

19<sup>th</sup> January 2012

To the Director General of NSW Health

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cc:

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**Dear Dr Mary Foley,**

We are writing to advise you of a most serious breakdown in the promotion of public health in NSW as it relates to NSW Health providing appropriate input into the development of Local Environment Plans (LEPs) by local councils. Previously in NSW there were processes in place to ensure that local councils, when submitting LEPs for review to NSW Health, were provided with considered feedback that promoted the principles and practices of public health promotion in regards to regulating the sex industry.

**Previous valuable resources and dedicated positions abandoned over time**

In the past, in recognition of the importance of ensuring local councils receive appropriate guidance in regulating the sex industry, significant resources were dedicated to this purpose. For example, the Sex Services Premises Planning Advisory Panel<sup>1</sup> which produced Guidelines for local councils that fully considered the health, and occupational health and safety needs of sex workers. These Guidelines were agreed to by all stakeholder representatives on the panel, including those from NSW Health.

Although these Guidelines were never endorsed by the State Government they have been used by some councils when considering amending their LEP in line with the Standard LEP Instrument Template (Standard LEP). They have also been referred to in numerous appeals before the Land and Environment Court. We, amongst others, note that the Guidelines remain useful but are in dire need of an update to reflect changes in regulations and laws and to incorporate emergent evidence from research conducted since 2004.

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<sup>1</sup> This panel was administered by the Local Government and Association of NSW and Shires Association of NSW on behalf of the Department of Planning (then DIPNR).

In addition, for several years a dedicated policy position was funded at ACON to ensure that local councils were provided with feedback that strongly encouraged them to pursue policy that would support rather than negate the implementation of the National and NSW STI and HIV Strategies. The policy officer directly liaised with local council town planners under the primary public health principles of enabling, advocating and mediating in order to optimise public health outcomes.

Tragically this position was left vacant for several years. It is only recently, after years of inaction, that ACON and SWOP have been forced to again express an interest in addressing the regulation of the sex industry by local councils. This renewed interest has been in part driven by the State Government threatening to introduce a licensing scheme for brothels. ACON and SWOP have now stepped forward to publicly identify that any move towards licensing would be in clear denial of all of the evidence that shows that decriminalisation is the world's best practice form of regulation for the sex industry from a public health perspective.

### **Failure of current LEPs from a public health perspective**

In the meantime local councils have been largely left to their own ill-informed devices when developing planning controls for their local sex industry. It is very important to note that all local councils are required to amend their LEPs to reflect the Standard LEP within the next couple of years.

For your information, we have recently researched planning provisions for sex industry premises within all 46 NSW local council Local Environment Plans (LEPs) 'made' by the Minister for Planning between 2008 and Sept 2011. Almost half of the LEPs restrict commercial *sex services premises* (SSP) to only industrial zones (21 of 46). SSP are sometimes permitted in commercial zones – primarily if no industrial land exists within the area being covered by the LEP.

Of the 46 comprehensive and Village | Town | City Centre or Limited Area LEPs gazetted since 2008 the majority (26) prohibit *home occupation (sex services)* (HOss) across all zones. Of those which do permit HOss, most do so only in limited zones compared to other home occupations and even then, only "with consent", i.e. with a Development Application (DA) (18 of 19).

Requiring a DA is the equivalent of a prohibition of HOss, as no sex worker will submit to a dangerous process that requires them to be publicly identified as a sex worker; especially as the DA process also would identify their home address. In addition, 12 of the 19 LEPs that require HOss to submit a DA also prohibit them in all residential zones. Some even go to the extreme of only permitting them in industrial zones (5 of 19).

It is vital to note that as the definition of *home occupation* within the "Model Provisions" for LEPs that existed prior to the introduction of the Standard LEP did not singularly discriminate against sex workers, most of these Councils previously permitted sex worker home occupations as *exempt developments* equal with all other home occupations. These Councils now prohibit or restrict HOss from residential zones and/or require them to submit to the DA process, even though there is no evidence or legitimate town planning rationale to justify this outright discrimination.

### **Rare examples of better practice continue to exist**

As far back as 2001 sex industry planning policies adopted by the former South Sydney City Council have been presented as representing better practice. For example, in the publication entitled “The Role of Local Government in the Promotion of Public Health Regulation<sup>2</sup>” South Sydney City Council policies are specifically presented as an example of better practice under the heading “Responding to Public Health Risks”.

