

ATTACHMENT NO: 1

Page No: 1

## SUBMISSION – DRAFT PROSTITUTION CONTROL BILL 2002

### BACKGROUND

The state government has released the draft Prostitution Control Bill 2002 (PCB) for public comment. The new Prostitution Control Act is intended to provide the framework to control and regulate the industry. Comments are sought by the Hon Minister for Police and Emergency Services, and must be received no later than the 7 February 2003.

Part 7 and Schedule 3 of the draft bill relate to town planning controls that are sought to be introduced. As regulators and administrators of the City's District Planning Scheme No. 2 (DPS2), comments on these legislative controls, from a town planning, environmental health and building perspective form the basis of the City of Joondalup's submission to the Hon Minister.

### COMMENTS

#### GENERAL

##### **Lack of Local Government involvement in the preparation of the PCB 2002**

Both the City and WALGA previously indicated the need for Local Government to be involved in the development of this legislation, however despite these requests, consultation in this regard has not occurred. However, it is noted that both the City and the Town of Vincent received a high level briefing of the PCB prior to the PCB being released for public comment.

As a result, the City believes that insufficient consideration has been given to issues affecting Local Government and their communities within the draft legislation. This has lead, in the City's opinion, to legislative provisions that will create increased burden upon both state and local government (eg: financial, monitoring and implementation).

##### **Lack of transitional period & commitment to review the PBC after gazettal**

Furthermore, the City has considerable concerns with respect to no transitional period being offered, together with the lack of commitment by the state government to assess and review the operation of the legislation in the future to identify and rectify any strengths and weaknesses respectively.

##### **Unsatisfactory public consultation period**

The City wishes to register its dissatisfaction with the consultation period offered by the state government. Furthermore, the City wishes to express it's dissapointment that the request for an extension to the consultation period made by WALGA on behalf of Local Government was virtually ignored. Furthermore, the City wishes to register it's concern over the number of days comprising the consultation period in that a full 3 month consultation period (90 days) has not been offered.

As the Hon Minister is aware, the consultation period fell within the christmas/new year holiday period, whereby it is largely known that this period is one where local governments have limited

staffing resources. Whilst the City is not espousing that the consultation period was deliberately set to correlate with this holiday period, the City considers that it is not unreasonable for the Hon Minister to favourably consider a slightly longer consultation period in order to acknowledge the implications caused by the holiday period.

Whilst it is noted that the state government is keen to progress the legislation in a timely manner in order to meet parliamentary deadlines, the City suggests that the state governments haste in progressing the legislation has resulted in the release of sub standard legislation that 'misses the mark' in several areas (Town Planning, Law, Environmental Heath, Building, amenity issues, community concerns etc).

### **PCB a hybrid of eastern state legislation that has had limited effect**

The City's research suggests that the state government's PCB is effectively a hybrid of Queensland, New South Wales and Victorian legislation, which is considered to have had limited impact within those states whereby a large section of the prostitution industry is still operating illegally outside of legislative licensing requirements.

## **TOWN PLANNING**

### **No Discretion to Prohibit Prostitution Landuse Activity**

The City strongly opposes the draft legislation, as it effectively forces the City of Joondalup to incorporate into its DPS2 various provisions that allow for prostitution related land uses.

At its meeting on 15 October 2002 (*C144-10/02 refers*) Council resolved to prohibit all forms of prostitution within the City of Joondalup and believes it should have the discretion to prohibit prostitution type land uses under its DPS2.

Given that the Council at its meeting on 15 October 2002 (*C144-10/02 refers*) resolved to prohibit prostitution as a land use within the City of Joondalup, such action to amend DPS2 will not be permitted unless in conformity with Schedule 3 of the draft Act. Therefore it is unlikely that any amendment to prohibit prostitution would be granted final approval by the Hon Minister for Planning.

### **Incorporation of Schedule 3 into the City's District Planning Scheme No 2**

It is unclear how Schedule 3 is to be incorporated into town planning schemes. Direction has not been provided in regards to what part/section of the scheme it is to be inserted into (ie can/should it be inserted into Part 5 – Special Controls within the City's DPS2?).

