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YSP Podcast Transcript: Episode 291. CCTV Best Practice - With Chris Irons

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Intro: Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source.

Amanda Farmer: Hello and welcome to this week's podcast episode. I'm your host Amanda Farmer and I am shortly going to take you over to my chat with Chris Irons of Strata Solve. Chris and I spoke live over on the, Your Strata Property Facebook page last Friday and I'm bringing you an edited down version of that live chat. You can catch the whole shebang over on the, Your Strata Property Facebook page. We had a large and very interactive audience that day tuning in to hear Chris' tips for best practice management of CCTV systems in strata.

Always a popular topic, one of the questions Chris and I were asked during the live session was this, how long does an owners corporation have to keep CCTV footage? Is it a record of the owners corporation? If so, what rules, if any, are there about the length of time that record has to be kept. Now in this chat, you'll hear me refer to the fact that some records of an owners corporation have to be kept for 5 years, some have to be kept for 7 years and perhaps deleting CCTV footage within 7 days as some buildings do may place the owners corporation in breach of the legislation.

Since this chat, I have gone over and had a look at the relevant provisions of our New South Wales legislation referring particularly to Sections 180 and 182 of the Strata Schemes Management Act and it's important that I say this, the period for which CCTV footage may need to be kept by an owners corporation is really not very clear in our legislation. It is certainly a record that should be made available to an owner when they are conducting an inspection of the owners corporation's books and records, but there is no specific statement in our New South Wales legislation that CCTV footage is the type of record that needs to be kept for a specified period.

Now, in one view that could mean the footage should be kept indefinitely, I appreciate how impractical that would be for this data which only grows in size over time storage of that much information becoming near impossible when we're talking about years of video footage. This is just one of the many areas of our strata legislation that is in my view, unclear and unfortunately left to our interpretation. Certainly, the report on the statutory review of our New South Wales Strata legislation published at the end of November 2021 does call for clearer laws around record-keeping for owners corporations, as well as acknowledging the privacy issues that arise when strata books and records are accessed by owners and their representatives.

I do want to a special thank you to both Gordon and Peter, you know who you are, they separately reached out to me after the live chat on Friday to share their thoughts on this issue of retaining CCTV footage within an owners corporations books and records. CCTV is not the only topic you'll hear me and Chris Irons talk about in this upcoming chat. Chris kicks us off by sharing his view that it's often a clash of personalities that is at the root of some of the most expensive and conflict-ridden strata litigation.

He also explains why he hasn't looked back after finishing our up his role as Queensland Commissioner for body corporate and community management. In the complete conversation over on the Facebook page you'll also hear Chris talk about strata doormats, trombones, and toilets. Well worth checking out that full version. There is a link in show notes for you. For now, I'll take you right on over to my edited Friday live chat with Chris Irons of Strata Solve. Chris is a thought leader for strata issues and dispute resolution. For over 5 years, Chris was Queensland's commissioner for body corporate and community management, the only role of its type in the world.

After working for Hynes Legal in Queensland, Chris is now an independent strata consultant working under the banner of Strata Solve and helping clients to untangle their strata issues with tailored solutions. Chris brings to the table over two decades of leadership in public policy development and is a nationally accredited mediator. He's a frequent media and content contributor on strata issues. He's well known for his ability to get to the heart of Strata problems focusing on cause rather than effect and also for his mantra of inform and educate. That's ours here too.

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In Strata, Chris believes knowledge is power and Strata Solve combines Chris' one of a kind perspective, skillset and knowledge to help his clients save time, money and emotional toil. In his capacity as an independent consultant Chris is senior vice president of the board of Strata Community Association Queensland. He's also the president of Northside Connect, a not-for-profit community and legal services provider based on Brisbane's Northside. Chris is the human slave to a happily retired former racing greyhound, which of course has all the necessary strata approvals. Welcome in Chris Irons.

