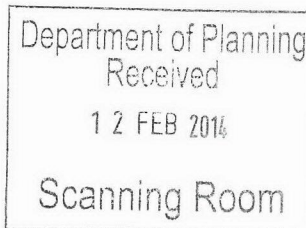


PCU51256

Our Ref: BP:20130232

10 February 2014

Ms Marian Pate
Sutherland LEP Review
NSW Department of Planning & Infrastructure
PO Box 39
SYDNEY NSW 2001



Level 1, 570 President Avenue
Sutherland NSW 2232

P 02 9589 6666
F 02 9589 6699

Correspondence
PO Box 1065

Sutherland NSW 1499

DX 4535 Sutherland

E mcw@mcwlaw.com.au

www.mcwlaw.com.au

Dear Ms Pate

**RE: SUBMISSIONS TO PUBLIC ENQUIRY
AMENDED DRAFT SUTHERLAND SHIRE
LOCAL ENVIRONMENTAL PLAN 2013**

We act for Mr and Mrs Yewdall, owners/occupiers of 28 Boomerang Avenue, Lilli Pilli.

We are instructed to prepare submissions on behalf of our client, for the above matter.

At the outset, we are instructed, the submissions **do not** relate to our clients' property only. The submissions are of a general nature and relate to the entire Sutherland Shire. The submissions address planning matters of significance to residents in residential zones.

Accompanying the submissions are the following documents:

1. Submission dated 15 April 2013 addressing submissions to the SSC draft LEP 2013.
2. Letter dated 23 October 2013 to the Sutherland Shire Council relating to draft amended Sutherland Shire LEP 2013.
3. Extract from Council report on the submissions to the draft LEP 2013 "Section 23.CCTV".
4. Submissions to the Australian Law Reform Commission dated 7 November 2013 addressing "Serious Invasions of Privacy in the Digital Era (IP 43)".

Principals

Donal Minehan LL.B.
Accredited Specialist
Family Law

Ian Connor B.Com. LL.B.
Litigation
Deceased Estates

Jon Prowse LL.B.
Accredited Specialist
Commercial Litigation

Kylie Holmes B.A. LL.B.
Accredited Specialist
Family Law

Senior Associates

Brian Phillips B.Leg.S.
Land & Environment Law

Elizabeth McDonald Dip Law
Accredited Specialist
Personal Injury Law



M:\Docs\20130232\435970.doc

Liability limited by
a scheme approved
under Professional
Standards Legislation

MCW LAWYERS PTY. LIMITED
ABN 79 128 754 987



Please confirm receipt of our clients' submissions.

Yours faithfully,
MCW LAWYERS

B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au



As of 1 April 2014
we will no longer be a member of the DX.
Please forward all correspondence to
our PO Box postal address.

SUBMISSIONS TO THE EXPERT PANEL ON DRAFT SUTHERLAND SHIRE LOCAL ENVIRONMENTAL PLAN 2013 AND AMENDED DRAFT SSLEP 2013

At the time the Sutherland Shire Council exhibited the draft LEP 2013 we made submissions on behalf of our clients. In summary, the submissions sought to have "*the erection of surveillance equipment in residential zones*" a land use or work for which consent was to be obtained or a prohibited use, in the respective zones.

To assist the Panel we include a copy of our clients' initial Submissions, dated 15 April 2013.

After the closing of submissions on the draft LEP 2013 the council decided to publicly advertise, for further submissions, a **draft amended LEP 2013**. Once again, we were instructed to make submissions to the draft amended LEP 2013. Further submissions dated 23 October 2013 were made to council on the draft amended LEP 2013.

Council Staff Report ("the Report") – 23.CCTV

The second set of submissions arose principally from a document prepared by council's officers entitled "Council Staff Report" ("the Report") in response to the submissions made to the **original** draft LEP 2013.

The relevant section of the Report is found at Section 23 and headed "CCTV". Although our clients' submissions of 23 October 2013 respond to the Report we wish to take this opportunity to elaborate on those submissions.

In the first instance it is submitted the Report is dismissive of our clients' submissions, self-serving, does not reflect the substance or the totality of our clients' submissions, is misleading and makes reference to the *Environmental Planning and Assessment Act* ('the Act') and case law that, in our opinion does not accurately reflect the legislation and the case cited in the Report.

We first address the case of *Szann -v- Council of City of Sydney (2012) NSWLEC 1168 (21 June 2012)*.

In the Report the council contended the installation of security cameras was not a point argued in the *Szann* case, rather the case was argued on its merits, *"without any implicit finding, as to whether security cameras constituted a form of development"*. The Report goes on to conclude with the following statement *"decisions of a Commissioner of the Court do not create a binding precedent, in the strict legal sense."* It is our clients' submissions both conclusions are incorrect.

The *Szann* case revolved around the City of Sydney council's conditions of consent referring to deletion of 2 security cameras out of a total of 6 cameras. Council approved the installation of 4 security cameras.

The council in the appeal contended the installation of security cameras is development permissible with consent. Commissioner O'Neil did not find otherwise. The court dismissed the appeal on the basis the cameras would have a detrimental impact on the neighbours' privacy and amenity and in so finding recognised the *"presence of the dome camera ... is a menacing panoptic mechanism"*.

In its Report under the heading "Analysis of Issues" ("Analysis") the substantive paragraph is vague, misleading and we submit incorrect. The basis of the council's argument that the *Szann* case does not assist our clients' contention that the installation of surveillance cameras can be introduced in the draft LEP as a form of development commences with the sentence, *"(W)hile the council in that case contended that the installation of security cameras is development that is permissible with consent, as security cameras were not permissible without consent or a form of exempt development."* The problem with this sentence is that it is grammatically confusing and does not assist a third party in comprehending what it is the council Report is trying to argue. The word *"While"* is either a conjunction or adverb. Either way the structure of the sentence is a statement that has no conclusion. The sentence is not logical. Nothing of substance can be gleaned from that sentence.

Council's conclusion in its Analysis that *"decisions of a Commissioner of the Court do not create a binding precedent, in a strict legal sense"* is, in our submission, not a true statement of the law. In this regard, it is not in the least uncommon for judgments in the Land and Environment Court to refer to the decisions of

Commissioners. Frequently, decisions of Commissioners are cited in judgments on a regular basis where such judgments are relevant.

The Report arrived at its conclusions based on legal interpretations of the relevant Act and its interpretation of case law. Its conclusion of Class1 appeals as not being binding "in a strict legal sense" is baseless and without legal justification. The failure to offer any explanation for what is meant by "in a strict legal sense" provides no comfort or rationale to either our clients, the community and, in our submission, to the Expert Panel for council's conclusion. In our submission it should be disregarded and given no weight.

