

**Submission
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INQUIRY INTO THE REGULATION OF BROTHELS

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Regulation of Brothels in NSW Submission 2015

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We have extensively researched the regulation of sex services premises in New South Wales, across Australia and internationally (including, inter alia, England & Wales, Scotland, Netherlands, Sweden, France). On the basis of our research we believe that the current New South Wales model is one of the best regulatory responses to sex work anywhere in the world. It serves to protect residential amenity and brings with it all the advantages of legalisation – for workers, clients, operators and neighbours. By bringing sex services premises within the ambit of environmental and planning law rather than criminal law, workers and operators are given rights and responsibilities, being treated as legal subjects, and, as such, behave as legal subjects. This is in distinction to abolitionist or prohibitionist approaches which criminalise sex workers or their clients: these approaches, whilst well-intentioned, do not provide sufficient protection to participants in commercial sex, and often merely encourage prostitution to occur in clandestine sites where the potential for exploitation by third parties is often pronounced.

This said, there are some minor reforms that could be made to the existing system, including redefining home occupations (sex services) so they may be treated in the same way as home occupations. There is no evidence to suggest that the licensing of brothels will assist in regulation, and the proposed Scandinavian model is just a return to criminalisation of sex work under another label.

Protection of Residential Amenity

Evidence of impact on residential amenity

There has been a dearth of research on the effects of sex premises from a planning perspective in Australia. Political debate, legislative reforms, council planning and community discussions have not been supported by empirical research.

We have undertaken original research analysing the impact of sex services premises on residential amenity.

Aspects of our research were referred to in the Issues Paper. In summary, our research included:

- Phone surveys of 401 residents in NSW living near sex premises in NSW asking:
 - Did they know there was a sex service premise nearby?
 - If they did know, did they regard the sex service premise as having neutral, positive, or negative impacts upon the neighbourhood? How did the sex service premise compare with other businesses in the area? How did they find out about the sex service premise?
 - Had the resident taken part in submissions to the local council in development applications for the sex service premise?
- Analysis of 284 resident submissions to sex services premises planning processes.

- Analysis of Land and Environment Court cases regarding sex services premises.
- Analysis of secondary literature on the regulation of sex services premises.

The analysis of this research has been published in a series of international refereed publications which are attached to this submission. However, the primary results of our research can be summarised:¹

- Almost half of those surveyed were unaware that they lived nearby a sex service premise (44%; 173 out of 401), suggesting these premises are generally well-managed and discrete, partly due to planning guidelines concerning visibility and location.
- Of the remaining respondents (56%; 228 out of 401) who were aware of sex services premises, just over half (49%; 122 out of 228) stated that the business had no effect (either positive or negative) upon the local area. Within the remaining half nearly as many residents rated the overall impact positively (24%, 55 out of 228) as rated it negatively (27%, 62 out of 228).

Our research accordingly suggests that brothels have a neutral or positive effect on neighbourhoods in terms of amenity.

- We found that the majority of submissions to councils in planning processes were negative about the authorisation of a proposed brothel in the area.
- However, surveyed residents who had known about local sex premises for more than three years on average tended to perceive their effect in neutral terms, whereas in general, respondents with three years or less knowledge had a negative perception of impact.

Our research suggests that whilst members of the community might fear living near sex services premises, the lived reality is very different. There is a disjunction between the imagined fears of sex premises as inherently disorderly, compared with the lived experience of brothels as orderly businesses amongst those surveyed.

- There were differences in the survey results depending on where the residents lived.²
 - Parramatta City Council residents were much less likely to realise a sex premise was nearby (31%; 49 out of 159) compared with City of Sydney residents (75%; 179 out of 242). If they were aware of the nearby sex services premise, Parramatta City Council residents were much more likely than City of Sydney residents to state it negatively impacted on the community.

We have argued that the different council approaches to sex services premises can both reflect and reinforce community attitudes to the sex industry. Moreover, as councils have demonstrated a capacity to respond appropriately to residential and community attitudes, community attitudes towards sex premises have become more positive. In City of Sydney, sex services premises are regarded and regulated according to pragmatic planning principles – and community discussions about sex services premises have been shaped by these planning principles. In contrast, Parramatta City Council has openly expressed the desire to prohibit brothels from the area, reflecting and reinforcing negative community attitudes.³ There was also a difference according to local government area about *how* respondents found out about a nearby sex service premise:

¹ Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 130.

² See Crofts and Prior 'Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales' (2012) 14 *Flinders Law Journal* 329.

³ Ibid.

- There was no one single reason for the greater level of awareness of premises by residents in COS, they became aware as a result of notifications by council, talking with neighbours, observing people coming and going, visual appearance, and the historic character of the area. Resident awareness of premises in COS were most commonly the result of the residents own observation of the premise, stating they knew because of their 'fairly obvious ... appearance' that made them 'hard to miss', and visual identifiers like: 'a red door', 'a little red light outside the front' and the 'the explicit use of signage'.
- Within the PCC area the most common way in which residents reported that they became aware of the sex services premise near their homes was through talking to other people and through newspapers. Fewer were aware of the nearby business as a result of how it looked or other observable activities. The fact that the majority of residents within PCC had become aware of the business as a result of being notified meant that some 'knew there was sex premises around but did not know exactly where'.

The way residents found out in Parramatta supports the argument that sex premises have relatively neutral amenity impacts. Residents did not find out about a sex premise due to amenity impacts such as noise or nuisance, but because someone told them or through media.

Information about council treatment of sex premises

Our research supports the contention that some councils in NSW respond to sex services premises in a more restrictive way than other businesses with similar amenity impacts.⁴

- The majority of local councils have adopted the definition of 'brothel' as one sex worker or more. Local councils have then constructed a 'onesize fits all' approach to 'brothels' – usually informed by fears of the (potential) amenity impacts of the largest type of commercial brothel. The failure to differentiate between sex premises type is a failure to engage with sex premises in planning terms – that is, based on amenity impacts.

Local councils (and the state government) should differentiate between sex services premises types. The failure to do so means that the majority of sex premises are treated more restrictively than other businesses with similar impacts.

- In many local councils brothel operators have great difficulty in receiving council authorisation. Councils can develop highly restrictive principles – based on distance from 'sensitive uses' (e.g. 100 metres from a licensed premise (overturned by LEC); location in specific zones; parking requirements; disability access etc – which can mean that it would be impossible for a business to operate with authorisation within the local government area.

⁴ Crofts, P. (2003). "Not in my neighbourhood: Home business (sexual services) and council responses." Local Government Law Journal 9: 10-20, Crofts, P. (2007). "Brothels and Disorderly Acts." Public Space: The Journal of Law and Social Justice 1: 1-39, Crofts, P. (2010). "Brothels: Outlaws or Citizens?" International Journal of Law in Context 6(2): 151-166, Crofts, P. and J. Prior (2011). Oscillations in the Regulation of the sex industry in New South Wales, Australia: Disorderly or Pragmatic? Global Perspectives on Prostitution and Sex Trafficking: Africa, Asia, Middle East and Oceania. R. Dalla, L. Baker, J. DeFrain and C. Williamson. New York, Lexington: 257-276.

- This means that if operators wish to receive consent, they need to have the time and the money to appeal to the Land and Environment Court. Upon appeal to the LEC, many operators receive consent on planning grounds. In these cases, the LEC has focused on specific amenity impacts and compared sex premises with other businesses that have received council consent (eg parking requirements for restaurants and sex premises).

Appeals to the Land and Environment Court provide evidence of treatment by some councils of proposed brothels that is more restrictive than businesses with similar (or worse) amenity impacts (e.g. bars or clubs which can be associated with more late night noise, parking problems, littering and antisocial behaviour). The LEC has expressed concern about overly restrictive approaches to sex premises.

Justifications for treating sex premises differently from other businesses

The justification for treating sex premises differently from other businesses are primarily historical, that is, relating to the historic criminalisation of sex work and brothels. It has now been almost 20 years since sex services premises were first able to operate as lawful businesses. Our evidence of minimal amenity impacts by sex premises suggests that councils should not regulate sex premises more restrictively than other businesses with similar amenity impacts.

Should councils use only evidence-based approaches to regulate sex premises?

The current legislative approach to sex services premises places these types of businesses within the existing planning regime. The existing planning regime has specific procedural requirements in the development and application of planning regulations. In particular, on appeal to the LEC, the court has underlined the need for hard and fast evidence of detriment, rather than general statements of fear/negativity about sex premises. In that sense, the planning regime does encourage local councils to regulate sex premises based on evidence. However, until recently there has been an absence of evidence and guidance about best practice models. Our research has highlighted that brothels have minimal amenity impacts and can be appropriately sited within the community. Accordingly there needs to be guidance about best practice models and education about evidence of the effects of sex premises.

Sex Services Premises Planning Guidelines

Sex services premises planning guidelines should be incorporated into Government policy. Currently there is ambivalence in state legislation about how best to regulate sex premises. For example, the *Disorderly Houses Amendment Act 1995* permitted sex premises to be regulated like other businesses. However, the *Brothels Amendment Act* provided special powers to councils to regulate 'disorderly and unlawful' brothels, suggesting that lawfulness of sex premises is only ever contingent. The standard *LEP* retains the definition of brothel – which does not adhere to the Sex Services Premises Planning guidelines – but also allows for home occupations (sex services) premises – which does. However, the *LEP* specifically excludes home occupations (sex services) premises from other home occupations – which goes against evidence which suggests that most people do not know they are living near a home occupation (sex services) unless told about it by the sex worker.⁵

⁵ Crofts and Prior 'Home occupation or brothel' (2012) 30 *Urban Policy and Research* 127.

Standardised sex services planning guidelines would provide clear guidance to councils about best practice models. The government should also adopt the definitions proposed by the guidelines into the Standard LEP.

Advantages and disadvantages of requiring councils to permit sex services premises

Currently councils are already required to permit sex premises to operate in their local government area: they are not permitted to prohibit brothels. Requiring councils to permit sex premises in the area is advantageous because it avoids the NIMBYism whereby some councils might argue that brothels should not be permitted in their jurisdiction as those wanting to buy sex can simply go elsewhere – an approach that can ultimately prove overly restrictive and unreasonable.

Advantages and disadvantages of state-imposed restrictions on locations

The disadvantage of state imposed restriction on locations of sex premises is that it means that local populations are not able to determine what is appropriate for their area. Many local councils restrict brothels to industrial zones, but local councils like City of Sydney have successfully integrated sex premises into industrial, commercial, mixed and residential zones.

The state should explicitly identify home occupations (sex services) as permitted to operate in residential areas – and like other home occupations – without development consent.

The Nordic Model

The ‘Nordic model’, associated with Sweden, Norway and Iceland, is a way of reintroducing the criminalisation of sex-work. It removes the advantages associated with decriminalisation which include:

- Protection of sex workers
- Safe-guarding of public health
- Education and recognition of clients

Protection of sex workers

We argue that the decriminalisation and regulation of the sex industry assists in the protection of sex workers and reduces the likelihood of trafficking, something which has recently been recognised by Amnesty International (August 2015). This is because regarding sex work as a legal transaction rather than criminal act provides certain rights and responsibilities to sex workers and their clients:

- Individual workers are more able to turn to police if they are victims of criminal threats or acts – whereas otherwise it makes it more difficult to turn to the police.
- Similarly, business owners who are also subject to criminal threats or acts are able to call upon police for assistance. This has been noted in LEC cases, where the business operator has been able to tell police of potential threats.
- Clients can report any witnessed criminality or exploitation of sex workers without fear of arrest.

- Legalisation and regulation also means that workers are brought under the gambit of existing legislation that protects health and safety.
- Legalisation has also meant that brothel owners report to police if they hear of competitors who are operating with authorisation and/or offering unsafe sex. This assists in natural surveillance, where well-run businesses work with the police.

Policy discussions relating to sex work have tended to fixate on two spaces of sex work: the street and the brothel. Such preoccupation has arguably eclipsed discussion of the working environment where most sex is sold, namely, the private home. Redressing this omission, our research⁶ discusses the public health and safety implications of policies that fail to regulate or assist the 'hidden population' of sex workers, focusing on the experiences of home-based workers in Sydney, Australia. Research with service providers and HOSSP operators found⁷:

- Workers' well-being and safety - Significantly, working in or operating HOSSPs was identified by interviewees (sex workers) as one of the healthiest environments for sex work within the sex industry, offering 'increased control and freedom', 'increased financial independence', 'flexibility of work hours', 'personal autonomy', and 'increased self esteem', when compared to working in a large commercial sex industry premises.
- Impacts on locality - Interview responses with representatives of organizations that provided services to HOSSP workers also indicated that most neighbours and businesses were unaware of HOSSPs operating in their local area, and the City of Sydney's complaints records reveal a relatively small number of complaints against what they describe as 'Unauthorised Sex Industry Premises': between January 2008 to August 2009, only two of forty-five substantiated complaints against sex premises related to HOSSPs.

Given home occupation sex working excites so little controversy or comment, and is rarely even recognized by neighbouring residents, it appears that this is a form of working that has little potential to generate anti-sociality or cause public disturbance. As such, we suggest that there are good grounds for evolving policies which aim to minimize the health and safety risks faced by those who sell sex at home given the evidence suggests home-working is more flexible, less intrusive, more discreet, safer and potentially more rewarding than other modes of working.

While our conclusions about home-working in Sydney suggest it has many advantages over other forms of (managed) sex work, policy-makers need to be mindful that many of those who sell sex at home do so because it provides them with some anonymity and allows them to negotiate the stigma of sex working. Like planning approval, compulsory registration or licensing of home operations might prove unpopular among home-workers given dominant social attitudes remain censorious of prostitution: we thus conclude by arguing for a harm reduction and labour rights approach to be enshrined in planning and health policy,

⁶ P. Hubbard and J. Prior, Out of sight, out of mind? Prostitution policy and the health, well-being and safety of home-based sex workers *Critical Social Policy* (2013) 33: 140-159, J. Prior and A. G. Murray (2015) 'Housing Sex in the city: the placement of sex services beyond respectable domesticity. (Sub)urban Sexscapes: Geographies and Regulation of the Sex Industry'. P. Maginn and C. Steinmetz. London, Routledge: 101-116.

⁷ P. Hubbard and J. Prior, Out of sight, out of mind? Prostitution policy and the health, well-being and safety of home-based sex workers *Critical Social Policy* (2013) 33: 140-159, J. Prior and A. G. Murray (2015) 'Housing Sex in the city: the placement of sex services beyond respectable domesticity. (Sub)urban Sexscapes: Geographies and Regulation of the Sex Industry'. P. Maginn and C. Steinmetz. London, Routledge: 101-116.

something that would help shift dominant attitudes towards sex working, spreading the message that home-based sex work is not a social problem to be eradicated, but a viable form of working that needs to be supported given the potential dangers and downsides of working in other spaces of sex work.

Crime and sex work

There is no clear evidence that crime is more prevalent in the sex industry than other businesses. Crime statistics from the NSW Bureau and Crime Statistics do not demonstrate any correlation between sex services premises and crime. Crofts has appeared as an expert witness in LEC cases highlighting the lack of evidence to support claims that brothels are criminogenic.

We would describe the notion that sex premises are criminogenic as essentially a problem of law. That is, historically brothels and sex work were illegal and thus criminal. Decriminalization has removed the criminogenic element of sex premises, and allowed them to operate as legal businesses where criminality is not tolerated.

Legislative and regulatory reforms based on a presumption of sex premises as inherently criminogenic are wrong and likely to do more harm than good.

Safeguarding public health

The process of decriminalisation of sex work and sex premises has meant that NSW has one of the lowest rates of STIs amongst sex workers in the world. A legal industry assists health workers to communicate with sex workers and owners of sex premises.

Possible Reform Options

Option 1: Improve the current regulatory system

Opportunities to improve planning across local government

Placing sex premises within the existing planning regime was an excellent idea. This has meant that sex premises and their workers are now included within an existing legal regime that is concerned with amenity impacts, but also brings with it a range of other regulatory aspects including worker health and safety. This is arguably more effective than the forms of licensing evident in some other jurisdictions as it judges the suitability of the premise for sex work rather than making any determination based on moral judgement of the applicant or worker.

There are several aspects that could improve planning across local government.

1. The standard LEP should be reformed to include home occupations (sex services) with other home occupations. This would mean that home occupations could operate without council authorisation.

More than 40% of the industry works from home. Currently, the legal position of home occupations (sex services) is very ambiguous, and varies greatly from local government to local government area. There have been no prosecutions of persons working from home. Treating home occupations (sex services) premises differently from other home occupations thus has no practical effect except for the safety of the worker.

Research has shown that neighbours are very unlikely to realise that they live next to a home occupation (sex service) unless the worker tells them.⁸ These businesses are discrete and quiet. They depend on discretion to attract the type of clients that use home occupations (rather than commercial brothels). In the rare event that home occupations do disturb amenity, there are existing legislative and regulatory regimes that can be depended upon the stop amenity disturbances.

By treating home occupations (sex premises) like any other home occupation, 40% of the industry would automatically be included under the law. This would give workers the advantages and duties associated with legality.

This would resolve the issue discussed in the *Issues Backgrounder* by Duff in 'Show me more sex'. This business was run from the home by one sex-worker. Rather than regarding this business as a brothel, it could be regarded as a home occupation, and as such, able to operate without development consent provided the business did not have negative amenity impacts. Duff asserts no other negative associated with the home occupation except that it had operated within 50 metres of a high school. In England, sex work is illegal *except* in the home – based on assumptions of privacy and a 'man's home is his castle'. We would recommend that home occupations (sex services) be treated automatically like any other home occupation.

2. The standard LEP should be amended to adhere to the Sex Services Premises Planning Guidelines and the basic definition of 'brothel' should be removed. This would mean that councils had to differentiate between business proposals based on specific amenity impacts.
3. Councils and state politicians should be given materials highlighting the minimal amenity impacts of sex services, the positive impacts of legalisation upon health and safety.

Enforcement of the sex services industry

Different local government areas have adopted very different approaches to sex premises. We have argued that where councils perceive brothels as inherently unlawful and disorderly, they have tended to rely heavily on a policing approach to sex premises, and have invested heavily in LEC cases (which have been unsuccessful). In contrast, councils that perceive sex premises as potentially lawful businesses tend to rely upon a planning model that focuses on amenity.⁹ To a certain extent, the different approaches are self-fulfilling. In areas where sex premises are perceived as inherently unlawful, it is very difficult for them to receive authorisation, and even if they do receive authorisation, they are then subject to a high level of inspection from council. In contrast, in councils where they are perceived as lawful businesses, they tend to operate consistent with other lawful businesses.

We would cast this primarily as a question of resources. It is very expensive and time-consuming to continue to attempt to exclude sex premises from local government areas. Rather, the council should consider appropriate conditions under which a sex premise should operate.

We would also question whether the heavy reliance upon police in some local government areas is necessary or appropriate. We believe that many police regard heavy regulation of sex premises as unnecessary.

⁸ Ibid.

⁹ Crofts, Hubbard and Prior 'Policing, planning and sex: governing bodies, spatially' (2013) *ANZ Journal of Criminology* 46, 51-69.

Improvement of compliance and enforcement activities

The difficulty of commenting upon this is the variation across councils. We would argue that the approach adopted by Sydney City of relying upon existing planning regulations and powers has worked. In addition, the LEC has tended to rely on structural models to assist with compliance, rather than management plans – this would include double glazing on windows to ensure minimal noise.

There needs to be caution here as there can be a tendency in some local councils to conflate all breaches of regulation and legislation into one category of illegality. Thus there is no differentiation between breaches of minor regulations and criminality. This is used to suggest that sex premises have a tendency to be non-compliant, when in fact, breaches that are identified are minor.

