



Land and Environment Court
of New South Wales

CITATION : Stewart -v- Tweed Shire Council [2010] NSWLEC 1319
This decision has been amended. Please see the end of the judgment for a list of the amendments.

PARTIES : APPLICANT
Susan Stewart

RESPONDENT
Tweed Shire Council

FILE NUMBER(S) : 10431 of 2010

CORAM: Dixon C

KEY ISSUES: DEVELOPMENT APPLICATION :- Brothel

LEGISLATION CITED: Environmental Planning and Assessment Act 1979
Tweed Local Environmental Plan 2000
Tweed Development Control Plan 2008

DATES OF HEARING: 12 August 2010 and 21 and 22 September 2010

DATE OF JUDGMENT: 22 November 2010

LEGAL REPRESENTATIVES: APPLICANT
Ms A Pearman (barrister)
SOLICITOR
Stacks The Law Firm

RESPONDENT
Mr M Staunton (barrister)
SOLICITOR
Maddocks Lawyers

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

Dixon C

22 November 2010

10431 of 2010 Stewart v Tweed Shire Council

JUDGMENT

Summary

- 1 This appeal, pursuant to section 97(1) of the *Environmental Planning and Assessment Act* 1979 (EPA Act), concerns an application for the establishment of a brothel for 7 sex workers in an existing factory at 2/36 Enterprise Avenue, Tweed Heads (the site).
- 2 The purpose built brothel is proposed over two levels and when lodged comprised:
 - (a) Lower floor: 289m² including foyer; reception; waiting area; bar; office; staff room; laundry; executive room; and two work rooms.
 - (b) Mezzanine floor: 143m² in area including four workrooms.
 - (c) Eleven car parking spaces on site (19 spaces overall).
- 3 Despite a council report recommending approval of the application the council determined on July 2010 that the locality and the deficiency in the Socio Economic Impact Statement submitted by the applicant under Clause 17 (2) of the *Tweed Local Environmental Plan* 2000 (LEP) justified a refusal of the application. Council's principal contention in this appeal

(despite the amendment of the application and additional evidence) is that the Court will also form that opinion and dismiss the appeal.

- 4 However, the evidence does not support such a finding. Based on the evidence before me, I am satisfied that any deficiency in the socio economic impact statement, which was before the council, has been addressed by the amended application. Following an assessment under section 79C of the EPA Act including a consideration of the matters raised by clauses 8, 17(2) and 17(3) of the LEP and section A13 of the *Tweed Development Control Plan 2008* (DCP), I have decided to grant a conditional approval to the amended development for a trial period of 12 months.
- 5 In coming to that determination I have decided to accept the council's draft conditions including the deletion of the car spaces marked 7 and 8 on the amended plans. This will, as anticipated by council's deferred commencement condition 5, require amendment to the other development consents and the strata by-laws.
- 6 I now set out the reason for my decision and start with a description of the amended application, which, as I said, is very different to that refused by the council.

What is the application before the Court?

- 7 At the conclusion of the first day of this appeal hearing, the applicant sought leave, which was granted subject to a section 97B cost order in favour of the Council, to amend its application.
- 8 The amended proposal is:
 - Trading from 6pm to 6am. This change, according to council's town planning consultant, Mr. Nash, significantly ameliorates any affront caused by this development when viewed from the public domain.

- There is to be no alcohol on the premises during business hours. The applicant no longer seeks consent to serve complimentary alcohol to its patrons; and this, according to Mr. Nash, removes the need for onsite security and makes acceptable the proposed remote security arrangements.
- The brothel is to operate in accordance with the plan of management (as amended by the Draft Conditions), which Mr. Nash describes as "competently prepared".
- The applicant relies on amended plans, as detailed in exhibit E and further amended in the hearing, which resolve the issues about the location and workability of the disability car parking space, the disability ingress and egress at the entry, the staff stacked parking, the security CCTV in the car park and in the premises, the gas/storage bin relocation, the removal of the beds from the staff room and the habitable room issue, the designation of the disability washroom/ toilet with exclusive access from workroom 2, the disability compliant toilet/washroom off the waiting area, removal of the bar (tables and chairs) in the waiting room, upgrading of the WC and shower wash areas in the "Executive Room" and workrooms 1 & 2. These amended plans address most of council's design contentions.
- The applicant agrees to operate the brothel subject to a 12-month trial period and to the deferred commencement conditions in Schedule A to the Draft Conditions of Consent filed with the Court on 22 September 2010.
- The applicant agrees to the draft conditions of consent subject to condition A1 (b) and (c) about car spaces 7 & 8.

- 9 The only conditions in dispute are those discussed in Contention 5(c) and 5(e) - car park design.
- 10 The Council proposes a shared use of all car spaces when the premises are likely to be operating. The current arrangement is that the car spaces have been allocated to particular units within the industrial site. Included in that allocation are spaces 7 and 8. In order to have shared usage council submits that spaces 7 and 8 need to be eliminated so as to ensure that other industrial units are more accessible to larger vehicles. Based on the evidence, including the fact that a limitation on the size of trucks is not consistent with the primary objective of the zone, it seems appropriate in

my opinion to accept council's condition and thereby require the modification of the other consents to allow shared car spaces.

- 11 However, the applicant does not consent to these conditions and submits, based on its evidence, that a semi-rigid truck could safely manoeuvre by one reverse movement in and out of the car park as reason to reject the conditions. However, that is not the evidence of council's traffic expert, who told me, that such a manoeuvre is unsafe and has the potential for conflict with pedestrians on the footpath. While the restricted hours of operation of the brothel outside normal working hours means that it is less likely there will be pedestrian and vehicle conflict, this does not warrant the keeping of spaces 7 and 8. I accept council's expert evidence on the issue that the design needs to accommodate the potential conflict for afterhours delivery for the current business - or any future use of the adjoining factory units. Furthermore, it is necessary to also resolve the conflict between the location of car parking and positioning of roller doors within unit one. Based on the evidence, this is achieved in my view if the council's conditions 5 (c) and 5(e) are accepted.

Remaining Contentions

- 12 At the conclusion of the hearing, the council conceded in its written and oral submissions that the amended application resolves most of council's issues: in particular, the issues raised by Contention 3-hours of operation, Contention 5(a), 5(b) and 5(d) - car park design, Contention 6 and Contention 7(a) - operation of brothel and management plan and 7(b) - service of alcohol on the premises.
- 13 This leaves the following matters in contention:
- (a) Contention 1 - clause 4(d) of Tweed LEP
 - (b) Contention 2 - Clause 8(1)(c) of Tweed LEP
 - (c) Contention 4 - Socio Economic Impact Statement - clause 17 of Tweed LEP

(e) Contention 8 - Public interest.

- 14 Before I deal with each remaining contention, it is necessary to appreciate the context of the site based on the evidence and the agreed facts because the remaining contentions concern whether or not the brothel is in an appropriate location.

The Site

- 15 The site has an area of 2008m² and a frontage of 51.64m to Enterprise Avenue. It is described as Lot 411 in DP859933.
- 16 It is located approximately 235m southwest of the Pacific Highway, approximately 1 km southwest of the Tweed City Shopping Centre and 2.5 km west of the Tweed River, Tweed Heads South. It is zoned 4a (Industrial) under the LEP and located within an industrial area known as 'Expo Park' in Tweed Heads South. The site is a zone interface and a brothel is a permissible use with development consent.
- 17 The Court took a view of the site and the local streets by foot and car including those sites deemed to be the surrounding sensitive uses: Forty Winks, Retravision, Epic Skate, Kids Biz, the dance studio and the park and the school. It travelled by car to view other brothels within the local government area including: Le penthouse, Club Tweed, Little Mermaids and Venus Lounge (copies of the development consents for the above-mentioned brothels were tendered at the hearing).
- 18 At the view, I observed that Lot 411 is relatively flat and is improved with industrial buildings that form a 'U' shape. Car parking and driveway provisions are located in the centre of the site, between the buildings and Enterprise Avenue. A single access driveway is provided to the site from Enterprise Avenue. The application lodged states that the site includes a total of 19 car parking spaces (which was corrected in the hearing to 18) and further amended by the amended plans. A landscaped strip is located between the roadway and car parking. The landscape strip ranges from

600mm to 1.5 metres in width and contains immature plantings, which in time, says the applicant, will provide a privacy screen between the site entry and Enterprise Avenue.

