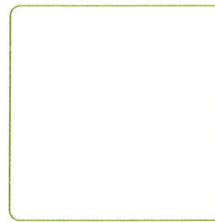


3 December 2009



Mr Peter Goth
Regional Director
Sydney North West Region
Department of Planning
GPO Box 39
SYDNEY NSW 2001



Our Ref: FP179

Dear Mr Goth

PLANNING PROPOSAL (SECTION 56 NOTIFICATION)
Draft Baulkham Hills Local Environmental Plan 2005 (Amendment No. (NO.)) –
(Zone changes to control brothels and sex services premises and prohibit
brothels in all zones other than the Light Industry 4(b) zone)

I refer to your letter dated 18 November 2009 requesting additional information in relation to the above planning proposal.

Council's LEP and DCP, while recent, do not contain provisions for brothels. Instead, they are categorised as being "commercial" premises and are therefore permissible with consent in any zone where commercial premises are permitted i.e. Residential 2 (c), Business 3 (a), Business 3 (b) and Employment 10 (a). Please refer to attached maps showing zones where brothels and sex services premises are currently permitted.

The industrial areas within the Shire are considered to contain uses that would be least impacted by the activities of brothels and sex services premises. The hours of operation of brothels and sex services premises are also unlikely to interfere with other activities located nearby. Industrial areas are usually self-contained and incorporate few businesses that would have children who use the land, on a regular basis. Where such uses do exist specific locational requirements for brothels, incorporated within the Baulkham Hills Development Control Plan (BHDCP), would be adequate to ensure suitable separation is maintained. Please refer to attached maps showing relevant zones where brothels and sex services premises are proposed to be permitted.

Council is currently preparing a draft DCP which aims:

- i) To ensure brothels are located in appropriate areas where they do not impact adversely on the environment, and in particular upon residences or other sensitive uses.
- ii) To ensure that brothels are discretely situated, sensitively located and are not prominent within an area.
- iii) To avoid the concentration of brothels or potential creation of 'red light districts'.
- iv) To optimise the safety and security of brothels.

Development controls relating to location are also being prepared.

If you need further information, please contact Raquel Ricafort-Bleza, Special Projects,
on 9843 0560.

Yours faithfully

A handwritten signature in blue ink, reading "Stewart Seale". The signature is written in a cursive, flowing style.

Stewart Seale
MANAGER - FORWARD PLANNING

PLANNING PROPOSAL

LOCAL GOVERNMENT AREA: The Hills Shire Council

NAME OF DRAFT LEP: Draft Baulkham Hills Local Environmental Plan 2005 (Amendment No.)

ADDRESS OF LAND: This plan applies to all land zoned under the Baulkham Hills Local Environmental Plan 2005.

MAPS:

- Maps showing areas/locations where brothels and sex services premises are currently permitted - refer Attachments A and B.
- Maps showing areas/locations where brothels and sex services premises are proposed to be permitted - refer Attachments C, D, E, F and G.

PHOTOS AND OTHER VISUAL MATERIAL: Nil

1. OBJECTIVE OF PROPOSED LOCAL ENVIRONMENTAL PLAN (LEP):

The purpose of the draft plan is to introduce additional definitions in respect of brothels, sex services premises and home occupation for sex services. The draft plan also seeks to prohibit brothels in all zones other than the Light Industry 4(b) zone.

2. PROVISIONS TO BE INCLUDED IN PROPOSED LEP:

To implement the restriction of brothels, sex services premises and home occupations for sex services in all zones except the light industrial zone, amendments are needed for the definitions and zoning controls in BHLEP 2005 to ensure that permitted and prohibited categories reflect the insertion of the new definitions. The table below indicates which zones will require changes to conform.

Zone	Change Required
Rural	No
Residential	
2(a), 2(a1), 2(a2), 2(a3), 2(a4), 2(b), 2(b1)	Yes
2(c), 2(d), 2(e)	No
Business	Yes
Industrial	No
Special Uses	No
Open Space	No
Environmental Protection	No
National Parks and Nature Reserves	No
Employment	Yes

Note: No: Indicates uses must be specified as permissible, otherwise they are prohibited.
Yes: Indicates specific uses must be included as prohibited.

