

Development Applications

SWOP: Legal Facts Sheet

No. 4: Getting approval to run a sex services premises

SUGGESTION: Before you apply to council for a development application (DA) to set up new sex services premises or for approval for existing premises, get advice from a qualified and experienced planner or lawyer.

1. Approval from council to operate sex services premises

Some premises may need council approval to operate as sex services premises. Others—such as escort agencies or home occupation/private sex worker premises permissible without a DA—may not. Check with your local council and their Land and Environment Plan.

2. How to get council approval for sex services premises

There are several steps to getting development consent or approval. The development assessment process includes:

- lodgement of the DA
- public notification of the DA
- review of submissions received in exhibition period
- development assessment to planning controls
- planners assessment and determination
- council may review and amend determination.

3. Development application (DA)

Most local councils require a DA to be lodged to gain development consent to operate as a sex services premises. For a DA you need:

- a development application form
- a description of the type of business
- details of the business size, opening hours, parking arrangements, signs etc
- the name of the company or person applying for permission
- the property owner's consent shown by their signature on the DA
- floor plans to scale
- a description of the impact of the business on the local area.

4. Council advertises the application

After you lodge the DA, the council advertises it in the local press and calls for public comment. Council's assessment should address the relevant planning issues raised in the application and submissions from the public. Moral concerns about brothels are not relevant to the planning assessment; but they have been known to influence the final decision of the councillors.

NO CONFIDENTIALITY: Your application to council is not confidential—it is advertised so the public can respond to it. But the application does not have to be lodged by you and can be lodged on your behalf by another party.



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5. Development assessment

The majority of DAs are determined by council planning staff. In some councils all sex services premises DAs—or DAs that attract a significant number of complaints—may be determined by the councillors at a council meeting.

Determinations of DA can include:

- approval—grant development consent
- deferral—request further consultation/information
- refusal—development consent not granted.

6. Development consent attaches to a building or land, not to a person

Council approval is given to the building or land, not to the operator of the premises. Some operators have done the work and spent money to get council development consent, only to find that the building owner won't renew their lease or plans to sell the building or land for use as an authorised brothel. Business operators cannot relocate the consent to set up a business in other premises—the approval stays with the building.

7. Development consent is usually permanent

Development consent is usually permanent—unless the consent contains a time period after which the consent will expire. Development consent can also:

- expire if not correctly activated

- be superseded if another consent is granted by council, or
- be surrendered to council.

8. An existing business is shut down if approval is not given

Premises operating without consent can face legal closure action by Council. You can request council review the decision and/or appeal in the Land and Environment Court against a decision to shut down your business.

9. Operating without council approval

If a sex industry business requires but does not have approval from the local council then the council can request that the business:

- cease the unauthorised use within 5-28 working days, or
- lodge a DA for the sex services business and stop operating the sex services business until the DA is approved.

If the premises are not closed, the operator and building owner could face criminal charges. As the operator of a business you need to balance the potential cost of fines, court costs or orders to close against the cost, benefit, and/or risk of seeking and gaining approval.

If you are a sex worker who works at but does not own a sex services premises closed by council, you are not liable for any fines or charges.

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10. Operating outside the terms of an approval

If a business already has council approval but is operating outside the terms of the approval—for example, by operating for longer than the approved hours—council can ask the owner to fix the problem or face further action.

If a business already has council approval for one use—such as a massage-only service—but is operating as another use without consent—such as a sex services premises—then council can take legal action to cease the unauthorised use.

Council action can include inspections, verbal and written requests to change business practices, fines, orders to close, legal action and in extreme cases withdrawal of the approval. If a business owner disagrees with council's actions they can request an internal review and/or take the matter to the Land and Environment Court.

11. Case Study: Two brothels

Two brothels in the same area received a letter from council stating they 'were a brothel operating without council approval' and should 'cease operating or lodge a DA with council to gain approval'. As businesses providing commercial sexual services they were now classified under council planning policies as 'brothels' and therefore required council approval to operate.

1.

The operator of an existing unauthorised brothel decided to lodge a development application to operate as a 'brothel' after:

- reviewing council's policy
- reading SWOP's resources
- consulting council planners and
- consulting a town planner.

Despite some opposition from local groups, the

application was approved because it complied with the council policy. The approval placed restrictions on the opening hours and number of work rooms and required the operator to make design changes and enhance staff facilities, safety, health information and equipment, lighting, fire exits, and sharps waste management systems. The value of the property and the commercial lease was increased as an 'authorised brothel'.

2.

The operator of an existing unauthorised brothel lodged a development application to gain consent—but as a massage parlour. The application was approved as it complied with the council policy. The approval placed restrictions on the use of the premises as a brothel, meaning sexual services could no longer be offered. Continuing to provide sexual services would put the business at risk of legal action by council.

REMEMBER: *Sexual services may include full sex, oral sex, masturbation, body slides and nude massage.*

SUGGESTION: *Seek the advice of a property lawyer before signing a lease.*

For more information on your legal rights and responsibilities, grab a copy of SWOP's Sex Industry Legal Kit (currently available only in English).

You can download a copy from:
swop.org.au OR
phone (02) 9206 2166 | 1800 622 902 (free call)
and speak to a SWOP staff member.

Notes

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