Chris Irons: Thanks Amanda. Thanks for having me. Yes. Ernest the greyhound has all of the necessary approvals. Just a bit of a fun fact about Ernest at the last weigh-in at the vets I think he topped the scales at about 38 kilos so he would fail pretty much most weight limit by-laws that you find in Australia. I live in the strata scheme by the way, but he is the perfect animal for an apartment. He spends about 16 hours a day asleep and does not bark unless I tease him and doesn't do anything else. It's a good example of how by-laws don't always work the way that you hope they would and vice versa.

Amanda Farmer: Yes. Well, there's a whole other chat webinar podcast episode for us to have on pets in strata that's for sure across Queensland and New South Wales weight limits being one of the bugbears that I have when it comes to pets as well. I do know greyhounds are excellent apartment residents, so I have heard, so it would be nice to meet Earnest one day. Tell us, Chris, what you have been up to since leaving Hynes Legal and I've mentioned there, your new banner Strata Solve, who are you serving? Is it just Queenslanders and what is it that Strata Solve is doing?

Chris Irons: Well, I think the services I offer are actually applicable Australia wide. Obviously, I have a bit of a knowledge base from Queensland's legislation and Queensland's legislation I think everybody knows every state and territory is different when it comes to strata legislation, but the services I offer they're not legal in nature and this is the point Amanda where I stress I'm absolutely not anti-lawyers, I have plenty of them and when it comes to strata disputes, I think it's essential that you have some legal advice and legal proceedings in some instances you can't avoid it when you're involved in a proceeding you'd be extraordinarily foolish and unwise if you were not properly advised and represented in those instances.

But my view is that at least 50%, if not more of all Strata problems are personality-based or lie in a communication breakdown or a communication problem. To me, legal advice doesn't necessarily suit that issue. That's what Strata Solve aims to achieve. Strata Solve is about applying different techniques to solve strata problems. If I was to sum it up, it would be dispute resolution but it's also dispute prevention as well, Amanda. Sometimes, and I'll be interested in your views on this, in my experience, strata disputes more often than not have their genesis in events that took place a long time ago.

Something happened 6 months or probably more than 6 months, a year, two years earlier, which is completely unconnected to the issue that's happening now but whatever happened back then it pours into the well and everything is wrecked after that. Is that what you find as well?

Amanda Farmer: Absolutely. It's often when a dispute doesn't make sense to me. I may sit with a client for the first time and they've spent the first half an hour of the conference telling me about the problem and the difficulty they're experiencing right now but I just feel in my gut that I'm missing a piece of the story and I might ask more questions and think, hang on, did I miss here? Have I fallen asleep and I missed the bit about why is this happening? Can you tell me more?

Eventually, I get to the stage I've learned over the years as I've got more experienced and more confident that I have ultimately said, "Tell me what's really going on because it ain't this. Whatever this is, there's something else going on here. Tell me what's really are going on." It's often at that point that the client will say, "Well, 5 years ago, I voted against Jim renovating his bathroom and he's never forgiven me and that's what this is really about."

Chris Irons: To a certain extent, that's what I'm trying to do with Strata Solve. I'm actually trying to find a way to ask that very question of people but maybe not maybe leading them to that point, Amanda, we were talking off-air before about the need to organically bring someone along the journey. In the intro there, you talked about how I'm an accredited mediator and part of the mediation training is very much focused on this idea that even if somebody comes up with a solution in the first 10 minutes of the mediation session, the temptation to end it right there is immense but you haven't addressed cause and you haven't gone towards

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the core issues.

Chris Irons: If you don't do that, then the likelihood of that problem coming up again or even being exacerbated in future is very high. Same thing applies here. Rather than leap to the solution, it's about, "Okay, you've come to me with these massive issues. I'm trying very hard to understand what it is." This is whether it's an owner or a committee or somebody else, "But let's try and unpack it all and find out where the cause is of that." I'm a big believer in addressing cause rather than effect and that's what Strata Solve is about.