The Locality

- 19 At the hearing, council's town planner, Mr. Nash, told me that he viewed the local government area of Tweed Shire as like a "country town" while the applicant's expert, Mr. Glazebrook, described it as "an extension of the Gold Coast". Despite Mr Nash's opinion, he ultimately agreed that while the position of the site and its physical layout, without mature screening, made visible the front door of the premises from Enterprise Ave, the trading from 6pm until 6am, "significantly ameliorated" any affront from Enterprise Ave.
- 20 It is a fact that development surrounding the site is mainly of a commercial and industrial nature. An industrial shed containing a relocatable home manufacturing business is located to the north of the site, a storage yard for earthmoving equipment is located to the west of the site, and an industrial building involving a formwork business is located to the south of the site.
- 21 The tenants of the adjoining industrial sheds gave evidence at the view in support of the development of a brothel on the site. In fact, one of the adjoining tenants told the Court that since the commencement of this appeal he has executed a further 3-year lease of his unit. This is evidence of the fact that at least for that adjoining unit the proposed use has no negative social or economic impact on that business.
- 22 Beyond Enterprise Avenue to the east, are the rear loading areas of commercial businesses (Forty Winks and Retravisio) fronting Greenway Drive. Relevantly⁷, their customer parking and main entry is located and orientated away from the entry to the brothel and not visible.

The Statutory Controls

23 The relevant statutory controls are:

- (a) *The Environmental Planning and Assessment Act 1979*
- (b) *State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988*
- (c) *State Environmental Planning Policy No. 64 - Advertising and Signage*
- (d) *State Environmental Planning Policy no. 71 - Coastal Protection*
- (e) *NSW Coastal Policy 1997*
- (f) *Tweed Local Environmental Plan 2000*
- (g) *Tweed Shire Development Control Plan:*
 - (i.) *Section A2 - Site Access and Parking Code*
 - (ii.) *Section A4 - Advertising Signs Code*
 - (iii.) *Section A8 - Brothels Policy*
 - (iv.) *Section B3 - Banora Point West - Tweed Heads South*
- (h) *Draft Tweed Local Environmental Plan 2010*

Notification

24 The development application was received by council on 19 January 2010; and notified from Wednesday 10 February 2010 to Wednesday 24 February 2010 (public holidays excepted) in accordance with the council's notification policy. Several written submissions received by council in response to the notification and these were tendered in council's bundle and I have read those submissions and petitions.

Police evidence

25 A copy of the application was sent to the NSW Police for comment. According to the evidence, on 1 April 2010, Council received email correspondence from the NSW Police had no objections to the proposal on the site.

Submissions

- 26 The hearing commenced onsite so that I could hear evidence from those who had lodged a submission about the development and view the site and locality.
- 27 Most of the local residents who gave evidence spoke about the matters they had raised in their written submissions to council although some additional written submissions were tendered on the day. Much of their evidence concerned objection to the original proposal for a 24-hour trading and the service of alcohol on the premises.
- 28 There is no doubt that the local residents who addressed the Court were passionate about their objections to this development on this site. However, they were realistic about what was relevant in a planning appeal. While some expressed objection on moral grounds, they also appreciated that the Court cannot refuse this permissible use on moral grounds alone. With respect to planning objections, they told me that the development should not operate in this location from 6am to 6pm because of its proximity to Kids Biz, the roller skating rink (Epic Skate), the dance studio, the park and the school and the nearby residential estate. Most objected to the visible entrance to the brothel in an area where children walk past the site to go to school or to the park or to the nearby residential estate.
- 29 Most of the residents who addressed the Court stated that any approval of this development needs to be subject to a 12-month trial period because that would allow some monitoring and of its use and the operator's compliance with the conditions of consent.
- 30 Some residents expressed fear about an increase in crime and illegal activity; but, again, those present understood that the police have raised no objection to this application.

Nearby sensitive developments

- 31 Mr Nash identified the following developments within the locality of the site as sensitive uses for the purposes of clause 17(3) of the LEP; Epic Skate

Park, Kidz Biz, Retravisio and Forty Winks (whose loading docks are directly opposite the site) and St Joseph's College.

Epic Skate

- 32 I was told that Epic Skate (which is located at Lot 16 /23 Enterprise Avenue and is not visible from the site) and operates 9am to 11pm Monday to Saturday but is not open to the public until 6pm on Monday to Friday because before that time it is used for organised groups that must travel to and from the centre by bus. I was told that consent lapsed in September 2007. The Court walked past that site which was about 500m from the brothel and it was noted that the brothel entry was not visible.

KidzBiz

- 33 This business operates Monday to Friday 7am to 10am and 4pm to 7pm Saturday and Sunday –7am to 7pm. A single group of (max 8 people) may utilise the facility between 10am and 4pm Mon –Friday by appointment only. The consent is time limited and expired last August 2010. According to the evidence, no section 96 modifications have been lodged to date.

Retravisio

- 34 This business also has its loading dock directly opposite the site has two development consents. It does not trade past 6pm Monday to Friday. No hours of operation are imposed on the consents.

Forty Winks

- 35 This business also has its loading dock directly opposite the site does not trade past 6pm. It has no hours of operation imposed on its development consent.

- 36 It is a fact that none of the abovementioned identified sensitive uses in the "affected community" under clause 17(2) of the LEP lodged objection to this development application

- 37 I was able to better understand the operation of the sensitive uses because their development consents were tendered into evidence and this supplemented the socio-economic impact statement lodged by the applicant. As noted above, a consideration of those approvals (exhibit F) made clear the fact that none of the sensitive uses operates the same hours as the brothel; and most have no direct view of the entry to the brothel. The view confirmed that the main parking customer and entry of the businesses opposite are not visible from the brothel. Based on the evidence, I am satisfied that the amended application, in particular the comprehensive plan of management, would mitigate any negative impacts on the sensitive uses because it would ensure that the operation of the premises without signage would be operated securely, safely and cause no direct conflict with the surrounding sensitive uses. It is true that children may walk past the site but the brothel will not be readily identifiable as there is no signage proposed. There is no evidence before me to suggest that the operation of the brothel would have a negative impact on the business opposite the site or any other identified sensitive use such as to warrant refusal on that ground.

Contention 1 - Contrary to the aims of the Tweed LEP 2000

- 38 Despite the amended application, Council still maintains that the amended development is not consistent with the planning outcomes envisaged under the aims of the LEP in Clause 4(d) of LEP.
- 39 Clause 4(d) of the LEP has the stated aim *"to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities"*.
- 40 Based on the evidence, the amended application in my opinion satisfactorily addresses council's concern that the development is inconsistent with clause 4 (d) of the LEP. Mr Nash, council's town planning expert gave evidence that the amended application with its comprehensive plan of management and the restricted hours of trade outside of normal business hours "significantly ameliorates" any affront and privacy conflicts

arising from the direct overlooking of the only entrance to the proposed brothel from the public domain, namely, the adjacent retail/bulky goods service and pick-up area on the opposite side of Enterprise Avenue and from the adjoining industrial units 1 and 3.

41 There was no evidence brought before the Court that the brothel would have any likely long-term adverse impacts on the economic viability and functioning of the industrial units and the adjacent retailing due to the proximity of the entrance of the brothel and related car parking area. Those businesses did not object to the application; and, in fact, the adjoining tenants gave evidence in support of the application with one tenant entering into a further 3-year lease of their adjoining unit. While there is a concrete pedestrian footpath adjacent to the site that potentially attracts pedestrian movements between local attractions such as the Epic Skate Park and residential precincts in the vicinity, it is not the only or even the main access to those developments. The evidence supports a finding that the operation of the brothel after 6pm and the plan of management will ensure that the brothel will have no adverse impact on “ *sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities*”.

42 Based on the evidence, particularly that of council's expert, Mr Nash, the amended application will be compatible with the area's environmental and residential amenity qualities. The 12-month trial will provide an opportunity for review and refinement of the conditions of consent including the plan of management to ensure that fact.