Returning, for the moment, to the question of whether security cameras are a form of development permissible with or without consent the council's Report argues the question was irrelevant in the *Szann* case because the court did not make any implicit finding as to whether security cameras constituted a form of development that could be regulated by the Act. In our submission, it is a material fact that Commissioners in Class 1 merit appeals can acquaint themselves with any aspect of the case, and if Commissioner O'Neil had any doubt as to whether the installation of security cameras was a form of development that was prohibited he would have raised this with the parties during the course of the appeal. This would have been a fundamental aspect of the appeal: if the court had found the installation of surveillance equipment was a prohibited use or, importantly, as the council in its Report has claimed 'activity (that) does not constitute 'development' or a prohibited activity the Commissioner would have not have had to dismiss the appeal on a point of law.

Response to Issues

In the Report under the heading "*Response to Issues*" the council refers to investigations carried out by the council and the results of its investigations.

In point of fact, the council although it claimed officers would get back to our client, and the other party making submission, once its investigations were concluded, council files will reveal no such undertakings were conducted.

Unfortunately, the council have provided no evidence to either our clients or the general public in relation to the alleged investigations conducted by council. The council file will clearly reveal no follow up action was taken. Neither this firm nor our clients received any communication from council advising of the follow up action and its results.

Similarly, no documents relating to the alleged investigations have been made available for public comment, as one would expect in important matters relating to invasion of privacy and public participation in local government. All we have is a conclusive statement, unsupported by evidence of any kind, placed in the public domain that unequivocally claims, on a point of law, the installation of security cameras "*does not constitute 'development'*". No legal opinion was made available for the public to ascertain the veracity or otherwise of the statement. The failure of council to provide any documents on an important question of law that has the possibility to influence a significant portion of its ratepayers flies in the face of council's "*open government*" mantra.

In summary, it is our clients' submissions the council's conclusions in its "*Response to Issues*" should not be given due weight.

A final point that we submit is misleading in a legal context is the statement in the Report under the heading "*Response to Issues*" where it is unequivocally claimed "*the provisions of the Environmental Planning and Assessment Act do not provide council with the power to regulate the installation of security cameras, because the activity does not constitute development*". This conclusion flies in the face of the *Szann* case. It was a material fact in the *Szann* and accepted by the court that the installation of security cameras was a permissible use of the land for which development consent had been granted.

Council's conclusions, in our submission, are an inaccurate reflection of the law. It is further submitted the provisions of the Standard Instrument (Local Environmental Plans) Order 2006 permits the addition of additional uses for particular land uses in an LEP. Clause 14 makes such a provision lawful. It is recognised the Department of Planning and Infrastructure would be required to accept such a provision were it suggested by the council in its draft LEP 2013.

The Panel's attention is also drawn to the Note 2 "Land Use Table" in clause 15 of the Standard Instrument for further support of our argument that additional land uses to the draft LEP is available to council.

We also draw the Panel's attention to the absence of any reference to the leading case of *Raciti -v- Hughes (unreported)*, the relevance of the law of negligence and its relationship with the Neighbourhood Trees Dispute Act, SSLEP 2006, SEPP (Exempt and Complying Development Codes) 2008 and the research papers all of which were referred to in our clients' original submissions dated 15 April 2013.

In the *Raciti* case Young J, as he then was, recognised the installation of floodlights and surveillance cameras amounted to a nuisance at common law and granted an injunction to have the cameras removed.

The Court recognised there is no protection by legislation of an intrusion into air space and, on those grounds, the applicant's remedy was to seek a cause of action in the tort nuisance.

The above references in our clients' submissions appear to have been disregarded and ignored by council officers. There is no reference whatsoever to any of the aspects referred to above leaving one to conclude council officers did not pay any great deal of attention to our clients' submissions other than their dismissive and brief report relating to CCTV. In our submissions the material referred to above is conclusive of the fact that the installation of security cameras in New South Wales has posed and still poses severe problems associated with the invasion of privacy in residential zones.

Council's failure to pay any regard to the Standard Instrument is a material fact that has been disregarded in the entirety of its Report.

It is for the above reasons we submit the council's Analysis of Issues in its Report does not assist in a thorough and proper understanding of the *Szann* case. Therefore we submit, the section in council's report dealing with CCTV should be disregarded by the Panel.

A statement should also be made by the Panel in its report to the Minister advising, the section dealing with CCTV is misleading, not only to the applicant but to the general public who have access to the council planner's Report and be influenced by the authority of the Report and its unfounded conclusions. Those members of the public who would support the control of surveillance equipment would be forgiven if they formed the view that lawfully the council could not amend the draft to protect their privacy and the enjoyment of their properties.

MAYORAL MINUTE

Subsequent to the preparation of the Council Staff Report a Mayoral Minute ("the Minute") No 6/13-14, dated 28 July 2013 was tabled at a Special Council Meeting on 29 July 2013.

The Minute fails to make any reference whatsoever to our clients' submissions and to "Section 23 CCTV" of the Report. No explanation is proffered.

The absence of any reference to the installation of surveillance equipment at 23 CCTV of the Report is appalling and calls into question the integrity of the Mayor in the preparation of his report. It gives little support to his opening comments in the Minute that, *"the lifestyle enjoyed by Shire residents... the quality of urban neighbourhoods... the enviable lifestyle enjoyed by the Shire's residents... and the attractive place to live in are enjoyed by the Shire population"* are matters of concern to the Mayor when there are serious issues relating to the enjoyment of residents' lifestyles and enjoyment of their properties when grave questions of the invasion of privacy are ignored by the Mayor.

INVASION OF PRIVACY

Unfortunately, the *Privacy and Personal Information Protection Act 1998* does not protect a party in matters relating to the invasion of privacy from the installation of surveillance equipment. The *Privacy Act* deals with information privacy and not with intrusions into personal privacy.

The absence of legislation to protect against an invasion into one's personal privacy can be addressed, by adopting suitable measures adopted by legislation such as the *EPA Act* and the *Standard Instrument Codes*.

The general question of privacy or more accurately stated the invasion of privacy is a topic ventilated throughout the world, and more so in countries that have adopted the common law and have a strong and enviable judicial process.

Australian Law Reform Commission (ALRC)

In Australia the ALRC have applied their expertise to all matters associated with privacy since the mid-1960's. The ALRC have produced numerous reports on the subject.

