operation of the premises will interfere with the amenity of the neighbourhood because of its size, operating*

hours, traffic generation, lighting or noise or the number of its employees and clients,

- (f) whether the operations of the premises will utilise circulation areas common to any other use of the premises.*
- (2) Development consent must not be granted for sex services premises in a business zone unless the premises will be located above the ground floor and in a building used for commercial purposes.*
- (3) Development consent must not be granted for sex services premises unless the premises are located more than 100 metres from any other premise to which a similar development consent has been granted.*
- (4) The distance between 2 premises referred to in subclause (3) is to be measured as the shortest distance between the premises."*

Council's desire to retain the 100m restriction from WLEP 1995 was one reason for the delay in processing of the WLEP 2012 through the Department of Planning and Infrastructure (DOPI). DOPI resisted the retention of the anti-clustering provision because of their policy to allow for the use in a similar way to other business premises. WDCP Section G.1 Sex Services Premises repeats the abovementioned WLEP 2012 100m anti clustering control.

- 4) Controls on sex services premises in neighbouring councils and other regional centres

Details of other Council controls are contained at Attachment 2.

In summary, other councils generally permit sex services premises in certain business and industrial zones, similarly to Willoughby City Council. Ku-ring-gai has no industrial zones. Parramatta is currently preparing a Draft LEP to remove sex services premises as permissible in the CBD business zones. Similar to Willoughby Council, Lane Cove (100m), Parramatta (200m) and Marrickville (200m) have minimum distance requirements between sex services premises in their local environmental plans. Ku-ring-gai, Lane Cove and North Sydney Council DCPs have a 500m distance requirement between sex services premises and the City of Sydney has a 75m distance requirement.

Discussion

It is considered that there are not an inordinate number of sex services premises in the City of Willoughby. While Willoughby has more approved sex services premises than neighbouring Council areas, the number is considerably less than major regional centres of Parramatta and City of Sydney. There have been no new approvals in the last 5 years, although there is a current court case for an existing sex services premises in Artarmon.

The existing Willoughby sex services premises controls regarding location and anti-clustering have sought to balance the State government requirement to provide for sex services premises within Willoughby with concern for general amenity, separation from other sensitive uses such as where children may congregate and preventing so called "red light" areas to occur. The current controls do allow for further sex services premises to be developed, particularly in the larger B3 Commercial Core, IN1 General Industrial and IN2 Light Industrial zones within Willoughby.

Should there be a concern regarding the location and potential for an increase in the number of sex services premises in the future, then two options are presented for consideration:

- 1) Increase the distance requirement in WLEP 2012 Clause 6.19 (3) from '100m' to '200m' or some other distance.

A 100m increase in the distance requirement will further restrict the areas within permissible zones where they could locate. Refer to Attachment 1 for a map showing all existing approved sex services premises, with a 100m and 200m radius around them. A 200m radius anti-clustering control will continue to leave potential locations for sex services premises in the larger industrial zones.

There are issues associated with the anti-clustering provisions based on a distance. For example, a single owner could set up businesses that comply with the separation requirement but effectively excludes other operators from establishing businesses in that locality. Further the provisions could be seen to be anti-competitive in that whichever operator sets up first then has a degree of exclusive control over an area.

- 2) Prohibit sex services premises in the Industrial zones (as suggested in the previously mentioned Council resolution of 12 August 2013, that industrial areas are no longer suitable for sex services premises)

This option would restrict the number of sex services premises in the Artarmon Industrial Area to the existing three or four (depending on the current 6 Cleg St Land and Environment Court Appeal) and the East Chatswood Industrial Area to nil. There have been past concerns raised regarding the suitability of locating sex services premises in industrial areas – with particular reference to the isolation of such sites at night, the potential danger to sex workers and the increasing number of childcare centres located in industrial areas. A number of councils such as North Sydney Council and the City of Sydney Council already prohibit sex services premises in industrial zones.

Prohibiting sex services premises in industrial zones will leave the B2 Local Centre and B3 Commercial Core as the only zones where they remain permissible. As the map at Attachment 1 shows, due to the 100m distance requirement, there is little scope for new sex services premises in B2 zones where a sex services premises is already located. If a sex services premises is permissible in an area, it does not necessarily mean that a consent to the use would be granted if the criteria under Clause 6.19 of WLEP 2012 are not satisfied.

