

# **CITY OF SYDNEY COUNCIL STREET SAFETY CAMERA PROGRAM**

## **NSW COUNCIL OF CIVIL LIBERTIES SUBMISSION**

### **1. CONTEXT**

#### **1.1. Background and NSWCCCL input**

The City of Sydney Street Safety Program (SSCP) is currently operating under a transitional policy. In August 2009 Councillors rejected recommendations for significant changes to the program's purpose and operational guidelines and, pending further advice, directed that the program continue to operate under existing guidelines.

NSWCCCL has been represented on the SSCP audit committee since its inception and has provided advice from a civil liberties perspective over the years. This paper from NSWCCCL is a contribution to the further advice Councillors requested.

NSWCCCL does not oppose the use of CCTV cameras for public safety purposes. We do, however, have a major concern that poorly regulated use of modern surveillance technology, including CCTV cameras, can pose real and undesirable threats to privacy and important civil liberties.

NSWCCCL welcome the opportunity to contribute to the development of guidelines which strike an appropriate balance between the need to protect public safety and the protection of core civil liberties in the operation of CCTV surveillance in Sydney's public places.

#### **1.2. CCTV Surveillance**

CCTV surveillance by public and private bodies is widespread and growing worldwide. The indicators are that this growth trajectory will continue for the foreseeable future- notwithstanding ongoing concerns about the effectiveness of CCTV in reducing crime and emerging concerns about the overall impact of mass surveillance on the nature of our societies.

CCTV surveillance technology is fast becoming more sophisticated. Individual face recognition will join automatic number plate recognition as a standard camera capacity in the near future. This increased capacity to identify individuals is likely to fuel arguments for wider uses of the programs especially in relation to general crime prevention and intelligence gathering by relevant agencies and governments. Digitisation has made transfer, copying and storage of CCTV records fast, cheap and easy. This development makes security of records harder to control.

Local Government bodies are major users of CCTV surveillance –particularly in the UK. In Australia, the take up of this technology was slower, but has been accelerating since the late 1990s. The main driver for councils has been the expectation that CCTV surveillance will improve public safety and community perceptions of public safety. This was further stimulated by availability of funding for the provision of cameras and the growth of community support for

cameras in their local areas. There is also a large security industry which actively promotes its own version of the benefits of surveillance technology.

From a 2011 perspective, the surveillance environment is complex and problematic.

### **1.3. The effectiveness debate**

Clearly there are many benefits from CCTV surveillance. But the jury remains out on key questions about the effectiveness of these programs in improving public safety or preventing crime.

It is clear that CCTV is least effective in preventing violent behaviour particularly when it is spontaneously generated- although this is one of the main aims of its use in public places. It is also one of the most important, expected outcomes from the perspective of the community. Communities also support CCTV surveillance as an anti-drug strategy when it is an issue in their localities. Research suggests that CCTV surveillance has no impact on the drug dealing but, not surprisingly, can generate a displacement effect so that the behaviour occurs in a nearby locality.

The most positive results suggest that CCTV surveillance can be most effective preventing anti-property crime, particularly car break-ins/theft, in particular contexts such as car parks – when combined with other strategies.

The best a recent Australian study by the Victorian Law Reform Commission (VLRC) could say on the accumulated research into effectiveness of CCTV programs in controlling crime was that it ‘remains largely inconclusive.’<sup>1</sup>

The VLRC concluded there is little supporting evidence that the community gains improved protection for personal safety:

*Even when CCTV has been shown to reduce crime rates, that reduction relates only to certain types of crimes. CCTV has been more successful at reducing property crimes, and two studies found that CCTV was effective at reducing vehicle theft from car parks. CCTV may be less effective at reducing crime against the person and ‘impulsive’ acts such as alcohol-related crime. Wells and others also reported that the evidence of CCTV’s effectiveness at reducing burglary was mixed.....*

and that ‘CCTV may be more effective in creating a perception of safety than preventing crime.’<sup>2</sup>

This increase in positive public perceptions partly explains the community support for CCTV cameras in locations perceived as unsafe. But it also has an obvious downside in that ‘creating a false sense of security carries its own risks, such as encouraging people to let down their guard.’<sup>3</sup>

### **1.4. City Of Sydney Context**

The SSCP was initiated in the context of the Sydney Olympics and was focussed on improving personal safety and an improved sense of personal safety for Sydneysiders and the many tourists who would be drawn to Sydney in 2000.

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<sup>1</sup> Victorian Law Reform Commission: Surveillance in Public Places , Final Report 18, May 2010. (VLRC 2010) p70. This report provides an extensive and balanced summary of what the research literature can tell us about the effectiveness of CCTV surveillance in different contexts.

<sup>2</sup>VLRC 2010, p.70.

<sup>3</sup>VLRC 21010, p 70.

The program has been run through a formal partnership with NSW Police. Council has ownership and responsibility for management and funding. NSW Police have responsibility for responding to reported incidents and operating within the agreed SSCP guidelines and the specific MOU between them and the Council.

This collaboration has been productive and is valued by both parties.

It has also been the source of constant pressure for expansion of the program's functions, scope and operational processes. This pressure, exacerbated by the dramatic change in the policing and security environment post 9/11, has led to significant –and in some cases, disturbing–changes to the program over the decade.

There are inherent and understandable tensions in a police/local government partnership around CCTV surveillance. Operational police are responsible for general crime prevention, detection and prosecution. They will have an obvious and understandable pre-disposition towards both maximising the uses of surveillance cameras and maximising the flexibility of operational guidelines.

In this partnership, the responsibility for holding the line on the appropriate balance between the general needs of policing and broader, but more elusive, public rights to privacy and civil liberties, sits squarely and explicitly, with Council. This is not an easy responsibility to honour.

This encompasses the broad issue of establishing appropriate and balanced parameters for CCTV surveillance in public spaces in a democratic society. In the Australian context (as distinct from other jurisdictions) it encompasses establishing the appropriate extent to which local councils should be engaged in the surveillance of residents and citizens.

This latter issue has another level of significance for Council, in that they carry the full budgetary responsibility for the SSCP. From the beginning, the NSW Police have had an explicit policy that: 'The Police Service will NOT: fund nor operate CCTV equipment'<sup>4</sup>In the longer run this responsibility is likely to become a major budgetary issue for councils.