The pervasiveness of intrusions to an individual's privacy is growing exponentially with the increasing technological advances in the digital area. The ALRC have been commissioned by the Federal Attorney General to report on the ubiquitous phenomena.

The ALRC have prepared an Issues Paper titled "Serious Invasions of Privacy in the Digital Era (IP43)". Submissions closed on 14 November 2013.

We were instructed to make submissions to the ALRC Paper and include for your attention a copy of our clients' submissions dated 7 November 2013.

The ALRC expect to have a Discussion Paper ready for public comment and submissions by the end of February 2014, a mere 2 weeks or less after the conclusion of submissions to the Expert Panel for the draft LEP 2013.

The ALRC's brief extends to **all** forms of invasion of privacy and includes recording devices such as surveillance cameras and the capability of owners to record and keep files of such recordings in perpetuity.

It is the recognition by the Commonwealth Government of the seriousness and far reaching effects of the consequences of the invasion of privacy that prompts our clients to respectfully suggest the Panel should avail itself of the Discussion Paper before coming to a determinative conclusion on the question of whether the draft

LEP 2013 should incorporate provisions for the control of surveillance cameras within the Sutherland Shire.

In conclusion we submit the installation of surveillance equipment in residential zones should be incorporated into the draft LEP 2013 either as a land use, work or activity. Whether the use is to be prohibited or permitted subject to consent is a matter to be determined on the basis of the objectives of the respective zone(s) and the EPA Act 1979, as amended.



MCW LAWYERS

B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au

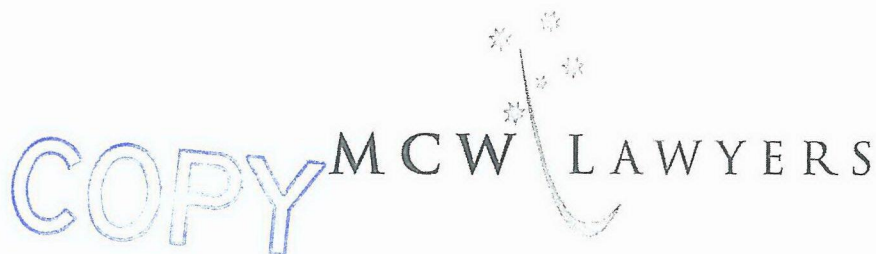
Lawyer and Town Planner

Encl

10 Feb. 2014

Our Ref: BP:JS:20130232
Your Ref: LP/03/252376

15 April 2013



SUBMISSIONS TO THE DRAFT LEP 2013

EMAIL: epu@ssc.nsw.gov.au

We act for Mr AJ and Mrs JL Yewdell, the owners and occupiers of a property within the boundary of the Sutherland Shire Council.

We are instructed to make submissions to the draft LEP 2013.

Our clients' submissions are:

' that the LEP 2013 include in the land use tables, for all Residential zones, the construction and/or erection of **surveillance equipment** should be a form of development/use of the land, that can only be constructed/erected subject to the Council's consent, pursuant to the *Environmental Planning and Assessment Act 1979*.'

Relevant history/background

By letter dated 30 April 2010 our clients wrote to council raising significant issues associated with an invasion of their privacy, arising out of the construction and erection of a number of surveillance cameras on the neighbouring property at 30 Boomerang Avenue, Lilli Pilli.

Among the cameras installed on the adjacent property was a dome type camera installed on a pole in excess of 2 metres in height. This structure was located at the entrance to 30 Boomerang Avenue, and

Level 1, 570 President Avenue
Sutherland NSW 2232

P 02 9589 6666
F 02 9589 6699

Correspondence
PO Box 1065
Sutherland NSW 1499

DX 4535 Sutherland
E mcw@mcwlaw.com.au
www.mcwlaw.com.au

Principals

Donal Minehan LL.B.
Accredited Specialist
Family Law

Ian Connor B.Com. LL.B.
Litigation
Deceased Estates

Jon Prowse LL.B.
Accredited Specialist
Commercial Litigation

Kylie Holmes B.A. LL.B.
Accredited Specialist
Family Law

Senior Associates

Brian Phillips B.Leg.S.
Land & Environment Law

Elizabeth McDonald Dip.Law
Accredited Specialist
Personal Injury Law



M:\Docs\20130232\415275.doc

Liability limited by
a scheme approved
under Professional
Standards Legislation

MCW LAWYERS PTY. LIMITED
ABN 79 128 754 987



recorded all persons entering and leaving our clients' property and other adjacent properties, within the range of the dome camera.

It should be noted this section of Boomerang Avenue is located in a cul-de-sac. As such, all persons entering the cul-de-sac would be recorded, without their knowledge and/or consent, by the camera located on the private property of Mr Hunter, at 30 Boomerang Avenue, Lilli Pilli, .

It should also be borne in mind the property had at least 5 cameras, of varying type, located at different locations on the property including the foreshore and, once again, persons unrelated to the occupants of 30 Boomerang Avenue were recorded, without their knowledge and/or consent.

In due course, your Mr Brunton, by letter dated 7 May 2010, responded to the letter of 30 April 2010. Mr Brunton's response was that Council, *"will not be taking any further action in relation to this matter"*. In his professional opinion he did not consider the *"installation of a surveillance camera"* required development consent pursuant to the *Environmental Planning and Assessment Act*.

Mr Brunton advised our clients, that *"Council does not consider the installation of security systems such as lights, alarms and cameras constitutes development"*.

Our clients were somewhat taken aback by Mr Brunton's letter where reference is made to the Council and its consideration that surveillance equipment does not constitute development. Nowhere in Mr Brunton's letter did he provide any evidence that the questions raised by our clients in their initial correspondence was raised before the Council, as the elected body corporate representing the ratepayers and other interested parties, to discuss our clients' request at a full Council meeting.

Similarly, in the conclusion of Mr Brunton's letter, he confirms Council will be taking no action in view of the contents of our clients' letter. Once again, there is no evidence to suggest the Council were made aware of our clients' grave concerns associated with the gross invasion of their privacy, in any discussion relating to our clients' correspondence at a full Council meeting.

Our clients' correspondence was then forwarded to the Council's Internal Ombudsman, Mr Ray Plibersek, for further investigation.

By letter dated 12 May 2010 the Internal Ombudsman advised he had conducted a preliminary assessment of our clients' concerns and discussed it with Council's Compliance Manager, Mr Michael Ryan.

The Internal Ombudsman went on to advise, Mr Ryan was dealing with a number of **similar complaints** (emphasis added) about the property at 30 Boomerang Avenue and would, in due course, contact Mr Brian Phillips from our offices advising what action the Council intends to make in relation to the objections raised by our clients and other local residents.