From a land use planning perspective, a sex services premises is a business and therefore most appropriately located in the business zones, similarly to other businesses such as a hairdresser or physiotherapist. Sex services premises are not consistent with the objectives of the industrial zones which include:

- *To provide a wide range of industrial and warehouse land uses.*
- *To support and protect industrial land for industrial uses.*
- *To identify and preserve industrial land to meet the current and future general industrial needs of Willoughby and the wider region.*

Conclusion

This report responds to the Consequential Motion of the Council Meeting dated 22 July 2013. That Motion followed consideration of a development application for a sex services

premises at 6 Cleg Street, Artarmon, and required a report be prepared reviewing Council's sex services premises Policy on the location of sex services premises in Willoughby.

The total number of approved sex services premises within the City of Willoughby is nine, with three (possibly four) located in the Artarmon Industrial Area. A distance of 100m is considered to be reasonable in the business zones of the City to prevent clustering, as was originally intended. However, it will not prevent an increase in the size and number of sex services premises in the large Artarmon and East Chatswood Industrial Areas.

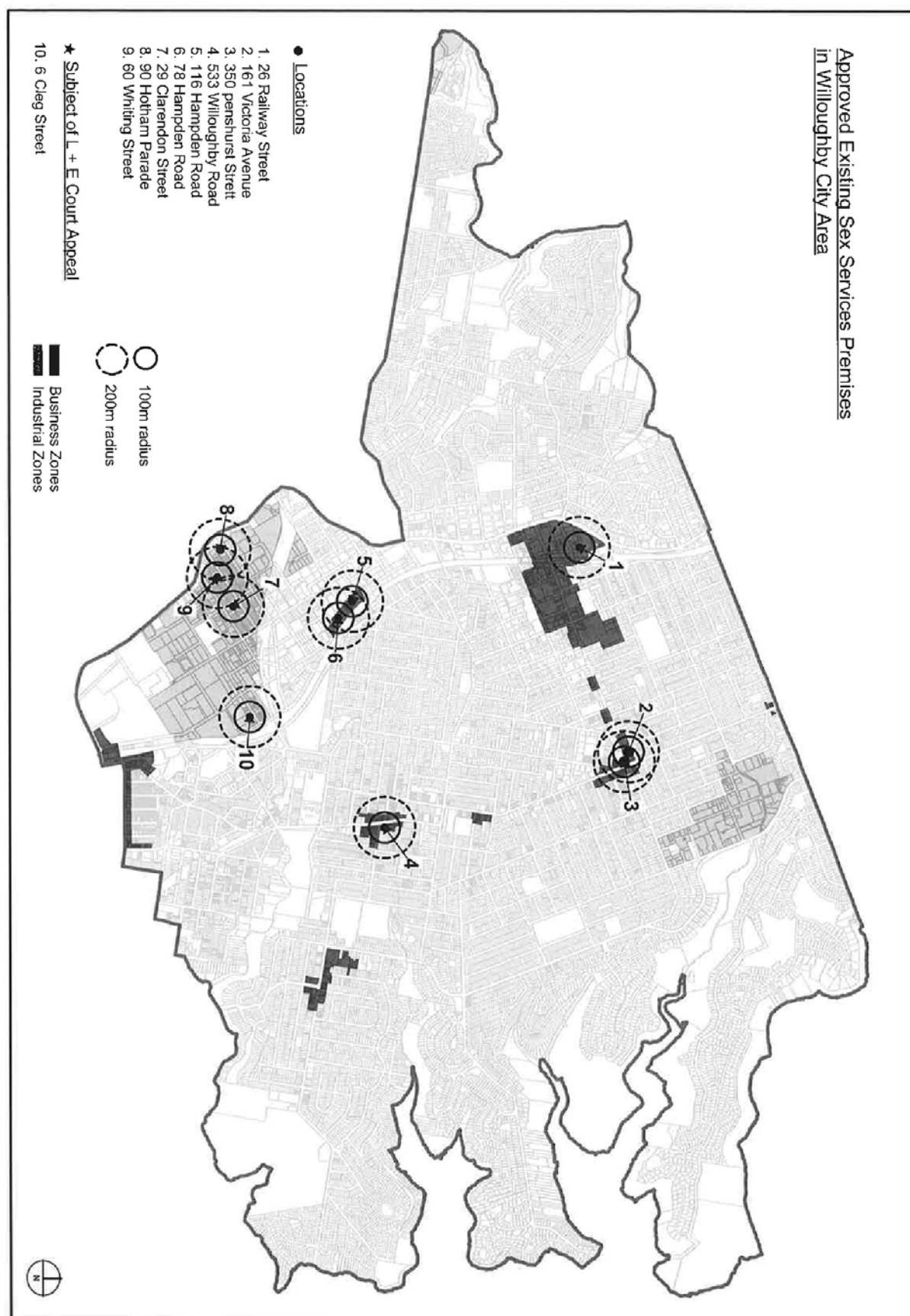
It is considered that sex services premises are businesses and therefore appropriately permitted in the B2 and B3 zones of the City. Sex services premises are not considered to be suitable for the industrial zones for the reasons indicated in this report. It is recommended that Council amend WLEP 2012 to prohibit sex services premises in the IN1 General Industrial and IN2 Light Industrial zones.