### **No development requirements/standards prescribed within Schedule 3 of the Draft Bill**

Schedule 3 doesn't outline the development requirements/provisions required for such landuses, for example car parking, landscaping, compliance with public building regulations etc. It is assumed that a scheme amendment may be initiated in order to prescribe development requirements applicable to such landuses, however if this is the case, it is more prudent for the legislation to prescribe general requirements, and, dependant upon local circumstances, a local government may complement the standard provisions with additional requirements via a scheme

amendment or local planning policy. The Hon Minister is therefore requested to give careful consideration to the incorporation of standard development requirements applicable to these forms of landuse/development in order to provide increased guidance to local government's and their planning, building and environmental health officers in dealing with such applications.

### **Implications of the 300 metre buffer requirement under Schedule 3**

The 300-metre figure appears to be an arbitrary figure, as it is not clear within the draft legislation or summary notes as to how this figure was arrived at, and what is hoped to be achieved by stipulating such a figure. Given the wording of the clause, it assumes that the 300 metre buffer provides adequate amenity protection to the landuses listed (schools, churches, child care centres, community purpose premises, hotels or residential properties), however this can be challenged. If this extrapolation is correct, the City strongly objects to this legislative provision.

The City therefore seeks information on the rationale for the 300 metre figure, together with clarification in respect to what is hoped to be achieved by the figure, prior to providing any follow up response to this particular proposed provision, which may include, amongst others, a request for the figure to be increased.

Additionally, given the type of landuses that require the 300 metre buffer, the City considers it appropriate that shopping center landuses be included, as they are accessible by the general public on a more frequent basis than the other landuses identified.

Furthermore, the City has prepared plans in respect to the application of the 300 metre figure to highlight potential lots upon which brothels and attended prostitution agencies may be hosted (refer Attachment 1).

As can be seen from the attached map, given existing land uses that require separation of 300 metres, there is extremely limited scope for the City to entertain any planning proposal for a brothel or an attended prostitution agency office within its scheme area. Given this fact, it is argued that this adds significant weight to the City's argument in that it should be afforded the opportunity to amend its scheme to prohibit such land uses.

### **No home occupation/business approval required for a self employed sole prostitute**

Of utmost concern to the City are the provisions relating to the permissibility of a self employed sole prostitute to operate from a residential dwelling without the need for obtaining local government planning approval in the form of a 'home occupation' or in the City's case, a 'home business' under DPS2.

There are obvious inequalities afforded to self-employed sole prostitutes, as opposed to other home based business persons under the draft Act. It is argued that self employed sole prostitutes should be treated the same (under home occupation/business scheme provisions) as any other applicant wishing to perform business type tasks from their residential dwelling.

Furthermore, it appears that this form of landuse is considered under the legislation as having a 'low impact/effect' upon adjoining property and as such, is considered akin to a home occupation/home business. Experience suggests that these types of landuses have a far greater impact upon residential amenity than a conventional home occupation/business type landuse and therefore also creates a higher number of complaints. The City considers that the legislation is

quite naïve in allowing for a self employed sole prostitute to set up without requiring a planning approval or meeting any planning requirements. Furthermore, land that may be used as a dwelling may be used for the purpose of carrying on a business as a self employed sole prostitute. What this means is that such a business is not confined to a residential zone.

### **'Non conforming' approval of existing prostitution type landuses**

The proposed provisions relating to existing prostitution premises in existence prior to the new act taking effect are also opposed, however it is noted that the City of Joondalup does not host any previously approved bona fide brothel type landuses. The intent of the legislation is to effectively give such land uses 'non conforming' use rights and as such, such provisions are opposed, as non conforming use rights are conferred upon landuses that were granted the necessary approvals and were legal at the time, with non compliance a result of gazettal of a new scheme or amendment to the existing scheme after that landuse was first approved. Clause 1(7) of the draft legislation confers legality on a use, which, prior to the commencement day of the Bill, would otherwise be unlawful.