For the record, we have not been contacted by Mr Ryan since the Ombudsman's letter of 12 May 2010, some 3 years ago!

Despite Council's failure to take this matter further our clients sought the assistance of their local MP, Mr Mark Speakman. Mr Speakman took the complaints seriously and after attending to the complaints advised our clients a Motion had been passed unanimously at a full Council meeting sometime at or about 31 August 2011.

The substance of the Motion sought the local Government Association consider the question of adequate controls to be enforced concerning the operation of security surveillance equipment installed on private property.

The Motion passed at the Council meeting was then raised at the Local Government Annual Conference 2011,

We also understand Mr Speakman raised the question of surveillance cameras in Parliament, at or about August 2011.

On 11 November 2010 the local paper circulating in the Shire, the Leader, published an article headed, "Are you being watched?" The article highlighted the concerns of residents affected by surveillance cameras directed towards their properties.

It is against this background our clients make their submissions to the draft LEP.

Case Law

In support of our clients' submissions that development for the purposes of the construction and/or erection of **surveillance equipment** should be a form of development subject to Council's consent the following case law is relied on.

Raciti v Hughes (unreported)

In *Raciti* Young J was required to address an action in nuisance.

The case involved a neighbour who had installed floodlights and surveillance cameras on their property. The floodlights were activated by persons walking in the neighbouring property's rear yard. Once the floodlights were activated the cameras began recording persons in the neighbour's rear yard.

The Court found it may be a nuisance at common law to film a property and also acknowledged the floodlights that were activated automatically to provide for the filming also constituted a nuisance.

The result of the action brought by the plaintiffs was the granting of an injunction to have the cameras removed. The Court acknowledged the full impact by the defendants on the neighbour's, at all times when they used their backyard, infringed their privacy.

Szann v Council of The City of Sydney (2012) NSW LEC 1168 (21 June 2012)

In *Szann* the Council had granted development consent for the installation of four (4) security cameras on a "site (that) forms part of a heritage item".

The applicant sought to modify the conditions of consent associated with the surveillance cameras..

The two cameras in question were dome style cameras, positioned in a manner that they would have the potential to record the private courtyards and rear elevations of neighbours' properties.

The Court found *"The presence of the dome camera is a menacing panoptic mechanism, positioned to give the neighbours the impression of being constantly observed in their own, private rear courtyard."*

The Court found that the dome cameras constituted an invasion of privacy where there was a constant presence of a dome camera on the neighbouring property.

In *Szann*, surveillance equipment was a form of development requiring the Council's consent. This fact would appear to conflict with Mr Brunton's opinion in his letter of 7 May 2010.

Research on surveillance equipment and the law

In a paper prepared by John Gaudin, a Research Officer at the NSW Privacy Committee, the author in, *Investigating the General Issue of Privacy and Dome Cameras* suggested, in cases of external video surveillance equipment, such should be regarded as development under the environment and planning legislation. In Gaudin's opinion, the proliferation of surveillance equipment did not advance good neighbourly relations and something substantive had to be done, from a legal perspective, to control the proliferation of video equipment.

We support Gaudin's suggestion that the most appropriate way to address external video surveillance equipment is by turning to the planning legislation ie the *Environmental Planning and Assessment Act* to protect neighbours' rights from the invasive nature of surveillance cameras.

Ref: Gaudin J 1996 Privacy Law and Policy Reporter

In view of the Court's decision in *Szann* where the Court acknowledged and accepted the City Council's requirement for development consent of surveillance equipment the case flies in the face of the letter by Mr Brunton (referred to above) where Mr Brunton claimed unequivocally, "*that the installation of a surveillance camera is not defined as development under the EP&A Act.*"

In Rolph,D "*The Mechanical Eye: Looking, Seeing, Photographing, Publishing*", 2010 Sydney law School Research Paper No. 10/37, the author follows the shift in the common law attitude to photographing, including the recent phenomena of surveillance equipment and concludes the legal system in Australia has, " started to address the inadequacy of (the common law's) previously established position in order to protect privacy as a fundamental human right." (p 31).

The gradual change in the common law, as evidenced in the Rolph Paper, strongly suggests the time has now arrived for the statutory enforcement to protect an individual's privacy to be afforded serious consideration. Such enforcement should be by way of the EPA Act, until the legislature addresses the matter in the form of specific legislation dealing with surveillance legislation.

Article 17 of the *International Covenant on Civil and Political Rights* guarantees, " no one shall be subject to arbitrary or unlawful interference with his (her) privacy..". Australia is a signatory to the Covenant and participated in the formulation of the Covenant. Consequently, Australia is under normal circumstances eg. in times of peace bound to protect an individual's privacy.

The Law of Negligence and Trees (Disputes Between Neighbours) Act 2006

Among the rationale for introducing the Trees (Disputes Between Neighbours) Bill in Parliament the Bill sought to resolve problems between neighbours relating to trees that often ended in acrimony and disharmony between neighbours. As a means of reducing the tension between neighbours the Bill suggested matters associated with trees should be removed into the Land and Environment Court. The Bill also suggested the legal process involved would be cheap, convenient and accessible, rather than having neighbours commence proceedings in the Supreme Court under the tort of nuisance. The Bill as council is aware was assented to and proclaimed.

In the *Trees Act* section 5 specifically prevents a party from bringing an action in nuisance as a result of damage caused by a tree, in the Land and Environment Court.

It is submitted the introduction of a land use in the LEP2013 would have a similar effect to that of the *Trees Act* in that, rather than neighbours having to commence proceedings in the Supreme Court in an action in nuisance, thereby containing costs, stress, anxiety and extensive delay before the proceedings have been brought to a conclusion it is far more beneficial to include in the land use table that surveillance equipment is only permissible subject to Council's consent.

Apart from negating actions in nuisance, the inclusion of surveillance cameras in Council's LEP promotes and goes a long way to complying with the objectives of the *EPA Act* by promoting public participation in the planning process.

Turning to the *EP& A Act* there is no requirement in the *Act* regulating the form of development that must or must not be included in a zoning table. The various land uses forming part of the zoning tables is effectively a matter for the local authority and the Department of Planning and Infrastructure to consider whether such a land use is appropriate within the LEP.

SSLEP 2006 and SEPP (Exempt and Complying Development Codes) 2008.

The SEPP Codes, has included a number of uses in Part 2 Division 1 for the construction or alteration of several land uses as exempt development.

Among the multiplicity of uses for exempt development the following are included: Aerials and antennae, Air-conditioning units, Clothes hoists and clothes lines, Evaporative cooling units (roof mounted), Flag poles, and Windmills.

