

IDAS IMPLEMENTATION NOTES

Note 31

Licensed brothels

The *Prostitution Act 1999(PA)* was assented to on the 14 December 1999, and the provisions relating to development approvals for brothels commenced on 1 July 2000. The Queensland Department of Police and Corrective Services is responsible for administering the PA.

The PA provides a regulated environment for safe, controlled prostitution to occur. The legislation also seeks to ensure quality of life for local communities, and to safeguard against corruption and organised crime.

This is achieved through licensing of persons to operate a brothel determined by the Prostitution Licensing Authority under the PA, and development approvals under the *Integrated Planning Act* (IPA) dealing with planning and development issues. Appendix 1 provides background information about brothel licensing and the matters considered by the Prostitution Licensing Authority when assessing applications for a brothel license under the PA.

1.0 What constitutes a 'brothel'

The Prostitution Act defines 'brothel' to mean premises available for prostitution by 2 or more prostitutes at the premises. A 'licensed brothel' means premises stated in a licensee's licence as the premises used for the business of providing prostitution.

Under section 64 of the PA, the assessment manager must refuse the application if more than 5 rooms in the proposed brothel are to be used for providing prostitution. Furthermore, under section 78 it is an offence for a licensee or an approved manager of a licensed brothel to have at any one time more than 10 staff at the brothel, or to have more prostitutes at the brothel than the total number of rooms that have been permitted to be used for providing prostitution under the development permit for the brothel. Therefore these sections effectively limit the maximum number of prostitutes allowed in a licensed brothel to 5.

2.0 Development assessment

Under the *Integrated Planning Regulation 1998*, the type of assessment required for the making of a material change of use of premises for a licensed brothel in -

- (a) an industrial area is code assessment; and
- (b) other than an industrial area, impact assessment, unless made code assessable by a local planning instrument.

A summary of potential development assessment scenarios is provided in Appendix 4.

3.0 The development application

Application form — A development application for a licensed brothel must be made using the IDAS Development Application Form 1 (Parts A, H and the IDAS Assessment Checklist). Depending on the nature of the application, other parts of the form may also need to be completed.

Persons able to make a development application — Any person may make a development application. Whether the applicant first applies for a development permit, or a brothel licence, is a matter for the applicant to decide which is the preferred approach. However, in the event a person successfully obtains a brothel licence first, they can ask the Prostitution Licensing Authority to postpone issuing the licence, until a development permit is obtained.

Schedule 8 Part 1, table 2 item 2 of the IPA makes a material change of use of premises for a licensed brothel assessable development.

To contact us:
 PO Box 15031 City East
 QLD 4002
 (07) 3237 1279
www.ipa.qld.gov.au

Potentially a locality may be the subject of more than one development application for a brothel. Each application will need to be considered by the assessment manager on its merits. However, even though a development approval is obtained for the premises, a brothel cannot lawfully operate unless it is a 'licensed brothel' under the PA.

The assessment manager - In most instances the assessment manager will be the local government for the area where the licensed brothel is proposed. A possible exception is where the licensed brothel is proposed on strategic port land, in which case the assessment manager will be the relevant Port Authority.

4.0 Code assessment against the IDAS code

The PA requires a development application for a licensed brothel in an industrial area to be assessed against the IDAS code in Schedule 3 of the *Prostitution Regulation 2000*.

The IDAS code applies irrespective of whether the planning scheme for the local government area is a transitional planning scheme or has been prepared under the IPA. However, in both situations, the relevant planning scheme provisions should be used to assess whether the performance criteria have been achieved, and in the setting of conditions.

The IDAS code applies uniformly throughout the State and cannot be modified by local government. However, under section 3.5.13 of the IPA, an assessment manager's decision can conflict with the IDAS code if there are sufficient grounds to justify the decision, having regard to the purpose of the IDAS code.

Local government must assess the development application in accordance with the IDAS code, and may impose conditions on the development approval as provided for under s3.5.11 and 3.5.30-3.5.32 of the IPA.

For convenience in using this IPA Implementation Note, Appendix 3 provides a copy of the IDAS Code. However an assessment manager should refer directly to the IDAS Code in the *Prostitution Regulation 2000* when assessing an application for a licensed brothel in an industrial area.

The IDAS code provides an acceptable solution for each of the performance criteria, however these are not exhaustive and there may be alternative ways an acceptable solution can be achieved. The planning scheme should provide guidance in respect to satisfying the performance criteria in the IDAS code, and the imposition of any reasonable and relevant conditions.

It is not necessary to incorporate the IDAS code directly into the planning scheme. If considered desirable, the IDAS code could be referenced in the planning scheme, or reproduced as a non-statutory part of the planning scheme.