Contention 2 - Contrary to consent considerations under the Tweed LEP 2000

43 The proposed development does not satisfy the requirements of Clause 8 (1)(c) of the Tweed LEP 2000.

Particulars

- (1) *The consent authority may grant consent to development (other than development specified in Item 3 of the Table to Clause 11) only if:*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

- 44 The planning experts have different opinions about the interpretation of clause 8(1) (c) of the LEP.
- 45 Even if I accept, as council submits I should, the wider interpretation of the clause advocated by Mr. Nash I am satisfied that the amended application will not have an unacceptable cumulative impact on the community, locality, catchment or on the Tweed as a whole.
- 46 This brothel will be purpose built and be required to operate in accord with a strict and comprehensive plan of management. It will operate outside normal business hours and that significantly lessens any impact on surrounding businesses, the community locally and within the catchment or the Tweed as a whole. The controls in place are according to the evidence of Mr. Nash, appropriate and - if complied with-will address satisfactorily safety and security issues for the brothel workers and their clients and the community generally. The police have raised no objection to this application. There is no evidence before me to support a finding that an approval of this brothel will cause any cumulative impact as detailed in clause 8(1) (c).

Contention 4 - Socio- Economic Impact Assessment

- 47 Council contends that the applicant's Socio- Economic Impact Assessment Report (SIA) is flawed.
- 48 As council conceded in assessing the adequacy or otherwise of the applicant's SIA, as required by clause 17 of the LEP, the Court needs to

have regard to the evidence at the time of the hearing. In this case the evidence before the Court is significantly more comprehensive than that originally before the council when they assessed the application.

- 49 Based on the evidence before me, the amended application (with its reduced hours of operation and comprehensive plan of management) is both a different and improved application. Council's expert, Mr. Nash, says that much in his evidence.
- 50 The objective of clause 17 is: *"to ensure the proper consideration of development that may have a significant social or economic impact"*.
- 51 As submitted by the council clause 17 of the LEP has two limbs. Foremost, there is the need to assess whether the development is likely to have a significant social and economic impact. If so, then consent can only be granted if the Court has considered a socio economic impact assessment.
- 52 By operation of section 13A of the DCP, the council has determined that all brothels require a socio economic impact assessment. Therefore, under clause 17(2) the court must consider a socio economic impact assessment.
- 53 It is a fact that the applicant submitted a socio economic impact assessment. The council says it is deficient in detail and therefore the court cannot approve the application.
- 54 It is also a fact that the amended application has significantly changed the impact of the brothel. Therefore, the socio economic impact assessment originally lodged must be amended to reflect the changed application.
- 55 Clause 17(3) sets out the minimum matters, which must be contained in the socio economic impact assessment. Clause 17(3)(a) requires an assessment of the future impacts of the development on the affected

community. The planners have identified the affected community to be Epic Skate, KidsBiz, local school, local residents and the business opposite. I have considered the consents in respect of each of those developments in particular their hours of operation and the future impact this development will have on those developments. Based on the evidence there is now little direct conflict between the hours of operation of the affected community because the brothel will only operate for restricted hours outside usual business hours. While Epic Skate (whose consent expired on Sept 2007) is apparently open to the public from 6pm Monday to Friday, it is some distance from the brothel; and based on the evidence there is no likely social and economic impact from the brothel if approved.

56 I also had the opportunity to inspect the affected community at the view by foot and in the car. This allowed me to better appreciate the likely future impacts of the development on the affected community. The distances between the development and the school and the residential area and the Epic Skate, Kids Biz are such that there is no direct line of sight to the brothel. It is also the case that the most direct route of travel to Epic Skate, Kids Biz is not Enterprise Ave. According to Mr. Nash, the restricted hours and amended application "significantly ameliorates" any affront caused by the brothel to the affected community now and in the future. At the view, the local residents who attended explained to me their concerns with the proposed 24-hour brothel; and I believe I understand their concerns for the future of their community. However, they also told me that if the hours were restricted to operate from 6pm that would alleviate some of their concern about the impact of the brothel on children who may walk past the site. Operating from 6pm to 6am, according to Mr. Nash, will avoid direct conflict with school children returning from school.

57 The council submits that there is no evidence before the Court about the impacts of the development in terms of its "...magnitude, significance, duration or effect on current and future conditions and community services and the like" clause 17 (3)(b). I reject this submission on the evidence before me. While the words in clause 17 (3) (b) "community services and

the like" are not defined based on the evidence including the view taken by the Court and the matters raised in the written and oral evidence of the objectors and supporters of the development, the planning and traffic evidence I am satisfied that the Court has addressed these matters because it has considered the effect of the brothel on the conditions of the consents of the affected community, the hours of operation of the development and the impact on the community generally.

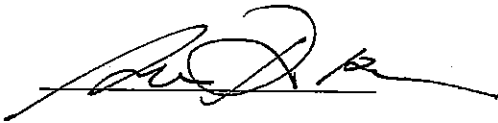
- 58 There is no definition of "community facilities" in the LEP but I accept that the Epic Skate, KidsBiz provide community services. The Court has considered the impact of the brothel on these community services and based on the evidence I do not accept that an approval of this development will cause a loss of amenity within the locality due to a net reduction of community services and facilities (clause 17(3)(c)).
- 59 Most of the hearing was spent considering ways to mitigate or manage the likely impacts of this development on the affected community and the community generally (cl 17(3) (d) the amended application including the restricted hours, the comprehensive plan of management, the change to the parking arrangements and the council's conditions are direct evidence of the attempts by the applicant and the council to address the matters raised in this subsection.

Conclusion

- 60 Based on the above, I am satisfied that the matters raised in clause 17(2) and (3) of the LEP have been addressed and after an assessment under section 79 C of the EPA Act and a consideration of the amended application, the matters raised by the residents and law the location of this brothel is appropriate on the evidence before me subject to a 12 month trial period and the conditions proposed by the council. Therefore, the Court makes the following Orders:

1. The appeal is upheld.

2. Development consent for a trail period of 12 month is granted to DA 10/0020 for the establishment of a brothel at 2/36 Enterprise Avenue, Tweed Heads subject to the council's conditions which form Annexure A to this judgment.
3. The council is directed to file a copy of the conditions as amended by this judgment within 7 days.
4. The Applicant is to pay those costs of the consent authority that were incurred in respect of the assessment of, and proceedings relating to the original development application the subject of the appeal in the amount of \$42,000. The first payment of \$15,000 is to be made on 18 October 2010, the second payment of \$9,000 is to be made on 15 December 2010, the third payment of \$9,000 is to be made on 15 February 2011 and the fourth and final payment is to be made on 15 April 2011 and time is of the essence. In the event that any payment is not made on the due date the total remaining amount becomes due and payable immediately.
5. The exhibits are returned apart from exhibits D and E.



Commissioner of the Court

Please be advised that pursuant to *Rule 36.17 of the Uniform Civil Procedure Rules 2005* corrections have been made to the Order 4.

Annexure "A"

Conditions of Consent

TWEED SHIRE COUNCIL at STEWART
Unit 2, 36 Enterprise Avenue, Tweed Heads South

DEFERRED COMMENCEMENT CONDITION

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within six (6) months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE A

Conditions imposed pursuant to section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A1. The plans for the proposed brothel are to be amended, and provided to Council for endorsement, to incorporate the following changes prior to the consent being operational, namely:
- (a) Wheel stops are to be installed across the front of carparking spaces numbered 1 to 5 to provide a clear path travel from disabled carparking space 1 to the brothel entry, in accordance with the B99 template for vehicles, and designed so that no vehicle intrudes within 1 metre from the wall of the premises.
 - (b) Carparking spaces 7 and 8 are to be deleted.
 - (c) Development Consents numbered DA08/0985 and DA09/0691 and Strata Subdivision SSC10/0019 are to be modified to restrict and enable their use in accordance with conditions 45, 46 and 47 of this consent.
 - (d) The toilet off the downstairs waiting area shall be made accessible for persons with a disability.
 - (e) The disabled toilet on the ground floor adjacent to workroom 2 and the executive room shall be accessible only from Workroom 2.
 - (f) Additional CCTV cameras are to be installed to provide coverage of all common areas within the brothel.
 - (g) The bar and basin in the waiting area is to be removed.
 - (h) The bin / gas enclosure is to be relocated to the south of the exist door.
 - (i) A 240 litre security facility marked 'contaminated waste' is to be provided on the ground floor.