A protocol about roles and responsibilities may be effective to restrict over-policing of sex premises that have received authorisation but have been subject to many council inspections.

Improved working together by regulators and the sex industry

Sydney City has adopted a model that appears to work. This is based on an acceptance of the idea that the sex industry is legal and a desire to be informed about, and embrace, best practice models.

Registration system

A registration system appears to add another layer of bureaucracy to the system without adding value. The planning system provides a clever system of checks and balances. The government should instead invest in encouraging local councils to work with sex premises within the existing planning system. The planning system provides protection for workers, reduces amenity impacts, and also brings in health and safety requirements.

Licensing System

We are strongly opposed to a licensing system. See our arguments on this matter in full in Crofts (2012) 'The Proposed Licensing of Brothels in New South Wales' in 17 *Local Government Law Journal* 3-10.

There is no evidence that brothels are criminogenic or inherently corruptive, nor any evidence that a licensing system would effectively reduce or prevent crime and corruption. Concerns associated with the sex industry such as amenity impacts and health and safety concerns are currently effectively regulated under the current planning regime. The Qld and Victorian model demonstrate the problems associated with a licensing regime. In both Queensland and Victoria there is a large unlicensed industry. For example, in Queensland it is recognised that there is a 'thriving illegal prostitution sector',¹⁰ and it is estimated that licensed brothels make up only 10% of the state's sex-work industry.¹¹ If illegality is assumed to be the problem, then in both Victoria and Queensland licensing has not resolved these problems. Rather, licensing has pushed problems of illegality aside, resulting in a two-tiered industry, of a heavily regulated legal industry and a thriving illegal industry.

¹⁰ Crime and Misconduct Commission, *Regulating Prostitution: A Follow-up Review of the Prostitution Act 1999* (2011) Qld Government, 19.

¹¹ The University of Queensland TC Beirne School of Law Human Trafficking Working Group, *Ten Years of Prostitution Regulation in Queensland* (2009).

A licensing authority is unlikely to improve the regulation of brothels in NSW in terms of illegality, amenity and health and safety given most of these issues can be addressed through development and planning control. Upon analysis, there is no evidence that a Licensing Authority would add value to the existing planning regime. The current planning regime delivers in terms of reduced amenity impacts and improved occupational health and safety. NSW currently has one of the best regimes for regulating brothels. The current regulatory regime for businesses works. There is nothing inherently criminal or corrupting about the sex industry, but where criminality occurs it can be dealt with reactively through policing: licensing adds no further guarantees beyond those offered by the planning system.

Selected relevant publications

- Crofts, P. (2012) 'The proposed licensing of brothels in New South Wales', *Local Government Law Journal*, vol. 17, pp. 3-10.
- Crofts, P. (2010) "Brothels: Outlaws or Citizens?" *International Journal of Law in Context* 6(2): 151-166.
- Crofts, P. (2007) "Brothels and Disorderly Acts." *Public Space: The Journal of Law and Social Justice* 1: 1-39.
- Crofts, P. (2007) 'Sex in the Dark: The Brothels Legislation Amendment Act 2007 (NSW)', *Current Issues in Criminal Justice*, vol. 19, no. 2, pp. 183-196.
- Crofts, P. (2003) "Not in my neighbourhood: Home business (sexual services) and council responses." *Local Government Law Journal* 9: 10-20.
- Crofts, P. & Brents, B. (2015) 'Legal Landscapes in Erotic Cities: Comparing legal prostitution in New South Wales and Nevada' in Maginn, P. & Steinmetz, C. (eds), *(Sub)urban Sexscapes: Geographies and regulation of the sex industry*, Routledge, Oxon New York, pp. 219-240.
- Crofts, P. & Prior, J. (2012) 'Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales', *Flinders Law Journal*, vol. 14, no. 2, pp. 329-357.
- Crofts, P. and J. Prior (2011) Oscillations in the Regulation of the sex industry in New South Wales, Australia: Disorderly or Pragmatic? Global Perspectives on Prostitution and Sex Trafficking: Africa, Asia, Middle East and Oceania. R. Dalla, L. Baker, J. DeFrain and C. Williamson. New York, Lexington: 257-276.
- Crofts, P. & Prior, J. (2014) 'Regulation of the Sex Industry: Assumptions of Offence, Awareness and Impacts on Safety and Amenity' in Sagade, J., Jivan, V. & Forster, C. (eds), *Feminism in the Subcontinent and Beyond*, Eastern Book Company, Lucknow, pp. 383-398.
- Crofts, P. Hubbard, P. & Prior, J. 'Policing, planning and sex: governing bodies, spatially' (2013) ANZ Journal of Criminology 46, 51-69
- Crofts, P., Maher, J., Pickering, S. & Prior, J.H. (2012) 'Ambivalent Regulation: The Sexual Services Industries in NSW and Victoria - Sex Work as Work, or as Special Category?', *Current Issues in Criminal Justice*, vol. 23, no. 3, pp. 393-412.
- Hubbard, P. (2006). Out of touch and out of time? The contemporary policing of sex work. In O'Neill, M. and Sanders, T. (eds) *Sex Work Now*, London, Willan..
- Hubbard, P., Boydell, S., Crofts, P., Prior, J., & Searle, G. (2013). Noxious neighbours? Interrogating the impacts of sex premises in residential areas. *Environment and Planning A*, 45(1), 126-141
- Hubbard, P., Matthews, R., & Scoular, J. (2008). Regulating sex work in the EU: prostitute women and the new spaces of exclusion. *Gender, Place and Culture*, 15(2), 137-152..

- Hubbard, P. & J. Prior, Out of sight, out of mind? Prostitution policy and the health, well-being and safety of home-based sex workers *Critical Social Policy* (2013) 33: 140-159
- Prior, J. & Crofts, P. (2011), 'Queerying urban governance: the emergence of sex industry premises into the planned city' in Doan, P. (ed), *Queerying Planning*, Ashgate Publishing Ltd, New York, pp. 185-208.
- Prior, J. & Crofts, P. (2012) 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use', *New Zealand Geographer*, vol. 68, no. 2, pp. 130-140
- Prior, J., Crofts, P. & Hubbard, P. (2013) 'Planning, Law, and Sexuality: Hiding Immorality in Plain View', *Geographical Research*, vol. 51, no. 4, pp. 354-363.
- Prior, J. & Crofts, P. (2014) 'Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity', *Social Policy and Society*, pp. 1-10.
- Prior, J. & Murray, A. G. (2015) 'Housing Sex in the city: the placement of sex services beyond respectable domesticity. (Sub)urban Sexscapes: Geographies and Regulation of the Sex Industry. P. Maginn and C. Steinmetz. London, Routledge: 101-116

Policing, planning and sex: Governing bodies, spatially

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Abstract

Literatures on the regulation of conduct have tended to focus on the role of policing and the enforcement of criminal law. This paper instead emphasizes the importance of planning in shaping conduct, using the example of how planning shapes sexual conduct to demonstrate that planning can, in different times and places, exercise police-type powers. We illustrate this by analysing the regulation of brothels in Sydney and Parramatta, NSW, Australia, providing a case study of spaces of sexuality that historically were constructed and regulated as criminal, but have since become lawful. This paper examines the ways in which these transitions in law have been differently expressed and accomplished through local planning enforcement. In making such arguments, the paper emphasizes not only the potential for planners to act like police, but also the capacity of planning to supplant policing as a key technique of governmentality.

Keywords

brothels, local government, planning, policing, regulation

Introduction

Policing has long been the subject of sustained criminological scrutiny, with increasing attention given to policing's role in producing gender, age, class and ethnic norms (see Reiner, 2000). In this sense, critical criminology considers policing as an enforcer of social order as much as a mechanism for eradicating crime. However, with a few honourable exceptions (e.g. Millie, 2008; Room, 2004; Valverde and Cirak, 2003), there has

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been little criminological analysis of planning regulators, which on the surface is explicable given that planning is primarily concerned with the civil sphere, whilst criminology focuses on the criminal sphere. Yet given that critical and cultural criminology has broadened the traditional interests of criminology, extending notions of offending, offences and offenders (Anthony and Cunneen, 2008: 3), in this paper we argue for a focus on planning as a means of enforcing social and behavioural norms through the control of land use.

In this paper, we alight on planning as a technique of governance, albeit one that regulates people via the regulation of land use (Foucault, 1991, see also Philo, 1992 on spatial governmentality). From its 19th-century origins, the ultimate aim of town and country planning was to order and regulate the use of land to secure the physical, economic and social efficiency, health and well-being of the population. Planning itself was an expression of the modern fantasy that society could control the worst aspects of industrialization and urbanization by identifying potential nuisances and segregating them from other land uses via the exercise of judgements about what properly belongs where (Blomley, 2010; Sibley, 1995). This is an exercise of spatial governmentality which is ultimately about the production of particular bodies and identities, with planning underpinned by ideas of environmental determinism (or at the very least, possibilism), which suggests that the management of space has the capacity to affect behaviour. Planning after all was introduced at the bequest of reformers concerned with the moral and physical health of the populace, and based on an understanding that the imposition of spatial order was about much more than aesthetic improvement and civic beautification: it was also about a biopolitics through which the problems of the governed were diagnosed and 'solved' (Rose, 2001).

Planning is thus an appropriate subject of criminological analysis because of the complex intersection of planning and policing: in many senses, the powers of planners over land use represent an *extension* of police power, being justified in terms of the health, safety and well-being of citizens. For some planning theorists, this represents the 'dark side' of planning, given it inevitably involves an entanglement of reforming rationalities with practices of social control (Yiftachel, 1998). Hence, and following Gill's (2002) argument that policing should be viewed as part of a spectrum of enforcement, we insist that the policing and planning nexus is not solely a unidirectional expansion of policing and social control into the civil sphere: given this entanglement, the relationship of planning and policing is more complex than this, with planning retaining the capacity to change and challenge social norms at a local level through the exercise of situated discretion (Valverde, 2011).

In this paper we explore the intersections of planning and policing via the example of the regulation of sexuality. There are two central rationales for this. The first is that there is a tendency in much of the literature on the governance and regulation of sexuality to focus on the role of policing and the deployment of the criminal law as it pertains to sexual conduct (Colter et al., 1996). In this paper we emphasize that planning can contribute to policing, take on a policing role, and augment policing powers as they pertain to sexual conduct. Second, by analysing the regulation of brothels in New South Wales (NSW), Australia, we provide a case study of spaces of sexual conduct that historically were constructed and regulated as criminal, but have since become lawful. Noting the different ways that these spaces have been regulated in two different municipalities (the

City of Sydney and Parramatta), our paper argues that planners have the ability to shape the 'conduct of conduct' in markedly different ways, with the realms of planning and policing overlapping in significant ways to produce different regulatory landscapes at the urban level.

Sexuality as object of regulation

This paper contributes to the understanding of both policing and planning as techniques of governance via an analysis of their ability to shape sexual conduct. Planning and policing are both viewed here as strategies for shaping the 'conduct of conduct', and hence implicated in the exercise of biopower that ultimately shapes the anatomo-politics of sex itself (Foucault, 1991, 1992). Here, both planning and policing must be viewed as working alongside other 'regimes of practice' – legal, medical, juridical, religious – which make sexuality visible and coherent, making clear 'which... [sexualities] are virtuous and useful and... which will be penalised through governance' (Kerkin, 2004: 185). Since the 1970s, critical sexologists have argued that these practices have privileged a very small portion of human sexuality that is seen as sanctified, natural, safe, normal, healthy, mature, profitable, legal or politically correct, noting that in most cultures this is taken to be synonymous with heterosexual, coupled, monogamous relationships (Foucault, 1990; Rubin, 1993; Warner, 1995).

As noted above, in contrast to policing, little has been said about planning's role in shaping sexual conduct. However, if planning is conceived as a technique of governing conduct through a management of space (Valverde, 2011), one can easily conceive of planning as creating and maintaining particular sexual norms within a given space or territory (see especially Brown, 2009). These techniques are inevitably multi-scalar, linking the national apparatus of the state to local mappings and interventions via a politics which is not determined by the nation-state but allows for dispersed power. Hence, at the level of the urban, it is evident that planning and policing can operate in paradoxical ways that are empowering as much as repressive (Frisch, 2002). Indeed, the ways planning deploys governance over sexuality varies from attempts to eliminate particular sexualities from urban communities via forms of incarceration and/or exclusion (e.g. Hubbard, 2004; Legg, 2008), through to assorted attempts to manage sexualities and sexual institutions through countless, often competing, local strategies of persuasion, inducement, management, incitement, motivation and encouragement which link the sexual conduct of individuals to the 'rational' use of land (Brown, 2009). The ability of planning authorities to deploy these strategies depends on a complex assemblage of diverse mechanisms – zoning, development control, building regulation and so on – which allow the decisions and actions of individuals, groups, organizations and populations to be understood and regulated in relation to these tactics.

Over recent years scholarship has hence begun to explore how mechanisms such as zoning (Anacker, 2011; Frisch, 2002; Hubbard, 2001), licensing (Hubbard et al., 2009; Valverde and Cirak, 2003), preservation (Forsyth, 2001) and public health regulation (Brown, 2008) are used to govern sexuality through the organization of city space. Here, an important focus has been the way that these procedures can combine to determine the placement of sex industry premises (Crofts, 2003, 2006; Cusack and Prior, 2010; Hubbard, 2004; Hubbard et al., 2009; Papayanis, 2000; Prior, 2008a, 2009; Ryder,

2004). Such studies might at first glance have little in common with studies of the ways that policing seeks to control sexuality through the surveillance and punishment of those pursuing illegal practices: whilst police are concerned with people, planning is, in contrast, concerned with place or land-use. However, it is apparent that this distinction veils some key mutualities. For example, if planning defines a particular land use as illegal, this will have major implications for the way the people in it are subject to surveillance, as well as shaping the rights of police to enter those premises (Prior, 2009). Conversely, if a practice is illegal in the eyes of the law, this tends to undermine its claim to occupy space legally, or have space allotted for it within the spatial imaginaries deployed by planners (Prior and Crofts, 2012).

For the purposes of this paper we are thus concerned with the intersections of, and differences between, planning and policing. Both planning and policing concern the 'conduct of conduct'. Both attempt to impose order on the chaos of life, to classify and organize behaviour (or things), to organize the environment and eliminate danger through the exercise of particular techniques of governance. Yet there are obviously key differences. Policing, for instance, is concerned with unauthorized acts or omissions that violate the law and are therefore subject to criminal prosecution and criminal sanction. The police constitute a legitimized state apparatus that has the power to enforce the laws of the land by coercive methods if necessary (Reiner, 1992b). Disorder accordingly has particular resonance for criminal law given it is a system of order, with crimes constituting breaches of that system. Crime and disorder are so closely intertwined that the terms are frequently conflated. Indeed, the lexicon of crime and disorder – violations, breaches, transgressions, offences – suggests that policing concerns the imposition of sanctions on those who breach that order. Thus it can be argued that the primary focus of the traditional policing role has been upon disorderly or criminal subjects, particularly individuals. From this perspective, the *raison d'être* of the police is the reduction of disorder or crime.

It can thus be suggested that whilst the role of police can be much wider, a conventional perception of the police role centres on crime fighting – that is, policing as *reactive* to perceived disorder (McCulloch, 2008). In contrast, planning as it has traditionally been conceived is forward-looking, and reformist, seeking to manage land in accordance with a vision of the ideal city. The key assumption of planning is that it is possible and desirable to impose order in advance by suggesting where specific land uses and activities should occur. Thus, while policing can be regarded as primarily reactive and responsive to disorder, planning can be seen as proactive – communicating, organizing and regulating a *vision* of order by predicting possible disorders to come (Valverde, 2011).

However, these broad summaries of the differences between policing and planning can – and have – been criticized. Modern police organizations perform many different functions that include enforcement roles in civil society (Tomkins, 2004–2005). Police increasingly participate in civil society (Waddington, 1999). Police are not solely reactive, but have become increasingly proactive, seeking to avoid disorder rather than simply react to its occurrence (Reiner, 2000), engaging in particular types of risk management (Stenson and Sullivan, 2001). Far from reacting only to disorder, policing can be regarded as order maintenance, that is, controlling the streets, reproducing social order, controlling street economies, recreations and people (Dixon, 1997). By the same token, we must also acknowledge that planning is not only forward looking, but

takes a role in reactively regulating environments that do not conform to prescribed building codes or zoning requirements (Blomley, 2010). Indeed, Valverde (2011) has historicized and problematized contemporary conceptions of planning as primarily prospective, noting the relevance of nuisance as a *reactive* organizing logic underlying planning. Accordingly a reactive element is integral to planning. Moreover, Foucault (1992) has written of the broad 18th- and early 19th-century conceptions of 'police' as a broad form of urban governance rather than one narrowly concerned with 'crime'. Indeed, 18th- and 19th-century reformers such as Jeremy Bentham and Edwin Chadwick certainly envisaged 'police' as involved in a broad field of urban regulation – much of which overlapped with planning (Finnane, 1994; Pasquino, 1991; Wilson, 2006).

Policing and planning are then both instrumental in the expression and maintenance of a prevailing order. As such, the enforcement of bourgeois morality and decency has been achieved through the police, via the management of the 'dangerous' and 'disreputable' poor who threatened the quality of life and economic advancement of the 'respectable' (Finnane, 1994; Scruton, 1985). The same arguments can be made in the expression and organization of order by and through planning, albeit through a regulation of people through the management of land use. Yet policing is also inherently spatial, with the police seeking to regulate behaviour through forms of territorial control in which the city is reduced to a space of knowable places (Herbert, 1997). Both planning and policing are hence implicated in the making of 'moral geographies' (Philo, 1992) through the exercise of discretionary powers that determine what is permissible where – noting that this can only be established situationally.

Yet perhaps the most startling commonality between police and planning is the nature of the discretionary powers which they are able to deploy. For example, Chapter 8 of the Local Government Act 1993 (NSW) specifies the enforcement powers of local councils in 12 sections, including powers of entry (s. 191), inspections and investigations (s. 192), use of force (s. 194) and emergency entrance (s. 195). The intersection of policing powers and local government powers is highlighted by section 201 of the Australian Local Government Act 1993, which specifies that an application for a search warrant has to satisfy the Law Enforcement and Police Powers Act 2002. This highlights that land use control has been empowered by the legal concept of police power, with the institutional authority of planners to control people and their environments drawing part of its inspiration from the police power of the state.

The planning and policing of brothels

The legislation regulating paid sex in NSW has shifted away from the criminal sphere toward the planning sphere. While this transition is, as yet, incomplete (Crofts, 2010; Crofts and Prior, 2011), the contemporary regulation of brothels provides a case study of subjects (that is sex-workers, clients, owners and brothels) that have transitioned from being criminal to potentially lawful at the symbolic level of legislative reform. Yet what is significant here is that the legal status of prostitution per se has not shifted – rather it is the legality of selling sex in different spaces. Since the Disorderly Houses Amendment Act 1995, sex industry premises have been permitted to operate as legitimate businesses. They are regulated by local councils under the Environmental Planning and Assessment

Act 1979 (Crofts, 2006), with councils not permitted to ban sex industry premises from their local area (Department of Planning, 1996). This means that planners can exercise discretion within the law to determine the appropriateness of brothels in different locales, enforcing a veritable moral geography which determines where sex may be sold (Hubbard, 2004).