Clearly the above list is not exhaustive of developments falling within the categorization of Exempt development. The list is merely cited to draw attention to the types of development not entirely intrinsically different to the proposed development for 'surveillance equipment'. Why the latter form of development was excluded from the Codes is not relevant. What is of relevance is that there is no reason grounded on planning theory or principles to suggest 'surveillance equipment' should be totally excluded as a legitimate form of land use. In fact, from time to time, the Department of Planning and Infrastructure seeks submissions/comments from the public to the inclusion of new forms of land use to be considered and included within the exempt and complying development Codes.

To suggest, as your Mr Brunton has suggested, that because the exempt and complying development Codes do not include surveillance equipment it therefore follows that such a form of development does not require development consent because it is not defined by the EP&A Act is misleading and and not an accurate statement of the law.

Conclusion

On the basis of case law, legal research and in recognition of the concerns raised by our clients, other local residents and the general public it is submitted the Council should include within the land use tables, for all Residential zones, that "surveillance equipment" is a permissible use of the land subject to Council's consent. Such action would address the invasive and intimidating nature of such equipment as observed by the L&E Court in the *Szann* case.

There is also the question of whether surveillance equipment, in this day and age, should be considered as a public interest criterion in planning law.

We do not consider such an inclusion in the LEP will prejudice the Council in any way. On the contrary, such an inclusion should promote better understanding between neighbours, encouragement of the public participation process in environment planning, reduce the effects associated with litigation in the Supreme Court and be more in keeping with the progress of the law relating to photography and surveillance equipment, evidenced by the changes in the common law over the past few decades.

We have attached correspondence and relevant documents referred to in the submissions.

MCW LAWYERS

B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au

Lawyer and Town Planner

Our Ref: BP:20130232

23 October 2013

 COPY

HAND DELIVERED

The General Manager
Sutherland Shire Council
Eton Street
SUTHERLAND NSW 2232

*Level 1, 570 President Avenue
Sutherland NSW 2232*

*P 02 9589 6666
F 02 9589 6699*

*Correspondence
PO Box 1065
Sutherland NSW 1499*

*DX 4535 Sutherland
E mcw@mcwlaw.com.au
www.mcwlaw.com.au*

Dear Sir

RE: DRAFT AMENDED SUTHERLAND SHIRE LEP 2013

We refer to the above and note the closing date for submissions has been extended to 1 November 2013.

Council's records will reveal this firm made submissions to the draft LEP on behalf of Mr and Mrs Yewdall, owners of land in Boomerang Avenue, Lilli Pilli.

We have at hand a council report on submissions made to the draft LEP.

At paragraph 23 CCTV, a one page report addresses the submissions made in relation to "security cameras installed on residential properties ...".

The clear impression one receives from council's report is that the submissions were made on behalf of our clients, as opposed to general submissions encompassing development control, as a form of planning, within the Shire. The submissions were based on town planning principles as opposed to the law. The legal references were no more than an aid to support the proposition: the installation of security cameras should be the subject of development consent or prohibited, as the case may be.

For the sake of clarity, the submissions were **not** made simply on behalf of our clients. As adverted to above, the submissions are of a general nature and affect the entire local government area of the Sutherland

Principals

*Donal Minehan I.L.B.
Accredited Specialist
Family Law*

*Ian Connor B.Com. I.L.B.
Litigation
Deceased Estates*

*Jon Prowse LL.B.
Accredited Specialist
Commercial Litigation*

*Kylie Holmes B.A. LL.B.
Accredited Specialist
Family Law*

Senior Associates

*Brian Phillips B.Leg.S.
Land & Environment Law*

*Elizabeth McDonald Dip Law
Accredited Specialist
Personal Injury Law*



M:\Docs\20130232\428909.doc

Shire Council. The submissions are to be read in that context and not isolated to "*two land owners in Boomerang Avenue, Lilli Pilli*". Had council ever taken the initiative and investigated the issues arising from the installation of security cameras it would come as a surprise to learn the extent of the problem in the Shire.

A further impression the general public would be prone to receive from the report, especially persons not fully aware of legal principles, legislation and case law, and, one might add, the intricacies of town planning is that the law does not support the control for the installation of security cameras.

In council's report under the paragraph headed "*Analysis of Issues*" reference is made to *Szann –v- Council of Sydney*. In our opinion, the council's analysis is self-serving and does not truly reflect the facts and contentions of the *Szann* case. A layman reading the Analysis would be forgiven in reaching the conclusion, the installation of security cameras did not require development consent by the City of Sydney Council. The facts in *Szann* did require the council's consent for the installation of security cameras. In the event the security cameras did not require consent, there would have been no need to resort to proceedings in the Court.

Council's report of the submissions made on behalf of our client seems to have focused on the *Szann* case only. No mention, of any kind, is made to the town planning issues arising from the submissions, nor any reference to the other forms of similar development requiring consent, eg. the erection of flagpoles. Likewise, all those other points raised in the submissions appear to have been ignored.

In the paragraph headed "*Response to Issues*" it is claimed council has undertaken investigations addressing the installation of security cameras. If this is correct, it is astonishing the results of the investigation were not made available for public comment. This begs the question why the investigation was not made public and the manner and form of the investigation. As referred to above it seems obvious council did not take the trouble to engage with the public on this contentious issue. Why not? Such behaviour by the council does not augur well for public participation and transparency in the draft LEP process.

We do not agree with the conclusions expressed in the second last paragraph on page 1 of the report where it is alleged council does not have the power to regulate the installation of security cameras. If this is correct, it is then axiomatic a person can install a series of security cameras on a number of 4m poles as of right and without any consultation with the council. In our opinion, if such structures were erected council officers would be breathing down the neck of the offender and threatening legal action as it has done in similar instances.

Neither do we agree with the report's conclusion that the *Environmental Planning & Assessment Act 1979* does not "*extend to the installation of ... security cameras or lights*". Perhaps the council should undertake further investigation into the forms of development the subject of litigation in the Land & Environment Court over the past 40 years. Such an investigation would reveal the complexity and variety of developments sanctioned by the Court, all of which fall within the definition the council has referred to in its report.

The conclusion is simplistic in the extreme and overlooks the general objectives of the Act. Further, its reference to the legal definition has omitted the entirety of the definition and misleads the public by its reference to 'buildings' and 'subdivision' only, let alone the extent on case law dealing with definitions and the classification of development generally.

Perhaps the council will voluntarily raise these issues before the public enquiry foreshadowed by the council at its recent meeting of 30 September 2013.

