

3.12 Sex Industry Establishments

Amendment history

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1	15/11/2011	15/06/2012	New
2	27/10/2020	02/11/2020	Amended

Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Land to which this section applies

This section applies to all land zoned:

- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- IN1 General Industrial
- IN2 Light Industrial
- IN3 Heavy Industrial.

Development (type/s) to which this section applies

This section applies to all development consisting of home occupation (sex services), restricted premises, sex services premises.

Applicable environmental planning instruments and legislation

The provisions of the following listed environmental planning instruments and legislation also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Work Health and Safety Act 2011
- Safety Regulation 2017
- Food Regulation 2015

In the event of any inconsistency between this section and the above listed environmental planning instruments, the environmental planning instrument will prevail to the extent of the inconsistency.

Note 1: Additional environmental planning instruments may also apply in addition to those listed above.

Note 2: The *Environmental Planning and Assessment Act 1979* enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

Related sections

The following sections of this DCP **will** also apply to development to which this section applies:

- 4.04 Safety and Security
- 4.05 Social Impact
- 7.02 Landscaping, Open Space, and Visual Amenity
- 7.03 Traffic, Parking and Access
- 7.05 Energy Efficiency
- 7.06 Stormwater
- 7.07 Water Efficiency
- 7.08 Waste Management
- 7.09 Advertising and Signage.

The following sections of this DCP **may** also apply to development to which this section applies:

- 4.01 Flood Management – all land which is identified as flood prone land under the Newcastle Flood Policy or within a PMF or area likely to flood
- 4.02 Bush Fire Protection – within mapped bush fire area/zone
- 4.03 Mine Subsidence – within mine subsidence area
- 5.01 Soil Management – works resulting in any disturbance of soil and/or cut and fill
- 5.02 Land Contamination – land on register/where risk from previous use
- 5.03 Vegetation Management – trees within 5m of a development footprint or those trees likely to be affected by a development
- 5.04 Aboriginal Heritage – known/likely Aboriginal heritage item/site and/or potential soil disturbance
- 5.05 Heritage Items – known heritage item or in proximity to a heritage item
- 5.06 Archaeological Management – known/likely archaeological site or potential soil disturbance
- 6.01 Newcastle City Centre - if proposed development is located in this precinct
- 6.02 Heritage Conservation Areas - known conservation area
- 6.03 Wickham - if proposed development is located in this precinct
- 6.04 Islington Renewal Corridor - if proposed development is located in this precinct
- 6.05 Mayfield Renewal Corridor - if proposed development is located in this precinct
- 6.06 Hamilton Renewal Corridor - if proposed development is located in this precinct
- 6.07 Broadmeadow Renewal Corridor - if proposed development is located in this precinct
- 6.08 Adamstown Renewal Corridor - if proposed development is located in this precinct
- 6.09 Darby Street, Cooks Hill - if proposed development is located in this precinct
- 6.10 Beaumont Street, Hamilton - if proposed development is located in this precinct
- 6.11 Royal Newcastle Hospital Site - if proposed development is located in this precinct.
- 6.12 Minmi - if proposed development is located in this precinct
- 7.10 Street Awnings and Balconies – awnings or balconies to be located over public land.

Associated technical manual/s

- Nil

Additional information

- Australian/New Zealand Standard, 2009, Interior Lighting Part 0: Safe Movement AS 1680.0:2009
- Australian Standard, 2018, Acoustics—Description and measurement of environmental noise AS 1055:2018
- Australian Standard, 2004, Design, Construction and fit out of food premises AS 4674-2004
- *Protection of the Environmental Operations Act 1997*, Federal Government
- *Requirements for Food Premises*, Newcastle City Council

- Australia New Zealand Food Standards Code - Standard 3.2.3 - Food Premises and Equipment
- *Restricted Premises Act 1943*, NSW Government
- *Food Regulations 2015*, NSW Food Act 2003
- Public Swimming Pool and Spa Pool Advisory Document 2013, NSW Dept of Health.
- Health and safety guidelines for sex services premises in NSW, SafeWork NSW

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless it is otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9:00 - Glossary of this plan, and include:

- **Act of Prostitution** - has the meaning ascribed to it under Section 20 of the Summary Offences Act, 1988.
- **Spa bath** - a domestic type bath fitted with a water recirculation system and/or an air injection system. A water heater may be incorporated in the system, but a water filter is not required.