In light of the legislative transition from the deployment of criminal law to environmental and land use law, it would be expected that the modes of enforcement would similarly shift from policing to planning. However, the relationship between planning and policing remains complex and cannot be easily characterized as having undergone this shift. Gill (2002) has persuasively argued that the range of possible enforcement responses by police and regulators will be influenced in part by where the business exists on an illegal/legal spectrum. We argue that whether or not a local council expresses a perception of a land-use as inherently legal or illegal is a key shaper of whether planning or policing enforcement regimes are applied. Here we are drawing upon the notion of a policing enforcement approach as primarily reactive, whilst a planning enforcement approach is primarily proactive: both approaches are available within the repertoire of powers accorded to local governments.

We consider case studies of the regulation of brothels in two local councils in New South Wales to demonstrate the central and discretionary role of planning in constituting roles for police, and to stress the overlap between these different 'regimes of practice'. The first, Parramatta City Council, was selected because it is an example of an approach that regards brothels as inherently disorderly despite legislative reforms, thus encouraging the deployment of planning powers which are akin to police-type powers (being reactive and punitive). The second council, Sydney City, is examined because it is widely regarded as a best practice model in the regulation of sex services premises, proactively determining the appropriate location for sex premises (Brothels Taskforce, 2001). We hence argue that Sydney City relies primarily on planning and a proactive imposition of order in its regulation of brothels.

Excluding brothels from Parramatta

Parramatta City Council is a largely suburban area to the west of Sydney. Despite the state-wide legalization of brothels, there is still a lingering perception of brothels in Parramatta as disorderly (Crofts, 2007a) with the council stating in 2011 that brothels would be banned from the entire local government area (Lim, 2011). Prior to this, the conception of brothels as disorderly was expressed in highly restrictive planning policies that made it very difficult to receive planning consent, further confirming the perception of disorder. For example, Parramatta restricted brothels to industrial and commercial zones, and imposed distance restrictions of 200 metres from 'sensitive uses', defined broadly to include 'licensed premises being a hotel, public bar, nightclub or the like' (Parramatta DCP 2009, 5.1, s.3). This meant that there were very few buildings in the Parramatta LGA that would be able to operate as brothels with council authorization. This restriction of brothels to industrial areas created security problems at night, when industrial zones tend to be particularly isolated, poorly serviced and with little or no public transport. In restricting brothels to these 'dangerous' zones, the Council then had a basis to claim they are unsafe and they should be refused (*Huang v Parramatta City Council*).

Parramatta has thus developed restrictive policies that are strictly applied, with most brothel applications for development (deemed) refused (*Boers v Parramatta City Council*, 2010; *Davis v Parramatta City Council*, 2005; *Huang v Parramatta City Council*, 2009; *Wei v Parramatta City Council*, 2008, 2010). This means that in order to achieve council authorization the brothel proprietor must invest time and money in an appeal to the Land and Environment Court (LEC). If a proprietor appeals, then the LEC tends to apply planning controls consistent with the Environmental Planning and Assessment Act. The focus of the court is on potential amenity impacts of a business, and morality is irrelevant. The LEC tends to require hard and fast evidence of detriment, and in the absence of this, will not apply overly restrictive policies. For example, in *Davis v Parramatta City Council* (2005) the LEC noted that the council had imposed parking requirements on a proposed brothel development, whilst a nearby restaurant had not needed to provide parking. It was accepted by the Court that like the restaurant customers, clients could use the nearby public transport, and also that brothel clients tend to park away from brothels. Accordingly, the LEC overturned the parking requirements and approved the brothel. However, the LEC has tended to accept zone restrictions to industrial areas, and in turn accepted council concerns about the safety of these locations for brothels. In these cases, the LEC has imposed strict security requirements, such as CCTV and security guards, that are very expensive for the operators to meet (*Huang v Parramatta City Council*, 2009).

These types of decisions by the LEC highlight that local councils do not have complete discretion within the law to determine how brothels are regulated. Nevertheless, in Parramatta it is very difficult, expensive and time consuming to receive development consent for a brothel. Moreover, the period of consent is only for two years, after which time the operator must apply again for authorization (Parramatta Development Control Plan, 2009, 4). This reduces the number of applicants and increases the likelihood of these types of premises operating without consent – confirming council assumptions of illegality. This regard of brothels as disorderly by Parramatta City Council in turn shapes their enforcement practices, rendering a policing response appropriate and necessary. Not only does Parramatta City Council actively pursue unauthorized or ‘illegal’ brothels, but once authorization for a brothel has been granted, the premises continue to be policed through the agents and powers of planning as though it is inherently disorderly. Parramatta City Council has adopted an enforcement approach to brothels in which local council powers at times equal or even exceed those of the police, at the same time that they augment police powers beyond the restrictions of the criminal justice system.

One of the difficulties in writing this paper has been establishing evidence of planners using police-like powers. This lack of evidence in itself contributes to our argument. Indeed, while there is a body of criminological literature criticizing the limited reporting of the exercise of police powers (Dixon, 1999), police have increasingly been called to account and required to provide information about the treatment of suspects. In contrast, no such effort to require the reporting of the exercise of local government powers has been made in NSW. The lack of records, systems and protections imposed on planning demonstrates the need for critical analysis given the potential for planning powers to be exercised in arbitrary and discretionary ways that produce prejudicial outcomes (see Hubbard et al., 2009). In order to establish this policing approach to

the regulation of brothels, we draw upon a range of sources including the Annual Reports of Parramatta City Council, anecdotal information from the Sex Workers Outreach Project (SWOP), and evidence presented to the LEC in *Huang* (2009) by the Strategic Crime and Corruption Officer of Parramatta City Council. *Huang* (2009) was an appeal by to the Land and Environment Court against a council refusal of development consent for a proposed brothel.

The Parramatta City Council Annual Reports¹ state the number of (recorded) brothel raids and closures. In 2007/2008, the council undertook 'more than 50 inspections of brothels and massage parlours (both unauthorised and approved)' (2007/2008: 101). In 2008/2009, 105 inspections took place (2008/2009: 99). In the 2008 quarterly review the council stated its aim to inspect all brothels on a six-monthly basis. There were 30 identified in the area, and 29 had been inspected, resulting in three closures (page 44 of 74). Anecdotally, there are indications that the inspections were more frequent: in court the Strategic Crime Officer claimed that 'raids' were fortnightly (*Huang v Parramatta City Council*, 2009). Similarly, SWOP received anecdotal information that in 2009 two brothels were raided twice a month, whilst one brothel stated there had been three raids in two months.

These council inspections were facilitated by the Brothels Legislation Amendment Act 2007. This legislation expanded the powers of councils and the LEC to close 'disorderly and unlawful brothels'. Under this legislation, councils and the LEC can order water, electricity and/or gas to be cut off to premises that have failed to comply with a closure order. Parramatta City Council states that it was the first council to receive a utilities order from the local court under this legislation, and notes that the more than 50 inspections of sex services premises resulted in four utilities orders being issued by Parramatta City Council (2007/2008: 101). The notion of brothels as inherently disorderly is confirmed by the Brothels Legislation Amendment Act 1995, which explicitly excludes development applications from the limited circumstances in which the LEC may grant adjournments to brothel owners, expressing the doubt that brothels would ever wish, or be able, to operate lawfully (Crofts, 2007b).

These legislative reforms not only demonstrate the perception of brothels as inherently unlawful, but also highlight a tendency to conflate 'disorderly' and 'unlawful' as one and the same. The legislation is based on the premise that even if brothels receive authorization by councils, that legitimacy is always contingent and suspect. In turn, the Council has demonstrated a tendency to subsume brothels into the category of 'illegal' or 'unlawful', whether authorized or not. For example, the Mayor promises inspections of 'unlicensed and unsafe' brothels (Issa, 2008). As a consequence of this lexicon of criminality, a policing-type enforcement approach appears both appropriate and necessary, with the council adopting police-like strategies and powers. The difference is that whilst police powers are subject to restrictions, similar local council powers are relatively unrestricted. The power of local councils is demonstrated by the frequent 'inspections' or 'raids' (Strategic Crime Officer, 2009) on authorized premises: police would simply not be permitted to undertake these types of highly intrusive and disruptive raids under the Law Enforcement Powers and Responsibilities Act (2002). Under this Act, police would need to establish reasonable suspicion of an imminent crime and/or obtain a warrant. In contrast, the Local Government Act 1993 gives much broader powers to agents acting for the council (which can include the police).

The exact means by which the council gains entry to these sex premises is unclear, but section 193 of the Local Government Act 1993 allows entry without notice if the owner consents. The complexity of the notion of consent has been explored in criminological literature generally (Naffine, 1997) and with regard to policing specifically (Dixon, 1990). Criminologists have argued that police may be able to achieve their objectives by not using legal powers, but by securing the 'consent' of the suspect. If consent is obtained, the legal relationship between the actors is not that between a state official and private citizen, but rather between two private citizens. This notion of policing by consent has long been promoted to supplement or replace what are regarded as inadequate or unclear powers (Dixon, 1990: 346), albeit the complexity of policing by consent has been widely acknowledged (Brogden, 1982; Murphy and Cherney, 2011; Murphy et al., 2008; Pickering et al., 2008). Where a police officer receives consent, the statutory requirements for the exercise of power do not apply and there is no need to establish a reasonable suspicion. Moreover, record keeping is also not required where consent has been given – resulting in greater difficulty in assessing accountability. In addition, where consent has been given, the suspect does not have the rights and protections that are corollaries of the exercise of legal power.

Consent is hence a problematic term, as indicated by a wealth of criminological literature. There are two significant components of consent. The first is *knowledge* – that is, information and understanding – about what is requested. The second is *power* – an ability to make choices based on knowledge to use the available information (Dixon, 1990). Consent is usually limited not by external factors, but by the subject's social and psychological position, lack of knowledge, and lack of power. Whilst the police may not positively misrepresent powers to achieve consent, they may receive consent based on an assumption that they are legally authorized. The same can apply to consent by brothel operators to inspections in Parramatta. Criminological literature would suggest operators would be unlikely to refuse council entry for a variety of reasons including lack of knowledge about their rights, fear of upsetting the council upon whom they depend for continued authorization, and relative disempowerment. There is hence recognition that consent is not solely based on ignorance, but the appreciation of the contextual irrelevance of rights and legal provision. Analysis of policing indicates that rights are seen by officers as the property of some people, but not others (Dixon, 1990). The overt construction by Parramatta City Council of brothels as disorderly, empowered by the Brothels Legislation Amendment Act 2007, and lack of sympathy in the community and media, renders brothel operators relatively powerless, and hence contributes to a perception of lack of rights by the local council *and* the brothel operators.

In the event council inspectors cannot obtain consent, section 193(3)(b) of the Local Government Act 1993 allows entry without consent 'because of the existence or reasonable likelihood of a serious risk to health or safety'. These grounds are similar to those of the police, where entry is justified if there is a reasonable likelihood of a breach of law (ss 9 and 10 Law Enforcement (Powers and Responsibilities) Act 2002). The difference is in the type of law that is being breached: police are given powers of entry if there is a relatively serious breach of the criminal law or a person is in imminent danger. In comparison, the council can enter if there are breaches of civil provisions, including fire safety and occupational health and safety. Claims by the Strategic Crime Officer of

breaches by that particular brothel, or brothels generally, and the tendency to conflate all breaches in terms of severity, would support an argument of 'reasonable likelihood' of serious risk to health or safety. Moreover, critical criminological literature argues that the 'very process of trying to obtain consent allows officers to test their suspicions about a person: as the hoary truism insists, only the guilty have reason to refuse it' (Dixon, 1990: 352). If consent is refused, then police could use this to arrest a suspect on reasonable suspicion of criminality: put simply, they appear guilty if they refuse.

These inspections confirm the perception of the inherent disorderliness of brothels, as breaches can only be found if these raids are carried out. No attempt is made to distinguish between brothels as victims or perpetrators of crime – the main argument is that brothels are criminogenic (see also Hubbard, 2004). The Strategic Crime Officer (2009) asserted that 'brothels have significant impact upon crime and a tendency to generate criminality'. According to him, 'typical crimes experienced within and around brothels' include armed robbery, assault, illegal drug use/supply, extortion and protection rackets, drive-by shootings and illegal immigrants used as sex workers, sex trafficking. This evidence focuses on brothels as inherently criminal, and does not differentiate between whether brothels are likely to be perpetrators or victims of crime. For example, the Strategic Crime Officer (2009) asserted that brothels are likely to be victims of armed robbery, and in the next paragraph that clients or criminals attracted to the area are likely to assault nearby workers.

The council also conflates civil and criminal breaches and escalates these to the criminal. This is demonstrated in evidence to the court in which the Strategic Crime Officer made no distinction between types of breaches in terms of seriousness of crime. For example, he asserted that 80 per cent of clients were known to the police. When questioned further, he asserted that offences they might have committed ranged from train fare evasion to assaults or robberies. He stated that as a former police officer he was concerned with all breaches of the law. This is a form of 'zero tolerance' (Dixon, 1998), which has been described in policing terms as routinely 'stopping the disorderly, the unruly and disturbing behaviour of people in public places whether lawful or not' (Bayley and Shearing, 1996). The Mayor of Parramatta has asserted that the council is adopting a zero tolerance policy to 'those operating unlicensed and unsafe brothels' (Issa, 2008). Given this approach, any breaches, whether civil or criminal, no matter how trivial, will not be tolerated. The tendency to conflate different types of breaches is reinforced and reflected by the multi-agency approach. The Lord Mayor of Parramatta has 'welcomed a joint-agency operation' to close brothels (Issa, 2008). This Joint Agency Group comprises of police, federal and state, the Department of Immigration and Citizenship and Centrelink – a combination of departments amalgamating criminal, immigration, social security and planning concerns. This in turn justifies the targeted policing of brothels. Criminality is hence confirmed by the high frequency of inspections identifying breaches (no matter how trivial) of various conditions, regulations, and civil and criminal laws.

The conflation of different areas and categories of law to construct an amalgam of law-breaking was demonstrated in the outcome of an inspection on the *Huang* brothel. The Strategic Crime Officer (2009) stated that the raid found a sex worker who 'was identified as having just turned 18 years of age and being on a no-work entry visa into Australia'. This would be a breach of immigration law. The mention of the age of the

worker implies (misleadingly) a suggested breach of criminal laws regarding the age of consent. In addition, the Strategic Crime Officer (2009) asserted that a 'detailed inspection of the premises located fire safety breaches and a lack of a Fire Safety Certificate' – a breach of civil fire safety laws – asserting that 'A penalty infringement notice was issued to the manager of that brothel for the offence of permit sex worker to reside on premises, contrary to Consent' (para. 27) – a breach of local government planning regulations. These breaches are amalgamated to depict brothels as criminogenic, with the lack of explanation as to the number, type and severity of breaches leaving the problems associated with brothels to the imagination. In this case, this justifies the high frequency of inspections, which in turn generates evidence of further breaches, albeit that many could be considered trivial.

Significantly then, we see here that planning powers have the capacity to augment and enhance police powers. Police presence is justified under section 201 of the Local Government Act given that an authorized officer may accompany and issue a warrant to enter and search premises 'if the authorised person has reasonable grounds for believing that the provisions of this Act... have been or are being contravened in or on any premises'. This would justify the initial police and council raid on authorized brothels. Minor breaches of the Act found by the raid would then justify continued raids. Ostensibly this involves the same powers granted to police under the Law Enforcement Powers and Responsibility Act 2002. However, the big difference is that police are granted these powers on the basis of breaches of the Local Government Act. As such, breaches of relatively minor regulations of civil law can be relied upon to justify and require police presence.

The conduct of the inspections themselves can be characterized as a 'punitive display' entailing zero tolerance (Garland, 1996). While section 191 of the Local Government Act states that entry 'may only be made at any reasonable hour' this is also supplemented by 'or at any hour during which business is in progress'. This permits and justifies late night raids on brothels. The effect of these late night inspections can be highly intimidatory. These disruptive inspections are within the repertoire of enforcement (Gill, 2002) and provide an example of where the process is itself the punishment (Feeley, 1979). Similarly, the number of people on the inspections representing various agency interests can intimidate. The multi-agency interests means the inspectors have a wide remit in terms of what they are inspecting and the evidence they need to collect, increasing the intrusiveness of the inspection and the length of time it takes. Not only does this result in loss of business to the brothel, but clients and workers on the street may feel humiliated and decide not to return.

Such practices raise questions in terms of costs. The attention currently directed towards the enforcement and exclusion of brothels in Parramatta represents an intensive use of resources, with relatively low returns. The inspections are time-consuming for police. Records include meaningless figures that make little effort to assess the outcomes, intended or unintended (Gill, 2002). Unintended consequences include the production of negative relations between the council and police, with brothel owners reluctant to turn to the police or council if 'real' crime issues arise, as this just confirms preconceptions and they cannot be sure that the police or council will assist (Hinds, 2009; Murphy, 2009; Murphy and Cherney, 2011; Pickering et al., 2008). There are also dangers that this punitive approach can create an environment that facilitates corruption. One of the

original reasons for legislative reforms in 1995 was the association of an illegal industry with police corruption – encouraging bribery by police and brothels (Crofts, 2003). This potential for corruption has extended to councils including Parramatta Council, for example, the Independent Commission Against Corruption found corrupt practices by Parramatta Council workers of accepting bribes in exchange for not investigating businesses (ICAC, 2007).

Making space for brothels in Sydney City

In Parramatta, it is clear that planners' implicit ideas about sex work as outside the conventions of heteronormative sexuality leads them to make certain assumptions about the disorderliness and even criminogenic status of spaces of sex work. This is something that might be related to Parramatta's status as one of Sydney's suburbs, a space that is imaginatively distanced from the landscapes of inner Sydney which have traditionally been noted for the presence of sex industries (see Prior, 2008a). In contrast, and given its reputation as sexually permissive, Sydney City has adopted a very different approach to the regulation of sex services premises. The basic difference is that whilst Parramatta asserts the inherent disorderliness of brothels, deeming them as inevitably 'out of place', Sydney City regards and regulates sex services premises as a legitimate land use that may well be appropriate – at least in some neighbourhoods. This is tied into a variety of factors, including the more established nature of sex premises in the inner city and the globally-mediated reputation of Sydney for sexual liberalism and LGBT lifestyles (Gorman-Murray and Waitt, 2009).

The difference in perception of, and approach to, sex services premises is apparent in the planning principles adopted in Sydney City and Parramatta City Council. We have argued that Parramatta City Council regulates sex premises through a unitary category of 'brothel' and highly restrictive policies that make it difficult for these businesses to receive council authorization. In contrast, Sydney City has adopted detailed planning regulations that assist and enable the authorization of sex services premises. Of particular importance in Sydney is the distinction made *between* types of sex services premises based on size, nature and potential amenity impacts. Specific regulations have been developed for different types of brothels, including Home Occupations Sex Services Premises (HOSSPs) where workers operate from their own home. Central to Sydney City's approach is the treatment of sex industry premises in the same way as other legitimate business on the basis of their environmental impacts, and providing assistance in reducing those impacts, rather than assuming that all brothels are disorderly, which is judged contingently via the exercise of planner's discretion about the appropriateness of a brothel in a given location.

An example of this is the way in which the Sydney City has approached HOSSPs. Rather than including HOSSPs within the unitary category of 'brothel' (as Parramatta City Council does), Sydney City regulates these businesses similarly to other home occupations. This differentiation between types of sex services premises is important, because it is estimated that HOSSPs make up at least 40 percent of the sex industry in NSW (Brothels Taskforce, 2001). It is very difficult, if not impossible, for HOSSPs to receive authorization in councils like Parramatta City which rely on a unitary category of 'brothel' because of zoning and notification requirements. In contrast, in Sydney City,

HOSSPs are permitted to operate without development consent within much of the residential zones of the city, whilst larger sex services premises are required to submit a development application, satisfying notification requirements and appropriate zoning. This approach to HOSSPs appears appropriate given their minimal negative amenity impact, with studies suggesting that most people are unaware that they have been living next to a HOSSP (Cox, 2003).