Amanda Farmer: And having somebody there a third party, whether independent or whether somebody is acting on your behalf to do that exercise of unpacking I think is so helpful. I often say to my clients that's the skill of a lawyer and it doesn't have to be a lawyer as you are demonstrating Chris, being able to see the wood for the trees and being able to separate out issues in a way that is rational, not emotive, and then being able to tick those issues off the list in the right order.

It's incredibly hard. I've definitely been on the other side as a client and it's very hard when it's your home when it's your biggest investment, when it's your own community, your own neighbours to think in a framework like that and therein lies the benefit of a professional to be able to guide you through.

Chris Irons: I think part of it also, Amanda is about being able to wear the black hat as when I was commissioner the temptation to really speak my mind was so strong and immense but I couldn't, I was a public servant. You don't speak your mind when you're a public servant. Different now and I can put on that black hat and I can say to people, "Look, listen, I'm here. What you're telling me, what you would like to do and what you would like to see happen here but everything that I have ever experienced and there's very little that I have not seen or experienced in strata tells me that if you go down this path, you are going to be very very sorry later on."

When you have somebody who has no stake in the scheme, no stake in the issues, it's actually far easier for them to be able to offer a perspective that might go some way towards unlocking, might not solve, it certainly might not solve that moment in time, but it unlocks, it gives that fresh perspective and once you can look at things anew that enables you to move forward, I think, and if you've spent again, you would've seen this plenty of times Amanda, clients who have lived with a problem for months, if not years, and just can't any longer have any rational perspective on it.

The ability to suddenly get that perspective back, it's invaluable I think and I think that's absolutely something I'm trying to do here. It's tough work being involved in strata. It doesn't matter if you're an owner, it doesn't matter if you're on committee, it doesn't matter if you're a strata manager, it doesn't matter if you're a practitioner, it's tough work. It's complicated. It's convoluted. It's emotional. It's I always like to say to people, Amanda, it's a very very weird mix of legal, housing, social justice, community, and a few other bits thrown in as well.

That's why government always, I think I'd be interested to hear what you think about this, that's why I think government always struggles to know precisely what to do with strata reform and how to offer services for the sector.

Amanda Farmer: Yes. I do agree with you that it is a confusing weird place. If it's confusing for those of us who are in it, our lawmakers, many of whom may not be so involved, probably aren't so involved, of course, it's going to be confusing for them. I just want to touch on your previous role as commissioner. I want to let our audience know because we chatted some years ago now probably and our audience has probably grown significantly since then, we do have a podcast episode where you and I spoke about the unique role of the Queensland body corporate commissioner. I think that was when you were still commissioner and I think we've had a live chat as well since then when you joined Hynes Legal. You haven't really looked back since leaving that role as commissioner?

Chris Irons: No, in a word, Amanda. No. Look, I think I touched upon it just a moment ago. The difference between being a public sector employee and being on the private side of things is the ability to speak just a little more freely. I still need to be a bit cautious about what I say of course, because I'll give you an example actually of what I mean there Amanda. I put on a webinar in my time

and I was with Hynes Legal and we called it dealing with, I think it was dealing with nuisance people or dealing with nuisance, something along those lines.

Chris Irons: We got a lot of attention and it's always a topic that comes up but I got a random email from someone who complained along and loud that use of the word nuisance immediately stigmatised and demonised people who had valid concerns and I was contributing to the problem by placing a label on them. My first reaction of course was to be outraged that someone would complain about a free information service that I was providing. I stopped to think about it and started to think to myself, actually, they might have a point it here.

Words are everything and when it comes to a strata situation words can just make all the difference about what's going on in the situation. The instant you label somewhat difficult or nuisance or problem, that's all they'll ever going to be, frankly and it takes an awful lot to change perception about it as well. I haven't looked back. Question for you though Amanda, if I may and maybe for everybody else, I don't know, I know that New South Wales has gone down the path you've got a building services, I think it's building service Mr. Chandler Building Service, very prominent, high profile.

