



11th February 2011

TO:
The General Manager
Marrickville Council
PO Box 14
PETERSHAM NSW 2049

E-mail: marrickvillebydesign@marrickville.nsw.gov.au

Submission in response to the Draft Marrickville Local Environmental Plan (MLEP) 2010

Touching Base Inc Contact Details

Post: PO Box 523, Newtown, NSW 2042

Email: info@touchingbase.org

Web: www.touchingbase.org

Dear General Manager,

The Touching Base Committee of Management is very disturbed by several of the policy provisions for sex services premises being introduced in the *Draft Marrickville Local Environmental Plan (MLEP) 2010*.

Who we are

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

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

We seek an evidence-based approach that reflects best practice

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

Guiding Principles of sex industry regulation

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

Before reading the following guiding principles it is important to note that in the SSPP Guidelines (2004) the definition of 'sex services premises' at that time covered all scales and types of premises where sex work occurs – from the largest commercial enterprises to the smallest home-based activities. In 2007 the *Standard Instrument—Principal Local Environmental Plan* was enacted, which re-defined 'sex services premises' to exclude sex worker home occupations.

- *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.¹

Our specific concerns with the sex industry provisions within the MLEP 2010 fall under the following headings:

1. Prohibiting commercial Sex Service Premises (SSP) from General Use Zones.....	p.4
2. Prohibiting <i>home occupation (sex services)</i>.....	p.6
3. Extending the location restriction between SPP from 75 to 200 meters...	p.7
4. Enabling equitable access for people with disabilities	p.7

¹ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 3

Prohibiting commercial Sex Services Premises (SSP) from General Business zones

Marrickville Council has not provided any rationale to explain, nor evidence to justify, why they are introducing this new prohibition. Marrickville has permitted this use in Business zones from many years. To our knowledge there is no evidence available to suggest such a prohibition is necessary in any LGA, let alone Marrickville, therefore we regard this new prohibition as *unnecessarily restrictive*.

In fact in 2002 Marrickville planners at the time noted that “...*the use itself is not incompatible with a business zoning and Councils have been encouraged by the State Government to properly regulate brothel uses by enabling them to locate in appropriate areas.*”²

The SSPP Guidelines note that “...*, the practice of permitting commercial sex services premises in industrial areas raises safety and accessibility issues as these areas are often isolated, singular in purpose and devoid of activity after hours.*”³

Due to the inherently unsafe and isolated environment of such zones and the lack of public transport etc, it is unfounded for Marrickville Council to force clients with disabilities to only be able to access sex services within industrial zones.

RECOMMENDATION 1:

In order to accommodate the planning principle of equity; in the absence of evidence of negative amenity impacts of SPP in Business zones in Marrickville LGA; Touching Base recommends that the MLEP 2010 permit commercial sex services premises across the LGA in all Business zones where other similar scales of commercial premises are permitted. This specifically includes: B1 Neighbourhood Centre; B2 Local Centre and B4 Mixed Use zones.

² Marrickville Development & Environmental Services Committee Meeting 5 March, 2002 - DRAFT DCP 37, 5.4

³ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p.29

Prohibiting home occupation (sex services)

Marrickville Council has not provided any rationale to explain, nor evidence to justify, why they are introducing this new prohibition. The SSPP Guidelines note that:

The larger scale of industrial premises is unsuited to small sex worker businesses and is inconsistent with their clients' needs for a discreet encounter in a residential setting. When added to the inherent advantages of undertaking a small-scale operation from home, rather than leasing premises, it is unlikely that private workers would establish in industrial areas in compliance with council controls.

Information from the sex industry and local councils suggests that most home-based sex services premises operate illegally until they are moved on, and then set up elsewhere. So prohibition does not deter private workers, although they live in fear of being closed down or subjected to stand-over tactics in the same way they were subjected to police corruption before the 1995 reforms. In addition, the relocation process can frustrate the achievement of health and safety objectives, as ties with key health service providers can be severed. Blanket prohibition of home-based sex work is not in the spirit of the 1995 reforms.⁴

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

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

*The Report of the Brothels Taskforce (2001) stated (p.12):
"The identification of individual sex workers through the development application process is also contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001."*

⁴ Sex Services Premises Planning Guidelines (2004), NSW Department of Planning, p. 30

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

One of the primary intentions of the decriminalisation of sex work in 1995 was to eliminate the systemic corruption of the industry by the NSW Police. Trying to enforce a prohibition of home-based sex work within Marrickville is unreasonable and unjustifiable and it would unnecessarily increase the potential for corruption to re-emerge.

Also, as private workers are more likely to have attended the Touching Base Professional Disability Awareness Training workshop than workers in commercial SSP, many clients with disabilities prefer to access the services of home-based sex workers. Council should not be in the business of limiting the sexual choices and related support of people with disabilities.

