

ATTACHMENT 1

SUBMISSION – DRAFT PROSTITUTION CONTROL BILL 2002

BACKGROUND

The state government has released the draft Prostitution Control Bill 2002 (PCB) for public comment. The new Prostitution Control Bill is intended to provide the framework to control and regulate the industry. Comments are sought by the Hon Minister for Police and Emergency Services, and must be received by no later than the 7 February 2003.

Part 7 and Schedule 3 of the draft bill relate to town planning controls that are sought to be introduced. As regulators and administrators of the City's District Planning Scheme No 2 (DPS2), comments on these legislative controls, from a town planning, environmental health and building perspective form the basis of the City of Joondalup's submission to the Hon Minister.

COMMENTS

GENERAL

Lack of Local Government involvement in the preparation of the PCB 2002

Both the City and WALGA previously indicated the need for Local Government to be involved in the development of this legislation, however despite these requests, consultation in this regard has not occurred. However, it is noted that both the City and the Town of Vincent received a high level briefing of the PCB prior to the PCB being released for public comment.

As a result, the City believes that insufficient consideration has been given to issues affecting Local Government and their communities within the draft legislation. This has lead, in the City's opinion, to legislative provisions that will create increased burden upon both state and local government (eg: financial, monitoring and implementation).

Lack of transitional period & commitment to review the PBC after gazettal

The City has considerable concerns with respect to no transitional period being offered, together with the lack of commitment by the state government to assess and review the operation of the legislation in the future to identify and rectify any strengths and weaknesses respectively.

Unsatisfactory public consultation period

The City wishes to register its dissatisfaction with the consultation period offered by the state government. Furthermore, the City wishes to express its disappointment that the request for an 'official' extension to the consultation period made by WALGA on behalf of Local Government was ignored, however it is acknowledged that an 'un-official' extension to the consultation period was granted by the Hon Minister until 14 February

2003. Furthermore, the City wishes to register its concern over the number of days comprising the consultation period in that a full 3 month consultation period (90 days) has not been offered.

As the Hon Minister is aware, the consultation period fell within the Christmas/new year holiday period, whereby it is largely known that this period is one where local governments have limited staffing resources and the general community are away on holidays. Whilst the City is not espousing that the consultation period was deliberately set to correlate with this holiday period, the City considers that it is not unreasonable for the Hon Minister to favourably consider a slightly longer consultation period in order to acknowledge the implications caused by the holiday period.

Whilst it is noted that the state government is keen to progress the legislation in a timely manner in order to meet parliamentary deadlines, the City suggests that the state governments haste in progressing the legislation has resulted in the release of sub standard legislation that 'misses the mark' in several areas (Town Planning, Law, Environmental Heath, Building, amenity issues, community concerns etc).

PCB a hybrid of eastern state legislation that has had limited effect

The City's research suggests that the state government's PCB is effectively a hybrid of Queensland, New South Wales and Victorian legislation, which is considered to have had limited impact within those states. A large section of the prostitution industry is still operating illegally outside of the legislation.

TOWN PLANNING

No Discretion to Prohibit Prostitution Landuse Activity

The City strongly opposes the PCB, as it effectively forces the City of Joondalup to incorporate into its DPS2 various provisions that allow for prostitution related land uses.

At its meeting on 15 October 2002 (*C144-10/02 refers*) Council resolved to prohibit all forms of prostitution within the City of Joondalup and believes it should have the discretion to prohibit prostitution type land uses under its DPS2.

Given that the Council at its meeting on 15 October 2002 (*C144-10/02 refers*) resolved to prohibit prostitution as a land use within the City of Joondalup, such action to amend DPS2 will not be permitted unless in conformity with Schedule 3 of the PCB. Therefore it is unlikely that any amendment to prohibit prostitution would be granted final approval by the Hon Minister for Planning.

Incorporation of Schedule 3 into the City's District Planning Scheme No 2

It is unclear how Schedule 3 is to be incorporated into town planning schemes. Direction has not been provided in regards to what part/section of the scheme it is to be inserted into (ie can/should it be inserted into Part 5 – Special Controls within the City's DPS2?).