You recently a property services commissioner appointed as well I understand. Just having a look at that report you were reading from before talked about the idea of a strata commissioner as well. What do you think? Do you think that that role would have some relevance for New South Wales?

Amanda Farmer: If you asked me that question pre-pandemic, I would've said no, not necessary. But having gone through the last almost 2 years of being, and look, I'm a private service provider I can say this, going through 2 years of being pretty much ignored, the strata space being ignored by our government, our New South Wales government in relation to public health orders and that was not without us clamouring SCA, OCN, myself, top-level academics in our space, clamouring for attention, sitting in meetings, requesting amendments that we drafted for public health orders and being refused with no explanation, we need somebody.

We need somebody sitting in that role to advocate for our interests. That has really been the missing piece this last two years.

Chris Irons: Yes.

Amanda Farmer: Bring on the emails, everybody.

Chris Irons: Look, it's an interest in the concept, isn't it? Because the instant you have somebody in that role, the expectations are high about what they will help people to achieve but at the end of the day, Amanda, people still have to help themselves when it comes to their property. Absolutely, let's have a government service provider there that's there to provide information and dispute resolution, give people the tools to do what they need to do but at the end of the day somebody has to do that for and of themselves. A lot of the problems arise when people don't feel empowered to take that step to enforce their rights. That's tough to bring people on that particular journey.

Amanda Farmer: Well, let's take that self-empowerment and taking matters into our own hands as a launching pad to discuss what I know is probably a topic I can see from the comments many are here to hear about, from you Chris, and that's CCTV. Installing CCTV in our apartment buildings, in our strata schemes. Now I asked you if you wouldn't my sharing your knowledge on this topic because I had seen that you did a very well attended webinar via Nicki at Lookup Strata, a webinar with Frank Higginson at Hynes dedicated to this topic and we could probably talk for an hour plus about CCTV. But if I can invite you to share maybe your three big tips when it comes to CCTV in Strata, and then we might jump into some of these comments and questions about CCTV.

Chris Irons: Absolutely.

Amanda Farmer: Let's try that.

Chris Irons: Okay. Three tips. The very first one is it all depends where the CCTV is fixed. Is it on common property or is it not?

Because if it on common property and we talked about this just before Amanda, if it's on common property, it's a body corporate record so that's that. When it's not on common property, that's a slightly different scenario, that's a slightly different treatment for any problems which arise. The first question, where is it located? The next tip that I would give, if you're going to have CCTV, regardless of who's installing it and where it's being installed, you have to assume that at some point someone is going to want the footage for some reason.

Chris Irons: Whether it be police or whether it be a member of the public or some other purpose. Then the question becomes okay, if I agree and I would hope that people would agree that at some point there will need to be access, what am I going to do to ensure access? Because if I can't or if I can't answer that question what's the point of having it in the first place? If your CCTV footage is going to be overwritten every 7 days and I think it's might have improved from that, but I think some systems might still be 7 days, I'm just not sure what the point is if the police come knocking in two weeks time, "Sorry, we don't have the footage anymore."

Doesn't really achieve much of a purpose. Then the third tip I'd probably give Amanda is transparency. All right, you've got CCTV from an owner's point of view it's a bit more difficult to compel an owner to be transparent about motives, but from a body corporate perspective I think it is appropriate to be transparent. You should be transparent about it. If there is CCTV and people are concerned about it for whatever reason, embrace it, own it. "Okay. I get you concerned. I get that you have some issue about privacy or where it's located. You've got an issue involving children."

That's always a big one that comes up in this area, engage with it. Don't just shut it down and say CCTV is there and that's that, you just have to suck it up. No, there's a bit more that goes with it. This goes back to what we were just talking about this weird mix of social issues and legal issues. This is we're talking about legalities, but we're also talking about social interaction, I guess too Amanda, there's a lot of different issues that come to play there.

