

PCU51298

P Liddy  
PO Box 505  
CRONULLA NSW 2230

10<sup>th</sup> February, 2014

Ms Marian Pate  
Sutherland LEP Review  
NSW Department of Planning & Infrastructure  
GPO Box 39  
Sydney NSW 2001



Dear Sir/Madam,

**Re Draft Sutherland Shire Local Environmental Plan 2013  
Submission for Invasion of Privacy CCTV Cameras in Residential Areas**

I have reviewed the changed draft Sutherland Shire Local Environmental Plan 2013 and I cannot see any reference to the prohibited use of or Development Consent being required for the installation of CCTV cameras in residential areas. I refer to my previous submissions dated 10<sup>th</sup> April, 2013 and 12<sup>th</sup> September, 2013 which have not been acted upon.

My neighbour installed both DOME cameras and fixed CCTV cameras on his property which can film my land. I have tried to reason with my neighbour but he refused to remove the offending cameras. My boat trailer was rammed in full view of one of these cameras ( as per the camera in photograph 1) and the police called but it would appear that the film had been edited prior to their arrival. His father admitted to me that his son had rammed the boat trailer. This led me to commence an action for a personal violence order the result of which mutual undertakings were agreed and substantial legal fees incurred. I believe that the cameras can still film my property and this is confirmed by the experts report (copy attached) by BRD Digital which stated that one of the cameras can film my property. Attached are photographs of the cameras which impact on my property.

Sutherland Shire Council previously stated that no DA is required for the installation of CCTV cameras under the Environmental Planning and Assessment Act. They first stated that the works were minor development, then exempt development and then did classify them as no development at all. However, the current definition of development includes the carrying out of a work. Clearly the installation of CCTV cameras requires tools for the installation and would satisfy this definition. Also attached is a copy of an email from Michael Cufer relating to development below the foreshore building line which states that development consent is required.

I believe that this is the reason that the City of Sydney Council required development approval for the installation of CCTV cameras, especially DOME cameras. Refer copy of the case Szann v Council of the City of Sydney 2012 attached. If you take the time to read this case it clearly states in paragraphs 27, 28 and 29 that the Council of The City of Sydney is concerned about the impact on privacy of these cameras. How can the planning department of the Council of the City of Sydney determine that the installation of cameras is development, yet Sutherland Shire Council's planners have a different view.

Attached is a copy of reference 23 CCTV, which was the Council response to previous submissions. This reference states that the use of CCTV cameras could be identified as a prohibited use and this fact has been ignored by the Mayor and the Council.



I cannot understand why the amended Draft Sutherland Shire Local Environmental Plan 2013 cannot include a clause that states that DOME CCTV cameras and fixed CCTV cameras are a prohibited use in residential areas. DA consent should be required if they film any other residential property and that they constitute a form of development and are then subject to specific regulatory controls similar to restrictions on the building of boatsheds. An amendment to any of the chapters in the existing Sutherland Shire Development Control Plan 2006 to include such a clause would be sufficient. An example of the current controls for boatsheds is attached, Clause 6.b.5 of Chapter 9 states that "Council will not permit the use of a boatshed for any other purpose." This clause does not relate to development yet Sutherland Shire Council has allowed a DOME CCTV camera to be installed on the property next door on a boatshed, which can film my children and friend's children while they are swimming or in their swimming costumes. This type of behaviour would not be allowed at the beach.

Now is the most appropriate time to ensure that these types of cameras are prohibited in residential areas before the Sutherland Shire Local Environment Plan is finalized. Your assistance would be appreciated in having this plan amended to state that that DOME CCTV cameras and fixed CCTV cameras are a prohibited use in residential areas if they film any other residential property and that development approval is required for the installation of CCTV cameras in residential areas.

The previous Mayor of Sutherland Shire Council has stated that he could not do anything but was able to table draft amendments to the Draft Sutherland Shire Local Environment Plan 2013 before a Council meeting in July 13. It would appear that the previous Mayor had the ability to seek adjustments to the Draft LEP 2013 but had advised me that he could not do so.

Council has the power within this new Plan to regulate the use of these security cameras as per the motion previously put forward at the Local Government Association annual conference in 2011 and referred to in Mr Mark Speakman's address to parliament, yet nothing has been done since. Council should take the initiative and be pro- active in relation to developing the appropriate objectives to be included within this new plan including prohibited use if required.

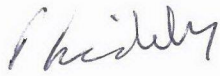
If the matter is not addressed, then what action does the Council propose to take to ensure these CCTV cameras are dealt with in the future. We are not the only residents of the shire that is/will be affected by these types of CCTV cameras and their use will only escalate out of control unless the Council takes appropriate action now.

In late July, 2013, my northern neighbours installed other fixed cameras on their property and although they do not appear to be filming my land, I am not aware of what type of lenses these cameras have. ie wide angle lenses would film my property. This now means that I am surrounded by cameras on both sides of my property and at the front and rear of my property by the same family and their relations. I am enclosing photographs of the various cameras that impact upon my property and this is part of the reason why we have had to sell our residence due to the constant harassment.

I confirm that I do not have any connection with any political party and that I have previously written to the Minister for Planning and Infrastructure to seek his assistance. Attached is a letter from Mr Neil McGaffin who has arranged for Ms Belinda Morrow to assist me and I will be contacting her soon. However the letter does not address the issue of Dome Cameras at all. I have also written to the Premiers Office, The Minister for Local Government and the Minister for Justice. All parties have advised that the issue of CCTV cameras is a planning issue and now is the time for appropriate action to be taken

I can be contacted on 9544 0722 (work) if you wish to discuss the matter and would appreciate meeting with you on site with other affected neighbours to discuss these cameras.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'P Liddy', written in a cursive style.

Peter Liddy



The Mayor did not comply with the *Model Code* Part 3.1 a) and b) 3.2 and 7.6. Nor did he comply with the council charter.

In the Department of Local Government's 2008 *Practice Note* the use of Mayoral Minutes at regular and special council meetings is outlined. Whilst the Practice allows Mayors to put Mayoral Minutes to a meeting without notice:

*"Mayoral Minutes should not be used to introduce, without notice, matters that are routine, not urgent, or need research or a lot of consideration by the councillors before coming to a decision. These types of matters would be better placed on the agenda, with the usual period of notice being given the councillors."*

Mayor Johns also did not comply with the Practice Note. The Mayoral Minute was given to councillors with an hour's notice. It was 25 pages long and contained 75 amendments additional to the detailed report produced by council staff. The council staff report is 722 pages long, summarizes the 2131 submissions made by residents and interested parties into the draft LEP and includes staff recommendations supported by expertise, analysis and documentation.

