



Our ref: ML:LW:24529:304688v1

8 March 2013

Mr Andy White
Cities Compliance Officer
City of Greater Geraldton
Po Box 101
GERLADTON WA 6531

Email: council@cgg.wa.gov.au

Dear Sir

Objection to Notice – Lot 38, 5 Lands Edge Close, Bluff Point

1. We act for Phillip and Lynne Conder (the **Conders**). The Conders are the owners of 5 Lands Edge Close, Bluff Point, WA (**Land**).
2. We refer to your letter to the Conders dated 25 February 2013 which enclosed a notice “requiring certain things to be done by the owner or occupier of land” (**Notice**). The Notice is made pursuant to section 3.25 of the *Local Government Act 1995 WA* (**Act**).
3. Relevantly, Part 9 Division 1 of the Act defines:
 - 3.1 an ‘*affected person*’ as including a person who has received a notice under section 3.25 (see section 9.2); and
 - 3.2 a ‘*decision*’ as constituting the giving of a notice under section 3.25 (see section 9.1(2)).
4. Section 9.1(2) confirms that Part 9 Division 1 of the Act applies to any notice given under section 3.25. Pursuant to section 9.5(1) of the Act, an ‘affected person’ may object to a ‘decision’ if the person has not applied under Part 9 Division 1 for a review of the ‘decision’. The Conders have not applied for a review of the Notice.
5. Section 9.5(2) of the Act states that an objection to a ‘decision’ must be lodged with the local government (i.e. City of Greater Geraldton (**City**)) within 28 days after the Notice was issued (i.e. by 28 March 2013).
6. This letter constitutes an objection to the Notice in accordance with Part 9 Division 1 of the Act.

The Notice

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7. The Notice states that the City “considers” that the security lights positioned at the front of the dwelling on the Land (**Security Lights**) “are creating a nuisance”. Item 2 of the schedule of the Notice elaborates by stating that the City “considers” the Security Lights are creating a nuisance to the “occupants on adjoining land” and that the Security Lights are “being activated by movement on the opposite side of the road and casting light onto adjacent properties and into windows”.
 8. The Notice requires the Conders to install a “suitable screen” around the Security Lights to ensure that light from the Security Lights is “not emitted beyond the boundaries of the Land” (the **Works**). The Works are required to be undertaken within 14 days from the date of the Notice (i.e. by 11 March 2013).
 9. The Conders are aware of the occupant on ‘adjoining land’ who has made a complaint to the City about the Security Lights (**Occupant**). The Conders have had a history of unreasonable complaints from the Occupant (who resides in the property at 5 Lands Edge Close, Bluff Point).

Reasons for the Objection

History of the Security Lights

10. The original security lights installed on the property were standard issue (purchased from Bunnings) residential security lights – they were not of a commercial nature. The same lights are used in many of the households in our clients’ area.
11. Notwithstanding the above, our clients received a complaint from the Occupant around early 2009 about the security lights. To accommodate the Occupant, our clients changed the security lights.
12. The complaints continued for a further two weeks. In response, our clients purchased another security light from a specialty lighting store (which was significantly more expensive than the Bunnings security lights). To ensure the lights were installed correctly, our clients paid for an electrician to install the lights and set them correctly (in relation to sensitivity and duration).
13. The Occupant made subsequent complaints. Our clients requested the electrician revisit to check the security lights – the electrician confirmed that the lights were on the lowest setting and were working as per the manufacturer’s instructions (he also informed our clients that the security lights (and the settings being used) should not affect a neighbour and that he had he was surprised regarding the Occupant’s complaints).
14. The electrician advised that the only additional thing the Conders could do in response to the (unreasonable) complaints was to point the security lights more downward facing, which the Conders did.
15. The installed security lights subsequently faulted and were returned to the speciality lighting store. Our clients installed a set of standard Bunnings lights and ensured the lights were set correctly.

Security Concerns

16. The Security Lights are an important security feature for our clients.
17. The area surrounding the Land has had a history of break-ins and car thefts. In relation to our clients’ property, there have been a number of occasions where the feature garden at

the front of the Land has been damaged by intruders. However since installing security lights approximately 10 years ago, there have been no further major incidents.

18. The Conders employment requires them to perform nightshift work (Mr Conder works on call for the RAC and frequently attends night time jobs, and Mrs Conder is a nurse and frequently does night shifts).
19. The Security Lights serve the purpose of providing light when our clients leave to attend their jobs and return home from their jobs (which is often still during the night time). The Security Lights are activated when Mr and Mrs Conder leave the property and allows them to access their vehicles safely (it performs the same function when they return home). The Security Lights also serve a security feature for our clients' two daughters who are often left at home alone.
20. Our clients reject the assertion in the Notice that the Security Lights would be activated by an individual on the other side of the road. The Security Lights are only activated when movement is detected on the Land, such as when our clients attend to their vehicle during night time.

Idiosyncrasies of the Occupant

21. The idiosyncrasies of the Occupant should be considered in the context of the City's decision to issue the Notice.
22. The Occupant has the odd habit of sleeping at night with the curtains open – this allows sources of light, including from street lights (we understand there is a street light closely proximate to the window of the Occupant's second storey bedroom), to enter the bedroom. Our clients reject the assertion that the source of light resulting in the Occupant's complaint derives from the Security Lights – it likely comes from another source such as a street light.
23. The Conders have done all they can to accommodate the Occupant (whose complaints have become unreasonable). They have angled the Security Lights downward facing and have ensured (on multiple occasions) that the settings on the Security Lights, in relation to sensitivity and duration, are optimal to ensure emitted light does not extend beyond the boundary of the Land.

Inspection of the Land

24. Our clients are disappointed that the City never visited the Land to inspect the Security Lights before issuing the Notice.
25. Our clients believe that if an inspection of the Security Lights was undertaken, the City would have ascertained that:
 - 25.1 the emitted light from the Security Lights does not extend beyond the boundary of the Land;
 - 25.2 the cause of the Occupants complaint is likely to be another source of light, such as the street light nearest the Occupant's bedroom; and
 - 25.3 the Security Lights are standard residential lights used frequently in our clients' area.

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26. To assist in resolving the matter, our clients have indicated that are willing to invite a member of the City to attend the Land to inspect the Security Lights. Our clients will be available to facilitate any inspection.

Conclusion

27. For the reasons outlined above our clients reject the assertion that the Security Lights “are creating a nuisance”.
28. We note that the Notice requires the Works to be undertaken within 14 days from the date of the Notice (i.e. by Monday 11 March 2013). Can you please confirm that the City will not take any precipitous action in relation to the Notice (e.g. our clients not complying with the deadline to undertake the Works) while the City considers our clients’ objection.
29. Please advise if the City requires any further information in relation to our clients’ objection and whether the City would like to arrange an inspection.
30. We look forward to hearing back from the City in relation to our clients’ objection.

Please direct all correspondence to Matthew Lenhoff of our office.

Yours faithfully



Williams & Hughes