

Private Worker Alliance

Friday, July 05, 2002

To:

Diana Marder
Senior Planning Policy Officer
Local Government and Shires Associations of NSW

Dear Diana,

AGENDA Item for next meeting of the NSW Sex Services Premises Planning Advisory Panel

Issue: Access to sex industry premises for people with disabilities

The Private Worker Alliance would like to draw the attention of the Sex Services Premises Planning Advisory Panel to the important issue of accommodating the rights and needs of people with disabilities when considering Sex Industry regulation through Local Environment Plan's and Development Control Plan's.

PWA/SWOP and the Touching Base Committee

The PWA also has representation on the Touching Base Committee, a group comprising of people with disabilities, sex workers and representatives from service providers to the disability community and the sex industry in NSW.

The Touching Base Committee was formed in Oct 2000 in response to a groundswell of interest and support to address various important issues that have a negative impact upon the provision of appropriate sexual services to people with disabilities in NSW.

The issue of Local Councils restricting the location of brothels in a manner that discriminates against equal access for people with disability and/or mobility issues has been a recurring item in the minutes of Touching Base Committee meetings.

The PWA looks forward to being a part of a process that enshrines the legal rights of people with disabilities to have equitable and viable access to sex industry premises in NSW.

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Legal ramifications suggest caution

Notwithstanding the information provided in this document, the PWA suspects that without further advice the Panel not be able to assist Local Councils create Sex Industry policies that protect them from being sued by people with disabilities, if they disallow brothels in ground floor premises.

The PWA would suggest the Panel put out requests to ACROD - (the peak body of NSW Disability Service Provider organisations), and the Human Rights and Equal Opportunity Commission, for appropriate representatives to be available to attend a future Panel meeting. This will allow us an opportunity to receive full briefings and give us an opportunity to explore the issues thoroughly.

With the hope of contributing to the awareness of the Advisory Panel to some of the relevant issues, the PWA offers the following document of information.

Yours sincerely

Saul
For the Private Worker Alliance

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Local Council discrimination against sex industry premises creates handicaps for people with disabilities

The issue of Local Council discrimination against brothels negatively impacting on the choices available to people with disabilities has most recently been noted by the Spastic Centre (NSW), in their Sexual and Human Relations Policy Statement as follows:

"Commitment to Creating Opportunity"

"Some Local governments discriminate needlessly by not providing street level access to sex venues. Further more sex venues almost never provide disabled access and adequate disabled facilities."

"The South West Regional Occupational Therapy team provided assistance to a new brothel to ensure accessibility and provide expertise and information on equipment and modifications needed for disabled access."

"The Spastic Centre is committed to continue to develop legitimate and lawful means by which opportunity for sexual development and expression is provided"

"With the understanding that present laws needlessly discriminate against people with disability and that many sexual services do also, strategies were put in place to circumvent these barriers."

"Service Users with a clear comprehension of the law and Spastic Centre policy have volunteered to assist other Service Users to access sexual services. The Project Worker has supported all initiatives by Service Users to access services that their service provider is unable to whilst not contravening Spastic Centre policy."¹ (PWA underlines)

¹ Spastic Centre (NSW) Sexual and Human Relations Policy Statement - April 2002

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NSW Department of Community Services (DOCS) Policy

DOCS also recognise that people with a disability have equal rights to gain access to sex workers as follows:

"11. SEXWORKERS AND SEX AIDS."

"11.1 A consumer's choice and right to use a sex worker or sex aids is to respected and treated with confidentiality by staff members.

11.2 The employment of sex workers is to be closely matched to meeting a consumer's sexual needs. Sex workers are to be considered as only one of a range of options in meeting the sexual needs of a consumer and should not be the first strategy for meeting a consumers need for intimacy."²

Marrickville Council Draft Development Control Plan - DCP 37 - consultation process

In the following edited extract from the minutes of the Marrickville Development & Environmental Services Committee Meeting 5 March 2002, Marrickville Council give background information outlining the extensive consultation process of their draft Development Control Plan - DCP 37 (Brothels Policy):

"Draft DCP 37 has been formulated over a nine (9) month period (commenced June 2001) and is the result of an extensive research and consultation process to ensure that both the content and format of the DCP represent current best practice." (PWA underlines)

To this end, internal consultation has occurred with ...and Community Services (Disability Worker) Officers...

External consultation has involved discussions with wide range of organisations including - ...NSW Health, ...SWOP, private Sex Workers... the Australian Quadriplegic Association (AQA), the Human Rights and Equal Opportunity Commission (HREOC) and the South Sydney Council Sex Industry Liaison Officer (SILO)."³

² NSW DOCS - Sex Worker and Sex Aids policy for service providers. Version 2 Oct 1996 6.25 - 11

³ Marrickville Development & Environmental Services Committee Meeting 5 March, 2002 - DRAFT DCP 37 pg 172

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Marrickville Draft Policy - disability access issues?

