

## **INQUIRY INTO THE REGULATION OF BROTHELS**

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The Chair  
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Dear Chair

## **INQUIRY INTO THE REGULATION OF BROTHELS**

Thank you for your correspondence dated 21 July 2015 in relation to an inquiry into the regulation of brothels in New South Wales.

Newcastle City Council submits the following information to the Inquiry set out in context to the issues identified for consideration in the Inquiry's 'Terms of Reference'.

### **Appropriate local and state government regulatory and compliance functions for brothels**

Enforcement of planning matters at local government level is usually reactive. In this regard, investigators apply consistent standards of investigation regardless of land-use, public pressure and media attention which can influence applications related to sex services premises. This prioritisation of work is not always proportionate to the actual risk or environmental impact generated by the activity.

Council's experience is similar to circumstances experienced by State Government Agencies such as NSW Police and NSW Health. As each local or state agency has different priority areas, it is sometimes difficult for an agency to commit the necessary resources in a coordinated manner to enable a whole of government response.

In the absence of further dedicated resources within each agency or organisation that focuses on sex service premises and the associated social issues and offending, it is likely that this disjointed approach will remain.

### **The current extent and nature of the brothel industry in New South Wales**

There are currently 14 authorised sex services premises operating in the Newcastle Local Government Area. These premises are predominantly located in commercial or industrial zones. Most of these premises were granted development consent in the late 1990s.

Newcastle City Council's records show that since 2010 a total of forty seven (47) complaints have been received by Council in respect of unlicensed brothels. However it should be noted that only twelve (12) of these requests have been received since October 2012.

Many complaints relate to allegations of sex services being provided in association with massage. It is not uncommon for Council to receive such complaints from operators of approved brothels.

It is expected that there will be a number of unlicensed brothels operating within Newcastle Local Government Area (LGA) that have not been brought to the attention of Council. Such premises are likely to be operated by criminal figures or organisations and few if any complaints are made due to fear of reprisal by the brothel operators.

The decline in complaint numbers could indicate that this was the case.

### **Current regulation of brothels in New South Wales**

Newcastle City Council's current developments controls for brothels and other sex industry land uses are contained in the provisions of:

- The Newcastle Local Environmental Plan, (LEP) 2012
- The Newcastle Development Control Plan, (DCP) 2012.

These controls are supplemented by existing State legislation in the Restricted Premises Act 1943, Brothels Legislation Amendment Act 2007 and the Environmental Planning and Assessment Act 1979.

The LEP provides that brothels, under the definition of sex services premises, are permitted with Council's development consent in B2-B5 commercial zones and IN1-IN3 industrial zones. The DCP incorporates minimum separation distances between individual sex services premises, and between sex services premises and residential occupancies as well as other nominated sensitive land uses. Restrictions also apply to sex services premises in respect of the maximum number of rooms (ie. seven) in which acts of prostitution can occur.

To minimise the potential for harm to the sex workers, a sex services premises cannot be located in a remote area or an area in which public transport or support services (eg. police, ambulance) are not conveniently to hand.

Under the provisions of the current LEP and DCP, home-based sex work defined as 'home occupation (sex services)' involving no more than two permanent residents of a dwelling are permitted with consent only in the B2 Local Centre zone and B4 Mixed Use zone. Home-based sex work involving only a single resident of a dwelling is considered to be exempt development under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) as the definition of a brothel under the *Environmental Planning and Assessment Act, 1979* excludes '*premises used or likely to be used for the purpose of prostitution by no more than one prostitute.*'

The provisions of the Newcastle DCP, 2012 provides for a consistent approach to the assessment of development applications for brothels.

It is considered that the introduction of an updated version of the planning guidelines prepared in 2004 by the Sex Services Premises Planning Advisory Panel would assist in providing a more consistent approach for sex services premises across local government in NSW.

However, it is acknowledged that local circumstances will still influence how some Councils consider the issue of sex services in their local government area.

### **Penalties and enforcement powers required to close illegal brothels**

Council has seen an increase in complaints relating to massage premises allegedly offering sexual services. Due to the similarity in nature of the businesses and minimal impacts created, investigation can be a lengthy process that is often impossible to resolve without resorting to engaging private enquiry agents to gather the level of evidence required.

Some Councils may feel politically constrained from utilising this method due to ethical questions and public perception (ie. '*Council paying for sex*').

The provision of sex services at massage premises is also identified as a breach of the *Summary Offences Act, 1988*. Liaison with NSW Police Force has often provided limited results due to their competing priorities. In this regard, it would be advantageous for a state government authority to undertake the often necessary intelligence based covert investigations facilitated by a formal legislative arrangement.

Council suggests the development of any monitoring and compliance protocol between NSW regulators must also include sex industry stakeholders through a collaborative interagency approach.

Potential difficulties in investigating allegations of prostitution or soliciting in massage parlours will be addressed in the 'Other related matters' section.

### **Options for reform including a scheme of registration or licensing system for authorised brothels**

In 2012, the Better Regulation Office encouraged Councils to contribute to an Issues paper relating to the Regulation of Brothels in NSW. One question put forward in that paper related to a registration system for sex service premises. It was articulated in the Issues Paper that owners and operators of sex services premises would be required to register. This seemed to suggest that some legislative power would be enacted to enable enforcement of a registration process and a requirement placed on a government agency to administer such a register to determine if a brothel is complying.

Unapproved businesses would be unlikely to draw attention to themselves via a registration process, regardless of any penalties involved if they considered it a possibility that other agencies, especially law enforcement, could be notified of their details.