No development requirements/standards prescribed within Schedule 3 of the Draft Bill

Schedule 3 doesn't outline the development requirements/provisions required for landuses proposed to be introduced, for example car parking, landscaping, compliance with public building regulations etc. It is assumed that a scheme amendment may be initiated in order to prescribe development requirements applicable to such landuses, however if this is the case, it is more prudent for the legislation to prescribe general requirements, and, dependant upon local circumstances, a local government may complement the standard provisions with additional requirements via a scheme amendment or local planning policy. The Hon Minister is therefore requested to give careful consideration to the incorporation of standard development requirements applicable to these forms of landuse/development in order to provide increased guidance to local government's and their planning, building and environmental health officers in dealing with such applications.

Implications of the 300 metre buffer requirement under Schedule 3

The 300-metre figure appears to be an arbitrary figure, as it is not clear within the draft legislation or summary notes as to how this figure was arrived at, and what is hoped to be achieved by stipulating such a figure. Given the wording of the clause, it assumes that the 300 metre buffer provides adequate amenity protection to the landuses listed (schools, churches, child care centres, community purpose premises, hotels or residential properties), however this can be challenged. If this extrapolation is correct, the City strongly objects to this legislative provision.

The City therefore seeks information on the rationale for the 300 metre figure, together with clarification in respect to what is hoped to be achieved by the figure, prior to providing any follow up response to this particular proposed provision, which may include, amongst others, a request for the figure to be increased.

Additionally, given the type of landuses that require the 300 metre buffer, the City considers it appropriate that shopping center landuses be included, as they are accessible by the general public, especially youths, on a more frequent basis than the other landuses identified.

Furthermore, the City has prepared plans in respect to the application of the 300 metre figure to highlight potential lots upon which brothels and attended prostitution agencies may be hosted (refer Attachment 1).

As can be seen from the attached map, given existing land uses that require separation of 300 metres, there is extremely limited scope for the City to entertain any planning proposal for a brothel or an attended prostitution agency office within its scheme area. Given this fact, it is argued that this adds significant weight to the City's argument in that it should be afforded the opportunity to amend its scheme to prohibit such land uses.

No home occupation/business approval required for a self employed sole prostitute

Of utmost concern to the City are the provisions relating to the permissibility of a self employed sole prostitute to operate from a residential dwelling without the need for obtaining local government planning approval in the form of a 'home occupation' or in the City's case, a 'home business' under DPS2.

There are obvious inequalities afforded to self-employed sole prostitutes, as opposed to other home based business persons under the draft Act. It is argued that self employed sole prostitutes should be treated the same (under home occupation/business scheme provisions) as any other applicant wishing to perform business type tasks from their residential dwelling.

Furthermore, it appears that this form of landuse is considered under the legislation as having a 'low impact/effect' upon adjoining property and as such, is considered akin to a home occupation/home business. Experience suggests that these types of landuses have a far greater impact upon residential amenity than a conventional home occupation/business type landuse and therefore also creates a higher number of complaints. The City considers that the legislation is quite naïve in allowing for a self-employed sole prostitute to set up without requiring a planning approval or meeting any planning requirements. Furthermore, land that may be used as a dwelling may be used for the purpose of carrying on a business as a self-employed sole prostitute. What this means is that such a business is not confined to a residential zone.

'Non conforming' approval of existing prostitution type landuses

The proposed provisions relating to prostitution premises in existence prior to the new act taking effect are also opposed, however it is noted that the City of Joondalup does not host any previously approved bona fide brothel type landuses. The intent of the legislation is to effectively give such land uses 'non conforming' use rights and as such, such provisions are opposed, as non conforming use rights are conferred upon landuses that were granted the necessary approvals and were legal at the time, with non compliance a result of gazettal of a new scheme or amendment to the existing scheme after that landuse was first approved. Clause 1(7) of the draft legislation confers legality on a use, which, prior to the commencement day of the Bill, would otherwise be unlawful.

The City's concern lies with the fact that although the City has not granted any planning approval to a bona-fide brothel or similar landuse activity, it has, however, granted approval to massage parlours, gyms and other similar landuses. Claims can be made that the massage parlour, gym or similar type of landuse were being used as a brothel prior to the commencement of the PCB, and may even gain an entitlement to operate the premises as a brothel. Concern lies with the fact that it would be relatively simple for operators to gather evidence, however virtually impossible for the City to prove that the premises was not being used as a brothel, prior to the PCB being passed into Law. It is also difficult to obtain sufficient evidence that would support a breach of scheme provisions and the PCB does not change this presently unsatisfactory situation but exacerbates it.

