

CHAPTER 2.14 RESTRICTED PREMISES AND SEX SERVICES PREMISES

1.0 INTRODUCTION

The purpose of this Chapter is to provide criteria to identify where Wyong Shire Council may consider a development application for the following uses:

- Restricted Premises;
- Home Occupation (Sex Services); or
- Sex Services Premises;

within the Wyong Shire. The Chapter does not identify other matters which may be considered by Council in the determination of any development application.

The purpose of this Chapter is to provide planning controls designed to ensure that sex services and restricted premises are operated in appropriate locations so that they do not give offence to the general community or result in a loss of amenity for residents.

Under Section 79C of the Environmental Planning and Assessment Act, 1979 (the Act), Council is required to take into consideration the relevant provisions of this Chapter when determining an application for development. However, compliance with the provisions of this Chapter does not guarantee that development consent will be granted. Section 79C of the Act also contains other matters that must be considered in determining a development application.

1.1 Objectives of this Chapter

- To identify criteria for the location of restricted premises, home occupations (sex services), and sex services premises in Wyong Shire
- To regulate and control home occupations (sex services), sex services premises, restricted premises and business and entertainment premises providing adult products and entertainment in appropriate locations so as to minimise amenity impacts upon adjoining land uses in the zone
- To discourage a concentration of home occupations (sex services), sex services premises, restricted premises and business and entertainment premises providing adult products and entertainment in close proximity to each other
- To ensure high levels of both internal and external amenity are provided for sex services premises and restricted premises to ensure the amenity and security of staff, and users or occupiers of the respective premises as well as neighbouring properties
- To ensure that restricted premises and similar establishments such as massage parlours are designed in such a way as to prevent either the easy conversion or use as sex services premises without obtaining development consent or operating outside their development consents
- To provide an appropriate framework to effectively regulate the operation of home occupations (sex services), sex service premises and restricted premises, through detailed provisions of development consent in the provision of plans of management and coordination with other relevant government agencies

- To support the health and safety initiatives of NSW Health and WorkCover NSW in regard to sex workers and their clients

1.2 Land to which this Chapter Applies

This Chapter applies where development is proposed for restricted premises, home occupations (sex services) and sex services premises (as defined in WLEP 2013, as amended).

- a This Chapter applies to land within the following zones where **Restricted Premises** are permissible with development consent within Wyong Shire:
 - i B2 – Local Centre;
 - ii B3 – Commercial Core;
 - iii B4 – Mixed Use;
 - iv B5 – Business Development;
 - v B6 - Enterprise Corridor;
 - vi IN1 – General Industrial;
 - vii IN2 – Light Industrial.
- b This Chapter applies to land within the following zones where **Home Occupations (sex services)** are permissible with development consent within Wyong Shire:
 - i RU1 – Primary Production;
 - ii RU2 – Rural Landscape;
 - iii RU5 – Village;
 - iv R1 – General Residential;
 - v R5 – Large Lot Residential;
 - vi B1 – Neighbourhood Centre;
 - vii B2 – Local Centre;
 - viii B3 - Commercial Core;
 - ix B4 - Mixed Use;
 - x B5 - Business Development;
 - xi B6 - Enterprise Corridor;
 - xii E4 – Environmental Living.
- c This Chapter applies to land within the following zones where **Sex Services Premises** are permissible with development consent within Wyong Shire:
 - i B2 – Local Centre;

- ii B3 – Commercial Core;
- iii B6 – Enterprise Corridor;
- iv B7 – Business Park;
- v IN1 – General Industrial;
- vi IN2 – Light Industrial.

1.3 Glossary

This glossary supports terms used in this Chapter. Definitions in WLEP 2013 prevail in the event of any conflict with terms outlined in this glossary.

ancillary services premises means premises that are used to arrange contacts between sex workers and clients, such as offices of an escort agency, with the intention of sexual activity taking place off site. Sex workers may or may not be based at the premises or visit the premises to obtain work. Premises where sexual activity occurs on site will be defined as a sex services premises.

bondage and discipline parlour means premises where the primary service provided is bondage and discipline, sadism and masochism, or similar role plays and activities. Premises may also provide a sexual service.

brothel (from Restricted Premises Act, 1943) means premises:

- a habitually used for the purposes of prostitution; or
- b that have been used for the purposes of prostitution and are likely to be used again for that purpose; or
- c that have been expressly or implicitly:
 - i advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means); or
 - ii represented;

as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.

Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

safe house brothel (for Street-Based Sex Workers) means premises where income is gained from the short-term rental of rooms to street-based sex workers (who usually solicit for work in the public domain) or their clients, for the purposes of sex services. The sex workers are not employed "in-house", nor do they solicit from the premises, or live on the premises.

sex on premises venue means premises that gain income from entrance and/or membership fees paid for the use of the premises for sex between the clients but are not premises where sex services take place, or are arranged in exchange for payment. Such premises include: swingers clubs and sauna clubs that accommodate sexual encounters.

sex services means sexual acts or sexual services in exchange for payment.

strip club premises means premises providing striptease acts, erotic dancing, tabletop, or podium performances, private dancing, peepshows, or nude or semi nude bar/waiting staff. Sexual intercourse does not take place on site. Premises may require payment to gain entry/view the performance, and may be liquor licensed.

2.0 SUBMITTING A DEVELOPMENT APPLICATION

Development consent is required for the establishment of home occupations (sex services), sex services premises and restricted premises. As a first step in the development consent process, proponents of such premises are strongly advised to consult with Council.

The following additional information should accompany any development application for a home occupation (sex services), or sex services premises, in order to enable Council to properly consider the application:

- a Specific information as to the operation of the proposed use must be clearly set out in the Statement of Environmental Effects, including:
 - i number and role of all staff;
 - ii description of the activities that are proposed to be undertaken at the premises;
 - iii hours of operation;
 - iv number of rooms in premises;
 - v identification of the rooms to be used for the proposed activities.
- b Plan of Management (refer to Section 3) which sets out necessary considerations to be addressed for the establishment and operation of all types of sex services premises.
- c Plans clearly showing the following information must be provided for all development applications:
 - i **location plan** drawn to scale showing the proximity of the subject site to churches, hospitals, schools, community facilities, parks, other sex services premises, licensed premises or residential properties, or any other place readily frequented by children for recreational or cultural pursuits. A location plan is to identify specified uses within 200m of the proposed sex services site, measured as a radius from the closest boundary of the allotment of the proposed sex services premises site;
 - ii detailed **floor plans/elevation/sections** showing:
 - the use of each room including staff areas and reception areas;
 - all sanitary facilities including toilets, showers and hand basins;
 - details of any spas or swimming pools;
 - entrances to and exits from the building;
 - details of food preparation areas;
 - details of contaminated waste storage;
 - any on-site laundry facilities;

- any proposed building alterations or additions (a construction certificate application may also be required);
- proposed external colour scheme, if intended to change;
- access for people with a disability, including assessable entries/exits, sanitary facilities and showers, pathway and circulation details;
- details of any advertising signs or structures (refer Section 4.6);
- details of existing and proposed external lighting.

Note: Applications for sex services and restricted premises will be referred to NSW Police for comment prior to determination.

3.0 GUIDE TO PLANS OF MANAGEMENT

The Plan of Management will be used both in the development assessment process and as a means to identify the way in which the premises will operate in compliance with conditions of consent. The Plan of Management itself will be incorporated as a condition of development consent. The Plan of Management should supplement the information provided in the Statement of Environmental Effects and the plans submitted with the development application. In addition to providing information to allow the assessment of the potential impact of the premises and compliance with the provisions of this Chapter, the Plan of Management can be used by both operators of premises and employees to outline roles and responsibilities and identify procedures for the successful operation and management of the premises. The Plan of Management should include the following essential information.

3.1 Business Details

- a Name and contact details of the operator(s) and manager(s).
- b ABN, registered business name, trading name and insurance.
- c Record keeping procedures for employees.
- d The procedure for recording and dealing with complaints regarding the operation of the premises or the behaviour of visitors arriving or leaving the premises.
- e All of the above information (approvals for the establishment of the premises, the Plan of Management, etc.) are to be made available to the public and be kept on the premises at all times. Confidential information on employee details is not expected to be released to the public.

Note: The consent authority must be advised of any changes in ownership, management, registered business or trading name during the period of consent.

3.2 Safety and Security

Detail systems ensuring safety for staff and visitors including:

- a risk management procedures appropriate to the service provisions (e.g., accident and injury, violent behaviour);
- b the number and role of security personnel;
- c procedures for the safe handling of money;
- d the method of surveillance of common areas; and
- e monitoring of alarms.

3.3 Induction and Training

Staff training and induction procedures and emergency evacuation procedures.

3.4 Health Access

- a Access arrangements for the attendance of health service providers must be detailed.
- b Health and safety policies for workers together with incident reports and an accident register.

3.5 Cleaning and Cleanliness

- a Details of cleaning systems.
- b Details of the surface materials of equipment and facilities including stages, sling room facilities, etc.
- c Details of cleaning products and equipment.
- d Identified cleaning areas for equipment and other removable items.
- e Details of cleaning procedures including staff allocations.
- f Detail cleaning and management systems for swimming pools and spas and douching.