More recently, the City of Sydney has proposed LEP changes that set the latest standards of better practice for regulating the industry. For example the City of Sydney does not consider it safe or appropriate to permit brothels in industrial zones. This approach is consistent with the Department of Planning in 2009 rescinding<sup>3</sup> a unilateral ministerial directive from 1995, which previously allowed councils to restrict ‘brothels’ to only be permitted industrial zones.

The City of Sydney Draft Sydney LEP2011 is also only the second LEP drafted since 2008 which has created provisions that specifically permit HOss as an exempt development. Councilors made this equitable decision on the basis of evidence that came to light during City of Sydney research into home based sex work in their local government area.

### **Breakdown in inter-departmental consultation over time**

We have evidence that previously the Health Department actively promoted its policy position regarding home based sex workers, which was that

*“the Health Department has consistently supported an “exempt development” approach, in keeping with the Intergovernmental Committee on AIDS recommendation that the sex industry should be dealt with as any analogous business<sup>4</sup>.”*

Another example of the Health Department previously being much more active in the addressing the regulation of home based sex workers is in a letter from Andrew Wilson, Deputy Director General Public Health and Chief Health Officer, to Ms Sue Holliday, Director General, Department of Urban Affairs and Planning dated 8 August, 2001. The letter is in relation to the public exhibition of the Burwood Council draft LEP No. 38, in which home based sex workers were to be prohibited in residential areas.

*“The NSW Health Department believes the draft appears appropriate in relation to public health aspects of responding to the sex industry, with the exception of the proposal to prohibit home occupation brothels in residential areas. While we understand that Councils seek to minimise activities which impact on the amenity of residential areas, I am advised that the above proposal may have the effect of creating barriers to access to health services and prevention programs for the home occupation sector of the sex industry.”*

The Chief Health Officer of the day then goes on to promote the South Sydney Council Sex Industry Policy as a policy that “*appears to strike an effective balance between local*

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<sup>2</sup> National Public Health Partnership - Endorsed by the Australian Health Ministers Advisory Council March 2002, Case Study 11, pp. 84,85

<sup>3</sup> Model local clauses for Standard Instrument LEPs – [Clause 6.6 Sex Services premises:](http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=X7ZhUb0-kY4%3d&tabid=250&language=en-US)  
<http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=X7ZhUb0-kY4%3d&tabid=250&language=en-US>

<sup>4</sup> Ross O'Donoghue, Director Health Protection, NSW Health letter to the Private Workers' Alliance, 3<sup>rd</sup> July, 2001

*government planning, public health and occupational health issues.*” He also acknowledges that the low prevalence of HIV and STIs amongst Australian sex workers remains one of the lowest in the world, largely due to outreach work and advocacy by special sex worker projects.

Contrast the earlier examples of consultation and feedback referred to above with a more recent example from 2011, when Marrickville Council requested feedback on its draft LEP from their Local Area Health Network (LAHN). In this draft LEP Marrickville Council introduced new provisions to restrict commercial SSP to industrial zones for the first time. Consultation documents produced by the Council also made it quite clear that they intended to also introduce a total prohibition of home based sex workers – specifically prohibiting them from operating across all zones within in the Marrickville LGA.

The only feedback they received from NSW Health was notification of a change of official name of the health service and its phone number. Not a single mention of the NSW Health policy position that Councils should treat home base sex workers analogous to other similar types of home occupation. No mention of the potential impacts on the health and safety of sex workers, their clients and the public health. No mention of supporting better practice public health policy by introducing evidence-based planning provisions that would complement the National and NSW HIV/STI strategies, rather than negate them.

In the absence of appropriate input from NSW Health, Marrickville went ahead and their new LEP banning home based sex workers has been gazetted.

**The lack of appropriate feedback from NSW Health to Marrickville Council provides remarkably clear evidence of the complete breakdown of the principles and practice of public health promotion between NSW Health, the Department of Planning and Local Councils regarding the sex industry.**

### **Re-engaging appropriate and informed feedback on LEPs**

We seek an urgent meeting with you to discuss ways to re-engage appropriate services funded by NSW Health to ensure that local councils are made fully aware of their responsibilities in the implementation of the National and State public health strategies. Late last year we met with NSW Health policy advisers to raise these matters.

We offer our extensive experience in the field of sex industry and sex industry legislative and regulatory reforms, along with our combined knowledge of the principles and practices of public health promotion. We would welcome an opportunity to meet with you in the interests of ensuring optimal the public health outcomes within the sex industry of NSW.

Yours sincerely,

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