Accordingly, Sydney City regards and regulates HOSSPs under a planning regime, focusing primarily on amenity impacts. Action is not taken unless and until complaints are made about negative amenity impacts. An analysis of these complaints revealed that during the period January 2008 and August 2009, Sydney City only received two substantiated complaints for complying HOSSPs. This underlines that within a planning perspective that treats sex premises as a legal land use, planning controls can exercise significant control over the location of sex premises primarily on grounds of minimizing negative environmental, as opposed to moral, impacts (see Hubbard et al., 2009). Assumptions of illegality are hence dropped, with the goal being to ensure the best possible use of urban land within the context of competing property and development rights (Blomley, 2010).

As a consequence of the council's approach, the role for police is that which would be adopted for any other legal citizen or business. Legitimacy and authorization come associated with a longstanding legal framework of responsibilities including the need to conform with environmental health and taxation regulations (Crofts and Prior, 2011). But along with obligations come rights, meaning that sex services premises and their workers and clients are able to turn to the law for protection. In *Huang v Parramatta* (2009) the Senior Constable of Police Statement of Evidence asserted that an existing authorized brothel near the proposed brothel had been the subject of motorcycle gang threats accompanied by promises of 'protection' (Senior Constable of Police, 2009). The officer relied upon this as evidence of the inherent unlawfulness of brothels. In contrast, we regard this as demonstrating an advantage of legal status, albeit in its infant form. Rather than succumbing to motorcycle gang threats, the brothel owner was able to, and did, report the threats to the police and seek protection from existing legal institutions.

The effect of legalization also improves the safety of individual sex workers. Research has consistently shown that sex workers in NSW experience high levels of violence and are more at risk of harm than other citizens (Harcourt et al., 2001; Prior 2007, 2008b). This research indicates that sex workers experience physical assault, fraud or scamming, theft, rape and attempted rape, being forced to have unprotected sex, verbal abuse, sexual assault, harassment threats, kidnapping, drugging and stalking. This research also indicates that these experiences result in varying degrees of physical and emotional trauma and physical health problems which until recently have often remained unaddressed because sex work was illegal and remains stigmatized.

Granting brothels legal status ensures that legitimate avenues are available for protection and redress. Moreover, it facilitates research into how best to protect sex workers, including the good design of brothels and the introduction of 'safe house brothels'. Safe house brothels are privately owned commercial premises that provide short-term room rentals to clients to enable the provision of sexual services by a sex worker. These safe houses provide workers with cheap, easily accessible, legal, clean and safe environment to service their clients, albeit away from areas where their presence might be

regarded as inappropriate (Prior et al., 2012). They were introduced into Sydney City local government area as a means of providing street-based sex workers with safe provision sites, as out of all forms of sex work, research has shown that street-based sex workers are vulnerable to the most extreme forms of violence (Prior, 2008b). This means that those who engage in street-based sex work have less need to risk their own safety by getting into a client's car or conducting services in other isolated private venues (Harcourt et al., 2001).

This suggests that taking an approach that regards sex work as an inevitable part of urban life, and planning for it by adopting certain principles of reducing undesirable 'secondary effects', results in the creation of spaces which can accommodate this legal activity. Yet the adoption of an approach led by the concern of planning with ensuring the optimum use of urban space does not mean policing is insignificant in the regulation of sex work. For example, planners relied upon police to assist with the collection of evidence of breaches of operating conditions by an erotic massage parlour (*Sydney City Council v DeCue*, 2006). This case involved neighbourhood complaints to police and council about public urination, propositioning schoolgirls and illegal parking. The council successfully applied to the LEC to close down this authorized sex services premises for breach of operating conditions. The case demonstrated the capacity for the council to regulate this sort of business through planning, but also the way in which policing can serve planning, rather than vice versa.

Conclusion

This paper has argued that, like the police before them, planners now play a key role in constructing sexual orders, albeit these operate through the deployment of specific techniques of spatial governmentality rather than through a direct surveillance and disciplining of bodies. Inevitably, this exercise of planning power can reinforce existing norms, and benefit specific groups – not least the propertied classes who may feel that the presence of commercial sex premises lowers property prices in the vicinity (see Hubbard, 2004; Papayanis, 2000). Although planning is not explicitly designed to protect landed interests or reinforce ideas that commercial sex is an inappropriate land use in wealthier, whiter or 'family' areas, we have argued this is a potential outcome if planning processes begin from the perspective that commercial sex is inherently criminal, disorderly or immoral (Crofts, 2007a). The regulation of brothels in Parramatta by the local council embodies this presumption of disorder, representing an instance of over-regulation – where a particular group, behaviour or space is targeted for intervention and surveillance in a way that is disproportionate to the risk it poses to society (see Millie, 2008). In the case of brothel owners and workers, we have argued that this form of regulation amounts to punishment given the loss of work and income because of these raids when the premises are closed for several hours. In contrast, Sydney City has adopted a planning approach to brothels which is more compatible with planning's traditional proactive role in dictating the most appropriate use of land, yet which still imposes a moral order by dictating where sex can legally be sold.

The idea that planning has the capacity to change and challenge sexual and social norms at a local level through the exercise of situated discretion (see Valverde, 2011) has thus been demonstrated here given the contrast between Parramatta and Sydney City.

Important questions accordingly need to be asked about the fairness of planning interventions in Parramatta as they are directed towards sex workers and premises owners. There is a large body of criminological literature about abuse of powers via differential policing practices informed by assumptions about which particular gender, age, class and ethnic groups are prone to offend (Bowling, 1996; Bowling and Phillips, 2002; Reiner, 2000). Part of policing's historical mandate has been the control of street economies, recreations and people (Herbert, 1997; Reiner, 2000), and this has meant using wide discretionary powers against categories of the population which police culture has distinguished from 'respectable people'. Such discrimination has been less frequently discussed in planning (though see Yiftachel, 1998) because it is assumed to be about the management of land use not people. Yet despite the legalization of sex work in NSW, sex workers, their clients and employers apparently remain perceived as criminal by (some) planners. Worryingly, whilst the Local Government Act provides planners with extensive powers of enforcement, it does not require extensive reporting. So, planners may have some of the powers of police, but are not necessarily accountable in the same ways.

We accordingly conclude by arguing that planning needs to be critically analysed as a technique of governmentality that sits alongside policing in the construction of social and moral orders, and, moreover, that criminological research needs to recognize that planning law can be as significant as criminal law in the regulation of conduct. In making such claims, we are arguing that criminological research needs to consider planning as a key technique of social ordering that is as much tied into questions of morality as policing is. However, adopting a critical Foucauldian perspective on planning as a technique of governmentality requires that attention is devoted to its specific apparatus given its emphasis on spaces rather than subjects (Valverde, 2011): considering planning as a form of governmentality requires that we consider both the spatiality of planning law and planners' discretion within that law, understanding planning as a 'situated mentality' that is contingently and unevenly applied.

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1. Available at http://www.parracity.nsw.gov.au/your_council/news/publications/council/annual_report

References

- Anacker KB (2011) Queering the suburbs: Analyzing property values in male and female same-sex suburbs in the United States. In: Doan PL (ed.) *Queering Planning: Challenging Heteronormative Assumptions and Reframing Planning Practice*. Farnham: Ashgate.
- Anthony T and Cunneen C (eds) (2008) *The Critical Criminology Companion*. Sydney: Hargrave Press.
- Bailey RW (1999) *Gay Politics, Urban Politics: Identity and Economics in the Urban Setting*. New York: Columbia University Press.

- Bauman J (2002) Race, class, gender, and sexuality in planning history: Looking at trends in literature. *Journal of Planning History* 1: 225–229.
- Bayley D and Shearing C (1996) The future of policing. *Law and Society Review* 30: 586–606.
- Blomley N (2010) *Rights of Passage: Sidewalks and the Regulation of Public Flow*. New York: Routledge.
- Bowling B (1996) *Violent Racism: Victimisation, Policing and Social Context*. Oxford: Clarendon Press.
- Bowling B and Phillips C (2002) *Racism, Crime and Justice*. London: Longman.
- Brogden M (1982) *The Police: Autonomy and Consent*. London: Academic Press.
- Brothels Taskforce (2001) *The Report of the Brothels Taskforce*. Sydney: NSW Government.
- Brown M (2009) Public health as urban politics, *Urban Geography* 30:1–29.
- Cain M (1973) *Society and the Policeman's Role*. London: Routledge and Kegan Paul.
- Colter EG, Hoffman W, Pendleton E, Redick A and Serlin D (eds) (1996) *Policing Public Sex: Queer Politics and the Future of AIDS Activism*. Boston, MA: South End Press.
- Cox E (2003) UTS Students' Research on Home Occupations Under Supervision of Eva Cox. Sydney: University of Technology, Sydney.
- Crofts P (2003) Ambiguities in approaches to brothels: Disorderly houses of commercial premises? *Environmental Planning and Law Journal* 20: 445–458.
- Crofts P (2006) A decade of licit sex in the city. *Local Government Law Journal* 12: 5–15.
- Crofts P (2007a) Brothels and disorderly acts. *Public Space: The Journal of Law and Social Justice* 1: 1–39.
- Crofts P (2007b) Sex in the dark: The Brothels Legislation Amendment Act. *Current Issues in Criminal Justice* 19: 183–196.
- Crofts P (2010) Brothels: Outlaws or citizens? *International Journal of Law in Context* 6: 151–166.
- Crofts P and Prior J (2011) Oscillations in the regulation of the sex industry in New South Wales, Australia: Disorderly or pragmatic? In: Dalla R, Baker L, Defrain J and Williamson C (eds) *Global Perspectives On Prostitution And Sex Trafficking: Africa, Asia, Middle East And Oceania*. New York: Lexington.
- Cusack CM and Prior J (2010) Religion, sexuality and retribution: Placing the 'other' in Sydney. In: Cusack CM and Hartney CH (eds) *Religion and Retributive Logic: Essays in Honour of Professor Garry W. Trompf*. Leiden: Brill.
- Department of Planning (1996) Council Circular – Planning Controls of Brothels, 16 July.
- Dixon D (1990) Juvenile suspects and the Police and Criminal Evidence Act. In: Freestone D (ed.) *Children and the Law*. Hull: Hull University Press.
- Dixon D (1997) *Law in Policing: Legal Regulation and Police Practices*. Oxford: Clarendon Press.
- Dixon D (1998) Broken windows, zero tolerance, and the New York miracle. *Current Issues in Criminal Justice* 10: 96–106.
- Dixon D (ed.) (1999) *A Culture of Corruption: Changing an Australian Police Service*. Sydney: Hawkins Press.
- Feeley M (1979) *The Process is the Punishment: Handling Cases in a Lower Court*. New York: Russell Sage Foundation.
- Finnane M (1994) *Police and Government: Histories of Policing in Australia*. Melbourne: Oxford University Press.
- Forsyth A (2001) Non-Conformist Populations and Planning Practice. *Journal of Planning Literature* 15: 339–358.
- Foucault M (1990) *The History of Sexuality. Volume 1: An Introduction*. London and New York: Penguin Group.
- Foucault M (1991) Space, Knowledge and Power. In: Rabinow P (ed.) *The Foucault Reader: An Introduction to Foucault's Thought*. New York and New York: Penguin Group.

- Foucault M (1992) Governmentality. In: Burchell G, Miller P and Gordon C (eds) *The Foucault Effect: Studies in Governmentality*. Hemel Hempstead Harvester Wheatsheaf.
- Frisch M (2002) Planning as a Heterosexist Project. *Journal of Planning Education and Research* 21: 254–266.
- Garland D (1996) The Limits of the Sovereign State. *British Journal of Criminology* 36: 445–471.
- Gill P (2002) Policing and Regulation: What is the Difference? *Social and Legal Studies* 11: 523–546.
- Gorman-Murray A and Waitt G (2009) Queer-friendly neighbourhoods: interrogating social cohesion across sexual difference in two Australian neighbourhoods. *Environment and Planning A* 41: 2855–2873.
- Harcourt C, Van Beek I, Heslop J, McMahon M and Donovan B (2001) The Health and Welfare Needs of Female and Transgender Street Sex Workers in New South Wales. *Australian and New Zealand Journal of Public Health* 25: 84–89.
- Herbert S (1997) *Policing Space: Territoriality and the Los Angeles Police Department*. Minneapolis: University of Minnesota Press.
- Hinds L (2009) Public satisfaction with police: The influence of general attitudes and police–citizen encounters. *International Journal of Police Science and Management* 11: 54–66.
- Hubbard P (2001) Sex zones: Intimacy, citizenship and public space. *Sexualities* 4: 51–71.
- Hubbard P (2004) Cleansing the metropolis: Sex work and the politics of zero tolerance. *Urban Studies* 41: 1687–1701.
- Hubbard P, Matthews R and Scoular J (2009) Controlling sexually-oriented businesses: Law, licensing and the geographies of a controversial land use. *Urban Geography* 30: 185–205.
- ICAC (2007) *Parramatta City Council Investigation into Solicitation and Bribery*. Independent Committee Against Corruption.
- Issa T (2008) Crack down on illegal brothels. Available at http://www.parracity.nsw.gov.au/your_council/news/media/media_releases2/2008/october_2008/crack_down_on_illegal_brothels.
- Kerkin K (2004) Discourse, representation and urban planning: How a critical approach to discourse helps reveal the spatial reordering of street sex work. *Australian Geographer* 35: 185–192.
- Legg S (2008) Ambivalent improvements: Biography, biopolitics, and colonial Delhi. *Environment and Planning A* 40: 37–56.
- Lim C (2011) Ban on brothels and sex-related services. *Parramatta Councillor*. Parramatta. Available at: http://www.chianglim.com.au/blog/blog/ban_on_brothels_and_sex-related_services_-_another_first_in_nsw/menu_id_102.html.
- McCulloch J (2008) Key issues in a critical approach to policing. In: Anthony T and Cunneen C (eds) *The Critical Criminology Companion*. Sydney: Hawkins Press.
- Millie A (2008) Antisocial behaviour, behavioural expectations and an urban aesthetic. *British Journal of Criminology* 48: 379–394.
- Murphy K (2009) Public satisfaction with police: The importance of procedural justice and police performance in police–citizen encounters. *Australian and New Zealand Journal of Criminology* 42: 159–178.
- Murphy K and Cherney A (2011) Fostering cooperation with the police: How do ethnic minorities in Australia respond to procedural justice-based policing? *Australian and New Zealand Journal of Criminology* 44(2): 235–257.
- Murphy K, Hinds L and Fleming J (2008) Encouraging public cooperation for police. *Policing and Society* 18: 136–155.
- Naffine N (1997) *Feminism and Criminology*. Sydney: Allen And Unwin.
- O'Malley P (1992) Risk, power and crime prevention. *Economy and Society* 21: 252–274.
- Papayanis MA (2000) Sex and the revanchist city: Zoning out pornography in New York. *Environment And Planning D: Society and Space* 18: 341–353.

- Pasquino P (1991) *Theatrum politicum: The genealogy of capital, police and the space of prosperity*. In: Burchell G, Miller P and Gordon C (eds) *The Foucault Effect: Studies in Governmentality*. Hemel Hempstead: Harvester Wheatsheaf.
- Philo C (1992) Foucault's geography. *Environment and Planning D: Society and Space* 10: 137–161.
- Pickering S, McCulloch J and Wright-Neville D (2008) *Counter-Terrorism and Policing: Community, Cohesion and Security*. New York: Springer.
- Prior J (2007) *Safety Incident Report*. Sydney: Sydney: Elton Consulting.
- Prior J (2008a) Planning for sex in the city: Urban governance, planning and the placement of sex industry premises in inner Sydney. *Australian Geographer* 39: 339–352.
- Prior J (2008b) *Safety Incident Report*. Sydney: Sydney: Elton Consulting.
- Prior J (2009) Experiences beyond the threshold: Sydney's gay bathhouses. *Australian Cultural History* 27: 61–77.
- Prior JH and Crofts P (2012) Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use. *New Zealand Geographer* 68(2): 130–140.
- Prior J, Boydell S and Hubbard P (2012) Nocturnal rights to the city. *Urban Studies* Epub ahead of print. DOI: 10.1177/0042098011417019.
- Reiner R (1992a) Policing a postmodern society. *Modern Law Review* 55: 761–781.
- Reiner R (1992b) *The Politics of the Police*. Toronto: University of Toronto Press.
- Reiner R (2000) *The Politics of the Police*. Toronto: University of Toronto Press.
- Room R (2004) Disabling the public interest: Alcohol strategies and policies for England. *Addiction* 99: 1083–1089.
- Rose N (2001) The politics of life itself. *Theory, Culture & Society* 18: 1–30.
- Roxburgh A, Degendardt L, Larance B and Copeland J (2005) *Mental Health, Drug Use and Risk Among Female Street Based Sex Workers in Greater Sydney*. Sydney: Greater Sydney National Drug and Alcohol Research Centre.
- Rubin G (1993) Rethinking sex: Notes on a radical theory of a politics of sexuality. In: Ablove H (ed.) *The Lesbian and Gay Studies Reader*. London: Routledge.
- Ryder A (2004) The changing nature of adult entertainment districts: Between a rock and a hard place or going from strength to strength? *Urban Studies* 41: 1659–1686.
- Scraton P (1985) *The State of the Police*. London: Pluto.
- Senior Constable of Police (2009) Police Statement of Evidence Brothel Development Proposal: *Huang v Parramatta City Council*. Sydney: NSW Police Force.
- Sibley D (1995) *Geographies of Exclusion: Society and Difference in the West*. London: Routledge.
- Stenson K and Sullivan R (eds) (2001) *Crime, Risk and Justice: The Politics of Crime Control in Liberal Democracies*. Cullompton: Willan.
- Strategic Crime Officer (2009) Statement of Evidence: Brothel Development Proposal, *Huang v Parramatta City Council*. Sydney: Parramatta City Council.
- Tomkins K (2004–2005) Police, law enforcement and the environment. *Current Issues in Criminal Justice* 16: 294.
- Valverde M (2011) Seeing like a city: The dialectic of modern and premodern ways of seeing in urban governance. *Law and Society* 45: 277–312.
- Valverde M and Cirak M (2003) Governing bodies, creating gay spaces. *British Journal of Criminology* 43: 102–121.
- Waddington PAJ (1999) *Policing Citizens: Authority and Rights*. London: UCL Press.
- Warner M (1995) Introduction. In: Warner M (ed.) *Fear of a Queer Planet*. Minneapolis: University of Minnesota Press.
- White R and Perrone S (2010) *Crime, Criminality and Criminal Justice*. Melbourne: Oxford University Press.
- Williams G and McGarrity N (2008) The investigatory powers of the Australian Building and Construction Commission. *Australian Journal of Labour Law* 21: 244–279.

- Wilson D (2006) *The Beat: Policing a Victorian City*. Melbourne: Circa Press.
- Yiftachel O (1998) Planning and social control: Exploring the dark side. *Journal of Planning Literature* 12: 395–406.

Cases

- Boers v Parramatta City Council* [2010] NSWLEC 1071.
- Davis v Parramatta City Council* [2005] NSWLEC 474.
- Huang v Parramatta City Council* [2009] NSWLEC 1401.
- Sydney City Council v DeCue* [2006] NSWLEC 763.
- Wei v Parramatta City Council* [2008] NSWLEC 1157.
- Wei v Parramatta City Council* [2010] NSWLEC 1107.