Another matter of concern is that should a right be established under the draft legislative provisions outlined above, there is no provision for the property to be recorded, as would be the case for a non-conforming use. The City would be unable to inform bona fide enquirers what landuses may be permitted upon the land subject to the enquiry or confirm that prostitution type landuses are not being carried out in the vicinity of that land if this provision is passed into law. It is argued that Schedule 3 would create a right that is not recognized or recognizable in any statute or register other than Schedule 3 itself. This is inconsistent with the proper practice of landuse law. Such a provision also undermines other legislative clauses proposed under the PCB, particularly in relation to the 300 metre separation figure.

Clarification of the definition of a ‘community purpose premises’

The City believes that further clarification of the definition of “*community purpose premises*” is required. The definition, as appears in the PCB states;

‘means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services for community benefit, by an organisation involved in activities for community benefit’

The definition is not clear in respect to recreational facilities that are provided through private or public organisations, and if such recreational facilities or services are free of charge or a charge applies. Examples of such land uses that may or may not apply under the above definition include indoor cricket, karate, soccer, gyms, basketball courts, child play centres and the like. Verbal advice obtained from the Hon Ministers Office in respect to this definition suggested that the definition would be all encompassing (ie recreational facilities provided either free of cost or user pays).

Brothels and attended prostitution agency office permitted within industrial zones

The draft legislation suggests that a brothel or attended prostitution agency office is a permitted landuse within the industrial zone and as such, may be exempt from obtaining local government planning approval under the planning scheme (as some schemes allow exemption where the use is permitted). It is also unclear if any community consultation is required when dealing with such applications, and if so, what form of consultation is required. It is suggested that consultation provisions be included within Schedule 3, or alternatively, each landuse to be introduced by the legislation may be given a specific use class (permitted – ‘P’, discretionary ‘D’, prohibited – ‘X’, or others), whereby advertising requirements for the corresponding use class are already provided for under the scheme.

Finally, there is an overall concern that the application of the proposed legislation will force brothels and attended prostitution agency offices into industrial areas. This will lead to the creation of red light districts within these industrial areas, with poor servicing infrastructure (public transport, passive surveillance, security, police availability etc). This will require increased services to be provided to these areas thus creating increased financial burden upon both Local and State Government.

MRS Approval Required

It is unclear if the legislation applies to the Metropolitan Region Scheme (MRS) as the MRS is not referred to. The City requests clarification in this regard and if the MRS is included, what form of approval is required under the MRS for all landuses to be introduced by the proposed legislation.

ENVIRONMENTAL HEALTH

The Government is seeking to protect those in the industry and the community in general from an unregulated and in some instances criminally controlled prostitution industry through the introduction of the Prostitution Control Bill 2002 (PCB).

The PCB is designed, amongst other goals, to - *safeguard public health and wellbeing against adverse effects of prostitution.*

Unfortunately the PCB delves into little detail about how public health and wellbeing will be protected focusing more specifically on licensing and conduct of potential operators as opposed to reducing the spread of infectious disease.

One of the main aims of any effective environmental health management is to control the spread of infectious disease within the community. For this bill to safeguard public health, infectious disease transmission (both sexually transmitted and non-sexually transmitted) needs to be addressed.

Sexually Transmitted Diseases

Although clauses are included in the PCB in an attempt to control the spread of sexually transmitted disease, this will be very difficult to prove and even harder to control.

It is envisaged that periodic health checks and assessments must be made mandatory for sex workers. A reporting mechanism will need be established to ensure such checks are carried out.

Non-Sexually transmitted Diseases

In an effort to ensure the control of infectious disease transmission, other than STD's, a code of practice detailing minimum hygiene requirements and structural requirements needs to be developed for the premises from which the prostitutes will be working from.

Furthermore, this will aid in providing a mechanism to allow for the licenced brothel operator, prostitution agent or prostitution manager to ensure compliance with 122 (3) (c) of the proposed bill –“..... *All reasonable steps be taken to keep conditions at the business premises at a satisfactory health standard, and protect the health of persons taking part, whether as prostitute or client, in acts of prostitution.....*”.

