EXECUTIVE SUMMARY:

On 8 January 2008, Planning Permit 35554 was issued allowing the premises to be used as a brothel and included a condition that the permit would expire if not extended by 8 January 2013. An application to extend the permit prior to the expiration date was not made.

In the current application, it is again proposed to use the premises as a brothel. No changes to the previous conditions are proposed.

The application was advertised and no objections were received.

The proposal is considered appropriate having regard to the relevant provisions of the Monash Planning Scheme. It is recommend that Council issue a Planning Permit subject to conditions.

Recommendation

<table>
<thead>
<tr>
<th>RESPONSIBLE DIRECTOR:</th>
<th>Sue Wilkinson</th>
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<tbody>
<tr>
<td>RESPONSIBLE MANAGER:</td>
<td>Peter Panagakos</td>
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<tr>
<td>RESPONSIBLE PLANNER:</td>
<td>Ian Carstens</td>
</tr>
<tr>
<td>WARD:</td>
<td>OAKLEIGH</td>
</tr>
<tr>
<td>PROPERTY ADDRESS:</td>
<td>1/44 WINTERTON ROAD CLAYTON VIC 3168</td>
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<tr>
<td>PRE-APPLICATION MEETING:</td>
<td>NO</td>
</tr>
<tr>
<td>NUMBER OF OBJECTIONS:</td>
<td>None</td>
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<tr>
<td>ZONING:</td>
<td>Industrial 1 Zone</td>
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<tr>
<td>EXISTING LAND USE:</td>
<td>Brothel</td>
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<tr>
<td>OVERLAY:</td>
<td>Design and Development Overlay (DDO1)</td>
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<tr>
<th>RELEVANT CLAUSES:</th>
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<tbody>
<tr>
<td>State Planning Policy Framework</td>
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<tr>
<td>Clause 10.01 (Purpose)</td>
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<td>Clause 10.02 (Goal)</td>
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<td>Clause 10.04 (Integrated Decision Making)</td>
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<td>Clause 11 (Settlement)</td>
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<td>Clause 11.04 (Metropolitan Melbourne)</td>
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<tr>
<th>Local Planning Policy Framework</th>
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<tr>
<td>Clause 21 (Municipal Strategic Statement)</td>
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<td>Clause 21.08 (Transport and Traffic)</td>
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<td>Clause 22.04 (Stormwater Management Policy)</td>
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<tr>
<td>General Provisions</td>
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<tr>
<td>Clause 33.01 (Industrial 1 Zone)</td>
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<td>Particular Provisions</td>
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<tr>
<td>Clause 52.06 (Car Parking)</td>
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<td>Clause 52.46 (Brothels)</td>
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<td>Clause 65.01 (Decision guidelines)</td>
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<th>STATUTORY PROCESSING DATE:</th>
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<tr>
<td>30 December 2013</td>
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<th>DEVELOPMENT COST:</th>
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1/44 Winterton Road Clayton - Use Of The Existing Premises As A Brothel With Associated Car Parking
RECOMMENDATION:

A. That Council resolves to **Grant a Planning Permit** under the Monash Planning Scheme to the land described as **1/44 WINTERTON ROAD CLAYTON TPA/41951** for the **USE OF THE EXISTING PREMISES AS A BROTHEL (8 SERVICE PROVIDERS AT ANY ONE TIME) WITH ASSOCIATED CAR PARKING AND HOURS OF OPERATION BETWEEN 10AM TO 4AM THE FOLLOWING DAY, 7 DAYS A WEEK**, subject to the following conditions:

1. This permit allows the use of the land only by Hong Yan Yao only while holding a license under the Sex Work Act 1994. If Hong Yan Yao ceases to use the land, this permit will expire unless written approval is obtained from the Responsible Authority granting approval for use by another specific operator.

2. No more than 8 service providers are permitted to be on the premises at any one time.

3. There must, at all times of operation, be a Manager on the site and such Manager must be over the age of 21 years and authorised by the operator of the use to make statements to any authorised Law Officer or authorised Council Officer which may attend the premises in the performance of their duties.