3.6 Waste

- a Details for disposing of commercial waste.
- b Details for managing the safe disposal of sharps.

3.7 Equipment

Detail of all specialist equipment, including information on how it is to be used, and how it is to be cleaned and maintained.

4.0 PLANNING PROVISIONS

4.1 Location

This Section includes provisions relating to the location of sex services premises and restricted premises, in relation to existing residential and sensitive land uses, and to other existing approved premises. Planning controls relating to Home Occupation (sex services) premises are detailed within Section 5.

OBJECTIVES

- To ensure that sex services premises and restricted premises are located in appropriate areas where they do not impact adversely on the amenity of the surrounding environment and in particular do not cause an adverse impact upon neighbouring properties, nearby residential occupancies or other sensitive uses
- To ensure that sex services premises and restricted premises are sensitively located and are essentially not noticeable within an area
- To optimise the safety and security of the users and workers within sex services premises and restricted premises
- To avoid the concentration of sex services premises and restricted premises in any one area, which may change the current character or may not be in keeping with the desired future character of the area

REQUIREMENTS

- a Sex services premises and restricted premises must not be sited:
 - i within a radius of 200 m of existing sex services premises and restricted premises. Council will limit the congregation of these premises;
 - ii within shopping malls/arcades;
 - iii within a radius of 200 m of a licensed premises being a hotel, public bar nightclub or the like.
- b Where land zoned for residential purposes adjoins land within another zone, a 100 metre buffer from the edge of the residential zone shall apply in which no sex services premises or restricted premises shall be located, unless it can be demonstrated to Council's satisfaction that:
 - i the sex services premises or restricted premises is not visible from the residential premises;
 - ii no activities associated with the use of the sex services premises or restricted premises (including the parking of cars and the movement of patrons to and from the premises) will create a nuisance for residents in terms of environmental impact (e.g.: noise); and
 - iii no objection is raised by any owner or occupant of residential premises within the buffer area.
- c The residential and business or industrial zones will be deemed to be adjoining even if separated by a road, drainage reserve or the like. The width of the road or reserve shall be included in the width of the buffer area.
- d Access to or exit from a sex services premises or a restricted premises shall not be provided within 100 metres of the property boundary of any premises used as a dwelling.

- e Access to or exit from a sex services premises or a restricted premises shall not be provided within 100 metres of the property boundary of any land used for or reserved for a church, school, child care centre, or any place frequented by children for cultural activities or structured recreation.

Note: Distances referred to in this Clause in respect of sex services premises and restricted premises are to be measured as a radius from the boundary of the allotment upon which the premises are proposed. For the purposes of this Chapter, this distance is measured (from door to the nearest point on the affected property boundary) along the most direct established pedestrian route between the premises.

4.2 Design of Premises

OBJECTIVES

- To ensure that sex services premises are designed to minimise their potential impacts in the locality
- To ensure the privacy and comfort of patrons
- To ensure that the design and external appearance of the premises and any associated structures do not have an adverse impact on and are in keeping with the character of the area
- To ensure that adequate and appropriate access to the premises and its facilities is provided to a person with a disability
- To ensure that the access to sex services premises is discreet and discourages clients from gathering or waiting on the street

REQUIREMENTS

- a The external appearance of sex services premises must respect the architectural character of the streetscape and not be a prominent feature in the street.
- b All entrances and exits to sex services premises should be designed to facilitate the privacy of staff and visitors without compromising personal safety (through avoiding the use of isolated back lanes and poorly lit areas). Shared access to the premises is not permitted.
- c The interior of sex services premises must not be visible from any place in the public domain. Where the interior of sex services premises may be visible from neighbouring buildings, adequate measures should be taken to screen the interior of the building, for example using blinds, screens etc.
- d Sex services premises must not display sex related products, sex workers, or performers, or nude or semi-dressed staff from windows, doors or outside of the premises.
- e Adequate design measures must be provided that ensure the safety and security of sex services premises staff and visitors and where appropriate shall include:
- i reception and visitor assessment areas that incorporate design measures and management procedures to ensure the safety and security of staff and visitors;
 - ii design which minimises alcoves and entrapment spaces;
 - iii adequate safety and surveillance systems;
 - iv adequate amenities (i.e. showers, basins and toilets) are to be provided for staff and visitors.

- f Premises must not be designed or operated to have the appearance and function of a 'fortress' and in particular there is to be no physical obstructions to internal and external access.
- g Doors to working rooms must not be fitted with locking mechanisms.