In Oct 2001 Marrickville Town Planning Department contacted SWOP wanting to know if there are any special requirements in regards to disability issues that they should take into account when drafting their Brothels- (sic) Policy. SWOP referred the request to the Touching Base Committee.

Touching Base recommendations

The Touching Base Committee forwarded the following recommendations for Marrickville for them to consider in the drafting of their Sex Industry Policy

"The Touching Base Committee would recommend that Sex Industry businesses have the option of ground level location to enable access for people with disability and/or mobility issues."

"It is the view of the Committee that building regulation requirements are the same for the Sex Industry as any other business."⁴

Marrickville states ground level location equals Best Practice

As per its stated commitment to "best practice", Marrickville amended its previous Brothel Policy to reflect the considerable consultation it received in relation to disability issues as follows:

- permitting a street level location demonstrates that Council is seeking to encourage premises to be accessible to all people, as opposed to the current situation where the prohibition of premises at street level can tend to create a physical barrier for people with a disability; (PWA underlines) and
- Council received advice from HREOC who raised concern with the current DCP provisions (see point 5.4 below).⁵

Marrickville explores some of the issues in depth

All the recent and pertinent input Marrickville planners received on issues concerning Access for People with a Disability is presented in the Marrickville Draft DCP 37 under point - 5.4.

The PWA has included the entire section here for the benefit of the Panel.

⁴ Extract from minutes of Touching Base Committee Meeting 31st Oct 2001

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

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"Marrickville Draft DCP 37- Regulation of Brothels:

5.4 Access for People with a Disability

SWOP have commended Marrickville's approach to addressing disability issues, with provisions for requiring equity of access and mobility and allowing brothels at ground level in business zones.

However other submissions have questioned the origins of this issue.

Comment: As noted in the report of 5 November 2001, this issue was investigated during the brothels policy review in response to issues raised by several development applications for brothels considered by Council during 2001. Advice was sought from the Human Rights and Equal Opportunity Commission (HREOC) about the expectations of access to brothels and their facilities and also whether the Council's current provisions could be interpreted as being discriminatory. HREOC then provided written advice to Council confirming that a "brothel is a clearly a place that the public, or a section of the public is entitled or allowed to enter or use". Following from this, the advice notes that:

"if you required a brothel to obtain a development approval before operating and required them to operate out of premises either above or below street level, but then failed to require access for people with disabilities, I believe you could be subject to a complaint if a successful complaint was lodged against the brothel owner/ operator. If you applied DCP 21, which specifically called for above or below ground location and then failed to apply DCP 31 [Equity of Access and Mobility] I believe there would be a particularly clear liability".

Council should be aware of the implications of the above advice should it resolve not to permit the ground level of premises to be used for brothels. The alternative to a ground level location is to enforce the provision of access in all situations (which for reasons of building design⁴ or cost is not always practical) or for Council to accept an "Unjustifiable Hardship" argument, which still exposes both Council and an applicant to potential challenge. Either way, the Council would be setting a benchmark by which every other first floor or sub-floor use should be assessed in respect to the access issue in the future, in order to promote consistency of approach.

Another suggestion made by submissions is that Council should disallow brothels in business zones if disability access is so great an issue. However this is not considered to be a valid approach since 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.

Moreover the same arguments could be advanced for other uses eg: a dentist, architects office which also have difficulties in providing access where they are

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located at the first floor yet are not incompatible with a business zoning. However unlike these premises which may find suitable premises at ground floor level in business zones, the Council's current provisions do not give brothel owners any choice. It is for this reason, that Planning Services staff have investigated the use of the ground floor for brothels.

Key Recommendation: That in order to address the need for premises to provide access for people with a disability, Council support the location of brothels or parts of brothels at ground floor level behind another land use in the manner set out in Clause 3.1 of the final version of Draft DCP No 37. Furthermore that implementation of the provision be monitored over time and reported back to Council at the next review of the DCP.

Surrounding Councils whose provisions allow brothels at street level in business zones include: (as surveyed 6/02/02- 11/02/02)

Leichhardt (One DA- for a ground floor brothel including use of the entire ground floor- approved at 99 Parramatta Road;

Canterbury (No DAs for ground level use and no complaints);

South Sydney (Two DAs submitted - one approved as fully compliant and one refused as insufficient area to be considered commercially viable);

Rockdale (No DAs or complaints);

Ashfield (Only 2 DAs- one refused and one approved as it had been operating for 7 years without complaint);

Randwick (No DAs or complaints);

Botany (No DAs received at all for brothels).

NB: In the case of Randwick, Ashfield and Leichhardt, the lack of any specific planning controls for brothel locations means that they are assessed as a commercial use and technically therefore allowable in any location within a business centre (without the need to meet any standards) subject to a merit assessment via a development application."⁶

⁶ Marrickville Development & Environmental Services Committee Meeting 5 March, 2002 - DRAFT DCP 37 note 2 page 180

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Marrickville meeting unruly

Unfortunately, when it came down to the vote Marrickville councilors faced a council chamber stacked by a rowdy group of anti-brothel agitators in league with an independent councilor. The meeting had to be adjourned twice to allow tensions to reduce from near violence.