The City's concern lies with the fact that although the City has not granted any planning approval to a bona-fide brothel or similar landuse activity, it has, however, granted approval to massage parlours, gyms and other similar landuses. Claims can be made that the massage parlour, gym or similar type of landuse were being used as a brothel prior to the commencement of the Act, and may even gain an entitlement to operate the premises as a brothel. Concern lies with the fact that it would be relatively simple for operators to gather evidence, however virtually impossible for the City to prove that the premises were not being used as a brothel, prior to the Bill being passed into Law. It is also difficult to obtain sufficient evidence that would support a breach of scheme provisions and the bill does not change this presently unsatisfactory situation but exacerbates it.

Another matter of concern is that should a right be established under the draft legislative provisions outlined above, there is no provision for the property to be recorded as would be the case for a non conforming use. The City would be unable to inform bona fide enquirers what landuses may be permitted upon the land subject to the enquiry or confirm that prostitution type landuses are not being carried out in the vicinity of that land if this provision is passed into law. It is argued that Schedule 3 would create a right that is not recognized or recognizable in any statute or register other than Schedule 3 itself. This is inconsistent with the proper practice of landuse law. Such a provision also undermines other legislative clauses proposed under the draft bill, particularly in relation to the 300 metre separation figure.

### **Clarification of the definition of a 'community purpose premises'**

The City believes that further clarification of the definition of "*community purpose premises*" is required. The definition states;

*'means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services for community benefit, by an organisation involved in activities for community benefit'*

The definition is not clear in respect to recreational facilities that are provided through private or public organisations, and if such recreational facilities or services are free of charge or a charge applies. Examples of such land uses that may or may not apply under the above definition include indoor cricket, karate, soccer, gyms, basketball courts, child play centres and the like. Verbal

advice obtained from the Hon Ministers Office in respect to this definition suggested that the definition would be all encompassing (ie recreational facilities provided either free of cost or user pays).

**Brothels and attended prostitution agency office permitted within industrial zones**

The draft legislation suggests that a brothel or attended prostitution agency office is a permitted landuse within the industrial zone and as such, may be exempt from obtaining local government planning approval under the planning scheme (as some schemes allow exemption where the use is permitted). It is also unclear if any community consultation is required when dealing with such applications, and if so, what form of consultation is required. It is suggested that consultation provisions be included within Schedule 3, or alternatively, each landuse to be introduced by the legislation may be given a specific use class (permitted – 'P', discretionary 'AA'/'SA', prohibited – 'X', or others), whereby advertising requirements for the corresponding use class are already provided for under the scheme.

Finally, there is an overall concern that the application of the proposed legislation will force brothels and attended prostitution agency offices into industrial areas. This will lead to the creation of red light districts within these industrial areas, with poor servicing infrastructure (public transport, passive surveillance, security, police availability etc). This will require increased services to be provided to these areas thus creating increased financial burden upon both Local and State Government.

**MRS Approval Required**

It is unclear if the legislation applies to the Metropolitan Region Scheme (MRS) as the MRS is not referred to. The City requests clarification in this regard and if the MRS is included, what form of approval is required under the MRS for all landuses to be introduced by the proposed legislation.

**ENVIRONMENTAL HEALTH**

Information to be provided.

**BUILDING**

Information to be provided.

## Attachment 2

### **Part 7 — Planning controls**

#### **159. Meaning of “planning scheme” in this Part**

In this Part, unless the contrary intention appears —

“**planning scheme**” means —

- (a) a town planning scheme under the *Town Planning and Development Act 1928*;
- (b) a redevelopment scheme under —
  - (i) the *Armada Redevelopment Act 2001*;
  - (ii) the *East Perth Redevelopment Act 1991*;
  - (iii) the *Midland Redevelopment Act 1999*; or
  - (iv) the *Subiaco Redevelopment Act 1994*; or
- (c) a master plan under the *Hope Valley-Wattleup Redevelopment Act 2000*.

#### **160. Existing planning schemes varied**

(1) Each existing planning scheme —

(a) is to be read, and has effect, as if the clause set out in Schedule 3 were part of the planning scheme; and

(b) is to be implemented accordingly.

(2) If a clause of an existing planning scheme is inconsistent with the clause set out in Schedule 3, the clause set out in Schedule 3 prevails to the extent of the inconsistency.

(3) In this section —

“**existing planning scheme**” means a planning scheme in force on the day on which this Part comes into operation.