Amanda Farmer: To the point about the CCTV being a record, I agree that is the law in here in New South Wales as well, a record that should be kept by the owners corporation. I want to give Elizabeth the chance, she got in early with the question. How long does the owners corporation have to keep the CCTV and audio? Well, in my view Elizabeth, if it is a record of the owners corporation, then we refer to the provisions in our legislation for how long we need to keep records.

From my memory in our Strata Schemes Management Act there are some specific provisions about keeping records. Some accounting records I think for 5 years and other records for 7 years. Chris has just said many of these systems owners set up to override the footage after seven days. A, that makes it rather useless and B, that is perhaps not complying with your legal obligations as an Owners Corporation to keep records so definitely something to think about.

Chris Irons: I'd agree with all of that, Amanda. Yes.

Amanda Farmer: Elizabeth is also as sharing a scenario and I think this is to your point, Chris, about where you have to take into account how people feel about the CCTV being there in their community. Elizabeth has this experience of having a feeling as if the staff are watching the CCTV all day laughing at the comings and goings of resonance. That sounds horrible, it really does. Nobody would want to be living in a community where that's happening and I hope, I'm sure Elizabeth and I know you're a forthright, confident woman, you'd be bringing this to the attention of your community and trying to resolve that concern.

Chris Irons: I think this is a really good example of a difference between a legal position and a different kind of position. The legal position I would imagine Amanda is that well, that footage is a body corporate record and therefore that's available to a person as defined under legislation. If, for example, I'm an owner and I can log onto a portal and access body corporate financials or whatever day or night on demand why should footage be any different? The answer is, well, it's a record so it shouldn't be but as Elizabeth, very correctly points out, this is a different scenario.

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This is what I am doing on a day-to-day basis that really has no involvement from the committee or anybody else. The issue that Elizabeth raises there about people having remote access to footage that comes up all the time and it's really problematic because you've got sometimes passwords being shared around amongst committee members, onto service contractors, perhaps even to the strata manager, it's like any access to anything there need to be some tight controls on who accesses things. You've got documents that have different security levels, stands to reason you'd have different security levels on something like footage too if possible.

Amanda Farmer: John is posting a question here about people going around with binoculars checking things. We have a colony of peeping Toms it seems. I know Chris you had a recent experience with a client where this was a concern and you're happy to share how that played out?

Chris Irons: Gosh, look, one of the things I'd say John in that situation is I'm a big believer, Amanda, in asking why? Whenever I'm presented with a strata problem my first question is why? Why is it happening? To me the scenario John that you described there, something must be going on that makes people want to be that way. Let's put aside that particular situation, even put aside CCTV for just one second and focus on records more generally. One of the big problems that I encounter all the time and I'm certain you would as well, Amanda, is an individual who makes a record request almost every day or multiple times a day.

It ties up the committee's time, it ties up the strata manager's time, it costs money, it costs time. My question and I've had clients come to me and say, "What can we do about this person? They're causing so much grief, so much angst, so much nuisance." My question is why are they constantly making those requests? Are they missing out on something or do they feel like they are missing out on something? Do they feel that something is being concealed from them? I wonder if you can apply that same step back logic and look at the situation.

Why are people running around with binoculars? In my neighbourhood, people are running around with binoculars. I dare say they're not in your neighbourhood either Amanda, why are they doing it here though? What makes this building, this scenario so different? It can't just be a coincidence. I can't imagine that it would be a coincidence. What's going on here that makes people act in this way? I dare say if you took the time, John, and anybody else connected with that scheme to consider that just in a little bit of detail you might start to find some different perspectives on that situation. I don't know, I could be wrong but.