A range of core issues emerged in the 2009 review of the SSCP guidelines and are still awaiting resolution

- setting a clear policy framework for the program –most importantly relating to purpose, scope and access and the appropriate balance between public safety and respect for privacy and civil liberties
- ensuring Council maintains effective and informed oversight of the operation of the program in practice
- assessing the relative effectiveness of the program in achieving its purpose
- assessing whether the budgetary implications of ongoing maintenance, upgrade/replacement of cameras and the significant staffing and operational costs are manageable and best use of funds

It might also be useful for Council to consider determining whether it is appropriate to continue with primary responsibility for this program in the longer term. This will be particularly pertinent if the program continues its drift beyond its original personal safety purpose towards general crime prevention/detection and intelligence gathering.

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<sup>4</sup> NSW Police Service Policy on the Development and Use of CCTV (no date)

NSWCCL is primarily interested in those matters which impinge on privacy and civil liberties and these mainly relate to the first two of these: policy parameters and oversight of the program. While the 'effectiveness question' is primarily a matter for Council, it would be particularly obnoxious and sad if we are progressively surrendering privacy and valued liberties for nil or limited positive outcomes in public safety and crime prevention.

Given the proliferation of CCTV surveillance programs across councils in NSW, it would be a significant public service for the City of Sydney Council to provide leadership for the sector by updating its Code of Practice and Protocols to create robust and well considered policy and operational guidelines for local government CCTV surveillance programs that address the contemporary pressures. While the NSW Government identified a set of Principles for the operation of CCTV cameras in the late 1990s<sup>5</sup>, these do not address all the issues that have emerged in practice over the last 11 years. The local government sector badly needs exemplary guidelines for local government street safety programs

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<sup>5</sup>NSW Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television (CCTV) in Public Places, 2000. (NSW Policy Statement 2000)

## 2. PURPOSE AND SCOPE OF THE SSCP

### 2.1. Original Scope 1998

As its title signals, the SSCP was introduced in 1998 with a clearly delineated and limited purpose: *'to assist in the prevention of crimes against the person.'*

From available records, this limited policy parameter was the result of extensive consultation, independent and expert advice and robust discussion. The advice came variously from independent bodies (NSW Privacy, NSWCCCL etc), the NSW Police Service and an IDC on CCTV surveillance set up within the Attorney General's Department.<sup>6</sup>

It is clear that the 1998 Council determination to limit the program to 'prevention of crimes against the person' was very deliberate and based on an appreciation of the civil liberties and privacy issues at stake:

*The original decision to restrict the scope of the SSCP to crimes against the person was made in an effort to balance crime prevention interests with the potential for infringement of privacy and civil liberties.*<sup>7</sup>

### 2.2. Function Creep 2000/2001

A challenge to these clear parameters came fairly quickly. Council records indicate a concern was raised that SSCP staff might be in breach of section 316(1) of the Crimes Act 1900 by not reporting **all** 'serious offences' they saw. This concern seems to have been a determining driver for the first major function creep in the program. Operational police officers were also strongly advocating a general broadening of the scope of the program to allow reporting of all offences.<sup>8</sup>

Both CCL and the NSW Privacy Commissioner questioned the legal advice that the Crimes Act necessitated the broadening of the program scope. They argued that an exemption could be gained by regulation under section 316(5) of the Crimes Act. Council, however, apparently accepted internal legal advice that they had to extend the scope of reporting to 'other serious offences'

This led to a major extension of the program scope beyond its original intentions. As well as the original primary purpose: *'to assist in the prevention of crimes against the person'*, a new secondary purpose was added: **'to assist in the prevention of other serious criminal offences'**. To help staff interpret and manage this very broad secondary purpose, Council added a clarifying clause: ***particularly the following:***

- i) *steal motor vehicle;*
- ii) *steal from motor vehicle;*
- iii) *other steal;*
- iv) *break and enter;*
- v) *malicious damage to property;*
- vi) *firearm offences;*
- vii) *receiving stolen goods; and*
- viii) *dealing, trafficking in drugs.*

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<sup>6</sup> Street Safety Camera Program Revised Code of Practice: Briefing to City of Sydney Council Meeting 27<sup>th</sup> March 2001, paras (COS Briefing 27<sup>th</sup> March 2001); Adam Sutton and Dean Wilson: *Open-Street CCTV in Australia: The Politics of Resistance and Expansion* 314

<sup>7</sup> COS Briefing 27<sup>th</sup> March 2001, para 60

<sup>8</sup> COS Briefing 27<sup>th</sup> March 2001,

The effect of this formulation was to include **all** serious crime within the program scope, albeit with emphasis on property and drug dealing offences. Presumably, in practice, staff were told to focus only on the 'particular' offences listed. (It is difficult to see how this could protect them from being in breach of the law if they failed to report other serious crime-if this was a legally valid concern.)

The new formulation also opened up the difficulty of defining 'serious' criminal offences-both conceptually and in a manner that provided practical guidance to operational staff.<sup>9</sup>

While accepting the advice that they could not exclude serious crime from the scope of the program, Council did build in some clear exclusions. The most significant was to exclude general intelligence gathering: ***'The SSCP will not be used for general intelligence gathering'***.

In relation to drug offences there was also a specific exclusion of personal use of illegal substances from the program scope.

### **2.3. Proposed Further Functional Creep 2009**

In 2008/9 the SSCP Audit Committee was reconvened to advise on proposed further amendments to the scope and operational guidelines of the program. Many of the proposed amendments related to technical and administrative matters that were of importance to the efficient operation of the program but did not change its function or scope. The more significant proposals which related to core issues of purpose, scope and access arose from requests from the NSW Police.<sup>10</sup>

Proposals that related to administrative or technical problems were largely agreed within the Audit Committee and have since been formally adopted by Council. There was not, however, agreement on the proposed further expansion of the program scope and access to its material.

In August 2009 the Cultural and Community Service Committee was asked to endorse 30 plus changes to the SSCP Code of Practice and Protocols.

The proposed changes included further functional creep - both by broadening the explicit purpose and removal of existing exclusions.