Code assessment under an IPA planning scheme for an area other than an industrial area may be required only if the local planning instrument, or an amendment to the instrument, was made after 1 July 2000, specifying a requirement for code assessment, rather than for impact assessment.

Under schedule 1 of the *Integrated Planning Regulation 1998*, a local government can make or amend a local planning instrument to require code assessment for a brothel in an area other than an industrial area (rather than impact assessment). Only a local government with a planning scheme prepared under the IPA can implement this approach, as such a code cannot operate under a transitional planning scheme.

A local government intending to take this approach should note that the IDAS code is intended to ensure licensed brothels are planned and designed in the context of industrial areas, and therefore may not be necessarily relevant in other areas such as a commercial locality.

5.0 Impact assessment

A development application for a brothel in an area other than an industrial area requires impact assessment, unless the planning scheme prepared under the IPA specifically makes it code assessable (see above). Consequently such an application must be assessed in accordance with the matters set out in s3.5.5 of the IPA.

It is recommended local planning instruments include measures addressing brothels in areas other than industrial areas. The measures should be reasonable and relevant planning matters to ensure brothels are established in appropriate locations, and consistent for similar uses within the surrounding locality.

The main considerations to address through local planning instruments include -

- ensuring sufficient, discrete and secure parking is available for staff and clients using the brothel;
- providing adequate access and egress to and from the site;
- determining appropriate hours of operation compatible with the locality;
- providing landscaping consistent with surrounding premises;
- providing a waiting room or reception area in the brothel to reduce the need for clients to wait in the street outside the premises;
- ensuring signage is not obtrusive;
- ensuring lighting provides security to staff and clients using the brothel;
- determining the appropriate street frontage;
- proximity of other uses involving similar hours of operation and creating similar amounts of noise and traffic (including pedestrians);
- streets surrounding the brothel are well lit; and
- privacy aspects in relation to overlooking issues.

6.0 Circumstances when the assessment manager must refuse application

The PA does not prevent the assessment manager receiving a development application for a material change of use of premises for a licensed brothel. However, under s 64(1) of the PA, the assessment manager **must refuse** the application if -

- when measured according to the shortest route a person may reasonably and lawfully take by vehicle or on foot the distance, between the application land and the other land, is –
 - (i) in, or within 200 m of the closest point on any boundary of, a primarily residential area or an area approved for residential development or intended to be residential in character; or
 - (ii) within 200m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities; or
- the application land is within 100m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities, measured in a straight line; or
- for land in a town with a population of less than 25,000 –
 - the local government for the local government area has required that all applications within the area be refused; and
 - the Minister (for Police and Corrective Services) has agreed that the applications should be refused; or
- more than 5 rooms in the proposed brothel are to be used for providing prostitution.

7.0 Places regularly frequented by children

Although not specified in the legislation, in certain circumstances a place regularly frequented by children may include roads or paths used by children for direct access to regularly frequented places, for example a school or a train station.

8.0 Caretaker's residence

A caretaker's residence, where used in association with an industrial use, is unlikely to be a residential building, since the building is not primarily used for private residential use. The primary use of the land in this instance is likely to be industrial.

9.0 Towns with a population of less than 25 000

A local government, with the agreement of the Minister for Police and Corrective Services, can resolve to refuse all applications for brothels in a town with a population of less than 25,000. The term 'town' for the purposes of s 64 of the PA is not defined. In such circumstances, where a term is not defined, the term invariably has the common dictionary meaning of the word. Further advice regarding this matter should be sought from the Minister for Police and Corrective Services.

The resolution should clearly identify each town with a population of less than 25 000 to which it relates within the local government area. It is suggested the resolution include the reasons for the decision, with supporting information regarding the size and the geographical extent of the boundary of each town. This information should be forwarded to the Minister of Police and Corrective Services in support of the request.

Even though the assessment manager is directed to refuse the application in the circumstances outlined in s 64 of the PA, the full IDAS process, whether code or impact assessment, must still be followed. In addition, any decision would also be subject to appeal to the Planning and Environment Court under the IPA.

10.0 Meaning of 'industrial' area

The following definition of 'industrial area' is provided in s 63A of the Prostitution Act and prevails in the event of any inconsistency with the IPA. An industrial area is land, however described, that is designated in a planning scheme or other planning instrument under the IPA, as industrial, or that is predominantly industrial in character having regard to –

- dominant land uses in the area; or
- the relevant provisions of the planning scheme or planning instrument applying to the area.

Examples of ways of describing industrial areas include - heavy industry, commercial industry, light industry, service industry, general industry and waterfront industry.