Amanda Farmer: I love that real-time demonstration of your approach to dispute resolution there, Chris, because my lawyer brain immediately says, well, if the camera or the binoculars in this instance, if you're on your own lot property, you can do what you like on your own lot property as a matter of law and subject to a few things like nuisance and things like that. But in terms of spying on other people, there's no law, there's no law against spying on anybody else. There's no right to privacy, even though many Australians like to think so in this country there's no right to privacy and as a matter of the application of the law then Mr. Peeping Tom has every right to be Mr. Peeping Tom.

But your approach of stripping that back and saying, well, why does Mr. Peeping Tom feel that he has to be, I think is excellent and it reminds me of clients that I've had that have made NCAT applications or our records inspection requests as you say, because they've tried. They've been trying for so long to get information or to get their community to meet its legal obligation to repair and maintain the common property and it's the last straw for them and they've come to me then we filed an NCAT application and the community's often sometimes up in arms, how dare you take us to NCAT?

Why are you taking us to NCAT all this cost and time and conflict? And the owner is left saying, well, I've tried these other avenues and I felt there was no transparency. There were no answers to my questions. I wasn't given access to records. I've had to exercise this option to go to the tribunal. Often people don't get the opportunity to explain themselves like that. They're not asked to.

Chris Irons: Yes. I think that's a fair point. Sometimes a person will just be irrational, Amanda, and not have any rational basis for what they're doing something and even then there might be some underlying medical issues, for example. Then that of itself probably warrants a slightly different treatment to the situation but it would be my contention that the majority of situations have a

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quite rational, tangible basis for why they are happening that way.

Amanda Farmer: Yes. We have so many comments coming through the thread here that I'm finding it hard to trace them but I have Joanna's comment here has jumped out to me about a by-law because it's something that I do again with my lawyer hat on recommend to buildings that have CCTV in place is to make sure there's a by-law that sets out how the CCTV is to operate. But here Joanna is sharing with us a by-law that her community is trying to pass saying that CCTV footage may be deleted by the owners corporation at such a time and in such manner as it determines.

That's interesting. I would see the out as a by-law that conflicts with the Act because the Act requires you to keep records for a period of time and as I teach in my webinars, a by-law that conflicts with the Act is an invalid bylaw. Again, applying my Chris hat, why would the community be doing that?

Chris Irons: I'm trying to think of a reason why, and the only thing that I can really come up with there, Amanda, is that the committee has been burnt by requests for footage, perhaps has been required to go through some considerable cost and effort, which is a valid concern. I get it, but the way they're addressing it is probably the wrong way here so instead of thinking about better ways to manage storage, and there are lots of different options for that, they've gone the sledgehammer to the walnut approach which is no, we can delete it whenever we like. I agree with you, Amanda, in Queensland, that would more than likely be in invalid by-law and would not survive challenge.

Amanda Farmer: Yes. As we know, well, here in New South Wales from our Court of Appeal, administrative convenience does not a valid by-law make. I am going to head back later this evening, I think, perhaps with a glass of wine to fortify me and visit these comments because I don't know what everybody's on today but there are some very interesting, somewhat amusing tangents happening over in the comments.

Thank you everybody for your contributions, both on topic and off. I am very grateful to have the knowledge, the skill, the expertise of Chris Irons here today. I do you very much enjoy the way your mind works, Chris, and your mantra that knowledge is power is definitely one that I subscribe to and that I support and it is a big part of what we're doing here and thank you for agreeing to be part of that.

Chris Irons: Thank you. It's been a real pleasure, Amanda. Thanks and thanks everyone for taking the time. You have an endless array of webinar podcast options. The fact that you choose to spend a bit of time on a Friday over watching and listening, got to appreciate that. Thanks everyone.

Amanda Farmer: Wishing you all a happy weekend. Go and enjoy some nice weather if you're lucky enough to have it for a change and I'll catch you all here next time. Thanks everybody.

Outro: Thank you for listening to your Strata Property, the podcast which consistently delivers to property owners, reliable and accurate information about their Strata property. You can access all the information below this episode via the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comment section which Amanda will answer in her upcoming episodes. How can Amanda help you today?