Out of sight, out of mind? Prostitution policy and the health, well-being and safety of home-based sex workers

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Abstract

Policy discussions relating to the selling of sex have tended to fixate on two spaces of sex work: the street and the brothel. Such preoccupation has arguably eclipsed discussion of the working environment where most sex is sold, namely, the private home. Redressing this omission, this paper discusses the public health and safety implications of policies that fail to regulate or assist the 'hidden population' of sex workers, focusing on the experiences of home-based workers in Sydney, Australia. Considering the inconsistent way that Home Occupation Sex Services Premises (HOSSPs) are regulated in this city, this paper discusses the implications of selling sex beyond the gaze of the state and the law. It is concluded that working from home can allow sex workers to exercise considerable autonomy over their working practices, but that the safety of such premises must be carefully considered in the development of prostitution policy.

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commercial sex, gender, home, safety, welfare

Introduction

Regarded as an intractable social phenomenon, prostitution has long excited distinctive policy responses, ranging from outright prohibitionism through to legalization and even decriminalization. Yet even where prostitution is legally sanctioned, it continues to court controversy, regarded as a form of employment that is morally questionable, potentially risky and often associated with exploitation (Sanders et al., 2009). Moral panics concerning the spread of sexually transmitted disease, sex trafficking and exploitation have hence prompted more punitive forms of regulation in recent decades, designed to discourage people from participating in what is seen as an undesirable form of commerce (Raphael and Shapiro, 2004). As such, in some jurisdictions (e.g. Sweden and Norway) there has been a wholesale condemnation of prostitution, with the purchasing of sexual services having been outlawed outright (Spanger, 2011).

Yet while there is a case for prohibition, this has often been countered by sex workers and their advocates, who have invoked a labour rights discourse presenting an increasingly strong argument for prostitution to be regarded as a form of work like any other (Sullivan, 2010). From the state's perspective, this argument can be persuasive given that when prostitution is left in the informal economy, it can attract criminal elements: accordingly, the decriminalization or legalization of sex working has been justified in several jurisdictions as a way of reducing the involvement of those who exploit sex workers (e.g. through pimping or trafficking). An additional consideration here is that forms of decriminalization or legalization can provide a basis for managing the impact of prostitution on the wider community where it occurs, noting that both street and off-street sex work are accused of attracting anti-social behaviour (Matthews, 2008). While the association between sex work, drugs and other forms of criminality is by no means universal, and often non-existent (Sanders et al., 2009), this does not prevent the media circulating representations which associate prostitution with multiple forms of criminality, creating strong exclusionary urges at the local level (Hubbard, 2004).

The circulation of these different discourses (i.e. prostitution as legitimate work versus prostitution as social problem) serves to ensure prostitution remains fiercely debated in policy circles. Significantly, such debates are increasingly informed by peer-reviewed empirical evidence about the impacts of policy on health, safety and well-being, with assessments suggesting different policy approaches can have different implications for workers, clients and local communities. For example, noting that indoor environments where

women can work together are generally safer than street soliciting (Sanders and Campbell, 2007), there are now many positive evaluations of the consequences of decriminalizing or legalizing brothels (Bretns and Hausbeck, 2005; Abel et al., 2009). In contrast, where street prostitution has been decriminalized either completely or in specific areas, there has often remained opposition from local residents or businesses, with the benefits for workers and clients appearing negligible (Church et al., 2001; O'Neill and Pitcher, 2010).

However, it is apparent that the evidence-base for policy remains strongly fixated on particular spaces of sex work, namely the street and the brothel. While both feature prominently in traditional representations of female prostitution, the focus on these neglects the wider range of spaces where commercial sex is negotiated, sold and transacted. Setting aside virtual 'indirect' sexual exchanges and performances, Harcourt and Donovan (2005) have tentatively identified at least 25 forms of direct sex work which are played out across a variety of public, quasi-public and private spaces including streets, doorways, clubs, hotels, brothels, massage parlours, swinging clubs, dance halls, and private homes. Despite the lack of comprehensive mappings of the sex industry (Cusick et al., 2009), there is good reason to suspect private homes now represent the most popular form of working environment, with mobile telephony, Internet contact boards and newspaper adverts allowing both male and female sex workers to advertise and negotiate sex without publicly soliciting or working in managed brothels. Yet Harcourt and Donovan (2005) concede there is little known about home-based sex work since it is largely invisible within an urban landscape of private residences: researchers have accordingly made a connection between the growth of middle class sex work, the rise of independent prostitution and its suburbanization (Bernstein, 1999; Hubbard and Whowell, 2008).

Given off-street sex workers outnumber street sex workers by at least 2:1 in most reputable estimates of contemporary sex work (Cusick et al., 2009), the lack of attention paid to home-based sex work helps perpetuate the myth that street-based prostitution remains the dominant form of sex work, making it a particular priority for sex work support services as well as the prime focus of policy debates. As such, this paper's focus on home-based sex working redresses its omission in policy debates and aims to contribute to a better understanding of the challenges and rewards of working in this largely unregulated environment. The focus here is on women selling sex from their own homes in Sydney (New South Wales, Australia), a city where 40% of sex work is thought to be transacted in private homes (City of Sydney, 2006a). While the regulatory environment in Sydney is distinct from that in jurisdictions where brothel and/or street prostitution is criminalized – meaning that social attitudes to home-based sex work may be more liberal than elsewhere – there are reasons to suppose that there will be certain similarities between the risks faced by those working at home in Sydney and those working at home

in other jurisdictions given home-working always exists in a zone of legal ambiguity (i.e. it is not illegal but, like some other forms of home-working, is typically unregulated and unacknowledged). As such, this paper contributes to an appreciation of home-spaces as distinctive 'risk environments' (Rhodes, 2009) in which client relationships are shaped by physical, economic, social and legal factors which can either increase or diminish risks of harm.

Home-based sex work in its socio-legal context

In most Western nations, prostitution has long been figured as standing at the boundary between sexualities that are considered good, healthy, and normal, and those that are deviant. Privileging heterosexual, monogamous relationships, the state has often regarded commercial sex as a threat to social stability, and hence sought to discourage it. At the same time, however, sex work and commercial sexual exchange have remained valued and sought-after, meaning that the state has recognized the impossibility of preventing prostitution, instead regulating it so that its negative impacts on communities are minimized. Such regulation simultaneously sends out a message that prostitution is not a respectable occupation. Historically, this has often involved the separation of commercial from non-commercial sex via an enclosure of the bodies of participants within a space subject to surveillance and control (Godden, 2001). Following Foucault, numerous scholars have identified the panoptic qualities of many spaces of prostitution – whether brothels or street working zones – tracing the legal instruments employed by the agents of the state who monitor these sites as spaces of potential deviance (Hubbard, 2011).

Within such constraints, sex work has also been controlled by the state and the law in the interests of maintaining the social and economic value of particular land uses that might be adversely affected by the 'negative externalities' of sex premises. Street prostitution, for example, has generally been tolerated only when it occurs in areas where it attracts little opposition from residents or businesses, with soliciting and kerb-crawling laws invoked when it intrudes into more 'respectable' spaces. Moreover, given sex work is rarely considered to be the 'best and highest use of land', street sex work has often been displaced by property development. For instance, O'Neill et al. (2008) have explored how an area of tolerated street prostitution in Edinburgh was closed down to allow for new residential development. In this case, the displacement of street prostitution was not discourses as economic or social loss per se, but deemed to make the city safer, more commodious and family-friendly.

Street sex work is hence often classified, alongside other behaviours such as begging and loitering, as profoundly anti-social. As urban public space becomes increasingly structured according to 'a territorial division between

the excluded and the included, between the spaces of consumption and civility and the savage spaces on the margins' (Sanders, 2009: 523), the public display of sex for sale has become viewed as increasingly 'out of place'. A significant shift in this drift towards Zero Tolerance for sex work in public space has been a discourse of gendered exploitation: the (female) worker is seen as not merely anti-social but responsible for putting herself at risk (Sanders et al., 2009). Conversely, in dominant representations of street work, the client is assumed male and depicted as a sexual threat (Matthews, 2008). The increase in laws against 'the kerb-crawler' is testament to this – for example, in England and Wales the 2001 Criminal Justice & Police Act made kerb-crawling an arrestable offence with the Criminal Justice Act 2003 allowing for on-the-spot fining, driving licence revocation and high profile 'naming and shaming'.

Given the UK government has repeatedly insisted that street sex working has no place in a 'civilized' society, it might be anticipated that off-street work would be facilitated to allow for the displacement of street workers. To the contrary, the Home Office has repeatedly backed away from the idea of legalizing off-street sex work in the form of licensed brothels. Such licensing, as practised in the Netherlands since 2000, Nevada (US) since 1978, Germany since 2002, Queensland since 1999, Victoria since 1984 and New South Wales since 1995, delegates control over brothels to local councils who handle planning procedures and are expected to identify and close down illegal brothels. This approach is somewhat different to an outright decriminalization (as passed in New Zealand in 2003) that removes all laws relating to prostitution and makes sex workers and clients liable to the laws that affect all citizens (including the obligation to pay taxes).

In New South Wales, the key legislative change legalizing brothels was the *Disorderly Houses Amendment Act 1995*. This removed that part of the *Disorderly Houses Act 1943* (called the *Restricted Premises Act 1943* from 2003 onwards) which made it a criminal offence to operate a brothel or other commercial sex venue. Records of the parliamentary debates leading up to the amendment of the Act show that the decriminalization of brothels was preferred over other models such as legalization, registration and licensing (Crofts, 2003). Under decriminalization it was thought that existing laws regulating businesses (e.g. environmental health and taxation laws) were sufficient to regulate brothels. Shifting the regulatory onus from the police to planners, the amending legislation removed the prohibition on private property being used as a brothel within New South Wales and allowed local councils to regulate brothels through plan-making powers, governed by the *Environmental Planning and Assessment Act 1979 (NSW)*. Over the next decade, this encouraged the development of Local Environmental Plans stipulating where brothels could be placed within particular local government areas. While the state government has told councils they cannot ban brothels outright, they can

restrict them to industrial zones in the interests of maintaining neighbourhood amenity: under s.17(5)(a) of the *Disorderly Houses Amendment Act 1995* a brothel can be closed if it is operating 'near or within view from a church, hospital, school or other place regularly frequented by children from residential or cultural activities'. In effect, this enables councils to prevent sex premises opening in residential and commercial areas, reinforcing a moral geography in which sex work is deemed incompatible with family occupation (Hubbard and Whowell, 2008).

Significantly, street prostitution in New South Wales is also legal, with soliciting for sex in public places ruled not to constitute 'truly offensive behaviour' (Frances and Gray, 2007). However, following a 1983 amendment to the *Prostitution Act 1979*, soliciting in a public street near a dwelling, school, church or hospital became an offence. In the Second Reading in the New South Wales Parliament of the *Prostitution (Amendment) Bill 1983*, it was stated that: '[t]he aim of this legislation is to ensure that persons who reside in basically residential areas are not subjected to the flagrant and unseemly aspects of prostitution, which cause severe inconvenience' (Walker, 1983: 5244). The purpose of this amendment was to contain soliciting to areas where it would not cause annoyance to 'sensitive' populations: however, rather than focusing on reducing nuisance per se, the intention of the law appeared to be removing sex work from view in 'family' residential areas. This preoccupation with vision is widely noted in literatures on prostitution, suggesting that the regulation of prostitution is based on forms of *optical governance* which seek to determine who can see what (Hubbard, 2011).

In this respect, it is worth stressing that most home-based operations remain invisible to local residents. For example, Cox (2003) led a survey of residential blocks in Woollahra and Marrickville (Sydney) where home-based sex work occurred, and concluded that there was no awareness of home-based sex workers in either area (and only limited awareness of home-based sex work in general): moreover, the presence of home-based sex work appeared to have no impact on residents' perception of crime and safety. Irrespective, any home occupation involving sex work in New South Wales is legally defined as a brothel or commercial premises only permissible in certain non-residential zones, usually industrial areas. Such areas are clearly far from ideal for sex work, as they are often isolated and poorly served by public transport (Brothels Taskforce, 2001). Moreover, the larger scale of an industrial premises is unsuited to small sex worker businesses and is inconsistent with clients' desire for a discreet encounter in a residential setting (Bernstein, 1999), meaning it is unlikely that workers would want to establish in industrial areas.

This given, the fact New South Wales legislation does not distinguish between dedicated commercial sex service premises and the provision of part-time home-based sex services by a single worker creates a range of legislative ambiguities and conflicts which have the potential to disadvantage providers

of home-based sex services. For example, under current New South Wales legislation, an individual selling sex from their own home would be required to lodge a development application to use that premises for sex work. When considering this application, the authorities do not differentiate between a large-scale commercial premises and a home operation, requiring the applicant to go through similar processes. As a result of these complications many home-based sex workers would not apply for planning consent – even where it is required – due to the difficulty in complying with council policies, and because they want to protect their privacy. Even if someone is able to get the approval for a Home Occupation Sex Services Premises (or HOSSP), the lack of consideration within New South Wales legislation of the multiple uses of the premises (as both residential home and place of work) results in a range of legal ambiguities that have the potential to problematize the lives of those living within the residence, whether this is the person who provides sex services from home, their partner or children. For example, given that a child at a private residence that is also being used for sexual services is technically ‘in a brothel’ (a restricted premises which people under the age of 18 are prohibited from entering), the police or Department of Community Services could classify these children as ‘at risk’ (see *Restricted Premises Act 1943*, and *Children and Young Persons (Care and Protection) Act 1998*, s.23).

Accordingly, while prostitution itself is no longer a crime in New South Wales, the majority of home-based work remains in breach of planning consent. This is despite the intent of the 1995 reforms to regulate all forms of sex services premises, including in the residential dwellings where approximately 40% of the sex sold in New South Wales is thought to be transacted (Crofts, 2003). Home-based working has hence tended to fall between the cracks, typically existing below the thresholds of both state and public visibility. As such, these premises are ‘out of sight and out of mind’: the women (and men) who choose to work in this way may well escape taxation, but they also lack labour rights such as social security and unemployment benefits given they are not recognized as running a legitimate home business (see Burgess and Strachan, 2000, on home-working in Australia). Lacking formal, legal recognition, there is also always the threat that workers may be issued with a notice to cease use of the premises for sex services: if they do not cease operation councils have the right to disconnect services to the premises.

However, continued discussion over the merits of decriminalization has provided opportunities to propose alternative approaches to how planning regulations classify home-based sex working. The *Standard Instrument (Local Environmental Plans) Order 2005*, for example, provided a potential basis for recognizing home-based work by proposing a standard Land Uses classification for all councils which no longer utilizes the term ‘brothel’ but referred instead to ‘sex services premises’, defined as any ‘premises habitually used for the purpose of sex services, but not home occupation or sex services (home

occupation)' (p. 88). This means that for the first time, the state government differentiated between types of sex services premises on the basis of size, albeit that it continued to differentiate home occupations (sex services) from home occupations in general. Thus the *Standard Instrument (Local Environmental Plans) Order 2005* requires councils to discriminate against home occupations (sex services), treating them differently from other home occupations even though there are no obvious planning grounds for this distinction (Crofts, 2003). This said, by suggesting that home-based work is distinct from brothel work, such planning reform has opened the door to recognizing home sex working as something that is not necessarily incompatible with residential dwelling.

Home Occupation Sex Services Premises in Sydney

Given the paucity of research on home-based prostitution, findings from recent research on Home Occupation Sex Services Premises (HOSSPs) commissioned by the City of Sydney Council are revealing of the impacts of prostitution policy on those who sell sex at home, alone (Prior and Lederwasch, 2010). Alongside a review of local planning approaches and analysis of safety reports lodged with the local sex work project, this research incorporated five interviews with HOSSP operators, as well as three with representatives of organizations providing support and guidance to home-based workers. The HOSSP operators were between thirty and fifty-six years of age, and all were female. They had operated HOSSPs within the City for between two and twenty-five years, albeit those that had operated HOSSPs for longer periods of time reported that they had intermittently closed their operation before recommencing work.

The interviews with HOSSP operators were designed to provide information associated with home-based sex working, including the number of workers/residents present at an address, the nature of the clientele, and the location of the premises. The interviews also explored occupational health and safety issues including health promotion and safety management strategies; knowledge of local council policies and services; and preferred communication and information distribution strategies. Interviewees were selected through a snowball technique, with an initial contact with one HOSSP operator (made via the City of Sydney Sex Industry Liaison Officer) providing contacts with other HOSSP operators. Interviews were conducted with both sex workers and service providers on the basis that their identities would remain confidential, with the City of Sydney unable to access information that identifies in any way the interviewees or properties discussed in this paper.

The interview methodology was developed in consultation with the City of Sydney Sex Industry Liaison Officer, and approved by the University of Technology Sydney Human Research Ethics Committee with all interviews conducted between August 2009 and March 2010. The City council also provided complaint records for the period of January 2008 to August 2009 relating to HOSSPs, with safety incident reports between 2000 and 2008 provided by the Sex Workers Outreach Project (SWOP) (see Prior, 2008).

The interviewees identified common characteristics among HOSSP workers and operators, suggesting that most had worked in a parlour or brothel for between 2 to 5 years previous to operating from home, often choosing clients from among those they had met through parlour work. This given, it appears most home-workers in Sydney were in their thirties upwards, albeit from extremely diverse backgrounds, as one interviewee stated:

Sex workers are as diverse as society comes, some have other jobs and some have it as their sole income, some educated, some uneducated.

Interviewees identified two important trends occurring over the previous 5 years that they believed had increased the prevalence of HOSSP operations within the City (and more broadly within the wider Sydney area). The first was a general increase in the number of migrant workers selling sex in the City (one of the interviewed representatives of organizations that provide support services to HOSSP workers indicated that their data showed that 'up to 35% of home based workers are multicultural workers'). The second was an increasing desire of women to work at home rather than in managed brothels. The reasons provided for this ranged from 'increased convenience', 'feeling better [improved well-being]', 'obtaining a larger "cut" of earnings', and avoiding 'the competitiveness of parlours [and other commercial sex premises]'.

The five HOSSP operators who were interviewed indicated that they currently worked from an apartment or semi-detached house. Three of the premises being used for home-based sex work were rental premises, with two premises being owned by the HOSSP operator. The size and layout of the buildings varied; some were located in apartments that had separate road access, others were located in apartments that shared common foyers. All HOSSP operators indicated that they restricted sex services to one particular room within the premises that could be closed off from the rest of the house. When asked to describe what made particular premises and locations appropriate for HOSSPs, interviewees identified a broad range of characteristics, including the accessibility of public transport and street parking; the presence of good security and lighting; and being in a location that is easy to explain to clients over the phone, but not too isolated.

Most interviewed HOSSP operators indicated they required clients to have an appointment and to ring on approach. Many HOSSP operators

indicated that they educated their clients on the importance of entering the premises 'discreetly and quietly', and that they did not accept return business from noisy clients. One interviewee noted that it is in the HOSSP operators' interest to maintain a 'low profile'. The most popular time for HOSSP operation was accordingly reported as being during the daytime and early evening, with interviewed HOSSP operators indicating their preference was to work during daytime hours to avoid alcohol-related problems with clients and 'only provide services to long term clients during the night for security reasons'. Overall, the interviewees were of the opinion that HOSSP workers spent more time with clients than sex workers from commercial sex industry premises such as brothels. The HOSSP operators that were interviewed indicated they saw anywhere between 1 and 20 clients in a week.