4. The Manager must make all reasonable endeavours to ensure persons attending the site do not cause a nuisance or adversely affect nearby property or persons.

5. The premises must only be used for the permitted purpose between the hours of 10am to 4am, the following day, Monday to Sunday.

6. No alcohol or drugs of addiction are permitted to be kept or brought onto the premises.

7. No person under the age of 18 years is permitted on the site.

8. The appearance of the site must be kept in a neat and tidy condition at all times to the satisfaction of the Responsible Authority.

9. Exterior lighting must be provided with suitable baffles and located so as to minimise the emission of light outside the site to the satisfaction of the City of Monash the Responsible Authority.

10. Vehicles under the control of the operator of the use or the operator’s staff must not be parked on the nearby roads.

11. This permit will expire in accordance with section 68 of the **Planning and Environment Act 1987**, if the use is not started before 2 years from the date of issue.
In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend this period if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the use allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the use has lawfully started before the permit expires.

**NOTES**

1. Building approval must be obtained for any works undertaken.

2. The subject premises are to comply with the requirements of AS 1428.1 and BCA D3 in providing access for people with disabilities.

**BACKGROUND:**

**History**

Planning Permit No. 35554 was issued by Council on 8 January 2008 allowing the premises to be used as a brothel.

On 10 November 2008, Council permitted the number of service providers and associated work rooms in the brothel to be increased from 5 to 6 at any one time and the number of onsite car spaces to be increased from 11 to 13.

On 1 October 2009, Council permitted the number of service providers in the brothel to be increased from 6 to 8 at any one time.

On 2 June 2010, Council permitted the hours of operation to be increased from 2 am 7 days a week, to 4am 7 days a week and co-licensing the existing brothel to include Hong Yan Yao.

Condition 13 of the permit authorised the use of the site for a brothel until 8 January 2013. To legitimately continue, it was required that the permit be extended prior to this date. This was not done and the permit has now expired.

**The Site and Surrounds**

The land is situated on the eastern side of Winterton Road approximately 470 metres south of Dandenong Road. The site is regular in shape with a frontage of 15.15 metres, a depth of 42.58 metres and a total area of 645 square metres. The land is occupied by a single storey warehouse type brick building. There are a total 13 onsite car spaces (10 are internal and 3 are external) and some landscaping in the front setback.

Surrounding land in Winterton Road is developed with a mix of industrial uses and warehouse buildings.
PERMIT TRIGGERS:

The application is subject to the provisions of Clause 33.01 (Industrial 1 Zone) of the Monash Planning Scheme. A permit is required to use the site as a brothel in this Zone. A planning permit is also required for buildings and works (Clause 33.01-4).

Also relevant are Clauses 19.04 of the State Policy Framework (Brothels) and Clause 65 (Decision Guidelines).

The application is subject to the provisions of the Sex Work Act 1994.

Section 72 of the Sex Work act 1994 states that, an application for a permit for a use or development of land for the purposes of the operation of a brothel may only be made by-

(a) a licensee; or  
(b) a person who has made an application for a licence under section 33; or  
(c) a person or two persons intending to rely on an exemption under section 23(1) from the requirement to hold a licence.

Responsible Authorities should consider the matters set out in Section 73 of the Sex Work Act 1987 before deciding on an application to use or develop land for a brothel. These matters include:

(a) any other brothel in the neighbourhood;  
(b) the effect of the operation of a brothel on children in the neighbourhood;  
(c) except in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, whether the land is within 200 metres of a place of worship, hospital, school, education and care service premises, children’s services centre or of any other facility or place regularly frequented by children for recreational or cultural activities and, if so, the effect on the community of a brothel being located within that distance of that facility or place;  
(d) other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise or traffic (including pedestrian traffic);  
(e) any guidelines about the size or location of brothels issued by the Minister administering the Planning and Environment Act 1987;  
(f) the amenity of the neighbourhood;  
(g) the provision of off-street parking;  
(h) landscaping of the site;  
(i) access to the site;
(j) the proposed size of the brothel and the number of people that it is proposed will be working in it;

(k) the proposed method and hours of operation of the brothel.