OFFICER'S RECOMMENDATION

- 1) That Council prepare a planning proposal to amend Willoughby Local Environmental Plan 2012 to prohibit 'sex services premises' in the IN1 General Industrial and IN2 Light Industrial Zones.**
- 2) The planning proposal is to be prepared with the next 'housekeeping' amendment to the WLEP 2012.**

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Approved Existing Sex Services Premises in Willoughby City Area



Survey of Sex Services Premises in Willoughby and other LGAs

A) Number of Approved Sex Services Premises in Willoughby and neighbouring Council areas (1/9/2013)

• Willoughby Council: 9

Artarmon Industrial zones: 3

Zone IN1 - 60 Whiting Street (DC 2001/1497 – Approved by Council)

90 Hotham Parade (DC 2008/429 – Approved by L & EC)

29 Clarendon Street (DC 2004/274 - Approved by Council)

Zone IN2 – 6 Cleg Street (Original approval DC 2003/106 – Approved by Council but consent lapsed after 12 months as conditions of consent not met)
(DA 2012/92 – DA refused by Council and subject to L& EC appeal)

Distance between each brothel:

- 220m between 60 Whiting St and 29 Clarendon St, measured as you would walk / drive
(195m radius / measured as the crow flies)
- 315m between 60 Whiting St and 90 Hotham Pde, measured as you would walk / drive
(175m radius / measured as the crow flies)
- 475m between 90 Hotham Pde and 29 Clarendon St, measured as you would walk / drive
(370m radius / measured as the crow flies)
- 950m between 29 Clarendon St and 6 Cleg St, measured as you would walk / drive
(750m radius / measured as the crow flies)

Hampden Road, Artarmon (Business zone): 2

Zone B2 - 78 Hampden Road (DC 2008/214 - Approved by L & EC)

116 Hampden Road (DC 2007/643 – Approved by Council)

Distance between each brothel:

- 150m measured as you would walk / drive along Hampden Rd)
(140m radius / measured as the crow flies)

Chatswood (Business zones): 2

Zone B2 – 161 Victoria Avenue (DC 1997/0002 - Approved by Council)

Zone B3 – 26 Railway Street (DC 1995/525 – L & EC)

Distance between each brothel:

- 1600m measured as you would walk / drive
- 1350m radius / measured as the crow flies

Willoughby (Business zone): 1

Zone B2 – 533 Willoughby Road (DC 2003/99 - Approved by L & EC)

North Willoughby (Business zone): 1

Zone B2 – 350 Penshurst Street (DC 2000/1313 – Approved by L & EC)

Distance between each brothel:

- 70m between 161 Victoria Ave and 350 Penshurst St
(40m radius / measured as the crow flies)
- 1850m between 350 Penshurst St and 533 Willoughby Rd
(1715m radius / measured as the crow flies)

Under WLEP 1995, the 100m anti clustering control was part of Amendment 62, which came into force in 2006 and has been retained as Clause 6.19 in WLEP 2012

- **North Sydney Council: 3**
 - 155 Pacific Highway (Business Zone)
 - 81A Willoughby Road, Crows Nest (Mixed Use Zone)
 - 451 Pacific Highway (Mixed Use Zone)
- **Ku-Ring-Gai Council: 2**
 - Located in business zones in Lindfield and Pymble
- **Lane Cove Council: 0**
- **Ryde Council: 2**
- **Parramatta Council: 20**
- **Sydney City Council: 56**

B) Anti clustering controls for sex services premises in Willoughby and neighbouring Council areas

- Willoughby Council
 - WLEP 2012 - sex services premises are permitted in the B2, B3, IN1 and IN2 zones
 - WLEP 2012 - Anti clustering controls :
 - Clause 6.19 (3) “Development consent must not be granted for sex services premises unless the premises are located more than **100m** from any other premises to which a similar development consent has been granted.”
 - WDCP – Reinforces the WLEP 2012, with a similar **100m** requirement.
- North Sydney Council
 - NSLEP 2013 (in force 13/9/2013) - sex services premises are permitted in the B3 and B4 zones.
 - NSLEP 2013 - There is no specific clause relating to sex services premises.
 - NSLEP 2013 – No Anti clustering controls involving a metre distance.
 - Draft NSDCP 2012 - Section 6 Restricted Premises
 - New sex services premises must not be located within:
 - a) **500m** from any existing sex services or restricted premises.