The Mayoral Minute notes *"Submissions were received which specifically objected to the draft plan as many considered that the plan does not preserve the Shire's amenity, the lifestyle of residents, or sufficiently protect the natural environment. Many were concerned that the draft plan promotes overdevelopment."*

However the Mayoral Minute has no explanation or analysis for the proposed amendments other than the statement *"I support further significant changes being made to the draft LEP before Council requests the Minister for Planning and Infrastructure makes the draft plan."* The Minute has no explanation or justification for its existence.

The Liberal and Independent councillors did not raise the lack of notice, or insufficient time to read the Mayoral minute and cross reference it to the existing draft and to the council staff report. Some of the amendments in the Mayoral Minute have significant and far reaching effects on environmental planning in Sutherland Shire such as re-zonings, changes to building heights and floor space ratios within re-zonings and existing zones and changes to the landscaping requirements in existing zones.

The Labor and Shire Watch Independent councillors applied to have the meeting deferred for a week so they could properly consider the amendments proposed in the Mayoral Minute. This application was refused. The meeting proceeded to consider the amendments in the Minute. The Labor and Shire watch councillors proposed a refusal or amendment to parts of the Mayor's amendments. The Liberal and Independent councillors spoke in support of the Mayor's motions and approved every one that was considered.



Councillor Provan went beyond the all the changes to the LEP being considered by the meeting and proposed further re-zonings at Kurnell and increases to building heights in the vicinity of the Mall at Cronulla. The Mayor said he would not support these, citing NSW noise level controls as his reason for not supporting the re-zoning at Kurnell.

My son and I listened to the meeting shocked, alarmed and appalled at the lack of due process or regard by the majority of councillors to the representative positions they hold. The Liberal and Independent councillors supported the larger part of the exhibited changes that residents and staff expressed opposition to as well as the amendments proposed in the minute.

It was clear to my teenaged son, and myself, we were hearing an abuse of proper procedure. To address the terms of reference for the review, I have looked at the *Act*, *Council Code of Conduct*, *Model Code of Conduct*, *Charter and Practice Note* that govern the responsibilities of Councillors at meetings and the use of Mayoral Minutes at meetings.

Given the inappropriate use of Mayoral Minute 6/13-14 and lack of integrity in the decision making process at the meeting of 29-7-2013 it is essential the LEP at least revert to the original draft version. Further, given the failure of the Liberal and Independent councillors at the meeting to “exercise a reasonable degree of care and diligence in carrying out your functions under the Act” or “properly examine and consider all information provided to them”, I do not have confidence in the decision making process associated with this LEP and submit that the process should begin again with the council properly considering what it exhibits to the public. Unfortunately this would necessitate costs and delay. The responsibility of any costs or delays lies with the councillors who have not followed due process.

I will outline a few of the significant motions passed at the meeting which were poorly debated or justified. The only consideration was more housing, more development and an assumed increase in jobs.

- The rezoning of the Sutherland Entertainment Centre to operational land. This proposal received the most submissions which objected. Councillors Blight and Steinwall tried to postpone or modify the motion. The motion was summarily passed without properly considering whether this is in the public interest. The change to zoning could see the Entertainment Centre or parts of the Entertainment Centre Precinct sold off to commercial interests in the future.
- A significant increase in building heights in central Cronulla, and the added population this will bring, will impact the already gridlocked traffic experienced on weekends and during special events. Traffic management, especially for emergency vehicles, to the peninsula, possible shadowing of the iconic Mall area and the amenity of existing residents, were largely ignored by the meeting.

- A significant increase in the building heights in areas adjoining Sutherland Public School and Miranda Public School and Minerva Special Purposes School was passed. Minerva Special Purposes School in Sutherland is solely for student with Special Needs ranging in ages from 8-18. Miranda Public School includes a purpose built playground for children with special needs which would be overlooked. The best interests of Primary school children and vulnerable school students was not considered.
- The new minimum landscape area ratios have not been justified as a positive planning initiative. Potential negative impacts on human wellbeing and the natural environment were ignored. Defining hard surfaces and recreational structures as landscaping was not explained as a quality planning control.
- The relaxation in planning controls on foreshore properties, which could lead to the degradation of remaining natural vegetation and wildlife was not a considered amendment. The new planning controls are so open to interpretation as to potentially allow a great new variety of types of development.

Whilst the Panel is considering the plan-making process that has gone into the draft LEP it may be also open to the Panel to recommend referring some Councillors to the Minister and the Division of Local Government for breaches in two categories of the Model Code. These breaches would relate to the Code of Conduct and a governance issue regarding conduct of a Council Meeting.

This concludes my submission to the panel. Thank you for your attention.

Yours sincerely, Helen Mabbutt









25<sup>th</sup> January 2011

P Liddy and Associates  
PO Box 505  
Cronulla NSW 2230

Attention – Peter Liddy

Subject – Survey of Installed CCTV System at 20 Gundawarra St Lilli Pilli and 30 Boomerang St Caringbah.

30 Boomerang St Caringbah – Operating System – Kodicom PC Based Digital Video Recorder  
- Cameras – Samsung Infa Red External Camera  
- PTZ Cameras – Pelco

*Questionable Camera Locations*

- PTZ located at Boatshed. – This camera can Pan Tilt and Zoom and has a 360 deg range. It cannot look up in any way. It is currently programmed to tour (move around Independently) without looking at the adjacent property. This tour can be changed at anytime by the operator.  
To avoid this camera viewing the adjacent property a physical barrier would have to be installed to cover the cameras northern view.
- PTZ Driveway - This camera can Pan Tilt and Zoom and has a 360 deg range. It cannot look up in any way. It is currently programmed to tour (move around Independently) without looking at the adjacent property. This tour can be changed at anytime by the operator. To avoid this camera viewing to rear of the above property ( north) it would have to be mounted about 1 metre below its current height. This camera will always be able to view the adjacent property (south) below.
- Camera located at side of House – This camera is currently viewing the driveway but can be turned to view the North Adjacent property. It would be very visible if turned to view the Northern property. ( highly unlikely )
- Camera located on Stairs on Southern Side – This camera can view the southern adjacent property.