Overall, there was a high level of confusion amongst the interviewees about the legality of HOSSPs. The majority of participants appeared aware that HOSSPs are subject to different planning approaches in different parts of the City. As one service agency representative noted:

Workers [and operators] know the basic regulation but not the detail.

There was general confusion over the meaning of the 'one worker policy' within the South Sydney Local Environmental Plan 1998, which applied to most of those interviewed; as one service agency representative noted:

workers generally understand the South Sydney LEP ... to mean only one person can be [in a HOSSP] and only one person can be working [in a HOSSP at any time].

Much of the discussion surrounding the 'one sex worker per HOSSP policy' reflected a lack of understanding among some interviewees of current regulations for HOSSPs, given the one worker policy does not preclude other workers being on the premises at the same time but that only one person is permitted to *work at any one time*. This given, the standard way of working has been for a woman to sell sex at home with no-one else on the premises, something that generated particular concerns in relation to health and well-being.

Workers' well-being and safety

A quantitative and qualitative analysis of the information provided in 333 safety incident reports voluntarily lodged with the Sex Workers Outreach Project (SWOP) between February 2000 and March 2008 confirms that safety incidents vary considerably within, and across, different types of sex work. Almost half of the safety incidents were reported by those working in street-based sex work (49.2%, 164 out of 333), much more numerous than incidents reported by sex workers in brothels, parlours or strip clubs (19.5%, 65 out

of 333), doing private work (19.8%, 66 out of 333) and escort work (9.3%, 31 out of 333). The types of sex work with the fewest reported safety incidents included Internet and telephone sex work (0.3%, one out of 333). For private workers such as HOSSP operators, theft, harassment and assault were the most frequently reported types of safety incidents. The majority of thefts in private situations involved cases in which the assailant watched where the worker kept their money and then waited until the worker was in another room before stealing their belongings. Yet only a small proportion of the 333 safety incident reports occurred within the worker's home (8.1%, 27 out of 333) when compared to commercial premises (26.4%, 88 out of 333) or the client's vehicle or home (44.4%, 148 out of 333).

Despite these relatively low risks, health, well-being and safety issues associated with home-working remained key concerns among both the HOSSP operators and service agency representatives that were interviewed. Significantly, working in or operating HOSSPs was identified by interviewees as one of the healthiest environments for sex work within the sex industry, offering 'increased control and freedom', 'increased financial independence', 'flexibility of work hours', 'personal autonomy', and 'increased self esteem', when compared to working in a large commercial sex industry premises. HOSSPs were seen to be particularly important for increasing the self esteem of older sex workers; as one interviewee noted:

it's not so brutal as being an older worker [in a brothel], and you're not as beautiful as you used to be and you're sitting in a parlour all day having clients pick other women.

This suggests that work in a HOSSP could impact positively on the emotional well-being of a sex worker. Conversely, however, HOSSP work was described as 'lonely work' with some suggestion that mental health was impacted negatively from 'lack of social interaction'. One interviewee nevertheless pointed out that these adverse impacts

are common for all people who operate a business from home alone, not just sex workers.

Here, the health risks associated with 'working in isolation' were regarded as 'exacerbated' by planning regulations. The interviewees expressed their frustration that current planning regulations made it difficult for HOSSP operators to work with other sex workers in the same premises. One HOSSP operator argued that current policies

take away the opportunity for sex workers within home sex services to have work companionship.

Another noted that some HOSSP workers work alongside other sex workers for companionship and appreciate the support of others within the home.

Despite perceptions that the home offers a relatively good working environment, it would be wrong to suggest that home-working is risk-free. Those working in them reported incidents including clients refusing to pay for services; the harassment of private workers by people from commercial sex industry premises; and harassment (e.g. stalking) by clients. Several of the interviewees noted aggression by clients and attempts to engage in unsafe sex (e.g. 'there is a big push for no condoms') as the most significant concerns. It was felt that having another worker on the premises would be likely to prevent such instances, but was not permitted given dominant planning approaches, as one interviewee expressed:

The current perceptions of plans covering one part of the city [South Sydney LEP 1998] and that covering another part of the city [Sydney LEP 2005] ... adversely affect safety and security [of a HOSSP]. To ensure worker safety and security they should be able to pair up with someone and run their own [HOSSP].

The implication here is that although the women interviewed wished to avoid the inflexibility and competitiveness of a managed brothel, they felt that working alongside others could still provide significant safety benefits.

Impacts on locality

Prostitution policy is justified in relation to not only worker safety, but the wider effects of sex work on the communities in which it is based (O'Neill et al., 2008). Several sources of information were hence examined to provide insight into the way that HOSSP operations impacted on their surrounding locality. Significantly, three of the HOSSP operators who were interviewed reported that surrounding residents and/or businesses were not aware of the HOSSP they operated. Two HOSSP operators stated that residents and/or businesses were aware and that this was because they had told them about their work. The HOSSP operators indicated that the reason they told the neighbours was because they felt they had 'friendly relationships with them' and that they had known their 'neighbours in the area for a long time, including shop owners'. Only one of the interviewed HOSSP operators indicated that they had to deal with a neighbour as a result of an impact that adversely affected the neighbour: in this instance a 'client [had] annoyed a neighbour by making loud noise'.

For personal and commercial reasons, all HOSSP operators sought to minimize the potential for disruption to those in the vicinity. The most commonly reported ways of minimizing noise levels and ensuring that clients do not 'wander around' outside the premises included vetting drunk/disorderly

clients; closing windows/blinds; limiting the hours of operation where possible to 9am–5pm Monday to Friday; training clients how to enter and leave the premises quietly; and keeping client numbers down wherever possible. The interviewed HOSSP operators believed these efforts had a positive effect on reducing impacts on the local area in which they operated. It was also suggested by two of the HOSSP operators that their operations had positive impacts on the locality in which they are located. As one HOSSP operator noted, the presence of home businesses means

that there is someone in the apartment building whilst everyone else is at work, which deters people from vandalising and stealing things because they think twice when they can see people are still there ...

Interview responses with representatives of organizations that provided services to HOSSP workers also indicated that most neighbours and businesses were unaware of HOSSPs operating in their local area, and explained that the most common way that neighbours found out about HOSSP operations was when ‘owners tell neighbours’. However, it was noted that this only happened when HOSSP operators ‘already had a very good relationship with [the neighbours]’ given HOSSP workers generally desired anonymity and privacy:

[they] don’t want ‘sex worker’ hanging on [their] door, [they] don’t want your in-laws to know, [they] don’t want you and your neighbours to know, or the whole street to know – [they] want to keep it private.

In considering the impact of HOSSPs on the locality in which they operate, the City’s complaints records reveal a relatively small number of complaints against what they describe as ‘Unauthorised Sex Industry Premises’: between January 2008 to August 2009, only two of forty-five substantiated complaints against sex premises related to HOSSPs.

Discussion: The home as a low ‘risk environment’?

Previous analyses of the impacts of working environment on health, safety and well-being of sex working women have drawn fairly mixed conclusions. Nonetheless, a range of different occupational risks – including physical assault, fraud or scamming, having belongings stolen, rape and attempted rape, being forced to have unprotected sex, verbal abuse, sexual assault, harassment threats, kidnapping, drugging, and stalking – have been deemed to be considerably more pronounced in street-based working as opposed to off-street

settings (Travis, 1986; Day, 1994; Harcourt et al., 2001; Plumridge and Gillian, 2001; Kerkin, 2004; Roxburgh et al., 2005; City of Sydney, 2006b; Hearn, 2006). Church et al. (2001), for example, found that that 81% of women working in street prostitution and 48% of women in indoor prostitution experienced client violence in their study of three UK cities, with 27% of women in street prostitution and 8% of women in indoor prostitution reporting being raped in the previous six months. Jeal and Salisbury (2007) likewise found that only 4 of 71 massage workers experienced violence, whereas 15 of 71 street-based sex workers had done so; Sanders and Campbell (2007) suggest around three quarters of those employed in off-street sex work had never experienced violence. These findings reinforce the notion that street sex work is both the most dangerous and 'lowest' form of sex work, something that is seen to have direct consequences for mental health, with Seib et al. (2009) arguing that street sex workers exhibit patterns of disadvantage, stigma and trauma rarely seen in sex workers from other industry sectors.

But while some research highlights the fact that indoor sex workers experience lower levels of violence than those who work in other 'risk environments', there has been little discussion of the variation between different spaces of off-street work. The available evidence nonetheless indicates that there are considerable differences in whether home-based workers have ever reported being raped, robbed, and/or assaulted when compared with brothel or bar workers. In one Queensland survey, for example, it appeared that over half of street workers had been raped or assaulted, as compared with 15% of home-workers but only 3% of those based in legal brothels (Ross et al., 2012). This is a trend echoed in Kinnell's analysis of violence in the UK sex industry, which shows that flat-based workers reported more dangerous or 'dodgy' punters than those in massage parlours or brothel work. This contrasts with our Sydney study, which suggests home-based sex work to be the least risky of all working environments. O'Doherty (2011) also shows independent home-based sex work to be associated with the lowest rates of threats with weapons and physical assault, although the tendency for clients to refuse to wear a condom or sexually assault the worker was comparable to massage parlour work.

The reasons for these disparities are complex, varying according to the environmental, social and legal conditions in which sex is bought and sold. One significant factor here is the legality or otherwise of different forms of sex work: where brothels are in the regulated sector there appears to be more likelihood for women to report violence to the police, something less likely when off-street brothel working is illegal, as in the UK (Church et al., 2001). Likewise, violence against sex workers is more likely to be reported and recorded if outreach and support services are aware of it, meaning that violence is more likely to be identified in street environments than the home premises which remain unknown to many sex work support projects. Here there is a significant contrast between the UK, where some home-based and brothel workers

appear to have little contact with outreach projects (Sanders and Campbell, 2007), and the experience of Sydney, where home-working exists in a decriminalized environment.

The suggestion here is that working in the private home is relatively safe compared with other spaces of prostitution, but that the legality or otherwise of home-working makes it more or less likely for crimes to be reported. Benoit and Millar (2001) found that clients were the most likely perpetrators of violence against home-working prostitutes and that sex workers were not likely to report this given virtually all those interviewed expressed alienation from the protective services of the police. While this potentially makes home-working less safe, from the perspective of the home-worker this can be a distinctive advantage, allowing them to avoid police harassment. For example, harassment by police was reported by over half of the street-based sex workers in one Queensland survey (54.5%), while over a quarter had been sexually or physically assaulted by a police officer in the last five years (27.3%) and over a third had been sexually propositioned (39.4%) (Woodward et al., 2004). This suggests that there is something of a 'trade off' involved in working off-street, with sex workers utilizing a variety of resources and skills to manage potentially risky encounters, something that is facilitated when working in a familiar, 'home' environment rather than visiting clients' homes or having sex in their cars (Sanders, 2007). Having control of one's own environment, and being confident that clients are entering the premises on given terms, appears hugely important in boosting sex workers' self-confidence, safety and job satisfaction.

In the absence of regular surveillance or visitation by the police, there are a number of obvious policy recommendations that emerge from our analysis, primarily that when more than one worker is present in a home setting, this should not necessarily deem it an illegal brothel. Co-working in a domestic setting would seem to have certain advantages in terms of health and well-being, but governments seem reticent to explore the viability of decriminalizing this form of working given this might lead to a proliferation of 'mini-brothels' in residential settings, exciting community opposition. Yet if home-working is legally recognized, and subject to planning consent, enforcement could ensure that premises possessed intercom communication, solid security doors with peepholes in, and that all workers were informed of relevant sex work support services. Moreover, when compared with large, visible sex premises, small home-working operations would have few impacts on local residential communities, suggesting they should not necessarily be limited to isolated industrial areas.

Yet among the legal, social and environmental factors that heighten the risks of sex work, it is the social stigma of sex work that has often been identified as most significant (Kinnell, 2008). In this regard, where policies seek to 'design out' or otherwise criminalize prostitution, this is seen to reinforce

the social stigma and discrimination that perpetuates a culture of violence. In so much that home-based work exists covertly – it is not illegal in most jurisdictions, yet nor is it regulated or planned for – it is difficult to ensure that the health and safety risks of selling sex at home are reduced. Sanders and Campbell (2007: 13) write that it is not simply an issue of removing or minimizing the risks inherent in different working environments, but one of simultaneously designing respect into these environments: ‘sex workers [need] the legal support, environmental conditions, and social status that protects them from sexual victimization and sets out expectations for those who seek out sexual services’. This speaks to a social strategy of acknowledging sex workers as members of communities who are engaged in a legitimate and useful form of work, and encouraging clients to be respectful and educated consumers, by recognizing home-based sex work as legitimate land use, even in residential areas.

Conclusion

Throughout the urban West, there is good reason to suppose that home-based sex work is an important and increasingly significant form of prostitution. For all this, it is rarely discussed in policy circles and generally falls outside the ambit of legal scrutiny given prostitution is not illegal if transacted between two consenting adults in private space. Yet given home occupation sex working excites so little controversy or comment, and is rarely even recognized by neighbouring residents, it appears that this is a form of working that has little potential to generate anti-sociality or cause public disturbance. As such, we suggest that there are good grounds for evolving policies which aim to minimize the health and safety risks faced by those who sell sex at home given the evidence suggests home-working is more flexible, less intrusive, more discreet, safer and potentially more rewarding than other modes of working. The flipside of this is that by working at home, the sex worker potentially situates themselves in a legally indistinct space in which they lack visibility in the eyes of the state and the law, with their ability to work flexibly and potentially safely coming at the expense of the labour rights they might enjoy in managed, legal brothels.

While our conclusions about home-working in Sydney suggest it has many advantages over other forms of (managed) sex work, policy-makers need to be mindful that many of those who sell sex at home do so because it provides them with some anonymity and allows them to negotiate the stigma of sex working by ‘hiding in plain view’. Like planning approval, compulsory registration or licensing of home operations might prove unpopular among home-workers given dominant social attitudes remain censorious of prostitution:

we thus conclude by arguing for a harm reduction and labour rights approach to be enshrined in planning and health policy, something that would help shift dominant attitudes towards sex working, spreading the message that home-based sex work is not a social problem to be eradicated, but a viable form of working that needs to be supported given the potential dangers and downsides of working in other spaces of sex work.

References

- Abel GM, Fitzgerald LJ, and Brunton C (2009) 'The Impact of Decriminalisation on the Number of Sex Workers in New Zealand', *Journal of Social Policy* 38: 515–531.
- Benoit C and Millar A (2001) 'Dispelling Myths and Understanding Realities: Working Conditions, Health Status and Exiting Experiences of Sex Workers' [<http://www.hawaii.edu/hivandaids/Working%20Conditions,%20Health%20Status%20and%20Exiting%20Experience%20of%20Sex%20Workers.pdf>].
- Bernstein E (1999) 'What's Wrong with Prostitution? What's Right with Sex-Work? Comparing Markets in Female Sexual Labour', *Hastings Women's Law Journal* 10: 91–119.
- Brents B and Hausbeck K (2005) 'Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk and Prostitution Policy', *Journal of Interpersonal Violence* 20(3): 270–295.
- Brothels Taskforce (2001) *Report of the Brothels Taskforce*. Sydney: NSW Government.
- Burgess K and Strachan G (2000) 'The Home as the Workplace: Developments in Homeworking in Australia', pp. 51–70 in G Murray, C Berner, D Harrison, and T Wagar (eds) *Rethinking Institutions for Work and Employment*. Quebec: Les Presses de l'Université Laval.
- Children and Young Persons (Care and Protection) Act* (1998) Parliament of New South Wales, Sydney [<http://www.legislation.nsw.gov.au/fullhtml/inforce/act+157+1998+FIRST+0+N>].
- Church S, Henderson M, Barnard M, and Hart G (2001) 'Violence by Clients towards Female Prostitutes in Different Work Settings: Questionnaire Survey', *British Medical Journal* 322: 524–525.
- City of Sydney (2006a) *Adult Entertainment and Sex Industry Premises Development Control Plan*. Sydney: City of Sydney.
- City of Sydney (2006b) *Mystery Men: The Client and Street Sex Worker Survey. Research Project Report*. Sydney: City of Sydney.
- Cox E (2003) *UTS Students' Research on Home Occupations under Supervision of Eva Cox*. Sydney: University of Technology Sydney.
- Crofts P (2003) 'Ambiguities in Approaches to Brothels: Disorderly Houses or Commercial Premises?', *Environmental Planning and Law Journal* 10: 445–458.
- Cusick L, Kinnell H, Brooks-Gordon B, and Campbell R (2009) 'Estimating the Size of the Sex Worker Population in Britain: Wild Guesses and Conflated Meanings?', *Critical Social Policy* 29: 703–719.

- Day S (1994) 'What Counts as Rape? Physical Assault and Broken Contracts: Contrasting Views of Rape amongst London Sex Workers', pp. 172–189 in P Harvey and P Gow (eds) *Sex and Violence: Issues in Representation and Experience*. London: Routledge.
- Disorderly Houses Amendment Act* (1995) Parliament of New South Wales, Sydney [<http://www.legislation.nsw.gov.au/sessionalview/sessional/act/1995-53.pdf>].
- Frances R and Gray A (2007) 'Unsatisfactory, Discriminatory, Unjust and Inviting Corruption: Feminists and the Decriminalisation of Street Prostitution in New South Wales', *Australian Feminist Studies* 22(53): 307–324.
- Godden L (2001) 'The Bounding of Vice: Prostitution and Planning Law', *Griffith Law Review* 10(1): 77–98.
- Harcourt C and Donovan B (2005) 'The Many Faces of Sex Work', *Sexually Transmitted Infections* 81: 201–206.
- Harcourt C, Beek I v, Heslop J, McMahon M, and Donovan B (2001) 'The Health and Welfare Needs of Female and Transgender Street Based Sex Workers in New South Wales', *Australian and New Zealand Journal of Public Health* 25: 84–89.
- Hearn J (2006) 'The Implications of Information and Communication Technologies for Sexualised Violences: Contradictions of Sexual Citizenship', *Political Geography* 25: 944–963.
- Hubbard P (2004) 'Cleansing the Metropolis: Sex Work and the Politics of Zero Tolerance', *Urban Studies* 41(9): 129–140.
- Hubbard P (2011) *Cities and Sexualities*. London: Routledge.
- Hubbard P and Whowell M (2008) 'Revisiting the Red Light District: Still Neglected, Immoral and Marginal?', *Geoforum* 39(5): 1743–1755.
- Jeal N and Salisbury C (2007) 'Health Needs and Service Use of Parlour-based Prostitutes Compared with Street-based Prostitutes: A Cross-sectional Survey', *BJOG: An International Journal of Obstetrics and Gynaecology* 114: 875–881.
- Kerkin K (2004) 'Discourse, Representation and Urban Planning: How a Critical Approach to Discourse Helps Reveal the Spatial Reordering of Street Sex Work', *Australian Geographer* 35: 185–192.
- Kinnell H (2008) *Violence and Sex Work in Britain*. Cullompton: Willan.
- Matthews R (2008) *Prostitution, Politics and Policy*. London: Routledge-Cavendish.
- O'Doherty T (2011) 'Victimization in Off-Street Sex Industry Work', *Violence Against Women* 17: 944–963.
- O'Neill M and Pitcher J (2010) 'Sex Work, Communities and Public Policy in the UK', pp. 203–218 in M Ditmore, A Levy, and A Willman (eds) *Sex Work Matters: Exploring Money, Power and Intimacy in the Sex Industry*. New York: Zed Press.
- O'Neill M, Campbell R, Hubbard P, Pitcher J, and Scoular J (2008) 'Living with the Other: Street Sex Work, Contingent Communities and Degrees of Tolerance', *Crime, Media, Culture* 4(1): 73–93.
- Plumridge L and Gillian A (2001) 'A Segmented Sex Industry in New Zealand: Sexual and Personal Safety of Female Sex Workers', *Australian and New Zealand Journal of Public Health* 25: 78–85.

