

4th April 2011

TO: Chief Executive Officer
City of Sydney
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SYDNEY NSW 2001



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Submission in response to the [Draft Sydney Local Environmental Plan \(SLEP\) 2011](#)

By Touching Base Inc

&

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Dear Chief Executive Officer,

We are writing in support of the policy provisions for *home occupations (sex services)* (**HO(SS)**) being introduced in the *Draft City of Sydney Local Environmental Plan (SLEP)* 2011. We are however also writing with concern about some other changes to land zones within certain areas.

Who we are

Touching Base was established, with the goal of assisting people with disability and sex workers to connect with each other. The Touching Base Committee of Management is led by sex workers and people with disability and is supported by organisations including People with Disability Australia Inc, Cerebral Palsy Alliance (formally The Spastic Centre of NSW), Family Planning NSW, Multiple Sclerosis Limited, and Scarlet Alliance – Australian Sex Workers Association.

The work of Touching Base focuses on areas such as access, discrimination, human rights, legal issues and the attitudinal barriers that these two marginalised communities can face.

Urban Realists is a town planning, health and safety service providing advice and support to the sex industry and other stakeholders on various aspects of sex industry related legislation and local government regulation, occupational health and safety and research needs.

We seek an evidence-based approach that reflects best practice

Speaking broadly, we support evidence-based sex industry planning approaches that (a) enable the rights of sex workers to safely engage in their work in a range of scales and types of sex industry premises and (b) enable the rights of people with disabilities, including the right to gain access, in a safe and dignified manner befitting the individual's level of ability, to the range of various scales and types of sex industry premises that occur within any given Local Government Area (**LGA**), without experiencing discrimination or systemic barriers.

Guiding Principles of sex industry regulation

We refer you to the guiding principles within the [Sex Services Premises Planning Guidelines 2004 \(SSPP Guidelines\)](#). Even though some parts of the SSPP Guidelines need updating to reflect changes since 2004, they still remain the most comprehensive resource available when considering planning provisions for sex services in NSW¹. The guiding principles remain as important and relevant today as they were in 2004 in supporting the decriminalisation reforms of 1995² as follows:

Before reading the following guiding principles it is important to note that in the SSPP Guidelines the definition of 'sex services premises' at that time covered all scales and types of premises where sex work occurs – from the largest commercial enterprises to the smallest home-based activities. In 2007 the *Standard Instrument—Principal Local Environmental Plan* was enacted, which re-defined 'sex services premises' to exclude sex worker home occupations.

¹ Chin, Sophia: 'Sex in the Suburbs', Bachelor of Planning Thesis, University of New South Wales, Sydney, 2007

² *Disorderly Houses Amendment Act 1995* (now *Restricted Premises Act 1943*)

- *appropriate planning for sex services premises can provide councils with greater control over their location, design and operation*
- *planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients*
- *sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions*
- *planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impact of each premises*
- *reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council, the local community and health service providers*
- *provision and consideration of sound information enables appropriate policy and decision-making processes, and*
- *engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of sex services premises and recognise that they are a legitimate land use to be regulated through the NSW planning system.*

Maintaining a focus on these guiding principles can assist all parties, including councils, the sex industry and the local community, by providing clarity and consistency of regulation, minimising amenity impacts and ensuring the health and safety of workers and clients.³

Our specific responses to the sex industry provisions within the SLEP 2011 fall under the following headings:

- 1. Congratulations on achieving best practice planning provisions for home occupations (sex services)**
- 2. Requiring DA's from home occupations (sex services) totally unacceptable**
- 3. Request Dept of Planning make provision for home businesses and home industries where sex work occurs**
- 4. Educate the community on changes and rationale behind them**
- 5. Provide any resources in multiple languages to reflect multi-cultural nature of sex work**
- 6. Justification for changes to land use zone (Sheet 016 Suburbs: Chippendale, Haymarket, Redfern, Surry Hills and Ultimo)**

³ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 3

Congratulations on achieving best practice planning provisions for home occupations (sex services)

The City of Sydney is to be congratulated for taking an evidence based approach ⁴ in expanding the provision for **home occupations (sex services) (HO(SS))** as exempt developments right across the wider LGA; provisions such as adopted by Armidale Dumaresq in 2008 ⁵. These provisions importantly adopt the planning principle of equity, and avoid discriminating against sex workers to the greatest extent possible, within the otherwise discriminatory confines of the *Standard Instrument - Principal Local Environmental Plan*.