In view of the above, we reiterate our client's submissions that the installation of security cameras should be the subject of development consent or a prohibited use, as the circumstances dictate, under the provisions of the *EPA Act*. Second, our clients' submissions are not restricted to Boomerang Avenue, Lilli Pilli, but affect the entire local government area the subject of the draft LEP 2013.

The submissions have been made with regard to the *public interest*, a criteria much lauded by the present State government in its promulgation of its new planning laws.

A copy of this submission is to be forwarded to the Office of the Director General, Department of Planning and Infrastructure.

Yours faithfully,
MCW LAWYERS



B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au

Cc: Department of Planning and Infrastructure

23. CCTV

Two (2) Submissions requesting that security cameras installed on residential properties be identified in the LEP as a use requiring development consent, or as a prohibited use.

Summary of Issues

Requests have been received from two land owners in Boomerang Avenue Lilli Pilli requesting that security cameras installed on residential properties be identified in the LEP as a use requiring development consent, or be identified as a prohibited use.

Analysis of Issues

Privacy concerns arising from the installation of security cameras installed by the intervening property owner have been a long standing concern for the authors of the two submissions.

The submissions raise a 2012 Land and Environment Court case (*Szann v Council of City of Sydney [2012] NSWLEC 1168, O'Neill C*), in support of their request. In this case, a Commissioner of the Court considered the issue of security cameras which were identified on plans forming part of a development application. While the council in that case contended that the installation of security cameras is development that is permissible with consent, as security cameras were not permissible without consent or a form of exempt development. However, the applicant did not argue this point and the Court determined the matter on merit, without any implicit finding, as to whether security cameras constituted a form of development that could be regulated by the *Environmental Planning and Assessment Act, 1979*. Further, decisions of a Commissioner of the Court do not create a binding precedent, in the strict legal sense.

Response to Issues

The issue of regulating the installation of security cameras has previously arisen and been investigated by council, in relation to the above mentioned Boomerang Avenue property and others. Council has also been made aware of the above mentioned decision and examined its implications.

Its investigations have found that the provisions of the *Environmental Planning and Assessment Act 1979* do not provide council with the power to regulate the installation of security cameras, because the activity does not constitute 'development'.

The legal definition of 'development' as contained within the *Environmental Planning and Assessment Act 1979*, includes activities such as erecting buildings and

subdividing land, but does not extend to the installation of equipment such as security cameras or lights.

It is recommended that no amendment be made to the Local Environmental Plan.

18. R2 Zoning Boundaries

Submissions have been received regarding changes from Zone 2- Environmental Housing (Scenic Housing) to R2 Low Density Residential in Como and Kareela and the associated increase in development potential. No changes are recommended within the proposed R2 low density residential zones under the draft SSLEP2013 in the Como and Kareela areas. It is recommended that the plan proceed as exhibited.

19. Sex services Premises

Submissions have been received in support and opposition to the planning provisions for sex services premises (brothels).

Sex services premises must be permissible in one zone within the local government area. IN1 is the most appropriate zone within the Sutherland Shire, due to the potential to minimise impact on sensitive uses. It is recommended that an amended model local provision be added.

20. Luminous Pole Advertising

Submissions oppose the prohibition of luminous pole advertising in all zones, except for commercial zones. It is recommended that the proposed inclusion of 'luminous pole advertising' in Schedule 2 – Exempt Development should remain unchanged and proceed as exhibited.

21. Cluster Housing

One submission has been received requesting opportunities for cluster housing in the E3 Environmental Management zone. While the theory of the development typology has merit, unfortunately the vast majority of cluster housing development previously constructed in the Sutherland Shire, have not achieved these aims. The few quality examples of this form of development do not warrant the re-introduction of this housing form into the draft plan. Furthermore the Standard Instrument does not facilitate such forms of housing. It is recommended that no change be made the draft plan and it proceed as exhibited.

22. Vulnerable Uses in the RE1 Public Recreation Zone

The submission has identified that permissible uses expose vulnerable uses to bushfire risk. It is recommended that Childcare Centres and Respite Day Care Centres are prohibited in the RE1 Public Recreation Zone. It is recommended that the permissibility of existing Council childcare centres and the existing Sylvandale facility Respite Day Care facility, within the RE1 zone, be maintained through Schedule 1 Additional Permissible Uses.

23. CCTV

Two (2) Submissions requesting that security cameras installed on residential properties be identified in the LEP as a use requiring development consent, or as a prohibited use. The provisions of the Environmental Planning and Assessment Act 1979 do not provide Council with the power to regulate the installation of security cameras, because the activity does not constitute 'development'. It is recommended that no amendment be made to the Local Environmental Plan.

Our Ref: BP:20130232

7 November 2013

COPY **MCW LAWYERS**

Executive Director
Australian Law Reform Commission

EMAIL: privacy@alrc.gov.au

Dear Sir

**RE: SERIOUS INVASIONS OF PRIVACY
IN THE DIGITAL ERA (IP 43)**

We act for Mr A J and Mrs J L Yewdall, the owners and occupiers of a property within the boundary of the Sutherland Shire Council.

We are instructed to make submissions to the Issues Paper.

The submissions that follow were, for the most part, made to the Sutherland Shire Council in response to the Council's draft Local Environmental Plan 2013. Minor changes have been made to the original submissions for the purpose of our clients' submissions to the Issues Paper.

The submissions to the draft Local Environmental Plan are apposite to the Issues Paper. They raise problems faced by the community, at large, in dealing with local government authorities and the intransigent and obfuscating manner adopted by some authorities in dealing with contentious matters. It also brings into question the ubiquitous call of politicians and the provisions of the Environmental Planning & Assessment Act relating to "public participation" and the reality of public participation at ground level.

The proliferation of surveillance cameras located on residential land, be it Torrens Title or Strata titled land is becoming a serious problem to residents on adjoining properties.