Should legislation be introduced to compel owners and operators of brothels to register and participate in a licensing system, a compliance program detailing the regulatory framework should be established. This framework should consider time frames for registration or licensing, criteria to be met to enable a premises to qualify for registration or licencing and suitable offences and penalties should a person or premises fail to comply.

It is believed that legitimate owners or operators of existing sex service premises would participate in such a system. It is however likely such a system would have minimal impact or cooperation from any person operating an unauthorised sex service premises.

Such a system may provide opportunity for Councils to confirm those currently operating in their respective areas and provide opportunity to check newly identified premises for compliance with planning laws.

While licensing may see changes in management of current premises to persons '*deemed fit and proper*', this could also see a large number of persons displaced in the industry, resulting in an increase in illegal operations. Therefore, enforcement is likely to require additional resources for any agency or organisation tasked with administering such a licensing system.

Should such a system be considered it is believed that a State Agency would be best placed to manage the complex associated investigations. It is suggested that local government should provide support to that agency by way of advice in respect of any planning applications or permissions.

### **Options to maintain the high level of public health outcomes**

Council supports an inter-agency approach in dealing with matters involving the sex industry and has involved agencies such as the Sex Workers Outreach Project (SWOP) and NSW Department of Health where appropriate. Section 3.12 – 'Sex Industry establishments' of the Development Control Plan identifies the appropriate NSW Health and WorkCover Guidelines and refers to the NSW Department of Health Code of Practice for sex service premises.

The NSW Department of Health has previously indicated that planning controls and local government management of the sex industry should not create a barrier to effective public health policies and outcomes, particularly for vulnerable and marginalised groups.

Any possible reforms for the further regulation of sex services premises should enable the ongoing provision of sexual health services to the industry through non-regulatory mechanisms such as SWOP.

### **Residential amenity and the location of sex services premises**

Council already permits sex services premises in the local government area and applies a Development Control Plan that is based on best practice principles and has been developed in consultation with the community, sex industry representatives and other government agencies.

The majority of complaints received by Council in relation to authorised premises are based on moral grounds or from business competitors and do not identify residential amenity impacts.

Complaints received in relation to unauthorised sex services premises often originate from within the sex industry, either from a competitor or an ex-employee.

Complaints made by members of the public concerning suspected sex services premises operating in residential areas are investigated by Council. If Council is able to confirm a sex services premises is in operation, interdictory enforcement action can be initiated using existing legislation to negate the impact to residential amenity.

### **Any legislative changes required**

*The Summary Offences Act 1988* contains provisions at Section 18A making it an offence to advertise for prostitution. This section applies equally to authorised and unauthorised brothels and also individual sex workers or escorts. While it would be onerous to enforce these provisions on all sex workers, there are regulatory models in other jurisdictions which require all sex workers to acquire a licence. Any licence could have conditions relating to a requirement for regular health testing of individuals for sexually transmitted diseases as well as hepatitis or HIV.

Revisions to the current legislation in NSW could formally allow advertising for prostitution only where a relevant licence has been obtained. It is considered that such a regime could limit the ability of unauthorised brothels or sex service providers to advertise and thus their ability to operate.

### **Other related matters**

#### Difficulties associated with conducting investigations into sex service premises

A significant trend in recent years has been the proliferation of massage businesses and allegations that some of these businesses are offering sexual services.

Contemporary investigative techniques encounter significant difficulties in being able to glean the necessary evidence to prove the offence. In the absence of admissions from the person providing the service or willingness from the customer to provide a witness statement disclosing what activities occurred and being prepared to attend Court if required.

Some Councils have resorted to obtaining evidence of sexual services in these premises by using covert evidence gathered by a private investigator. The relevant offence is identified within Section 16 of the Summary Offences Act 1988. Council Officers are not empowered to take enforcement action under this Act and if sufficient evidence of an offence was obtained, the investigation would be directed to NSW Police.

Depending upon the location of the offence, some Police Local Area Commands may not have sufficient resources to investigate these offences or other investigations with a higher priority take precedence. It is not uncommon for these investigations to be returned to local government for resolution as a planning breach under the Environmental Planning and Assessment Act. Unfortunately the same evidentiary requirement applies and if insufficient evidence exists, the matter may remain unresolved.

Some sex service premises have anecdotally, been operated and frequented by persons who are engaged in criminal activity or have criminal associations. These premises have had links to organised crime, outlaw motor cycle gangs, been an avenue to launder money or engage in people trafficking or sexual servitude.

The frequency of these activities is unknown as local government does not have access to criminal intelligence that would reveal such activities.

Councils have limited investigative resources experienced in the management of such serious matters. It is unlikely that local government could identify such an illegal activity or the persons involved.

It is difficult to obtain evidence when a significant reliance is being placed upon those involved being prepared to cooperate with investigative agencies. Law enforcement unlike any other agency or organisation has the skills and frameworks already in place to manage such individuals / witnesses and the associated investigations.

Should the regulation of brothels remain solely the responsibility of local government it is suggested that the following points should be considered:

- Specialised training is required for Council planning investigators to enable them to properly operate in this complex and at times hostile environment.
- Improved interagency cooperation including the sharing of information and intelligence in respect of brothels.

In conclusion, the current model for the control of the location of the sex industry pursuant to the *Environmental Planning and Assessment Act 1979* is adequate for Newcastle in respect of authorised premises.

As detailed above, unauthorised premises prove to be a challenge for Councils. Local government is ill-equipped to deal with such premises especially if they are operated by a criminal figure or organisation.

It is respectfully suggested that NSW Police have a greater role in the investigation of such premises, with Councils providing support in respect of planning matters as required.

Should you require any further information, please contact Andrew Baxter, Manager Regulatory Services on 4[REDACTED]

Yours faithfully

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**Ken Gouldthorp**  
**GENERAL MANAGER**