It was proposed that the purpose be broadened to:

***'The primary purpose of the (SSCP) is to assist in the prevention of all criminal offences, such as:***

- ***Offences against the person*** .Any situation involving injury to a person, or any situation where injury to a person is threatened, or activity that is, or may be, intimidating, harassing or cause fear to a reasonable person.
- ***Property related crime***. Any situation involving the theft or serious damage to property, or any situation where theft of property or serious damage to property is threatened.
- ***Drug related offences***. Any situation involving the sale or distribution of illegal substances. (Note: personal use of illegal substances is not included under the scope of the program)

The broad scope would no longer be restricted to 'serious' crime.

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<sup>9</sup> Proposals to list every 'serious' offence were found to be impractical. The generic specification of a minimum maximum gaol sentence of 5 years is current definition.

<sup>10</sup> This is NSWCCCL's understanding from various staff briefings.

It was also proposed to remove the explicit exclusion of general intelligence gathering added in 2001.g. Instead it was proposed to extend the scope by a specific inclusion: *'The SSCP may be used for intelligence gathering on individuals and locations, in relation to offences within the scope of the program'*.<sup>11</sup>

These changes were opposed at the Committee meeting by NSWCCCL and other independent stakeholders.<sup>12</sup>

These proposals would have expanded the scope of the program extensively. The only kind of offences formally excluded would have been personal use of illicit substances. The expanded program would be a far remove from the original purpose of 'preventing crimes against the person' and would no longer be limited to **'serious'** crime.

And, given that the only proposed exclusion in relation to intelligence gathering on individuals and locations was that it had to be 'in relation to offences within the scope of the program, it followed that the only limitation on intelligence gathering would be in relation to personal use of illegal substances!

Taken together, these proposals would have left the program few effective constraints as to functional scope - the program would encompass **all** crime and would extend beyond observed criminal behaviours to the monitoring of individuals for intelligence purposes (with the single exclusion of personal use of illegal substances).

NSW Police officers with operational links to the SSCP were the only external group supporting this very broad definition of scope. Given that Police have a responsibility for acting on/preventing all criminal activities, this is not a surprising perspective. It continues to be the view of police officers advising on the program in 2011.

Councillors were not willing to support these proposals, and on 31<sup>st</sup> August 2009 endorsed an alternative resolution which reaffirmed the original, more precisely defined focus of the program on safety and the reasonable protection of civil liberties and privacy:

- a) *the SSCP contributes to protecting and increasing safety and perceptions of safety in the public domain*
- b) *operation of the SSCP should not unreasonably impact on the civil liberties and privacy of individuals*
- c) *the SSCP shall continue to operate for the immediate future in accordance with the existing Code of Practice, Protocols and Standard Operating Procedures.*<sup>13</sup>

Since that committee decision, the program has operated on the interim guidelines- an amalgam of the 2005 version of the Code of Practice and a partly updated Protocol. Councillors have been briefed further on broad options and further discussions have occurred between Council staff, NSWCCCL and the NSW Police.

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<sup>11</sup> Review of the Street Safety Camera Program: Briefing for Cultural and Community Services Committee, 24<sup>th</sup> August 2009.(C&CSC brief, August 2009)

<sup>12</sup> NSWCCCL spoke against these changes at the meeting as did the CFMEU. See also letter from Malcolm Tulloch Acting Secretary CFMEU to Lord Mayor Clover Moore, 25<sup>th</sup> August 2009.

<sup>13</sup> Minutes of Cultural and Community Services Committee, 24<sup>th</sup> August 2009, Agenda item 3.

### 3. PROPOSALS FOR AN EXEMPLARY BALANCED PROGRAM

CCL's preferred position is a return to the original specific and limited purpose of the program: 'to assist in the prevention of crimes against the person'. CCL also considers it essential to maintain the explicit exclusion of general intelligence gathering that was added in 2001 to clarify Council's original intentions and to provide stronger protection of civil liberties.

The SSCP was explicitly developed as a street safety program for the City of Sydney in the context of the 2000 Sydney Olympic Games preparation. Councillors were careful to limit the potential for the program to unnecessarily infringe on civil liberties and privacy:

*The original decision to restrict the scope of the SSCP to crimes against the person was made in an effort to balance crime prevention interests with the potential for infringement of privacy and civil liberties.<sup>14</sup>*

It was deliberately **not** conceived as general crime prevention/policing program.

Apart from the privacy and civil liberties implications, CoS does not have responsibility for general crime prevention. This original restriction of the program scope was appropriate and sensible.

#### 3.1. The legal driver

The first, and major, loosening of this policy constraint was justified on the basis of contended legal advice that staff would be acting illegally if they failed to report observed criminal activity outside the formal scope of the program.

CCL does not accept that this 1999 advice was soundly based. CCL considers there to be no legal pressure preventing a return to the Program's original purpose and scope.

#### 3.2. NSW Police Perspective

NSW Police are partners in the SSCP. Their role is important and their views are influential.

It should be no surprise that police with operational links to the SSCP have consistently taken the 'common sense' view that all observed crime, no matter how minor, should be reported and that the intelligence gathering potential of the surveillance technology should be fully exploited. Why would they not support a reshaping of the programs purpose in ways which make their day to day work and responsibilities easier?

*However, operational police generally indicated a reluctance to place any limits on the types of offences to be reported to police. Of note was the view that the reporting of any offence, regardless of how minor, assists them with their intelligence efforts. Operational police had the view that it is preferable to report all offences or suspected offences and that it is up to the police to prioritise their responses in line with available resources.<sup>15</sup>*

This is especially so when the information can be gained with no budgetary or operational staffing implications. It is worth noting that the NSW Police Service CCTV Policy as early as 2000 determined that they would have no responsibility for either funding or operating of CCTV cameras.<sup>16</sup>

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<sup>14</sup> COS Briefing 27<sup>th</sup> March 2001, para 60

<sup>15</sup> CoS Briefing 27<sup>th</sup> March 2001, para 22

<sup>16</sup> 'The NSWPF will NOT: Fund nor operate CCTV equipment; Routinely monitor CCTV cameras': **NSW Police Force Policy on the Development and Use of CCTV, 2000(?)** .

It is of interest to note that there was a significant counterbalancing view as to the appropriate use of CCTV surveillance within the Police Service in 2000/2001 with the central policy branch taking a more balanced view:

*The Organisational Policy and Development Branch of the NSW Police .....holds the view that the SSCP should not be used to do policing work, including general intelligence gathering.<sup>17</sup>*

One presumes that this more constrained Police view reflected awareness of the implications of NSW Privacy legislation, Council not Police ownership and responsibility for the Program, and the broader need to balance privacy and civil liberties rights with policing and safety requirements.