Aims of this section

1. To nominate location requirements and development standards for sex industry establishments and other development types applying to this control, which reflect broad community attitudes and expectations and which clarify the provisions of the Newcastle Local Environmental Plan 2012 in this regard.
2. To provide guidelines for sex industry establishments, which will ensure that such are at a reasonable distance from residential occupancies and other nominated sensitive land uses and will not cause disturbance or otherwise have a detrimental impact on the amenity of the host neighbourhood.
3. To provide appropriate guidelines which will restrict the scale of sex industry establishments and other development types to which this control applies, as well as prevent their concentration in close proximity to one another.
4. To identify appropriate health and hygiene standards relating to the equipping and management of sex industry establishments.
5. To provide detailed provisions to guide the preparation and assessment of development application for sex industry establishments.

3.12.01 Design guidelines

A. Location

Objectives

1. Ensure this development type is located on appropriate sites, having regard to the surrounding environment.

Controls

General controls applying to restricted premises and sex services premises as defined by the Newcastle Local Environmental Plan 2012

1. The entrance or exit doorway to or from a restricted premises or sex services premises is not closer than a 150m walk from the entrance to premises used as a dwelling within a residential zone. Council may relax this requirement by up to 50% in respect of premises used as a dwelling within a commercial or industrial zone, including 'shop top' housing or inner-city residential apartments.
2. The entrance or exit doorway to or from a restricted premises or sex services premises is not closer than a 200m walk from a school, community facility or any place where children or young people are likely to regularly congregate.
3. Avoid a concentration of sex industry related land uses in the one location:
 - (a) a restricted premises or sex services premises does not occupy premises already used or proposed to be used for any such purposes
 - (b) an entrance or exit doorway to or from a restricted premises or sex services premises is not closer than a 200m walk from the entrance doorway to any other restricted premises or sex services premises.
4. A sex services premises is not located within a remote area or an area in which public transport or support services (eg. police, ambulance) are not conveniently to hand.
5. A sex services premises is located either at the rear of ground floor premises or at an upper level, rather than having full exposure to the street.

B. Scale and character

Objectives

1. Limit the potential for adverse social and environmental impact of all sex services establishments in any locality by controlling the intensity of operation.

Controls

General controls applying to restricted premises, sex services premises and home occupation (sex services) development

1. Restricted total floor space such that it is reasonably compatible with the scale and character of and not dominant in relation to existing development in the vicinity and, in this regard, a sex service establishment provides no more than seven rooms in which acts of prostitution are to take place.
2. Any acts of prostitution within an approved sex services premises or home occupation (sex services) are confined to rooms or areas nominated on the submitted plans which are the subject of Council's consent.
3. Any new building or refurbishment of an existing building to function as a restricted premises or sex services premises is designed to be compatible with the built form of adjoining premises and in accordance with any location plan applicable to the subject site.
4. The entrance to a restricted premises, sex services premises and home occupation (sex services), is discrete and unobtrusive with any signage limited to a single identification sign only, of modest dimensions, devoid of any sexually explicit or suggestive material, and any distinctive external lighting provided in respect of a sex services premises is limited to a single, low-wattage globe.
5. A sex services premises or restricted premises (that is an entertainment establishment) is provided with adequate reception area/waiting room facilities sufficient to discourage clients or prospective clients from loitering outside the premises.
6. Alcoholic liquor is, under no circumstances, provided or offered for sale on premises used as a sex services premises, restricted premises or other sex service establishment unless such premises are appropriately licensed under the *Liquor Act 2007*.

C. Specific building standards

Objectives

1. Ensure that all development is adequately built to the standards of the *Building Code of Australia*.

Controls

1. Restricted premises involving live shows or the exhibition of films satisfy the constructional and fire safety standards for a 9b Assembly Building under the provisions of the *Building Code of Australia*.

D. Security

Objectives

1. Ensure that all development provides adequate security.

Controls

General controls applying to all restricted premises development that provides entertainment

1. The operator of restricted premises that provides sexual entertainment provides a security patrol in the vicinity of the premises to ensure the proper conduct of patrons and the safety of staff leaving the premises.