11.0 Independent Assessor

Decisions pertaining to code assessable development applications in respect of a material change of use of premises for a licensed brothel in an industrial area or on strategic port land may be reviewed by an independent assessor. However appeals in relation to impact assessable brothel applications i.e. a material change of use of premises for a licensed brothel other than in an industrial area or on strategic port land - are to remain with the P & E Court.

12.0 Enforcement

The existing avenues available to local government under the IPA for enforcing compliance with development approvals, including the prosecution of development offences, still apply to brothels.

In addition, a local government may seek a declaration from the Magistrates Court that a particular brothel is a prohibited brothel under Part 5 of the PA. Council officers are authorised in certain situations to enter the premises under the *Local Government Act 1993*, s 1091.

The court will declare a brothel to be a prohibited brothel if it is satisfied that the brothel is being used without a licence or is in contravention of the IPA (Prostitution Act, s 66(1)). If a brothel is declared to be prohibited, then workers and clients commit an offence if the brothel continues to operate unlicensed, and are potentially liable to fines and/or imprisonment.

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APPENDIX 1

Brothel licenses

The Prostitution Licensing Authority is responsible for considering applications for brothel licences.

S 16 of the PA provides the circumstances when the Prostitution Licensing Authority must refuse to grant a licence. This section includes the situation where, if the application were granted, the combined total of licensed brothels and premises permitted to provide adult entertainment in the locality in which the brothel is to be situated would substantially affect the character of the locality.

This enables the Prostitution Licensing Authority to consider the issue of cumulative impacts resulting from brothels establishing in a locality, in order to prevent 'red light districts' from developing.

Definitions

Note: The following definitions are provided for information purposes only. Reference should be made to the relevant legislation for legal or other interpretation purposes.

Relevant Terms as defined in the Prostitution Act —

- “Brothel” means premises made available for prostitution by 2 or more prostitutes at the premises.
- “Brothel licence” means a licence granted under the Prostitution Act authorising a person to operate a brothel at premises stated in the licence.
- “Licensed brothel” means premises stated in a licensee’s licence as the premises used for the business of providing prostitution.
- “Prostitution” refer the Criminal Code, section 229E
- “Residential building” means a building or part of a building used primarily for private residential use other than a building or part of a building used only for a caretaker’s residence on land in an industrial area.

Relevant Terms as defined in the IPA —

- “Development application” means an application for a development approval under the IPA.
- “Development approval” means a decision notice or a negotiated decision notice that —
 - (a) approves, wholly or partially, development applied for in a development application (whether or not the approval has conditions attached to it) and
 - (b) is in the form of a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval.
- “IDAS” means the Integrated Development Assessment System as detailed in Chapter 3 of the IPA for integrating State and local government assessment and approval processes for development (*s3.1.1*).
- “Premises” means —
 - (a) A building or *other structure* or;
 - (b) Land (whether or not a building or *other structure* is situated on the land).

APPENDIX 3

IDAS code

Note: This copy of the IDAS Code is provided for convenience only. An assessment manager should refer directly to the IDAS Code in the Prostitution Regulation 2000 for development assessment purposes.

IDAS CODE FOR DEVELOPMENT APPLICATIONS MENTIONED IN PART 4 OF THE ACT

Code

1. This code applies for the assessment of a development application under the IPA for the making of a material change of the use of premises for a licensed brothel¹.

Definitions

2. In this code-
“Infrastructure” has the meaning given by the IPA, schedule 10.
“Planning instrument” has the meaning given by the IPA, schedule 10.

Purpose of code

3. The purpose of this code is to seek to ensure-
 - (a) a licensed brothel is compatible with the form, function and amenity of the locality in which it is located; and
 - (b) the safety and security of staff of a licensed brothel.

How to comply with code

4. (1) The code is complied with if each performance criterion in column 1 of the table is complied with.
(2) A performance criterion is complied with if —
 - (a) the acceptable solution to the performance criterion set out in column 2 opposite the criterion is complied with; or
 - (b) the criterion is complied with in another way.

¹ Under the *IPA*, section 3.5.11 conditions may be imposed on the development approval as provided under section 3.5.30.