There is no objection to the installation of surveillance cameras on an individual's land provided the surveillance cameras do not cover any

*Level 1, 570 President Avenue
Sutherland NSW 2232*

*P 02 9589 6666
F 02 9589 6699*

*Correspondence
PO Box 1065
Sutherland NSW 1499
DX 4535 Sutherland*

*E mcw@mcwlaw.com.au
www.mcwlaw.com.au*

Principals

*Donal Minehan LL.B.
Accredited Specialist
Family Law*

*Ian Connor B.Com. LL.B.
Litigation
Deceased Estates*

*Jon Prowse LL.B.
Accredited Specialist
Commercial Litigation*

*Kylie Holmes B.A. LL.B.
Accredited Specialist
Family Law*

Senior Associates

*Brian Phillips B.Leg.S.
Land & Environment Law*

*Elizabeth McDonald Dip Law
Accredited Specialist
Personal Injury Law*



Liability limited by
a scheme approved
under Professional
Standards Legislation

M:\Docs\20130232\429886.doc

MCW LAWYERS PTY. LIMITED
ABN 79 128 754 987



part of an adjacent property. Unfortunately, the installation of surveillance cameras is not restricted to monitoring the property on which the camera is located. Too often, cameras cover a wider area and in so doing infringe upon the privacy enjoyed by neighbouring properties. There are cases of cameras recording activities in a neighbour's swimming pool and in the case of our clients cameras directed into their dwelling. Apart from monitoring the activities of the occupiers of the neighbouring properties, all other persons visiting the property are also monitored. This becomes more egregious in situations where cameras are located in such a position that activity is also monitored in a public place.

Information collected from surveillance cameras can be downloaded onto a computer and kept in perpetuity. Such activity is a blatant invasion of privacy on persons unassociated with the residents of the property upon which the camera or cameras is located. It is also becoming common place for individuals to mount cameras on poles to provide a wider horizon of surveillance that, by itself, takes into view adjoining properties.

The following submissions relate to the draft Sutherland Shire LEP 2013 and are provided to the Commission as an illustration of the attitude of some local government authorities concerning the installation of surveillance cameras on private property.

As the Commission will note, there are some local government authorities within New South Wales that require development approval for installation of surveillance cameras, whereas other authorities, eg. the Sutherland Shire Council, have formed a view the *Environmental Planning & Assessment Act* does not make provisions for council to "control" the installation of surveillance cameras. In our opinion, there is nothing to prevent a local government authority, with the co-operation of the Department of Planning and Infrastructure, to include in a local environmental plan controls for the installation of surveillance cameras.

Against that background our clients make the following submissions:

Relevant history/background

By letter dated 30 April 2010 our clients wrote to Council raising significant issues associated with an invasion of their privacy, arising out of the construction and erection of a number of surveillance cameras on the neighbouring property at 30 Boomerang Avenue, Lilli Pilli.

Among the cameras installed on the adjacent property was a dome type camera installed on a pole in excess of 2 metres in height. This structure was located at the entrance to 30 Boomerang Avenue, and recorded all persons entering and leaving

our clients' property and other adjacent properties, within the range of the dome camera.

It should be noted this section of Boomerang Avenue is located in a cul-de-sac. As such, all persons entering the cul-de-sac would be recorded, without their knowledge and/or consent, by the camera located on the private property of Mr Hunter, at 30 Boomerang Avenue, Lilli Pilli, .

It should also be borne in mind the property had at least 5 cameras, of varying type, located at different locations on the property including the foreshore and, once again, persons unrelated to the occupants of 30 Boomerang Avenue were recorded, without their knowledge and/or consent.

In due course, the council's Director of Planning, Mr Brunton, by letter dated 7 May 2010, responded to our client's letter of 30 April 2010. Mr Brunton's response was that Council, *"will not be taking any further action in relation to this matter"*. In his opinion he did not consider the *"installation of a surveillance camera"* required development consent pursuant to the *Environmental Planning and Assessment Act*.

Mr Brunton advised our clients, that *"Council does not consider the installation of security systems such as lights, alarms and cameras constitutes development"*.

Our clients were somewhat taken aback by Mr Brunton's letter where reference is made to the Council and its consideration that surveillance equipment does not constitute development. Nowhere in Mr Brunton's letter did he provide any evidence that the questions raised by our clients in their initial correspondence was raised before the Council, as the elected body corporate representing the ratepayers and other interested parties, to discuss our clients' request at a full Council meeting.

Similarly, in the conclusion of Mr Brunton's letter, he confirms Council will be taking no action in view of the contents of our clients' letter. Once again, there is no evidence to suggest the Council were made aware of our clients' grave concerns associated with the gross invasion of their privacy, in any discussion relating to our clients' correspondence at a full Council meeting.

Our clients' correspondence was then forwarded to the Council's Internal Ombudsman, Mr Ray Plibersek, for further investigation.

By letter dated 12 May 2010 the Internal Ombudsman advised he had conducted a preliminary assessment of our clients' concerns and discussed it with Council's Compliance Manager, Mr Michael Ryan.

The Internal Ombudsman went on to advise, Mr Ryan was dealing with a number of **similar complaints** (emphasis added) about the property at 30 Boomerang Avenue

and would, in due course, contact Mr Brian Phillips from our offices advising what action the Council intends to make in relation to the objections raised by our clients and other local residents.

Mr Ryan has never contacted our clients or this firm.

Despite Council's failure to take this matter further our clients sought the assistance of their local MP, Mr Mark Speakman. Mr Speakman took the complaints seriously and after attending to the complaints advised our clients a Motion had been passed unanimously at a full Council meeting sometime at or about 31 August 2011.

The substance of the Motion sought the local Government Association consider the question of adequate controls to be enforced concerning the operation of security surveillance equipment installed on private property.

The Motion passed at the Council meeting was then raised at the Local Government Annual Conference 2011,

We also understand Mr Speakman raised the question of surveillance cameras in Parliament, at or about August 2011.

On 11 November 2010 the local paper circulating in the Shire, the Leader, published an article headed, "Are you being watched?" The article highlighted the concerns of residents affected by surveillance cameras directed towards their properties.

It is against this background our clients make their submissions to the draft LEP.

Case Law

In support of our clients' submissions that development for the purposes of the construction and/or erection of **surveillance equipment** should be a form of development subject to Council's consent the following case law is relied upon.

Raciti v Hughes (unreported)

In *Raciti* Young J was required to address an action in nuisance.

The case involved a neighbour who had installed floodlights and surveillance cameras on their property. The floodlights were activated by persons walking in the neighbouring property's rear yard. Once the floodlights were activated the cameras began recording persons in the neighbour's rear yard.

The Court found it may be a nuisance at common law to film a property and also acknowledged the floodlights that were activated automatically to provide for the filming also constituted a nuisance.

The result of the action brought by the plaintiffs was the granting of an injunction to have the cameras removed. The Court acknowledged the full impact by the defendants on the neighbour's, at all times when they used their backyard, infringed their privacy.

Szann v Council of The City of Sydney (2012) NSW LEC 1168 (21 June 2012)

In *Szann* the Council had granted development consent for the installation of four (4) security cameras on a "site (that) forms part of a heritage item".

The applicant sought to modify the conditions of consent associated with the surveillance cameras.