#### **161. Prostitution control under planning schemes**

(1) Before making or amending a planning scheme after the coming into operation of this Part it is to be ensured that the planning scheme will provide for the use of land for the purpose of prostitution in a manner that gives effect to, and is consistent with, the clause set out in Schedule 3.

(2) Nothing in this section is to be construed as precluding or restricting the making or amending of a provision relating to prostitution if to do so would not be inconsistent with the clause set out in Schedule 3.

#### **162. Public release day for certain planning concessions**

The Minister, by order published in the *Gazette*, is to specify as the public release day for the purposes of the clause set out in Schedule 3 the day on which the Minister made available to the public a proposed Bill for an Act to regulate and control prostitution, to establish a board with licensing and other functions relating to prostitution, to repeal the *Prostitution Act 2000* and amend certain other Acts, and for related purposes.

### **Schedule 3 — Clause implied in planning schemes**

## 1. Use of land for prostitution purposes

(1) The use of land in a residential zone or precinct for the purpose of a brothel, or an attended prostitution agency office, is a use that is not permitted by the scheme.

(2) The use of land in an industry zone or precinct for the purpose of a brothel or an attended prostitution agency office is a use permitted by the scheme if, at the time the relevant brothel business or prostitution agency business commences to be carried on, the land is not within 300 metres of an educational establishment, a place of worship, child care premises, community purpose premises, an hotel, or land in a residential zone or precinct.

(3) The use of land other than land referred to in subclause (1) or (2) for the purpose of a brothel or an attended prostitution agency office is a use not permitted by the scheme unless planning approval has been given under the scheme, and planning approval is not to be given unless the person giving the approval is satisfied that the land is not within 300 metres of an educational establishment, a place of worship, child care premises, community purpose premises, an hotel, or land in a residential zone or precinct.

(4) In applying subclause (2) or (3) —

(a) land is to be regarded as being within 300 metres of an educational establishment, a place of worship, child care premises, community purpose premises, or an hotel (the **“relevant premises”**) if the shortest distance between the lot in which the relevant land is included and the lot on which the relevant premises are situated is 300 metres or less; and

(b) land is to be regarded as being within 300 metres of land in a residential zone or precinct (the **“residential land”**) if the shortest distance between the lot in which the relevant land is included and any lot that is part of the residential land is 300 metres or less.

(5) Land that may be used as a dwelling may be used for the purpose of carrying on business as a self-employed sole prostitute without approval being obtained for that additional use and the land is not, by reason of that additional use, to be regarded as being used for the purpose of a home occupation within the meaning of the scheme.

(6) A prostitution booking office is an office within the meaning of the scheme but an attended prostitution agency office is not.

(7) If, immediately before the public release day, land was used for the purpose of a brothel or an attended prostitution agency office and the land has continued to be used for that purpose until the commencement of the *Prostitution Control Act 2002* section 160(1), despite anything in subclause (1), (2), or (3) the use of the land for that purpose is a use permitted by the scheme until —

(a) the person who was carrying on the brothel business or prostitution agency business immediately before the public release day —

(i) ceases to carry on the business; or

(ii) for a continuous period of 6 months does not carry on the business;

(b) the buildings used as the business premises are totally destroyed or their value is reduced to less than 25% of their former value;

(c) the buildings used as the business premises are extended or otherwise altered, except as necessary for carrying out repairs or maintenance, without obtaining any planning approval that is required; or

(d) any buildings other than those that were being used immediately before the public release day are used as, or as part of, the business premises.

(8) In this clause —

**“attended prostitution agency office”** means a prostitution agency office at or outside which persons who act as prostitutes or prostitution drivers for the prostitution agency business carried on from that office attend in person;

**“child care premises”** means premises that are kept for the provision of a child care service, as defined in the *Community Services Act 1972* section 3 —

- (a) under a licence or permit referred to in 17A of that Act; or
- (b) under an exemption given under section 17D of that Act.