- Prior J (2008) *Safety Incident Report*. Sydney: Elton Consulting.
- Prior J and Lederwasch A (2010) *Home Occupation (Sex Services) Premises Report*. Sydney: University of Technology Sydney.
- Raphael J and Shapiro DL (2004) 'Violence in Indoor and Outdoor Prostitution Venues', *Violence Against Women* 10: 126–139.
- Restricted Premises Act* (1943) Parliament of New South Wales, Sydney [<http://www.legislation.nsw.gov.au/inforcepdf/1943-6.pdf>].
- Rhodes T (2009) 'Risk Environments and Drug Harms: A Social Science for Harm Reduction Approach', *International Journal of Drug Policy* 20(3): 193–201.
- Ross MW, Crisp BR, Månsson S-A, and Hawkes S (2012) 'Occupational Health and Safety among Commercial Sex Workers', *Scandinavian Journal of Work, Environment and Health* 38(2): 105–112.
- Roxburgh A, Degendardt L, Larance B, and Copeland J (2005) 'Mental Health, Drug Use, and Risk among Female Street Based Sex Workers in Greater Sydney'. National Drug and Alcohol Research Centre (NDARC) Technical Report No. 237. Sydney: University of New South Wales.
- Sanders T (2007) 'Protecting the Health and Safety of Female Sex Workers: The Responsibility of All', *BJOG: An International Journal of Obstetrics and Gynaecology* 114(6): 791–793.
- Sanders T (2009) 'Controlling the "Anti Sexual" City: Sexual Citizenship and the Disciplining of Female Street Sex Workers', *Criminology and Criminal Justice* 9(4): 507–525.
- Sanders T and Campbell R (2007) 'Designing Out Violence, Building in Respect: Violence, Safety and Sex Work Policy', *British Journal of Sociology* 58: 1–18.
- Sanders T, O'Neill M, and Pitcher J (2009) *Prostitution: Sex Work, Policy and Politics*. London: SAGE.
- Seib C, Fischer JA, and Najman JM (2009) 'The Health of Female Sex Workers from the Three Industry Sectors in Queensland', *Social Science & Medicine* 68(3): 473–478.
- South Sydney Local Environmental Plan* (1998) (amended 2006) South Sydney City Council, Sydney, NSW [<http://www.cityofsydney.nsw.gov.au/Council/OnExhibition/documents/SouthSydneyLEP1998.pdf>].
- Spanger M (2011) 'Human Trafficking as a Lever for Feminist Voices? Transformations of the Danish Field of Prostitution', *Critical Social Policy* 31(4): 517–539.
- Standard Instrument (Local Environment Plans) Order* (2005) Parliament of New South Wales, Sydney [http://www.planning.nsw.gov.au/planning_reforms/p/s05-474-35-d04.pdf].
- Sullivan B (2010) 'When (Some) Prostitution is Legal: The Impact of Law Reform on Sex Work in Australia', *Journal of Law and Society* 37(1): 85–104.
- Sydney Local Environmental Plan* (2005) City of Sydney, Sydney, NSW [<http://www.legislation.nsw.gov.au/sessionalview/sessional/epi/2005-810.pdf>].
- Travis G (1986) *Soliciting in Darlinghurst: Female, Transsexual, and Male Street Prostitutes Talk about their Work*. Sydney: NSW Bureau of Crime Statistics and Research Department of the Attorney-General.

Walker F (1983) Second Reading: Prostitution (Amendment) Bill. Hansard, NSW Legislative Assembly, Parliament of New South Wales, 29 March.

Woodward C, Fischer J, Najam J, and Dunne M (2004) *Selling Sex in Queensland*. Brisbane: Prostitution Licensing Authority.

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Research Article

**Effects of sex premises on neighbourhoods:
Residents, local planning and the geographies of
a controversial land use**

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Abstract: The paper examines 284 resident submissions to sex premises planning processes, and a survey of 401 residents living near sex premises in New South Wales, Australia, to investigate resident concerns about the effect of sex premises on local environs, and how these concerns inform resident views on the spatial ordering of sex premises. The investigation found that there was a discrepancy between the views of the broader residential population and the views of participants in planning processes. The investigation suggests that geographers need to consider more deeply the connections between residents, planning and the geographies of this controversial land use.

Key words: effect, land-use planning, New South Wales, residence, sex premises, spatial ordering.

Introduction

In recent decades research into the geographies of sexuality has been important in highlighting how mechanisms, such as policing, licensing and planning, have long been used within diverse international jurisdictions to regulate the location, visibility and discreteness of businesses that profit from sex, including brothels and massage parlours that sell sexual services, adult bookshops and other sex premises (Prior 2008; Hubbard 2009; Mathieu 2011). Processes of economic and social mainstreaming have brought sex commerce out of the shadows and into the formal economy (Brents & Sanders 2010), with sex businesses, such as sex shops and adult retailers, taking more prominent positions within a range of international jurisdictions (Coulmont & Hubbard 2010), while in some jurisdictions, such as New South Wales (NSW), Australia, even brothels and erotic massage parlours are now regulated as legiti-

mate land uses (Crofts & Prior 2011). While attitude surveys indicate that the public is becoming more liberal in its opinion of commercial sex (Tibbetts & Blankenship 1999), when confronted with sex premises in their own city, many residents and business owners display a strong 'Not in My Back Yard' (NIMBY) attitude (Boffa *et al.* 1994; Mathieu 2011). Opposition to sex premises proceeds from the assumption that they encourage a broad range of negative effects such as immorality, nuisance, antisocial behaviour and criminality (Edwards 2011). Such opposition is often particularly pronounced when sex premises are proposed in areas with little prior experience of the sex industries (Hubbard 2009). As a result of these objections, sex premises are often socially and spatially marginalised (Papayanis 2000; Prior 2008; Coulmont & Hubbard 2010), typically located away from residential neighbourhoods and in 'red light districts' or industrial areas.

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As a result of the mainstreaming of sex business within some jurisdictions, the regulation of sex premises has shifted from policing to land-use planning (Prior 2008); in NSW, this occurred in 1995. As a consequence, NSW local governments and their communities now have a great deal of discretion in how they apply planning to sex premises development (Crofts & Prior 2011), provided that they do not prohibit sex premises from operating in their local areas. Sex premises refused by council can appeal to the NSW Land and Environment Court (LEC). While this approach appears more liberal than that evident in jurisdictions where sex work is criminalised (Weitzer 2012), there is a fundamental ambivalence inscribed in the NSW legislative framework (Crofts & Prior 2011). On the one hand, legislation has been constructed around the idea that sex services premises should be treated as equivalent to other non-residential premises, with planners setting requirements as to provision of parking, opening hours and size of the business, which are not coloured by moral judgments about those who buy or sell sex. On the other hand, the regulatory regime also sustains the perception of sex premises as inherently disorderly by insisting they are incompatible with 'sensitive' land uses such as schools and religious establishments.

Research into the role of land-use planning in controlling the location and visibility of sex premises has emerged as an important theme within the geographies of sexuality (Kerkin 2004; Prior 2008). This research has sought to elucidate 'geograph[ies] of [sex premises] planning practice' (Forester 1983). Sex premises land-use planning is a complex terrain (which includes planning legislation, planning instruments, development processes and judicial hearings), which we explore by examining the roles of various participants (Lyons *et al.* 1993; Papayanis 2000; Paul *et al.* 2001; Sanchez 2004) and the arguments and evidence used to plan sex premises (Prior 2008; Prior & Crofts 2011). Most research to date has focused directly on the contents of planning processes (Kerkin 2004; Prior 2008). With few exceptions (Paul *et al.* 2001; Prior 2008) most scholarship highlights the ways in which sex premises land-use planning is dominated by arguments asserting that premises disrupt local communities by

contributing to: blight and urban deterioration (e.g. decline in property values); deleterious effects on environmental and personal health (e.g. noise); antisocial behaviour and crime (e.g. drug dealing, public urination); and the erosion of community standards (Papayanis 2000; Prior & Crofts 2011).

While this research highlights the dominance of presumed negative impacts in planning processes, there remains a dearth of evidence about the nature and extent of local impacts within jurisdictions such as NSW (Harcourt 1999), and a reliance on a small number of US studies. Some of these US studies highlight the adverse effects of commercial sex industry premises (New York Department of City Planning 1994; Linz *et al.* 2004; Enriquez *et al.* 2006), but are limited in terms of validity and reliability (Linz *et al.* 2004; Hanna 2005). Others report no significant association between crime and the presence of adult businesses, with sex premises attracting less criminality than equivalent licensed premises (e.g. clubs or bars) because security is generally better and clients are older (Linz *et al.* 2004; Hanna 2005; Enriquez *et al.* 2006). Broader community research is essential so that 'community and council debate in respect to [sex premises] and the sex industry generally' can be based on factual knowledge of the broader communities views and not on 'community responses generated by sensational and selective reporting, relying heavily on anecdotal and emotionally charged "evidence"' (Harcourt 1999, p. 34).

Our paper contributes to, and goes beyond, existing research. Our paper draws on original primary research in which we surveyed residents living near sex premises regarding their perceived effects and compares this with the perceptions of those residents who participated in planning processes. NSW planning legislation (Environmental Planning and Assessment Act 1979, s. 79) specifically enshrines the right of members of the public to be consulted and make submissions in respect of land-use decisions about sex premises. Consent authorities (e.g. local governments and the LEC) are required to give genuine consideration to the matters raised in those public submissions. This research has temporal and spatial aspects that contribute to geographies of planning. Participants in planning processes tend to articulate

predicted and *assumed* impacts in relation to proposed sex premises, while our survey participants detailed their *experience* of living near sex premises. Our research suggests that formal planning processes tend to attract participation by those who are negative towards a proposed land use. In contrast, our survey showed that the majority of people living near a sex premises are either unaware of its existence, or regard the business as having neutral impacts.

We also explore how spatial assumptions contribute to residential expectations and experiences of sex premises. Expectations tend to be expressed as 'common sense', and in the absence of research, contribute to and are in turn reinforced by planning principles. Planning principles are used to remove sex premises from public awareness by containing, enclosing, concealing and isolating them, and by reducing their visibility (Hubbard *et al.* 2008; Prior & Crofts 2011). Planning principles not only express assumptions but also constitute knowledge and visibility about and for sex premises. Our survey highlights different 'common sense' notions and experiences of the city and sex premises.

Research methodology

We employed an analysis of two sources of data – resident submissions to sex premises planning processes and a survey of residents who reside near an operating sex premises. Both sets of data relate to residents in the same local areas in NSW. The survey focused upon sex premises where sexual services were sold (i.e. legal brothels, sex-on-premise venues and swinger's clubs), while resident submissions additionally included adult entertainment premises where no sex services were provided (i.e. 'gentleman's clubs' and sex shops).

Resident submissions to sex premises planning processes

The first data source was 284 resident submissions to 47 planning processes for sex premises in two local government areas (LGAs) in NSW – City of Sydney Council (COS) and Parramatta City Council (PCC). COS includes Kings Cross, a historic 'red light area' with a high concentration of sex premises and street-based sex workers; PCC is located 24 kilometres west of COS. Submissions were collected between

July 2009 and November 2010. These resident submissions were primarily predictive, that is, 37 of the 47 submissions were in response to *proposed* rather than *existing* development applications for sex premises.

The analysis of the submissions utilised a stepped qualitative data analysis: first, describing phenomena; second, classifying phenomena; and third, assessing how the phenomena interconnect. Resident submissions were classified according to three themes: overall (potential) effect of sex premises (an objection constituted a negative overall effect and a letter of support constituted a positive overall effect); types of (potential) effects (effect types such as noise were identified and attributed a positive or negative value based on the resident's explanation); and methods for spatially ordering sex premises that were expressed (e.g. resident suggestions concerning the proximity of sex premises to other land uses). It was only possible to collect limited demographic data on the residents that lodged submissions (Table 1). NVIVO software (QSR International) was used for coding themes from residents' submissions.

Survey of residents residing near operating sex premises

The second data source was a random survey of 401 residents who resided within 400 meters of one or more operating sex premises in either COS or PCC. Thus in contrast to the resident submissions, our survey was based on experiences rather than predictions of the impact of sex premises. These sex premises had been subject to the planning processes that were identified in the first data source. Residents that participated in the fixed line telephone survey were randomly contacted using a list of telephone numbers attached to residents in COS and PCC collected from a commercially available database of 1.905 million household numbers for NSW. Because this database is sortable by postcode, suburb and street, it was possible to identify telephone numbers of residents who lived within a 400-metre radius of operating sex premises. Telephone numbers were excluded from consideration if they were attached to residents who lived on the other side of a main road or railway line from sex premises. Potential respondents were screened

Table 1 Demographic characteristics of residents who lodged submissions and residents who took part in the survey

Characteristics	Resident submissions (<i>n</i> = 284)	Resident survey	
		Total residents surveyed (<i>N</i> = 401)	Proportion aware of premises (<i>n</i> = 228)
	<i>n</i>	<i>N</i>	<i>n</i> (% of <i>N</i>)
Location:			
COS	183	241	179 (74.3)
PCC	101	160	49 (30.6)
Gender:			
Male	—	186	113 (60.8)
Female	—	215	115 (53.5)
Age:†			
18–35	—	84	32 (38.1)
36–50	—	125	72 (57.6)
51–65	—	115	74 (64.3)
>66	—	75	50 (66.5)

Notes: †2 out of 401 did not provide details of age. COS, City of Sydney Council; PCC, Parramatta City Council. Based on authors' data.

to ensure they were aged 18 or over and lived within the relevant LGA. The survey was conducted using Plenari CATI software (Potential Group) in October–November 2010.

Several questions in the survey were designed to collect data on the same themes that structured the analysis of the resident submissions. Residents were asked to indicate if they were aware of a sex business operating in their local area. Aware residents (56.9%, or 228 out of 401) were asked to provide information about sex premises in terms of the overall effect, the types of effects and the principles upon which they thought decisions about the location of sex premises should be based. Residents were also asked to value the overall effect and types of effects, using a scale range of –3 (extremely negative) to +3 (extremely positive), where nil (0) was understood to mean a neutral effect. To allow comparison with the first data set, all negative responses were assigned the same negative effect value (i.e. scores of –1, –2 and –3 were all assigned the same negative value), all positive responses were assigned the same positive effect value, and all nil (0) responses were assigned a neutral value. The full range of effect values were only used when calculating mean scores for the cohort. The survey also collected demographic data on the participants (Table 1). The analysis

of the survey data used the same thematic coding developed for the analysis of the resident submissions. Both SPSS (SPSS Inc.) and NVIVO software were used for analysis of the resident survey. Descriptive statistics, and checking for significance where appropriate with non-parametric tests, were used to interpret the quantitative results of the survey.

The analysis and data collection was conducted in accordance with the ethics approval provided by the University of Technology, Sydney Human Research Ethics Committee.

Sample

Those who submitted planning submissions and participated in the survey exhibited the demographic characteristics in Table 1.

One limitation to this study was that we could not analyse the suggestion that opposition to sex premises development often coalesces with objections of religious groups and anti-pornography campaigners who regard commercial sex as a form of *moral* pollution (Hanna 2005). Furthermore while this study examines resident experiences of sex premises it does not explore how residents experience different types of sex premises, nor does it examine the effect of demographic factors such as gender or living in a household with chil-

dren. These are important future directions for research that deserve attention (Edwards 2011).

Discussion of research findings

The findings from the analysis of the resident submissions and the survey are presented and compared in three sections. We discuss firstly resident concerns about the overall effects of sex premises on local areas, secondly the types of effects that residents associate with sex premises and finally the ways in which residents seek to influence the location and design of sex premises in their neighbourhoods. Direct quotations from the survey and resident submissions are shown in quotation marks without in-text referencing.

Overall effect

The analysis of resident submissions found that the vast majority (279 out of 284, 98.2%) believed that the proposed sex premises would have an overall negative effect on the surrounding neighbourhood, and only a tiny proportion (5 out of 284, 1.8%) asserted that sex premises would have an overall positive effect on the surrounding neighbourhood. In contrast, our survey produced a broader range of perspectives on the overall experience of the effects of sex premises. Among those who were aware of sex premises in their neighbourhood, almost half (48.2%, or 108 out of 224) believed that sex premises had no overall impact on their surrounding environs. Of the remaining residents, nearly as many residents rated the overall impact positively (24.1%, or 54 out of 224) as rated it negatively (27.7%, 62 out of 224). Thus, 72.3% of the total survey experienced *no negative effects* as a consequence of the nearby sex premises.

The disparity between the diversity of views expressed in the survey and the predominantly negative views expressed in the submissions can be explained in different ways. First, it suggests that planning processes tend to attract those members of the public who wish to object, and that those with neutral or positive views about the effects of sex premises on local environs are less likely to make submissions.

Second, the disparity suggests that there is a great difference between predicted or imagined

fears of proposed sex premises and the lived reality. This was underlined by the survey revealing an association between the length of time that residents were aware of a sex business operating in their local area and the perceived overall negative or positive assessment of its effect. Surveyed residents who had known about local sex premises for more than three years on average tended to perceive their effect in neutral terms (mean 0.05), whereas in general, respondents with three years or less knowledge had a negative perception of impact (mean -0.65) ($P = 0.018$, statistically significant at 95% level). This suggests that residents become more accepting of a nearby sex premises the longer they are familiar with its presence. This is in accordance with disgust and disorder theories which suggest increased levels of acceptance of objects of disgust through increased familiarity and prolonged contact (Miller 1997, p. 15). The longer we are in contact with an object of disgust, the more our fears can weaken by extinction or adaptation (Rozin *et al.* 2004). Through the process of familiarisation we are able to remove the ideational factors that often drive our fears and assumptions. Systems of order on an individual and/or social level can be changed, so that through familiarity, experience and/or change of law, businesses such as sex premises, which have historically been constructed as disorderly (Crofts 2007), can be recognised and regarded as lawful and orderly.

This change due to increased familiarity was apparent in the commentary in both the surveyed residents and the resident submissions. As one survey respondent noted:

I strongly protested against the brothel before it opened but now I have no problem with the brothel as no problems have evenuated and I admitted that I was wrong with my concerns.

Similarly, one resident submission stated:

[I live]... directly opposite the... premises... When they originally lodged their DA a couple of years ago, I was very hesitant and actually wanted to oppose their application. I was very doubtful they would honour their agreement once their DA was

approved. . . . Well, shock and horror, they kept their word. In fact, I have been rather surprised at how diligently they have run this business with the locals in mind. . . . They have also shown genuine interest in the community and are prepared to help in whatever way possible.

Our analysis thus highlighted a disjunction between the imagined fears of sex premises as inherently disorderly expressed in resident submissions, compared with the lived experience of brothels as orderly businesses among those surveyed. Those who saw the overall effect as being neutral often noted their 'indifference' towards sex premises as a result of their familiarity with them. Survey respondents reported that 'they're around and a fact of life', they had 'no impact on [them] or [their] neighbourhood whatsoever' and 'It's been there as long as we've [been here], thirty years, there's never been any problems or caused any trouble'.