This Code of Practice will need to include provisions to enable effective control over infectious disease transmission through:

- Unclean/unsanitary/poorly maintained water (spas/pools)
- Lacking/unclean ablution and sanitary facilities (specify use requirements)
- Inadequate laundering of linen (specify cleaning and maintenance requirements)
- Poor waste management practices – i.e. prophylactic disposal/clinical waste
- Inadequate Cleaning of premises

Licensing of approved premises needs to take into consideration minimum structural requirements to ensure safety of patrons and operators. This is to include all relevant Health, Building & Town Planning requirements, and should include, but not limited to, the following:

- Construction to comply with the Building Code of Australia
- Specify construction requirements and minimum numbers of sanitary conveniences (shower, toilet & hand wash basins)
- Construction requirements for Laundry's,
- Minimum room occupancy rates
- Fire control,
- Evacuation plans,
- Air-handling systems,
- Lighting,
- Refuse disposal
- Noise management plan to control any possible unreasonable noise situations arising from the premises,
- General Cleaning & Maintenance requirements

Issues that would arise from development of such a code will include who will process an application for a new premises, how would compliance be assessed and who would be responsible for this compliance check.

Inspection regime?

The City expresses concern over inspection of premises to ensure there will be no possible spreading of infectious disease through unhygienic premises. The City concurs that inspections are warranted of such premises to ensure a satisfactory operational health standard, however the legislation does not explain local governments responsibility in regard to inspection of these premises nor powers to control any possible problems associated with inspection of the premises.

As the Prostitution Control Board to be formulated includes the Commissioner of Health, the City assumes that any need for inspections would be delegated to the State Health Department. The Executive Director of Public Health would then set minimum and desirable inspection frequencies as an expected level of performance. Discussions would need to be entered over whom controls this activity, State Health Department or the Local Government Health Service. Environmental Health Officers are qualified to undertake such inspections.

Any direction for inspections of licenced premises will also require supporting information on enforcement provisions and control options available to the controlling body and will need to document its' reporting relationship to the Board. Furthermore information on who will action complaints of non-compliance in regard to any proposed code of practice needs full investigation.

Fees from Inspections

Under the Local Government Act, the Local Government has the ability to impose and recover a fee or charge for any goods or services it provides or proposes to provide, other than a service for which a service fee is charged.

A fee or charge may be imposed for receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorization or certificate.

The need for inspection and which body would control such a function still requires clarification, however should inspections be warranted and Local Government has the delegated authority, the issue of inspection fees will need resolving. This is a highly contentious issue.

The City could prescribe inspection fees for brothels, however it could be seen that the City is benefiting from the "earnings of prostitution". By not prescribing or charging a fee, the City would in fact be paying to ensure health compliance of such an activity.

Are brothels Public Buildings?

A ruling is required as to the classification of a brothel under the Health Act definition as to whether it meets the requirements of a Public building. This will in turn create added responsibilities for Local Government Environmental Health Officers through inspections.

Self-employed sole prostitute

The promotion of self-employed, sole operator prostitutes in residential areas is alarming. The bill relies heavily on self regulation of health of the individual and hygiene of the premises a self-employed sole prostitute works from. Clarity is required on how will hygiene standards be enforced, if there will be a minimum structural standard required for the premises.

Issues such as noise from vehicles at all times of the evening, antisocial behaviour etc needs to be addressed. It is anticipated this will lead to an increase in complaints to the Local Government Authority, as well as an increase in possible vexatious complaints from neighbours not wanting such an element in the neighbourhood. This increases workload for Local Government Officers in investigating the validity of the complaints.

BUILDING

Building Licence Approval Required

It is unclear if the legislation applies to the Local Government (Miscellaneous Provisions) Act 1960, as the Act is not referred to. The City requests clarification in this regard and if the Act is included, what form of approval is required under the Act and will that approval need to comply with the Building Code of Australia (BCA).

The Building Code of Australia

The BCA general provisions Section A3 identifies that a building used for prostitution is a Class 6 building, as such the following provisions apply in order to protect the health and safety of the buildings occupants;

Section C, Fire Resistance: the protection of openings, fire resistance, compartmentation and separation.

Section D, Access and Egress: the provision of escapes, construction of exits and access for people with disabilities.

Section E, Services and Equipment: fire fighting equipment, emergency lighting and exit signs.

Section F, Health and Amenity: sanitary facilities, light and ventilation, sound transition and insulation.