4.3 Parking

OBJECTIVES

- To ensure that adequate parking is provided for people working on the premises and clients using the facility so that the establishment of sex services premises does not give rise to car parking congestion on the street
- To ensure that the location of parking does not adversely affect the surrounding locality, particularly residential properties and sensitive land uses
- To ensure the safety and security of car parking areas

REQUIREMENTS

- a On-site car parking shall be provided for sex services premises at the rate of one space per two working rooms and shall be designed in accordance with the provisions of Chapter 2.11 Parking and Access.
- b Parking areas, access corridors and entrances are to be well lit and signposted at all times, but not interfere with the amenity of the area.
- c Reduced parking requirements may be considered if it can be demonstrated by the applicant that adequate on street car parking and/or public transport services exist close to the premises and public transport services operate at the time at which the premises is proposed to be open. It will also be necessary to demonstrate that a variation to the requirements in the provision of less on-site parking, will not adversely affect the amenity of any adjoining properties.

4.4 Hours of Operation

OBJECTIVE

- To ensure that sex services premises operate at times where they will have least impact on the community, the environment and nearby land uses

REQUIREMENT

Council will exercise its discretion in relation to permitted hours of operation of sex services premises by taking into consideration the nature of adjoining land uses, hours of operation/use of those premises and possible conflicts with such uses.

4.5 Scale of Operation

OBJECTIVE

- To limit the potential for adverse social and environmental impact of sex services premises in any locality by controlling the intensity of operation

REQUIREMENT

No more than 10 employees (includes all staff, e.g. administration staff, sex workers, security guards, etc.) and no more than 8 sex workers are to be on the premises at any one time, but Council may exercise its discretion in relation to the number of employees taking into consideration the nature of adjoining land uses and possible conflicts with such uses.

4.6 Advertising Signs and Structures

OBJECTIVES

- To ensure advertising is discreet
- To encourage appropriately designed and suitably located signs for sex services premises
- To consider the amenity of the surrounding area
- To ensure advertising does not result in visual clutter or other visual impacts upon a locality
- To minimise the potential for advertising to cause offence to the public
- To ensure that there is no confusion over the location of the sex services premises, which may result in disturbance to surrounding properties

REQUIREMENTS

- a A maximum of one (1) external sign per premises is permitted and shall indicate only the name of the business operated and/or the address (see Note below). However, additional signage for parking and traffic management may be provided.
- b Where primary pedestrian access is from the rear of the site e.g. from a common car park (and subject to Council's assessment of the safety aspects of allowing rear access), a second sign may be provided on the site indicating only the name of the business operated and the street number or address.

Note: Advertising premises specifically for the purposes of prostitution is an offence under the Summary Offences Act 1988.

- c The advertising sign is to be limited in size to 0.3 x 0.6 metres (or other dimensions, but of equivalent surface area of 0.18m²).
- d Signs may be illuminated, but flashing signs are not permitted, provided this would not result in adverse impacts upon the environment or amenity of the area. Illuminated signs are generally required to be extinguished between 2am and 7am.
- e The sign shall not display words or images, which are in the opinion of the consent authority sexually explicit, lewd or otherwise offensive.

- f A clearly visible street number is to be displayed on the premises to avoid disturbance to surrounding premises arising out of confusion as to the location of the premises.

4.7 Health and Building Matters

OBJECTIVES

- To ensure sex services premises comply with relevant health and building regulations
- To promote the operation of sex services premises in a manner which will ensure the meeting of best practice health standards
- To promote safe sex education to sex workers and their clients so as to minimise the risk of contracting sexually transmitted diseases
- To ensure that reasonable working conditions are provided for sex workers

REQUIREMENTS

- a All applications to which this Chapter relates shall comply with the requirements of the Public Health Act 1991 and the requirements of the New South Wales Health Department.

Note: The NSW Health and WorkCover "Health and Safety Guidelines for Brothels in NSW" (2001) provide detailed advice on how occupational health and safety requirements can be met. It is the responsibility of the services premises owner/operator to ensure that the NSW Health and WorkCover Guidelines are satisfied in the design and ongoing operation of the premises.

- b All sex services premises must be fitted with the necessary services and facilities required for Class 5 Buildings (an office building used for professional or commercial purposes) under the Building Code of Australia (BCA). This includes, but is not limited to the following:
- i fire safety requirements;
 - ii adequate lighting in accordance with Australian Standard AS 1680- Interior lighting; and
 - iii ventilation requirements.