20 Gundawarra St Lilli Pilli - Kodicom PC Based Digital Video Recorder  
- 4 x Samsung IR Cameras

*Questionable Camera Locations*

Driveway or Entry camera – This is an overview camera with a long view. It does have a view of the Adjacent Property but from a distance. To ensure this camera cannot view other properties it would have to be moved from its current location.

Stairs camera – This camera is currently viewing the nature / grass area between 20 Gundawarra St Lilli Pilli and 30 Boomerang St Caringbah. The view can be changed to view the Southern Adjacent property.

If there are any questions or issues that you would like to discuss please contact myself on the numbers or email listed below.

Kind Regards

**Mark Wall**

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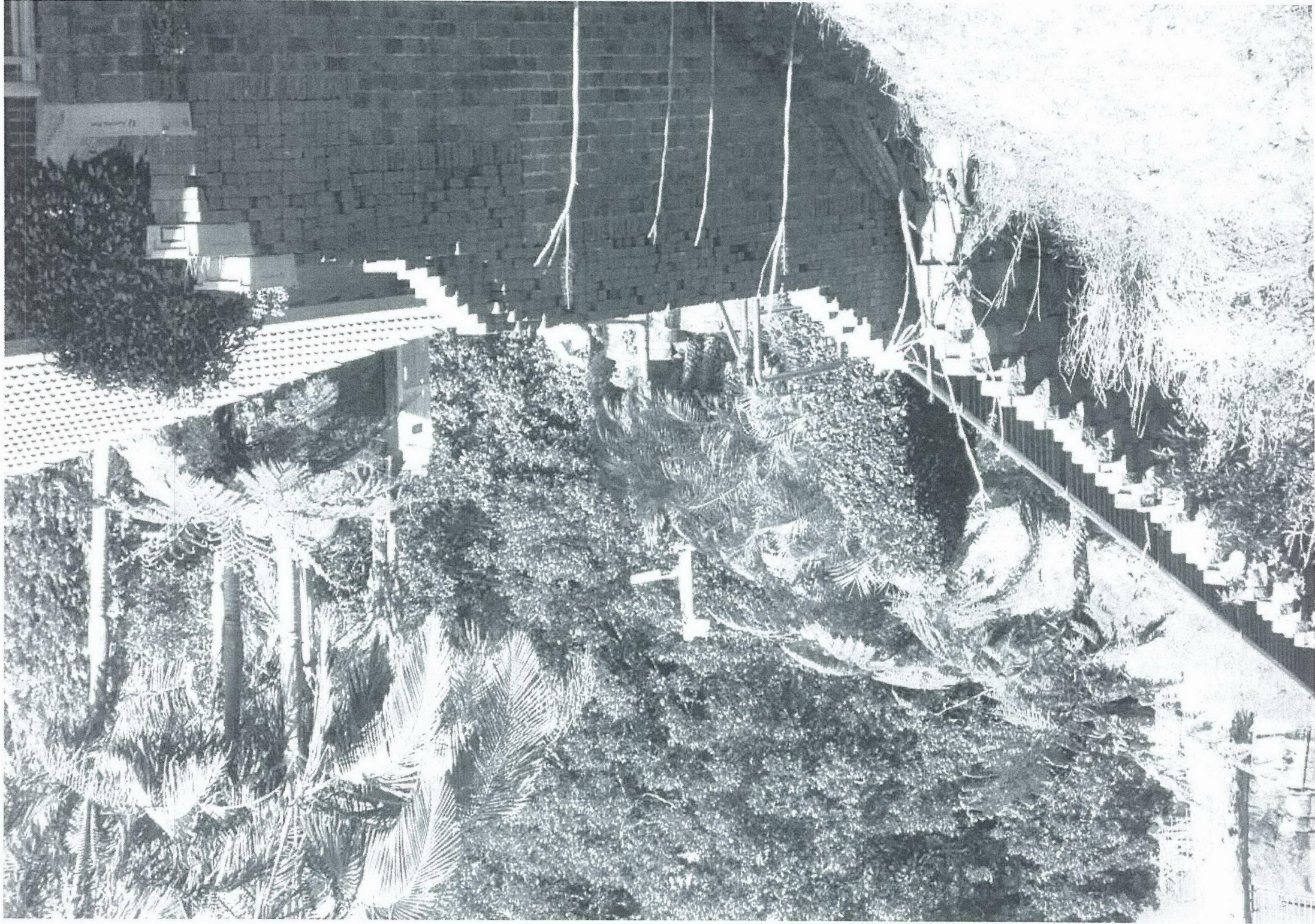