E. Car parking

Objectives

1. Ensure all development is adequately provided with car parking access and provisions.

Controls

General Controls applying to all sex services establishment development

1. Refer to Section 7.03 Traffic, Parking and Access.

3.12.02 Health standards

Note: It is the responsibility of the owner/operator to ensure the NSW Health, Occupational, Health and Safety Legislation and WorkCover Guidelines are satisfied in the design and ongoing operation of the premises for the planning controls under this provision.

A. Ventilation and lighting

Objectives

1. Ensure adequate lighting in accordance with the *Building Code of Australia*.

Controls

General controls applying to all restricted premises, sex services premises and home occupation (sex services) development

1. The premise is ventilated in accordance with the requirements of the *Building Code of Australia*.

B. Noise

Objectives

1. Ensure all development is in accordance with the standards of the *Building Code of Australia* and *Protection of the Environment Operations Act, 1997*.

Controls

General controls applying to all restricted premises, sex services premises and home occupation (sex services) development

1. The use of the premises does not give rise to:
 - (a) a sound level at any point on the boundary of the site greater than the background levels specified in 'Australian Standard 1055, Acoustics—Description and measurement of environmental noise.
 - (b) an “offensive noise” as defined in the *Protection of the Environment Operations Act*, 1997.

C. Bar and food preparation areas

Objectives

1. Ensure all development is in accordance with the relevant standards.

Controls

General controls applying to all restricted premises, sex services premises and home occupation (sex services) development

1. All bars and food preparation areas are constructed, fitted out and finished in compliance with, Food Regulation 2015, Australian Standard, 2004, Design, Construction and fit out of food premises AS 4674-2004, Australia New Zealand Food Standards Code - Standard 3.2.3 - Food Premises and Equipment and Council's Requirements for Food Premises.

D. Spa baths and spa pools

Objectives

1. Ensure all development is in accordance with the relevant standards.

Controls

General controls applying to all sex services premises and home occupation (sex services) development

1. Spa baths are filled with fresh water for each use and drained and thoroughly cleaned after being used.
2. Spa pools are to comply with the NSW Department of Health Public Swimming Pool and Spa Pool Advisory Document 2013.
3. The temperature of the water in the bathing area of a spa pool is not to be allowed to exceed 40°C.
4. Spa pools are provided with a system of automatic analysis and dosage control equipment that will maintain the level of disinfectant.

5. Tests to be done on every spa pool before use each day, and every four (4) hours when the spa is in use.
6. A log book of the spa water quality is kept by the proprietor and may be checked upon inspection by officers of Council or the NSW Department of Health.

E. Sanitary facilities

Objectives

1. Ensure all development is in accordance with the standards of the *Building Code of Australia*, NSW Department of Health and WorkCover Guidelines.

Controls

General controls applying to all sex services premises and home occupation (sex services) development

1. Sanitary facilities are provided in accordance with the requirements of the *Building Code of Australia*.
2. Each room used or available for use for the conduct of acts of prostitution contains or has direct access to its own shower and wash hand basin facilities for the use of both sex workers and their clients.
3. All required wash hand basins are provided with a continuous supply of hot and cold water delivered through an approved mixing spout which can be adjusted to enable hands to be washed under hot running water. The hot water supply is to be maintained and delivered at a temperature of at least 40°C.

F. Contaminated waste

Objectives

1. Ensure all development is in accordance with the standards of the *Building Code of Australia*, NSW Department of Health and WorkCover Guidelines.

Controls

General controls applying to all sex services premises and home occupation (sex services) development

1. Used condoms and any other contaminated wastes are double bagged in plastic and placed in a waste receptacle provided on the premises. Contaminated wastes are disposed of by licensed waste contractors.

Note: A schedule of licensed waste contractors can be obtained from Council's Waste Collection Services.

G. Health and safety guidelines for sex services premises

Objectives

1. Ensure all development is adequate and appropriate in accordance with the standards of the Health and safety guidelines for sex services premises.

Controls

Applies to sex services premises and home occupation (sex services) development

There are no specific controls.

Health and safety guidelines for sex services premises in NSW has been published by SafeWork NSW. *Health and Safety guidelines for sex services premises in NSW* outlines the minimum standards for maintaining a safe and healthy environment for sex workers, clients, visitors and others in sex service premises in NSW under the *Work Health and Safety Act 2011* and *Safety Regulation 2017*. These requirements are not part of Council's policy and are not the responsibility of Council to administer.

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