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# Restricting the Location of Adult Stores in Queensland – Draft State Planning Regulatory Provisions (Adult Stores)

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## INTRODUCTION

Queensland has more adult stores<sup>1</sup> per capita than any other state in Australia, with the number of stores having doubled during the five years to 2007 according to the Adult Retailers Association of Queensland ([Ministerial Media Statement](#), 11 August 2009).<sup>2</sup> Media reports suggest that in Queensland there are now more adult stores (180) than Coles supermarkets (155) or KFC outlets (115), and more than double the number of Blockbuster video stores (for example, see *Australian*, 28 September 2008; *Australian Financial Review*, 25 September 2008).<sup>3</sup> The Department of Infrastructure and Planning has recently put the number at approximately 140 ([State Planning Regulatory Provisions \(Adult Stores\), Fact Sheet](#), p 1 (Fact Sheet)).<sup>4</sup>

There have been instances of public outcry when adult stores have opened in places some community members consider inappropriate for a shop of its nature – for example, near schools, playgrounds or churches. In response to this community concern, the Queensland Government conducted a review in 2008 on the location of adult stores. Following the review, the Government released draft regulations for public consultation: [Draft State Planning Regulatory Provisions \(Adult Stores\)](#), July 2009 (Draft Regulatory Provisions).

The purpose of this Brief is to provide an outline of the review and the resultant Draft Regulatory Provisions. Two instances, in Proserpine and Varsity Lakes at the Gold Coast, where community concern was raised in relation to the location of adult stores in the respective districts, are also discussed.

## REVIEW OF ADULT SHOP LOCATIONS IN QUEENSLAND

On 10 April 2008, the then Acting Premier, the Hon P Lucas MP, Deputy Premier and then Minister for Infrastructure and Planning, announced that the Queensland Government would review the issue of adult stores opening close to schools ([Ministerial Media Statement](#), 10 April 2008):

These are legitimate businesses but I do understand that some communities are concerned that stores may open up too close to schools.

...

The State Government will look at ways – whether through changing state policies or strengthening council planning schemes – to regulate how close to schools adult stores could be established.

The review by the Department of Infrastructure and Planning (in conjunction with the Office of Fair Trading) was undertaken in consultation with a reference group comprising representatives from local government, adult retailers and parents and citizens groups.<sup>5</sup>

Some adult shop owners in Brisbane welcomed the review, with the chief executive of Australia's national adult retail and entertainment association, Eros Association, calling on the Queensland Government to regulate the adult store industry (*Australian Financial Review*, 25 September 2008):<sup>6</sup>

Bizarrely, we're probably the only industry calling on the government for regulation. The problem is the lack of legislation in Queensland has resulted in a free-for-all...

In NSW and Victoria you have to apply for a development application. there (sic) are restrictions where you can establish, and the ACT has a licensing regime [which costs \$11,000]. That does temper the growth. In Queensland if you see an empty building you can open an adult shop.

State Government regulation was also sought by the Urban Local Government Association (ULGA) of Queensland to allow local authorities greater power to treat adult shops differently from other retail shops in terms of planning restrictions on location ([letter to the Deputy Premier and Minister for Infrastructure and Planning](#), 14 August 2008):<sup>7</sup>

An Adult Shop is defined as a "shop" in Queensland Planning Schemes. Local Governments are unable to restrict the establishment of such uses where they are "self assessable" or "code assessable" in business zones adjoining or adjacent to educational establishments, youth facilities or churches.

The community is expecting controls over such uses so that they do not impose adverse affects on the amenity of the area in which youth are located, similar to provisions relating to the location of brothels. State imposed regulations would assist Local Government Planning Schemes where such uses are currently self assessable.

At its 2008 annual conference, the ULGA resolved to lobby the State Government to introduce regulations to restrict the establishment of adult stores within 200 metres of educational establishments, kindergartens, crèches, churches and youth establishments, regardless of the zoning of the land ([letter to the Deputy Premier and Minister for Infrastructure and Planning](#), 14 August 2008).

For a selection of media coverage on the announcement of the review, see:

- Adult stores invite regulators in, *Australian Financial Review*, 25 September 2009;
- Sex shop close to school spurs ban, *Courier Mail*, 11 April 2008 - the Hon P Lucas MP is quoted as saying: “*This is not about prohibiting adult shops, they provide a legitimate service, but it’s about saying there should be an ability to co-exist*”;
- Outrage as sex shop opens near Catholic school, *ABC Radio – AM Program*, Transcript, 11 April 2008;
- Sex shop owners welcome review, *Brisbane Times*, 11 April 2008.