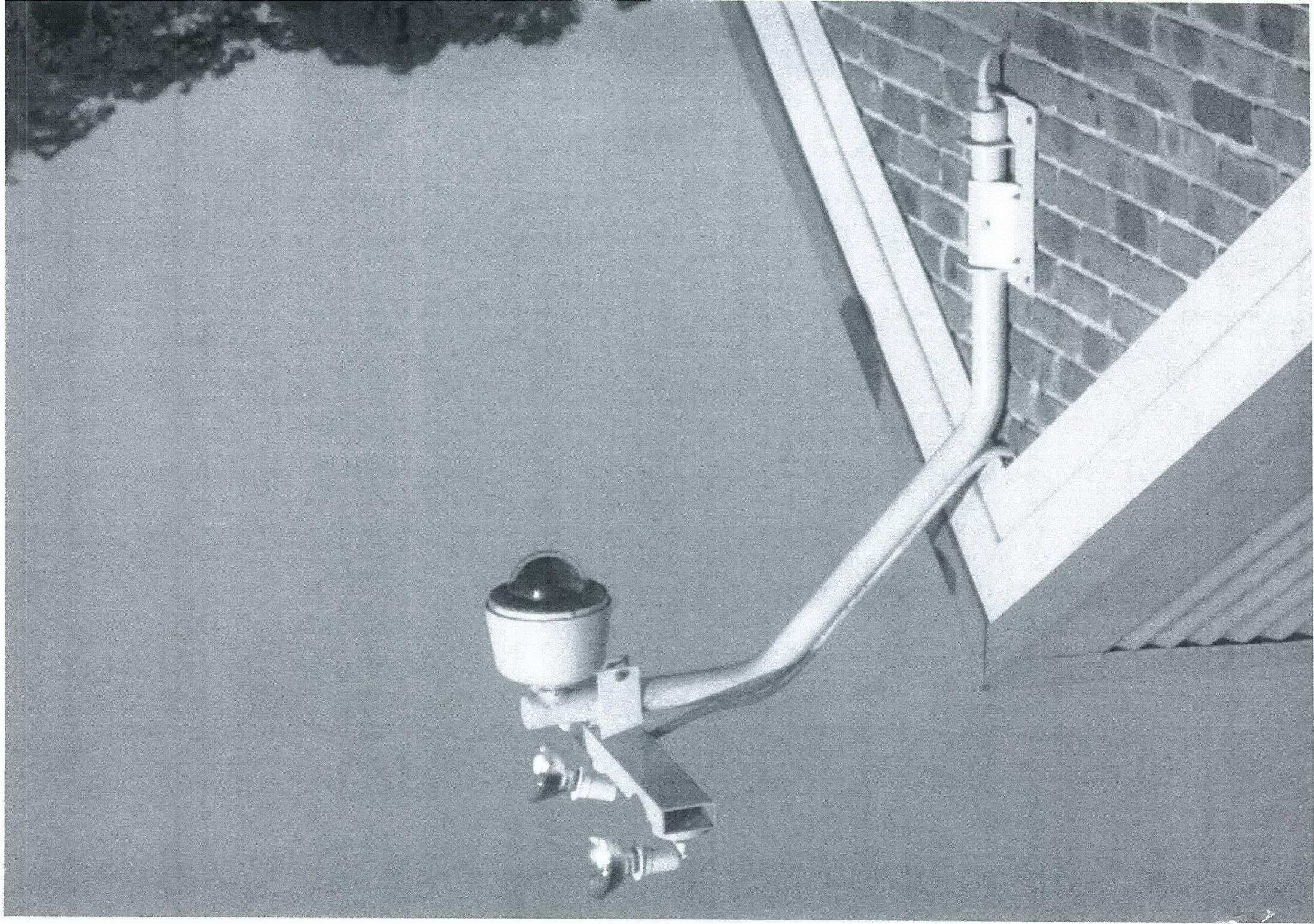




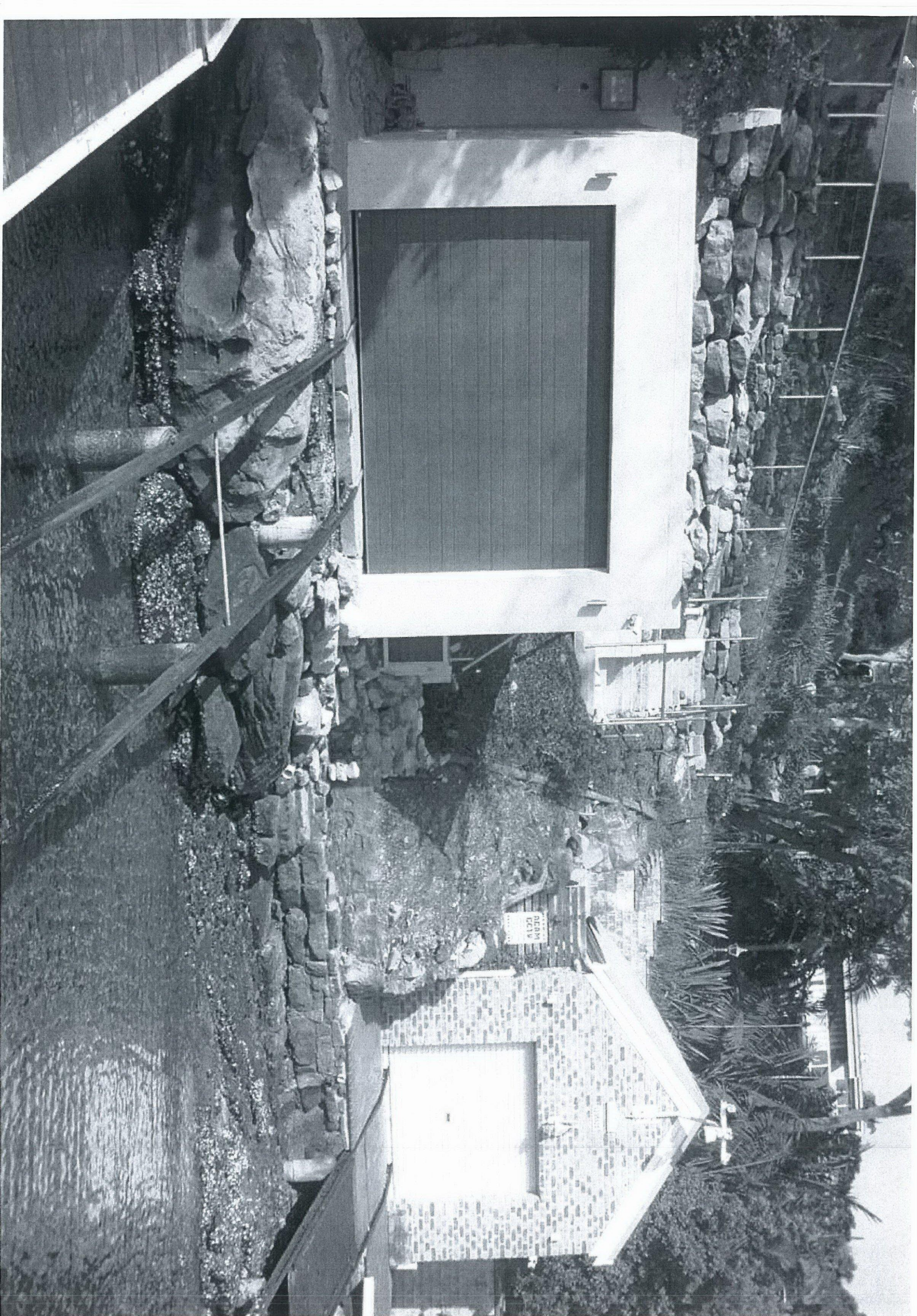














**Sutherland Shire  
COUNCIL**



Office of the Mayor

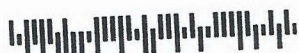
**Councillor Kent R Johns**  
Mayor

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Sutherland NSW 1499

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File Ref: CRMS: 771167415



Mr Peter Liddy  
PO Box 505  
CRONULLA NSW 2230

- 1 MAY 2013

Dear Mr Liddy

**Is Development Consent required for Closed Circuit Cameras?**

Thank you for providing me with the extensive documentation that outlines your concerns about the inappropriate use of closed circuit television cameras. From these documents it is apparent that you have pursued the issue for many years but, in a practical sense, you have not achieved the result you have been seeking.