RECOMMENDATION 2:

In order to accommodate the planning principle of equity, and avoid discriminating against sex workers to the greatest extent possible within the discriminatory confines of the *Standard Instrument—Principal Local Environmental Plan*, Touching Base recommends that MLEP 2010 permit *home occupation (sex services)* as *exempt development* across the LGA, in all zones where other home occupations are permitted. This specifically includes: R1 General Residential; R2 Low Density Residential; R3 Medium Density Residential; R4 High Density Residential; B1 Neighbourhood Centre; B2 Local Centre and B4 Mixed Use zones.

⁵ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 54

Extending the location restriction between SPP from 75 to 200 meters

Marrickville Council has not provided any rationale to explain, nor evidence to justify, why they are extending the already unreasonable restriction from 75m to 200m. We concur with the SSPP Guidelines where they note that:

*“Despite gaining popularity in recent years, anti-clustering controls are not appropriate or necessary as a generic control for all councils. Few areas have a high concentration of sex industry premises and many councils receive few, if any, DAs for commercial sex services premises. **It is inappropriate to apply an anti-clustering provision unless genuine impacts emerge from the clustering of commercial sex services premises. [Our bold]** Furthermore, implementing these provisions concerns health agencies, which have observed its impact on the sex industry.”⁶*

RECOMMENDATION 3:

In the absence of evidence of negative amenity impacts of SPP in Business or Industrial Zones in Marrickville LGA, we strongly recommend that council delete all anti-clustering controls in the MLEP 2010 and Develop Control Plan as they are clearly unnecessary.

Enabling equitable access for people with disabilities

“The prohibition of premises at street level can tend to create a physical barrier for people with a disability”⁷

Marrickville Council has not provided any rationale to explain, nor evidence to justify, why commercial SSP are not permitted to have ground floor locations. Many other Councils in surrounding areas do not have this sort of restriction in place.

The Touching Base Committee would recommend that commercial SPP be permitted at ground level locations within all Business Zones to enable access for people with temporary or permanent disability and/or mobility impairments.

RECOMMENDATION 4:

In order to address the need for premises to provide access for people with disabilities, including mobility impairments, Touching Base recommends that the MLEP 2010 be amended to support the location of brothels or parts of brothels at ground floor level, in all zones that other commercial activities of a similar scale are permitted, including all Business zones within the LGA.

⁶ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 37

⁷ Marrickville Development & Environmental Services Committee Meeting 5 March, 2002 - DRAFT DCP 37 pg 178

Conclusion

This current draft of the MLEP manifests some of the worst practice in sex industry regulations identified by the Sex Service Premises Planning Advisory Panel. Overall it “discourages positive relations and communication with the local sex industry, and it does not uphold the intentions of the 1998 reforms to the planning system, which sought to streamline the development, and planning system.”⁸

We conclude by referring you to Chapter 6 of the SSPP Guidelines – ‘Achieving Better Practice’ (pp. 69-77), particularly ‘6.5 Prohibitive and overly-restrictive approaches’ (p.72). We trust that after careful examination of this most relevant resource available the next draft of the Marrickville LEP will better reflect our own recommendations, which represent the best practice options available under current legislative and regulatory regime in NSW.

RECOMMENDATION 1:

In order to accommodate the planning principle of equity, in the absence of evidence of negative amenity impacts of SPP in Business zones in Marrickville LGA, Touching Base recommends that the MLEP 2010 permit commercial sex services premises across the LGA in all Business zones where other similar scales of commercial premises are permitted. This specifically includes: B1 Neighbourhood Centre; B2 Local Centre and B4 Mixed Use zones.

RECOMMENDATION 2:

In order to accommodate the planning principle of equity, and avoid discriminating against sex workers to the greatest extent possible within the discriminatory confines of the *Standard Instrument—Principal Local Environmental Plan*, Touching Base recommends that the MLEP 2010 permit home occupation (sex services) as exempt development across the LGA, in all zones where other home occupations are permitted. This specifically includes: R1 General Residential; R2 Low Density Residential; R3 Medium Density Residential; R4 High Density Residential; B1 Neighbourhood Centre; B2 Local Centre and B4 Mixed Use zones.

RECOMMENDATION 3:

In the absence of evidence of negative amenity impacts of SPP in Business Zones in Marrickville LGA, we strongly recommend that council delete all reference to location restrictions or anti-clustering controls in the MLEP 2010 and Develop Control Plan as they are clearly unnecessary.

RECOMMENDATION 4:

In order to address the need for premises to provide access for people with a disability, Touching Base recommends that the MLEP be amended to support the location of brothels or parts of brothels at ground floor level, in all zones where other commercial activities of a similar scale are permitted, including all Business zones within the LGA.

⁸ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 24