A blow struck against people with disabilities in the local area

In the final result the majority of Marrickville councilors backed down from the recommendations that came out of their Planning Department's extensive consultative process and disallowed brothels from ground floor locations.

Point of view: from a client with a disability

The following are some extracts from an enlightening letter a man with a spinal cord disability wrote to the Touching Base Committee. He offered his story so we could gain knowledge and inspiration from his trials and tribulations when accessing sex workers/brothels both before and after the Touching Base 'Professional Disability Awareness Training' programme was started. He has given us permission to use it discreetly, so please consider this a most personal story and please treat it accordingly, with the respect it deserves.

*****Please Note that some sections of this letter are sexually explicit*****

"With regard to my disability, I am approaching 60 and born with spina bifida. This has left me with a severe curvature of the spine and partial paralysis in both legs. I use a wheelchair for long distances and two walking sticks around the unit and for walking short distances. I don't have much sensation in the genital area, the only part of the penis that is sensitive is the tip while the shaft has hardly any feeling at all.

I can get an erection but can't sustain it. If I did penetrate (with a lot of help), I have no feeling of being inside and the erection drops. The only way I have been able to come is with a very vigorous rubbing of the tip of the penis with a well-oiled hand and even then the sensation hardly registers on the Richter Scale. Masturbating gives me no satisfaction at all. Notwithstanding I still have a strong sexual need but the satisfaction is mental rather than physical. It does give me a great deal of satisfaction if I can make a woman come. I enjoy seeing a naked woman and being able to touch her.

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"I had no sexual experience while growing up and first sought a sex worker when I was 18. I went to Kings Cross and walked down one of the lanes I had read about where the girls stood at the doors. When I started to walk down most of them disappeared inside. This was an enlightening experience. One didn't and I went in. It was naturally a complete disaster as I really didn't know what to do and she didn't want to show me. It was however my first experience of touching a naked woman and that I did enjoy...

I decided that I wouldn't try Kings Cross again and did not have any physical sexual experience till I was 27 and started a relationship with a girl from work. She was responsive to my touches and I soon found the right spot to touch and she would come 5-6 times in an evening. This went on for about 18 months but for the whole of this time I never had a full erection, I never was able to penetrate or come. It also wasn't a really satisfactory experience with her as it was always in the dark, under the bed clothes and she always insisted on keeping some clothing on. It broke up very traumatically when her mother phoned up one Saturday morning to say her daughter was pregnant and I had been nominated as the one who did it. Needless to say I said not guilty.

There were no further relationships or any sexual contacts until I was about 40. I had to stop working and go on a disability pension. The need for sexual contact was strong and I tried a couple of parlours and private places but they were not a satisfactory experience. For some reason I decided to try a B&D place at Erskineville. I don't know why I went there but having explained my situation to the owner and she seem to understand my situation.

'Over a 12 month period I went to see her about 5 or 6 times and on occasions I was able to make her come which surprised her and gave me quite a lot of satisfaction. But the local council stepped in and ordered the place to be closed and I lost contact with this lady. This was about 1986.'

"After this I tried some other places but they were not a satisfying experience. I gave up going to parlours or private situations until last year when I heard about a parlour that supposedly catered for disabled clients. I phoned up and they said all their staff were trained to work with disabled clients, but when I went there I found this was not the case. The only available lady had never had a disabled client before. I finished up giving her

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a short course on the effect of spinal cord injury on sexuality. Hopefully I achieved something there but for me it was not a great experience."

"At that point I thought I would never have another sexual experience. When I saw the article about Touching Base I couldn't believe it. I thought that this may be the way I could get in contact with a worker who was experienced with disabled clients and I wouldn't have to go through the worry of explaining my disability."

"Through Touching Base I was able to contact a lady who came to my home. This was the best sexual experience I have ever had but not only was it satisfying physically but also psychologically and intellectually. Without Touching Base this would not have happened and I am very grateful for its existence."

"If I was asked what would the first thing I would say to sex workers interested with working with disabled men, I would say that the sexual experiences that they have are not going to be like the sex they have with non-disabled men. In some cases this may be the first sexual experience the disabled man has had. It may also be a long time since they have had sex and as they are probably on a pension, it may also be some time before they can afford to see someone again. It is likely to be a special occasion."

"I know there are dangers in working with disabled men in that the arrangement may be seen by some as a sort of relationship rather than as a business arrangement. But if steps are taken to prevent this happening then there should not be a problem. Touching Base is a most important thing for the disabled to enjoy a part of life that has not been available to many. I do hope it is a huge success."⁷

Not the end of this issue - but all for now

PWA

⁷ Personal Story sent to Touching Base Committee -