Council has previously considered the issues you raise. This led to Council seeking the support of the Local Government Association. The matter has also been raised in the NSW Parliament without any consequential action. In all of these discussions and related correspondence with Council, the central issue is not about the merits of your argument but rather the legal framework that may apply to these cameras.

Ordinarily I would not venture into a discussion about legal interpretation. However, I can provide a guide towards a legal solution based upon the speech of Mr Mark Speakman, SC, MP to the NSW Parliament. As a senior lawyer, Mr Speakman has been able to examine the legal constraints that apply.

In his speech Mr Speakman, SC, MP concludes that *"there is uncertainty and, more likely, a lack of remedy in current law."* Three possible solutions were then presented to the Parliament. The first two solutions are beyond the scope of planning legislation. However, Council officers have outlined the third option which explains why the position that you argue has no foundation.

A development application is required to undertake "development" as defined by the Environmental Planning & Assessment Act. Under the legal definition the erection of a building constitutes development but a camera is not a building. However, part (f) of the definition also states that "development" includes any other act, matter or thing ... that is controlled by an environmental plan.



By way of illustration, the Exempt & Complying Development Codes have numerous forms of activity that become development because the Code states, for example, the "construction or installation of an aerial or antennae, including a microwave antennae, is development specified for this code. As an antennae is not a building it would otherwise not be subject to the planning controls.

Utilising this example, Mr Speakman, SC, MP proposed that the NSW Government could incorporate a provision in an environmental plan specifying that closed circuit cameras constitute a form of development. Contrary to your request, Council is not able to incorporate any such clause in its draft Sutherland Shire LEP 2013. Every plan formulated by Council must be consistent with a standard format that precludes what you propose.

If you wish to pursue this option it will be necessary for you to obtain the support of the NSW Department of Planning & Infrastructure.

For completeness, it is also appropriate that you are informed about the response that I have received concerning the decision of Commissioner O'Neill of the Land & Environment Court. As a matter of principle, decisions from Commissioners of the Court do not create legal precedents that can be relied upon under other circumstances.

At paragraph 13 of the decision, the Commissioner states that "the council contends that the installation of security cameras is development." In this statement the Commissioner merely records the evidence that was presented. The applicants represented themselves before the Court and did not challenge the position of the council. It was open to the applicants to argue that the council's interpretation was false. As the Commissioner was presented with only one position a decision was not required. Consequently, the Commissioner does not state that the installation of security cameras constitutes "development" but merely records the council's contention.

It is appreciated that you have been pursuing this matter for a considerable time. Consequently, I have considered it appropriate to provide you with a detailed response. Please appreciate that your enquiry has been thoroughly investigated.

Based upon the information available to me, I am unable to identify any action that Council could take to address your concerns. Court action cannot be initiated when the Council officers who would present the evidence in Court are of the opinion that there has been no breach of the Environmental Planning & Assessment Act.

Yours sincerely

  
Councillor Kent R Johns  
Mayor

1/5/13.



- (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions.

**corporation** means the corporation constituted by section 8 (1).

**council** has the same meaning as it has in the Local Government Act 1993.

**Court** means the Land and Environment Court.

**critical habitat** has the same meaning as in the Threatened Species Conservation Act 1995 or (subject to section 5C) Part 7A of the Fisheries Management Act 1994.

**critical stage inspections** means the inspections prescribed by the regulations for the purposes of section 109E (3) (d).

**Crown land** has the same meaning as in the Crown Lands Act 1989.

**Department** means the Department of Planning.

**designated development** has the meaning given by section 77A.

**development** means:

- (a) the use of land, and
- (b) the subdivision of land, and
- (c) the erection of a building, and
- (d) the carrying out of a work, and
- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument,

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

**development application** means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate.

**development area** means land constituted as a development area in accordance with Division 1 of Part 7.

**development consent** means consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate.

**development control plan** (or **DCP**) means a development control plan made, or taken to have been made, under Division 6 of Part 3 and in force.

**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:



**Peter Liddy**

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**From:** <GCapsis@ssc.nsw.gov.au>  
**Date:** Monday, 29 November 2010 4:51 PM  
**To:** <pliddy@bigpond.com>  
**Subject:** Fw: Development below foreshore building line

-----Forwarded by Councillor George Capsis/SSC on 11/29/2010 04:48PM -----

To: "gcapsis@ssc.nsw.gov.au" <gcapsis@ssc.nsw.gov.au>  
 From: Michael Cufer <MCufer@hurstville.nsw.gov.au>  
 Date: 11/12/2010 12:24PM  
 Subject: Development below foreshore building line

Dear Clr Capsis

I refer to the recent story in the Leader regarding the security cameras placed on a property in boomerang Ave Lilli Pilli. I presume by the description from a neighbour that this structure is on or near the waterfront and if correct is below the foreshore building line.

A bit of background to my interest in this matter. I was a former compliance officer for SSC and did regular proactive enforcement on foreshore structures including that of Boomerang Ave. I am currently the Building Regulations Officer for Hurstville City Council. It is my understanding that anything below the foreshore building line requires a development application. In addition if it is not described in the LEP then it automatically requires consent. Recently I had a friend ask if I could adjudicate on a matter and I spoke to a SCC planner and the certification unit Manager regarding some minor repair works to stairs on the waterfront. The response was that anything below the foreshore Building line including repairs and additions would require a development application regardless of what it was.

Reference in the Leader was made that the Environmental Planning And Assessment Act did not extend to cameras. In my view this is irrelevant because there are many structures that are not mentioned however would require consent. The EP&A Act is in most parts generic in the listing of items requiring approval varies from the most obvious structures and extends to all land uses from rural to coastal.

I refer to the comment made by the spokeswoman for SCC in which she states "The intent of the Act is to regulate the environment, not social issues such as cameras and their use", is grossly incorrect in that the Act empowers the regulatory authority being Council to enforce the planning and assessment requirements and not just environmental issues. There is the Protection of the Environment (POEO) Act which covers environmental Issues. The other legislation she refers to is the Surveillance Devices Act 2007 which if you read through might actually not allow the recording of activity of neighbouring property without consent.