TABLE

Column 1	Column 2
PERFORMANCE CRITERION	AN ACCEPTABLE SOLUTION
<p>Car parking for clients Adequate car parking is provided, or available, for brothel clients.</p>	<p>Provide 1 car parking space on the brothel premises for each room in the brothel.</p>
<p>Car parking for staff Adequate secure car parking is provided, or available, for brothel staff.</p>	<p>Provide 1 car parking space on the brothel premises, that is well lit and directly accessible to an entrance to the brothel, for each 2 brothel staff members at the brothel at any 1 time.</p>
<p>Vehicular access The brothel is safely accessed by vehicular traffic.</p>	<p>Locate vehicular ingress and egress to allow-</p> <ul style="list-style-type: none"> (a) vehicles to enter and exit the premises in forward gear; and (b) if the brothel shares road access, parking areas or pedestrian areas with land used for other purposes — parking, vehicle maneuvering and pedestrian movement for the brothel to be undertaken without adversely affecting the safety of traffic using the land.
<p>Lighting External lighting for the brothel is designed to ensure the safety and security of brothel staff and clients without adversely affecting the amenity of adjoining premises.</p>	<p>Provide external lighting for the brothel that—</p> <ul style="list-style-type: none"> (a) is static; and (b) has no characteristic indicating the premises are used for a brothel; and (c) Facilitates surveillance; and (d) is hooded and directed downwards.
<p>Sign Sign for the brothel is compatible with the amenity of the locality.</p>	<p>Comply with each of the following requirements—</p> <ul style="list-style-type: none"> (a) only 1 sign is displayed for the brothel; (b) the surface area of the sign is not more than 1 m²; (c) the sign displays only the name of the licensee and the registered business name of the brothel; (d) the sign does not display words or images that are sexually explicit, lewd or otherwise offensive; (e) the sign is affixed to the brothel.
<p>Loitering The design of the brothel discourages loitering outside the premises.</p>	<p>Provide a reception or waiting area at the brothel for use by brothel clients.</p>
<p>Appearance The brothel premises are unobtrusive in appearance.</p>	<p>Ensure the colours and materials for the brothel premises are unobtrusive.</p>
<p>Entrances—security The staff and clients of the brothel are provided with a secure environment within the brothel premises in the vicinity of each staff or client entrance to the brothel.</p>	<p>Locate the staff and client entrances to the brothel in positions that facilitate surveillance.</p>
<p>Entrance—clients The clients' entrance to the brothel is clearly identified.</p>	<p>Ensure the entrance to the brothel makes it clear to clients which premises to enter.</p>
<p>Brothel siting and design The brothel premises are sited and designed in a way that is compatible with the character or intended character of the locality.</p>	<p>Comply with the requirements about the character of the locality under a planning instrument, including boundary setback, building height and bulk, and landscaping.</p>
<p>Infrastructure The brothel premises are adequately serviced by infrastructure.</p>	<p>Comply with the requirements for infrastructure under a planning instrument applying to the locality, including the requirements to connect to sewerage and water.</p>

SUMMARY OF POTENTIAL DEVELOPMENT ASSESSMENT SCENARIOS

1: Brothel in an industrial area or on strategic port land

Area in which brothel is proposed to be located	Code or impact assessment	Transitional planning scheme	Planning scheme prepared under the IPA
Industrial Area or on Strategic Port Land	<p>Code assessment</p> <p>The IDAS process must be used for processing applications under s3.5.4 and 3.5.13 of the IPA.</p>	<p>Code assessment under the IDAS code.</p> <p>Regard should be had to the transitional planning scheme in respect of satisfying the performance criteria in the IDAS code, and the imposition of any reasonable and relevant conditions.</p> <p>Section 6.1.30 of the IPA (assessing applications under a transitional planning scheme) is <u>not</u> applicable, as the brothel is made assessable through schedule 8 of the IPA, not a transitional planning scheme.</p>	<p>Code assessment under the IDAS code.</p> <p>Regard should be had to the planning scheme in respect of satisfying the performance criteria in the IDAS code, and the imposition of any reasonable and relevant conditions.</p>

2: Brothel in an area other than an industrial area

Area in which brothel is proposed to be located	Code or impact assessment	Transitional planning scheme	Planning scheme prepared under the IPA
Other than in an industrial area	<p>Impact assessment</p> <p>The IDAS process must be used for processing applications under s.3.5.5 and 3.5.14 of the IPA.</p>	<p>Impact assessment with regard to the transitional planning scheme, the IDAS code (if appropriate), together with other matters relevant under the IPA.</p> <p>Section 6.1.30 of the IPA (assessing applications under a transitional planning scheme) is <u>not</u> applicable, as the brothel is made assessable through schedule 8 of the IPA, not a transitional planning scheme.</p>	<p>Impact assessment with regard to the planning scheme, the IDAS code (if appropriate), together with other matters relevant under the IPA.</p>
	<p>Code assessment</p> <p>The IDAS process must be used for processing applications under s3.5.4 and 3.5.13 of the IPA.</p>	Not applicable	<p>Code assessment under the planning scheme code, and other matters relevant under the IPA.</p>