**“community purpose premises”** means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services for community benefit, by an organisation involved in activities for community benefit;

**“educational establishment”** means land used for the purposes of education and includes land used for a school, tertiary institution, business college, academy, or other educational centre;

**“hotel”** means premises to which a hotel licence under the *Liquor Licensing Act 1988* applies;

**“industry zone or precinct”** means a zone or precinct, however described, in which the predominant uses are —

- (a) manufacturing industries and the storage and distribution of goods; or
- (b) light and service industries and associated uses, except that it does not include land in a strategic industry zone or precinct;

**“lot”** has the meaning given to that term in the *Town Planning and Development Act 1928* section 2;

**“place of worship”** means land used for religious activities, and includes land used for a church, chapel, mosque, synagogue, or temple;

**“premises”** means land, and includes any building or structure on the land;

**“prostitution booking office”** means a prostitution agency office that —

- (a) is not a brothel or an attended prostitution agency office; and
- (b) is not used as a place where any business or activity other than the prostitution agency business is carried on;

**“public release day”** means the day specified under the *Prostitution Control Act 2002* section 162 as the public release day for the purposes of this clause;

**“residential zone or precinct”** means a zone or precinct, however described, in which the predominant use is residential;

**“strategic industry zone or precinct”** means a zone or precinct, the land in which is an industrial area of State significance, that is intended to accommodate higher order industrial uses, which may include the use of land for offensive or potentially hazardous industrial or storage facilities.

(9) A term used in this clause that is given a meaning by the *Prostitution Control Act 2002* has the same meaning in this clause.

## **SUBMISSION – DRAFT PROSTITUTION CONTROL BILL 2002**

### **BACKGROUND**

The state government has released the draft Prostitution Control Bill 2002 (PCB) for public comment. The new Prostitution Control Act is intended to provide the framework to control and regulate the industry. Comments are sought by the Hon Minister for Police and Emergency Services, and must be received no later than the 7 February 2003.

Part 7 and Schedule 3 of the draft bill relate to town planning controls that are sought to be introduced. As regulators and administrators of the City's District Planning Scheme No. 2 (DPS2), comments on these legislative controls, from a town planning, environmental health and building perspective form the basis of the City of Joondalup's submission to the Hon Minister.

### **COMMENTS**

#### **GENERAL**

##### **Lack of Local Government involvement in the preparation of the PCB 2002**

Both the City and WALGA previously indicated the need for Local Government to be involved in the development of this legislation, however despite these requests, consultation in this regard has not occurred. However, it is noted that both the City and the Town of Vincent received a high level briefing of the PCB prior to the PCB being released for public comment.

As a result, the City believes that insufficient consideration has been given to issues affecting Local Government and their communities within the draft legislation. This has lead, in the City's opinion, to legislative provisions that will create increased burden upon both state and local government (eg: financial, monitoring and implementation).

##### **Lack of transitional period & commitment to review the PBC after gazettal**

Furthermore, the City has considerable concerns with respect to no transitional period being offered, together with the lack of commitment by the state government to assess and review the operation of the legislation in the future to identify and rectify any strengths and weaknesses respectively.

##### **Unsatisfactory public consultation period**

The City wishes to register its dissatisfaction with the consultation period offered by the state government. Furthermore, the City wishes to express it's dissapointment that the request for an extension to the consultation period made by WALGA on behalf of Local Government was virtually ignored. Furthermore, the City wishes to register it's concern over the number of days comprising the consultation period in that a full 3 month consultation period (90 days) has not been offered.

As the Hon Minister is aware, the consultation period fell within the christmas/new year holiday period, whereby it is largely known that this period is one where local governments have limited

staffing resources. Whilst the City is not espousing that the consultation period was deliberately set to correlate with this holiday period, the City considers that it is not unreasonable for the Hon Minister to favourably consider a slightly longer consultation period in order to acknowledge the implications caused by the holiday period.

Whilst it is noted that the state government is keen to progress the legislation in a timely manner in order to meet parliamentary deadlines, the City suggests that the state governments haste in progressing the legislation has resulted in the release of sub standard legislation that 'misses the mark' in several areas (Town Planning, Law, Environmental Heath, Building, amenity issues, community concerns etc).

### **PCB a hybrid of eastern state legislation that has had limited effect**

The City's research suggests that the state government's PCB is effectively a hybrid of Queensland, New South Wales and Victorian legislation, which is considered to have had limited impact within those states whereby a large section of the prostitution industry is still operating illegally outside of legislative licensing requirements.