The other issue which is more apparent in the lighting which may not comply with the Australian Standards. I recall a development in Gympie which had security lights fitted that



spilt out to the street and became offensive to other residents. A conditions of consent referred to compliance with the Australian Standard. I don't know the actual standard but this can be found through SCC Planning Dept. If the security camera structure had been put through the development approval process then this requirement may have been implemented. In any case the issue is for compliance to enforce. It does seem that issues like this get put into the "too hard basket", when just a little proactiveness could resolve the matter.

On a personal note; If these lights are on the waterfront I would not take kindly to the spill lighting from flood lights creating a hazard when I am navigating my boat in that area.

If you need to discuss please call.

All the best

Mike Cufer

93306269

0411744103

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6/02/2014



This decision has been amended. Please see the end of the decision for a list of the amendments.

## Land and Environment Court New South Wales

Medium Neutral Citation	Szann v Council of the City of Sydney [2012] NSWLEC 1168
Hearing Dates	18 June 2012
Decision Date	21/06/2012
Jurisdiction	Class 1
Before	O'Neill C
Decision	<p>1. The appeal is dismissed.</p> <p>2. The application to modify conditions 2(b)(i), 2(b)(iii) and 2(d) of development consent D/2011/ 574/A is refused.</p> <p>3. The exhibits, other than 2 and A, are returned.</p>
Catchwords	DEVELOPMENT CONSENT: appeal against condition imposed on development consent to delete two security cameras and to require the approved cameras to be the fixed lens type cameras.
Legislation Cited	Environmental Planning and Assessment Act 1979 Land and Environment Court Act 1979
Category	Principal judgment
Parties	Mr Aleksander Szann and Mrs Lesley Szann (Applicants) Council of the City of Sydney (Respondent)
Representation	Solicitors Council of the City of Sydney (Respondent)  Mr Aleksander Szann and Mrs Lesley Szann (Litigants in Person) (Applicants) Mr Alex Singh (Solicitor) (Respondent)
File Number(s)	10350 of 2012

## JUDGMENT

- COMMISSIONER:** This is an appeal pursuant to the provisions of s97 of the *Environmental Planning and Assessment Act 1979* against a conditions of consent, 2(b)(i) and (iii) and 2(d), of Development Consent no D/2011/574, granted by the Council of the City of Sydney (the Council), requiring the deletion of two security cameras of a total of six cameras and for the approved cameras to be the fixed lens type cameras.
- The appeal was subject to mandatory conciliation on 18 June 2012 in accordance with the provisions of s34AA of the *Land and Environment Court Act 1979*. Soon after the commencement of the conciliation conference, the parties advised that there was no prospect of



an agreement being reached and so the conciliation conference was terminated and a hearing held forthwith pursuant to s 34AA(2)(b).

- 3 The development consent is for the installation of four security cameras, planter screens in the rear courtyard, modifications to the northern boundary fence and alterations and maintenance works to the terrace house at 522 Bourke Street, Surry Hills (the site). Two of the four security cameras approved are located under the front balcony facing towards Bourke Street and two are located on the rear boundary wall, which has a roller door opening, facing towards Olivia Lane.
- 4 The development consent did not approve the following cameras, identified by condition 2(b) of the development consent:
  - (i) The existing camera located on the third storey of the rear wall and the proposed new location slightly to the south.
  - (ii) The existing camera located under the front balcony facing south (Bourke Street).
  - (iii) The proposed camera located on the centre of the rear roller door facing the rear yard.

5 Condition 2(d) states:

Details of the approved cameras, their precise location and field of vision shall be submitted and be approved by Council prior to their installation. The type of camera to be used and their positioning shall be such as to minimise the view of the public domain and adjacent properties. The cameras shall be of a fixed lens type (ie no zoom or ability to pan from side to side/up/down).

### Issues and the proposal

- 6 The applicant seeks to have conditions 2(b)(i) and 2(b)(iii) deleted and condition 2(d) amended to delete the last sentence, '*the cameras shall be of a fixed lens type (ie no zoom or ability to pan from side to side/up/down)*' in order to install a dome style camera on the third floor rear wall of the terrace and above the roller door facing the rear yard and to allow the approved cameras to be the dome style of camera (the proposal).
- 7 The Council contends that the proposed camera on the third floor rear wall of the terrace will have a detrimental impact on the heritage significance of the terrace house; and that the proposed camera fixed to the wall on the rear boundary, above the roller door and facing the rear yard, together with the rear wall camera, will have a detrimental impact on the neighbour's privacy and amenity.
- 8 The Council further contends that the dome style of the cameras proposed, with the ability to pan from side to side and up and down and to zoom, is not appropriate, due to the perception it gives neighbours of being remotely surveilled and the consequent amenity impacts on privacy.

### The site and its context

- 9 No. 522 Bourke Street is located on the eastern side of Bourke Street, between Nobbs and Arthur Streets. The property backs onto Olivia Lane.
- 10 The site contains a Victorian terrace house consisting of four floors, with a basement level (first floor) at the rear courtyard level, the entry level from Bourke Street (second floor) and two upper levels, the third and fourth floors. The rear wing of the terrace house is located on the southern side of the site and is three storeys high.
- 11 No. 524 Bourke Street is to the south of the site and also contains a four storey terrace house



with a three storey rear wing.

- 12 The area consists of a dense pattern of development, with terrace houses, houses, former warehouses and commercial premises.

## Planning framework

- 13 The Council contends that the installation of security cameras is development that is permissible with consent; as security cameras are not addressed by the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes)* 2008, nor by clause 10A of the *South Sydney Local Environment Plan* 1998 (LEP 1998), 'What is exempt and complying development'.
- 14 The site forms part of a heritage item, 'four storey Victorian Terrace House Group', 520-534 Bourke Street, Surry Hills included in Schedule 2 Heritage Items of LEP 1998.
- 15 The principal objectives of LEP 1998, at clause 7, include:
- (b) to enhance the quality of life and well being of the local community.
- 16 The heritage aims of LEP 1998, at clause 22, include:
- (e) to ensure that any development is undertaken in a manner that is sympathetic to, and does not detract from, the heritage significance of heritage items, of heritage conservation areas and their setting, and of streetscapes within heritage streetscape areas and their setting.
- 17 The amenity objectives of the *South Sydney Development Control Plan* 1997 (DCP 1997) includes, at Part E, clause 4.1:
- To ensure that development minimises noise and overlooking to adjacent development.
- 18 The security and design objectives of DCP 1997 includes, at Part F, clause 1.3:
- That a balance between surveillance, safety, security, acoustic and visual privacy, building appearance and other environmental criteria is achieved.
- 19 The *City of Sydney Heritage Development Control Plan* 2006 (DCP 2006) includes, at 3.1 Objectives, that the objectives of the provisions are to ensure that development to heritage items does the following:
- (v) maintains the setting of the heritage item including the relationship between the item and its surroundings.
  - (vi) encourages the removal of inappropriate alterations and additions and the reinstatement of significant missing details and building elements.