- A2. The management plan prepared by Ross Fleming of Boston Blyth Fleming is to be amended to include the following matters:
- a) Name and contact details of the 'operator(s) and manager(s)';
 - b) Registered business name and trading name;
 - c) The receptionist duties are to be amended to include handling money and procedures for banking money regularly;
 - d) The operations manager must undertake the duty of the fourth dot point of the receptionist duties to ensure that there is not conflict with the receptionist undertaking her duties at the same time;
 - e) Location of safe sex aids and equipment available to sex workers (fourth dot point of receptionist duties);
 - f) Details of induction training for the receptionist and sex workers;
 - g) A CCTV camera is to be installed on the mezzanine level above the door to workroom 3 to provide security coverage of the access to the four workrooms on the upper level;
 - h) Details (ie manager) of who is to vacuum and clean rooms after each shift;
 - i) Details of who is to change the bed linen;
 - j) Details of mattress cleaning including frequency and by who (ie external contractor);
 - k) Details of who is to clean the spa/bathroom;
 - l) Whether sex workers are allowed to leave premises during meal breaks or whether meal breaks are to be taken in the staff room;
 - m) Details of programs for ongoing education and health for sex workers;
 - n) Annexing the amended plans as approved by Council pursuant to Condition A1 above;
 - o) Sex workers are to arrive and depart from the premises by way of registered taxi and the cost of this travel is to be at the cost of the proprietor; and
 - p) No Alcohol is to be provided on the Premises.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

1. The development shall be completed in accordance with the Statement of Environmental Effects and Approved Plans under Schedule A of this consent, except where varied by the conditions of this consent.

2. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
3. The building shall be provided with systems of mechanical exhaust ventilation and comfort conditioning in accordance with the provisions of part F4.5 (b) of the Building Code of Australia.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

5. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Tweed Road Contribution Plan:

36.93 Trips @ \$936 per Trips \$34566

(\$851 base rate + \$85 indexation)

S94 Plan No. 4

Sector2_4

6. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying

Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP4:2.511 ET @ \$11,020 per ET \$27,671.20

Sewer Banora: 3.211 ET @ \$5,295 per ET \$17,002.20

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

PRIOR TO COMMENCEMENT OF WORK

7. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

8. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
9. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council
10. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
11. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

DURING CONSTRUCTION

12. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.
13. The layout and construction standards of all car parking spaces is to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.
14. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -
 - (a) Monday to Saturday from 7.00am to 6.00pm;
 - (b) No work to be carried out on Sundays or Public Holidays; and
 - (c) The proponent is responsible to instruct and control subcontractors regarding hours of work.
15. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of

Australia (as in force on the date the application for the relevant construction certificate was made).

16. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.
17. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.
18. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.
19. The finished floor level of the building should finish not less than 225mm above finished ground level.
20. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
 - (a) Noise, water or air pollution
21. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.
22. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.
23. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.
24. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.
25. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
 - (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building.

26. Plumbing:
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.
27. An isolation cock is to be provided to the water services for the unit in a readily accessible and identifiable position.
28. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
29. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
30. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - 50°C in all other classes of buildings.
31. A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

32. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
33. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
34. All landscaping work (approved under DA08/0985) is to be completed in accordance with the approved plans prior to any use or occupation of Unit 2.
35. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

USE


36. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
37. The use being restricted to the floor area designated on the approved plans.

38. The operation of the Brothel shall comply with the provisions of the latest version of the NSW Workcover "Health and safety Guidelines for Brothels".
39. Where it is proposed to install swimming pools and/or spa pools within the Brothel, then all such swimming pools and spa pools shall be operated in compliance with the latest version of the NSW Department of Health "Public Swimming Pool and Spa Pool Guidelines" and "Protocol for Minimising the Risk of Cryptosporidium Contamination in Public Swimming pools and Spa Pools".
40. Appropriate waste containers acceptable to the NSW Department of Health are to be placed in all work rooms for the collection and disposal of soiled articles such as condoms, tissues, gloves and the like. Such waste containers should have sliding lids to eliminate odours. All contaminated sharps, e.g. needles shall be placed in non-reusable sharps containers which comply with Australian Standard-AS 4031 for their disposal.
41. Service or consumption of alcoholic beverages is prohibited within the brothel premises at any time.
42. The brothel premises are not to be used by staff and sex workers for sleeping or habitation at any time. There are to be no beds provided in the staff room.
43. The hours of operation of the brothel premises are from 6.00pm to 6.00am seven (7) days a week for a one (1) year trial period commencing on the operation of this consent.

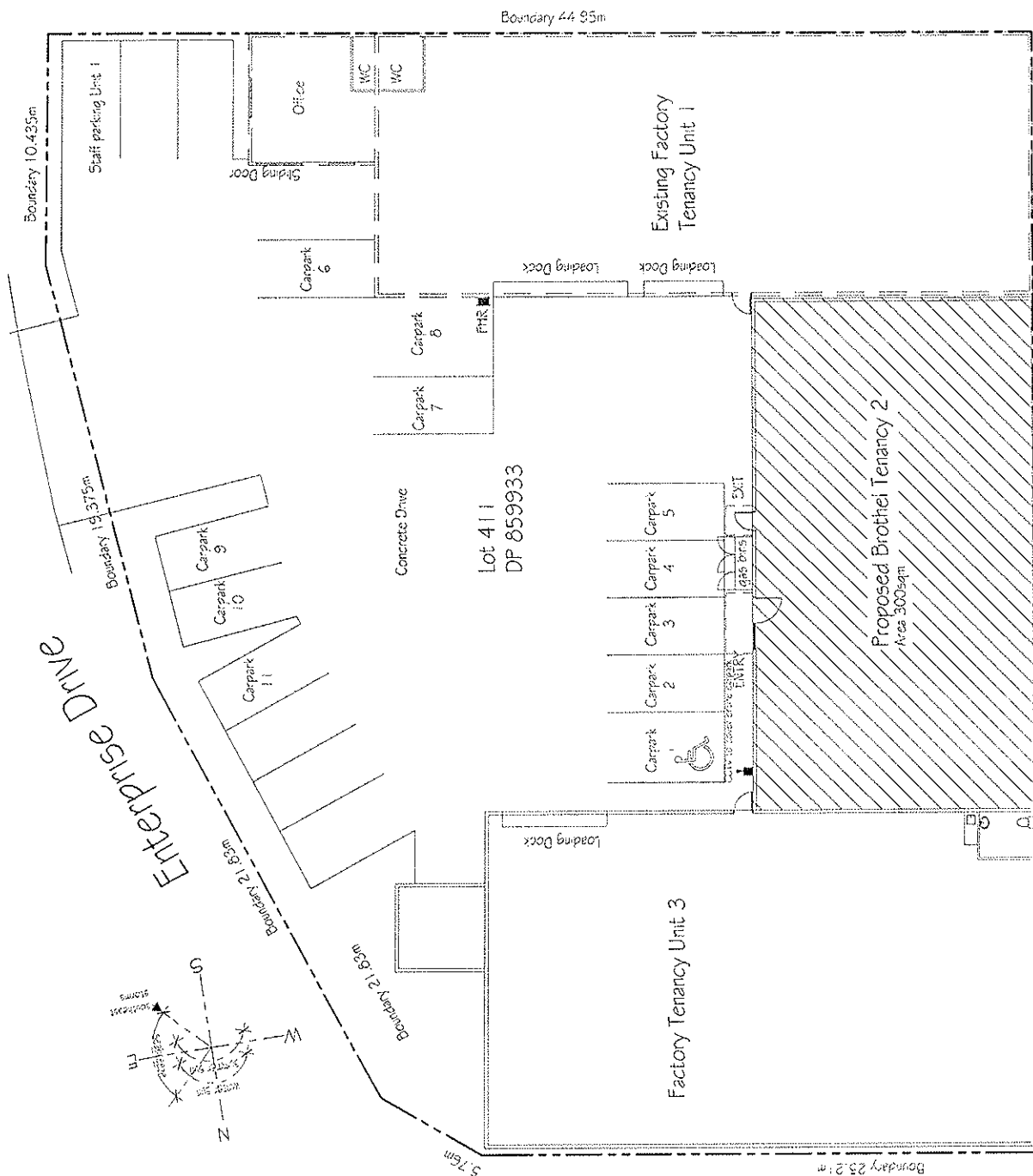
The brothel premises is not to be used or occupied by sex workers, employees, cleaners etc prior to 5pm or after 7am.