- b) **100m** from or within a direct line of sight of a place of worship, hospital, school (including a preschool), child care centre or other place frequented by children for recreational, cultural or similar activities, or community facilities
- Ku-Ring-Gai Council
 - Under KLEP (Local Centres) 2012, Sex Services Premises are permissible with consent in all business zones.
 - KLEP (Local Centres) 2012 - No Anti clustering controls involving a metre distance.
 - KDCP (Local Centres) 2012 – **Clause 11.3** Sex Services Premises
“Sex services premises are not to be located within **500m** of the entrance to a building which contains an existing known sex services premises
- Lane Cove Council
 - LCLEP 2009 – sex services premises are allowed:
 - In Zone IN2 Light Industrial
 - On land along the Pacific Highway between Bellevue Avenue and Oxley Street, St Leonards in Zone B3 Commercial Core, under Schedule 1 Additional Permitted Uses .
 - LCLEP 2009 – Anti clustering controls involving a **100m** distance between sex services premises.
 - LCDCP -
 - for sex services premises permitted on land in Zone IN2 Light Industrial - the premises are located more than **100m** from any school.
 - No sex services premises shall be permitted within **500 lineal m** of another sex services premises
- Ryde Council
 - Sex services premises are permissible in the IN2 Light Industrial zone
 - Sex services premises are prohibited in commercial zones.
 - There are no anti clustering controls involving a metre distance in the Ryde Council (RLEP 2010).
 - Ryde Council does not have a distance requirement between sex services premises. The RDCP does have a location control that states *“Council will not permit the “congregation” of brothels so as to form, or potentially form, “red light districts”.*”

C) Examples of anti clustering controls for sex premises in other Sydney Council areas

a. City of Sydney Council

- Sex services are permitted under SLEP 2012 in the B2 Local Centre, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park and B8 Metropolitan Centre zones.
- Anti clustering controls involving a metre distance are not in Sydney Local Environmental Plan 2012 but in Sydney Development Control Plan 2012.
- Under SDCP 2012, Section 4.4.6.1 Location of Premises, Adult entertainment and sex industry premises must not be located within a radius of **75m** of an existing, approved adult entertainment or sex industry premise as measured from the centre of the primary access to the proposed and existing premises.

b. Parramatta Council

- Parramatta City Centre LEP 2007 permits sex services premises in business zones (B3 Commercial Core, B4 Mixed Use and B5 Business Development).
- PLEP 2011 (currently does not include town centre), sex services premises are permissible with consent in the IN1, IN2, IN3 zones.
- Council is currently preparing a Draft PLEP for the city centre which will prohibit sex services premises in the business zones.
- Anti clustering controls involving a metre distance are in PLEP 2011 and PDCP 2011.
- Under PLEP 2011:
 - “(1) Despite any other provision of this Plan, development consent must not be granted to development for the purposes of sex services premises unless the premises are located:
 - (a) at least **200 metres** (measured from the closest boundary of the lot on which the premises are proposed) from any residence or any land in a residential zone, and
 - (b) at least **200 metres** (measured from the closest boundary of the lot on which the premises are proposed) from any place of public worship, hospital, school, child care centre, community facility or recreation area, and
 - (c) at least **50 metres** (measured from the closest boundary of the lot on which the premises are proposed) from any railway station entrance, bus stop, taxi rank, ferry terminal or the like.”
- Under PDCP 2011, C.1 Sex services, restricted premises and adult entertainment premises must not be sited:
 - a) within a radius of **200 m** of existing sex services, restricted premises and adult entertainment premises. Council will limit the congregation of sex services, restricted premises and adult entertainment premises.
 - b) within shopping malls/arcades.
 - c) within a radius of **200 m** of a licensed premises being a hotel, public bar nightclub or the like.

Distances measured as a radius from the boundary of the allotment upon which the premises are proposed.

c. Marrickville Council

- Under MLEP 2011, Clause 6.14, sex services premises are permissible with consent in the General Industrial zone IN1, Light Industrial zone IN2 and Enterprise Corridor zone B6.
- Anti clustering controls involving a metre distance are in MLEP 2011 and added to in MDCP 2012.
- Under MLEP 2011
 - (3) Development consent must not be granted for development for the purpose of sex services premises:
 - (b) if the development will be located within 200 metres of existing or proposed sex services premises.
- Under MDCP 2012, C3, a restricted premise or adult business premise must not be located within a 75m radius of any entrance (used by members of the public or employees) of an existing, approved sex services premises, restricted premises or adult business premises.
- Under C4, a sex services premises must not be located within a 200m radius of any entrance (used by members of the public or employees) of an existing sex

services premises (to be used by members of the public or employees) which has development consent.