## Evidence

- 20 The Court, in the company of the parties, heard from the two occupants at 524 Bourke Street and viewed the site from the rear courtyard of 524 Bourke Street.
- 21 There is an existing dome style camera mounted on the third floor rear wall of the terrace house, without development consent. It is mounted projecting out from an opening in the wall, which is intended to be used for an exhaust fan. The existing dome style camera is a half sphere, with the flat surface facing upwards, so that the camera appears to have 360 degree view in the horizontal plane and a 180 degree view in the vertical plane. It is not possible to detect, by looking at the apparatus, which direction the camera view is recording. The proposed camera



will be located to the south of the existing camera, closer to the shared boundary with 524 Bourke Street.

22 The neighbours at 524 Bourke Street object to the proposal on the basis that it will compromise their privacy and therefore their amenity, in their rear courtyard. The existing dome style camera lens is clearly visible from their rear deck and courtyard and is located on the rear wall of 522 Bourke Street, in close proximity shared boundary. The objecting neighbours state that the proposed dome style camera on the rear boundary wall facing the courtyard will allow the applicant to remotely view their rear elevation, including windows, doors and deck.

23 No expert evidence was provided.

## Submissions

- 24 The applicant submits that the cameras are necessary for their defence, in order to document anti-social behaviour and intruders and that the view from the existing camera located on the third floor rear wall is limited to their own rear courtyard and shared boundary with 524 Bourke Street. The cameras are mounted in pairs so as to monitor any tampering of the opposite camera. The applicant is willing to have 'privacy masks' settings on the dome style cameras, which enable the masking of unwanted zones, such as the rear courtyard of 524 Bourke Street.
- 25 The applicant submits that the development consent granted to 524 Bourke Street for alterations and additions, includes a rear dormer window and the neighbour will be able to overlook the applicant's property, including his bathroom skylights from the rear dormer. The applicant submits that the windows, doors and rear decks of the terrace row permit overlooking of neighbours' properties.
- 26 The applicant tendered a letter (Exhibit D), dated 14/12/10, from the resident of 530 Bourke Street, informing their neighbours of a break-in and theft on the morning of 14/12/10.
- 27 The Council submits that their contention regarding the impact of the camera on the heritage significance of the heritage item is a minor concern and that the impact of the camera on the privacy and amenity of neighbours is their primary concern.
- 28 The Council submits that overlooking from windows or decks can be ameliorated by conditions requiring screening and furthermore, someone standing at a window or on a deck is visible and therefore the neighbour would be aware of their presence. In contrast, a dome style camera has a greater impact on privacy and amenity, as it can zoom and refocus and the neighbour may not realise they are being remotely observed and recorded.
- 29 The Council submits that a fixed lens style camera located on the ground floor rear elevation, with its view of neighbouring properties obscured by the boundary fences, would be acceptable. The applicant's response is that the camera must be at the third level in order to adequately view the shared boundary with no. 524 Bourke Street.

## Findings

### Heritage impact



30 I am satisfied that the camera, mounted on the rear elevation of the terrace house, at the third level, will have no impact on the identified heritage significance of the heritage item, being the terrace row, 520-534 Bourke Street. The camera is a similar size to an external light fitting or an external siren of an alarm system, both contemporary fittings common on external facades of dwellings, including heritage items.

### **Privacy and amenity impact**

31 The two positions of the proposed dome style cameras, on the third floor wall of the rear wing and on the rear boundary wall above the roller door and facing the courtyard, will have the potential to record the private courtyards and rear elevations of neighbours' properties.

32 The presence of the dome camera, high on the rear elevation immediately adjacent to the shared boundary, is a menacing panoptic mechanism, positioned to give the neighbours the impression of being constantly observed in their own, private rear courtyard. Any camera, where the lens is visible from an adjoining property or the public domain, gives the perception that you are under surveillance, regardless of whether 'privacy masks' are enabled to veil unwanted zones, because you cannot see whether a privacy mask is enabled by looking at the camera. The barrel camera body of the fixed lens camera provides an assurance than when you are not in front of the cone view of the lens, you are not under surveillance.

33 I accept that it is possible to overlook the neighbours' rear courtyards from rear window and decks in the terrace row, due to the density and form of the development. There is a difference, however, between being able to observe neighbours from a rear window or deck, where the observer is present and visible and the constant presence of a dome camera, with the ability to zoom, focus, record and remotely surveil.

34 The imposition of privacy masks on a dome camera system by condition would be impossible to enforce, as the privacy mask can be removed at any time. The Council has imposed condition 2 (d), requiring that the four approved cameras are a fixed type lens, to ensure that they are physically restricted to surveillance of the site and public domain immediately adjacent to the site.

35 I agree with Council's position, that a fixed lens camera, positioned on the rear elevation at ground floor level, at a height that the lens is not visible from both of the neighbours' properties, would provide adequate surveillance of the rear courtyard.

### **Conclusion**

36 I am satisfied that the proposed cameras, on the third level rear elevation and on the rear wall above the roller shutter facing the courtyard, would have a detrimental impact on the neighbours' privacy and amenity. For the above reasons, the appeal is dismissed.

### **Orders**

37 The orders of the Court are:

1. The appeal is dismissed.
2. The application to modify conditions 2(b)(i), 2(b)(iii) and 2(d) of development consent D/2011/



574/A is refused.

3. The exhibits, other than exhibits 1 and A are returned.

**Susan O'Neill**

**Commissioner of the Court**

### **Amendments**

22 Jun 2012      typo - the words "both of" added

Paragraphs: 35

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Last updated 1 November 2011



## 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.



## CHAPTER 9

### Specific Land Use

Sutherland Shire  
COUNCIL



3. Berthing areas shall be located adjacent and at right angles to a jetty, ramp and pontoon structure, have maximum dimensions of 9m X 5m and when measured together with other waterfront structures (including reclamations) shall not extend beyond 15m from deemed MHWM.
4. Multiple berthing areas adjacent to shared or communal waterfront facilities shall not be developed.
5. No berthing is allowed over seagrasses or macroalgae.