## **TOWN PLANNING**

### **No Discretion to Prohibit Prostitution Landuse Activity**

The City strongly opposes the draft legislation, as it effectively forces the City of Joondalup to incorporate into its DPS2 various provisions that allow for prostitution related land uses.

At its meeting on 15 October 2002 (*C144-10/02 refers*) Council resolved to prohibit all forms of prostitution within the City of Joondalup and believes it should have the discretion to prohibit prostitution type land uses under its DPS2.

Given that the Council at its meeting on 15 October 2002 (*C144-10/02 refers*) resolved to prohibit prostitution as a land use within the City of Joondalup, such action to amend DPS2 will not be permitted unless in conformity with Schedule 3 of the draft Act. Therefore it is unlikely that any amendment to prohibit prostitution would be granted final approval by the Hon Minister for Planning.

### **Incorporation of Schedule 3 into the City's District Planning Scheme No 2**

It is unclear how Schedule 3 is to be incorporated into town planning schemes. Direction has not been provided in regards to what part/section of the scheme it is to be inserted into (ie can/should it be inserted into Part 5 – Special Controls within the City's DPS2?).

### **No development requirements/standards prescribed within Schedule 3 of the Draft Bill**

Schedule 3 doesn't outline the development requirements/provisions required for such landuses, for example car parking, landscaping, compliance with public building regulations etc. It is assumed that a scheme amendment may be initiated in order to prescribe development requirements applicable to such landuses, however if this is the case, it is more prudent for the legislation to prescribe general requirements, and, dependant upon local circumstances, a local government may complement the standard provisions with additional requirements via a scheme

amendment or local planning policy. The Hon Minister is therefore requested to give careful consideration to the incorporation of standard development requirements applicable to these forms of landuse/development in order to provide increased guidance to local government's and their planning, building and environmental health officers in dealing with such applications.

### **Implications of the 300 metre buffer requirement under Schedule 3**

The 300-metre figure appears to be an arbitrary figure, as it is not clear within the draft legislation or summary notes as to how this figure was arrived at, and what is hoped to be achieved by stipulating such a figure. Given the wording of the clause, it assumes that the 300 metre buffer provides adequate amenity protection to the landuses listed (schools, churches, child care centres, community purpose premises, hotels or residential properties), however this can be challenged. If this extrapolation is correct, the City strongly objects to this legislative provision.

The City therefore seeks information on the rationale for the 300 metre figure, together with clarification in respect to what is hoped to be achieved by the figure, prior to providing any follow up response to this particular proposed provision, which may include, amongst others, a request for the figure to be increased.

Additionally, given the type of landuses that require the 300 metre buffer, the City considers it appropriate that shopping center landuses be included, as they are accessible by the general public on a more frequent basis than the other landuses identified.

Furthermore, the City has prepared plans in respect to the application of the 300 metre figure to highlight potential lots upon which brothels and attended prostitution agencies may be hosted (refer Attachment 1).

As can be seen from the attached map, given existing land uses that require separation of 300 metres, there is extremely limited scope for the City to entertain any planning proposal for a brothel or an attended prostitution agency office within its scheme area. Given this fact, it is argued that this adds significant weight to the City's argument in that it should be afforded the opportunity to amend its scheme to prohibit such land uses.

### **No home occupation/business approval required for a self employed sole prostitute**

Of utmost concern to the City are the provisions relating to the permissibility of a self employed sole prostitute to operate from a residential dwelling without the need for obtaining local government planning approval in the form of a 'home occupation' or in the City's case, a 'home business' under DPS2.

There are obvious inequalities afforded to self-employed sole prostitutes, as opposed to other home based business persons under the draft Act. It is argued that self employed sole prostitutes should be treated the same (under home occupation/business scheme provisions) as any other applicant wishing to perform business type tasks from their residential dwelling.