In doing so the City of Sydney demonstrates the legislated [Charter for Councils](#) does not have to be just a shallow list of hollow platitudes in regards to regulating the sex industry. Like the guiding principles of sex industry regulation within the [SSPP Guidelines](#) – the Charter for Councils can provide a meaningful framework to encourage Councils to express vital principles of governance, such as to:

- *exercise community leadership,*
- *have regard to the long term and cumulative effects of their decisions,*
- *exercise their functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights,*
- *facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government, and*
- *ensure that, in the exercise of regulatory functions, they act consistently and without bias, particularly where an activity of the council is affected.* ⁶

RECOMMENDATION 1:

We insist that the final version of the SLEP 2011 must continue to adopt an evidence-based approach and permit *home occupation (sex services)* as exempt development across the LGA, in all zones where other home occupations are permitted and also in the Core Commercial zone.

⁴ Explanatory Document to DRAFT SYDNEY LEP 2011

⁵ *Armidale Dumaresq LEP 2008*

⁶ *Local Government Act 1993 No 30, 8 (1)*

Requiring DA's from HO(SS) would be totally unacceptable

Under no circumstances would it be safe or reasonable to amend the SLEP 2011 to require sex workers working from residential areas to submit to the Development Application (DA) process. In fact the SSPP Guidelines note that there are no known advantages in requiring a DA from private sex workers, only disadvantages, as follows:

- *sex workers are unlikely to comply with it, as a DA or Complying Development Certificate reveals sex workers' addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises. As a result, home occupations would continue to exist illegally within council areas, which is to be discouraged as it keeps them 'underground' and isolated from sex worker peer support and health services;*
- *it is inequitable as there is no evidence that home-based sex work has any more impact than other home occupations e.g. an architect working from home, accountant, tax agent, photographer etc;*
- *the low, or negligible, impact does not warrant a DA, which involves considerable cost and time and raises the possibility of neighbour objections; and*
- *it drives home occupations underground with most of them operating unauthorized. This then provides opportunities for corruption, which the Disorderly Houses Amendment Act 1995 specifically sought to redress.*

The Report of the Brothels Taskforce (2001) stated (p.12):

"The identification of individual sex workers through the development application process is also contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001."

Advice from the Sex Workers Outreach Project and the Private Worker Alliance as discussed in the report to the Marrickville Council Development and Environmental Services Committee Meeting 02/02, 5 March 2002, is that for instance, situations have been reported where men claiming to be council officers demand free sexual services or financial benefits in return for not disclosing unauthorised home occupations.⁷

One of the primary intentions of the decriminalisation of sex work in 1995 was to eliminate the systemic corruption of the industry by the NSW Police. Requiring a DA would be the equivalent of trying to enforce a prohibition of home-based sex work within the LGA. This would be unreasonable and unjustifiable and it would unnecessarily increase the potential for corruption to re-emerge.

⁷ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 54

Finally, as private workers are more likely to have attended the Touching Base Professional Disability Awareness Training workshop than workers in commercial sex services premises (**SSP**), many clients with disabilities prefer to access the services of home-based sex workers. We congratulate the City of Sydney Council for supporting the sexual choices and related support of people with disabilities by permitting HO(SS) as exempt developments.

RECOMMENDATION 2:

We demand that the City of Sydney stands by the results of the research referred to in the *Explanatory Document to SLEP 2011* and ensure home occupation (sex services) are NOT required to submit to the DA process within the City of Sydney LGA - consistent with best practice as identified in the SSPP Guidelines.

Need to accommodate other scales and types of home based sex work

The South Sydney City Council policy approach of accommodating a wider variety of scales and types of homed-based and smaller SSP is to be highly commended.

As a part of providing leadership to other councils with less experience in regulating sex industry premises, and by way of introducing the City's experience in these matters to the new State Government, we strongly recommend that the City of Sydney make representations to The NSW Department of Planning seeking changes to the *Standard Instrument - Principal Local Environmental Plan* that would permit home businesses and home industries where sex work occurs to operate as exempt developments, equal to other home businesses and home industries, under the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

Decriminalisation is a model of regulation that at its essence recognises that Sex Industry businesses must be regulated like other businesses. Decriminalisation recognises that it is unnecessary to develop a set of additional laws to regulate the Sex Industry as existing regulatory approaches (local government, WorkCover etc) and existing laws (Criminal Code and Police Act) regulate a wide range of factors across society and all industries. This model removes barriers to effective HIV prevention and is in this way a best practice model to regulating the sex industry⁸

RECOMMENDATION 3:

We strongly recommend that the City of Sydney formally request of the Director General of the NSW Department of Planning seeking amendments to the *Standard Instrument - Principal Local Environmental Plan* to remove any regulatory obstacles to permitting home businesses and home industries where sex work occurs as exempt development – equal to other types of home businesses and home industries.