A further application may be lodged to continue the hours of the use outlined above before the end of the trial period. Council's consideration of the continuance of the operating hours will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, including the Plan of Management, any substantiated complaints received and any views expressed by the Police.
- 44A. No entertainment is to be provided on the premises.
44. Carparking spaces 1, 2, 3, 4, 5, 6, 9, 10 & 11 shall be available for shared use by all units in the development between the hours of 6am and 6pm and shall be signposted accordingly.
45. Carparking spaces other than 1, 2, 3, 4, 5, 6, 9, 10 & 11 shall be available for shared use by all units in the development between the hours of 6pm and 6am and shall be signposted accordingly.
46. All carparking spaces shall either remain as common property or appropriate easements for carparking shall be registered to give effect to conditions 45 and 46 prior to the issue of an amended subdivision certificate.
47. There shall be no more than 7 customers waiting in the waiting rooms at any one time. In addition there will be no more than 1 customer in each of the workrooms and any customer in a workroom must be accompanied by a sex worker at all times.
48. There shall be no more than 7 sex workers on the premises at any one time.

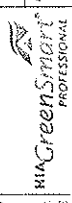
49. There shall be a minimum of 1 receptionist and 1 operations manager on the premises at all times when the brothel is operating.
50. The operator of the brothel shall maintain in force for the life of the development a contract with a reputable security contractor which provides for the security contractor to be on call and promptly respond when required by the operations manager.
51. The premises shall be operated in accordance with the plan of management prepared by Ross Fleming of Boston Blyth Fleming as amended and approved by Council in accordance with deferred commencement condition A2.

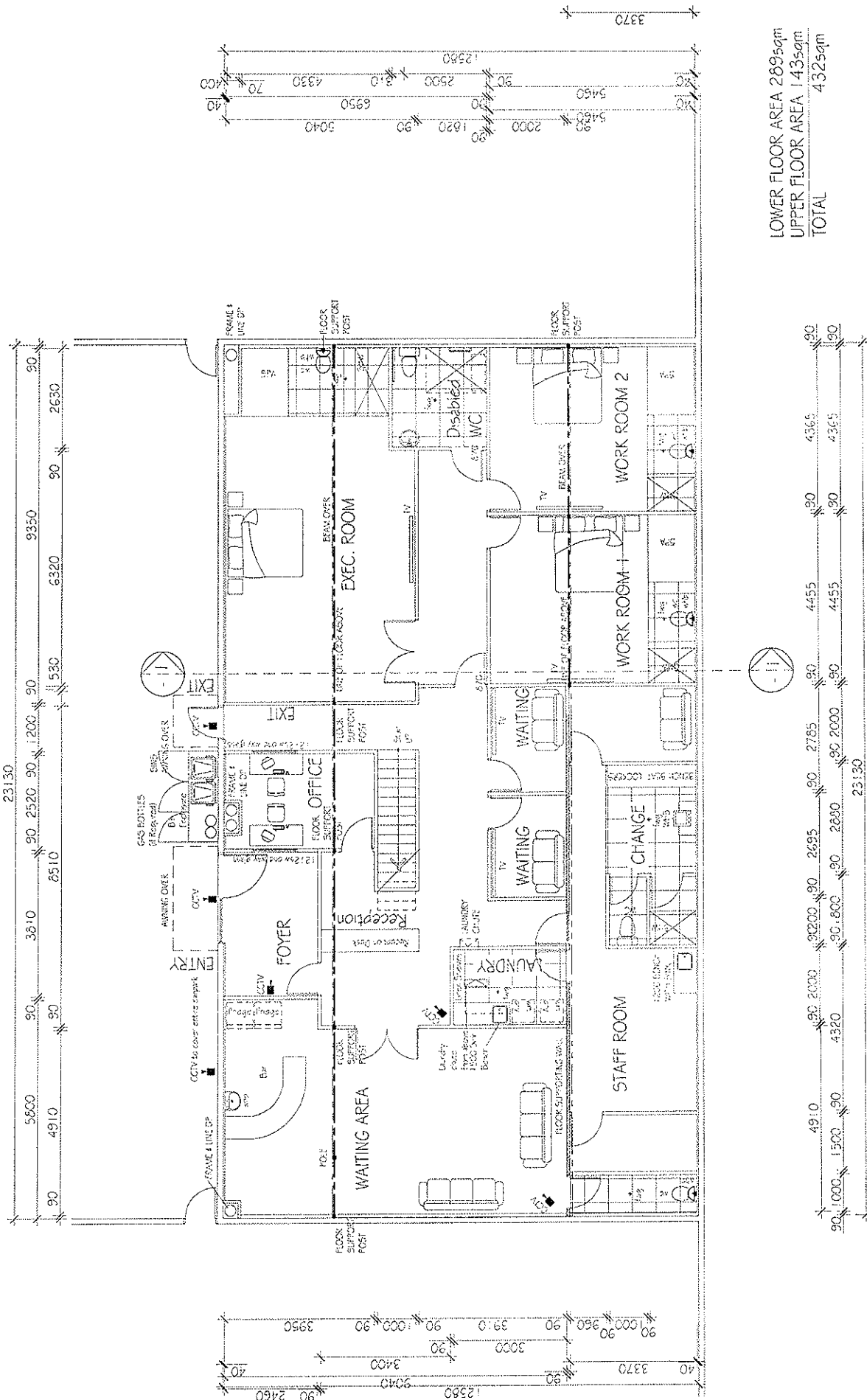


Susan Dixon
Commissioner of the Court



All Design & Drafting <small>10 Box 1204 O'Brien Road QLD 4210 PH: 64 6569 7553 email: info@alldesignanddrafting.com.au</small>	<small>© THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF ALL DESIGN & DRAFTING. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM ALL DESIGN & DRAFTING.</small>	Client: Jason Robinson & Susan Stewart Project: Proposed Brothel Address: Unit 2 Lot 411 Enterprise Drive, South Tweed Heads	Lot & RP: Lot 411 DP 859933 Parish: - County: -	Drawing: SITE PLAN 21 Amendments 11 Amendments 01 Amendments	15-09-10 02-09-10 20-09-10	Scale: Dates: Project No: Drawing No:	1:200 (A3) 12-1-08 11070 1