Furthermore, it appears that this form of landuse is considered under the legislation as having a 'low impact/effect' upon adjoining property and as such, is considered akin to a home occupation/home business. Experience suggests that these types of landuses have a far greater impact upon residential amenity than a conventional home occupation/business type landuse and therefore also creates a higher number of complaints. The City considers that the legislation is

quite naïve in allowing for a self employed sole prostitute to set up without requiring a planning approval or meeting any planning requirements. Furthermore, land that may be used as a dwelling may be used for the purpose of carrying on a business as a self employed sole prostitute. What this means is that such a business is not confined to a residential zone.

### **‘Non conforming’ approval of existing prostitution type landuses**

The proposed provisions relating to existing prostitution premises in existence prior to the new act taking effect are also opposed, however it is noted that the City of Joondalup does not host any previously approved bona fide brothel type landuses. The intent of the legislation is to effectively give such land uses ‘non conforming’ use rights and as such, such provisions are opposed, as non conforming use rights are conferred upon landuses that were granted the necessary approvals and were legal at the time, with non compliance a result of gazettal of a new scheme or amendment to the existing scheme after that landuse was first approved. Clause 1(7) of the draft legislation confers legality on a use, which, prior to the commencement day of the Bill, would otherwise be unlawful.

The City’s concern lies with the fact that although the City has not granted any planning approval to a bona-fide brothel or similar landuse activity, it has, however, granted approval to massage parlours, gyms and other similar landuses. Claims can be made that the massage parlour, gym or similar type of landuse were being used as a brothel prior to the commencement of the Act, and may even gain an entitlement to operate the premises as a brothel. Concern lies with the fact that it would be relatively simple for operators to gather evidence, however virtually impossible for the City to prove that the premises were not being used as a brothel, prior to the Bill being passed into Law. It is also difficult to obtain sufficient evidence that would support a breach of scheme provisions and the bill does not change this presently unsatisfactory situation but exacerbates it.

Another matter of concern is that should a right be established under the draft legislative provisions outlined above, there is no provision for the property to be recorded as would be the case for a non conforming use. The City would be unable to inform bona fide enquirers what landuses may be permitted upon the land subject to the enquiry or confirm that prostitution type landuses are not being carried out in the vicinity of that land if this provision is passed into law. It is argued that Schedule 3 would create a right that is not recognized or recognizable in any statute or register other than Schedule 3 itself. This is inconsistent with the proper practice of landuse law. Such a provision also undermines other legislative clauses proposed under the draft bill, particularly in relation to the 300 metre separation figure.

### **Clarification of the definition of a ‘community purpose premises’**

The City believes that further clarification of the definition of “*community purpose premises*” is required. The definition states;

*‘means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services for community benefit, by an organisation involved in activities for community benefit’*

The definition is not clear in respect to recreational facilities that are provided through private or public organisations, and if such recreational facilities or services are free of charge or a charge applies. Examples of such land uses that may or may not apply under the above definition include indoor cricket, karate, soccer, gyms, basketball courts, child play centres and the like. Verbal

advice obtained from the Hon Ministers Office in respect to this definition suggested that the definition would be all encompassing (ie recreational facilities provided either free of cost or user pays).

**Brothels and attended prostitution agency office permitted within industrial zones**

The draft legislation suggests that a brothel or attended prostitution agency office is a permitted landuse within the industrial zone and as such, may be exempt from obtaining local government planning approval under the planning scheme (as some schemes allow exemption where the use is permitted). It is also unclear if any community consultation is required when dealing with such applications, and if so, what form of consultation is required. It is suggested that consultation provisions be included within Schedule 3, or alternatively, each landuse to be introduced by the legislation may be given a specific use class (permitted – 'P', discretionary 'AA'/'SA', prohibited – 'X', or others), whereby advertising requirements for the corresponding use class are already provided for under the scheme.

Finally, there is an overall concern that the application of the proposed legislation will force brothels and attended prostitution agency offices into industrial areas. This will lead to the creation of red light districts within these industrial areas, with poor servicing infrastructure (public transport, passive surveillance, security, police availability etc). This will require increased services to be provided to these areas thus creating increased financial burden upon both Local and State Government.