Council certainly has an obligation to take these dimensions into consideration in defining the purpose and scope of the program. Recognising this, the original Code of Practice was based on 15 overarching Principles.<sup>18</sup> These included:

*Principle 2 The Street Safety Camera Program will be operated with due regard to the privacy and civil liberties of individual members of the public, including the rights to freedom of religious and political expression and assembly.*

*Principle 4 The City of Sydney has primary responsibility for compliance with the purposes and objectives of the Street Safety Camera Program, for the maintenance, management and security of the Program, and the protection of the interests of the public in relation to the Program.*

Together these two Principles are clear signals that the programs parameters should balance the protection of persons (and property) with privacy and civil liberty considerations and that it is CoS (notPolice) who has responsibility for the protection of the interests of the public in relation to the program.

If these Principles are to be respected, CoS will have to resist the ongoing pressure from its operational police partners to expand the scope of information they can access from the Program. In practice, the operational police position appears to be: if the Program technology can capture information of relevance to the police work, it should be made available to them.

If this were to be the case, it is difficult to see why the Program should be run by the Council and not the Police. This would not change the privacy/civil liberties issues, but it would make more sense in terms of agency: function fit in the NSW context.

### **3.3. Property Related Offences**

Councillors got it right when they resisted the August 2009 proposals and voted to reaffirm a position much closer to the original purpose and scope of the program – limiting it ‘to protecting and increasing safety and perceptions of safety in the public domain’. CCL considers this would be achieved if the Program focussed on crimes against the person.

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<sup>17</sup>CoS Briefing 27<sup>th</sup> March 2001, para 23

<sup>18</sup> These Principles have been amended since 1998 so as to strengthen their protection of civil liberties. In 2001, protection of ‘religious and political assembly’ was added to Principle 2 to limit the implications of proposed changes to the definition of major events and the scope of offences to be covered.

It may, however, be practically difficult to exclude property related crimes from the program given that it has been included since 2000 and there is strong community awareness of and support for this dimension of the program.

NSWCCL does not oppose the inclusion of property related crime within the scope of the SSCP if clearly defined as only 'serious' property related offences and minor offences (such as individual graffiti tagging and urinating in a public place) are explicitly excluded.

### **3.4. Drug Related Offences**

A more difficult issue is the inclusion of drug related offences. This was not part of the original program. Arguably any drug related activity likely to be a threat to safety will be picked up as threats to either personal safety or property.

When it was included in 2000/1, Councillors rightly determined to exclude reporting of individuals who were only involved as personal users. In practice, this is difficult to ensure because personal users will usually be captured in the record of vision of dealing activity and the police (at least formally) do not have discretion to ignore personal use offences.

There is little evidence that drug dealing will be reduced by CCTV surveillance. Its location simply changes. CCL would argue that again the original intention for the program was appropriate and that drug related offences should not be included as a separate broad category in the program scope.

Focussing the program on serious crimes against the person and serious property related crimes will cover most criminal activity that affects safety and perceptions of safety in our public places.

### **3.5. General Intelligence Gathering**

It is clear that the Councillors in 1998 and 2000/2001 did not intend intelligence gathering to be a permitted function of the Program. The 2009 proposal that 'intelligence gathering on individuals and locations' be explicitly included in the Code of Practice, was strongly opposed by the NSWCCL.

Statements by Councillors at the August 2009 committee meeting also demonstrated strong opposition to the proposal. Hopefully, therefore, the drift of the Program into general intelligence gathering for Police (and other law enforcement/security agencies) is now off the agenda. However, the pressure to use the CCTV surveillance capacity for general intelligence gathering is likely to be a constant real life factor for the Council.

During the 2000/2001 review, the Council was very conscious that, by accepting significant extensions to the scope of offences to be reported, they were increasing the potential for encroachments on privacy and civil liberties. For this reason, they added several explicit protections to the Code of Conduct. One of these was the explicit exclusion of intelligence gathering:

*The SSCP will not be used for general intelligence gathering.*

This was taken directly from the NSW Government CCTV policy guidelines issued in 2000<sup>19</sup>. The Council's CCTV Audit Committee also recommended that this exclusion be supported by a workable definition of what distinguished intelligence information from permitted information to

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<sup>19</sup> NSW Policy Statement 2000

be reported to Police. Essentially the distinction was intended to 'exclude surveillance that was of/for certain individuals/places rather than the surveillance of /for specified behaviours.'<sup>20</sup>

NSWCCL recommends that the explicit exclusion of intelligence gathering be maintained in the Code of Conduct and that a clear supporting definition be included in the Code of Conduct.

### **3.6. Surveillance of Major Events and Police Operations<sup>21</sup>**

Currently the SSCP has either formal or de facto provision for use of the SSCP in a number of special contexts beyond its standard day to day operations: Major Events and Police Operations. The approach to demonstrations is unspecified and it is unclear whether these are encompassed under Major Events. Collectively these provisions raise concerns about the potential for CCTV surveillance beyond the intended parameters of the program.

#### **Major Events**

In November 2000 Council approved the one-off use of two cameras to assist with the general management of the New Year's Eve celebrations and the 2001 celebration of the centenary of Federation. This led in 2001 to an amendment to the Code of Practice allowing the temporary use of CCTV cameras for major events. The current Code states:

*It is anticipated that the Street Safety Camera Program may also be of some benefit in the management of major or special events, such as New Year's Eve. The temporary use of the Street Safety Camera Program for such purposes, including the use of temporary cameras must be approved in accordance with section 3 of this Code of Practice.<sup>22</sup>*

Initially major events were defined as celebratory or cultural events listed in the city calendar. The list began with two calendar events and over time others were added. At some point the supporting definition in the Protocols was expanded to a much more open definition:

*Any event held in the public domain that:*

- *is an identified calendar event, usually cultural or celebratory in nature;*
- *has a significant impact on the normal functioning of the city, for example, alters normal business or transport activities;*
- *involves a significant increase in the normal volume of pedestrian activity; and*
- *involves an additional risk to personal safety.<sup>23</sup>*

CCL understands that Council staff excluded demonstrations from this provision. This exclusion is based on an understanding of the intention when the definition was adopted. However, a common sense reading of the provision would include any large events that have any of these characteristics-including presumably all sizable demonstrations. The intention of this provision needs to be clarified. This could be done by explicitly excluding political or religious demonstrations and explicitly restricting this category to 'events, usually cultural or celebratory in nature' which meet any or the additional criteria.