Types of effects

Table 2 presents the most common types of potential effects that were identified during the analysis of resident submissions, and details the number of times these same types of effects were identified by residents in our survey. A review of Table 2 shows that all types of effects, except noise, were assigned positive, negative and neutral values, revealing the diverse ways in which residents believe sex premises affect surrounding neighbourhoods. This is clear evidence that the effects of sex premises cannot be assumed to be generally negative. Moreover, the table shows that the majority of resident submissions and survey respondents attributed a neutral value to all types of effects.

Table 2 also shows that positive and negative values are not equally distributed across the two data sources. There is an almost complete absence of the attribution of positive values in the resident submissions, while in the resident survey there is a greater attribution of positive values. This reiterates our argument that local government planning processes attract those members of the public who wish to identify negative effects, and do not attract those who identify positive impacts. This inference is further supported by the fact that the survey respondents who also engaged in planning pro-

cesses for sex premises (6.7%, or 16 out of 224), did not include any residents who attributed positive values to effect types (Table 2).

The positive and negative dimensions identified for each type of effect can be further understood in the context of qualitative comments which provide insight into what the residents believed would cause the positive or negative effect. For example, the belief that sex premises could have a positive effect on their surrounding neighbourhood by (italics added) 'contribut[ing] to the *sexual health* of the community', was seen as resulting from their ability to promote safe sex practices in the community. 'Design features' and 'effective management' of sex premises were also seen as enabling a range of positive effects (italics added):

Higher levels of *lighting* [outside premises] . . . improve *safety and security* in the neighbourhood.

CCTV coverage and security guards [outside premises] will . . . deter *crime* and . . . reduce *fear of crime* . . . and reduce *noise* in the area.

A range of residents identified 'economic benefit' as a key driver behind the positive effect of sex premises on local areas (italics added) by:

Providing local *employment* opportunities, . . . which added to the economic value of the locality.

Improving the [state of] *the neighbourhood* through an increased diversity of local goods and services . . . attracting people and travellers to come through the area and visit cafes.

Residents also identified a range of generators for negative effects. Sex premises would have a negative effect on the local neighbourhood by 'adversely [affecting] the *sexual health* of local community' (italics added) as a consequence of the ability of premises to 'increase [the] prevalence of sexually-transmitted infections'. It was claimed that the 'type of clientele' – 'male, alcohol-fuelled' – that sex premises attracted were seen as having a (italics added): 'predisposition to be *noisy*, disorderly and engage in *anti-social behaviour* . . . pissing in

Table 2 Type and value of effects identified in resident submissions and by surveyed residents aware of sex premises in the surrounding neighbourhood

Type of effect:	Effect value detailed in resident submissions (<i>n</i> = 284)			Effect value noted by residents in survey who are aware of operating sex premises near their home (<i>n</i> = 224)			Effect value noted by residents in survey who are aware and engaged in DA processes for that premise (<i>n</i> = 16)		
	<i>n</i> (% of 284)			<i>n</i> (% of 224)			<i>n</i> (% of 224)		
	+ve	-ve	Neutral	+ve	-ve	Neutral	+ve	-ve	non
Sexual health	0	5 (1.8)	279 (98.2)	17 (7.6)	14 (6.3)	190 (84.8)	0	1 (0.4)	15 (6.7)
Antisocial behaviour	1 (0.3)	44 (15.5)	239 (84.2)	4 (1.8)	30 (13.4)	191 (85.3)	0	5 (2.2)	11 (4.9)
State of the neighbourhood	2 (0.6)	58 (20.4)	224 (78.9)	6 (2.7)	23 (10.3)	192 (85.7)	0	4 (1.8)	12 (5.4)
Safety and security	0	57 (20.1)	227 (79.9)	6 (2.7)	20 (8.9)	193 (86.2)	0	3 (1.3)	13 (5.8)
Parking and traffic	1 (0.3)	106 (37.3)	177 (62.3)	5 (2.2)	27 (12.1)	196 (87.5)	0	5 (2.2)	11 (4.9)
Crime	0	41 (14.4)	243 (85.6)	6 (2.7)	17 (7.3)	198 (88.4)	0	1 (0.4)	15 (6.7)
Fear of crime	0	44 (15.5)	240 (84.5)	3 (1.3)	18 (8.0)	201 (89.7)	0	3 (1.3)	13 (5.8)
Employment	0	7 (2.5)	277 (97.5)	13 (5.8)	9 (4.0)	201 (89.7)	0	1 (0.4)	15 (6.7)
Property values	0	40 (14.1)	244 (85.9)	5 (2.2)	18 (8.0)	202 (90.2)	0	2 (0.9)	14 (6.3)
Morality	1 (0.3)	12 (4.2)	271 (95.4)	1 (0.4)	19 (8.5)	203 (90.6)	0	4 (1.8)	12 (5.4)
Noise	0	50 (17.6)	234 (82.4)	0	28 (12.5)	204 (91.1)	0	3 (1.3)	13 (5.8)
Lighting	0	6 (2.1)	278 (97.9)	7 (3.1)	6 (2.7)	211 (94.2)	0	0	16 (7.1)

DA, Development Application. Based on authors' data.

doorways'. Sex premises are 'often associated with owners . . . that have known criminal histories or have other reasons to clash with the law' and that employees at the sex premises are linked to 'crime . . . we all know that prostitution and drugs, plus robbery, go hand in hand'. Residents asserted that sex premises would have negative effects such as *crime, threats to safety and security, fear of crime, antisocial behaviour*. Residents feared that sex premises would adversely affect the *state of the neighbourhood* by 'detrimental[ly] impact[ing] on local businesses' and the 'family-oriented nature of the local area'. They would 'devalue the quality and price of . . . apartment[s] being close to a [sex premises]' as 'investors and renters see [sex premises] as *devaluing . . . property*' (italics added). They create 'repressive *employment*' (italics added), are subject to the 'the sex trade' and lead to 'psychological . . . problems [for employees]'.

Those who asserted positive effects frequently used personal experience to substantiate their assertions. In contrast, personal experience was only rarely used by residents to substantiate negative effects, most frequently with regard to *noise, parking, lighting, and anti-social behaviour*. Most of those who asserted negative effects corroborated their assertions through such expressions as 'it is well known', 'accepted fact' and 'studies show' (although no such studies were ever cited). For example, one submission asserted (italics added):

It is an *accepted fact* that the very nature of brothels brings a seedy element into play. The majority of existing brothels, and their staff, have, or have had, involvement in drugs, violence and the use of illegal immigrants.

These results underlined again the difference between predicted and experienced impacts of sex premises.

Spatial ordering

There was a diversity of opinion among residents about the ways in which sex premises should be located and designed. What one resident viewed as a desirable solution was likely to be seen as unwelcome by another. For example, in the same planning process one resident noted 'I'd live next door to one [a sex pre-

mises]' and another noted '*any proximity is dangerous, I am strongly opposed to paid prostitution in this area*'.

Almost half (131 out of 279, or 46.9%) of the resident submissions suggested what they believed was the appropriate proximity between 'sex premises' and other land uses. This varied greatly – some felt that they could live next door to a sex business without any problem, while others suggested that sex premises should be at least 100 or 200 metres away from homes, or that they should not be in the same neighbourhood or in the city at all. These gradations of proximity also took on non-numeric forms. For example, some submissions argued that sex premises are out of place in neighbourhoods because they are 'anti-family' while others saw them as part of their community.

Those who identified negative effects (Table 2) often sought to validate the 'distancing' of sex premises, not only promoting distance in terms of objective data (metres, quantity) but also by claiming there was a 'gaping distance' between the danger, criminality, immorality, disorderliness of sex premises and the quiet, moral, law-abiding, orderly, family-oriented qualities of other land uses. One resident explained (italics added):

They [sex premises] need to be at least 400m from homes, churches, schools and shopping centres . . . The proximity of a [sex premises] would . . . bring an increase in drug use and of course robberies and muggings, all of which we law abiding citizens can very well do without. . . . they shouldn't be in our suburb.

While there was great variety in the types of land uses that residents felt had some degree of discordance with sex premises, the land uses that people associated with children, families and religion were the most commonly noted (e.g. 'family homes', 'schools', 'community facilities').

In contrast, residents who identified the positive effects of sex premises (Table 2) often made statements that endorsed the 'similarity' of sex premises to the character of their local area – 'they are like any other business in the local area', 'they are part of the diversity of the

neighbourhood' – and used terms that promoted 'nearness' and belonging. For example, one survey respondent noted:

I have found *my neighbours* [occupants of sex premises] to be most considerate and civic minded individuals.

Those who asserted spatial orderings that encouraged 'nearness' and those who encouraged 'distance' had one thing in common: both groups attached importance to preserving a perceived neighbourhood identity. This identity was constructed through spatialised boundaries which distinguished between such dualities as self and other, home and abroad, foreign and familiar, moral and immoral (Nast 1998). Spatial order naturalises distinctions, separating what is in place (expected) from what is out of place (abnormal). 'Common sense' is spatialised, and given material and embodied form (Cresswell 1996). Our research highlights the disparities of 'common sense' about space in the city.

For some the only 'acceptable' spatial ordering that preserved social structures such as 'family neighbourhood', 'family unit' and 'society at large' was the 'containment' or 'isolation' of sex premises in 'marginal landscapes' such as industrial estates or red-light districts. The restriction of sex premises to marginal locations is indicative of the heightened anxiety which the presence of such premises often provokes among many urban dwellers (Hubbard 2000). A broad cross section (121 out of 279, or 43.4%) of resident submissions expressed the wish that sex premises be prevented from being too conspicuous in the public domain. This view was held by residents who had positive views about the impact of sex premises as well as those who held negative views. The desire to minimise the visibility of sex premises in the public domain varied among the submissions. Some sought to eliminate 'obviously lewd and flashing signage and markers', while for others *any* indication that a building housed a sex business was unacceptable.

This desire to limit the public profile of sex premises can be understood as part of a broader spatial ordering of sexuality within LGAs. This division and confinement of sexual identities seeks to keep particular sexual activities, such as commercial sex, 'discrete' within sequestered

spaces (e.g. sex premises). Many residents indicated that 'very discrete' premises were felt to have little or 'no negative effects on [the] local area whatsoever', and their concern was limited to those premises that were 'not really very discrete'. Residents in COS were 'more worried about the street workers' and believed that commercial sex industry premises were 'positives' in that they provided an enclosed and regulated space for 'sex work' that was [italics added] 'in marked contrast to [the] uncontrollable nature of street activity which was *out of place*'.

Concluding remarks

In recent decades public participation has become a central feature of land-use planning in a range of international planning jurisdictions, including NSW (Lane 2005), with the interest of communities being a principal ethical concern for planners in these jurisdictions (Planning Institute of Australia 2002). Consequently, information about residents' views collected through planning processes has become vital in decisions about where to locate sex premises. The absence of evidence of the effects of sex premises on the broader community has posed a major challenge for planners in gauging whether the loudest and most articulate voices opposing sex premises are actually representative of community opinions and/or experiences.

This investigation provided a snapshot of resident submissions, bringing into sharper focus the concerns residents expressed about the impact of sex premises and their views on how these potential impacts can be addressed through design and location. These fears were imagined and predictive but, in the absence of empirical research, were expressed in and contributed to planning processes. Our survey of those residents who lived nearby sex premises indicates disjunctions between concerns expressed through formal avenues of planning practices and those of the broader community, and predicted fears as opposed to experiences. Our survey showed that there are diverse views within the broader community concerning the effects of sex premises, and demonstrates how such views change through factors such as familiarity.

The wide range of views expressed in our survey responses contrasted with the narrow

range of views expressed in the resident submissions. This highlights some potential dangers which arise from the likelihood that urban planning processes, instruments and policies are dominated by the interests of vocal minorities, do not canvass the views of the wider range of community members, and appear not to engage more sympathetic or tolerant voices. This was suggested by the virtual absence of submissions from those who asserted positive effects, while our survey showed an almost equal presence of those who asserted positive and negative effects in the broader community. In this respect, our survey of residents living close to sex premises reveals a much lower perception of negative impacts than might be supposed from objections to councils and previous studies (Edwards 2011).

Furthermore, the investigation has paved the way for a better understanding of how residents relate to sex premises based on their perceptions about the effect of sex premises on their local area. The analysis of both the survey and the resident submissions suggests that those who sought to distance or isolate sex premises from their neighbourhood and homes were driven by assumptions about the negative effects that would result if sex premises were allowed in their neighbourhoods. Conversely, our research highlighted how those who perceive positive effects encourage proximity. While those who perceived negative and positive effects had their differences, they also shared some similar desires for the containment of sex premises by drawing firm boundaries between the public and private, the intention being to ensure that sex premises were hidden from the public gaze.

The findings in this study need to be understood in the context of Sydney's diverse sexual landscapes as well as in relation to the legal status of sex work in NSW. This may encourage more tolerant, and even positive attitudes to sex premises than in jurisdictions where sex work is prohibited or highly restricted. Indeed, legalising brothels has allowed them to be acknowledged, discussed and subjected to the application of pragmatic planning principles in NSW (Crofts & Prior 2011). The fact that few in the survey registered major dissatisfaction about living in areas with sex premises might suggest that the planning process has suc-

ceeded in identifying suitable locations for sex premises where they cause little offence. On the other hand, it might imply that planning controls are over-precautionary, with little evidence that sex premises promote nuisance.

While the results of this study should not be interpreted as suggesting that sex premises are suitable in all locations at all times, the implication is that treating them as legitimate and orderly businesses might help integrate them into the community and 'build in respect' (Sanders & Campbell 2007, p. 12) for sex work and sex workers. This study suggests a need to reconsider the 'rational' assumption that sex premises are disorderly, and hence do not belong in such areas of the city as residential neighbourhoods and be relegated to marginalised areas such as red-light districts and industrial areas. Distancing sex premises from residential neighbourhoods certainly appears unobjectionable given the potential 'risks' associated with sex premises, but it is ultimately a form of social ordering that reaffirms the connection between commercial sex and the socially marginal, rendering it potentially more disturbing and constructing it as Other (Prior & Crofts 2011). 'NIMBY' mobilisations towards sex work and sex workers are often fuelled by fears of social contagion (Mathieu 2011; Tibbetts & Blankenship 1999). Our study suggests experience and familiarity can reduce anxiety about, and negative perceptions of, sex premises. Accordingly, locating sex premises within the community may be an effective means of reducing perceptions and anxieties that continue to circulate around sex premises.

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References

- Boffa J, George C, Tsey K (1994). Sex, alcohol and violence: a community collaborative action

- against strip tease shows. *Australian Journal of Public Health* **18**, 359–65.
- Brents B, Sanders T (2010). Mainstreaming the sex industry: economic inclusion and social ambivalence. *Journal of Law and Society* **37**, 40–60.
- Coulmont B, Hubbard P (2010). Consuming sex: socio-legal shifts in the space and place of sex shops. *Journal of Law and Society* **37**, 189–209.
- Cresswell T (1996). *In Place/Out of Place: Geography, Ideology and Transgression*. University of Minnesota Press, Minneapolis, MN.
- Crofts P (2007). Brothels and disorderly acts. *Public Space: The Journal of Law and Social Justice* **1**, 1–39.
- Crofts P, Prior J (2011). Oscillations in the regulation of the sex industry in New South Wales, Australia: disorderly or pragmatic. In: Dalla R, Baker L, Defrain J, Williamson C, eds. *Global Perspectives on Prostitution and Sex Trafficking: Africa, Asia, Middle East, and Oceania*. Lexington Books, New York, pp. 257–76.
- Edwards M (2011). Gender, social disorganization theory, and the locations of sexually oriented businesses. *Deviant Behavior* **31**, 135–58.
- Enriquez R, Cancino J, Varano S-P (2006). Legal and emperical perspectives on crime and adult establishments: a secondary effects study in San Antonio, Texas. *The American University Journal of Gender, Social Policy & the Law* **15**, 1–42.
- Environmental Planning and Assessment Act (1979). Environmental Planning and Assessment Act 1979 (NSW). New South Wales.
- Forester J (1983). The geography of planning practice. *Environment and Planning D: Society and Space* **1**, 163–80.
- Hanna J-L (2005). Exotic dance adult entertainment: a guide for planners and policy makers. *Journal of Planning Literature* **20**, 116–34.
- Harcourt C (1999). Whose morality? Brothel planning policy in South Sydney. *Social Alternatives* **18**, 32–7.
- Hubbard P (2000). Desire/disgust: mapping the moral contours of heterosexuality. *Progress in Human Geography* **24**, 191–217.
- Hubbard P (2009). Opposing striptopia: the embattled spaces of adult entertainment. *Sexualities* **12**, 721–45.
- Hubbard P, Matthews R, Scouler J, Agustin L (2008). Away from prying eyes? The urban geographies of adult entertainment. *Progress in Human Geography* **32**, 363–81.
- Kerkin K (2004). Discourse, representation and urban planning: how a critical approach to discourse helps reveal the spatial re-ordering of street sex work. *The Australian Geographer* **35**, 185–92.
- Lane M-B (2005). Public participation in planning: an intellectual history. *The Australian Geographer* **36**, 283–99.
- Linz D, Land K, Williams J (2004). An examination of the assumption that adult businesses are associated with crime in surrounding areas: a secondary effects study in Charlotte, North Carolina. *Law and Society Review* **38**, 69–104.
- Lyons D, Schoolmaster A, Bobbitt C (1993). Controlling the location of sexually oriented businesses. *Applied Geographical Studies* **3**, 23–43.
- Mathieu L (2011). Neighbors' anxieties against prostitutes' fears: ambivalence and repression in the policing of street prostitution in France. *Emotion, Space and Society* **4**, 113–20.
- Miller W-I (1997). *The Anatomy of Disgust*. Harvard University Press, Cambridge, MA.
- Nast H-J (1998). Unsexy geographies. *Gender, Place and Culture* **5**, 191–206.
- New York Department of City Planning (1994). Adult Entertainment Study (Report). City of New York, New York.
- Papayanis M-A (2000). Sex and the revanchist city: zoning out pornography in New York. *Environment and Planning D: Society and Space* **18**, 341–53.
- Paul B, Shafer B-J, Linz D (2001). Government regulation of adult businesses through zoning and anti-nudity ordinances: debunking the legal myth of negative secondary effects. *Communication Law and Policy* **6**, 355–91.
- Planning Institute of Australia (2002). *Code of Professional Conduct*. The Institute, Kingston, ACT.
- Prior J (2008). Planning for Sex in the City: urban governance, planning and the placement of sex industry premises in inner Sydney. *The Australian Geographer* **39**, 339–52.
- Prior J, Crofts P (2011). Queering urban governance: the emergence of sex industry premises into the planned city. In: Doan P, ed. *Queering Planning: Challanging Heteronormative Assumptions and Reframing Planning Practice*. Ashgate, New York, pp. 185–208.
- Rozin P, Haidt J, McCauley C (2004). Disgust. In: Lewis M, Haviland J, eds. *Handbook of Emotions*. Gilford Press, London, pp. 575–94.
- Sanchez L-E (2004). The global e-rotic subject, the ban, and the prostitute-free zone: sex work and the theory of differential exclusion. *Environment and Planning D: Society and Space* **22**, 861–83.
- Sanders T, Campbell R (2007). Designing out vulnerability, building in respect: violence, safety and sex work policy. *The British Journal of Sociology* **58**, 1–19.
- Tibbetts SG, Blankenship M (1999). Explaining citizens' attitudes toward pornography: differential effects of predictors across levels of geographic proximity to outlet sources. *Justice Quarterly* **16**, 735–56.
- Weitzer R (2012). *Legalizing Prostitution: From Illicit Vice to Lawful Business*. New York University Press, New York.