**MRS Approval Required**

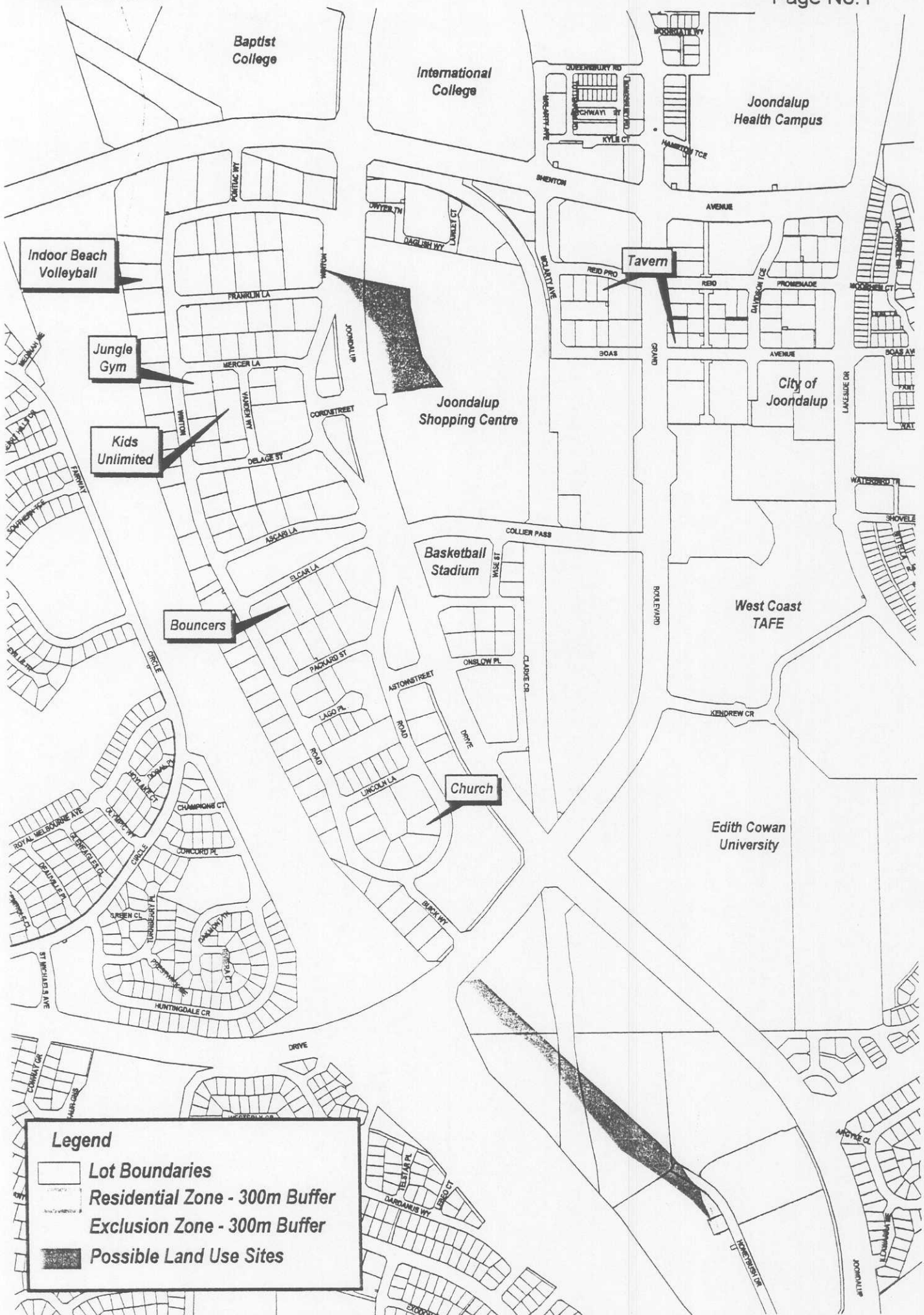
It is unclear if the legislation applies to the Metropolitan Region Scheme (MRS) as the MRS is not referred to. The City requests clarification in this regard and if the MRS is included, what form of approval is required under the MRS for all landuses to be introduced by the proposed legislation.

**ENVIRONMENTAL HEALTH**

Information to be provided.

**BUILDING**

Information to be provided.



## DRAFT : Prostitution Control Bill 2002 - Potential Sites