The Protocols specify that to assist in the management of Major Events the SSCP can, in addition to its usual functions, be used for:

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<sup>20</sup>CoS Briefing , 27<sup>th</sup> March 2001

<sup>21</sup> In some versions of briefings there were described a 'Police Special Operations'. Later versions referred to Police Operations.. To avoid confusion, I have consistently used the current term: Police Operations.

<sup>22</sup> Code of Practice (interim)

<sup>23</sup> Street Safety Protocols Revised June 2010 (Interim 1). 1.11

- monitoring crowd movements;
- cleansing operations;
- waste management; and
- emergency management.

This is an uncontroversial additional use of the SSCP, as long as the Code of Practice is observed and the surveillance is not used for reporting on minor offences, offences outside the scope for any general intelligence gathering.

### **Police Operations**

In 2009 it was proposed to add an additional context for use of the CCTV surveillance:

*The Street Safety Camera Program may be used for NSW Police operations, targeting offences covered under the Code of Practice.*

The documentation is unclear as to the exact meaning of police operations. The operational definition offered in the Protocols is circular and unhelpful: “a police operation targeting offences covered under the Code of Practice”. As the proposed definition of ‘offences covered under the Code’ was to be all crime except personal drug use, this additional context for a special use of the SSCP would have been open-ended. On this proposed (non) definition, a police operation could be set up to monitor political or religious demonstrations.

It was not clear to CCL why ‘Police Operations’ need to be added as a specified, additional context. If they are confined to monitoring offences covered under the Code of Practice, any relevant offensive behaviour will already be monitored and reported to Police.

The staff briefing to Council in 2009 offered this explanation:

*Provides for the use of the Program for NSW Police (and other state and federal law enforcement agencies) for operations targeting offences covered under the Code of Practice.*<sup>24</sup>

A later Council briefing indicated that the reason for creating a formal category was to do with the post hoc formalisation of an existing de facto practice:

*Joint Operations have been common practice for 5 years; this ensures an approval and operational framework similar to that in place for ‘Special Events’*<sup>25</sup>

(CCL notes that there are numbers of references to Police Operations in the current interim Protocols although the additional provision was not approved for the Code of Practice which sets the policy parameters. CCL also understands that the approvals have for some years been given by Council staff for the SSCP to be used for Police Operations.)

If the reason is to gain approval for extra temporary cameras in locations not covered by the Program, or to increase Police access to direct vision and/or control of the cameras for the duration of any Special Operation, it is too open ended.

As Council is explicitly responsible for ensuring the public interest is protected within the SSCP and that its operations are in line with the Code of Practice, it needs to be in control of the

<sup>24</sup> Attachment B, par 4.1.7 CoS Brief August 2009

<sup>25</sup> Attachment 1 Summary of Proposed Changes to the Street Safety Camera Program Code of Practice para 4.1.7 (no date but distributed at meeting in mid 2010).

program and its operations. The transfer of direct vision and control of the cameras to Police command centres obviously lessens, or removes, Council's capacity to maintain control of the information and the uses to which it is put.

The Protocols do recognise the potential for loss of control and specify that, for both Major Events and Police Operations, the control of the cameras will 'at all times' remain with the control room staff. They also stipulate that, during Police Operations, vision will only be transferred to the police operations centre while a responsible council officer is present. (Confusingly, this same stipulation is not made in a related section covering operations during Major Events and Police Operations.)

This does provide an element of accountability though it does not limit what information police may extract from the ongoing surveillance.

However, the Protocol covering Police Operations also allows for the recording of vision at the Police Operations Centre. This recorded material could be scrutinised by Police for any information/purpose. This constitutes a serious loss of control by Council and it is not necessary. Recorded material, if needed following an incident of any relevant kind, can be retrieved from the SSCP Control Room.

NSWCCL appreciates that there is likely to be valuable synergy in using the SSCP in conjunction with police operations targeting offences within the scope of the program. CCL does not want to exclude them from working with the SSCP. However, we are concerned that such collaborations do not increase the potential for back door uses of the SSCP outside the agreed parameters (eg for: intelligence gathering or identifying minor offensive behaviours). It is not clear however, why this synergy cannot be generated within the existing broad guidelines without the creation of a separate category and operational rules.

CCL recommends Council reconsiders the need for a separate SSCP police operations context.

If police operations are approved as an additional category, the definition of what constitutes a 'police operation' should be clarified. Use of the SSCP for Police Operations should only be approved after formal application at the most senior level. The current practice of allowing police to directly record vision during these operations should be stopped. The provision of additional, temporary SSCP cameras to expand surveillance to new localities for police operations should only be approved by at the most senior level and reported to the SSCP Audit Committee.

### **Political or Religious Demonstrations**

In the case of demonstrations/rallies, the danger is that the use of the SSCP for intelligence gathering would constitute a real inhibition to free religious and political expression.

When first opening the program to cover Major Events in 2000/1, the Council was clearly concerned about the potential infringement on civil liberties. To counter the potential for this kind of infringement Council built in two additional safeguards. They strengthened Principle 2 to specifically include freedom of assembly:

*The Street Safety Camera Program will be operated with due regard to the privacy and civil liberties of individual members of the public, including the rights to freedom of religious and political expression and assembly*

and they added the explicit prohibition of general intelligence gathering under the SSCP.

We are now in a context where there is considerably less respect and less legal protection for civil liberties, including freedom of religious and political expression, than was the case pre 9/11. The Police Force also operates in an environment where there is considerably less accountability for the way they exercise their powers.

Council needs to take care that it can be assured-and can assure the public- that these core protections remain effective in all uses of the SSCP.

CCL noted that the recent GetUp sponsored political demonstration supporting a Carbon Tax was under CCTV surveillance. We are not aware if this was as a Major Event or as a Police Operation. Under current SSCP practices (if not formal policy) it seems either context could have been possible.

CCL recommends that demonstrations should not be included in any definition of a special Police Operation context for the SSCP.