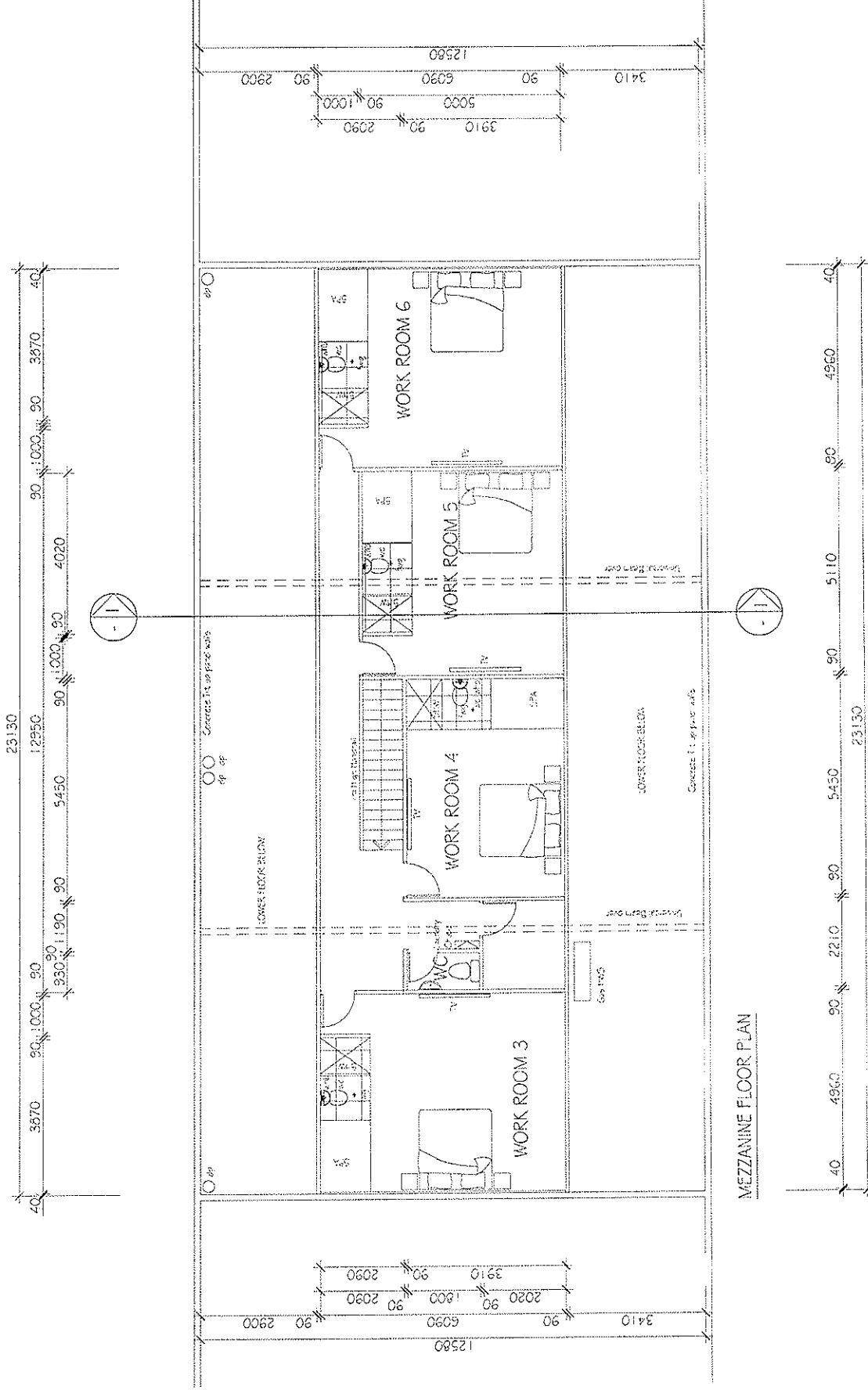




LOWER FLOOR AREA 289sqm
UPPER FLOOR AREA 143sqm
TOTAL 432sqm

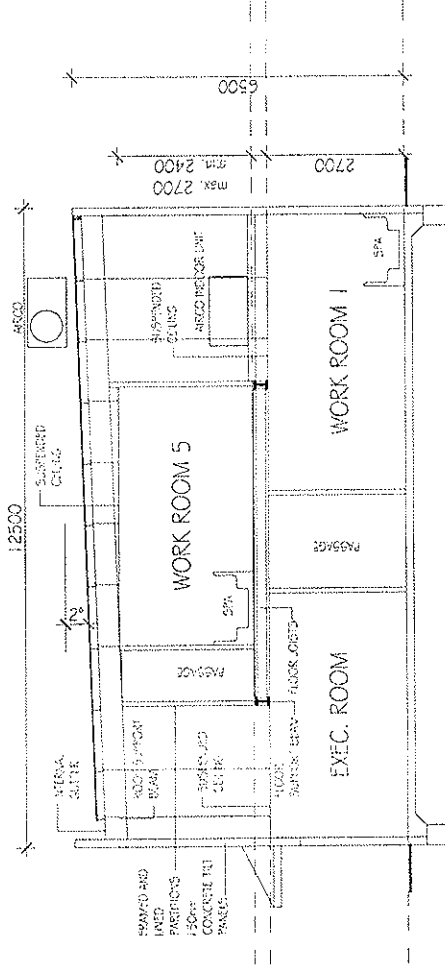
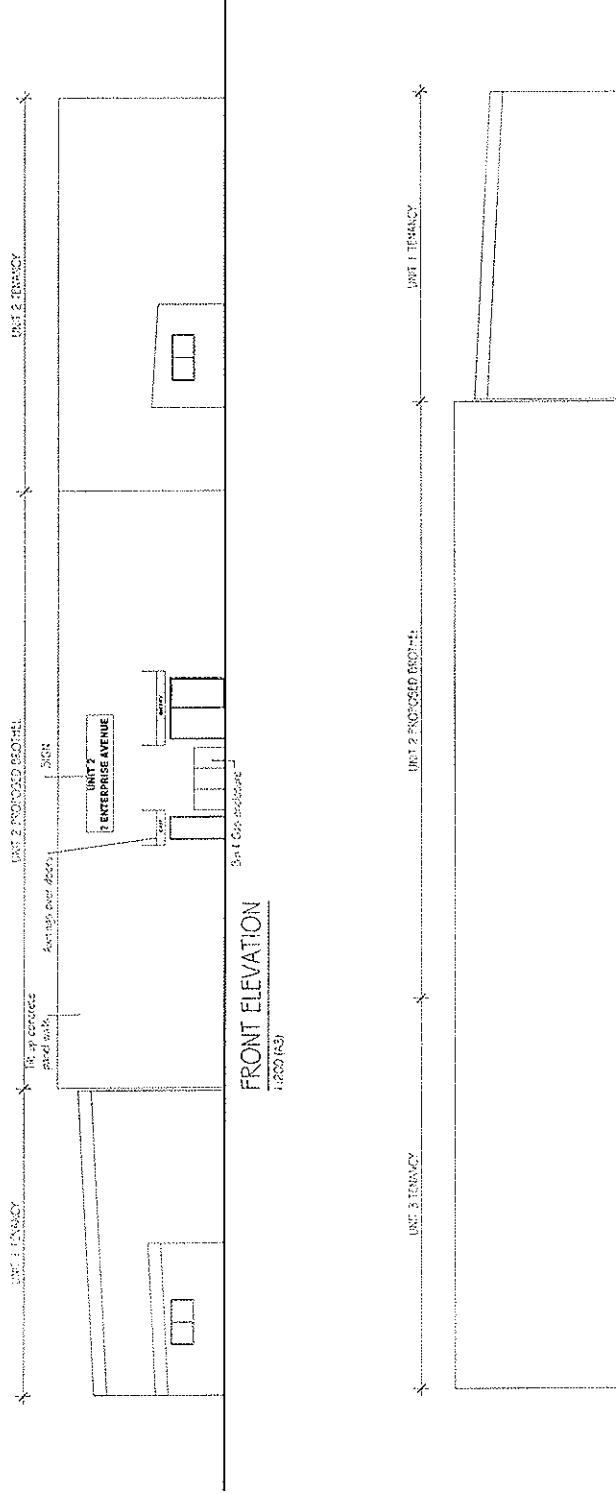
LOWER FLOOR PLAN

All Design & Drafting <small>PROFESSIONAL DESIGNERS & ARCHITECTS 10 BOX 1784 OCEANVIEW PT. 04 1500 7553 email: info@add.com.au 04 1500 7553 04 1500 7553 04 1500 7553</small>	Client Jason Robinson & Susan Stewart Project Proposed Brothel Address Unit 2 Lot 411 Enterprise Drive, South Tweed Heads	Drawing: LOWER FLOOR PLAN			
		Lot: 4 RP	DP589933	1:100 (AS)	1:100 (AS)
		Parish		1:100 (AS)	1:100 (AS)
		County		1:100 (AS)	1:100 (AS)
		Unit 2 Lot 411 Enterprise Drive, South Tweed Heads		1:100 (AS)	1:100 (AS)



MEZZANINE FLOOR PLAN

All Design & Drafting 10 Box 1284 ORENTHO PH: 84 6269 7555 email: info@alldd.com.au 10 Box 1284 ORENTHO	© 2010 ALL DESIGN & DRAFTING 10 BOX 1284 ORENTHO 10 BOX 1284 ORENTHO	Client: Jason Robinson & Susan Stewart Project: Proposed Brothel Address: Unit 2 Lot 411 Enterprise Drive, South Tweed Heads	Drawing: MEZZANINE FLOOR PLAN 12 Amendments 11 Amendments 10 Amendments	Lot 411 DP589933 Parish: County:	Scale: 1:100 A3 Date: 12-1-09 Project No: 11070 Drawing No: 3



All Design & Drafting <small>15 THOMAS STREET, SUITE 101, MELBOURNE VIC 3000 TEL: 03 9594 1111 FAX: 03 9594 1112 email: info@alldesignanddrafting.com.au</small>	<small>© 2010 ALL DESIGN & DRAFTING ALL RIGHTS RESERVED 2010-2011</small>	Client: Jason Robinson & Susan Stewart Project: Proposed Brothel Address: Unit 2 Lot 411 Enterprise Drive, South Tweed Heads	Loc & RP: Lot 411 DP589933 Parish: - County: -	Drawing: ELEVATIONS & SECTION			
				12	Amendments	15-09-10	Scale: as shown
				11	Amendments	02-09-10	Date: 12-1-09
				10	Amendments	20-08-10	Project No: 1-070 Drawing No: 4

Draft Plan of Management – Unit 2, Lot 411, DP 589933 No. 36 Enterprise Ave, South Tweed Heads.