Under S.74 (1) of the Sex Work Act 1994, an application must be refused if:

(a) the land is within an area zoned by a planning scheme as being primarily for residential use;

(b) the land is within 100 metres of a dwelling other than a caretaker’s house, with that distance being reduced to 50 metres in the case of such a dwelling located between Spring, Flinders, Spencer and La Trobe Street in the City of Melbourne; or

(c) except within that specified Central City of Melbourne area, the land is within 200 metres of a place of worship, hospital, school, kindergarten, children’s services centre or any other facility or place regularly frequented by children for recreational or cultural activities.

S.74 (2) of the Act requires the distances in the above locational criteria to be measured according to any route which reasonably may be used in travelling.

**PROPOSAL:**

It is proposed to use the land as a brothel subject to the same restrictions as the previous permit as follows:

- Operating hours of 10am to 4am, 7 days a week.
- Maximum of 8 service providers working on the premises at one time.
- A total of 6 rooms within the brothel.
- A total of 13 formal onsite car spaces. Ten of the spaces located internally and the remaining three are external.
- Only Hong Yan Yao may operate the business.

Existing vehicle access and on-site car parking would remain unchanged. The proposed building and works will not result in the loss of any car parking.

**CONSULTATION:**

**Public Notice**

The application was advertised in accordance with section 52 of the Planing and Environment Act 1987 by way of 37 notices sent to the surrounding property owners/occupiers, erection of one sign displayed on the Winterton Road frontage of the site and the placement of an advertisement in the Public Notices section of The Leader newspaper on 12 November 2013.

No objections were received.
Public information session

A Public information session was not required.

Referrals

The application was not required to be referred.

DISCUSSION:

Consistency with State and Local Planning Policies

The Industry and Business Development Character Policy at Clause 22.03-2, aims to: -

“Ensure that development contributes to the maintenance and development of a high quality urban environment within the industrial and business areas and their environs, including the enhancement of the image of industrial and business areas, when viewed from any road”.

Given the industrial nature of the land together with its proximity to a major arterial road, the use of the site for a brothel is considered appropriate.

Assessment

The proposed brothel is compliant with the locational criteria as set out in Sections 73 and 74 of the Sex Work Act 1994. The applicant (Hongyan Yao) holds a current Sex Work Service Provider Licence (SWA7297B) allowing her to operate the premises as a six room brothel.

It is not considered that the brothel will cause any adverse impacts on the neighbourhood. The subject site is located in an established industrial area with a wide range of manufacturing and warehousing type uses. Given that the brothel is a permissible use within the zone and has effectively operated at the subject premises since 2006, it is considered there are no issues with amenity impacts. There are also no other brothels in the immediate neighbourhood that would result in any clustering or concentration of brothels in the same area.

A total of 13 car spaces for this proposal are considered sufficient to meet the demands of this facility. The proposed hours of operation are considered consistent with other brothel premises in the municipality and will remain the same as that previously approved under the expired planning permit. The brothel will have an authorised manager on site at all times and security measures employed will ensure the safety and security of staff and customers are met.

The signage is discreet in nature and will be limited to the name of the business, street number of the property and car parking directional signage. No sexually explicit material will be displayed. This signage is considered satisfactory.
Historically, Council has imposed a 5 year time frame on brothel permits. However, this was found to be unduly restrictive and onerous since the applicant would have to re-apply to Council every 5 years. The extension of the 5 year period was found out to be a relatively administrative and rudimentary task for Council to process each time. It is considered that the use of a “brothel” is no different to any other use permit issued. If issues do happen to arise, then Council can initiate enforcement action against the owner and tenant.

CONCLUSION

The proposal is identical to that for which a planning permit was previously issued but since expired. The proposal would be consistent with the matters set out in the provisions of the Sex Work Act 1994 and the relevant State and Local Planning Policy Frameworks, zoning and overlay provisions. The proposal will not result in any unreasonable amenity impacts on the surrounding properties. It is recommended that the proposal be approved subject to conditions.
ATTACHMENT 1

This drafted document is made available for

1/44 Winterton Road Clayton - Use Of The Existing Premises As A Brothel With Associated Car Parking
ATTACHMENT 1 (Continued)