The review led to the release, in July 2009, of Draft Regulatory Provisions on the location of adult stores pursuant to Part 5C of the [Integrated Planning Act 1997](#) (Qld). Despite being in draft form, these Draft Regulatory Provisions took immediate effect on 31 July 2009, and will remain in force until the final provisions come into effect or they are repealed (ss 2.5C.12, 2.5C.15 and Schedule 10, [Integrated Planning Act 1997](#) (Qld); clause 1.7 Draft Regulatory Provisions).

During the period from 4 August to 15 September 2009, the Draft Regulatory Provisions were subject to public consultation: Department of Infrastructure and Planning, [Adult Stores](#).

## DRAFT REGULATORY PROVISIONS

### POLICY OBJECTIVE

The policy objective of the [Draft Regulatory Provisions](#) is stated in clause 1.2:

These state planning regulatory provisions provide a standard to manage the location of new adult stores and to avoid close proximity to existing sensitive uses.

The term ‘**sensitive use**’ is defined in Schedule 1 of the Draft Regulatory Provisions to include “...*a child care centre, place of worship, primary school, secondary school or kindergarten.*” Essentially, most sensitive uses “...*are facilities or places regularly frequented by children.*” ([Fact Sheet](#), p 2).

### LOCATION RESTRICTIONS OF THE DRAFT REGULATORY PROVISIONS

The Draft Regulatory Provisions seek to achieve the policy objective of clause 1.2 by placing restrictions on the location of adult shops. Clause 1.3(1) requires a proposed adult store to meet the following criteria:

- 1) The distance between the boundary of the land occupied by a sensitive use and the entrance of a proposed adult store is the greater of the following:
  - a) more than 200m according to the shortest route a person may lawfully take, by vehicle or on foot; or
  - b) more than 100m measured in a straight line.

An ‘**adult store**’ is defined in Schedule 1 of the Draft Regulatory Provisions to include:

...a shop where the primary purpose of the business is for the display or sale of sexually explicit material and materials and devices associated with or used in a sexual practice or activity.

The definition excludes the following:

...the business of a newsagent, registered pharmacist, video hire or a shop where the primary use is concerned with the display, sale or hire of printed or recorded matter (not of a sexually explicit nature), the sale of underwear or lingerie, or the sale or display of an article or thing, primarily concerned with or used in association with a medically recognised purpose.

### APPLICATION OF THE DRAFT REGULATORY PROVISIONS

Clause 1.5 states that the Draft Regulatory Provisions:

...apply for a material change of use that is assessable development or self-assessable development under the relevant planning scheme.

That is, the Draft Regulatory Provisions apply to those material changes of use that require an application to be lodged (assessable development) and those that do not require an application to be lodged, but do require compliance with any applicable codes (self-assessable development).

In general, ‘material change of use’ of premises, means:<sup>8</sup>

- the start of a new use of the premises; or

- the re-establishment on the premises of a use that has been abandoned; or
- a material change in the intensity or scale of the use of the premises.

Clause 1.6 makes it clear that the Draft Regulatory Provisions do not apply to:

- a development application that has been made but not decided at the date the Draft Regulatory Provisions take effect; or
- existing adult stores; or
- new sensitive uses locating close to existing adult stores.

## **LOCAL GOVERNMENT ABILITY TO MODIFY THE DRAFT REGULATORY PROVISIONS**

Clause 1.3(2) of the Draft Regulatory Provisions grants local government discretion to adopt alternative location restrictions in their local planning schemes, provided these are consistent with the policy objective of the Draft Regulatory Provisions (see clause 1.2 above). It is intended that this discretion will enable local government to modify the Draft Regulatory Provisions “...*in line with local community attitudes and surrounding land uses*” ([Fact Sheet](#), p 1). For example, a council may decide to have a greater or lesser buffer zone or add to or subtract from the list of sensitive uses ([Fact Sheet](#), p 1). Alternatively, within a local government area, a council may decide to have different restrictions; for example, “...*the Gold Coast may choose to continue allowing adult stores on the tourist strip, but opt to be more restrictive in its residential areas like Helensvale and Coomera.*” ([Ministerial Media Statement](#), 11 August 2009).

If a local government’s planning scheme is identified as meeting the policy objectives of the Draft Regulatory Provisions, clause 1.3(2) requires a proposed adult store to comply with the criteria set out in the planning scheme.