Introduction

The Council's Statement of Facts and Contentions dated 9th July, 2010 cites at Contention 7.

"The applicant has failed to provide relative information in relation to how the proposed development is to be managed and operated".

Solicitors for the applicant, Stacks – The Law Firm, have instructed me to prepare a plan of management in relation to the subject matter. To this end and having regard to the site plans, floor plans, sections and elevation details as appended to this plan of the proposed brothel prepared by All Design and Drafting and to a telephone conference with Ms Susan Stewart the applicant in the subject matter I have prepared the following Plan of Management.

1. General

This plan of management provides guidelines and controls that are to be adhered to in the daily operation and management of the premises as a brothel. The plan of management aims at providing appropriate details in relation to health and safety regulations as well as addressing controls and regulations for the activities to be conducted on the site, particularly to security, amenity and the interaction of the land use with neighbouring premises.

2. Site and Services

The subject site is described as tenancy No. 2 within an established factory premises at 36 Enterprise Avenue, South Tweed Heads. The premises is to be re-fitted as a brothel involving 7 workrooms as detailed in drawings 2 and 3 of the plans and involving the provision of a mezzanine floor within the existing factory premises.

Entry into the premises will be via an intercom controlled security door and a locked foyer. A reception area and general waiting or private waiting areas are provided dependent upon the individual client's request.

The entry into the foyer of the premises from the adjacent car parking area is to be subject of CCTV surveillance with back up memory for a minimum 7 days.

Each of the workrooms is provided with a WC, hand basin shower and with spa bath.

3. Management and Business Details

The hours of the brothel are 6pm to 6am Monday to Sunday inclusive.

The business is to be managed by the applicant Ms Susan Stewart, who is an experienced sex worker having been involved in the management and operation of brothels for the past ten years.

In the event of the brothel being sold or otherwise disposed of the Council is to be notified of the new operator's name and background experience in the sex industry.

4. Staffing

The maximum number of sex workers on the site at any one time will be 7 persons with this number fluctuating during the week depending upon demand. It is anticipated that mid week the number of sex workers might reduce to 3 or 4 persons.

In addition to the sex workers an operations manager and a receptionist will also be on the site at any one time.

The functions of the operations manager will be to:

- Ensure that the Work Cover NSW Health & Safety Guide 2001, Health and Safety Guidelines are adhered to as minimum standard for the operation of the brothel.
- Monitor client access to the premises and workrooms and client behavior.
- Address any disagreement between clients and sex workers.
- Liase with police, private security and Council as maybe required.
- Ensure evacuation procedures and fire safety drills are known to all employees and appropriate training is provided on a regular basis. Ensure signage is provided and maintained to indicate emergency egress paths and directions and that all fire safety equipment is serviced and maintained.
- Oversee complaints, recording and management responses. An incident book will be retained and be accessible by the police, Work Cover or Council as and when required. The incident book is to include incidents of injury or risk involving client behavior and/or works involved in their normal duties. Management will record their response to each incident to enable a review and response details.

- Service of any complimentary drinks.

The functions of the receptionist will be to:

- Take appointments.
- Allocate rooms to sex workers.
- Maintain a rooms register and work sheet for each sex worker.
- Ensure the availability of sex aids and materials to sex workers at all times and ensure that all sex aids and equipment are appropriately stored in a cool space and not exposed to sunlight. At a minimum, safe sex aids equipment available to sex workers is to include condoms, dental dams and gloves, tissues, water based lubricants, soap and disposable towels.
- Monitor the cleanliness of the public areas and consultation rooms prior to their allocation.
- Assist the operations manager in the service of any complimentary drinks.
- Maintain first aid kit.

5. Amenity

It will be the manager's responsibility to ensure the appropriate behaviour of patrons on the premises and that no adverse impact is caused to the quiet enjoyment of neighbouring land uses. Patrons are to be directed to enter and leave the premises in a quiet manner and appropriate notices directing the attention of patrons to this objective are to be prominently displayed within the brothel premises.

It will be the manager's responsibility to refuse entry to patrons who are affected by alcohol or drugs.

No patron or sex worker is to be permitted to smoke within the workrooms of the subject premises.

Associated with the brothel activity, will be a complimentary alcohol service within the waiting area of the brothel. To this end the service of alcohol will only be permitted by the manager and/or the receptionist and each of these persons will be required to hold the appropriate certification in relation to the safe service of alcohol.

6. Client Access

The operation of the brothel is to be advertised in the personnel services section of the local newspaper and other appropriate

publications. Public inquires concerning access to the brothel will be directed to the necessity to make a booking and to the availability of parking on the site. It will be the operations manager's discretion to refuse entry to patrons arriving at the site without a prior booking.

Signage external to the brothel is to be confined to the detail as proposed at sheet 4 of the plans prepared by All Design and Drafting in this matter.

It will be the manager's responsibility to preclude access to the brothel of any underage person and to require proof of age as and when required.

7. Safety and Security

Entry to the premises is to be monitored by CCTV surveillance cameras from the reception deck. Security cameras are to be located at the entry to the brothel and within the public foyer area. Security cameras installed on the site shall be maintained in a serviceable condition at all times and shall be tested on a regular basis in accordance with the manufacturer's specification.

A time delay safe is to be installed on site and maintained for the secure storage of cash.

All workrooms are to be fitted with a panic alarm to be monitored at the reception desk.

Entry into consultation rooms is to be keyed or security controlled to preclude unauthorized or casual entry into these spaces.

All workrooms will display signage on the back of room doors describing cardio-pulmonary resuscitation procedures and emergency phone numbers.

A reputable security service contractor will be engaged to be on call and to respond as required by the operations manager.

8 Health & Safety

Each sex worker is required to provide a doctors attendance certificate to prove inoculation against hepatitis and confirmation that they are free of sexually transmitted disease. These certificates are to be updated quarterly and be available for viewing by Council appointed health officers who shall be responsible for the confidentiality of the information contained therein.

Adjustable lighting is to be provided in all consultation rooms to enable sex workers to observe clients and to be satisfied as to the health of clients.

The brothel manager shall be responsible to ensure sex workers have access to the Sexual Workers Outreach Program and to instructional videos and literature as produced by that program for the purpose of educating and updating sex workers.

A sharps disposal container complying with AS4031-1992 is to be provided in each WC workroom.

Signage is to be prominently displayed within the waiting rooms advertising safe sex practices, information concerning sexually transmitted diseases and OH&S information including local area information associated with sex health clinics, needle exchange programs, SWOP and other relevant agencies.

At the end of each shift the premises is to be vacuumed and cleaned and all flat surface areas disinfected. A contract cleaner is to be engaged to clean the premises after hours on a daily basis.

Bed linen is to be changed at the conclusion of each visit/use of a consultation room and placed in the laundry/linen chute and discarded waste collected and placed in the waste disposal bins.

Spa baths are to be emptied and cleaned after each use. Maintenance of spa baths is to conform to the NSW Health Dept. 'Guidelines for Disinfecting Public Swimming Pools and Spa Pools'.

Sex workers are to be trained to ensure that sex aids and toys are properly cleaned after each use and condoms changed for each partner. All such aids and toys are to be cleaned after each use using water and detergent followed by a disinfectant.

Sex workers are to be entitled to a 30 minute meal break after 3 hours of their shift commencement.

9. Waste Disposal

All workrooms are to be provided with a sliding lid bin for the collection of waste preparatory to its disposal. Each bin is to be lined and all waste double bagged.

NSW Dept. of Environment & Conservation guidelines are to be followed for the storage and subsequent disposal of all contaminated waste. A 240 litre secure storage facility is to be provided on the ground floor, clearly marked 'contaminated waste' and collected and disposed of by a licensed agency.

10. Code of Conduct

All sex workers are to be appropriately attired within the general areas of the premises. No sex worker is to be permitted outside the premises during a shift period.