NSW Standard Template

The State Government has required all councils to prepare new principal planning instruments. These instruments contain a number mandatory definitions, zones and clauses that will be part of any future LEP for the Shire. The Template Local Environmental Plan includes a number of new definitions including the following definitions that relate to brothels:

- i. **brothel** *has the same meaning as in the Act.*

EP&A Act

Brothel means a brothel within the meaning of the Restricted Premises Act 1943, other than premises used or likely to be used for the purposes of prostitution by no more than one prostitute.

- ii. **home occupation (sex services)** *means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and does not involve:*
 - a) the employment of persons other than those residents, or*
 - b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or*
 - c) the exhibition of any notice, advertisement or sign, or*
 - d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,**but does not include a home business or sex services premises.*
- iii. **sex services** *means sexual acts or sexual services in exchange for payment.*
- iv. **sex services premises** *means a brothel, but does not include home occupation (sex services).*

The introduction of the above definitions into the current LEP would have the effect of removing brothels from the general definition of commercial premises and allow Council to target specific locations where such establishments could be appropriately located.

The ability to conduct a "home occupation (sex services)" is not considered appropriate within any zone in the Shire. As a result changes to BHLEP 2005 will ensure that they are categorised as a prohibited activity within the Land Use Table.

A new section will be added into the Baulkham Hills Development Control Plan (BHDCP) specifically relating to the operation of a sex services premises or brothel. This new section would identify zones that brothels are permissible and would provide specific controls for the operation of such premises. As an individual section within BHDCP, it would be clear to users accessing the BHDCP that The Hills Shire Council has specific objectives and development controls relating to the use of such a business.

3. JUSTIFICATION FOR THE PLANNING PROPOSAL:

A. Need for the planning proposal

- 1. *Is the planning proposal a result of any strategic study or report*

The planning proposal is a result of a recent application to use certain premises as a brothel. The application was refused by Council and was subject to an appeal in the Land and Environment Court. The court upheld the decision of

Council but highlighted the need to make provisions for brothels in Council's LEP and DCP.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The planning proposal is required to address the omission of relevant definitions from Council's LEP and identify suitable locations via land use zones where brothels and the alike are permitted.

3. *Is there a net community benefit?*

The recommended amendments to the LEP will introduce new definitions relating to brothels and clearly identify in which zones they are permissible. This will ensure that brothels are located in appropriate areas where they do not impact adversely on the environment, and in particular upon residences or other sensitive uses.

B. Relationship to strategic planning framework

1. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

No relevant objectives or actions are contained within the Metropolitan Strategy or Draft North West Sub-Regional Strategy in respect to the location of Brothels and the alike.

2. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The Hills 2026 Community Strategic Direction identifies the community's vision for the Shire and demonstrates how Council will align its delivery of services and facilities to support this vision.

The proposal to amend BHLEP 2005 supports the following Hills 2026 objectives:

- a. *proactive leadership*, through Council's active engagement with the community during the exhibition of the amendments, and
 - b. *vibrant communities* by ensuring the safety of the community through locating, designing and managing land uses like brothels and sex services premises.
3. *Is the planning proposal consistent with applicable state environmental planning policies?*

The plan is consistent with the relevant state environmental planning policies as indicated in Attachment A.

4. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The plan is consistent with the relevant Ministerial Directions as outlined in Attachment A.

C. Environmental, social and economic impact

1. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

The proposal has no impact on these environmental factors.

2. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The proposal is unlikely to have any other environmental effects.

4. *How has the planning proposal adequately addressed any social and economic effects?*

The proposed amendments to the BHLEP 2005 are consistent with recent policy decisions of Council, that reflect broad community concern regarding the location and permissibility of brothels and the alike within The Hills Shire LGA. The amendments will appropriately restrict brothels to industrial zones and via the BHDCP provide controls for the assessment of future development applications for brothels.

The amendments will assist with minimising adverse social and community impact from development applications for the establishment of brothels and sex services premises.

D. State and Commonwealth interests

1. *Is there adequate public infrastructure for the planning proposal?*

Existing public infrastructure within the industrial centres of The Hills Shire are sufficient to accommodate the proposed amendments.

2. *What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal? (Note: The views of State and Commonwealth Public Authorities will not be known until after the initial gateway determination. This section of the planning proposal is completed following consultation with those public authorities identified in the gateway determination.)*

Following the Gateway determination, relevant agencies will be consulted. Any proposed variations to the planning proposal would be addressed in the submission following the consultation period.