Schedule 2 of the Draft Regulatory Provisions lists those local government planning schemes that have already been identified as meeting the objectives of the Draft Regulatory Provisions despite having alternative location restrictions:

- Bowen Shire Council Planning Scheme 2006
- The Broadsound Plan 2005
- Cairns Plan 2005
- Caloundra City Plan 2004
- Herberton Shire Planning Scheme 2005
- Johnstone Shire Planning Scheme 2005
- Living 2005 Livingstone Shire Planning Scheme
- Logan Planning Scheme 2006
- Mareeba Shire Plan 2005
- Maroochy Plan 2000
- Pine Rivers Plan 2006

No modifications are required to be made to these schemes as they “...*are not ‘over-ridden’*...” by the Draft Regulatory Provisions ([Fact Sheet](#), p 1).

## **COMMUNITY CONCERN REGARDING ADULT STORE LOCATIONS**

The Government’s decision to undertake a review of the location of adult stores was made in response to concerns raised by residents of Proserpine and at Varsity Lakes on the Gold Coast in relation to the location of adult stores in these areas ([Ministerial Media Statement](#), 5 January 2009). The complaints are indicative of the tension that can arise within a community on the issue of adult stores.

### **PROPOSED ADULT STORE NEAR A PRIMARY SCHOOL IN PROSERPINE**

There was considerable media reporting of a proposed adult store in Proserpine which was planned to open within 100m of a Catholic primary school. Some of the concerns expressed were that the proposed adult store would expose school children to inappropriate adult material and that the store would attract the wrong sort of people to the district.

The Whitsunday Regional Council said that it did not have power to ban the store from operating out of the proposed location, and that it had offered to relocate the store, but after negotiations with the owner, it was ascertained that the cost of such action was prohibitive ([Press Release](#), 9 April 2009).

For a selection of the relevant media coverage, see:

- ABC News, 5 January 2009;
- Adult shop issue felt across state, *Whitsunday Times*, 18 April 2008;
- Sex shops are defiling the suburbs, *Courier Mail*, 16 April 2008;
- Sex shop close to school spurs ban, *Courier Mail*, 11 April 2008;
- Outrage as sex shop opens near Catholic school, *ABC Radio – AM Program*, Transcript, 11 April 2008;
- School worried about planned sex shop location, *ABC News Online – Regional*, 10 April 2008;
- Push to regulate Qld sex shops, *ABC Radio – AM Program*, Transcript, 10 April 2008.

### **PROPOSED ADULT STORE NEAR A SKATE PARK AT VARSITY LAKES, GOLD COAST**

At around the same time as the controversy in Proserpine, some Gold Coast residents expressed concern about an adult store that was about to open less than ten metres from a \$1 million youth skate park at Varsity Lakes. The residents were worried that the proposed adult store would draw 'undesirables' to the area who may leave unwanted items in the park, and that children and families would be confronted with the sight of a sex store displaying items such as lubricant, sex games and DVDs.

For a selection of the relevant media coverage, see:

- Sex shop? No spans, *Gold Coast Bulletin*, 14 April 2008;
- Adult shop fights council, *Courier Mail*, 20 September 2007.

## LINKS TO FURTHER READING

### LEGISLATION & REGULATIONS

- [Integrated Planning Act 1997](#) (Qld);
- [Draft State Planning Regulatory Provisions \(Adult Stores\)](#), July 2009.

### MINISTERIAL MEDIA STATEMENTS

- Queensland Ministerial Media Statements, [11 August 2009](#), [5 January 2009](#), [10 April 2008](#).

### QUEENSLAND DEPARTMENT FOR INFRASTRUCTURE AND PLANNING – PUBLICATIONS

- [State Planning Regulatory Provisions - Adult Stores](#) (website);
- [State Planning Regulatory Provisions \(Adult Stores\)](#), Fact Sheet (undated).

### OTHER PUBLICATIONS

- Eros Association, [‘New No-Go Zones’ for Qld Sex Shops Ineffectual and Confused](#), Media Statement, 5 January 2009;
- Whitsunday Regional Council, [Adult Shop to Open in Proserpine](#), Press Release, 9 April 2008;
- Urban Local Government Association of Queensland, [letter to the Deputy Premier and Minister for Infrastructure and Planning](#), 14 August 2008.

### ADULT STORE INDUSTRY ASSOCIATION

- [Eros Association](#) (Australia’s national adult retail and entertainment association).