CCL recommends that Demonstrations should be added as a specific context for the use of the SSCP with strong and explicit guidelines as to appropriate and improper use the cameras and the recorded vision. This should include the strengthening of the relevant Principles within the Code of Practice to ensure that there can be no misunderstanding that the SSCP will not be used for surveillance and reporting of any intelligence on the expressions- by speech or assembly- of legitimate political or religious views.

SSCP specific surveillance of demonstrations should only occur when they are large enough to have a significant impact on the normal functioning of the city and/or involve **significant** additional risk to personal safety. Vision and camera control should be exercised exclusively from the SSCP control centre. Approval for the use of the SSCP to monitor a demonstration should be made by the CEO.

The uses of the SSCP for Major Events should be amended to make it clear that 'monitoring crowd movements' is only about crowd safety and traffic flow and not about monitoring individual/small group interactions for intelligence purposes. The same provision should be made for surveillance of demonstrations.

The current requirement that NSW Police or the Premiers Department must submit a written request for the use of the SSCP for coverage of Major Events (or Police Operations if approved as a separate context) be maintained and included to cover Demonstrations.

For Major Events and Police Operations (if approved as a separate context) vision and camera control should only be transferred to the Police Operation Centre when a council responsible staff officer is present. Control must at all times be in the hands of the Control Room Staff. Recording of vision should not be permitted at a Police Operation Centre.

If the explicit exclusion of general intelligence gathering by the SSCP is not maintained, CCL would not support the provision of special operating provisions for Police Operations. Nor would it support the inclusion of demonstrations within the scope of the program.

### **3.7. Residential Area Surveillance**

CCL is aware of current debates about the extension of the SSCP into residential areas. In CCL's view this is an undesirable and dangerous trend. The concept of public space in a retail/commercial zone is different from that of a residential area. The community's acceptance of

surveillance in commercial areas for public safety reasons is reasonably positive. The trade-off of privacy for perceptions of increased safety is seen by many as reasonable. But when this trade – off includes surveillance of activity around one’ own and neighbours’ homes, the intrusion of residents’ privacy is considerably greater.

CCL opposes the use of CCTV surveillance in residential areas as an unwarranted major intrusion into privacy. There may be some exceptional circumstances where the use of cameras may be on balance reasonable, but this should only occur with clear and strong community support.

### **3.8. Control and Responsibility**

The Code of Practice puts considerable emphasis on the Council’s responsibility for the integrity of the program:

***Principle 3**The public interest in the operation of the Street Safety Camera Program will be recognised by ensuring the security and integrity of operational procedures.*

***Principle 4**The City of Sydney has primary responsibility for compliance with the purposes and objectives of the Street Safety Camera Program, for the maintenance, management and security of the Program, and the protection of the interests of the public in relation to the Program.*

***Principle 5**As a partner to City of Sydney’s Street Safety Camera Program, the NSW Police Force will act in accordance with the Code of Practice.*

Community trust and confidence that the Council is able to deliver on this responsibility is very important given the potential for privacy and civil liberties to be overlooked in operational contexts.

Council has maintained a rigorous security around access to the SSCP operating centre and places restrictions on access to recorded material and limitations on the preservation of material. Notwithstanding these measures, NSWCCCL is of the view that the Council cannot guarantee that it can deliver on these responsibilities. Once direct vision and camera control and permission to record vision have been ceded to the Police in their own operational centres Council has lost effective control over the program and the use to which material is put.

CCL also shared concerns of other community groups that access to the Program has been opened to AFP, and other ‘state and federal law enforcement agencies’<sup>26</sup> Council does have a MOU with the NSW Police which requires them to abide with the Code and the Protocols but this is of necessity a matter of trust. CCL is not aware of similar formal agreements with other law enforcement agencies that are (apparently) given access to the program.

This loosening of control is the result of tension between the Councils initial requirement to manage the SSCP with due regard to privacy and civil liberties and the operational pressures from police seeking maximum information, efficiency and flexibility in policing- and, as a result, reduced accountability.

The controls need to be tightened in a number of ways to address this drift.

As law enforcement and security agencies other than the NSW Police have been given de facto access to the program and its recorded information, their access must be formalised. CCL

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<sup>26</sup> This is revealed only in the accompanying brief explaining the rationale for the inclusion of the ‘police operations’ Attachment D 1.18 CoS Brief August 2009.

recommends that these agencies be required to enter into formal agreements to act in accordance with the Code of Practice- along the lines of the existing MOU between the NSW Police and Council. If this is not achievable, then access to material should be denied or, at the least, provided only on the same grounds as for civilian access.

It is also obviously of importance to both Council responsibility and public confidence, that the access and use of materials by the Police and other agencies is subject to credible audit.

### **3.9. Audit of the SSCP**

The Code of Practice sets strong parameters for the regular audit of the SSCP through an Audit Committee 'comprising individuals independent of both the City of Sydney and the NSW Police Force.'<sup>27</sup>

*7.1.1 City of Sydney will establish and provide support to an Audit Committee comprising individuals independent of both the City of Sydney and the NSW Police Force. The functions of the Audit Committee will be:*

- i) to provide an independent and continuous review and checking mechanism for the Street Safety Camera Program;*
- ii) to identify and review any deviations from the Code of Practice, Protocols or Standard Operating Procedures ("SOPs") that come to notice during audit; and*
- iii) to recommend actions that will safeguard the Program from abuse.*

CCL's experience is that the Audit Committee has had significant input into two reviews of the SSCP in 2000/1 and again in 2009. It was, however, inoperative for lengthy periods and, at least in recent years, did not therefore fulfil its regular auditing functions.

In August 2009, Council staff proposed that it be replaced with an SSCP Steering Committee which would retain some aspects of these functions but not the audit function. The Steering Committee would 'contribute to the development of the annual audit program' and 'review recommended actions arising from audits that will safeguard the Program from abuse'.<sup>28</sup> The City would be responsible for the conduct of 'a regular audit' of the program. The mechanism was not specified though a report was to be provided on an annual basis to the Council's overall Audit Committee.<sup>29</sup>

NSWCCL supports the linkage of the SSCP audit process with the general Council Audit Committee. However, an ongoing specialist SSCP Audit Committee will provide greater accountability and protection for the Council, NSW Police and the public than one-off audits by external contractors. Useful auditing of a program like this is very difficult to achieve without an appreciation of the legal, privacy and civil rights dimensions as well as understanding of police and council operational procedures and their implications for a surveillance program in important public places. As proposed the SSCP Steering Committee, would lack capacity for meaningful oversight of the program.