No spruikers are to be permitted associated with the activities of the brothel.

All sex workers are to be driven to and collected from the premises by registered taxi.

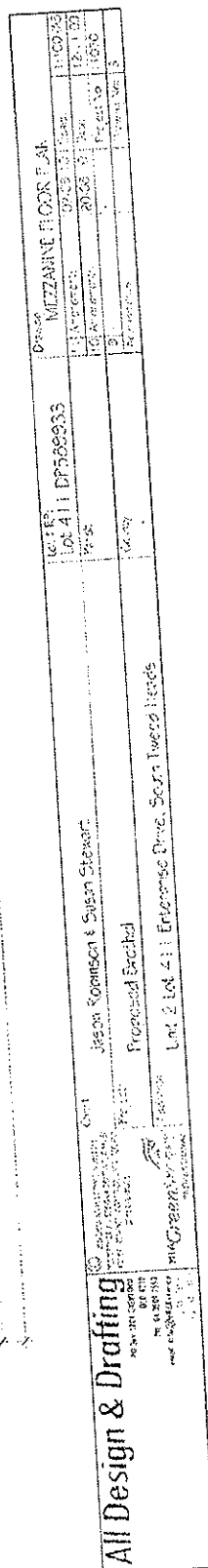
No staff is to be permitted to reside on the premises.

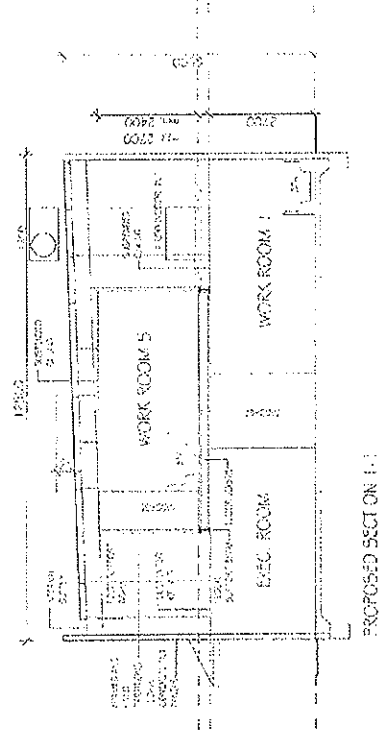
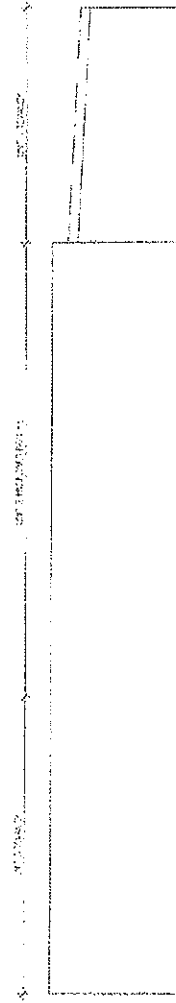
NSW police, authorised Council staff, NSW Dept. of Health and Sex Workers Outreach Project staff and other relevant health services are to be permitted access to the premises as and when required.

This plan of management is to be reviewed at the expiry of the initial 12 month period for the operation of the brothel premises and a modified draft referred to Council as a component of any application to extend the operating period of the brothel premises.

The premises are to be operated in compliance with the Workplace Injury Management and Workers Compensation Act 1998 including:

- Maintenance and policy details of workers compensation insurance
- Employment records of all employees and wages paid, maintained for 7 years including tax deduction records including contract sex workers.
- Register of injuries
- Register of complaints
- Non employment of illegal immigrants
- Maintenance of first aid equipment.



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LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES
MATTER NO. 10431 of 2010

SUSAN STEWART

Applicant

-V-

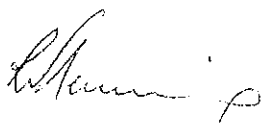
TWEED SHIRE COUNCIL

Respondent

TOWN PLANNING EXPERT WITNESS JOINT REPORT

INTRODUCTION

1. Mr R Fleming, town planner for the Applicant has prepared a draft plan of management that has been filed with the Court. The draft plan has been the subject of a telephone conference with Mr K Nash the town planner for the Respondent in these proceedings and the plan modified as a consequence of those discussions. It is agreed by the town planning experts that the draft plan of management as appended to this report is an appropriate document to provide for a direction condition as to the daily performance and operation of the proposed landuse subject to the Courts determination of these appeal proceedings.
2. This Report has been prepared in accordance with Division 2 of Part 31 of the Uniform Civil Procedure Rules 2005 and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules. The signatories to this undertake to be bound by these rules.



Ross Fleming

Kerry Nash

14 September 2010

Our Ref: 34198

Your Ref: AES:jms File No.: 100096

Stacks Law Firm
PO Box 819
Murwillumbah NSW 2484

Attention: Tony Smith

36 Enterprise Drive, Tweed Heads South

Amendments to Estimate of Typical Daily Traffic Generation Assuming 12-hour Operation

Dear Mr. Smith,

I refer to my letter to you dated 29 July 2010 that included a table containing a breakdown of estimated staff and visitation numbers for the proposed Brothel which in turn permitted an estimation of daily traffic generation. During the preparation of the Joint Experts Report I agreed with Mr. John Zawadski (Tweed Shire Council Traffic Engineer) that two additional staff should be added for each shift, representing a cleaner and a security guard. The Joint Report concluded that daily traffic generation for the proposed use based on 24 hour operation was 110 total vehicle trips per day (TVTPD).

The aforementioned table has been subsequently amended to cater for 12 hour operation of the premises as shown below. Clients have been prorated by 75% to reflect the reduction in the two "overnight" shifts from eight to six hours.

TTM Consulting (GC) Pty Ltd

A Subsidiary of TTM Consulting Pty Ltd

ABN 39 093 345 156

Brisbane Gold Coast Sunshine Coast
Sydney Melbourne Singapore

2 / 130 Scarborough Street
P O Box 352 Southport BC
QLD 4215 Australia

t (07) 5591 9177

f (07) 5591 9188

e ttmgc@ttmgroup.com.au

www.ttmgroup.com.au

Shift		Mon	Tue	Wed	Thu	Fri	Sat	Sun	Avg
6pm-12am	Reception	1 staff (2 trips)	1 (2)	1 (2)	1 (2)	2 (4)	2 (4)	1 (2)	1 (2)
	Sex Workers	4 (8)	4 (8)	5 (10)	5 (10)	6 (12)	6 (12)	4 (8)	5 (10)
	Other staff	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)
	Clients	6 (12)	6 (12)	8 (16)	8 (16)	18 (36)	18 (36)	9 (18)	14 (28)
12am-6am	Reception	1 (2)	1 (2)	1 (2)	1 (2)	2 (4)	2 (4)	1 (2)	1 (2)
	Sex Workers	4 (8)	4 (8)	5 (10)	6 (12)	6 (12)	6 (12)	4 (8)	5 (10)
	Other staff	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)	2 (4)
	Clients	6 (12)	6 (12)	8 (16)	11 (22)	15 (30)	15 (30)	9 (18)	13 (26)
Totals	Reception	2 (4)	2 (4)	2 (4)	2 (4)	4 (8)	4 (8)	2 (4)	3 (6)
	Sex Workers	8 (16)	8 (16)	10 (20)	11 (22)	12 (24)	12 (24)	8 (16)	10 (20)
	Other staff	4 (8)	4 (8)	4 (8)	4 (8)	4 (8)	4 (8)	4 (8)	4 (8)
	Clients	12 (24)	12 (24)	16 (32)	19 (38)	33 (66)	33 (66)	18 (36)	21 (42)
TOTAL									38 (76)

It is estimated given the assumptions made in the above table that the 12 hour operation of the proposed use would generate 76 TVTPD.

Traffic Generation for Contributions Payable under Contribution Plan No. 4

Total traffic generation attributed to proposed use: 76 TVTPD

Reductions:

- 40% reduction for employment creating development: - 30.4 TVTPD
- Credit attributed to the existing site use: - 14.45 TVTPD

The trip generation for the proposed development to be used for applying a contribution under Contribution Plan No. 4 is 31.15 TVTPD.

Yours Faithfully,
TTM Consulting (GC) Pty Ltd



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