#### **6.b.5 Controls for Boatsheds (excluding land zoned Zone 15 Private Recreation at Sylvania Waters)**

1.
  - a. The use of boatshed shall be limited to the storage of small boats and boating equipment.
  - b. Regardless of subclause 1.a, a shower facility is acceptable.

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##### **Note to Subclause 1:**

Council will not permit the use of a boatshed for any other purpose.

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2. Boatsheds must be single storey and can only be located at or above deemed MHWM. Boatsheds can have a maximum length of 7 m, a maximum width of 4 m and a maximum height of 3 m to the eaves or ceiling of the elevation/s facing the water and 5m to the highest part of the roof. The maximum floor level of the boatshed shall be 900 mm above MHWM (i.e. the maximum height is 1.44m AHD).
3. Boatsheds shall be designed to minimise excavation and incorporate a pitched roof that reflects the character of the waterway. Sites which would require excavation into a cliff or rock face to achieve sufficient depth for a boat are unsuitable locations for boat sheds.

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##### **Note to Subclause 3:**

Boatsheds that exhibit a scale and character in keeping with traditional timber boatsheds are preferred.

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4. The materials of construction shall be of low maintenance and in a tone and colour appropriate to the natural landscape.

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##### **Note to Subclause 4:**

Walls shall be restricted to timber, stone, brick or other material with an applied surface finish satisfactory to Council and high gloss paints or reflective materials and finishes shall not be used. Roofs shall be of corrugated metal or tile or other approved non-reflective



## Surveillance Cameras (Proof)

About this Item

Speakers

Business

Speaker Mr Mark

Private Members Statements, PRIV

## SURVEILLANCE CAMERAS

Page: 74

**Mr MARK SPEAKMAN** (Cronulla) [7.00 p.m.]: I draw to the attention of the House uncertainty and likely gaps in the law relating to the installation and use of surveillance cameras on residential properties. Last month at the Local Government Association annual conference the following Sutherland Shire Council motion appeared on the business paper:

That the Local Government Association of NSW request the NSW Government to adopt legislation which regulated the use of security cameras on private property and provide a mechanism for affected persons to ask authorities to initiate enforcement action to prevent the security devices being used inappropriately.

As the conference was inquorate at the time the motion was to be debated, it was not dealt with. The Office of the NSW Privacy Commissioner has analysed the law on its website on its page devoted to frequently asked questions. It states that currently no laws specifically restrict the use of surveillance systems in residential settings. It states also that it is possible that the installation of surveillance cameras that intrude on the privacy of neighbours is a planning issue and that the Environmental Planning and Assessment Act does not clearly support such a position. There appears to be no case of the council attempting to deal with this issue through the use of its development control powers.

The Office of the NSW Privacy Commissioner states that if video surveillance has reached a high level of intensity there may be a common law claim of nuisance on the basis of unreasonable interference with the enjoyment of property. In only one local case the court granted an interim injunction to a neighbour to restrain the intrusive use of a video camera. Isolated cases may enable the issue to be dealt with in the broader context of an application for an apprehended violence order, as well as a few provisions in the Crimes Act if voyeurism and the like were involved. At present, limited criminal and civil law remedies may assist in some cases of inappropriate use of surveillance cameras. I shall illustrate the problem by reference to two of my constituents whose privacy appears to be gravely affected by the use of security cameras on adjoining private property.

The next-door property has five surveillance cameras atop a four-metre pole. They comprise two rotating and three fixed security cameras. The rotating cameras can swivel 360 degrees, are activated by movement sensors and can zoom in for close-ups of any activity in the street and on adjoining properties. My constituents are concerned that this digital film footage could end up anywhere on the internet, including sites such as YouTube. My constituents were told by Sutherland council that the definition of "development" in the Environmental Planning and Assessment Act does not extend to cameras for the purposes of a development application. They were told that the intent of the Act is to regulate the environment, not social issues such as cameras and their use. At the least there is uncertainty and, more likely, a lack of remedy in current law. What are the solutions to this problem?

A first solution would be the creation of a general statutory cause of action for invasion of privacy. Creating such a tort has been recommended by the New South Wales and Australian law reform commissions. Of course, such a wide-ranging and contentious proposal may never happen. In any event, if it were to become law it may have to take into account national developments. A second and more focused approach to this problem, following the wording of the Sutherland Shire Council motion and given growing community concern about the issue, would be specific legislation that prescribes the circumstances and ways in which security cameras on private property can be used.

A third approach would be to amend planning legislation to clarify that development consent is required before any surveillance cameras can be installed on residential property. The current Planning System Review led by former environment Minister Tim Moore and former public works Minister Ron Dyer could address this issue. At best, the law is unclear; at worst, the law fails to protect the privacy of those whose neighbours use surveillance cameras. It is clear that reform is required.





## Planning & Infrastructure

Mr Peter Liddy  
PO Box 505  
CRONULLA NSW 2230

13/19814

Dear Mr Liddy

I refer to your previous correspondence to the Hon. Brad Hazzard MP, Minister for Planning and Infrastructure, concerning CCTV security cameras in residential areas and inclusion within local planning provisions.

The issues you have raised are noted and I appreciate your concerns about the installation of CCTV security cameras within your neighbour's property. The matter has been further investigated, and there is no further information, in case law or otherwise, to support the assertion that CCTV security cameras are or should be development as defined under the *Environmental Planning and Assessment Act 1979* (the Act). For this reason, a Council's local environmental plan is unable to include any development controls involving CCTV security cameras.

From your previous correspondence, I understand the real issue to be the angle of the CCTV security cameras and what they are capturing rather than the actual physical installation of this equipment on your neighbour's property. As such I suggest you continue to explore civil avenues to resolve the dispute, such as seeking the assistance of your local Community Justice Centre.

Please note the NSW Government is currently reviewing the NSW Planning System to replace the existing Act. The Planning Bill has been tabled before the NSW Parliament. Further information is available at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

If you have any further enquiries regarding this matter, I have arranged for Ms Belinda Morrow to assist. Ms Morrow can be contacted on (02) 8575 44124.

Yours sincerely

Neil McGaffin

General Manager, Metropolitan Delivery

28.1.14