The two cameras in question were dome style cameras, positioned in a manner that they would have the potential to record the private courtyards and rear elevations of neighbours' properties.

The Court found *"The presence of the dome camera is a menacing panoptic mechanism, positioned to give the neighbours the impression of being constantly observed in their own, private rear courtyard."*

The Court found that the dome cameras constituted an invasion of privacy where there was a constant presence of a dome camera on the neighbouring property.

In *Szann*, surveillance equipment was a form of development requiring the Council's consent. This fact would appear to conflict with Mr Brunton's opinion in his letter of 7 May 2010.

Research on surveillance equipment and the law

In a paper prepared by John Gaudin, a Research Officer at the NSW Privacy Committee, the author in, *Investigating the General Issue of Privacy and Dome Cameras* suggested, in cases of external video surveillance equipment, such should be regarded as development under the environment and planning legislation. In Gaudin's opinion, the proliferation of surveillance equipment did not advance good neighbourly relations and something substantive had to be done, from a legal perspective, to control the proliferation of video equipment.

We support Gaudin's suggestion that the most appropriate way to address external video surveillance equipment is by turning to the planning legislation ie. the

Environmental Planning and Assessment Act to protect neighbours' rights from the invasive nature of surveillance cameras.

Ref: Gaudin J 1996 Privacy Law and Policy Reporter

In view of the Court's decision in *Szann* where the Court acknowledged and accepted the City Council's requirement for development consent of surveillance equipment the case flies in the face of the letter by Mr Brunton (referred to above) where Mr Brunton claimed unequivocally, "*that the installation of a surveillance camera is not defined as development under the EP&A Act.*"

In Rolph,D "*The Mechanical Eye: Looking, Seeing, Photographing, Publishing*", 2010 Sydney law School Research Paper No. 10/37, the author follows the shift in the common law attitude to photographing, including the recent phenomena of surveillance equipment and concludes the legal system in Australia has, " started to address the inadequacy of (the common law's) previously established position in order to protect privacy as a fundamental human right." (p 31).

The gradual change in the common law, as evidenced in the Rolph Paper, strongly suggests the time has now arrived for the statutory enforcement to protect an individual's privacy to be afforded serious consideration. Such enforcement should be by way of the EPA Act, until the legislature addresses the matter in the form of specific legislation dealing with surveillance legislation.

Article 17 of the *International Covenant on Civil and Political Rights* guarantees, " no one shall be subject to arbitrary or unlawful interference with his (her) privacy..". Australia is a signatory to the Covenant and participated in the formulation of the Covenant. Consequently, Australia is under normal circumstances eg. in times of peace bound to protect an individual's privacy.

The Law of Negligence and Trees (Disputes Between Neighbours) Act 2006

Among the rationale for introducing the Trees (Disputes Between Neighbours) Bill in Parliament the Bill sought to resolve problems between neighbours relating to trees that often ended in acrimony and disharmony between neighbours. As a means of reducing the tension between neighbours the Bill suggested matters associated with trees should be removed into the Land and Environment Court. The Bill also suggested the legal process involved would be cheap, convenient and accessible, rather than having neighbours commence proceedings in the Supreme Court under the tort of nuisance. The Bill as Council is aware was assented to and proclaimed.

In the *Trees Act* section 5 specifically prevents a party from bringing an action in nuisance as a result of damage caused by a tree, in the Land and Environment Court.

It is submitted the introduction of a land use in the LEP 2013 would have a similar effect to that of the *Trees Act* in that, rather than neighbours having to commence proceedings in the Supreme Court in an action in nuisance, thereby containing costs, stress, anxiety and extensive delay before the proceedings have been brought to a conclusion, it is far more beneficial to include in the land use table a provision that the installation of surveillance equipment is only permissible subject to Council's consent. Alternatively, if the cameras are not mounted on poles and are only directed onto the property upon which they are erected they would constitute Exempt development pursuant to the EPA Act 1979. The SEPP (Exempt and Complying Development Codes) 2008 could also be amended to include surveillance cameras (see below).

Apart from negating actions in nuisance, the inclusion of surveillance cameras in Council's LEP promotes and goes a long way to complying with the objectives of the *EPA Act* by promoting public participation in the planning process.

Turning to the *EP& A Act* there is no requirement in the *Act* regulating the form of development that must or must not be included in a zoning table. The various land uses forming part of the zoning tables is effectively a matter for the local authority and the Department of Planning and Infrastructure to consider whether such a land use is appropriate within the LEP.

SSLEP 2006 and SEPP (Exempt and Complying Development Codes) 2008.

The SEPP Codes, has included a number of uses in Part 2 Division 1 for the construction or alteration of several land uses as exempt development.

Among the multiplicity of uses for exempt development the following are included: Aerials and antennae, Air-conditioning units, Clothes hoists and clothes lines, Evaporative cooling units (roof mounted), Flag poles, and Windmills.

Clearly the above list is not exhaustive of developments falling within the categorization of Exempt development. The list is merely cited to draw attention to the types of development not entirely intrinsically different to the proposed development for 'surveillance equipment'. Why the latter form of development was excluded from the Codes is not relevant. What is of relevance is that there is no reason grounded on planning theory or principles to suggest 'surveillance equipment' should be totally excluded as a legitimate form of land use. In fact, from time to time, the Department of Planning and Infrastructure seeks submissions/comments from the public to the inclusion of new forms of land use to be considered and included within the exempt and complying development Codes.

The council has suggested, because the exempt and complying development Codes do not include surveillance equipment it therefore follows such a form of

development does not require development consent because it is not defined by the EP&A Act is misleading and not an accurate statement of the law.

Conclusion

On the basis of case law, legal research and in recognition of the concerns raised by our clients, other local residents and the general public it is submitted the Council should include within the land use tables, for all Residential zones, that "surveillance equipment" is a permissible use of the land subject to Council's consent. Such action would address the invasive and intimidating nature of such equipment as observed by the L&E Court in the *Szann* case.

There is also the question of whether surveillance equipment, in this day and age, should be considered as a public interest criterion in planning law.

We do not consider such an inclusion in the LEP will prejudice the Council in any way. On the contrary, such an inclusion should promote better understanding between neighbours, encouragement of the public participation process in environment planning, reduce the effects associated with litigation in the Supreme Court and be more in keeping with the progress of the law relating to photography and surveillance equipment, evidenced by the changes in the common law over the past few decades.

Yours faithfully,
MCW LAWYERS



B PHILLIPS
Lawyer and Town Planner

Writer's email Address: bphillips@mcwlaw.com.au