4.8 Safety and Security

OBJECTIVE

- To maximise the safety and security of sex workers, other staff, clients and the general public at all times by ensuring the development upholds the principles of Crime Prevention Through Environmental Design (CPTED)

REQUIREMENTS

4.8.1 Siting of Buildings and Structures

- a The pedestrian entrance to a building must be easily recognisable and provided at the front of the building.
- b New buildings or alterations and additions to existing buildings should avoid the creation of recesses in the building form, as these can become potential entrapment spots where intruders may hide. In existing developments to which no new works are proposed, appropriate lighting should illuminate existing entrapment spots, without interfering with the amenity of the area.
- c Opportunities to provide surveillance of vehicle routes, outdoor car parks and access to car parks must be maximised. This should be achieved by a building layout with windows overlooking these areas, provided there is no reduction in privacy or potential for offence or electronic surveillance where casual surveillance cannot be provided.
- d In new developments, parking spaces should be arranged in a grid pattern rather than a herringbone configuration, which reduces surveillance.

4.8.2 Blind Corners

- a Pathways must be direct (i.e. straight) and blind corners avoided (including on stairs, in corridors or in other situations where movement can be predicted). If blind corners cannot be avoided then they must be treated with mirrors to improve sightlines.
- b All barriers beside pathways must be low in height or visually permeable (i.e. 'see-through') including landscaping, fencing and the like.

4.8.3 Lighting

- a The pedestrian entrance to the building must be well lit but not to the extent where it becomes a prominent feature in the streetscape (e.g. by high intensity lighting or the use of excessively bright colours). Details must be provided with the development application.
- b External lighting should be vandal resistant by being high mounted and/or protected and must be directed towards access/egress routes rather than towards buildings (including the subject or neighbouring buildings).

4.8.4 Landscaping

- a Landscaping must not conceal the building entrance from the street or obstruct sight lines between the building and the street.
- b Any proposed plantings must not create opportunities for entrapment spots or the concealment of intruders.

4.8.5 Security Measures

- a All premises are to have either an intercom or a duress alarm in each room that is used for sexual activity. Alarms are to connect back to a central base (such as reception) that is to be monitored at all times.

- b External storage areas, including waste storage, must be secured to avoid creating hiding places or potential entrapment spots for victims and unauthorised access to the premises by potential offenders.
- c Any security grilles used on windows must be able to be opened from the inside in case of emergency.
- d All intruder alarm systems, security screens, door and window locks and intruder resistant materials used in the development should comply with relevant Australian Standards.

5.0 PLANNING CONTROLS FOR HOME OCCUPATIONS (SEX SERVICES)

5.1 Location and Character

OBJECTIVES

- To ensure Home Occupation (sex services) premises are designed and located in appropriate areas where they do not impact adversely on the amenity of the surrounding environment and in particular, do not cause an adverse impact upon neighbouring properties, nearby residential occupancies or other sensitive uses
- To avoid a concentration of Home Occupation (sex services) premises in any one area, which may change the current character or may not be in keeping with the desired character of the area

REQUIREMENTS

- a Home Occupation (sex services) premises must not be sited:
 - i within a radius of 200 metres of existing sex services premises, restricted premises or home occupation (sex services) premises; and
 - ii within shopping malls / arcades; and
 - iii within a radius of 200 metres of licensed premises being a hotel, public bar, or the like.

Note: Distances referred to in this Clause in respect of sex services premises, restricted premises and home occupation (sex services) premises are to be measured as a radius from the boundary of the allotment upon which the premises are proposed. For the purposes of this Chapter, this distance is measured (from door to the nearest point on the affected property boundary) along the most direct established pedestrian route between the premises.

- b The external appearance of Home Occupation (sex services) premises shall be in keeping with the character of the surrounding locality.
- c Home Occupation (sex services) premises shall not exhibit any signage.
- d All entrances and exits to the Home Occupation (sex services) premises should be designed to facilitate the privacy of visitors and respect the privacy of the surrounding premises (particularly residential premises) without compromising personal safety.
- e The interior of the Home Occupation (sex services) premises must not be visible from any place in the public domain or residential premises in the locality.

- f No more than one client per sex worker is to be present on the site at any time.
- g On-site carparking shall be provided at the rate of 1 space (covered) per dwelling plus 1 space per 2 working rooms and shall be designed in accordance with the provisions of Chapter 2.11 Parking and Access. Parking areas shall be designed to ensure that there is no interference with the amenity of the neighbourhood by way of noise or light spill onto adjoining properties.
- h Home Occupation (sex services) premises shall be designed to maximise the safety and security of sex workers (occupants), clients and surrounding residents/occupants of adjoining premises at all times by ensuring the development upholds the principles of Crime Prevention Through Environmental Design (CPTED), published by the NSW Police Service.