The integrity of the program, and community trust in it, will be better served if the SSCP Audit Committee is maintained and made a sub-committee of the City of Sydney Audit Committee. The question as to how it conducts its audit process can be left open.

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<sup>27</sup> Code of Practice Section 7 on Accountability and Principle 6

<sup>28</sup> Council Brief August 2009 Section 7, 7.1.1 p27

<sup>29</sup> In May 2010 Council contracted Deloitte to conduct an internal audit of the program.

NSWCCL recommends that its functions remain similar to its current ones with several amendments:

- i) to provide an independent and *regular* review and checking mechanism for the Street Safety Camera Program;
- ii) to identify and review any deviations from the Code of Practice, Protocols or Standard Operating Procedures (“SOPs”) that come to notice during audit;
- iii) to recommend actions that will safeguard the Program from abuse;
- iv) to advise Council of local and international developments in practice, policy and research on effectiveness of public safety surveillance programs, and implications for the SSCP

The sub-committee should have a majority of independent members with relevant expertise. The City of Sydney Council and the NSW Police should be members of the committee.<sup>30</sup> Ideally the chair should be drawn from the independent membership. This, in conjunction with its direct linkage to the City of Sydney Audit Committee, would provide some protection against it again falling into inactivity. A quorum for meetings should include a majority of independent members.

The expert independent membership should be drawn from persons with:

- expertise in civil liberties and privacy issues nominated by NSW CCL
- expertise in relevant research relating to surveillance, public safety and crime prevention
- expertise in relevant legal aspects nominated by the NSW Law Society
- community experience of CCTV surveillance nominated by a relevant local community group from within the area of the SSCP

Current Protocols require the SSCP Audit committee to report every six months. This was never achieved and does not seem necessary. CCL recommends an annual audit and formal report to the main Audit Committee. In addition the minutes from each meeting should be sent to the main Audit committee. To enable it to conduct a regular review and checking mechanism the SSCP Audit sub-committee should meet three or four times a year.

Council should ensure that adequate staff and funds are provided to allow the Audit sub-committee to properly fulfil its functions.

### **3.10. Auditing Police Activities within the Program**

The MOU which formalises the SSCP partnership between the NSW Police and the Council is clear that the intention was that the SSCP audit function would cover the Police activities within the program.

*11.2 Both parties undertake to cooperate as far as practicable with the Audit Committee in its oversight of the Street Safety Camera Program operation.*

At the same time the MOU, in line with the Code of Practice, makes it clear that the Council has the primary responsibility for both audit and evaluation.

It is not clear to CCL how all Police activities within the program are audited. Where their activities are directly controlled/observed by Council staff they can be robustly audited. Where there is no direct presence of Council staff, robust auditing is not possible. Just to take an obvious

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<sup>30</sup> Police and Council are not members of the current committee although they were attendees and the committee was chaired by the Council – (a strange arrangement.)

example: copying of digital material is easy. It would not be possible for the Council to assure the public that no material is copied inappropriately.

NSW Police attend and participate cooperatively in meetings of the Audit Committee. But robust auditing of a program needs to be able to spot audit all operational aspects.

CCL recommends that the ambit of the SSCP audit process is able to encompass all operational aspects of the program across partners. This could be done by allowing the Council's SSCP Audit Sub-committee oversight of independent Police operations (preferred as the most efficient approach) or by NSW Police taking responsibility for a similar independent audit process of their separate SSCP activities.

### **3.11. Formal Documentation**

The SSCP policy and operational guidelines are set out in three separate documents:

- **Code of Practice** which sets the policy framework and is publicly available
- **Protocols** which is an internal document only and covers definitional and operational matters
- **Standard Operating Procedures** which is a more detailed version of the protocols and is used by staff

While it is standard practice to separate policy and operational documents, the approach has not worked well in this program.

The documents are long and unwieldy. They contain inconsistencies, some of which are significant.

The most concerning aspect, however, goes beyond administrative tidiness. Cumulative changes to the Protocols (and presumably to the Standard Operating Procedures<sup>31</sup>) have moved formal operational practice beyond the policy parameters of the Code of Practice.

This seems to have been a process whereby operational practice moves beyond the formal Protocols; once this becomes de facto standard practice, the Protocols are aligned. These changes to the operational protocols are deemed to be of minor significance so there is no urgency to go through the formal approval process for major policy changes to the Code of Practice.

Some of these changes in de facto practice and to the Protocols have amounted to major changes to the policy parameters of the SSCP and have significantly eroded the Council's overall control of the program. Some examples are:

- the shifting definition of 'Major Event' from a specified small number of calendar events to any large event – including demonstrations
- the expanding contexts (eg police operations) in which Police were given access to direct vision, control of cameras and right to record vision materials beyond emergencies
- the access (unregulated) of other law enforcement and security agencies to the SSCP

This kind of policy drift can happen easily under day today pressures when operational changes are not scrutinised at the public or the policy levels.

The immediate task is to bring the Code and the operating protocols into alignment. The determining drivers here must be the Code of Practice moderated sensibly for practicality. For the

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<sup>31</sup> NSWCCCL has not had an opportunity to see these.

future amendments to operational procedures should be more widely and carefully scrutinised to assess their individual/cumulative policy impact.

CCL recommends that the SSCP Protocols be made available to the public, and that amendments be referred to the SSCP Audit Sub-Committee for policy implications to be identified and assessed. The involvement of the Audit Committee ensures that there is an informed, independent input to assist program managers identify unintended policy implications with a minimum of bureaucratic delay. Making the Protocols as well as the Code of Practice publicly available is the best way of providing protection for the Council and the community against unintended policy creep through operational changes.

CCL agrees with the 2010 Deloitte's audit of the SSCP which recommended that the Code of Practice and Protocols be amalgamated into one document. This will help with both accessibility and consistency. This could be a time consuming task requiring a fair amount of liaison with stakeholders. As a transitional improvement, the documents could be quickly made more user friendly by aligning the numbering of matters across the documents.

The full amalgamation of the Code and the Protocols should be done over the 2011/12 period. It would be sensible for the reconstituted SSCP Audit Committee to be given responsibility for this process.