### NEWSPAPER & OTHER NEWS ARTICLES

- Sex shops restricted, *Courier Mail*, 12 August 2009;
- Buffer zone proposed between adult stores and schools, churches, *brisbanetimes.com.au*, 11 August 2009;
- Not so sexy politics, *Courier Mail*, 9 January 2009;
- Sex shop ban near schools and churches, *Courier Mail*, 6 January 2009;
- Sex shops ‘too explicit’, *brisbanetimes.com.au*, 6 January 2009;
- Gold Coast councillor supports adult shop regulations, *ABC News*, 6 January 2009;
- Adult shop ban near schools, churches ‘pointless’, *ABC News*, 5 January 2009;
- How many sex shops in Queensland? Nobody knows, *brisbanetimes.com.au*, 15 December 2008;
- Sex shop markets itself as family-friendly, *Couriermail.com.au*, 30 October 2008;
- More sex shops than supermarkets – Why Queensland is getting even steamier, *Sunday Mail*, 28 September 2008;
- Sex shops now outnumber supermarkets, *Australian*, 28 September 2008;
- Queensland has more sex shops than Coles supermarkets, *Couriermail.com.au*, 28 September 2008;
- Adult stores invite regulators in, *Australian Financial Review*, 25 September 2008;
- Hypocrisy over porn is just indecent, *Courier Mail*, 21 April 2008;
- Adult shop issue felt across state, *Whitsunday Times*, 18 April 2008;
- Sex shops are defiling the suburbs, *Courier Mail*, 16 April 2008;
- Sex shop? No spansks, *Gold Coast Bulletin*, 14 April 2008;
- Outrage as sex shop opens near Catholic school, *ABC Radio – AM Program*, Transcript, 11 April 2008;

- Sex shop close to school spurs ban, *Courier Mail*, 11 April 2008;
- Sex shop owners welcome review, *brisbanetimes.com.au*, 11 April 2008;
- Push to regulate Qld sex shops, *ABC Radio – AM Program*, Transcript, 10 April 2008;
- School worried about planned sex shop location, *ABC News Online – Regional*, 10 April 2008;
- Council's hands tied over sex shop, *brisbanetimes.com.au*, 10 April 2008.

## ENDNOTES

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- <sup>1</sup> Adult stores "...sell products such as erotic and pornographic magazines, books and films, computer games, sex toys and erotic lingerie." ([State Planning Regulatory Provisions \(Adult Stores\), Fact Sheet](#), p 1).
- <sup>2</sup> The Adult Retailers Association of Queensland has since been subsumed into [Eros Association](#), Australia's national adult retail and entertainment association. See also: [Outrage as sex shop opens near Catholic school](#), *ABC Radio – AM Program*, Transcript, 11 April 2008 (it is believed that a new adult shop opens every three to four weeks in Queensland); More sex shops than supermarkets – Why Queensland is getting even steamier, *Sunday Mail*, 28 September 2008 (the number of adult shops in Queensland has increased by 65% in the past two years).
- <sup>3</sup> See also: Queensland has more sex shops than Coles supermarkets, *Couriermail.com.au*, 27 September 2008.
- <sup>4</sup> See also: How many sex shops in Queensland? Nobody knows, *Brisbane Times*, 15 December 2008.
- <sup>5</sup> Queensland Ministerial Media Statements, [5 January 2009](#), [10 April 2008](#).
- <sup>6</sup> See also: Sex shop owners welcome review, *Brisbane Times*, 11 April 2008, Push to regulate Qld sex shops, *ABC Radio – AM Program*, Transcript, 10 April 2008.
- <sup>7</sup> There seems to be some confusion on the issue of whether or not local governments have the authority to restrict the location of adult shops. For example, see [Ministerial Media Statement](#), 10 April 2008, [Ministerial Media Statement](#), 5 January 2009 compared with local government comments reported in: Council's hands tied over sex shop, *Brisbane Times*, 10 April 2008; Whitsunday Regional Council, [Adult Shop to Open in Proserpine](#), press release, 9 April 2008; Gold Coast councillor supports adult shop regulations, *ABC News*, 6 January 2009, Urban Local Government Association of Queensland, [letter to the Deputy Premier and Minister for Infrastructure and Planning](#).
- <sup>8</sup> Section 1.3.5 of the [Integrated Planning Act 1997](#) (Qld). 'Premises' means a building or other structure; or land (whether or not a building or other structure is situated on the land).