

**Submission  
No 2**

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

**Name:** Mr Peter Woods

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**Submission to the  
SELECT COMMITTEE ON THE REGULATION OF BROTHELS  
(MINISTER FOR INNOVATION AND BETTER REGULATION)**

Dear members of the Select Committee,

During my Presidency of the Local Government Association of New South Wales I was the representative of Local Government to the Sex Services Premises Planning Advisory Panel (SSPPAP - **The Panel**) from 2002-2004. This Panel was formed upon the recommendation of the Ministerial Brothels Taskforce (2001). The Panel included representatives from the sex industry, Local Government and State Government (including Planning and Health Departments). The major task of The Panel was the production of the Sex Services Premises Planning Guidelines (**The Guidelines**), which were designed to assist councils to make informed decisions when regulating the sex industry in NSW.

Firstly I would like to make mention of the agreement by the Cabinet Office, at the commencement of The Panel's work, that its name would be changed from the "Brothels' Advisory Panel" to the Sex Services Premises Planning Advisory Panel. This change was done in recognition of the existence of a broader range of establishments than just 'brothels'.

Under the current legal framework the term 'brothel' has become even more problematic as it now has different meaning under NSW laws and regulations, depending on whether one is considering zoning or enforcement actions in relation to:

- a) the premises of a sole operator,
- b) a home occupation (sex services) [up to 2 sex workers],
- c) or a sex services premises (commercial premises often known as a massage parlour or brothel)

Reflecting on the work of The Panel, I believe that it is equally important that members of the Select Committee be mindful of problems that can arise from failing to differentiate between the various scales and types of *sex industry premises* in laws and regulations.

In relation to issues arising from local and state government regulation, The Panel's final report to the Minister noted a number of recurring issues. These included:

- a) a strong incidence of councils seeking to prohibit and remove home occupations involving sex work from residential areas for no apparent planning reason, nor based on equitable grounds;
- b) a strong incidence of councils preparing controls which are overly restrictive on sex industry premises, again for no apparent planning reason nor equitable in nature. Examples included:
  - I. requiring a Development Application for home based sex work;
  - II. prohibiting commercial sex services premises from commercial zones; and
  - III. restricting locations of commercial sex services premises through use of unjustified separation distances from public transport, etc.
  - The Panel noted restricting types of premises available for such activity reduces options for workers and their clients and increases unauthorised activity with implications for adequate access to health services.
- c) Onerous zoning provisions/prohibitions which were difficult to define on maps,

and excluded much of the councils' areas from permitting such use, even in land zones where such use was deemed permissible in the LEP.

- d) Councils trying to address issues outside their scope and related to other agencies – such as Workcover requirements and NSW Health guidelines; with associated risk of vital information becoming outdated.
- e) A lack of planning rationale for some of the onerous requirements specific to the sex industry
- f) Inadequate consultation with the sex industry in the preparation of LEP's
- g) Questionable rationale for anti-clustering provisions and separation distances
- h) No apparent justification in planning terms for prohibitions and restrictions affecting sex industry premises
- i) Prohibition of commercial sex services premises in some commercial zones.

In response to these issues identified above, The Panel made the following recommendations to the Minister for Planning:

- 1) The development of policy to treat all home occupations equitably on the basis of amenity impact. The Panel recommended that any issues of amenity and impact on locality can be addressed through Council's normal planning processes.
- 2) In addressing Councils' tendency to produce overly restrictive provisions / prohibitions, to establish a small Panel to help/ advise councils in the process of applying the Guidelines
- 3) The resourcing of training workshops for councils
- 4) A review of practices in 2-3 years to review if The Guidelines have resulted in council's' creating policies in accordance with the Guiding Principles contained within the Guidelines (see Appendix A).

I note that The Guidelines were never endorsed by the Government of the day, and the recommended review did not take place.

More recently, as a Patron of Touching Base Inc, I am aware of their current research being conducted in collaboration with the University of Technology, Sydney, which is investigating Sydney Metropolitan Local Councils' regulation of the sex industry. Preliminary results found that, contrary to the advice and Guiding Principles agreed to by all stakeholders on The Panel, *"the vast majority of councils prohibit Home Occupation (Sex Services) and relegate Sex Services Premises to be permissible in predominantly Industrial zones"*. I understand that Touching Base will be providing a full report on these findings to the Select Committee as a part of their submission.

It is my understanding that many of the historical and current issues that some councils complain of in relation to regulating the sex industry come directly from their failure to treat sex industry fairly and equitably, in the same manner as other businesses of a similar scale and type. I believe that The Guidelines and the recommendations forwarded to the Minister in 2004, could be of immense value to Select Committee members in finding solutions to the raft of issues outlined above.

In acknowledging that the Select Committee is required to review "possible reform options that address the social, health and planning challenges associated with legal and illegal brothels", rather than seeking to add new layers of laws or regulations I would strongly suggest a major part of any solution would involve updating and endorsing The Panel's

Guidelines and providing sufficient resources to Local Government to enable their effective implementation by local councils.

I bring your attention to the Brothels Taskforce Report (2001) which identified that “...the prohibition of home based sex workers, or requiring development consent, may create barriers to these workers accessing health services and programs targeted towards this population” (p.13). They suggested that a State-wide Environmental Planning Policy (SEPP), enabling exempt development status, would be a straightforward and equitable solution to addressing the regulation of home-based sex workers within NSW.

This approach would be consistent with the successful policy adopted by the City of Sydney upon amalgamation with the South Sydney City Council, which has allowed private workers to work in residential areas as exempt development for over a decade. This policy was used as an example of better practice regulation in the manual titled “[The role of local government in public health](#)” published by the National Public Health Partnership and endorsed by the Australian Health Ministers' Advisory Council (2002), pp.84-85. Simple amendments to the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) could be enacted to extend this policy state-wide and provide a succinct and equitable solution for the home-based sector.

I thank you for your consideration in these matters and I do hope that during your deliberations on these matters that you will keep in mind the overarching intentions of the reforms in 1995 that decriminalised brothel keeping in NSW; to eliminate opportunities for corruption and to increase the health & safety outcomes for sex workers, their clients and therefore the general population. As a former longstanding Mayor and Councillor and State and Federal President of Local Government I have sought to be most objective on these matters over the years. I would commend that a reform Government would do a great service by righting the wrongs associated with this matter.

Yours sincerely,

Peter Woods OAM

Patron Local Government NSW; Honorary Member United Cities and Local Governments -World (Barcelona);

Honorary Member UCLG Asia Pacific (Jakarta); Honorary Member Commonwealth Local Government Forum (London)

## **APPENDIX A**

### **Sex Services Premises Planning Guidelines 2004, p.3**

#### **1.3 Guiding Principles**

These Guidelines are based on the belief that the following guiding principles should inform all decisions regarding planning for sex services premises:

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

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