## 4. SUMMARY OF NSWCCL RECOMMENDATIONS

### PURPOSE AND SCOPE

NSWCCL recommends that:

- 4.1.1. The primary purpose of the SSCP be limited to assisting in the prevention of crimes against the person
- 4.1.2. The secondary purpose of the SSCP be limited to assisting in the prevention of serious property related crime (with specific exclusions for minor and non-violent activities such as graffiti tagging.)
- 4.1.3. Drug related offences should not be specifically included in the scope of the program as any associated activities/offences which threaten safety in public places will be covered by the provisions in 3.7.1/2
- 4.1.4. If Council determines to retain drug related offences within the scope, then the explicit exclusion of personal use of illicit substances should be maintained and identifiable features of individuals captured in videos as receiving (apparently) personal quantities of drugs be obscured before making recorded material available to Police
- 4.1.5. The explicit exclusion of general intelligence gathering should be maintained along with a clear, supporting definition of 'general intelligence' in the Code of Conduct/Protocols. It would be along the lines of excluding monitoring of individuals/locations except on the basis of observed offensive behaviour/action within the scope of the program.

### MAJOR EVENTS, DEMONSTRATIONS AND POLICE OPERATIONS

NSWCCL recommends that:

- 4.1.6. The definition of Major Events for which the SSCP can be used be confined to major cultural, celebratory and sporting events which meet any of the prescribed additional criteria.
- 4.1.7. The criteria for a Major Event to be monitored by the SSCP be amended to involve 'a **significant** additional risk to personal safety'.
- 4.1.8. The permitted uses of the SSCP for Major Events be amended to clarify that 'monitoring crowd movements' relates only to crowd safety and traffic/pedestrian flow and not monitoring of individual/small group interactions for intelligence purposes.
- 4.1.9. A separate context of Political or Religious Demonstrations as a permitted context for the SSCP be added to the Code of Practice. Permitted uses in this context should be the same as for Major Events
- 4.1.10. The overarching SSCP Principles in the Code of Practice be strengthened to explicitly exclude the reporting of any intelligence on the expressions- by speech or assembly- of legitimate political or religious views by members of the public.
- 4.1.11. The SSCP can be used to specifically monitor demonstrations/rallies only when they meet the prescribed additional criteria for Major Events and following formal application and approval processes.
- 4.1.12. For the duration of demonstrations/rallies vision and camera control should be exercised exclusively from the from the SSCP Control Centre

- 4.1.13. Council should review the proposal for a separate ‘Police Operations’ context and preferably maintain any intensive operations within the standard SSCP contexts and guidelines.
- 4.1.14. If ‘Police Operations’ are added as a separate context, the definition of what is meant by this needs to be clarified. The surveillance of demonstrations should be explicitly excluded from a Police Operation context.
- 4.1.15. For Major Events (other than demonstrations/rallies) and Police Operations:
- vision and camera control should only be transferred to the Police Operation Centre when a City of Sydney responsible Officer is on duty and present at the Centre
  - camera control should at all times be in the hands of the Control Room Staff
  - recording of vision should not be permitted at the Police Operation Centre
- 4.1.16. The requirement that NSW Police or the Premier’s Department must submit a written request for the use of the SSCP to monitor Major Events and Police Operations be maintained and be extended to include demonstrations
- 4.1.17. Approval for the use of the SSCP to monitor Demonstrations and Police Operations must be given by the CEO.
- 4.1.18. Discretion to permit one-off use of the program outside these parameters in exceptional cases should be included. Approval to do so should remain with the Lord Mayor.

#### **SURVEILLANCE IN RESIDENTIAL AREAS**

- 4.1.19. CCL opposes the use of CCTV surveillance in residential areas as an unwarranted major intrusion into privacy. There may be some exceptional circumstances where the use of cameras may be on balance reasonable, but this should only occur with clear and strong community support.

#### **AUDIT OF THE SSCP**

NSWCCL recommends that:

- 4.1.20. The SSCP audit committee should be reconstituted as a sub-committee of the City of Sydney Audit Committee.
- 4.1.21. Its functions should be:
- i) to provide an independent and *regular* review and checking mechanism for the Street Safety Camera Program;
  - ii) to identify and review any deviations from the Code of Practice, Protocols or Standard Operating Procedures (“SOPs”) that come to notice during audit;
  - iii) to recommend actions that will safeguard the Program from abuse;
  - iv) to advise Council of local and international developments in practice, policy and research on effectiveness of public safety surveillance programs, and implications for the SSCP
- 4.1.22. Membership of the SSCP Audit Sub-Committee should have at least 6 members including:
- i) one representative of the City of Sydney Council
  - ii) one representative of the NSW Police Force
  - iii) a majority of independent members including persons with:
    - expertise in civil liberties and privacy issues nominated by NSW CCL

- expertise in relevant research relating to surveillance, public safety and crime prevention
- expertise in relevant legal aspects nominated by the NSW Law Society
- community experience of CCTV surveillance nominated by a relevant local community group from within the area of the SSCP

4.1.23. The SSCP Audit sub-committee should:

- i) meet at least three times a year
- ii) conduct an annual audit of the SSCP
- iii) report on the SSCP annually.

4.1.24. Council should resource the SSCP Audit Sub-Committee adequately so it can effectively fulfil its functions.

### **AUDITING POLICE ACTIVITIES WITHIN THE PROGRAM**

NSWCCL recommends that:

4.1.25. The ambit of the SSCP audit process should encompass all operational aspects of the program across partners including NSW Police Force activities

### **DOCUMENTATION**

NSWCCL recommends that:

4.1.26. Policy and operational guidelines for the SSCP should be open to the public to allow community monitoring/scrutiny of operational consistency with formal policy across program documentation.

4.1.27. Changes to operation documents should be referred to the SSCP Audit Sub-Committee for assessment of the policy implications and consistency with the Code of Practice

4.1.28. Priority be given to determining the updated Code of Practice and editing the Protocols and other supporting documentation to ensure consistency with the Code.

4.1.29. In the longer term (2011/12) the Code of Practice and the Protocols should be amalgamated into a single document

4.1.30. The tasks of editing SSCP guidelines for consistency and subsequently, amalgamation of the Code of Conduct and the Protocols be referred to the SSCP Audit Sub-Committee

**NSW Council for Civil Liberties  
April 2011.**