Building Regulations 1989

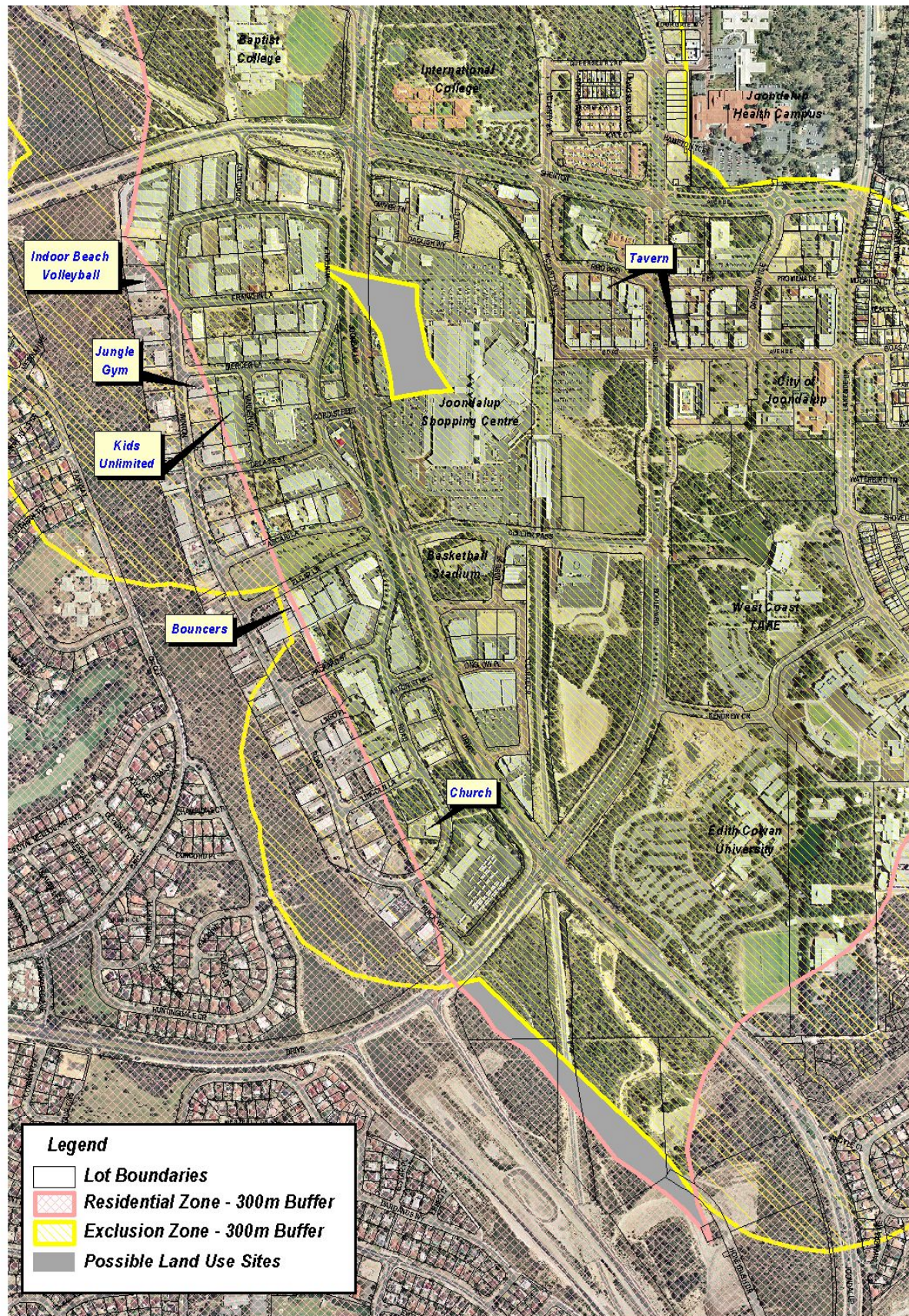
It is unclear if the legislation applies to the Building Regulations 1989, as the regulations are not referred to. The City requests clarification in this regard as the Building Regulations 1989 Part 5 require that every building should be classified, and that no person should occupy a building until a certificate of classification has been issued in accordance with the regulations.

Business approval required for a self-employed sole prostitute

The BCA Section A3.3 advises that where there is multiple classifications of a building such as a Single house class 1 and, for example, a home occupation class 6, the class 6 must comply with the requirements of that classification where it exceeds 10% of the building area, therefore where there is such a home occupation the building MUST comply with the provisions listed above.

It is again not clear in the legislation if the self employed sole prostitute is required to comply with the Local Government (Miscellaneous Provisions) Act 1960, the Building regulations or the Building Code of Australia, leaving the occupants at risk in regards to health and safety.

Attachment 1



DRAFT : Prostitution Control Bill 2002 - Potential Sites

Prepared by City of Joondalup - Planning and Community Development - Approvals, Planning & Environmental Services, Cartographic Section.



Attachment 1