4. DETAILS OF THE COMMUNITY CONSULTATION THAT IS TO BE UNDERTAKEN:

It is intended to advertise the proposed amendments in local newspapers. The exhibited material will be on display at Council's Administration Building located at 129 Showground Road, Castle Hill between the hours of 8.30am to 4.30pm Monday to Friday and at Vinegar Hill Memorial Library located at 29 Main Street, Rouse Hill Town Centre NSW 2155 Monday, Tuesday, Wednesday and Friday 10am - 6pm, Thursday: 10am - 9pm, Saturday: 10am - 5pm and Sunday: 1pm - 5pm. The exhibition material will also be made available on Council's website.

The Gateway determination will identify any additional consultation required.

ATTACHMENT A
STATE ENVIRONMENTAL PLANNING POLICIES

INSTRUMENT	RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
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S.E.P.P.

1	Development Standards	NO
4	Development without Consent and Miscellaneous Exempt & Complying Development	NO
6	Number of Storeys in a Building	NO
10	Retention of Low-Cost Rental Accommodation	NO
19	Bushland in Urban Areas	NO
21	Caravan Parks	NO
22	Shops and Commercial Premises	NO
30	Intensive Agriculture	NO
32	Urban Consolidation	NO
33	Hazardous and Offensive Development	NO
50	Canal Estate Development	NO
55	Remediation of Land	NO
62	Sustainable Aquaculture	NO
64	Advertising and Signage	NO
65	Design Quality of Residential Flat Development	NO
70	Affordable Housing (Revised Schemes)	NO
	Housing for Seniors or People Living with a Disability (2004)	NO
	Building Sustainability Index: BASIX 2004	NO
	Major Projects 2005	NO
	Sydney Region Growth Centres 2006	NO
	Mining, Petroleum Production and Extractive Industries 2007	NO
	Temporary Structures and Places of Public Entertainment (2007)	NO
	Infrastructure (2007)	NO

SYDNEY REP

9	Extractive Industry	NO
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INSTRUMENT		RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
18	Public Transport Corridors	NO	
19	Rouse Hill Development Area	NO	
20	Hawkesbury – Nepean River	NO	

ATTACHMENT B SECTION 117 DIRECTIONS

<u>S117(2) MINISTERIAL DIRECTIONS</u>		RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
1.	Employment and Resources		
	1.1 Business and Industrial Zones	YES	Consistent
	1.2 Rural Zones	NO	
	1.3 Mining, Petroleum Production and Extractive Industries	NO	
	1.4 Oyster Aquaculture	NO	
	1.5 Rural Lands	NO	
2.	Environment and Heritage		
	2.1 Environmental Protection Zones	NO	
	2.2 Coastal Protection	NO	
	2.3 Heritage Conservation	NO	
	2.4 Recreation Vehicle Areas	NO	
3.	Housing, Infrastructure and Urban Development		
	3.1 Residential Zones	YES	Consistent
	3.2 Caravan Parks and Manufactured Home Estates	NO	
	3.3 Home Occupations	YES	Consistent
	3.4 Integrating Land Use and Transport	NO	
	3.5 Development Near Licensed Aerodromes	NO	
4.	Hazard and Risk		
	4.1 Acid Sulfate Soils	NO	
	4.2 Mine Subsidence and Unstable Land	NO	
	4.3 Flood Prone Land	NO	
	4.4 Planning for Bushfire Protection	NO	
5.	Regional Planning		
	5.1 Implementation of Regional Strategies	NO	
	5.2 Sydney Drinking Water Catchments	NO	
	5.3 Farmland of State and Regional Significance on the NSW Far North Coast	NO	

<u>S117(2) MINISTERIAL DIRECTIONS</u>	RELEVANT? (YES/NO)	(IF RELEVANT) INCONSISTENT/ CONSISTENT
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	NO	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	NO	
5.6 Sydney to Canberra Corridor	NO	
5.7 Central Coast	NO	
5.8 Second Sydney Airport: Badgerys Creek	NO	
6. Local Plan Making		
6.1 Approval and Referral Requirements	NO	
6.2 Reserving Land for Public Purpose	NO	
6.3 Site Specific Provisions	NO	

3.3 Home Occupations

Objective

- (1) The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.

Where this direction applies

- (2) This direction applies to all relevant planning authorities.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

- (4) Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.

Consistency

- (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.

Note: In this direction "home occupation" has the same meaning as it has in the Standard Instrument (Local Environmental Plans) Order 2006.