⁸ [Submission on Sex Industry Regulation in NSW September, Scarlet Alliance and ISIS CATS, 2010, p.4](#)

Educate the community on changes and rationale behind them

With all the different definitions available for sex industry premises in various pieces of legislation and regulations, and significant variations between the approaches taken by different councils, there is understandable confusion in the community about what constitutes a lawful land use where sex work occurs

In addition, in regard to community education, the SSPP Guidelines note that:

“A key problem for those preparing policies on sex services premises is the ability to communicate to the local community the advantages of regulating sex services. More often than not, negative community attitudes to the sex industry are evident, and can present a significant barrier to best practice planning due to their degree of influence on decision-making in local government. Many individuals and groups perceive sex work as immoral, and that it is councils’ responsibility to close down sex services premises rather than approving DAs or formulating new policies. (p.71)

The Guidelines also note that:

To some extent, community fears regarding sex services premises are understandable in the absence of appropriate information about the sex industry and the role of councils in regulating it. Fear of the unknown underpins many negative reactions to either individual DAs or new council policies regarding sex services premises, as it sometimes does for other local planning issues. (p.71)

Suggested solutions include *“providing information e.g. ‘Fact Sheets’ (see **Appendix E**) on council web sites, advising people why council is involved in planning for sex services premises and the benefits of council involvement.”* (p.71)

The sample Fact sheets provided as Appendix E in the SSPP Guidelines could easily be updated to include the recent City of Sydney research on home based sex work. Including the contact details for peer-based sex worker organisations such as [Scarlet Alliance - Australian Sex Worker Organisation](#), and [NAUWU](#) would also be worthy additions.

RECOMMENDATION 4:

We strongly urge the City of Sydney make available community education information resources about the new sex industry policies based upon the sample Fact Sheets in the Sex Services Premises Planning Guidelines – Appendix E.

Provide resources in multiple languages to reflect multi-cultural nature of sex work

As a thorough and relevant resource the SSPP Guidelines fortunately also offer advice on this matter, as follows:

Communication involves providing adequate information, advice and resources to enable people to both make informed decisions and be fully aware of council requirements in regard to sex services premises.

A key problem for operators of sex services premises is access to reliable, accurate and non-prejudiced information from councils about their planning requirements. Lack of access to resources written in plain English and translated into several community languages can create barriers to operators complying with council requirements. If information is not available, or is suppressed, operators remain uncertain as to the reception they will receive from council and the length of time and cost involved in achieving consent.

The SSPP Guidelines make several helpful suggestions to overcome language barriers, including:

- *preparing articles for local NESB newspapers*
- *identifying council employees who speak a language other than English who could assist with planning enquiries about sex services premises*
- *ensuring staff are aware of the protocol for obtaining interpreter services within council*

RECOMMENDATION 5:

We strongly recommend that the City of Sydney apply for a grant to translate any resources into several community languages, such as identified through further consultation with the Scarlet Alliance

Justification for changes to land use zone (Sheet 016 Suburbs: Chippendale, Haymarket, Redfern, Surry Hills and Ultimo)

The draft SLEP proposes to re-zone areas within the Surry Hills precinct from mixed use 10 to residential R1 and if gazetted, will effectively prohibit commercial uses including sex services premises in this locale.

Council has encouraged mixed use development in this vicinity for nearly 25 years and has not provided any justification for the creation of a purely residential neighbourhood in an area so close to the CBD and Central Railway. This neighbourhood was zoned mixed use some years ago due to its mixed use nature and suitability for this type of land use given its location, street and subdivision pattern and built form.

We are aware that this is not the only location in this locality where it is proposed to move from a mixed use zone to a purely residential zone. Without the provision of a more detailed land use and urban design study taking into account the business use diversity in these precincts, any attempt to rezone the areas under question will leave many business operators, including SPP owners and operators, unfairly disadvantaged in terms of any future development to their businesses.

Again, we refer you to the SSPP Guidelines in respect to communication and the need to ensure adequate information is provided in appropriate languages, so that people understand Council requirements. This is of particular importance given the seriousness of the zoning changes as proposed under the draft SLEP.

RECOMMENDATION 6:

We recommend that Council undertake a more detailed investigation of appropriate land use and urban design principles for this southern part of the CBD prior to any re-zoning, incorporating a consultation process that takes into account the cultural, linguistic and business use diversity of residents and business operators and owners in this area.

Conclusion

This current draft of the SLEP 2011 manifests some of the better practice in sex industry regulations identified by the Sex Service Premises Planning Guidelines, especially in relation to home occupations (sex services). While it requires some further investigation and consultation in respect to proposed zoning changes, overall it encourages *“positive relations and communication with the local sex industry”*, and upholds *“the intentions of the 1998 reforms to the planning system, which sought to streamline the development, and planning system.”*⁹

By adopting the recommendations contained within this submission the City of Sydney will significantly contribute to providing leadership to other Councils in NSW for when they are considering how to adopt best practice regulation of the sex industry in their own LGA's.

⁹ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 24

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